

## COMMISSION DECISION

of 26 October 2009

**granting a derogation requested by France pursuant to Decision 2006/771/EC on harmonisation of the radio spectrum for use by short-range devices***(notified under document C(2009) 8041)***(Only the French text is authentic)**

(2009/812/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) <sup>(1)</sup>, and in particular Article 4(5) thereof,

Having regard to Commission Decision 2006/771/EC of 9 November 2006 on harmonisation of the radio spectrum for use by short-range devices <sup>(2)</sup>, and in particular Article 3(2) thereof,

Having regard to the request made by France on 29 June 2009,

Whereas:

(1) Decision 2006/771/EC, as amended by Commission Decision 2009/381/EC <sup>(3)</sup>, provides that Member States must designate the frequency band 2 400-2 483,5 MHz for wideband data transmission systems and radio determination applications and make it available on a non-exclusive, non-interference and non-protected basis, subject to specific conditions, by 1 November 2009.

(2) Article 3(2) of Decision 2006/771/EC states that, by way of derogation, Member States may request transitional periods and/or radio spectrum-sharing arrangements, pursuant to Article 4(5) of Decision No 676/2002/EC.

(3) France has informed the Commission that the 2 454-2 483,5 MHz sub-band is currently used by military systems, and that it cannot therefore meet the requirements laid down in Decision 2006/771/EC in time.

(4) France has indicated that the Ministry of Defence has started implementing a plan to replace the equipment used at present. From 1 July 2012, the frequency band 2 400-2 483,5 MHz will be made available entirely for wideband data transmission systems and radio determination applications, in accordance with Decision 2006/771/EC.

(5) By letter of 29 June 2009, France officially asked the Commission for a transitional period during which wideband data transmission systems and radio determination applications could be used in the 2 454-2 483,5 MHz sub-band on its territory solely subject to the following conditions. Outside buildings, these devices may only be used with a power limited to 10 mW. However, inside buildings, they may be used with the maximum power authorised by Decision 2006/771/EC, as amended by Decision 2009/381/EC, that is to say 100 mW e.i.r.p. for wideband data transmission systems and 25 mW e.i.r.p. for radio determination applications. Wideband data transmission systems and radio determination applications may be used in the 2 400-2 454 MHz sub-band subject to the conditions laid down in Decision 2006/771/EC.

(6) In support of its request, France has provided sufficient information and technical justifications demonstrating that there is a risk of interference with military equipment.

(7) A report on the development of the situation in France would be beneficial for the smooth progress of the transitional period.

(8) The members of the Radio Spectrum Committee indicated at their meeting on 8 July 2009 that they did not object to this transitional derogation.

(9) The derogation requested would not unduly delay implementation of Commission Decision 2006/771/EC, as amended by Decision 2009/381/EC, or create disproportionate differences between Member States in terms of competition or regulation. There is sufficient justification for this derogation in view of the special situation in France, and full implementation of Decision 2006/771/EC should be facilitated there,

<sup>(1)</sup> OJ L 108, 24.4.2002, p. 1.

<sup>(2)</sup> OJ L 312, 11.11.2006, p. 66.

<sup>(3)</sup> OJ L 119, 14.5.2009, p. 32.

HAS ADOPTED THIS DECISION:

*Article 1*

France is hereby authorised to derogate from its obligations under Commission Decision 2006/771/EC, subject to the conditions laid down in this Decision.

*Article 2*

Until 30 June 2012, France is hereby authorised to limit the power of wideband data transmission systems and radio determination applications in the 2 454-2 483,5 MHz sub-band in metropolitan France to 10 mW e.i.r.p. where the devices in question are used outside buildings, including places assimilated thereto such as an aircraft, in which the shielding will typically provide the necessary attenuation to facilitate sharing with other services.

*Article 3*

By 31 December 2010, France shall submit a report to the Commission on the implementation of this Decision.

*Article 4*

This Decision is addressed to the French Republic.

Done at Brussels, 26 October 2009.

*For the Commission*  
Viviane REDING  
*Member of the Commission*