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Proposal for a

COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union, in the International
Telecommunication Union (ITU) World Radiocommunication Conference 2015 (WRC-
15)**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The World Radiocommunication Conference (WRC) is the venue for revising the Radio Regulations (RR) that codify cross-border aspects of the use of the radio spectrum, in particular by determining which radio services are allocated to specific spectrum bands. Each WRC only considers a limited subset of the Radio Regulations, setting out the spectrum bands to be discussed and the scope of the possible outcomes based on an agenda decided at the previous WRC. The next conference will take place in Geneva from 2 to 27 November 2015. Following several years of preparatory work, it will conclude with the adoption of modifications to the International Telecommunication Union (ITU) Radio Regulations.

All EU Member States are members of the ITU and play an active part in adapting the Radio Regulations. The European Union is a ‘Sector Member’, a status similar to industry organisations. A common approach to spectrum planning on national territories means that, in practice, the RR can have a significant influence on spectrum use, even in purely domestic situations.

A strategic and coherent EU spectrum policy is a key element of a modern information society and helps facilitate a wide range of policy objectives; the European Parliament and the Council have recognised the importance of radio spectrum in particular in Directive 2002/21/EC of 7 March 2002 *on a common regulatory framework for electronic communications networks and services*¹ (hereinafter the Framework Directive) and in Decision 243/2012/EU *on establishing a multiannual Radio Spectrum Policy Programme to frame the development of spectrum policy*² within the European Union. The Framework Directive³ makes specific reference to the Radio Regulations, which Member States are required to respect. In addition, the Radio Spectrum Decision 676/2002/EC requires that activities undertaken under that Decision take due account of the work in the ITU.

It is therefore essential that decisions made at WRC-15 enable the Union to exercise its internal competence to implement the internal market and to develop appropriate policies. In that context, it is necessary for the Union to ensure that its interests are promoted and protected during the WRC negotiations.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The European Conference of Postal and Telecommunications Administrations (CEPT) has been preparing the substance of the negotiations for WRC-15 since 2012. All meetings of the CEPT were open to interested stakeholders. In addition, two joint workshops were held by the Commission and the CEPT (10 December 2013 and 14 April 2015), during which the preliminary European policy objectives were presented together with the state of play within the CEPT. The Radio Spectrum Policy Group's Opinion on the European policy objectives was given on 19 February 2015, following a public consultation.

3. LEGAL ELEMENTS OF THE PROPOSAL

The ITU is the UN agency responsible for supporting the development of telecommunications

¹ OJ L 108, 24.4.2002, amended by Directive 2009/140/EC, OJ L337, 18/12/2009 .

² OJ L81, 21.3.2012

³ Ibid, Article 9(1).

at global level. All EU Member States are members of the ITU. ITU-R, the arm of ITU that deals with radiocommunications and other uses of the radio spectrum has the task of effecting, on the one hand, *“allocation of bands of the radio-frequency spectrum, the allotment of radio frequencies”* and on the other hand, *“the registration of radiofrequency assignments and, for space services, of any associated orbital position in the geostationary-satellite orbit or of any associated characteristics of satellites in other orbits, in order to avoid harmful interference between radio stations of different countries”*⁴.

The instrument for managing the first part of this role is the Radio Regulations, considered as an international treaty, which are revised at each World Radiocommunications Conference. Radio Regulations do not prescribe specific spectrum usages inside the borders of individual ITU members. However, as they regulate spectrum usage in such a way as to avoid cross-border interference and determine the types of communications which get priority, RR have a wide-ranging influence on spectrum use within each ITU member and as a consequence in the Union as a whole. Most of the WRC15 agenda items will involve a change of use of a specific spectrum band or bands; while focused in scope, they will require a negotiated outcome, with the need for trade-offs.

Revisions to the Radio Regulations shall apply provisionally in respect of any Party that has signed the revision⁵. Parties shall, in any event, be deemed to have consented to be bound by the revision thirty-six months following the date of entry into force of the revision⁶. The revision of the Radio Regulations at WRC-15 will thus give rise to an act having legal effect within the meaning of Article 218(9) TFEU. Therefore positions to be adopted on the Union's behalf may need to be established.

