



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.10.1996
COM(96) 467 final

95/0274 (COD)

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DECISION

**on a common framework for the harmonised development of
satellite personal communications services in the European Union**

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

The Commission hereby presents a modified proposal for a European Parliament and Council Decision on a common framework for the harmonised development of satellite personal communications services in the European Union. The modified proposal incorporates those amendments proposed by the European Parliament at First Reading which were accepted by the Commission.

1. Introduction

a) Background

The Commission adopted its proposal on 8 November 1995, and it was formally transmitted to the EP and the Council on 10 November 1995.

The Economic and Social Committee gave its opinion on 25 April 1996¹. The European Parliament adopted a favourable opinion in its resolution at its first reading on 19 June 1996, and proposed 22 amendments to the Commission proposal².

b) Purpose of the Decision

This decision aims at ensuring in a timely fashion the introduction of satellite personal communications services (S-PCS) in the European Union by means of a co-ordinated action at a Union level between Member States.

This includes the selection, where necessary, of satellite personal communications space segment operators; adoption of common conditions to be attached to authorisations for S-PCS space segment operators; the harmonisation of conditions for authorisations for providers of S-PCS services and gateway operators; where required, appropriate measures for equipment circulation and use; and the establishment of a dialogue and, where appropriate, negotiations between the European Union and third countries in order to establish international co-operation to promote the development of S-PCS and remove obstacles to their development.

2. EP amendments accepted by the Commission

Out of the 22 amendments adopted by the European Parliament at First Reading, the Commission accepted 9 in full and 1 in part, making a total of 10.

Amendments accepted in full: 1, 2, 3, 4, 5, 9, 13, 14, 16.

Amendments accepted in part: 10.

¹ TRA/303, 18.4.96

² A4-0179/96, PV 19.06.96

The Commission accepted the following amendments :

- Amendment 1 to the title presents the purpose of the proposed action in a different but equivalent way;
- Amendments 2, 3, and 5 adapt the text of the proposal to the difficulty to determine the timing of the of the decision, and to the need for urgent action;
- Amendment 4 has no major implications and is limited to factual assumption;
- Amendment 9 insists on the promotion of harmonisation of S-PCS introduction;
- Amendment 10: not all sections thereof are acceptable (see under par. 3 description of the unacceptable sections).

Amendment to article 2(ii), specifies that authorisations are national; this is acceptable;

amendment to article 2(iii) adds a reference to the proposal for a EP and Council Directive on a common framework for general authorisations and individual licenses in the field of telecommunications services³: this is acceptable to the Commission; such addition however fails to identify that only harmonisation of general authorisations is addressed in this proposed directive;

amendment to article 2(iv)1 introduces the possibility for negotiations with third countries in view of the allocation of access to space segment in the light of the interests of all the countries concerned.

- Amendment 13 refers to the proposed EP and Council Directive on a common framework for general authorisations and individual licenses in the field of telecommunications services;
- Amendment 14 refers to the European Union Telecommunications Committee to be created by the proposed EP and Council Directive on a common framework for general authorisations and individual licenses in the field of telecommunications services (General Licensing Directive).
- In amendment 16, the EP invites the Council to adopt a common position by 31.12.96 on allocation of frequencies necessary for S-PCS and if necessary to give a mandate to the Commission to negotiate within international fora including the International Telecommunications Union on space segment access and on authorisations to be attached to authorisations for space segment operators. This opens new perspectives. It is acceptable to the Commission as a matter of principle.

Pursuant to amendment 16, a specific negotiation mandate will have to be obtained from the Council by the Commission. The EP also introduced an additional principle for Community action, i.e. facilitating interoperability of the various S-PCS systems, particularly by means of the transmission standards which already render such systems interoperable within the Union.

³ COM(95)545 final, 14.11.1995.

3. Amendments not accepted by the Commission

The Commission has not accepted 12 of the 22 amendments proposed by the European Parliament. The reasons are given below, where the amendments are grouped into broad categories.

- **Selection of S-PCS space segment operators and alignment with the general Licensing Directive (Amendments 6, 8, 10 (art. 2(i)), 11, 12, 14, 15, 17, 18, 19, 20, 21)**

The main issue raised by the EP refers to the need for a selection of satellite personal communications space segment operators and to the co-ordination of such selection at European Union level through a IIIa-type comitology procedure (article 5). The EP proposes to delete the possibility to conduct such selection at EU level and replace it by a procedure for the adoption of common rules by a consultative committee and by a uniform selection by Member States.

