

COMMISSION IMPLEMENTING DECISION

of 23 April 2013

defining the practical arrangements, uniform formats and a methodology in relation to the radio spectrum inventory established by Decision No 243/2012/EU of the European Parliament and of the Council establishing a multiannual radio spectrum policy programme*(notified under document C(2013) 2235)***(Text with EEA relevance)**

(2013/195/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) An inventory of existing uses of spectrum, for both commercial and public purposes, has been established by Decision No 243/2012/EU. To implement this inventory, an implementing act shall be adopted to, on the one hand, develop practical arrangements and uniform formats for the collection and provision of data by the Member States to the Commission on existing uses of spectrum and on the other hand to develop a methodology for the analysis of technology trends, future needs and demand for spectrum in policy areas covered by the radio spectrum policy programme (RSPP), so as to identify developing and potential significant uses of spectrum, in particular in the frequency range between 400 MHz and 6 GHz (hereinafter 'the relevant spectrum').
- (2) The inventory should help identify spectrum bands in which the efficiency of existing spectrum uses could be improved, in particular bands that could be suitable for reallocation and spectrum-sharing opportunities so as to support EU policies set out in the RSPP, in order to match technology trends, and future needs for spectrum based, inter alia, on consumers' and operators' demand in Union policy areas. In order to help analyse the various types of use of the spectrum by private, i.e. mainly commercial, and public, i.e. governmental, users, there is a need to improve the level of detail, in particular, quantitative data available on supply and demand for certain parts of the spectrum or uses, as the data available currently varies considerably, depending on whether the spectrum is used for private, commercial or public purposes, and across Member States.
- (3) The spectrum inventory should be constructed progressively in order to lower the administrative

burden on the Member States while some prioritisation is necessary depending on the type of use, by focusing first on the bands identified in Article 6 of the Decision No 243/2012/EU and the bands relating to Union policies identified in Article 8 of that Decision. The purpose is to set up an inventory which is improved continually and could help achieving an efficient management of the spectrum in all bands relevant to Union policies through gradual improvement of data availability and analysis. Some of the most urgent contributions from the inventory should be to identify at least 1 200 MHz of suitable spectrum for wireless broadband services, as provided by Article 3(b) of Decision No 243/2012/EU as well as to enhance efficiency and flexibility, inter alia, by fostering, where appropriate, the collective use and shared use of spectrum, as called for in Article 4(1) of that Decision.

- (4) Data should be provided by Member States in the most consistent way possible, either through the European Communications Office Frequency Information System (EFIS), or directly to the Commission, in cases for example where data gathered from public users and national authorities needs to be treated on a restricted or confidential basis. Specific uniform formats for the collection of data may vary considerably depending on the type of use and frequency band in question and data may in certain cases not be available in a specific uniform format. In order nevertheless to ensure that available data is provided to the Commission in an effective way for analysis, Member States should collect data in machine readable format so as to allow the same electronic data interchange format with the Commission and EFIS.
- (5) As well as providing relevant data that is available, Member States, together with the Commission, should engage in a collaborative process to improve the quality and comparability of data, in order to develop the efficiency of the inventory as appropriate and relevant for the specific band in question, and to find a comparable format for data, without imposing a further administrative burden.
- (6) Additional data could also be obtained from public consultations and studies. Moreover, the inventory could use data provided, on a voluntary basis, by Member States and private parties who monitor spectrum on a permanent basis to manage the spectrum at local level, to cross-check the validity of licensing data, determine usage density in certain types

⁽¹⁾ OJ L 81, 21.3.2012, p. 7.

of authorisation schemes such as license-exempt bands and evaluate the level of spectrum usage throughout the Union in particular for bands in high demand.

