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COMMISSION OF THE EUROPEAN COMMUNITIES

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2007/0174 (COD)

Proposal for a

**DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the selection and authorisation of systems providing mobile satellite services (MSS)**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The EU regulatory framework for electronic communications aims at promoting competition, inter alia by encouraging efficient use and ensuring effective management of radio frequencies and numbering resources, as well as developing the internal market, inter alia by removing the remaining obstacles to the provision of the relevant networks and services, ensuring that there is no discrimination in similar circumstances and encouraging the establishment and development of trans-European networks and the interoperability of pan-European services (Article 8 of the Framework Directive 2002/21/EC).

Satellite communications, by their very nature, cross national borders and are thus susceptible to international or regional rather than purely national regulation. Existing regulations of the International Telecommunications Union (ITU) provide for procedures for satellite radio frequency coordination as a tool for management of harmful interference, but do not extend to selection or authorisation. Moreover, under the EU regulatory framework for electronic communications, the selection of satellite operators is made at national level. However, diverging selection and authorisation solutions adopted in different Member States would negate the benefits of pan-European coverage for mobile satellite systems and would make the use of the available radio spectrum ineffective, considering in particular the natural capability of satellite communications systems to cover large parts of Europe and the EU Member States at the same time, and given the relatively limited amount of radio spectrum made available for such communications.

This proposal therefore lays down Community procedures for the common selection at Community level of mobile satellite system operators as well as provisions for the coordinated authorisation by national authorities of the selected operators to use radio spectrum for the operation of such systems in the Community.

- **General context**

In the light of technological and market developments, the European Commission adopted, on 14 February 2007, Decision 2007/98/EC designating the 2 GHz radio frequency bands (1980-2010 MHz and 2170-2200 MHz) for use by systems providing mobile satellite services (MSS), to ensure availability of spectrum in all Member States for such systems on a harmonised basis. However, that Decision does not cover procedures for the selection and authorisation of operators.

As a follow-up to the spectrum designation, this proposal creates a legal framework for an EU-wide coordinated selection and authorisation process with a view to allowing actual use of the 2 GHz band for MSS and achieving the objectives of the internal market for electronic communications. Without this follow-up selection and authorisation initiative, Member States would take steps to put the 2 GHz band into use individually. It is likely that different mobile satellite system operators would be selected in different Member States, which would not only deprive such operators of pan-European coverage of their services and fragment the internal market, but could

also result in complex harmful interference situations.

- **Existing provisions in the area of the proposal**

The proposal builds on the legal context put in place by the EC regulatory framework for electronic communications and, more particularly, the Framework Directive 2002/21/EC and the Authorisation Directive 2002/20/EC. Article 8 of the Authorisation Directive provides for the possibility of selecting undertakings and assigning the radio frequencies only in accordance with international agreements (and Community rules). However, an international agreement cannot be realistically relied upon in view of the need for relatively quick selection and authorisation of mobile satellite operators. Therefore, the proposed decision lays down a specific new framework for a coordinated selection and authorisation process at Community level, which will only apply to the 2 GHz radio frequency band and to mobile satellite communications.

- **Consistency with the other policies and objectives of the Union**

The proposal is in line with the renewed Lisbon Strategy for promoting growth and jobs through greater competitiveness and the Commission's associated i2010 initiative. Space and its applications is a €90 billion market worldwide, which is growing at 7% per year. In 2005, European space manufacturing industry turnover was €4.4 billion with a workforce of 28 000. European space industry secures 40% of world markets for manufacturing satellites, for launching them and for providing services by operating them. Europe is home to three of the five largest satellite system operators in the world. Satellite communications represent 40% of the current revenues of the European space sector. Effective and coherent use of radio spectrum is essential for the development of electronic communications services and can help the European Community to stimulate growth, competitiveness and employment. Mobile satellite services, when launched on a commercial scale, are expected to bring innovation, greater flexibility and enhanced choice of services for European consumers.

## 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

### Consultation methods, main sectors targeted and general profile of respondents

The overall framework proposed for the selection and authorisation of mobile satellite services was subject to a public consultation which lasted from 30 March to 30 May 2007 and was directed at all the interested parties. It was published on the Commission's website and by national administrations of the EU Member States. The satellite industry (both EU and non-EU), non-satellite telecom operators (in particular mobile operators), some ministries or national regulatory authorities of Member States and the European Space Agency were the main respondents. Contributions are published on the Commission's website.

### Summary of responses and how they have been taken into account

The consultation revealed broad support among interested parties, Member States and potential applicants for Community-level coordination of the selection and

authorisation of operators of pan-European mobile satellite communications. Many respondents also supported the selection methods and criteria proposed by the Commission. Some detailed requirements of the selection methods and criteria were the subject of diverging views, often reflecting the specific interests of the respondents. Such details are expected to be addressed during implementation of the proposal through comitology procedures. While some stakeholders requested more flexibility at national level, in particular on the timing of national authorisations, other respondents called for deeper coordination of national authorisation procedures. In the Commission's view, the proposal strikes a reasonable balance between the need to ensure a consistent and synchronised authorisation outcome across the EU on the one hand and to ensure that relevant national circumstances and regulations are taken into account on the other hand.