ITU rules may affect or alter the scope of EU common rules and policies in several ways. Pursuant to Article 9(1), second paragraph, of the Framework Directive, Member States *‘shall respect relevant international agreements, including the ITU Radio Regulations’* when applying Article 9, which relates to the management of radio frequencies for electronic communications services. A modification of the ITU Radio Regulations therefore has the potential to affect Article 9 or alter its scope.

With regard to Radio Spectrum in particular, Article 10 of Decision 243/2012/EU stipulates that in international negotiations relating to spectrum matters *“if the subject matter of the international negotiations falls within the competence of the Union, the Union position shall be established in accordance with Union law”*.

Furthermore a number of technical harmonisation decisions have also been adopted by the Commission under the Radio Spectrum Decision (676/2002/EC) to ensure the availability and efficient use of radio spectrum in the Union. Such decisions have been adopted in cooperation with the Member States acting in the Radio Spectrum Committee and on the basis of technical assistance from the CEPT.

Examination of the agenda items on the WRC-15 shows that three agenda items may directly affect common rules or alter their scope as they are covered by EU law or subject to a concrete regulatory process underway. Two of the items concern electronic communications services and are directly linked to the EU efforts to provide connectivity to our citizens. The third concerns automotive safety:

⁴ ITU constitution Art 1, 2 a

⁵ Article 54 (3) pentier of the ITU Constitution.

⁶ Article 54 (5) bis of the ITU Constitution.

- item 1.1 concerning spectrum for International Mobile Telecommunications (IMT), which corresponds to mobile broadband under EU regulation. Of relevance to this item is the provision in the Radio Spectrum Policy Programme to identify at least 1200 MHz for wireless broadband in the EU. Regarding the relevant bands, there is also Decision 2008/411/EC harmonising 3400-3800 MHz for wireless broadband, Decision 2015/750/EU regarding the harmonisation of 1452-1492 MHz for downlink broadband, Decision 2008/671/EC harmonising the band 5875-5905 MHz for intelligent transport systems and an ongoing mandate to the CEPT regarding using radio local area networks in the bands 5350-5470 MHz and 5725-5925 MHz,

- item 1.2, setting the parameters for the use of the 700 MHz band for IMT. At WRC-12, this band was allocated on a co-primary basis to mobile services in addition to the existing broadcasting allocation with effect from WRC-15. Regarding this band there is a mandate issued to the CEPT to develop harmonised technical conditions for the use of spectrum in the band 694-790 MHz by wireless broadband. As signalled by the Commission, as much flexibility as possible in the decisions taken at the ITU is necessary to enable the Council and Parliament to decide on the future use of the band, and

- item 1.18 regarding automotive anti-collision radars in the band 77.5-78 GHz. Such radars are already harmonised in the EU under Decision 2004/545/EC, which enables the use of the whole band 77-81 GHz by automotive short-range radars.

The other WRC 15 agenda items are the subject of an opinion of the Radio Spectrum Policy Group, which the Commission shares as to its substantive spectrum policy aspects.

Some of these agenda items are linked to EU policies, such as transport policy (Agenda Items 1.5, 1.7, 1.8, 1.15, 1.16 and the new agenda item on inflight tracking), space policy (Agenda Items 1.5, 1.7, 1.8, 1.11, 1.12, 1.16 and 1.17), combating climate change and earth monitoring (Agenda Items 1.5, 1.12, 1.17 but also 1.1), or industrial policy and economic growth (Agenda Items 1.16 1.17). As can be seen from this overview, there can be multiple Union policy interests involved. Negotiations at the WRC-15 may produce results which could affect directly or indirectly the application of existing Union law or its foreseeable development. Therefore, the Union position on these agenda items should be safeguarded by ensuring that the negotiations respect existing requirements of Union law and do not bear any prejudice to its foreseeable further development.

