

COMMISSION DECISION

of 6 October 2009

granting a derogation to France pursuant to Decision 2008/477/EC on the harmonisation of the 2 500-2 690 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community*(notified under document C(2009) 7514)***(Only the French text is authentic)**

(2009/740/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision)⁽¹⁾, and in particular Article 4(5) thereof,

Having regard to Commission Decision 2008/477/EC of 13 June 2008 on the harmonisation of the 2 500-2 690 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community⁽²⁾, and in particular Article 2(2) thereof,

Whereas:

- (1) Under Decision 2008/477/EC Member States must designate and subsequently make available, on a non-exclusive basis, the 2 500-2 690 MHz frequency band for terrestrial systems capable of providing electronic communications services subject to specific parameters, no later than 13 December 2008.
- (2) Article 2(2) of Decision 2008/477/EC states that, by way of derogation, Member States may request transitional periods that may include radio spectrum sharing arrangements, pursuant to Article 4(5) of Decision No 676/2002/EC.
- (3) France has informed the Commission that, since this band is currently occupied on an exclusive basis by mobile electronic communications equipment used for national security needs (the RUBIS System), it is not in a position to implement on time the requirements set out in Decision 2008/477/EC.
- (4) By letter of 15 December 2008, France requested a temporary derogation from such requirements in order to be able to continue using this equipment while putting in place new equipment using different frequency bands. By letter of 29 June 2009, further clarification was provided in relation to this request.
- (5) France has provided sufficient technical justification for its request, based in particular on the need to keep the current RUBIS communication system fully operational and uninterrupted during the migration period and to procure and install new equipment.
- (6) The first phase of implementation will end on 1 January 2012 and make the band 2 500-2 690 MHz available in accordance with Decision 2008/477/EC in the most densely populated areas of France. The second phase will cover all areas not included in the first phase and will make them available by 31 December 2013, with the exception of Corsica, where spectrum will be made available by 31 May 2014.
- (7) Considering the envisaged duration of the migration, and in order to ensure the shortest transitional period possible, the French authorities commenced the process of migration on 1 July 2009.
- (8) A progress report on migration and implementation of commitments will help manage the transition period properly.
- (9) The members of the Radio Spectrum Committee indicated at the Committee meeting on 2 October 2008 that they did not object to this transitional derogation.
- (10) The requested derogation would not unduly defer implementation of Decision 2008/477/EC or create undue differences in the competitive or regulatory situations between Member States. The request is justified and a transitional derogation would be appropriate to facilitate the full implementation of Decision 2008/477/EC,

⁽¹⁾ OJ L 108, 24.4.2002, p. 1.⁽²⁾ OJ L 163, 24.6.2008, p. 37.

HAS ADOPTED THIS DECISION:

Article 1

France is hereby authorised to postpone the full implementation of Decision 2008/477/EC until 31 May 2014, subject to the conditions laid down in Articles 2 and 3.

Article 2

France shall make the band 2 500-2 690 MHz available, in accordance with Decision 2008/477/EC, in the most densely populated areas of France by 1 January 2012, including the region Ile de France, so that at least half of the French population is covered by that date. France shall make the band 2 500-2 690 MHz available in accordance with Decision 2008/477/EC in all other areas by 31 December 2013, with the exception of Corsica, where it shall be made available by 31 May 2014.

Article 3

France shall submit a first report by 1 January 2012 and a second report by 31 May 2014 on implementation of Decision 2008/477/EC.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 6 October 2009.

For the Commission
Viviane REDING
Member of the Commission