An open consultation was conducted over the internet from 30/03/2007 to 30/05/2007. The Commission received 35 responses. The results are available at: [http://ec.europa.eu/information\\_society/policy/radio\\_spectrum/ongoing\\_consult/2ghz\\_mss\\_comments/index\\_en.htm](http://ec.europa.eu/information_society/policy/radio_spectrum/ongoing_consult/2ghz_mss_comments/index_en.htm).

- **Collection and use of expertise**

*Scientific/expertise domains concerned*

The harmonised technical conditions and the regulatory issues relating to the selection and authorisation of mobile satellite services in the 2 GHz bands in the Community.

*Methodology used*

Analysis and reporting on the technical conditions on the basis of a mandate pursuant to the Radio Spectrum Decision 676/2002/EC; regular meetings held with national experts concerning regulatory issues; public consultation.

*Main organisations/experts consulted*

The European Conference of Postal and Telecommunications Administrations (CEPT); experts from Member States' administrations in the context of the informal MSS expert group and in the context of the COCOM working group on authorisations and rights of use; other Commission departments dealing with regulatory issues.

*Summary of advice received and used*

The existence of potentially serious risks with irreversible consequences has not been mentioned.

As regards technical conditions, the coexistence of systems capable of providing mobile satellite services and systems providing terrestrial-only mobile services in the same spectrum without harmful interference is not possible in the same geographical area. Therefore, a primary allocation should be applied for spectrum used by mobile satellite services.

As regards regulatory issues, a milestone review process followed by a comparative selection procedure was considered as the preferred selection option. The need for

quick progress in resolving details of the regulatory issues was emphasised.

*Means used to make the expert advice publicly available*

The CEPT's report is publicly available on the Commission's website at: [http://ec.europa.eu/information\\_society/policy/radio\\_spectrum/activities/rsc\\_work/meetings\\_2006/index\\_en.htm](http://ec.europa.eu/information_society/policy/radio_spectrum/activities/rsc_work/meetings_2006/index_en.htm). The CEPT also organised a public consultation on its report and draft Decision ECC/DEC/(06)09 of 1 December 2006. Several reports concerning regulatory issues are publicly available on the Commission's website at: [http://ec.europa.eu/information\\_society/policy/radio\\_spectrum/by\\_topics/mss/index\\_en.htm](http://ec.europa.eu/information_society/policy/radio_spectrum/by_topics/mss/index_en.htm). The contributions of respondents to the public consultation are generally available on the Commission's website at: [http://ec.europa.eu/information\\_society/policy/radio\\_spectrum/ongoing\\_consult/2ghz\\_mss\\_comments/index\\_en.htm](http://ec.europa.eu/information_society/policy/radio_spectrum/ongoing_consult/2ghz_mss_comments/index_en.htm).

- **Impact assessment**

The option of no action would result in Member States granting rights to use spectrum to various satellite systems with the following consequences: obstacles to the internal market for pan-European MSS would not be removed; pan-European coverage, which is the essence of such services, would be severely undermined; the risk of interference would be maximised.

In the present circumstances, a selection and authorisation mechanism whereby the satellite operators and the spectrum bands for each operator would be chosen in a coordinated way by the Commission with the assistance of a committee is an appropriate means to ensure the efficient sharing of spectrum in the Community. In view of the explicit demand for spectrum in these bands, it is felt that this mechanism also ensures the right balance between cross-border consistency and speed of action.

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposed decision would provide a legal framework for the selection and authorisation of mobile satellite communications services. Such selection would have to be made in line with the general objectives and pursuant to a competitive selection procedure described in the proposal. It would involve the Commission, assisted by the Communications Committee. The authorisation (rights to use radio spectrum) of selected operators would be granted at national level subject to a minimum set of harmonised conditions laid down in the proposal.

- **Legal basis**

Article 95 EC

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States

for the following reasons:

While operators are selected and authorised at national level under the existing EU regulatory framework for electronic communications, in the case of mobile satellite communications the limited availability of spectrum will probably require selection of a limited number of satellite operators. Moreover, satellite communications cross national borders and as such are better managed through Community measures rather than purely national regulation. Pan-European satellite services are an important element of the internal market and could make a substantial contribution towards achieving the EU's objectives.

Selection and issuance of rights over the same spectrum to different satellite operators in different Member States would prevent satellites from covering their natural footprint, which by nature covers a large number of countries; it would risk fragmenting the satellite communications market and eliminate the natural advantage of satellites compared to other modes of communication. The mobile character of the services involved also means that citizens travelling in the EU should benefit from the availability of such services throughout the EU.

Community action will better achieve the objectives of the proposal for the following reasons:

Both the effect and the scale of EU action would lie in the selection of the same operators for the whole EU and in ensuring that the same spectrum is assigned to specific satellite operators in each Member State. This would enable the selected operators to provide mobile satellite services on a pan-European scale, exploiting to the full the advantages of satellite communications. This cannot be achieved at national level.