Agenda Item 1.3. The WRC-12 established this agenda item as an attempt to harmonise the spectrum used by public services to deliver public protection and disaster relief (PPDR). This would be a massive undertaking given the baseline situation of extremely fragmented spectrum use, even within Europe. At the worldwide level, a modest approach is more realistic. The relevant information should be provided to the ITU on regional Public Protection and Disaster Relief frequency ranges, with no obligation on the use of a specific technology and/or specific frequency band.

Agenda Item 1.5. This item concerns how to insert remotely piloted aircraft systems (RPAS) into non-segregated airspace, i.e. where normal air traffic control rules apply. This is necessary to enable these systems to be used efficiently for civilian purposes. These can include uses such as search and rescue and border patrol over the Mediterranean, identifying the extent of forest fires, when flying manned aircraft is too risky, delivering supplies in difficult terrain and establishing the effects of climate change, The use of the bands allocated to the fixed-satellite service for the control communications of unmanned aerial systems should be supported in principle, whilst ensuring compatibility with other services having allocations in those bands, not compromising the current coordination and notification

procedure of other satellite networks in the band and meeting the ICAO requirements to ensure flight safety.

Agenda Item 1.7. (ECS) Originally this band was intended as an extension band for microwave landing systems for aircraft. There has however been no need for using this band by the aeronautical sector and the proposal is to remove previous requirements to phase out mobile satellite use in the band. The removal of regulatory constraints to the fixed satellite service (earth-to-space) in the band 5091-5150 MHz should be supported.

Agenda Item 1.8. More flexibility to operation of earth stations on board vessels in the band 5925-6425 MHz and the band 14-14.5 GHz should be supported, while continuing to protect other services in the same bands. Relaxing the requirements can support the European space and maritime industries.

Agenda Item 1.11. This allocation is intended for tracking telemetry and control of satellites and is of considerable interest for the development of space policy. The requested allocation for the earth exploration satellite service (earth-to-space) within the band 7-8 GHz should be supported, while ensuring the adequate protection of the existing radiocommunication services in the band.

Agenda Item 1.12. This item supports the development of next-generation earth exploration satellite systems and will complement the Copernicus programme. The primary allocation to the earth exploration service in the bands 9200-9300 MHz and 9900-10400 MHz should be supported with the proviso that this extension shall only be used for systems that need a bandwidth greater than 600 MHz.

Agenda Items 1.15 and 1.16. This item will alleviate congestion in on-board communications in ports and introduce a new safety system. It concerns both maritime policy and space policy. Modifications necessary to enable improvements in favour of on board communications stations and the development of the VHF Data Exchange System used by the maritime sector, should be supported.

Agenda Item 1.17. A globally harmonised solution in the 4200-4400 MHz band for Wireless Avionics Intra-Communications should be supported, while ensuring the protection of existing aeronautical radionavigation systems operating in the band. A successful outcome has the potential to substantially lower the weight of aircraft, reducing fuel consumption and operating costs while diminishing the ecological impact of air travel.

For the new Agenda Item on inflight tracking, the requirements of any future system should be defined appropriately ensuring that any eventual potential decision at this conference is based on those requirements

Taking into account the above, it is necessary to establish the positions to be adopted on the Union's behalf at the WRC called to adopt revisions of the Radio Regulations, according to Article 218(9) TFEU.

4. BUDGETARY IMPLICATION

No specific budgetary implications for the European Union, except the cost of negotiations.

