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► **B** DECISION No 626/2008/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 30 June 2008

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

(Text with EEA relevance)

(OJ L 172, 2.7.2008, p. 15)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019	L 198	241	25.7.2019



**DECISION No 626/2008/EC OF THE EUROPEAN PARLIAMENT
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TITLE I

OBJECTIVE, SCOPE AND DEFINITIONS

Article 1

Objective and scope

1. The purpose of this Decision is to facilitate the development of a competitive internal market for mobile satellite services (MSS) across the Community and to ensure gradual coverage in all Member States.

This Decision creates a Community procedure for the common selection of operators of mobile satellite systems that use the 2 GHz frequency band in accordance with Decision 2007/98/EC, comprising radio spectrum from 1 980 to 2 010 MHz for earth to space communications, and from 2 170 to 2 200 MHz for space to Earth communications. It also lays down provisions for the coordinated authorisation by Member States of the selected operators to use the assigned radio spectrum within this band for the operation of mobile satellite systems.

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

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

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

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 electronic communications networks and associated facilities capable of providing radio-communications 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 components used at fixed locations. Such a system shall include at least one space station;

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- (b) ‘complementary ground components’ of mobile satellite systems shall mean ground-based stations used at fixed locations, in order to improve the availability of MSS in geographical areas within the footprint of the system’s satellite(s), 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 referred to in Article 10(1).
2. Applicants shall be given a fair and non-discriminatory opportunity to participate in the comparative selection procedure, which shall be transparent.

The call for applications shall be published in the *Official Journal of the European Union*.

3. Access to documents relating to the comparative selection procedure, including applications, shall be granted in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾.
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, which shall be no more than 15 MHz for earth to space and 15 MHz for space to earth in relation to any single applicant and shall include statements and evidence concerning the radio spectrum requested, the required milestones and the selection criteria;
 - (c) applications shall include a commitment on the part of the applicant that:
 - (i) the mobile satellite system proposed shall cover a service area of at least 60 % of the aggregate land area of the Member States, from the time the provision of MSS commences;

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

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- (ii) MSS shall be available in all Member States and to at least 50 % of the population and over at least 60 % of the aggregate land area of each Member State by the time stipulated by the applicant but in any event no later than seven years from the date of publication of the Commission's decision adopted pursuant to Articles 5(2) or 6(3).

2. Applications shall be submitted to the Commission. The Commission may request applicants to supply additional information regarding the fulfilment of admissibility requirements within a specific time frame of between five and 20 working days. The application shall be deemed inadmissible if such information is not supplied within the specified time frame.

3. The Commission shall decide on the admissibility of applications. Any decision of the Commission on non-admissibility of applications shall be reasoned and adopted in accordance with the advisory 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.

*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 satisfactory completion of milestones one to five as set out in the Annex. The credibility of applicants and the viability of the proposed mobile satellite systems shall be taken into account throughout the first 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 in Article 1(1), the Commission shall, by means of a reasoned decision, determine, in accordance with the regulatory 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, 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. Within 30 working days of such publication, eligible applicants that intend to proceed no further in the selection procedure, and selected applicants that intend not to use the radio frequencies, shall inform the Commission thereof in writing.

▼B*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 in Article 1(1), the Commission shall select eligible applicants by assessing to what extent the proposed mobile satellite systems of the eligible applicants fulfil the following weighted selection criteria:

