

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending 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(2008) 762 final — 2008/0214 (COD)

(2009/C 218/08)

On 5 December 2008 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 amending 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'

On 2 December 2008 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 451st plenary session, held on 25 and 26 February 2009 (meeting of 25 February), and adopted the following opinion by 101 votes in favour with one abstention.

1. Conclusion

1.1 The EESC reaffirms its support for the Commission's proposal, considering that the liberalisation of the 900 MHz frequency band makes Community-level legislative action necessary.

2. Background

2.1 On 25 July 2007, the Commission presented a proposal for a directive to repeal Directive 87/372/EEC⁽¹⁾, with the intention of removing the reservation of the 900 MHz band for GSM systems in the EU Member States, introduced under 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 communications in the Community.

2.2 The 900 MHz band is particularly valuable as it has good propagation characteristics, covering greater distances than higher frequency bands, and allowing modern voice, data and multimedia services to be extended into less populated and rural areas.

2.3 The proposal's objective was considered to be necessary in order to contribute to the success of the *i2010 – A European*

Information Society for Growth and Employment initiative⁽²⁾ and to boost competition through the use of the 900 MHz band by other technologies, offering users maximum freedom of choice between services and technologies.

2.4 In keeping with Decision 676/2002/EC, the Commission gave a mandate to CEPT to define less restrictive technical conditions. Under this mandate, conditions have been drawn up based on the principle that the 900 MHz band can coexist, and is fully compatible, with GSM and UMTS.

2.5 The EESC issued an opinion⁽³⁾ in support of the proposal, considering that it would foster innovation and competitiveness, boost competition on the telecommunications market and extend consumer choice.

2.6 As a result of the discussions during the legislative procedure, on 19 November 2008 the Commission presented a new proposal for a directive⁽⁴⁾, with a view to amending Directive 87/372/EEC.

⁽¹⁾ 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.

⁽²⁾ COM(2005) 229 final.

⁽³⁾ CESE 70/2008 Opinion on *Repeal of the GSM Directive*, OJ C 151 of 17.6.2008, p. 25-27. Opinion adopted at the plenary session of 16 January 2008. Rapporteur: Mr Hernández Bataller.

⁽⁴⁾ Proposal for a Directive of the European Parliament and of the Council amending 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 2008) 762 final.

3. The Commission proposal

3.1 The present directive requires the Member States to reserve the whole 890-915MHz and 935-960MHz bands for GSM. This constraint prevents the bands from being used by pan-European systems other than GSM, that are capable of providing advanced interoperable voice, data and multimedia services with a high delivery bandwidth. These new pan-European systems, such as the UMTS system, offer capabilities beyond the GSM system and have become viable since the adoption of the directive 20 years ago thanks to technological developments.

3.2 Because the liberalisation of the use of the 900 MHz spectrum band could result in competitive distortions, particularly where certain mobile operators have not been assigned spectrum in the 900 MHz broadband, the latter could be put at a disadvantage in terms of cost and efficiency in comparison with operators that will be able to provide 3G services in that band.

3.3 The proposal defines the 'GSM system' as 'an electronics communications network that complies with the GSM standards, as published by ETSI, in particular EN 301 502 and EN 301 511'; and the 'UMTS system' as 'an electronic communications network that complies with the UMTS standards, as published by ETSI, on particular EN 301 908-1, EN 301 908-2, EN 301 908-3 and EN 301 908-11'.

3.4 Under the regulatory framework on electronic communications, and in particular Directive 2002/20/EC⁽¹⁾, Member States can amend and/or review rights of use of spectrum and thus have the tools to deal, where required, with such possible distortions. To this end, they are to bring into force the necessary measures, in particular by examining whether the implementation of the directive could distort competition in the mobile markets concerned.

4. General comments

4.1 The EESC reaffirms its support for the Commission's proposal, considering that the liberalisation of the 900 MHz

frequency band makes Community-level legislative action necessary.

4.1.1 The proposal will, firstly, boost competition on the internal market and, secondly, enhance economic, social and territorial cohesion in the Union, as it will be possible to deploy UMTS networks in urban, suburban and rural areas in coexistence with GSM900/1800 networks by using appropriate values for carrier separation.

4.2 The option for the Member States to use 'ex ante' measures under the regulatory framework on electronic communications, allowing them to review these rights of use and to redistribute them in order to address any distortions, bears out the relevance of such measures, as previously pointed out by the EESC when it looked at the electronic communications framework. In the interests of the required transparency, the EESC restates the need for periods of public consultation before such measures are adopted.

4.3 The scheme set out in the proposal must benefit the entire electronic communications sector as part of a system of open and competitive markets, speeding up the industry's adjustment to structural changes and fostering a favourable environment for business initiatives and development throughout the Union, and in particular among SMEs.

4.4 Consumers must also benefit from the greater flexibility in the management of spectrum resources for wireless electronic communications, in general, under the WAPECS⁽²⁾ approach, since this approach, as pointed out by the EESC, views technology and service neutrality as policy goals with a view to achieving more flexible and efficient spectrum use.

4.5 Lastly, the EESC hopes that the implementation of the proposal will contribute to job creation, better living and working conditions – enabling equality to be progressively achieved – proper social protection, social dialogue and the development of human resources to achieve a high and durable level of employment.

Brussels, 25 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI

⁽¹⁾ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services. OJ L 108 of 24.4.2002, p. 21.

⁽²⁾ Wireless Access Policy for Electronic Communications Services.