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on the position to be adopted, on behalf of the European Union, in the International Telecommunication Union (ITU) World Radiocommunication Conference 2015 (WRC-15)

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Pursuant to Resolution 1343 containing the agenda adopted at the ITU World Radiocommunication Conference in 2012 (WRC-12), the World Radiocommunication Conference in 2015 (WRC-15) will adopt acts in the form of revisions to the Radio Regulations which will apply provisionally in respect of any Party that has signed the Final Acts of the Conference. Parties shall, in any event, be deemed to have consented to be bound by the Final Acts thirty-six months following the date of entry into force of the revision. All EU Member States are Parties to the Radio Regulations, and at least some of the revisions may affect common EU rules or alter their scope. Therefore, although the Union is not a full member of the ITU, it is necessary to decide on positions to be taken on the Union's behalf.
- (2) Pursuant to Article 9(1) second paragraph of Directive 2002/21/EC *on a common regulatory framework for electronic communications networks and services* (the Framework Directive), Member States shall respect relevant international agreements, including the ITU Radio Regulations when applying Article 9. Any modification of the ITU Radio Regulations will therefore have to be considered in the light of the question whether it may affect Article 9 or alter its scope.
- (3) Article 9 of the Framework Directive requires Member States to ensure the effective management of radio frequencies for electronic communications services in their territory in accordance with the Directive's Articles 8 and 8a. Article 8 requires national regulatory authorities to promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by e.g. encouraging efficient use and ensuring the effective management of radio frequencies, and to contribute to the development of the internal market by removing any remaining obstacles to the provision of electronic communications networks, associated facilities and services and electronic communications services at European level. Article 8a requires Member States to take into consideration, inter alia, the economic public interest, freedom of expression, cultural and technical aspects of EU policies as well as the various interests of radio

spectrum user communities to optimise the use of radio spectrum and avoid harmful interference.

- (4) Common rules are also laid down by Commission Decisions 2005/513/EC, 2008/411/EC and 2004/545/EC; consideration should also be given to ongoing regulatory work conducted by the Commission, together with the Member States in the Radio Spectrum Committee and the Radio Spectrum Policy Group, and with the assistance of the CEPT, under Decision 676/2002/EC of the European Parliament and of the Council (the Radio Spectrum Decision). Member States should therefore adopt on the Union's behalf positions that do not call into question the substance of these Decisions and ongoing regulatory work.
- (5) The adoption of specific orientations which are necessary in order to enable Member States to take a position during the conference on agenda items relevant to existing harmonisation decisions under the Radio Spectrum Decision, or to ongoing regulatory work with a view to such harmonisation, is without prejudice to the Union's external competence regarding any other agenda items which could affect common rules or alter their scope. As regards the latter, the Union position on these agenda items can be confined to ensuring respect in the negotiations for existing requirements of Union law.
- (6) Under Resolution 233 of WRC-12 relating to item 1.1 of the WRC-15 agenda, the ITU is to identify candidate bands for International Mobile Telecommunications (IMT), subject to existing or new allocation of these bands to the mobile service, possibly including the bands 470-694 MHz, 1427-1518 MHz, 3400-3800 MHz, 5350-5470 MHz and 5725-5925 MHz.
- (7) With regard to mobile communications, Decision 243/2012/EU of the European Parliament and of the Council establishing a multiannual Radio Spectrum Policy Programme (RSPP) calls for the identification of at least 1200 MHz for wireless broadband in the Union by 2015, including already harmonised bands. Therefore, all negotiations regarding candidate IMT bands should be handled in such a way as to ensure that EU unity is maintained throughout the negotiations.
- (8) In this regard, Commission Decision 2008/411/EC⁷ harmonises the 3400-3800 MHz band for wireless broadband and Commission Decision 2005/513/EC⁸ harmonises the 5150-5350 MHz and 5470-5725 MHz bands for wireless access systems including radio local area networks. As to the 1452-1492 MHz band, a technical harmonisation measure under Article 4(3) of the Radio Spectrum Decision is under adoption and following a positive opinion of the Radio Spectrum Committee, with a view to the harmonisation of this band for wireless broadband communications in the Union. This band (1452-1492 MHz), together with the adjacent bands 1427-1452 MHz and 1492-1518 MHz will be a key element of the negotiations confirming the need for a holistic approach to the whole band.
- (9) Commission Decision 2008/671/EC harmonises the use of radio spectrum in the 5875-5905 MHz frequency band for safety-related applications of Intelligent Transport Systems.
- (10) In light of the positive opinion of the Radio Spectrum Committee, the Commission issued on 2 September 2013 a mandate to the CEPT to study and identify harmonised

