

**Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council repealing Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community**

COM(2007) 367 final — 2007/0126 (COD)

(2008/C 151/08)

On 31 August 2007, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

*Proposal for a Directive of the European Parliament and of the Council repealing Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public-pan European cellular digital land-based mobile communications in the Community*

On 25 September 2007 the Committee Bureau instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Hernández Bataller as rapporteur-general at its 441st plenary session, held on 16 and 17 January 2008 (meeting of 16 January), and adopted the following opinion unanimously.

## 1. Conclusions

1.1 The EESC supports the Commission proposal, since it will foster innovation and competitiveness, boost competition on the telecommunications market and extend consumer choice.

## 2. Introduction

2.1 Under the terms of Council Directive 87/372/EEC of 25 June 1987 <sup>(1)</sup>, complemented by Council Recommendation 87/371/EEC of 25 June 1987 <sup>(2)</sup> and the Council Resolution of 14 December 1990 <sup>(3)</sup>, the 890-915 and 935-960 MHz frequency bands (known as the 900 MHz band) were reserved and were to be occupied for the public pan-European cellular digital mobile communications service provided in each of the Member States to a common specification.

2.2 Market developments have led to general support for removing the reservation of the 900 MHz band for GSM, so that new and different digital technologies providing innovative services can be deployed in these frequency bands.

2.3 Decision No 676/2002/EC <sup>(4)</sup> of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community establishes a legal framework to ensure the harmonised availability and efficient use of the radio spectrum, where

<sup>(1)</sup> Council Directive 87/372/EEC of 25 June 1987 on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digit land-based mobile communications in the Community, OJ L 196 of 17.7.1987, p. 85.

<sup>(2)</sup> Council Recommendation 87/371/EEC of 25 June 1987 on the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community, OJ L 196 of 17.7.1987, p. 81.

<sup>(3)</sup> Council Resolution of 14 December 1990 on the final stage of the coordinated introduction of pan-European land-based public digital mobile cellular communications in the Community (GMS), OJ C 329 of 31.12.1990, p. 25.

<sup>(4)</sup> OJ L 108 of 24.4.2002, p. 1.

required to implement Community policies in areas such as communications, transport, broadcasting and research and technological research (RTD).

The EESC supported the proposal for this decision <sup>(5)</sup>, considering that it would guarantee the rational, equitable, effective and economic use of frequencies for all radiocommunications services.

2.4 The purpose of the decision is to:

- set up a regulatory committee, to be called the Radio Spectrum Committee (RSC), responsive to technological and regulatory developments in the radiocommunications field and allowing for proper consultation of all relevant radio spectrum user communities. The Committee advises the Commission when issuing mandates to the CEPT (European Conference of Postal and Telecommunications Administrations) and gives a regulatory opinion on technical implementation measures aimed at harmonised conditions and implementation of Community policy;
- establish a legal framework for spectrum harmonisation where necessary;
- ensure coordinated and timely provision of information on radio spectrum use and availability in the EC;
- ensure that appropriate Community and European positions are developed with a view to international negotiations <sup>(6)</sup> relating to spectrum, where the issues at stake are covered by Community policies.

<sup>(5)</sup> OJ C 123 of 25.4.2001.

<sup>(6)</sup> Countries historically coordinate the use of the radio spectrum in the framework of the International Telecommunications Union (ITU), a specialised body of the United Nations. At the ITU's World Radiocommunications Conferences (WRC), 186 countries meet biannually to adopt measures to achieve international harmonisation. In Europe, 43 countries — including the Member States — coordinate the use of the radio spectrum in the framework of the European Conference of Postal and Telecommunications Administrations (CEPT) and its subcommittee, the European Radiocommunications Committee (ERC).

2.5 The decision allows the Commission to adopt technical implementing measures to ensure harmonised conditions for the availability and efficient use of the radio spectrum band. Thus, where harmonisation is required in order to safeguard legal certainty and Community policies, the Commission grants mandates to the CEPT to develop technical criteria at European level based on which spectrum harmonisation measures can be drafted and adopted by the RSC.

### 3. The proposal for a directive

3.1 In order to remove the reservation of the 900 MHz band for GSM in the EU Member States, introduced by Council Directive 87/372/EEC of 25 June 1987 on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community, this directive should be repealed by means of the adoption by the European Parliament and the Council of a specific directive for this purpose.

3.2 This is necessary in order to contribute to the success of the *i-2010 — A European Information Society for growth and employment* initiative <sup>(7)</sup> and also to achieve greater competition through the use of the 900 MHz band by other technologies, allowing users as much freedom of choice of services and technologies as possible.

3.3 In accordance with the provisions of Decision No 676/2002/EC, the Commission issued a mandate to the CEPT to develop less restrictive technical conditions. Under this mandate, conditions have been produced based on the principle that the 900 MHz may coexist and is fully compatible with GSM and UMTS. Future mandates can be issued to demonstrate the compatibility of other technologies with GSM, thus achieving a further opening of this band.

### 4. General comments

4.1 The EESC welcomes the form of the Commission's proposal for a directive, and considers it to be legislatively appropriate. The proposal forms part of the up-dating and simplification of the Community *acquis* that the EESC has supported in its opinions.

4.1.1 Extensive case-law of the Court of Justice has established that binding acts of institutional law can only be amended or repealed by subsequent acts of the same type. Thus the need to adopt a specific directive to repeal Directive 87/372/EEC is fully justified.