- (a) consumer and competitive benefits provided (20 % weighting) comprising the following two sub-criteria:
 - (i) the number of end-users and the range of MSS to be provided by the date of commencement of the continuous provision of commercial MSS;
 - (ii) the date of commencement of the continuous provision of commercial MSS;
- (b) spectrum efficiency (20 % weighting) comprising the following two sub-criteria:
 - (i) the total amount of spectrum required;
 - (ii) the aggregated data stream capacity;
- (c) pan-EU geographic coverage (40 % weighting) comprising the following three sub-criteria:
 - (i) the number of Member States in which at least 50 % of the population is within the service area by the date of commencement of the continuous provision of commercial MSS;
 - (ii) the degree of geographical coverage, based on the service area of the aggregate land area of the Member States by the date of commencement of the continuous provision of commercial MSS;
 - (iii) the time stipulated by the applicant when MSS will be available in all Member States and to at least 50 % of the population and in at least 60 % of the aggregate land area of each Member State;
- (d) the extent to which public policy objectives, not dealt with by the criteria referred to in points (a), (b) and (c), are achieved (20 % weighting) in accordance with the following three equally weighted sub-criteria:
 - (i) the provision of public interest services contributing to the protection of health or safety and security of citizens in general or specific groups of citizens;
 - (ii) the integrity and security of services;
 - (iii) the range of services provided to consumers in rural or remote areas.

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2. Any rules for implementing this Article shall be adopted by the Commission in accordance with the regulatory procedure referred to in Article 10(3). The credibility of the applicants and the viability of the proposed mobile satellite systems shall be taken into account throughout the second selection phase.

3. Within 80 working days following publication of the list of eligible applicants identified in the first selection phase, the Commission shall, on the basis of the report of the external expert panel, if applicable, and in accordance with the regulatory procedure referred to in Article 10(3), adopt a decision on the selection of applicants. The decision shall identify the selected applicants ranked on the basis of the extent to which they meet the selection criteria, the reasons on which the decision is based, as well as the frequencies which each selected applicant is to be authorised to use, in each Member State, in accordance with Title III.

4. The Commission shall publish the decisions adopted pursuant to Articles 5(2) or 6(3) in the *Official Journal of the European Union* within one month of their adoption.

TITLE III

AUTHORISATION

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

1. Member States shall ensure that the selected applicants, in accordance with the time frame and the service area to which the selected applicants have committed themselves, in accordance with Article 4(1)(c), and in accordance with national and Community law, have the right to use the specific radio frequency identified in the Commission decision adopted pursuant to Articles 5(2) or 6(3) and the right to operate a mobile satellite system. They shall inform selected applicants of those rights accordingly.

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

- (a) selected applicants shall use the assigned radio spectrum for the provision of MSS;
- (b) selected applicants shall meet milestones six to nine set out in the Annex within 24 months of the selection decision adopted pursuant to Articles 5(2) or 6(3);
- (c) selected applicants shall honour any commitments they give in their applications or during the comparative selection procedure, irrespective of whether the combined demand for radio spectrum exceeds the amount available;
- (d) selected applicants shall provide to the competent authorities of all Member States an annual report detailing the status of development of their proposed mobile satellite system;

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(e) any necessary rights of use and authorisations shall be granted for a duration of eighteen years from the date of the selection decision adopted pursuant to Articles 5(2) or 6(3).

3. Member States may grant rights of use of spectrum identified in Article 1(1) for such time and to the extent that they remain outside the service area to which the selected applicants have committed themselves pursuant to this Decision, in accordance with Decision 2007/98/EC.

4. Member States may impose objectively justified, non-discriminatory, proportionate and transparent obligations to ensure communications between emergency services and authorities during major disasters, in accordance with Community law, including Directive 2002/20/EC.

*Article 8***Complementary ground components**

1. Member States shall, in accordance with national and Community law, ensure that their competent authorities grant to the applicants selected in accordance with Title II and authorised to use the spectrum pursuant to Article 7 the 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 a Commission decision adopted pursuant to Articles 5(2) or 6(3). This is without prejudice to the use of the 2 GHz frequency band by systems other than those providing MSS in accordance with 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;

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- (d) rights of use and authorisations shall be granted for a period of time ending no later than the expiry of the authorisation of the associated mobile satellite system.

*Article 9***Monitoring and enforcement**

1. Selected 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 ensure that rules on enforcement, including rules on penalties applicable in the event of breaches of the common conditions provided for in Article 7(2), are in accordance with Community law, in particular Article 10 of Directive 2002/20/EC. Penalties must be effective, proportionate and dissuasive.

