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(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

487TH PLENARY SESSION HELD ON 13 AND 14 FEBRUARY 2013

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: promoting the shared use of radio spectrum resources in the internal market’

COM(2012) 478 final

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On 3 December 2012 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Promoting the shared use of radio spectrum resources in the internal market

COM(2012) 478 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 January 2013.

At its 487th plenary session, held on 13 and 14 February 2013 (meeting of 13 February), the European Economic and Social Committee adopted the following opinion by 89 votes with 3 abstentions.

1. Conclusions and recommendations

1.1 The EESC supports the Commission's approach to promoting the shared use of radio spectrum resources in the internal market, since wireless connections are an increasingly important part of the economy.

1.2 The EESC hopes that European consumers will effectively prove to be the final beneficiaries of the entire strategy, reaping the advantages of all the progress made. It must be ensured that the use of allocated spectrum is maximised, with personal data being fully secured and private.

1.3 Any legislation adopted must guarantee a high level of protection for consumers, as well as economic, social and

territorial cohesion, in order to prevent the digital divide growing wider, with a two-speed information society.

1.4 Shared use of spectrum must be managed in order to generate to a high level of employment and enhanced competitiveness for the European economy, within a framework where there is no distortion of free competition. The opportunity should be taken to press ahead with research and innovative technologies. The Committee calls on the Commission, rather than promoting liberalisation of the spectrum, to ensure that greater competition among spectrum operators leads to net job creation. Consequently, in line with the EU 2020 Strategy, special attention should be paid to the situation facing States affected by the economic and fiscal crisis.

1.5 The EESC hopes that the Commission will adopt a recommendation on a common format for shared spectrum access rights and a common terminology for documenting sharing conditions and sharing rules.

2. Introduction

2.1 Spectrum is a key public resource for essential sectors and services, including mobile, wireless broadband and satellite communications, television and radio broadcasting, transport, radiolocation, and applications such as alarms, remote controls, hearing aids, microphones, and medical equipment.

2.2 It supports the smooth operation of public services such as security and safety services, including civil protection, and scientific activities, such as meteorology, Earth observation, radio astronomy and space research.

2.3 Easy spectrum access also plays a role in supplying electronic communications, especially for users and businesses located in less-populated or remote areas, such as rural areas or islands.

2.4 All regulatory measures on spectrum may therefore have economic, safety, health, public interest, cultural, scientific, social, environmental and technical implications.

2.5 In 2002 the Radio Spectrum Decision laid down a basic legislative framework for radio spectrum policy and was complemented in 2012 by the Decision establishing the multi-annual programme on this policy in the EU, on which the EESC previously issued an opinion.

2.6 The EU regulatory framework seeks to facilitate access to spectrum, based on the least onerous authorisation system possible. It favours the use of general authorisations, except where individual licences are clearly necessary. The framework is based on the principles of efficient use, effective management of spectrum, and technology and service neutrality. There is an adequate legal basis for the Commission to address spectrum management: the framework for electronic communications and the rules governing the internal market, transport, and against distortion of free competition.

2.7 As spectrum management is an essential pre-requisite for the digital single market, this initiative contributes directly to meeting the objectives of the Europe 2020 strategy. The

Commission seeks broad consensus on the proposed steps, in line with the Radio Spectrum Policy Programme, to foster the development of wireless innovations in the EU in order to ensure that the currently allocated spectrum is exploited to the fullest extent possible.

3. The communication from the Commission

3.1 The communication examines the drivers and enablers for the shared use of spectrum, such as wireless broadband, the wireless-connected society, and research and innovative technologies, highlighting that:

- Shared use of licensed or licence-exempt wireless broadband frequencies enables cost savings for mobile network operators, affordable internet connectivity and infrastructure sharing possibilities.
- The trend towards a connected society demonstrates the added value of low spectrum access barriers in licence-exempt shared bands as the breeding ground for wireless innovation that stimulates the development and deployment of more resilient wireless technologies.
- Research has enabled access to spectrum to be opened up on a shared basis while ensuring that primary services are protected. Cognitive radio technologies are developing today with the support of mandates for harmonised standards and trials in European research projects. More progress can be expected in the area of sensing and use of small cell base stations.

3.2 The communication addresses the challenges on the path to more shared use of spectrum, discussing the management of harmful interference in order to remove uncertainty, the creation of sufficient incentives and safeguards for all interested parties, and the capacity of licence-exempt bands.