One single binding decision selecting the operators to which the same spectrum will be assigned in each Member State is the most efficient way of ensuring the coordinated introduction of mobile satellite systems in the EU.

Centralised decision-making will only apply to the selection of the operators to which a specific part of the spectrum for mobile satellite communications will be assigned. The actual authorisation (assignment of the spectrum) will be made by each Member State, subject to a number of harmonised authorisation conditions. Member States will be able to add specific conditions in areas not harmonised by the Decision, in accordance with Community law.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

The proposal will create a mechanism for coordinating the selection and definition of certain conditions to be attached to rights of use of spectrum. It will not touch upon the right of Member States to grant the authorisations to use the spectrum or to attach specific conditions applying to the provision of services in areas which are not harmonised. Member States will be closely involved in elaborating the details of the

selection procedure.

The financial cost will be minimal for the Community and essentially limited to the costs of organising and implementing the selection process. The administrative burden will be shared between the Commission and the Member States, which will remain involved in the selection process through the Communications Committee and will subsequently issue authorisations. Overall, a centralised selection process will replace numerous selection processes in Member States and thus should result in considerable reduction of regulatory burden both for national administrations and for applicants.

- **Choice of instruments**

Proposed instruments: other.

Other means would not be adequate for the following reasons:

The situation requires an efficient and binding method for selecting satellite operators. The decision creates a mechanism to do so as well as certain obligations on Member States which relate to the nature of satellite communications. A directive would not have been adequate to create such a mechanism. A regulation is not necessary, because the proposal is limited to one single selection and authorisation initiative.

#### 4) **BUDGETARY IMPLICATION**

The cost of implementing this proposal will be essentially limited to the cost of running a selection process.

#### 5) **ADDITIONAL INFORMATION**

- **Simplification**

The proposal provides for simplification of administrative procedures for public authorities (EU or national) and for private parties.

Coordination of selection will reduce the burden of administrative procedures related to the assignment of spectrum in each Member State. Member States will cooperate in the Communications Committee under the guidance of the Commission. Duplication of administrative procedures will be limited.

Instead of having to rely on 27 different national procedures for selection of the systems, applicants will benefit from a coordinated procedure; the public consultation has already been carried out this way.

- **Detailed explanation of the proposal**

Title I describes the objective, scope and definitions of the decision. The selection procedure is set out in Title II. The operators will be selected through a comparative selection procedure to be organised by the Commission assisted by the Communications Committee, with the possibility of advice from external experts. The proposal sets out the main elements of the procedure and the criteria. Title III provides that Member States shall grant authorisations to those entities selected by the

Commission. It sets out certain common conditions which will have to be attached to all national authorisations. Title IV contains the general and final provisions, including those concerning the Committee, which will act in line with the advisory and regulatory procedures. The proposed decision is addressed to the Member States.

Proposal for a

**DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the selection and authorisation of systems providing mobile satellite services (MSS)**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

In accordance with the procedure laid down in Article 251 of the Treaty<sup>4</sup>,

Whereas:

- (1) As confirmed by the Council in its conclusions of 3 December 2004, effective and coherent use of radio spectrum is essential for the development of electronic communications services and contributes to stimulating growth, competitiveness and employment; access to spectrum must be eased to improve efficiency and promote innovation as well as greater flexibility for users and more choice for consumers, while taking account of general interest objectives.
- (2) The European Parliament, in its Resolution 2006/2212 "Towards a European Policy on the Radio Spectrum" of 14 February 2007, emphasised the importance of communications for rural and less developed regions, for which the diffusion of broadband, of lower frequency mobile communications and of new wireless technologies could provide efficient solutions to achieving universal coverage of the 27 EU Member States with a view to the sustainable development of all areas<sup>5</sup>. The European Parliament also noted that Member States' regimes for spectrum allocation and exploitation differ widely and that these differences represent serious obstacles to the achievement of a well-functioning single market.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .

<sup>5</sup> point 15.

- (3) The Commission, in its Communication of 26 April 2007 on European Space Policy<sup>6</sup>, has also established an objective of facilitating the introduction of innovative satellite communications services, in particular by aggregating demand in remote and rural areas, while stressing the need for pan-European licensing of satellite services and spectrum.
- (4) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)<sup>7</sup> aims at encouraging efficient use and ensuring effective management of radio frequencies and numbering resources, removing the remaining obstacles to the provision of the relevant networks and services, ensuring that there is no discrimination and encouraging the establishment and development of trans-European networks and the interoperability of pan-European services.
- (5) The introduction of new systems providing mobile satellite services (MSS) would contribute to the development of the internal market and enhance competition by increasing the availability of pan-European services and end-to-end connectivity as well as encouraging efficient investment. MSS constitute an innovative alternative platform for various types of pan-European telecommunications and broadcasting/multicasting services, regardless of the location of end users, such as high-speed internet/intranet access, mobile multimedia and public protection and disaster relief. These services could in particular improve coverage of rural areas in the Community, thus bridging the digital divide in terms of geography, simultaneously contributing to the competitiveness of European information and communication technology industries in line with the objectives of the renewed Lisbon strategy.
- (6) Satellite communications, by their very nature, cross national borders and as such are susceptible to international or regional rather than purely national regulation. Pan-European satellite services are an important element of the internal market and could make a substantial contribution to achieving European Union objectives, such as expansion of geographical coverage of broadband in line with the i2010 initiative<sup>8</sup>. New applications of mobile satellite systems will emerge in the coming years.
- (7) Commission Decision 2007/98/EC of 14 February 2007 on the harmonised use of radio spectrum in the 2 GHz frequency bands for the implementation of systems providing mobile satellite services<sup>9</sup> provides that Member States shall make these frequency bands available to systems providing mobile satellite services in the Community as of 1 July 2007.
- (8) Radio spectrum technical management, as organised by Decision 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>10</sup> in