Member States shall ensure monitoring of compliance with these common conditions and take appropriate measures to address non-compliance. Member States shall inform the Commission of the results of such monitoring on an annual basis, in the event that any common conditions have not been complied with and in the event that any enforcement measures have been taken.

The Commission may, with the assistance of the Communications Committee referred to in Article 10(1), examine any alleged specific breach of the common conditions. Where a Member State informs the Commission of a particular breach, the Commission shall examine the alleged breach with the assistance of the Communications Committee.

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3. The Commission may adopt, by means of implementing acts, measures defining any appropriate modalities for coordinated application of the rules on enforcement referred to in paragraph 2 of this Article, including rules for the coordinated suspension or withdrawal of authorisations for breaches of the common conditions provided for in Article 7(2). Those implementing acts shall be adopted in accordance with the procedure referred to in Article 10(3).

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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.

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The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

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Article 11

Entry into force

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

Article 12

Addressees

This Decision is addressed to the Member States.

*ANNEX*

MILESTONES

1. Submission of International Telecommunications Union (ITU) request for coordination

The applicant shall provide clear evidence that the administration responsible for the ITU filing of a mobile satellite system to be used for the provision of commercial MSS within the territories of the Member States has submitted the relevant ITU Radio Regulations Appendix 4 information.

2. Satellite manufacturing

The applicant shall provide clear evidence of a binding agreement for the manufacture of the satellites required for the provision of commercial MSS within the territories of the Member States. The document shall identify the construction milestones leading to the completion of manufacture of satellites required for the provision of commercial MSS. The document shall be signed by the applicant and the satellite manufacturing company.

3. Satellite launch agreement

The applicant shall provide clear evidence of a binding agreement to launch the minimum number of satellites required for the continuous provision of commercial MSS within the territories of the Member States. The document shall identify the launch dates and launch services and the contractual terms and conditions concerning indemnity. The document shall be signed by the mobile satellite system operator and the satellite launching company.

4. Gateway Earth Stations

The applicant shall provide clear evidence of a binding agreement for the construction and installation of Gateway Earth Stations that would be used for the provision of commercial MSS within the territories of the Member States.

5. Completion of the Critical Design Review

The Critical Design Review is the stage in the spacecraft implementation process at which the design and development phase ends and the manufacturing phase starts.

The applicant shall provide clear evidence of the completion, no later than 80 working days after the submission of the application, of the Critical Design Review in accordance with the construction milestones indicated in the satellite manufacturing agreement. The relevant document shall be signed by the satellite manufacturing company and shall indicate the date of the completion of the Critical Design Review.

6. Satellite mating

The mating is the stage in the spacecraft implementation process at which the Communication Module (CM) is integrated with the Service Module (SM).

The applicant shall provide clear evidence that the Test Readiness Review for SM/CM mating has taken place in accordance with the construction milestones indicated in the satellite manufacturing agreement. The relevant document shall be signed by the satellite manufacturing company and shall indicate the date of the completion of the satellite mating.

7. Launch of satellites

The applicant shall provide clear evidence of the successful launch and in-orbit deployment of the number of satellites required for the continuous provision of commercial MSS within the territories of the Member States.

▼B**8. Frequency coordination**

The applicant shall provide clear evidence of the successful frequency coordination of the system in accordance with the relevant provisions of the ITU Radio Regulations. However, a system which demonstrates compliance with milestones one to seven inclusive is not obliged to demonstrate at this stage completion of successful frequency coordination with those mobile satellite systems which fail to comply adequately and reasonably with milestones one to seven inclusive.

9. Provision of MSS within the territories of Member States

The applicant shall provide clear evidence that it is effectively providing the continuous commercial MSS within the territories of the Member States using the number of satellites it has previously identified under milestone three to cover the geographical area the applicant has committed to in its application by the date of the commencement of the provision of MSS.