

COMMISSION DECISION (EU) 2021/1038**of 23 June 2021****granting a transitional period to the Kingdom of the Netherlands pursuant to Decision 2008/477/EC as regards an update of relevant technical conditions applicable to the 2 500-2 690 MHz frequency band***(notified under document C(2021) 4433)***(Only the Dutch text is authentic)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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,

Having regard to the request made by the Netherlands on 6 January 2021,

Whereas:

- (1) Decision 2008/477/EC provides that Member States are to designate and make available, on a non-exclusive basis, the 2 500-2 690 MHz frequency band for terrestrial systems capable of providing electronic communications services, in accordance with the parameters set out in the Annex to that Decision.
- (2) Article 2(2) of Decision 2008/477/EC provides that Member States implementing time division (TDD) duplex or 'downlink-only' use outside the 2 570 – 2 620 MHz sub-band on the date when that decision takes effect may request a transitional period for the implementation of that Decision, pursuant to Article 4(5) of Decision No 676/2002/EC.
- (3) The Netherlands has informed the Commission that, while authorisations have been granted for the use of the major part of the 2 570 – 2 620 MHz sub-band in accordance with Implementing Decision (EU) 2020/636 ⁽³⁾, two limited sections of the band, namely the 2 565-2 570 MHz and 2 685-2 690 MHz lots, are still subject to two authorisations implementing time division duplex (TDD) instead of frequency division duplex (FDD) that were granted in 2010 pursuant to Decision 2008/477/EC and will expire in 2030.
- (4) By letter of 6 January 2021 to the Commission, The Netherlands requested a transitional period pursuant to Article 2(2) of Decision 2008/477/EC in order to maintain the validity of the two abovementioned authorisations implementing TDD until their expiry. Those authorisations were granted by decisions of the Agentschap Telecom van het Ministerie van Economische Zaken en Klimaat. One authorisation was granted under reference number AT-EZK/7635162 dossier number 6781570-G1 and is valid from 3 January 2013 until 2 January 2030 and the other authorisation was granted under reference number AT-EZK/7937970 dossier number 6697351 and is valid from 11 May 2010 until 11 May 2030.
- (5) In support of its request, the Netherlands has provided sufficient information and justification. By maintaining during the transitional period the two existing authorisations which are used for the provision of public mobile communications services, the Dutch authorities avoid interrupting the provision of mobile communications services by the holders of these two authorisations and avoid disrupting the present competition level playing field situation on the mobile communications market in The Netherlands. Moreover, the extensive usage restrictions attached to the use of the two corresponding spectrum lots required that these authorisations not be included in the

⁽¹⁾ OJ L 108, 24.4.2002, p. 1.

⁽²⁾ OJ L 163, 24.6.2008, p. 37.

⁽³⁾ Commission Implementing Decision (EU) 2020/636 of 8 May 2020 amending Decision 2008/477/EC as regards an update of relevant technical conditions applicable to the 2 500–2 690 MHz frequency band (OJ L 149, 12.5.2020, p. 3).

definition and determination of the generally applicable spectrum cap. As a consequence, the transitional period will ensure stability in the competitive situation of the mobile communications market and not unduly defer the implementation of Decision 2008/477/EC in the Netherlands.

- (6) Moreover, the emission power limits attached to the use of that spectrum under the relevant authorisations are in line with the international coordination agreements concluded with the neighbouring Member States in order to ensure that no interference is created into those Member States. Consequently, the transitional period will not defer the implementation of Decision 2008/477/EC in neighbouring Member States.
- (7) The transitional period would also not go beyond what is necessary so as not to prevent the establishment of a common framework and harmonised technical conditions for the use of the 2 500-2 690 MHz band; restrictions in 2 685-2 690 MHz are provided to protect radio astronomy services in the adjacent band and the use of the 2 565-2 570 MHz frequency is restricted to protect adjacent FDD usage.
- (8) Therefore, this transitional period would ensure that the EU policy objectives in the band 2 500-2 690 MHz are achieved at minimum cost for each Member State and operator.
- (9) For these reasons, the requested transitional period appears justified and proportionate and would not unduly defer implementation of Decision 2008/477/EC in the Netherlands or in the other Member States or create undue differences in the competitive or regulatory situation between Member States.
- (10) The members of the Radio Spectrum Committee were consulted and indicated at their meetings of 9 and 10 March 2021 that they did not object to that transitional period,

HAS ADOPTED THIS DECISION:

Article 1

A transitional period is hereby granted to the Netherlands under Decision 2008/477/EC subject to the conditions laid down in that Decision.

Article 2

The Netherlands is hereby authorised to implement, until 11 May 2030 at the latest, time division duplex (TDD) instead of frequency division duplex (FDD) in the 2 565-2 570 MHz and 2 685-2 690 MHz sub-bands.

Article 3

The Netherlands shall continue to ensure that the implementation of TDD pursuant to Article 2 does not unduly defer implementation of Decision 2008/477/EC, does not create undue differences in the competitive or regulatory situations between Member States and does not affect the terrestrial systems capable of providing electronic communications services already operating or to be deployed in the 2 500-2 690 MHz frequency band in accordance with the technical parameters harmonised by Decision 2008/477/EC within other Member States.

Article 4

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 23 June 2021.

For the Commission
Thierry BRETON
Member of the Commission
