

*Parliament of the Czech Republic*

**CHAMBER OF DEPUTIES**

**2010**

**6<sup>th</sup> electoral term**

**27.**

**RESOLUTION**

**of the Committee for European Affairs  
of the 6<sup>th</sup> meeting which took place on 18 November 2010**

**on the Draft proposal for a Decision of the European parliament and the Council to set up a first Radio Spectrum Policy Programme / document number 13872/10, COM(2010) 471 in final wording**

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Committee for European Affairs after having listened to the information by Deputy Minister of Industry and Trade Ing. Martin Tlapa, MBA, after having listened to the report by M.P. Jiří Zemánek and after a debate

**approves** the position which is in the annex to this resolution.

Jaroslav Lobkowicz  
Verifier of the Committee

Jiří Zemánek  
Rapporteur of the Committee

Jan Bauer  
Chairman of the Committee

**Draft proposal for a Decision of the European parliament and the Council to set up a first Radio Spectrum Policy Programme**

**COM(2010) 471 in final version, Council code 13872/10  
Inter-institutional document 2010/0251/COD**

- **Legal basis:** Article 114 TFEU.
- **Date of the submission to the Chamber of Deputies:** 22.9. 2010
- **Date of discussion in COREPER:** 7.10. 2010 (1. round)
- **Procedure:**  
Co-decision.
- **Preliminary position of the Government (according to § 109a subsection 1 of the rules of procedure of the Chamber of Deputies):**  
Dated on 7.10. 2010, submitted to the Committee for European Affairs on 12.10. 2010 by means of the system ISAP.
- **Assessment in light of the subsidiarity principle:**  
The proposal is in accordance with the principle of subsidiarity. Nevertheless the rationale of the proposal from the point of view of this principle stated in the explanatory report is not acceptable. It results from its formulation that any initiative of the Commission is in accordance with the subsidiarity principle as far as it concerns a domain in which the EU is already executing its powers. The execution of the powers by the EU in the domain in which this power is shared with Member States (which is also the case of the internal market under which falls the proposal discussed) is limiting the powers of Member States, but is not abrogating them, and the initiatives in such a domain continue to be subject to a rationale as regards the subsidiarity principle as it is laid down in the Treaties. In case of this proposal the Commission does not provided the rationale requested.
- **Rationale and subject:**  
The radio spectrum is a necessary mean for the development of the digital society. Several goals were formulated in the framework of the Strategy Europe 2020, an efficient use of of spectrum can contribute to achieve its goals, and especially in the framework of flagship initiatives Digital Agenda for Europe<sup>1</sup> and Innovative Union<sup>2</sup>. The basic goal in this sense is creating a single digital market based on a universally accessible high-speed broadband internet access<sup>3</sup> and on interoperable applications. The achievement of this goal should then contribute to realise partial political priorities of the Union in the field of economic growth, social inclusion, rise in energy

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<sup>1</sup> COM(2010) 245 in final wording

<sup>2</sup> COM(2010) 546 in final wording

<sup>3</sup> By 2013 all EU citizens should have broadband internet access and by 2020 the connection speed should be enhanced to at least 30 Mb per second.

efficiency and efficiency in using resources, security of the transport or space research.

A limited quantity of radio spectrum implies such an approach to its management which will ensure its best efficient use, while at the same time fulfilling quantitative requirements on individual services which are provided by using spectrum. The basis of the current legal framework of the Union in this domain is Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive) together with the Directive 2002/20/EC on the authorisations for electronic communications networks and services (Authorisation Directive) and Decision 676/2002/EC on the regulatory framework for the radio spectrum policy in the European Community, on the basis of which the Commission have adopted Decisions on harmonising technical conditions of the use of four frequency bands<sup>4</sup>, the last one from them was the so called digital dividend (band freed up by the digital switch-over). The draft proposal submitted further develops this legal framework, the Framework Directive 2002/21/EC lays down a competence to the Commission to submit to the Council and European Parliament a legislative proposal to set up a multiannual programme for radio spectrum policy for setting up a political orientation and goals for a strategic planning and harmonisation of spectrum use.

The radio spectrum policy programme until 2015 is a first programme of that kind. Its goal is a further deepening of existing harmonisation measures in order to create a functioning single market for electronic communications.