The Commission on the contrary considers that the need for a selection at EU level should not a priori be ignored and that a selection procedure at EU level through a IIIa-type committee is the only way to fully guarantee a co-ordinated selection within the appropriate deadline.

- **Distinction between mobile satellite services and fixed satellite services (amendments 8, 10 (art.2(iv)2))**

The EP proposes to draw a distinction among satellite personal communications services between mobile satellite services (voice and data communications) and fixed satellite services in Ka band (with larger capacity transmission means for video, data, voice). The Commission believes that at this stage of the regulatory process it is too early to make such a distinction.

- **Advisory Committee (amendment 15)**

The EP proposes an advisory committee and rejects the regulatory committee. The Commission believes that, for selection purposes at least, a regulatory committee would be necessary in order to have agreement in Council.

- **Test Licenses (amendment 20)**

The EP proposes deadlines for test licenses. The Commission believes that the issue of testing is not directly related to the subject matter of this proposed decision, i.e. co-ordination of authorisations.

- **Public committee meetings (amendment 22)**

EP proposes that committee meetings be held publicly. The amendment is simply not in line with the 1987 comitology decision.

4. Conclusion

The Commission has accepted 10 of the 22 amendments proposed by the European Parliament at First Reading either in whole or in part.

In accordance with Article 189 a paragraph 2 of the EC Treaty, the Commission amends its initial proposal, incorporating these amendments.

**Amended Proposal for a
European Parliament and Council Decision
on a common framework for the harmonised development of
satellite personal communications services in the European Union**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Articles 57, 66 and 100a,

Having regard to the proposal of the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

1. Whereas on 7 December 1993 the Council adopted a Resolution on the introduction of satellite personal communications services in the Community¹; whereas in that Resolution the Council stressed the importance of co-ordinated action required to allow the introduction of satellite personal communications services in the Community, taking full account of the global nature of these services; whereas the Council underlined the need for the development of an effective policy and asked the Commission to study the matter, monitor international developments and propose appropriate measures and/or actions;

Whereas on 19 May 1995, the European Parliament adopted a Resolution on Mobile and Personal communications in the European Union² in which it considers as a priority objective to establish, before 1 January 1996, a harmonised authorisation approach for satellite based mobile and personal communications and, on that basis, the implementation of procedures for the provision of licences of those systems at an early stage; whereas this approach must be implemented early enough in order to take account of the rapid development of these services at a global level and their social and commercial potential;

¹ O.J. No. C 339/1, 16.12.93

² O.J. No. C , to be published

Whereas on 29 June 1995 the Council adopted a Resolution on the further development of mobile and personal communications in the European Union³ in which it considers as a priority objective to ensure the sufficiently early definition of a harmonised authorisation approach for satellite based mobile and personal communications, after study by ECTRA;

Whereas satellite personal communications systems have a role to play in assuring the delivery of universal service to remote parts of the European Community, thereby strengthening social and economic cohesion;

2. Whereas, having considered the telecommunications, trade and industry aspects as well as the frequency and standardisation aspects of satellite personal communications, and after consultation of the relevant industry, the Commission has submitted proposals for decision-making and the related time schedule with the aim to come to selection and authorisation of satellite personal communications services on the basis of a common approach;
3. Whereas, market entry for satellite PCS space segment operators can only be restricted on the basis of objective, transparent, proportionate and non-discriminatory selection criteria relating to the availability of scarce resources, and award procedures shall be objective, transparent and non-discriminatory; whereas within the limited common spectrum a harmonised selection is required at a European Community level; whereas the common conditions for authorisations for satellite PCS services shall be based on the principles of objectivity, transparency, non-discrimination, and proportionality;
4. Whereas, since satellite personal communications by nature addresses foremost the needs of mobile users travelling between Member States but especially outside the European Community, diverging national legislations, regulations, and administrative measures would hinder or even prevent the provision of European Community-wide satellite personal communications services, the free movement of related equipment and, as a consequence, the successful introduction of satellite PCS on the internal market;
5. Whereas the free provision of satellite personal communications services and the free movement of related equipment on the internal market can only be achieved if an approximation of national regulations and administrative measures is achieved on the basis of harmonised conditions for authorisations for providers of services and gateway operators and, if required, for equipment;

