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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

RECOMMENDATIONS

COMMISSION

COMMISSION RECOMMENDATION

of 28 October 2009

facilitating the release of the digital dividend in the European Union

(Text with EEA relevance)

(2009/848/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211 thereof,

Whereas:

(1) The Council, in its Conclusions of 12 June 2008, invited the Commission to prepare a coherent basis for the coordinated usage of spectrum released as a result of the switch-over from analogue to digital broadcasting (the digital dividend), on a non-exclusive, non-mandatory basis. This should include notably the technical aspects, the cost analysis and the socioeconomic impact of different options and the regulatory conditions for accessing spectrum.

(2) The European Parliament, in its Resolution of 24 September 2008 on reaping the full benefits of the digital dividend in Europe: a common approach to the use of the spectrum released by the digital switchover⁽¹⁾, also underlined the potential benefits of a coordinated approach to the usage of spectrum in the European Union in terms of economies of scale, the development of interoperable wireless services and the avoidance of fragmentation leading to suboptimal use of that scarce resource. Therefore, the Parliament called for active cooperation between Member States to overcome national obstacles for the efficient (re)allocation of the digital dividend.

(3) In its earlier Conclusions of 1 December 2005, the Council had already invited Member States to complete switchover by 2012 as far as possible.

(4) Under the electronic communications regulatory framework, Member States should encourage efficient use and ensure effective management of radio spectrum. In combination with the principle of better regulation, this implies that radio spectrum must be allocated in such a way as to bring the highest benefit to society in cultural, economic and social terms. However, in light of the diverse national contexts and legacy situations, this principle must be applied gradually and with sufficient flexibility.

(5) The potential social and economic benefits from future services that will operate in the digital dividend cannot be fully realised as long as the radio spectrum previously or currently used for analogue broadcasting is not released. Moreover, digital terrestrial television technology is increasingly available for users and consumers at affordable prices. Several Member States have already switched off analogue broadcasting technologies and several others have decided to ensure that all broadcasting uses digital technology by 2012.

(6) It is therefore essential to ensure a coherent policy at European level regarding the transition to digital technology and the switch-off of analogue broadcasting, so that this can be completed as quickly as possible in line with the early plans of certain Member States. Where state subsidies are provided to this end, this should be in accordance with state aid rules.

⁽¹⁾ 2008/2099(INI).

- (7) The current economic crisis has underlined the urgency of making sufficient radio spectrum available for the development of high-speed wireless infrastructure to provide broadband services, in order to create productivity gains and cost savings in the broader economy. This is in line with the goals of the Economic Recovery Plan, endorsed by the European Council meeting of 12 December 2008, which sets a target of 100 % broadband coverage to be achieved between 2010 and 2013. As stressed in the Competitiveness Council Key Issues Paper of March 2009, this can only be completely achieved by using wireless technologies, for example in rural areas where wired infrastructure is impractical. Timely switch-off of analogue broadcasting is therefore vital to ensure that the new services made possible using the radio spectrum released by the digital dividend, will effectively contribute to the EU's economic recovery efforts.
- (8) International agreements, including those reached at the International Telecommunication Union (ITU) Regional Radiocommunication Conference (RRC-06) in June 2006 and the ITU World Radiocommunication Conference (WRC-07) in November 2007, have already concluded on the allocation of part of the digital dividend frequencies, the 790-862 MHz sub-band, on a co-primary basis to mobile services in addition to broadcasting and fixed services as from 2015, or even before that date subject, where necessary, to technical coordination with other countries. Moreover, several Member States have already announced that they are planning or actively considering opening up the 790-862 MHz sub-band to services other than high-power terrestrial broadcasting.
- (9) In the light of these developments, there is an urgent need to develop a coordinated approach to the digital dividend in the European Union in order to avoid a fragmented situation emerging among Member States. Otherwise the establishment of a single market for services and equipment will be hampered, the related economies of scale will be lost and the digital dividend will not be able to contribute effectively to economic recovery at EU level. In addition, to help to achieve this goal, the Commission could provide assistance to Member States in their negotiations with non-EU countries on a bilateral or multilateral basis.
- (10) The Radio Spectrum Policy Group, in its Opinion of 18 September 2009 on the digital dividend, recommended that the European Commission acts no later than 31 October 2009 in order to minimise uncertainty at EU level regarding the ability of Member States to make available the 790-862 MHz sub-band, so as to promote growth, competition and innovation in the provision of electronic communications networks and services. It also encouraged Member States that are making available the 790-862 MHz sub-band for new and/or enhanced electronic communications networks and services to apply, in particular, the principles of service and technology neutrality under conditions which ensure that broadcasting services are not adversely impacted.
- (11) Studies on the socioeconomic aspects of a coordinated approach towards the digital dividend have shown significant social and economic benefits in coordinating at EU level the allocation of a part of the digital dividend for new uses such as broadband services in rural areas and more generally for reducing the broadband gap arising from the lack of availability of these services.
- (12) For these reasons, the Commission plans to adopt within the coming months a Decision setting the harmonised technical requirements for the future use of the 790-862 MHz sub-band for low- and medium-power electronic communications networks. This technical implementing measure should be adopted with the assistance of the Radio Spectrum Committee pursuant to Article 4 of the Radio Spectrum Decision⁽¹⁾. The harmonised technical conditions would have to be applied by a Member State only if and when that Member State decides to open the band for services other than broadcasting.
- (13) In order to prepare this technical harmonisation, the Commission mandated the European Conference of Postal and Telecommunications Administrations (the CEPT) to define technical conditions applicable to the 790-862 MHz sub-band which are optimised for, but not limited to, wireless fixed and/or mobile communications networks. As a result, the CEPT has provided the Commission with several reports which contain the least restrictive technical conditions and associated guidance, to be applied to base stations and terminal stations operating in the 790-862 MHz sub-band, in order to manage the risk of harmful interference.
- (14) As the further development of the 790-862 MHz sub-band for high-power broadcasting in one Member State could severely impede the use of part of the digital dividend spectrum for potential new uses in neighbouring Member States due to the fact that high-power signals travel over long distances and can cause harmful interference, Member States, while not being obliged to withdraw high power broadcasting transmitters or to open up the sub-band to electronic communications services, should facilitate future reorganisation of the sub-band to allow, on the long term, optimum use by low- and medium-power electronic communications services.
- (15) It is therefore essential that Member States refrain from introducing national measures that would compromise the implementation of Community acts applying to the same band, in particular any technical harmonisation measure for new electronic communications services to be deployed in the 790-862 MHz sub-band,

⁽¹⁾ Decision No 676/2002/EC of the European Parliament and of the Council (OJ L 108, 24.4.2002, p. 1).

HEREBY RECOMMENDS:

1. That Member States should take all the measures necessary to ensure that all terrestrial television broadcasting services use digital transmission technology and cease using analogue transmission technology on their territory by 1 January 2012.
2. That Member States should support regulatory efforts towards harmonised conditions of use in the Community of the 790-862 MHz sub-band for electronic communications services other than, and in addition to, broadcasting services, and refrain from any action that

might hinder or impede the deployment of such communications services in that sub-band.

3. This Recommendation is addressed to the Member States.

Done at Brussels, 28 October 2009.

For the Commission
Viviane REDING
Member of the Commission