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<sup>6</sup> COM(2007) 212.

<sup>7</sup> OJ L 108, 24.4.2002, p. 33. Directive as amended by Regulation (EC) No 717/2007 (OJ L 171, 29.6.2007, p. 32).

<sup>8</sup> COM(2005) 229, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - "i2010 – A European Information Society for growth and employment", 1.6.2005.

<sup>9</sup> OJ L 43, 15.2.2007, p. 32.

<sup>10</sup> OJ L 108, 24.4.2002, p. 1.

general and Commission Decision 2007/98/EC in particular, does not cover procedures for assignment of spectrum and granting rights of use for radio frequencies.

- (9) With the exception of Article 8 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)<sup>11</sup>, operators of mobile satellite systems are selected and authorised at national level under the existing EU regulatory framework for electronic communications.
- (10) Regulations of the International Telecommunications Union (ITU) provide for procedures for satellite radio frequency coordination as a tool for management of harmful interference, but do not extend to selection or authorisation.
- (11) In order to prevent Member States from taking decisions that might lead to fragmentation of the internal market and undermine the objectives identified in Article 8 of the Framework Directive, selection criteria for mobile satellite systems should be harmonised so that the selection process results in availability of the same set of mobile satellite services throughout Europe. High up-front investment required for the development of mobile satellite systems and the associated high technological and financial risks necessitate an economy of scale for such systems in the form of wide pan-European geographic coverage, so that they remain economically viable.
- (12) Moreover, the successful launch of such services requires coordination of regulatory action by Member States. Differences in national selection procedures could still create fragmentation of the internal market due to the divergent implementation of selection criteria, including the weighting of the criteria, or different timescales of the selection procedures. This would result in a patchwork of successful applicants selected in contradiction with the pan-European nature of these mobile satellite services. Selection of different mobile satellite operators by different Member States could imply complex harmful interference situations or could even mean that a selected operator is prevented from providing a pan-European service, for instance where different radio frequencies are assigned to the operator in different Member States. Therefore, harmonisation of the selection criteria should be supplemented by the establishment of a common selection mechanism that would provide a coordinated selection outcome for all Member States.
- (13) Since authorisation of the selected mobile satellite operators involves attachment of conditions to such authorisations and a broad range of national provisions applicable in the field of electronic communications must thus be taken into account, the authorisation issues should be dealt with by competent national authorities of Member States. However, in order to ensure consistency of authorisation approaches between different Member States, provisions on synchronised assignment of spectrum and on harmonised authorisation conditions should be established at the Community level, without prejudice to specific national conditions compatible with Community law.
- (14) Taking into account a comparatively long period of time and complex technical development steps required for the launch of satellite services, progress in the

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<sup>11</sup> OJ L 108, 24.4.2002, p. 21.

technical and commercial development of mobile satellite systems should be assessed as part of the selection procedure.

- (15) Complementary ground components are expected to be used at fixed locations in order to improve the availability of mobile satellite services in zones where communications with one or several space stations cannot be ensured with the required quality. The authorisation of such complementary ground components will therefore mainly rely on conditions related to local circumstances. They should therefore be selected and authorised at national level, subject to conditions established by Community law.
- (16) The limited amount of radio spectrum available implies that the number of undertakings that may be selected and authorised is also necessarily limited. However, if the selection process leads to a finding that there is no radio spectrum scarcity, a simplified selection procedure should apply with a number of minimum requirements imposed on the selected mobile satellite operators as conditions attached to authorisations.
- (17) While monitoring of the use of radio spectrum by the selected and authorised mobile satellite operators and any required enforcement action is undertaken at national level, it should remain possible for the Commission to define the modalities of a coordinated monitoring and/or enforcement procedure.
- (18) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>12</sup>.
- (19) Since the objective of the proposed action, namely to establish a common framework for the selection and authorisation of operators of mobile satellite systems, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DECISION:

## **TITLE I**

### **OBJECTIVE, SCOPE AND DEFINITIONS**

#### *Article 1 Objective and scope*

1. The purpose of this Decision is to create a Community procedure for the common selection of operators of mobile satellite systems as well as to lay down provisions for the coordinated authorisation by Member States of the selected operators to use radio spectrum for the

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<sup>12</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

operation of mobile satellite systems, in order to facilitate the development of a competitive internal market for mobile satellite services in the Community.