³ O.J. No. C 188/2, 22.7.95

6. Whereas the European Parliament and the Council are examining measures on authorisations and individual licences in the field of telecommunications in the European Community; whereas, given the urgency of the matter and in the absence of adoption and implementation of such European Community authorisation measures, the area of satellite personal communications services therefore requires an action at a European Community level, as specified in this Decision; whereas the action shall be urgent but of limited duration;
7. Whereas, given the foreseen implementation timeschedule for satellite personal communications systems, the action aims to ensure that, within its limited duration, appropriate regulatory and policy measures are taken in the European Community on the selection and authorisation of satellite personal communications, taking due account of the international dimension and its ensuing requirements;
8. Whereas, in view of limited availability of the frequency resources, categories of satellite personal communications services shall be determined for which a comparative bidding process is required to come to a selection of satellite systems; whereas a single European Community-level selection process shall avoid incompatible national decisions on the selection of satellite systems; whereas the procedures by means of which the comparative bidding process will be undertaken will have to be determined in detail;
9. Whereas potential applicants shall be informed of the procedures of the comparative bidding process, and of the criteria which have been determined for selection, and of the principles which will be used for the establishment of the common conditions to be attached to authorisations for satellite PCS space segment operators
10. Whereas the determination of common conditions for selected space segment operators, and of harmonised conditions for authorisations for providers of services, gateway operators and, if required, circulation and use of equipment will permit Member States to provide authorisations under applicable national regimes in accordance with the provisions of Directive 94/46/EC, and thereby avoiding uncoordinated and incompatible national regulatory decisions;
11. Whereas measures adopted by the European Radiocommunications Committee (ERC) and the European Committee for Telecommunications Regulatory Affairs (ECTRA), if consistent with the European Community's interest, may be a basis for the use of the relevant frequencies by, and for the elaboration of the authorisation criteria of, satellite personal communications services;

Whereas the European standardisation bodies such as the European Telecommunications Standards Institute (ETSI) and Cen/Cenelec may be engaged in a timely fashion to elaborate the necessary standards which are relevant in this area;

12. Whereas the global dimension of satellite personal communications systems and services, as well as the related global regulatory structure under which they are provided play an important role in the considerations of the European Community; whereas this action at a European Community level shall permit the European Community and its Member States to exert greater influence on the world-wide development of mobile and personal communications;

Whereas the inherent global nature of satellite personal communications services may require the adoption of a substantial number of agreements with third countries on, *inter alia*, interconnection, free circulation and use of equipment, satellite system and satellite control centres operations, frequency band usage and sharing plans, numbering, safety and distress operations, access to gateway stations and access to third markets; whereas these agreements are closely related to market access arrangements; whereas therefore the Commission may start multi-lateral and/or bi-lateral negotiations on these aspects of satellite personal communications.;

13. Whereas the results of international discussions and/or other warranted changes of circumstances may require that decisions taken under this action be amended or other appropriate action be undertaken by the Commission in close co-operation with the Member States;
14. Whereas Member States shall take all appropriate action to implement this action and its resulting decisions in a timely fashion and communicate national implementation measures to the Commission;
15. Whereas the relevant industry should be requested to co-operate closely with the Commission and the national regulatory authorities in order to achieve solutions for issues raised during the selection and authorisation of satellite personal communications services; whereas this co-operation may be extended to address the issues in an international context;

Whereas the Commission may wish to seek assistance from an ad-hoc panel of experts in the elaboration of the detailed work required under the tasks assigned to it by this Decision; whereas the ad-hoc panel of experts should be made up, in as far as available, of relevant experts from industry augmented, as necessary, by experts from national ministries, representatives of relevant bodies such as, *inter alia*, ETSI, ECTRA, ERC, and other relevant governmental bodies;

Whereas the nature of the information provided by applicants and other relevant industry may be of a commercially-in-confidence nature; whereas the utmost discretion shall be undertaken in respect of this information; whereas however this shall not prevent publication of information relevant for a selection and authorisation process;

HAVE ADOPTED THIS DECISION:

Article 1

The establishment of an action at a European Community level

The purpose of this Decision is to promote the harmonised introduction of satellite personal communications services in the European Community by means of co-ordinated action at a European Community level between the national regulatory authorities for telecommunications.