3.2.1 Fostering more shared use of spectrum requires:

- engaging mutual responsibility of users over acceptable limits of interference and appropriate mitigation strategies;

- providing legal certainty on applicable rules and conditions, enforcement procedures as well as transparency about compatibility assumptions and protection rights;
- incentivising investments in improved technologies beneficial for incumbents and additional users, while safeguarding and fostering competition;
- identifying broad frequency channels for RLAN development as well as providing congestion forecasts to increase the predictability and reliability of the most important shared bands;
- ensuring that any transition from exclusive rights of use to shared use enhances competition from additional users and in particular does not create undue competitive advantages for current or future right-holders.

3.3 The Commission proposes to develop two tools to provide more, and more efficient, use of existing spectrum resources:

- an EU approach to identify beneficial sharing opportunities in harmonised or non-harmonised bands, and
- shared spectrum access rights as regulatory tools to authorise licensed sharing opportunities with guaranteed levels of protection against interference.

3.4 To the extent that technological advances enable more beneficial sharing opportunities (BSO) in the internal market, the Commission considers it necessary to promote investment and encourage spectrum users to make better use of their spectrum assets by defining, in close cooperation with the Member States, a process and key criteria at EU level to identify BSOs (e.g. in a recommendation).

3.5 According to the Commission, spectrum sharing contracts can provide users with greater legal certainty while creating market-based incentives, including financial compensation, to identify more BSOs in the internal market, if national regulatory authorities (NRAs) grant shared spectrum access rights to additional users of a frequency band.

3.6 The Commission proposes the following as the next steps:

- 1) identify BSOs in both licensed and licence-exempt frequency bands;
- 2) consider making sufficient licence-exempt spectrum, harmonised at EU level, available for wireless innovations;
- 3) define, in cooperation with Member States, a common path towards enabling more sharing possibilities, based on contractual agreements between users;
- 4) conclude contractual agreements between stakeholders, which would provide greater legal certainty for potential spectrum users.

4. General comments

4.1 The Committee welcomes the content of the communication from the Commission in that it entails commencing the process of discussion that is needed for the EU's regulatory framework to be brought into line in the future with the objectives of the multiannual Radio Spectrum Policy Programme (RSPP).

4.1.1 In this regard, the Commission looks at ways of alleviating the lack of spectrum and the high price of re-allocating spectrum to new uses that involve severe restrictions on the use of wireless connections, advocating substantial changes in spectrum management.

4.2 To remove current regulatory obstacles to deploying innovative radio access technologies and facilitate shared spectrum use, the Commission takes an all-embracing approach under which the NRAs, and arrangements between incumbent and new spectrum users, are to actively facilitate collective and shared use.

4.3 It also sets out to act on the basis of the existing EU regulatory framework for electronic communications, developing and implementing the principles of efficient use and effective management of spectrum as well as technology and service neutrality: the EESC considers this to be highly appropriate. In consequence, the Commission plans to make full use of its powers in this field, with the aim of improving and extending the use of radio spectrum as far as possible. This would be done by harnessing free competition and the alignment of the NRAs' criteria for authorising use, with a particular emphasis on access by means of shared licences.

4.4 The Committee would however underline a number of aspects concerning the content of the communication with a view to facilitating, as far as possible, the implementation of the future regulatory steps on radio spectrum so that they are based on solid principles and, in particular, the principles of democracy, transparency, respect for fundamental rights and the rights of consumers and users of electronic communications. In particular, consumers' and users' rights must be clearly protected against fraud, by setting criteria that facilitate a proper price, general access to spectrum and efficient complaint and compensation mechanisms. It must also be ensured that independent supervisors have the ability to settle transnational disputes over use of spectrum, avoiding harmful interference. The Commission should report periodically on the measures taken and targets achieved in relation to these rights and obligations.

4.5 The Committee calls on the Commission, with regard to the future implementation of the relevant regulatory framework, to draw up the most exhaustive possible list of 'regulatory barriers' to innovative radio spectrum access technologies.

4.6 The purpose is to avoid situations whereby, under cover of pretexts arising from false over-protection of users, the real aim – for reasons of nationality or other similar protectionist motives – is to prevent spectrum being opened up to the maximum. The integration of other users and innovative technologies should be facilitated. The European Economic and Social Committee considers that application of the Communication needs to result in a guarantee of greater access to the new technologies for people with disabilities.