2. Operators of mobile satellite systems shall be selected through a Community procedure, in accordance with the provisions laid down in Title II.

3. The selected operators of mobile satellite systems shall be authorised by Member States in accordance with the provisions laid down in Title III.

4. Operators of complementary ground components of mobile satellite systems shall be authorised by Member States in accordance with the provisions laid down in Title III.

5. This Decision applies to the 2 GHz frequency band, comprising radio spectrum from 1980 to 2010 MHz for Earth to space communications, and from 2170 to 2200 MHz for space to Earth communications, according to Decision 2007/98/EC.

### *Article 2 Definitions*

1. The definitions laid down in Directive 2002/21/EC and Directive 2002/20/EC shall apply for the purposes of this Decision.

2. The following definitions shall also apply:

(a) 'mobile satellite systems' shall mean networks and associated facilities capable of providing radiocommunications services between a mobile earth station and one or more space stations, or between mobile earth stations by means of one or more space stations, or between a mobile earth station and one or more complementary ground based stations used at fixed locations. Such a system shall include at least one space station;

(b) 'complementary ground components' of mobile satellite systems shall mean ground based stations used at fixed locations in order to improve the availability of the mobile satellite service in zones where communications with one or more space stations cannot be ensured with the required quality.

## **TITLE II SELECTION PROCEDURE**

### *Article 3 Comparative selection procedure*

1. A comparative selection procedure shall be organised by the Commission for the selection of operators of mobile satellite systems. The Commission shall be assisted by the Communications Committee in accordance with Article 10.

2. The procedure shall aim to bring the 2 GHz frequency band into use without undue delay while allowing applicants a fair and non-discriminatory opportunity to participate in the comparative selection procedure.

3. The Commission shall define, in accordance with the procedure referred to in Article 10(2):

- (a) the frequency bands;
- (b) the amount of spectrum to be assigned to the selected applicants;
- (c) detailed requirements of the comparative selection procedure;
- (d) the particulars and documents to be included in applications;
- (e) the conditions under which information about applications can be disclosed.

The call for applications and any detailed requirements defined pursuant to this paragraph shall be published in the Official Journal of the European Union.

4. The Commission may seek advice and assistance from external experts for the analysis and/or evaluation of applications. Such external experts shall be selected on the basis of their expertise and high level of independence and impartiality.

#### *Article 4 Admissibility of applications*

1. The following admissibility requirements shall apply:

- (a) applicants shall be established in the Community;
- (b) applications shall identify the amount of radio spectrum requested and shall include statements and evidence concerning the required milestones and the selection criteria as well as any other particulars and documents.

2. Applications shall be submitted to the Commission.

3. The Commission shall decide on the admissibility of applications. Any decision of the Commission on non-admissibility of applications shall be adopted in accordance with the procedure referred to in Article 10(2).

4. The Commission shall forthwith inform the applicants whether their applications have been considered as admissible and publish the list of admissible applicants. The Commission may request applicants to supply additional information within a specific time period between 5 and 20 working days. The application shall be deemed inadmissible if such information is not supplied within the specified time period.

#### *Article 5 First selection phase*

1. Within 40 working days following publication of the list of admissible applicants, the Commission shall assess whether applicants have demonstrated the required level of technical and commercial development of their respective mobile satellite systems. Such assessment shall rely on the completion of a number of the milestones listed in the Annex to this Decision. These milestones will be further defined by the Commission in accordance with the procedure referred to in Article 10(2). Credibility and viability of the proposed mobile satellite systems shall be taken into account throughout this selection phase.

2. If the combined demand for radio spectrum requested by eligible applicants retained according to paragraph 1 of this Article does not exceed the amount of radio spectrum

available, identified pursuant to Article 3(3), the Commission shall decide in accordance with the procedure referred to in Article 10(3) that all eligible applicants shall be selected and identify the respective frequencies which each selected applicant shall be authorised to use in each Member State for the operation of a mobile satellite system in accordance with Title III.

3. The Commission shall forthwith inform the applicants whether their applications have been considered as eligible for the second selection phase or have been selected according to paragraph 2. The Commission shall publish the list of eligible or selected applicants.

4. In the absence of eligible applicants, or if spectrum remains available in the 2 GHz band following the first selection phase, the Commission may decide, in accordance with the procedure referred to in Article 10(3), to organise a new selection procedure.

#### *Article 6 Second selection phase*

1. If the combined demand for radio spectrum requested by eligible applicants identified in the first selection phase exceeds the amount of radio spectrum available, identified pursuant to Article 3(3), the Commission shall select eligible applicants according to the following further criteria:

(a) consumer and competitive benefits;

(b) spectrum efficiency;

(c) pan-EU geographic coverage;

(d) public policy objectives.

2. The detailed requirements under each selection criterion shall be defined by the Commission in accordance with the procedure referred to in Article 10(2). Credibility and viability of the proposed mobile satellite systems shall be taken into account throughout this selection phase.