- **Content and impact:**

The programme formulates four general regulation principles of radio spectrum management; 1) support of an efficient use in order to satisfy a growing demand; 2) technology and service neutrality, 3) the simple authorisation system,; 4) an efficient economic competition.

The requirement to implement these principles is linked to the following obligations of Member States:

- by 1 January 2013 take appropriate measures in the domain of authorisation and assignment of frequencies, focussed especially on the development of broadband services;
- by 1 January 2012 authorise all bands already harmonised with the exception of the digital dividend under the conditions ensuring a seamless access to wireless broadband services;

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<sup>4</sup> Decision of the European Commission 2008/411/EC on the harmonisation of the frequency band 3400-3800 MHz for terrestrial systems capable of providing electronic communications services in the Community; Decision of the European Commission 2008/477/EC on the harmonisation of the frequency band 2500-2690 MHz for terrestrial systems capable of providing electronic communications services in the Community; Decision of the European Commission 2009/766/EC on the harmonisation of the frequency bands 900 MHz and 1800 MHz for terrestrial systems capable of providing electronic communications services in the Community; Decision of the European Commission 2010/267/EU on the harmonised technical conditions for the use of the frequency band 790-862 MHz for terrestrial systems capable of providing electronic communications services in the European Union.

- by 1 January 2013 make available the band 800 MHz (digital dividend) for electronic communications services with a possibility of derogation (for technical reasons) until 2015<sup>5</sup>;
- ensure the availability of services provided in the 800 MHz band in sparsely populated areas, especially by setting the obligation of coverage;
- support the collective and shared use of spectrum;
- ensure that the competition is not distorted by hoarding, transferring or changing of spectrum usage rights;
- ensure seamless authorisation and assignment procedures which support the competition;
- in the co-operation with the Commission, ensure the availability of spectrum and protection of radio frequencies for monitoring atmosphere and earth surface;
- carry out a review of bands needed for research and development and prepare the procedures for the assignment of bands for applications in this domain on the basis of harmonised technical conditions;
- ensure the compliance of international legal instruments by which they are bound with the EU law.

If not stipulated otherwise, the measures contained in the programme shall be adopted by Member States by 1. July 2015.

Besides obligations for Member States the programme also sets tasks for the Commission. These include:

- ensuring the allocation of sufficient spectrum to achieve a total coverage of the territory of the Union by broadband connection with a speed of at least 30 Mb per second by 2020;
- ensuring the availability of spectrum in order to ensure broadband connection by means of satellite technology in cases when the terrestrial coverage is not possible and this under comparable price conditions for the users;
- adopting the standards for technical equipment and networks in co-operation with Member States;
- elaborating the instructions for authorisation conditions and procedures for harmonised bands in co-operation with Member States;
- taking appropriate measures that will ensure that Member States will enable the trading of radio spectrum usage rights in harmonised bands;
- investigating the possibility to use the spectrum for technologies enhancing the energy efficiency;
- making available sufficient spectrum on harmonised basis for services which ensure the security of the population (civil protection);
- creating a review and monitoring of existing uses of radio spectrum use and assessing the possibility to free up and make available further bands for new applications;
- representing the Union at the international level in radio spectrum issues and protecting its interests;

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<sup>5</sup> In this point the draft proposal does not respect the opinion of the Radio Spectrum Policy Group (RSPG) which consists of representatives of Member States which is consultation body to the Commission and which supports to ensure the availability of the 800 MHz band for electronic communications services by 2015. See the RSPG Opinion on the RSPP (RSPG10-330 Final), 9. June 2010 available on [http://rspg.ec.europa.eu/\\_documents/documents/opinions/rspg10\\_330\\_rspp\\_opinion.pdf](http://rspg.ec.europa.eu/_documents/documents/opinions/rspg10_330_rspp_opinion.pdf).

- development and support of the co-operation with responsible bodies of Member States as well as international bodies in order to achieve the coordination of spectrum management and its efficient use;
- organising public consultations and collecting views of concerned parties;
- carrying out a review of the implementation of the programme by 31 December 2015 and submitting a report about its results to the European Parliament and Council.

