



EUROPEAN COMMISSION

*Brussels, 4.5.2017  
C(2017) 2930 final*

*Mr Urban AHLIN  
Speaker of the Riksdag  
SE – 100 12  
STOCKHOLM*

*Dear President,*

*The Commission would like to thank the Riksdag for its Reasoned Opinion on the Proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code {COM(2016) 590 final/2}.*

*This proposal forms part of an ambitious package of EU telecoms rules designed to meet the growing connectivity needs of European citizens and businesses and boost Europe's competitiveness<sup>1</sup>. The package of measures aim at encouraging investment in very high capacity networks and accelerating public access to Wi-Fi for Europeans. In proposing these measures, the Commission is delivering on the promise in its Communication of May 2015, a Digital Single Market Strategy for Europe<sup>2</sup> to present an ambitious overhaul of the regulatory framework for electronic communications so as to make the telecom rules fit for purpose as part of the creation of the right conditions for the Digital Single Market.*

*The Commission's proposal would not change the primary prerogatives of the Member States to own and control spectrum within their national borders, but rather would promote a better and more efficient coordination of spectrum assignment policies also across borders. Therefore, the provisions of the proposal on radio spectrum aim at (i) ensuring advanced connectivity by guaranteeing a faster time to market of radio spectrum resources; (ii) promoting sufficient investments to meet tomorrow's economic challenges, such as denser 5G networks, by simplifying regulatory intervention and ensuring greater consistency and predictability in radio spectrum assignment, in such a way as to avoid the delays and unpredictability that characterised some assignment processes in the past; and (iii) responding to the new radio spectrum management challenges raised by the development of 5G communications.*

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<sup>1</sup> [http://europa.eu/rapid/press-release\\_IP-16-3008\\_en.htm](http://europa.eu/rapid/press-release_IP-16-3008_en.htm).

<sup>2</sup> COM(2015) 192 final.

*The Commission welcomes the Riksdag's broad support for the revision of the regulatory framework for electronic communications as well as the recognition of the general compliance of such proposal with the principle of subsidiarity. However, it notes that the Riksdag nevertheless considers that a number of measures proposed in relation to the harmonisation of radio spectrum conflict with the principle of subsidiarity due to a perceived transfer of competences to the European Union level.*

*The Commission is pleased to have this opportunity to provide a number of clarifications regarding its proposal in the annex and trusts that these will allay the concerns expressed by the Riksdag. The Commission indeed took great care to ensure that all the proposed measures fulfil both the subsidiarity and proportionality principles and provide for action at European Union level only where and to the extent necessary for the fulfilment of the internal market while otherwise leaving Member States the freedom to manage spectrum as they see fit according to their national needs.*

*The points made in this reply are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Riksdag and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Andrus Ansip  
Vice-President*

## ANNEX

*The Commission has carefully considered each of the issues raised by the Riksdag in its Reasoned Opinion and is pleased to offer the following clarifications.*

*The Riksdag considers that Articles 35, 49, 53 and 54 of the proposal entail a formal transfer of competence to the European Union level which is contrary to the subsidiarity principle as it does not allow sufficient scope of action to national regulatory authorities in order to meet national needs and to take into consideration factors that lie outside European Union's competence such as public order, security and defence.*

*The Commission believes that these concerns were taken into consideration during the preparation of the proposal and consequently the proposal only addresses the main requirements to fulfil the internal market under Article 4(2)(a) of the Treaty on the Functioning of the European Union in line with the principles of subsidiarity and proportionality.*

*The Commission believes that while radio spectrum is indeed a scarce resource which belongs to Member States, a certain level of consistency in the management of that resource must be guaranteed to ensure that electronic communications can in particular achieve a common and coordinated, if not simultaneous, level of connectivity for all throughout the European Union. This includes the measures covered by Articles 35, 49, 53 and 54 of the proposal.*