4.2 The legal context of the proposal would also appear to justify its adoption on several grounds.

4.3 Market developments in the telecommunications industry argue in favour of the introduction of new digital technologies which would coexist with GSM in using the 900 MHz band, and bringing about benefits from the widespread use of voice,

data and multimedia services in rural or sparsely-populated areas at lower cost.

4.4 The Committee welcomes the fact that this technology will be used with low environmental costs due to the fact that it will work with less base stations.

4.5 These new technologies, such as UMTS, have also created a pan-European market for the related services.

4.6 The care taken by the Commission is also deserving of mention: the proposal is accompanied by other steps, such as plans to prepare technical harmonisation measures to ensure the continued use of the 900 MHz band by GSM services, and the use of the comitology provisions under the Radio Spectrum Decision in order to react rapidly to technological progress and introduce new harmonising legislation at EU level.

4.7 Both the necessary repeal of the above-mentioned directive and the future introduction of the new operating conditions for radio spectrum in the Member States are in line with the subsidiarity principle, since they are limited to the specific objective of ensuring the satisfactory use of the 900 MHz band, and are without prejudice to national decision-making powers regarding the use of this band by other, additional services, or the granting of spectrum use rights by the Member States.

4.8 The steps proposed or planned by the Commission are neutral with regard to the technologies and services used in the spectrum, enabling it to be used more flexibly and efficiently.

4.9 Spectrum management must be governed by the general principles of technological neutrality combined with service neutrality, flexibility and transparency, ensuring cultural and linguistic diversity, freedom of expression and plurality in the media, and reflecting the technical, social, cultural and political needs of all the Member States.

4.10 The EESC considers that efficient radio spectrum use is crucial to guaranteeing access to the various potential service providers and is consequently a key factor for growth, productivity and the development of European industry in line with the Lisbon Strategy, while also increasing consumer choice.

4.11 The proposal could benefit European citizens, *inter alia*, by reducing the hurdles to the deployment of advanced mobile communication technologies and overcoming the geographical digital divide, promoting social and territorial cohesion, increasing the quality of the services that may be provided and at lower cost, reducing the number of necessary base stations through greater use of lower frequencies, with the ensuing environmental benefit, and ensuring continuous protection of health against electromagnetic emissions, etc.

4.12 The EESC does however consider that the Community steps foreseen by the Commission could be complemented by introducing a range of measures of varying type and scope.

<sup>(7)</sup> COM(2005) 229 final.

4.12.1 Firstly, from the broad legislative policy point of view, once the proposed legislation has been adopted, budget allocations should be provided in line with the provisions of Commission Communication COM(2006) 129 in order to facilitate, where appropriate, the creation of the necessary infrastructure in Member States lacking a suitable network of base stations. This must, however, be without prejudice to the special care that should be taken to protect the environment, so that such steps do not entail environmental impact costs.

4.12.2 Secondly, current Community legislation on public procurement and concessions must be adjusted in order to guarantee that any concessions granted by Member States for the use of radio spectrum meet conditions of transparency, non-discrimination and protection of the general interest.

4.12.3 Thirdly, the comitology decisions supplementing the legal aspect of pan-European radio spectrum must include

specific provisions to ensure that current Community law on electronic accessibility is applied across the board. More specifically, such decisions will have to be concerned with the full exercise of the rights of the disabled, the elderly and citizens with little or no digital training, if progress in the digital field is to be properly harnessed, according to the provisions of Commission Communication COM(2007) 694.

4.12.4 To this end, a range of incentives — to be determined at the appropriate time — could be devised to encourage the telecommunications industrial sector and the Member State authorities, especially at regional and local level, in order to contribute to general access for citizens to every technological progress.

4.13 It is likely that the new technical conditions will have been produced without any further unnecessary financial or administrative burden at Community, national or regional level.

Brussels, 16 January 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

### **Opinion of the European Economic and Social Committee on the Communication from the Commission: Towards a European Charter on the Rights of Energy Consumers**

COM(2007) 386 final

(2008/C 151/09)

On 5 July 2007, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*Communication from the Commission — Towards a European Charter on the Rights of Energy Consumers*

On 25 September 2007, the Committee Bureau instructed the Section for Transport, Energy, Infrastructure and the Information Society to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Iozia as rapporteur-general at its 441<sup>st</sup> plenary session, held on 17 January 2008, and adopted the following opinion by 127 votes to 1 with 3 abstentions.

#### **1. Summary of the EESC's comments and recommendations**

1.1 The European Economic and Social Committee welcomes the Commission's initiative to establish a European charter on the rights of energy consumers.

1.2 The EESC considers the charter to be a first step to make the rights of consumers stronger and more effective. As the Commission rightly points out, these are not protected if they are left to market forces alone.

1.3 The EESC believes that, where possible, the enactment of non-binding legislation should be avoided. The EESC concurs with the European Parliament resolution and believes that binding legal measures are needed to protect the rights of citizens, and that soft law measures do not fully achieve their aims. In the case of passenger rights, the Commission considered it necessary to enact a regulation, 261/2004 EC of 11 February 2004. It is not therefore clear why the rights of energy customers should be relegated to a non-binding document.

1.4 The EESC calls on the Commission, aside from the proposed changes to the directive currently undergoing