DECISION No 710/97/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 24 March 1997

on a coordinated authorization approach in the field of satellite personal-communication services in the Community

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 thereof,

Having regard to the proposal of the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3],

(1) Whereas on 7 December 1993 the Council adopted a resolution on the introduction of satellite personal-communications services in the Community [4]; whereas in that resolution the Council recognized the desirability of coordinated action to allow the introduction of satellite personal-communications services in the Community, taking full account of the global nature of such services; whereas the Council stressed the importance of developing an effective policy and asked the Commission to study the matter, monitor international developments and propose appropriate measures and/or actions;

(2) Whereas on 19 May 1995, the European Parliament adopted a resolution on mobile and personal communications in the European Union [5] in which it considered it a priority objective to establish a harmonized licensing approach for satellite-based mobile and personal communications and, on that basis, to initiate procedures for licensing such systems at an early stage; whereas, according to that resolution, that approach should have been implemented by 1 January 1996 in order to take account of the rapid development of such services at global level and of their potential in both social and commercial terms;

(3) Whereas on 29 June 1995 the Council adopted a resolution on the further development of mobile and personal communications in the European Union [6] in which it considered it a priority objective to ensure, before 1 June 1996, the specification of a harmonized licensing approach for satellite-based mobile and personal communications, after investigation by the European Committee for Telecommunications Regulatory Affairs (Ectra);

(4) Whereas on 18 June 1996 the Council adopted common position No 34/96 with a view to adopting the Directive of the European Parliament and of the Council on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP) [7], hereinafter referred to as 'the interconnection Directive'; whereas principles to govern the interconnection of mobile services which include satellite personal-communications services with separate telecommunications networks are set out in this Directive;

(5) Whereas on 6 December 1995 the Commission submitted a proposal for a Directive of the European Parliament and of the Council relating to telecommunications terminal equipment and satellite earth-station equipment, including the mutual recognition of their conformity (consolidated version);

(6) Whereas the European Parliament and the Council are examining a common position with a view to the adoption of the Directive of the European Parliament and of the Council on a common framework for general authorizations and individual licences in the field of telecommunications services [8], hereinafter referred to as 'the licensing Directive'; whereas, given the urgency of these matters and the fact that no such authorization measures have been adopted or implemented, the area of satellite personal-communications services therefore requires action at Community level in accordance with this Decision; whereas that action should be of limited duration;

(7) Whereas, having considered the telecommunications, trade and industry aspects as well as the frequency and standardization aspects of satellite personal communications and having consulted the industry

[1] OJ No C 15, 20. 1. 1996, p. 6, and OJ No C 350, 21. 11. 1996, p. 14.
[2] OJ No C 204, 15. 7. 1996, p. 8.
[3] Opinion of the European Parliament of 19 June 1996 (OJ No C 198, 8. 7. 1996, p. 93), Council common position of 9 December 1996 (OJ No C 41, 10. 2. 1997, p. 37) and Decision of the European Parliament of 20 February 1997 (OJ No C 85, 17. 3. 1997). Council Decision of 6 March 1997.
[4] OJ No C 339, 16. 12. 1993, p. 1.
[5] OJ No C 151, 19. 6. 1995, p. 473.
[6] OJ No C 188, 22. 7. 1995, p. 3.
[7] OJ No C 220, 29. 7. 1996, p. 13.
[8] OJ No C 41, 10. 2. 1997, p. 48.

concerned, the Commission has submitted a proposal for a decision and the related timetable with the aim of harmonizing the authorization of satellite personal-communications services on the basis of a common approach;

(8) Whereas, in accordance with Commission Directive 94/46/EC of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications [1], market entry for satellite personal communications space-segment operators can be restricted only on the basis of objective, transparent, proportionate and non-discriminatory selection criteria relating to the availability of scarce resources; whereas if spectrum is not available for the accommodation of all candidate systems, decisions on such restrictions should be coordinated;

(9) Whereas there is an urgent need for harmonization of the use of frequency bands for satellite personal-communications services, which for the purposes of this Decision are defined as those operating in the 1.6/2.4 GHz and 1.9/2.1 GHz frequency bands; whereas the Member States' final assignment of frequencies to individual systems should comply with established International Telecommunication Union procedures;