3. Within 80 working days following publication of the list of eligible applicants identified in the first selection phase, the Commission shall, in accordance with the procedure referred to in Article 10(3), adopt a decision on the selection of applicants. The decision shall identify the selected applicants as well as the frequencies which each selected applicant shall be authorised to use, by each Member State, for the operation of a mobile satellite system in accordance with Title III.

### **TITLE III AUTHORISATION**

#### *Article 7 Authorisation of the selected applicants*

1. Member States to be covered by the system of the selected applicant shall ensure that their competent authorities grant to such applicant any right to use the specific radio frequency identified in the Commission decision adopted pursuant to Article 5(2) or Article 6(3) and any

authorisation necessary for the operation of a mobile satellite system. The Commission decision shall set the time limit in which the rights and authorisations shall be granted.

2. The rights covered by paragraph 1 of this Article shall be subject to the following common conditions:

(a) applicants shall use the assigned radio spectrum for the provision of mobile satellite systems;

(b) applicants shall meet the milestones identified in the Annex to this Decision according to the deadlines defined by the Commission in accordance with the procedure referred to in Article 10(2);

(c) applicants selected according to Article 5(2) shall meet minimum requirements related to consumer and competitive benefits, spectrum efficiency, pan-European coverage, and public policy objectives as further defined by the Commission in accordance with the procedure referred to in Article 10(2);

(d) applicants shall provide to competent authorities of Member States an annual report detailing the status of development of a mobile satellite system;

(e) applicants shall meet any commitment undertaken during the comparative selection procedure;

(f) rights of use and authorisations shall be granted for a duration defined by the Commission in accordance with the procedure referred to in Article 10(2).

#### *Article 8 Complementary ground components*

1. Member States shall ensure that, upon request, their competent authorities grant to the applicants selected in accordance with Title II and authorised to use the spectrum pursuant to Article 7 any authorisations necessary for the provision of complementary ground components of mobile satellite systems on their territories.

2. Member States shall not select or authorise operators of complementary ground components of mobile satellite systems before the selection procedure provided for in Title II is completed by the adoption of a decision by the Commission pursuant to Article 5(2) or Article 6(3). This is without prejudice to the use of the 2 GHz frequency band by systems other than those providing mobile satellite services within the limits of Decision 2007/98/EC.

3. Any national authorisations issued for the operation of complementary ground components of mobile satellite systems in the 2 GHz frequency band shall be subject to the following common conditions:

(a) operators shall use the assigned radio spectrum for the provision of complementary ground components of mobile satellite systems;

(b) complementary ground components shall constitute an integral part of a mobile satellite system and shall be controlled by the satellite resource and network management mechanism; they shall use the same direction of transmission and the same portions of frequency bands as

the associated satellite components and shall not increase the spectrum requirement of the associated mobile satellite system;

(c) independent operation of complementary ground components in case of failure of the satellite component of the associated mobile satellite system shall not exceed 18 months;

(d) rights of use and authorisations shall be granted for a duration defined by the Commission in accordance with the procedure referred to in Article 10(2).

#### *Article 9 Monitoring and enforcement*

1. Authorised operators shall be responsible for compliance with any conditions attached to their authorisations and for payment of any applicable authorisation and/or usage fees and charges as required by laws of Member States.

2. Member States shall monitor compliance by authorised operators with the conditions of authorisations issued by their national authorities and shall inform the Commission of the results of such monitoring on an annual basis.

3. The Commission shall define, in accordance with the procedure referred to in Article 10(2), any appropriate modalities for coordinated monitoring and/or enforcement procedures, including coordinated suspension or withdrawal of authorisations, in particular for breaches of the common conditions provided for in Article 7(2).

### **TITLE IV GENERAL AND FINAL PROVISIONS**

#### *Article 10 Committee*

1. The Commission shall be assisted by the Communications Committee set up by Article 22 of Directive 2002/21/EC.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

#### *Article 11 Entry into force*

This Decision shall enter into force on the third day following that of its publication in the Official Journal of the European Union.

#### *Article 12 Addressees*

This Decision is addressed to the Member States.

Done at Brussels,

*For the European Parliament  
The President*

*For the Council  
The President*

## ANNEX MILESTONES

1. Submission of International Telecommunications Union (ITU) request for co-ordination
2. Satellite manufacturing
3. Completion of the Critical Design Review
4. Satellite launch agreement
5. Gateway Earth Stations
6. Satellite mating
7. Launch of satellites
8. Frequency co-ordination
9. Provision of satellite service within the territories of EU Member States

## LEGISLATIVE FINANCIAL STATEMENT

**1. NAME OF THE PROPOSAL:**

Selection and Authorisation of Systems Providing Mobile Satellite Services (MSS)

**2. ABM / ABB FRAMEWORK**

Policy Area(s) concerned and associated Activity/Activities:

Information Society, i2010: Electronic communications policy and network security

**3. BUDGET LINES**

**3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B..A lines)) including headings:**

090201: Definition and Implementation of Community policy in the field of electronic communication

09010401: Definition and Implementation of Community policy in the field of electronic communication - Expenditure on administrative management

**3.2. Duration of the action and of the financial impact:**

Envisaged duration of the financial impact: 2008.

