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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 13 January 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: Communication from the Commission to the European Parliament pursuant to
Article 294(6) of the Treaty on the Functioning of the European Union
concerning the position of the Council on the adoption of a Decision of the
European Parliament and of the Council establishing a multi-annual radio
spectrum policy programme

Delegations will find attached Commission document COM(2012) 3 final.

Encl.: COM(2012) 3 final



EUROPEAN COMMISSION

Brussels, 12.1.2012
COM(2012) 3 final

2010/0252 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of a Decision of the European Parliament and of
the Council establishing a multi-annual radio spectrum policy programme.**

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council on the adoption of a Decision of the European Parliament and of the Council establishing a multi-annual radio spectrum policy programme.

1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council 20 September 2010
(document COM(2010) 471 final – 2010/0252 COD):

Date of the opinion of the European Economic and Social Committee: 16 February 2011

Date of the position of the European Parliament, first reading: 11 May 2011

Date of transmission of the amended proposal: 11 May 2011
SP (2011)5858

Date of adoption of the position of the Council: 13 December 2011

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The proposed Radio Spectrum Policy Programme (RSPP) based on Article 114 TFEU responds to the invitation by Parliament and the Council in Article 8a(3) of Framework Directive 2002/21/EC as amended by Directive 2009/140/EC to present a legislative proposal to establish a multiannual programme setting out policy orientations and objectives for the strategic planning and harmonisation of the use of spectrum.

The RSPP reflects the importance of the availability and efficient use of spectrum for the internal market in electronic communications and other EU policy areas such as transport, research, Earth observation, navigation satellite systems, environmental protection and the fight against global warming. The RSPP is part of the Commission's Digital Agenda for Europe and contributes to the Europe 2020 strategy for smart, sustainable and inclusive growth as spectrum is essential for the digital society, fast wireless services, economic recovery, growth, high-quality jobs and long-term EU competitiveness. The Single Market Act also calls upon the Parliament and Council to adopt the proposal without delay.

The RSPP will create a process to determine how spectrum use can contribute to EU objectives and optimise social, economic and environmental benefits. It builds on EU regulatory principles for electronic communications and on the Radio Spectrum Decision (676/2002/EC), reaffirms principles to be applied to all types of spectrum use, establishes objectives for EU initiatives and lists actions to be launched.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The position of the Council at first reading is the result of a compromise reached after informal negotiations between the Council, the European Parliament and the Commission which culminated at the informal trilogue meeting of 24 October 2011, and which was confirmed by an exchange of letters between co-legislators.

This compromise includes:

- a clear commitment to complete the authorisation process for already harmonised spectrum, including the 800 MHz band, by 1/1/2013;
- a strong inventory mechanism based on Commission implementing measures as well as clear deadlines for adopting those measures;
- an explicit target to identify at least 1200 MHz of spectrum by 2015 based on the inventory, for wireless broadband communications;
- a commitment to examine the need for further spectrum for wireless broadband based on capacity requirements;
- the means to guarantee competition in the use of spectrum in particular for electronic communications services;
- the development of policy initiatives on collective and shared use of spectrum;
- a provision to enhance EU coordination in international spectrum negotiations;
- a commitment to develop policy initiatives on the spectrum requirements of other internal market sectors and EU policies, including energy saving, Earth observation and monitoring, public safety and protection, wireless microphones and the Internet of Things.

Therefore, the Commission can accept the Council's position as it reflects the compromise reached and calls for similar adoption without amendment by Parliament in the shortest time possible considering the importance of the matter, the close deadlines set in the draft decision and the need for swift implementation thereof.

The Commission also made three statements (see below) for the minutes of the Council meeting of 13 December 2011 which explain the Commission's view on certain specific provisions.

4. CONCLUSION

The Commission supports the position of the Council, while making the three statements below, and invites the Parliament to approve the Council's position without amendment in line with the compromise reached on 24 October 2011, as quickly as possible to allow for early entry into force of the decision.

5. UNILATERAL STATEMENTS MADE BY THE COMMISSION TO THE MINUTES OF THE COUNCIL MEETING OF 13 DECEMBER 2011.

(1) On insertion of a reference to RSPG in Article 9.2:

'The Commission notes that Article 9.2 requires the Commission to take utmost account of the views of the Radio Spectrum Policy Group (RSPG) before adopting implementing acts in relation to the inventory. The Commission considers that in the matter of implementing acts there are no other procedural requirements than those laid down by Article 291 TFEU. The RSPG has been created by the Commission itself for the purposes of using its advice and expertise, which the Commission will continue to do considering that it plays an important advisory role and provides valuable input in regard to policy matters, but it is for the Commission to consult this group as it considers necessary.'

(2) On Article 10.1 regarding international negotiations:

'The Commission confirms its interpretation of references to "Member States' competence" as competence not attributed to the European Union. It also recalls that the Treaties in their entirety remain applicable, including in particular Article 218(9) TFEU as the case may be.'

(3) On the procedure of adoption of implementing acts for Art. 13.2:

'The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 to invoke Article 5, paragraph 4, second subparagraph, point (b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5, paragraph 4, recourse to second subparagraph, point (b) cannot be simply seen as a "discretionary power" of the Legislator, but must be interpreted in a restrictive manner and thus must be justified.'

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