The programme itself is backed up in the existing EU legal framework for the domain of electronic communications, concretely in the Framework Directive 2002/21/EC<sup>6</sup>. However the provisions of this Directive does not link the adoption of the programme to the creation of a functioning internal market and the submitted proposal exceeds the framework of the valid legal provisions, according to which the goal of the programme should be providing support to strategic planning. With regards to the nature of radio spectrum it is obvious that if in the whole European Union a seamless provision of services using spectrum is to be provided, a certain level of coordination of activities of Member States (by also third, especially neighbouring countries) is necessary. The obligations imposed on Member States and the tasks of the Commission are exactly concurring already adopted measures in the domain of radio spectrum management. With regard to the current scope of the exercise of competencies of the Union and Member States in the domain of radio spectrum management, as stipulated by EU regulations in force, three points do appear as potentially problematic: harmonisation of conditions of and procedures for authorisation<sup>7</sup>; ensuring the tradability of usage rights within the EU<sup>8</sup> and monitoring the use of spectrum by the Commission<sup>9</sup>.

• **Position of the Government of the Czech Republic:**

The Government of the Czech Republic in its position paper draws the attention to the potentially problematic legal basis of the proposal (Art. 114 TFEU) which primarily makes of the programme a tool for creating a single market in the domain of radio spectrum and not a tool for strategic planning in this domain as foreseen by the Framework Directive 2002/21/EC.

It further states that setting a date for the release of the 800 MHz band for 2013 is not in compliance with the opinion of the RSPG which prefers 2015. In this regard, the proposal of the Commission is not problematic for the Czech Republic.

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<sup>6</sup> Art. 8a section 3

<sup>7</sup> According to Art. 9 of the Framework Directive 2002/21/EC the management of radio frequencies for electronic communications services is the task of national regulatory authorities. It further results from Art. 5-7 of the Authorisation Directive 2002/20/EC that granting usage rights for radio frequencies including setting of conditions for exercising these rights and of eventual restrictions is within the powers of Member States. According to Art. 8 of this Directive a harmonised allocation of frequencies (at the Community level) is subject to the fulfilment of all conditions set at the national level which are linked to the right of usage of frequencies concerned. So the Member States will conserve their powers in the domain of conditions and procedures for authorisation and it is not probable that they will be willing to transfer them at the Union level. The Commission is only planning non-binding measures (instructions) in this domain.

<sup>8</sup> One of the conditions to ensure the tradability of spectrum is the availability of information on spectrum usage rights, conditions, procedures and fees concerning the use of spectrum. The Decision 676/2002/EC on the regulatory framework for the radio spectrum policy in the European Community laid down the obligation on Member States to publish this information. The Commission further elaborated this obligation in the Decision 2007/344/EC which harmonises the availability of information regarding spectrum use by introducing a common information portal and by harmonising the format and the content of this information. It is not clear which further measures is the Commission planning to support the tradability.

<sup>9</sup> The use of spectrum is currently monitored at the Member States level, because they bear the responsibility for ensuring the availability of services of fundamental importance. An added value of transferring this activity to the Commission is not clear.

At the same time it reminds that the responsibility for the implementation of proposed measures and the achievement of the goals set down are born by Member States where to the division of powers should correspond. The decision should also not infringe upon measures taken at the national level which follow public interest goals.

- **Planned timetable of negotiations in EU bodies:**

A submission of a progress report is foreseen at the meeting of Council for transport, telecommunications and energy on 3<sup>rd</sup> December 2010. The draft proposal is attributed to the Committee for Industry, Research and Energy. The adoption of the report in the Committee is planned for 12 April 2011 and a plenary vote is foreseen on 9 May 2011.

- **Conclusion:**

Committee for European Affairs

**1. takes note** of the Draft proposal for a Decision of the European Parliament and Council on a first radio spectrum policy programme and the frame position of the Government;

**2. decides** to transfer this document together with its resolution and frame position of the Government to the Committee for Economic Affairs for information;

**3. considers** the justification of the draft proposal from the point of view of subsidiarity as stated in the explanatory report **to be unacceptable** and asks the Commission for the completion;

**4. entrusts the Committee Chairman** with forwarding this resolution to the European Commission.

Jaroslav Lobkowicz  
Verifier of the Committee

Jiří Zemánek  
Rapporteur of the Committee

Jan Bauer  
Chairman of the Committee