This action is limited to a period of three years from the date of publication of this Decision in the *Official Journal*. The Commission shall keep developments in the satellite personal communications area under review, report on the effectiveness of action taken under this Decision after two years and, if required, propose a prolongation or extension of action in this area to the European Parliament and the Council.

Article 2

Objectives

The objectives of action in satellite personal communications shall be to ensure, within the period set out in Article 1:

- (i) the selection of satellite PCS space segment operators;
- (ii) the adoption of common conditions to be attached to national authorisations for satellite PCS space segment operators;
- (iii) harmonisation of conditions for authorisations, established in accordance with the provisions of Directive 94/46/EC, and Directive .../.../EC on a common framework for general authorisations and individual licenses in the field of telecommunications services, for providers of S-PCS services and gateway operators, and, if required, appropriate measures for equipment circulation and use;
- (iv) the establishment of a dialogue and, where appropriate, negotiations between the European Community and third countries with the aim of establishing international co-operation in order to allocate access to space segment in the light of the interests of all the countries concerned, promote the development of satellite personal communications services and remove the obstacles to their development.

Article 3

Definitions

For the purposes of this decision:

- authorisation of a space segment operator: the permission allowing an undertaking to establish and operate space segment capacity for the provision of S-PCS services and to be granted the right to use the relevant frequency spectrum under specified conditions;
- provider of S-PCS services: any undertaking providing satellite communications services as defined in Directive 94/46/EC and making use of space segment capacity provided by the selected space segment operators; this does not cover resellers of authorised services;
- gateway operator: any undertaking providing satellite network services as defined in Directive 94/46/EC and making use of the space segment capacity provided by the selected space segment operators.

Article 4

Establishment of selection process for space segment operators

The Commission shall, in close co-operation with the national regulatory authorities of the Member States in accordance with the procedure laid down in Article 7:

- (i) establish categories of satellite personal communications services, and determine, where appropriate, the need for selection of satellite personal communications space segment operators;
- (ii) adopt, for the relevant categories, criteria for the common selection of satellite personal communications space segment operators to be authorised to provide their services in the European Community;
- (iii) adopt the procedures by which a comparative bidding process may be undertaken;
- (iv) adopt, for all categories of services, principles for the common conditions to be attached to authorisations for selected satellite personal communications space segment operators;

Article 5

Selection of space segment operators

1. A Call for Declaration of Interest shall be published in the Official Journal within six months after adoption of this Decision.
 - (i) The Call for Declaration of Interest shall set out the criteria for the common selection for each category of service established pursuant to Article 4 par.(ii), the procedures to be followed in the selection established pursuant to Article 4 par.(iii) and the principles of the common conditions to be attached to authorisations established pursuant to Article 4 par.(iv).
 - (ii) The Call for Declaration of Interest shall invite declarations from any person or entity wishing to operate a system for the purpose of providing satellite personal communications services in the European Community.
2. A Decision selecting satellite personal communications space segment operators for the relevant categories of services shall be adopted in accordance with the procedure laid down in Article 9.

Article 6

Adoption of common and harmonised conditions for authorisations

The issuing of authorisations to space segment operators, gateway operators and providers of S-PCS services shall be governed by the provisions of the European Parliament and Council Directive on a common framework for general authorisations and individual licenses in the field of telecommunications services. Without prejudice to the provisions of the above Directive, and in particular of Annex I thereof, the following shall be adopted by a Decision in accordance with the procedure laid down in Article 8:

- (i) common conditions to be attached to the authorisations of the selected satellite personal communications space segment operators;
- (ii) harmonised conditions for the authorisation of providers of satellite personal communications services, gateway operators, and, if required, for the circulation and use of equipment;
- (iii) any other measures aimed at facilitating the development of satellite personal communications services.

In view of the adoption of common and harmonised authorisation conditions, the Commission may decide, where it deems appropriate, to consult representatives of selected space segment operators.

Article 7

Co-operation with CEPT and European standardisation bodies

In order to assist the adoption of common and harmonised criteria and conditions and with due regard to the time schedule established in Annex, the Commission may ask the European standardisation bodies such as the European Telecommunications Standards Institute (ETSI) and Cen/Cenelec, as well as the European Radio Committee (ERC), and the European Committee for Telecommunications Regulatory Affairs (ECTRA), via work requirements under the relevant existing framework agreements with those organisations, to study the necessary technical criteria and conditions.