(10) Whereas each country has the sovereign right to decide whether and how to participate in satellite personal-communications systems and to determine the terms and conditions of access to such systems from its territory, known as uplinks, and satellite personal-communications services operators are required to operate at the point of delivery under the legal, financial and regulatory requirements of the Member State within the territory of which those services are authorized; as a consequence, satellite personal-communications services operators are concurrently subject to the jurisdictions of the notifying administrations for the satellite personal-communications systems and to those of the countries in which services are authorized;

(11) Whereas, despite the priority at present given to services operating in the aforementioned 1.6/2.4 GHz and 1.9/2.1 GHz frequency bands, Member States recognize the possible need to harmonize the use of other satellite frequency bands, in particular those corresponding to 'small LEOs' (non-vocal, non-geostationary satellite mobile-telecommunications systems);

(12) Whereas, since satellite personal communications by their nature primarily address the needs of mobile users travelling between Member States and especially outwith the Community, diverging national laws, regulations and administrative provisions would hinder or even prevent the provision of Community-wide satellite personal-communications services, the free movement of related equipment and, as a consequence, the successful introduction of satellite personal-communications services on the internal market;

(13) Whereas the freedom to provide satellite personal-communications services and the free movement of related equipment on the internal market requires the approximation of national regulations and administrative provisions;

(14) Whereas, owing to the need for the widest possible territorial coverage by satellite personal-communications systems, Member States should aim at the rapid and simultaneous introduction of compatible satellite personal-communications services in the Community on the basis of internal market principles by means of a coordinated approach;

(15) Whereas, given the timetable laid down for the implementation of satellite personal-communications systems, this Decision is intended to ensure that, within its limited duration, appropriate regulatory measures are taken in the Community to achieve the harmonized provision of satellite personal communications, taking due account of the international dimension and its consequent requirements;

(16) Whereas it is necessary to determine whether the scarcity of frequencies in the 1.6/2.4 GHz and 1.9/2.1 GHz frequency bands represents a constraint on the number of satellite personal-communications services which can be provided in the Community in these bands shared among candidate systems; whereas, to prevent the emergence of 'paper satellite systems' due account must be taken of the advanced stage of development of those systems;

(17) Whereas the principle of transparency should apply at all stages of the procedure to any measure adopted pursuant to this Decision without prejudice to the legitimate right to confidentiality;

(18) Whereas authorizations are granted pursuant to the national regimes applicable in accordance with Directive 94/46/EC;

(19) Whereas measures adopted by the European Radiocommunications Committee (ERC) and Ectra are, if consistent with Community law, a basis for the use of the relevant frequencies by and for the preparation of the criteria for the authorization of satellite personal-communications services;

[1] OJ No L 268, 19. 10. 1994, p. 15.

(20) Whereas European standardization bodies such as the European Telecommunications Standards Institute (ETSI) and the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (Cenelec) may be called upon in due course to prepare the necessary standards in this area;

(21) Whereas the European Conference of Postal and Telecommunications Administrations (CEPT), Ectra and ERC in particular will also be given mandates to harmonize authorization conditions and procedures;

(22) Whereas to facilitate the granting of satellite personal-communications services authorizations to undertakings in more than one Member State, a 'one-stop-shopping procedure' should be established; whereas that one-stop-shopping procedure should be implemented without prejudice to national provisions relating to the language used in the relevant procedures;

(23) Whereas the global dimension of satellite personal-communications systems and services and the related global regulatory structure under which they are provided play an important role in the Community's deliberations; whereas the Commission should monitor developments, particularly in respect of the regulatory process, outwith the Community and, if appropriate, consult with third countries on the co-ordinated introduction of satellite personal communications at global level; whereas this action at Community level should permit the Community and its Member States to exert greater influence on the worldwide development of mobile and personal communications;

(24) Whereas the inherent global nature of satellite personal-communications services may require the conclusion of a substantial number of agreements with third countries on, *inter alia*, interconnection, the free movement and use of equipment, satellite-system and satellite-control operations, access to gateway stations and access to third countries' markets; whereas those agreements are closely related to market access arrangements;

(25) Whereas Community undertakings should have effective and comparable access to third countries' markets and enjoy treatment in third countries similar to that offered in the Community to undertakings owned wholly, controlled through majority ownership or effectively controlled by nationals of the third countries concerned;