- (7) In order to minimise the administrative burden and obligations for Member States, the methodology chosen for the inventory should take into account to the best extent possible the data provided by Member States pursuant to Commission Decision No 2007/344/EC of 16 May 2007 on harmonised availability of information regarding spectrum use within the Community⁽¹⁾. Additional information gathered through voluntary means such as studies, including from the European Conference of Postal and Telecommunications Administrations, could also be used to further populate the inventory.
- (8) The identification of frequency bands that could be used more efficiently and which would be suitable for reallocation or spectrum sharing requires detailed knowledge of the actual use of spectrum, preferably evidenced by quantitative data. Such identification would help to find solutions to accommodate the technology trends, future needs and demand for spectrum which would be identified pursuant to the analysis to be conducted.
- (9) The process of the inventory should lead to a continual improvement of the efficient use of spectrum to satisfy a demand in constant evolution in relation to Union policies and taking into account technological evolution. On that basis, and to achieve the objectives set by Article 9(1) of Decision No 243/2012/EU, the Commission would issue reports to the European Parliament and to the Council. That would be done on a regular basis, depending on the time necessary to conduct the analysis in the inventory as well as the pace of evolution of spectrum use.
- (10) While transparency of the use of spectrum is essential to the inventory, this is subject to the protection of personal data and privacy, business confidentiality and state secrets under EU law. These provisions include Article 346(1)(a) of the Treaty on the Functioning of the European Union allowing Member States to refrain from supplying information contrary to the essential interests of its security; Article 8 of 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)⁽²⁾; Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽³⁾; as well as the Annex to the Rules of Procedure of the Commission which governs the handling of EU classified information, including information originating within the EU or is received from Member States, third States or international organisations⁽⁴⁾.

- (11) In line with Article 15 of Decision No 243/2012/EU, the effectiveness of the inventory should be reviewed from time to time to ensure that the objectives listed in that Decision are being implemented effectively and whether they need to be adapted. Member States should provide the Commission with the relevant information.
- (12) The measures provided for in this Decision take utmost account of the views of the Radio Spectrum Policy Group and are in accordance with the opinion of the Radio Spectrum Committee,

HAS ADOPTED THIS DECISION:

Article 1

Objective

This decision sets the practical arrangements and uniform formats for the collection and provision of data by Member States to the Commission on existing uses of spectrum between 400 MHz and 6 GHz (hereafter 'the relevant spectrum'), and the methodology for the analysis of technology trends, future needs and demand for spectrum in Union policy areas, pursuant to Article 9 of Decision No 243/2012/EU establishing a multiannual Radio Spectrum Policy Programme.

Article 2

Collection and Provision of data

In order to fulfil the objectives under Article 9(1) of Decision No 243/2012/EU, Member States shall collect and provide for electronic data interchange with the Commission data which is available to them on rights of use and actual use of the relevant spectrum, in accordance with the following arrangements:

- (1) Member States shall ensure that the relevant information already collected pursuant to Decision No 2007/344/EC is provided by the European Communications Office to the Commission, so as to minimise the administrative burden;
- (2) in addition to data under paragraph 1, Member States shall provide to the Commission data, if available at national level, in the machine readable format chosen at national level, including data on the public use of spectrum, and which is necessary for the Commission to carry out its tasks under this Decision and Decision No 243/2012/EU;
- (3) Member States shall cooperate with the Commission to increase the data available on spectrum use for provision under paragraph 2, in particular by providing quantitative data such as, unless they consider it impossible in view of national circumstances, the number of transmitters, time duration of usage and the coordinates or location information showing the geographical extent of spectrum usage, as well as technologies in use and sharing conditions, and this in a comparable format across Member States. In order to limit the administrative burden, data concerning those bands relevant for the implementation of the objectives set by Decision No 243/2012/EU, taking into account the opinion of the Radio Spectrum Policy Group,

⁽¹⁾ OJ L 129, 17.5.2007, p. 67.

⁽²⁾ OJ L 108, 24.4.2002, p. 1.

⁽³⁾ OJ L 145, 31.5.2001, p. 43.