4.7 This would also have the effect of boosting income from spectrum use fees, the benefits of which are obvious. It must however be emphasised that since spectrum is a finite physical space and the planned measures will increase user traffic, careful consideration will have to be given to a number of issues such as compensation for current licence holders, how to avoid spectrum paralysis or contraction due to overuse, how to ensure that innovative technologies are introduced, etc. Although the purpose of this opinion does not fully match a number of previous Committee opinions on the application of EU measures relating to technological change, such as the so-called digital dividend, for example, consideration should be given to the real impact of such measures, in order to rationalise the expectations created by the progress made on EU radio spectrum policy.

4.8 The Committee would however like the issue of individual licences by NRAs to be kept to a minimum, preferring far more open access provided that actual availability and

compliance with the established rights of spectrum users so permit. It therefore calls on NRAs to grant individual licences for use on a limited basis, and only on very solid grounds, in order to facilitate far wider access.

4.9 Among other important objectives, the communication also points to the need to narrow the technological gap between European and third-country manufacturers of electronic communication equipment, which is caused in part by the fragmentation of the current regulatory framework. The Committee calls on the European Commission to provide an impact assessment of the potential benefits of opening up the spectrum in terms of narrowing the digital divide between EU Member States. Consequently, the Committee favours an urgent adjustment of this framework, and has confidence in the Commission's regulatory capacity for this purpose by means of comitology procedures.

4.9.1 Furthermore, the Committee underlines the EU's firm commitment to fundamental rights, and urges that the Commission, when framing the relevant adjustment rules, exercise the utmost caution in order to safeguard these fundamental rights such as privacy, professional secrecy and the processing of data that may be stores by e-communication service providers.

4.9.2 It would also be advisable to establish an effective form of supervision over licence-free access by new users to bands, where such bands come to the fore on account of the added value generated by their technological innovations. This applies in particular if they interfere with the trouble-free use of spectrum by third parties whose entitlement to protection is not guaranteed by an NRA. The European Economic and Social Committee is concerned at the impact that this process of liberalisation could have on the implementation of the principle of access to services of general interest (police, ambulance and rescue services, etc.).

4.9.3 Similarly, the situation of users seeking access to spectrum and who provide a service of general interest must be examined in careful detail. If a supranational provision was made and possibly appropriate legislation adopted, they could be exempted from payment of financial compensation, or a purely symbolic amount set.

4.9.3.1 None of the above detracts from the obligation to promote general interest objectives, in keeping with EU law, particularly regarding the rules on content, audiovisual policy, and the right of the Member States to organise and use their radio spectrum for the purposes of public policy and public safety.

4.10 Concern for independence and legal certainty also prompts the EESC to suggest that the responsibility for supervising and reporting on shared use agreements between users and the compliance of such agreements with the rules of competition should lie with the NRAs and, where appropriate, with the Body of European Regulators for Electronic Communications (BEREC). This should apply when there is a need for strategic planning, coordination and harmonisation, particularly concerning the procedures for granting general authorisations or individual rights for the use of radio frequencies, when this is necessary to overcome barriers to the completion of the internal market.

4.11 The Commission, in cooperation with representatives of consumer associations and companies, should draw up a code of practice on supplying information at EU level on BSO applications and their outcomes. This would help spread transparent procedures and optimal management of existing resources in the 'spectrum inventory'.

4.12 Lastly, the Committee calls on the Commission to use the work carried out by the Radio Spectrum Policy Group

(RSPG) as a basis for drawing up an implementing act as set out in Article 291 of the Treaty on the Functioning of the European Union. This would help achieve the objectives in areas such as a common concept for shared access licences and the terms of the recommendations encouraging the use of common criteria for granting these licences in the EU, to facilitate their application in all Member States.

4.12.1 Among other significant aspects, this decision should include protection of the principles of free competition and protection of electronic communications users' safety and rights, with particular emphasis on bringing down the cost of payment for the services provided by the suppliers of such communications.

4.13 The Committee is convinced that any technological innovation potentially resulting from a greater number of spectrum operators should be able to benefit from financing under EU Funds, in order to help boost the use of technology in the EU's least developed States.

Brussels, 13 February 2013.

The President
of the European Economic and Social Committee
Staffan NILSSON