**3.3. Budgetary characteristics:**

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
BGUE+B 2008- 090201	Comp	Diff <sup>13</sup>	NO	NO	NO	No [1A...]

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<sup>13</sup> Differentiated appropriations.

## 4. SUMMARY OF RESOURCES

### 4.1. Financial Resources

#### 4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to three decimal places)

Expenditure type	Section no.		Year 2008	2009	2010	2011	2012	2013 and later	Total
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#### Operational expenditure<sup>14</sup>

Commitment Appropriations (CA)	8.1.	a	0.05	-	-	-	-	-	0.05
Payment Appropriations (PA)		b	0.05	-	-	-	-	-	0.05

#### Administrative expenditure within reference amount<sup>15</sup>

Technical & administrative assistance (NDA)	8.2.4.	c	0.064	-	-	-	-	-	0.064
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#### TOTAL REFERENCE AMOUNT

<b>Commitment Appropriations</b>		a+c							0.114
<b>Payment Appropriations</b>		b+c							0.114

#### Administrative expenditure not included in reference amount<sup>16</sup>

Human resources and associated expenditure (NDA)	8.2.5.	d	0.234	-	-	-	-	-	0.234
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6.	e	0.002	-	-	-	-	-	0.002

#### Total indicative financial cost of intervention

<b>TOTAL CA including cost of Human Resources</b>		a+c +d +e							0.35
<b>TOTAL PA including cost of Human Resources</b>		b+c +d +e							0.35

<sup>14</sup> Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

<sup>15</sup> Expenditure within article xx 01 04 of Title xx.

<sup>16</sup> Expenditure within Chapter xx 01 other than articles xx 01 04 or xx 01 05.

## Co-financing details

Not applicable.

### 4.1.2. Compatibility with Financial Programming

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement<sup>17</sup> (i.e. flexibility instrument or revision of the financial perspective).

### 4.1.3. Financial impact on Revenue

- Proposal has no financial implications for revenue
- Proposal has financial impact – the effect on revenue is as follows:

EUR million (to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action					
			[Year n]	[n+1]	[n+2]	[n+3 ]	[n+4]	[n+5] <sup>18</sup>
	a) Revenue in absolute terms							
	b) Change in revenue	Δ						

## 4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

Annual requirements	Year 2008	2009	2010	2011	2012	2013 and later
Total number of human resources	2	-	-	-	-	-

<sup>17</sup> See points 19 and 24 of the Interinstitutional Agreement.

<sup>18</sup> Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years.

## 5. CHARACTERISTICS AND OBJECTIVES

### 5.1. Need to be met in the short or long term

Short-term: selection and authorisation of mobile satellite system operators to provide pan-European services; long-term: actual availability of pan-European mobile satellite services.

### 5.2. Value added by Community involvement and coherence of the proposal with other financial instruments and possible synergy

Community involvement will ensure a coherent selection outcome across the Community as well as prevent fragmentation of the internal market.

### 5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

By facilitating the deployment of pan-European mobile satellite services, the proposal is expected to contribute to expansion of geographical coverage of broadband in line with the i2010 initiative as well as to enhancement of the competitiveness of European information and communication technology industries in line with the objectives of the renewed Lisbon strategy.

The main expected results are the following:

- 1) selection and authorisation of approximately 2-3 mobile satellite system operators to provide pan-European services using the 2 GHz radio spectrum at the end of 2008 – beginning of 2009;
- 2) actual availability to European consumers and enterprises of pan-European mobile satellite services, including high-speed internet access, mobile multimedia, public protection and disaster relief, starting in approximately 2011.

### 5.4. Method of Implementation (indicative)

#### *Centralised management*

- directly by the Commission
- indirectly by delegation to:
  - executive Agencies
  - bodies set up by the Communities as referred to in Art. 185 of the Financial Regulation
  - national public-sector bodies/bodies with public-service mission

#### *Shared or decentralised management*

- with Member States
- with third countries

- Joint management with international organisations (please specify)*

Relevant comments:

Selection of mobile satellite system operators will be carried out by the Commission through comitology procedures and, if needed, with the assistance of external experts.

Authorisation of the selected mobile satellite system operators will be carried out by competent authorities of Member States.

## **6. MONITORING AND EVALUATION**

### **6.1. Monitoring system**

The proposal provides for regular monitoring by competent authorities of Member States of compliance by authorised mobile satellite system operators with the conditions of authorisations, including progress towards fully operational systems. Information collected as a result of such monitoring shall be presented to the Commission.

### **6.2. Evaluation**

#### *6.2.1. Ex-ante evaluation*

Not applicable.

#### *6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)*

Not applicable.

#### *6.2.3. Terms and frequency of future evaluation*

An evaluation is foreseen upon finalisation of selection and authorisation of mobile satellite system operators.

## **7. Anti-fraud measures**

Transparent procedures shall be used for appointment of external experts by the Commission.