⁷ Amended by Commission Decision 2014/276/EU

⁸ Amended by Commission Decision 2007/90/EC

compatibility and sharing conditions for the use of wireless access systems including radio local area networks in the bands 5350-5470 MHz and 5725-5925 MHz in the Union, calling in particular for protection of the planned operation of GMES/Copernicus or airborne weather radars. As according to CEPT, there is currently no mitigation technique allowing the introduction of radio local area networks in the 5350-5470 MHz band together with the Copernicus system, any decision regarding the use of the bands 5350-5470 MHz and 5725-5925 MHz for radio local area networks should be delayed until WRC-19 as studies are still being conducted.

- (11) Resolution 232 adopted at WRC-12 in conjunction with item 1.2 of the WRC-15 agenda provides a mandate for studies at ITU level regarding the allocation of the 694-790 MHz band to the mobile service, to be effective immediately after WRC-15. As this band is currently used for terrestrial broadcasting in all Member States, the Commission, with the positive opinion of the Radio Spectrum Committee, issued on 19 February 2013 a mandate to the CEPT under Article 4(2) of the Radio Spectrum Decision to develop harmonised technical conditions for wireless broadband use of the 694-790 MHz band, to be adopted by a Commission implementing decision under Article 4(3) of the Radio Spectrum Decision. As also stressed in the Radio Spectrum Policy Group opinion of 19 February 2015, the application of such a technical harmonisation solution would be dependent on a decision to be taken by the Council and the Parliament on the future use of that band, which would not be adopted until after WRC-15. Therefore, the results of WRC-15 should preserve as much flexibility as possible for Parliament and Council to decide, as the consequences of such measure will be decisive for the future of broadcasting and wireless broadband electronic communications services in the Union.
- (12) Moreover, considering the importance of the lower part of the UHF band for broadcasting, there is a need to ensure that WRC-15 allows sufficient spectrum to be retained, in the Union, for terrestrial provision of audiovisual media services in the 470-694 MHz band. This is in line with Article 7 of Decision 243/2012/EU which requires Member States, in cooperation with the Commission, to aim at ensuring that there is sufficient spectrum available for satellite and terrestrial provision of innovative audiovisual media services to Union citizens, considering also that half of European households currently receive broadcasting through terrestrial services and that broadcasting in Europe currently relies heavily on the 470-694 MHz band.
- (13) The agenda for the subsequent conference in 2019 will be adopted at WRC-15 under agenda item 10. In particular, following on from the decisions that will be taken under item 1.1 of the WRC-15 agenda regarding candidate bands for IMT, there is worldwide interest in identifying spectrum in higher frequencies above 6 GHz for fifth generation IMT. The preparatory work in the ITU process will need to match the parallel work within the EU.
- (14) Resolution 654 adopted at WRC-12 in conjunction with item 1.18 of the WRC-15 agenda calls for studies regarding the allocation of the 77.5-78 GHz band to automotive short-range radars. Commission Decision 2004/545/EC harmonises the 77-81 GHz band for automotive short-range radars.

HAS ADOPTED THIS DECISION:

Article 1

The Member States, acting jointly in the interest of the Union, shall participate in the negotiations at the World Radiocommunication Conference 2015 of the International Telecommunication Union with a view to revising the Radio Regulations.

The positions to be adopted on the Union's behalf in the negotiations and during the adoption of the revisions to the Radio Regulations are set out in the Annex to this Decision.

Where new proposals regarding the subject matter in the Annex are made at the Conference on which there is not yet a Union position, the Union position shall be established by means of on-the-spot coordination before the Conference is called to adopt revisions to the Radio Regulations. In such cases, the Union position shall be consistent with the principles laid down in the Annex to this Decision

Article 2

The revisions to the Radio Regulations shall be published in the *Official Journal of the European Union*.

Article

This Decision shall enter into force on .

Done at Brussels,

*For the Council
The President*