⁽⁴⁾ OJ L 317, 3.12.2001, p. 1.

shall be collected and provided in accordance with this Article first. Data about all frequency bands in the relevant spectrum shall be collected and provided by Member States in a step-by-step approach by 31 December 2015.

Article 3

Identification of future demand for spectrum

1. In order to help identify future demand for spectrum as well as specific spectrum bands which could best accommodate future needs and demand for spectrum, whilst taking utmost account of the opinion of the Radio Spectrum Policy Group, the Commission shall analyse all data collected pursuant to Article 2 or through other means, such as public consultations and studies, taking into account:

- the technical efficiency of existing use,
- the economic efficiency of existing use by comparing the possibilities and options available for individual bands to accommodate future needs,
- the socioeconomic impact on existing users of the relevant bands and adjacent bands.

2. The analysis referred to in paragraph 1 shall aim at identifying technology trends, future needs and demand for spectrum in Union policy areas in relation to applications grouped by similar technical characteristics and functionality in Part I of the Annex, and the identification of significant developing and potential uses of spectrum. This analysis shall, where necessary and possible, contain at least the information listed in Part II of the Annex. The Commission shall ensure transparency by conducting workshops or public consultations.

Article 4

Report to European Parliament and Council

1. The Commission shall include the results of the analysis conducted pursuant to this Decision and the information listed in Part II of the Annex in regular reports to be submitted pursuant to Article 9(4) of Decision No 243/2012/EU.

2. In order to meet the objectives of Article 9(1) of Decision No 243/2012/EU and taking into account the analysis of technology trends, future needs and demand for spectrum, together with an analysis of data collected under Article 2 of this Decision, the Commission may include in these reports possible specific options for accommodating the identified needs and maximising the efficiency of the use of spectrum

taking into account drawbacks (including costs for users, manufacturers and the financial budget of the Union on the one hand and of the Member States concerned on the other) and benefits, including an analysis of the overall effects of those options.

Article 5

Confidentiality and classified information

Member States and the Commission shall ensure the protection of information which is considered confidential or classified by a Member State, an international institution, the Commission or any third party, in accordance with EU and national law, in particular:

- business confidential information,
- information in relation to protection of privacy, and
- information in relation to public security and defence.

This shall be without prejudice to the right of relevant authorities to undertake disclosure where permitted under national law and if such a disclosure is essential for the purposes of fulfilling their duties. Such disclosure shall be proportionate and shall have regard to the legitimate interest of the party concerned in the protection of any of the information mentioned above.

Article 6

Review

In order to assist the Commission in reporting on the functioning of the radio spectrum inventory, Member States shall provide the Commission with information on the application and effectiveness of this decision.

Article 7

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 23 April 2013.

For the Commission

Neelie KROES

Vice-President

ANNEX

PART I

Application Groupings

The following application groupings are relevant for the analysis of trends, needs and demand by the Commission and do not restrict the application terms used by the Member States when providing data. These groupings are intended to provide a starting point for a structured assessment of spectrum usage with similar technical characteristics and functionality and may be developed further, as appropriate, for the assessment of technology trends, future needs and spectrum demand.

- (1) Aeronautical, Maritime and Civil Radiolocation and Navigation Systems
- (2) Broadcasting (terrestrial)
- (3) Cellular/BWA
- (4) Defence Systems
- (5) Fixed Links
- (6) Intelligent Transport Systems (ITS)
- (7) Meteorology
- (8) PMR/PAMR
- (9) PMSE
- (10) PPDR
- (11) Radio Astronomy
- (12) Satellite Systems
- (13) Short Range Devices (SRDs)
- (14) WLAN/RLAN

PART II

Content of the report to be submitted by the Commission pursuant to Article 4

Where possible depending on the level of data collected, the report to be submitted by the Commission pursuant to Article 9(4) of Decision No 243/2012/EU shall include at least the following information:

- (1) state of technology trends for the use of the relevant spectrum in the Union policy areas covered by the Radio Spectrum Policy Programme;
 - (2) future needs and demand for spectrum.
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