## 8. DETAILS OF RESOURCES

### 8.1. Objectives of the proposal in terms of their financial cost

The financial cost has been calculated on the basis of the appointment by the Commission of a selection panel consisting of five experts working in Brussels for two 5-day periods (compensation of travel expenses being equal to €20 per expert per period, daily allowance being equal to €200 per expert and expert fee being equal to €700 per expert per day).

Commitment appropriations in EUR million (to three decimal places)

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	Year 2008		Year 2009		Year 2010		Year 2011		Year 2012		Year 2013 and later		TOTAL		
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost									
OPERATIONAL OBJECTIVE																	
<sup>19</sup> Pan-European mobile satellite services																	
<b>Action</b>																	
<b>Selection of mobile satellite system operators</b>																	
- Output 1	Expert report	-	1	0.05	-	-	-	-	-	-	-	-	-	-	-	-	-
- Output 2	Selection decision	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

<sup>19</sup>

As described under Section 5.3.

<b>TOTAL COST</b>		-	1	0.05	-	-	-	-	-	-	-	-	-	-	1	0.05
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## 8.2. Administrative Expenditure

### 8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources ( <b>number of posts/FTEs</b> )					
		Year 2008	Year 2009	Year 2010	Year 2011	Year 2012	Year 2013
Officials or temporary staff <sup>20</sup> (09 01 01)	A*/AD	1	-	-	-	-	-
	B*, C*/AST	1	-	-	-	-	-
Staff financed <sup>21</sup> by Art. 09 01 02		-	-	-	-	-	-
Other staff <sup>22</sup> financed by Art. 09 01 04/05		-	-	-	-	-	-
<b>TOTAL</b>		2	-	-	-	-	-

### 8.2.2. Description of tasks deriving from the action

Provision of secretarial, analytical, drafting and other support throughout the process of selection of mobile satellite system operators.

### 8.2.3. Sources of human resources (statutory)

- Posts currently allocated to the management of the programme to be replaced or extended
- Posts pre-allocated within the APS/PDB exercise for year n
- Posts to be requested in the next APS/PDB procedure
- Posts to be redeployed using existing resources within the managing service (internal redeployment)
- Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

<sup>20</sup> Cost of which is NOT covered by the reference amount.

<sup>21</sup> Cost of which is NOT covered by the reference amount.

<sup>22</sup> Cost of which is included within the reference amount.

8.2.4. *Other administrative expenditure included in reference amount (09 01 04/05 – Expenditure on administrative management)*

Other administrative expenditure has been calculated on the basis of four meetings (1-day duration each) of the Communications Committee or a working group mandated by the Communications Committee (assuming that reimbursement of travel expenses would cost approximately €16 000 per meeting).

EUR million (to three decimal places)

Budget line	Year 2008	Year 2009	Year 2010	Year 2011	Year 2012	Year 2013 and later	TOTAL
090201: Definition and Implementation of Community policy in the field of electronic communication							
<b>1 Technical and administrative assistance (including related staff costs)</b>							
Executive agencies <sup>23</sup>	-	-	-	-	-	-	-
Other technical and administrative assistance	-	-	-	-	-	-	-
- <i>intra muros</i>	0.064	-	-	-	-	-	0.064
- <i>extra muros</i>	-	-	-	-	-	-	-
<b>Total Technical and administrative assistance</b>	0.064	-	-	-	-	-	0.064

8.2.5. *Financial cost of human resources and associated costs not included in the reference amount*

EUR million (to three decimal places)

Type of human resources	Year 2008	Year 2009	Year 2010	Year 2011	Year 2012	Year 2013 and later
Officials and temporary staff (09 01 01)	0.234	-	-	-	-	-
Staff financed by Art. 09 01 02 (auxiliary, END, contract staff, etc.)  (specify budget line)	-	-	-	-	-	-

<sup>23</sup> Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

<b>Total cost of Human Resources and associated costs (NOT included in reference amount)</b>	<b>0.234</b>	-	-	-	-	-
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### 8.2.6. Other administrative expenditure not included in reference amount

Other administrative expenditure has been calculated on the basis of four meetings (1-day duration each) of the Communications Committee or a working group mandated by the Communications Committee (assuming that lunch would cost approximately €500 per meeting).

EUR million (to three decimal places)

	Year 2008	Year 2009	Year 2010	Year 2011	Year 2012	Year 2013 and later	TOTAL
09 01 02 11 01 – Missions	-	-	-	-	-	-	-
09 01 02 11 02 – Meetings & Conferences	-	-	-	-	-	-	-
09 01 02 11 03 – Committees <sup>24</sup> - Communications Committee	0.002	-	-	-	-	-	0.002
09 01 02 11 04 – Studies & consultations	-	-	-	-	-	-	-
09 01 02 11 05 - Information systems	-	-	-	-	-	-	-
<b>2 Total Other Management Expenditure (09 01 02 11)</b>	0.002	-	-	-	-	-	0.002
<b>3 Other expenditure of an administrative nature</b> (specify including reference to budget line)	-	-	-	-	-	-	-
<b>Total administrative expenditure, other than human resources and associated costs (NOT included in reference amount)</b>	0.002	-	-	-	-	-	0.002

<sup>24</sup> Specify the type of committee and the group to which it belongs.