Article 8

The advisory Committee

1. The Commission shall be assisted in the implementation of this Decision by by the European Union Telecommunications Committee set up by the European Parliament and Council Directive on a common framework for general authorisations and individual licenses in the field of telecommunications services.
2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit to be determined by the Chairman according to the urgency of the matter and, where necessary, by taking a vote.

The opinion shall be recorded in the minutes. Furthermore, each Member State shall have the right to request that its position be included in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee and shall inform the Committee of the manner in which its opinion has been taken into account.

Article 9

The regulatory Committee

1. By way of exception to the provisions of Article 8, the following procedure shall apply in respect of the matters covered by Article 5 (2).
2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within

the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.
4. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 10

International aspects

1. The Council shall, by 31 December 1996, draw up a common position on the allocation of the frequencies necessary for the operation of S-PCS and, should this prove a desirable step towards the establishment of a critical mass, shall give the Commission a mandate to negotiate within the relevant international bodies, particularly the International Telecommunications Union, and where appropriate, with relevant third countries with a view to establishing the conditions of access to space segment and the obligations to be attached to authorisations for space segment operators.
2. The Member States shall inform the Commission of any difficulties encountered, *de jure* or *de facto*, by Community organisations in the introduction of satellite personal communications in third countries;
3. Whenever the Commission establishes that the action undertaken under this Decision, in particular with regard to the information received further to paragraphs 1 and 2, may require negotiations with the aim of facilitating the introduction of satellite personal communications in the European Community and remove obstacles thereto, the Commission may request the granting or extension of a mandate to start, where appropriate, negotiations in view of these aims.

The principle of Community action will be aimed at ensuring effective and comparable access for Community organisations to the markets in these third countries and at facilitating the interoperability of the various personal mobile communications systems, particularly by means of the transmission standards which already render such systems interoperable within the European Community.

4. Measures taken pursuant to this Article shall be without prejudice to the Community's and Member States' obligations under relevant international agreements.

Article 11

Amendment of Decisions

In order to take into account the results of discussions in international fora and /or with third countries or as a result of measures taken in accordance with the provisions of Article 10, as well as any warranted change of circumstances, the Commission shall adopt, in close co-operation with the national regulatory authorities of the Member States in accordance with the procedure laid down in Article 8, all appropriate measures as deemed necessary, including amending its decisions.

Article 12

Implementation

1. Member States shall take all necessary measures by law or administrative action to enable implementation of the measures agreed in or pursuant to this Decision;
2. Member States shall supply the Commission, not later than 6 months after adoption of this Decision, with such information as may be required by the Commission to verify the implementation of this Decision.
3. Member States shall supply the Commission, not later than 3 months after adoption of the decisions taken pursuant to this Decision and in accordance with the time schedule in Annex, with such information which will allow the Commission to verify the compliance with such decisions.

Article 13

Confidentiality

1. Without prejudice to the provisions of this Decision, the Commission and the national regulatory authorities, their officials and other servants, and experts consulted shall not disclose any information acquired by them as a result of the implementation of this Decision and of the kind covered by the obligation of professional secrecy.
2. The provisions of paragraph 1 shall not prevent publication of information on selection criteria and authorisation conditions which does not include information of a confidential nature.

Article 14

This Decision is addressed to the Member States.

Done at Brussels,

**For the European Parliament
The President**

**For the Council
The President**

Annex

**to a European Parliament and Council Decision of . . .
on a common framework for the harmonised development of
satellite personal communications services in the European Union**

Time schedule for measures

- Sep. 96** Establishment of categories of satellite personal communications services for which a selection of satellite systems is required;
Publication of a Call-for-Declaration of Interest in the Official Journal;
- Oct. 96** Adoption of criteria for the selection of satellite systems and the principles for the authorisations for these systems;
- Dec. 96** Based on a comparative bidding process and subsequent evaluation, selection of satellite systems used for the provision of categories of satellite PCS services;
Adoption of common conditions for the authorisation of the selected systems;
- Mar. 97** Adoption of harmonised conditions for the authorisation of all aspects of satellite personal communications as they concern, inter alia, service provision, equipment, interconnection, numbering, and gateway access;
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