*With regard to the proposed peer review mechanism under Article 35, the Commission believes that, as there is no power of veto over the draft measures made available by the national regulatory authorities pursuant to that Article, there is no shift of decision-making competence to the European Union level and therefore Member States retain a high level of freedom to act. The peer review mechanism would allow each authority to rely on the experience of its peers through the Body of European Regulators for Economic Communication (BEREC) to ensure that the regulatory and market-shaping measures foreseen in relation to the granting of spectrum usage rights would be the most appropriate to promote the internal market and competition, maximise the benefits for the consumer and achieve the objectives of the European Union regulatory framework. In this process, specific national objectives would also be considered and national regulatory authorities would remain free to follow or not the opinion. As to the timing, they could also decide on the moment when to consult Body of European Regulators for Economic Communication, which could well be in parallel to the national consultation; in any case, the one-month deadline set for the peer review should be short enough not to be overly burdensome.*

*Article 49 would set 25 years as a minimum duration for individual rights to use spectrum the technical conditions of which would have been harmonised. While Member States would be prevented from setting shorter durations for spectrum usage rights, it should be considered that these rights would relate to spectrum whose technical usage conditions have already been harmonised, and which, as a consequence, are to be used in a similar way or for similar applications or services throughout the whole European Union, in the interests of the internal market. It makes sense for the integration or complementarity of such applications and services across the internal market that the necessary underlying spectrum remains available for a similar period of time throughout the European Union. Moreover, such a common*

*minimum duration would contribute to ensuring a return on investment and provide predictability for all market players to incentivise a more rapid roll-out of advanced, denser networks throughout the European Union. Some flexibility would nevertheless remain for Member States since such a common minimum duration would not apply to temporary rights, the temporary extension of rights and rights for secondary use.*

*In a similar and complementary way, Article 53 would allow the Commission, acting with the assistance of the Communications Committee pursuant to the examination procedure, as well as taking utmost account of the opinion of the Radio Spectrum Policy Group (in which each Member State is represented), to set maximum common deadlines for the granting of rights for the use of spectrum which has already been technically harmonised. It would indeed make sense, in the interests of the internal market, to ensure that harmonised bands can effectively be used in a coordinated way throughout the European Union. This outcome would also be achieved in a proportionate way since individual Member States could decide to assign their spectrum ahead of the coordinated deadline, any implementing measure would have to take due account of the different national market situations, and, as provided by Article 45(3), in the case of a national or regional lack of market demand, any Member State may decide to allow alternative uses of that spectrum under certain conditions.*

*With regard to Article 54(7), the Riksdag considers that the possibility for the Commission to adopt implementing measures to determine criteria for the coordinated implementation of procedures for limiting the number of spectrum usage rights would deprive the national regulatory authorities of the necessary flexibility to meet national needs and considerations. The Commission believes that such coordination is necessary among Member States to ensure more convergent and consistent processes for market entry and to eliminate obstacles to the internal market created by undue divergences in the granting of spectrum usage rights, which is an essential process for the provision of wireless electronic communications services in the Union. Moreover, the scope of Article 54(7) is limited. Firstly, the subject of the coordination would not be the implementation of the obligations set by paragraphs 1 to 3 of Article 54 but the criteria for such implementation. Concretely, the harmonisation would not apply to the number of rights to be granted in a specific band, but to the criteria to take into account when determining the number of rights to be granted in a band (for example, criteria such as how to maximise the use of spectrum considering the type of service or the size of the frequency blocks to assign). Secondly, such an implementing measure would be adopted in advance of any specific national selection process and will not be band-specific as it will set out a general framework of criteria to be taken into account afterwards by Member States when actually implementing their obligations under Article 54. Member States would remain free to adapt the authorisation process to their specific needs and circumstances taking into account such criteria.*

*Lastly, as is made clear in recital 102, reflecting Article 1(4) of the Radio Spectrum Decision 676/2002/EC and Article 1(3) paragraph 2 of Decision 243/2012/EU, the proposal is without prejudice to the right of Member States to organise and use their radio spectrum for public order, public security and defence.*

*The Commission is therefore of the view that the proposal is in line with the subsidiarity and proportionality principles as explained in the supporting documents which accompanied the proposal.*