(26) Whereas, therefore, the Commission may start multilateral and bilateral negotiations on those aspects of satellite personal communications on the basis of specific mandates from the Council, which should make it possible to conclude balanced agreements ensuring in particular effective and comparable access for Community operators in third countries;

(27) Whereas the results of international consultations and other changes in the situation may require that decisions taken pursuant to this Decision be amended or other appropriate measures be undertaken;

(28) Whereas Member States should take all appropriate measures to implement this Decision and decisions arising therefrom in due course and communicate all national implementation measures to the Commission;

(29) Whereas the industry concerned should be requested to cooperate closely with the Commission and national regulatory authorities in the implementation of this Decision;

(30) Whereas the nature of the information provided by applicants and by other representatives of the industry concerned may be of a commercially confidential nature; whereas the utmost discretion should be exercised in connection with that information,

HAVE ADOPTED THIS DECISION:

Article 1

Scope

The aim of this Decision shall be to facilitate the rapid introduction of compatible satellite personal-communications services in the Community on the basis of internal-market principles within a comparable time-frame by means of a coordinated approach.

Article 2

Coordinated authorization approach

1. When preparing and applying their authorization systems Member States shall ensure that the provision of satellite personal-communications services is organized in frequency bands which are harmonized by CEPT in accordance with the procedure laid down in Article 3.

2. If it is established, in accordance with Article 3 and in conjunction with CEPT, that it is necessary to limit the number of satellite personal-communications services authorizations owing to the scarcity of the frequency spectrum available, Member States shall coordinate their authorization procedures with a view to authorizing the same satellite personal-communications services throughout the Community.

3. Member States may attach the conditions listed in Annex I to authorizations.

Those conditions may be imposed even if no part of the satellite personal-communications systems concerned is located within the territory of a Member State.

4. Member States shall take all technical and other appropriate measures to ensure the free movement of technical equipment within their territories in accordance with European harmonized standards and common technical regulations (CTRs).

Article 3

Cooperation with CEPT

1. The Commission shall, in accordance with the procedure laid down in Article 7, give CEPT/Ectra and CEPT/ERC mandates to harmonize frequency use and the conditions attached to general authorizations for satellite personal-communications services, without prejudice to the scope established in the licensing Directive for individual licences. Those mandates shall define the tasks to be performed and lay down a timetable.

2. The timetable for the first mandates shall be as set out in Annex II.

3. On the completion of the mandates it shall be decided in accordance with the procedure laid down in Article 6 whether the result of the work done pursuant to the mandates shall be made applicable in the Community.

4. Notwithstanding Article 2 (1), if the Commission or any Member State considers that work done pursuant to the mandate given to CEPT/Ectra or CEPT/ERC is not progressing satisfactorily having regard to the timetable laid down, it may refer the matter to the committee provided for in Article 5, which shall act in accordance with the procedure laid down in Article 6.

Article 4

One-stop-shopping procedure

1. Where appropriate and in conjunction with CEPT/Ectra and CEPT/ERC, the Commission shall take the steps necessary for the operation of a one-stop-shopping procedure for the grant of individual licences and, in the case of general authorizations, for notification procedures, including suitable arrangements for its administration, in accordance with the procedure laid down in Article 6. Information on that one-stop-shopping procedure shall be published in the *Official Journal of the European Communities.*

2. The one-stop-shopping procedure shall comply with the following conditions:

(a) it shall be open to all undertakings wishing to operate telecommunications services in the Community;

(b) the submission of applications and notifications shall be possible and one or more bodies to which applications and notifications may be submitted shall be designated;

(c) in the case of individual licences, applications shall be passed to the national regulatory authorities concerned, within seven working days of formal receipt, by the bodies to which they were submitted.

In the case of general authorizations, notifications shall be passed to the national regulatory authorities concerned, within two working days of formal receipt, by the bodies to which they were submitted;

(d) in the case of individual licenses, the national regulatory authorities concerned shall decide within a reasonable time whether to grant them; *inter alia,* they shall inform the applicants of their decisions as soon as possible but not more than six weeks after receiving the applications. Member States may extend that time limit to up to four months in objectively justified cases which are defined specifically in the provisions adopted to implement the licensing Directive. In the case of comparative bidding procedures in particular, Member States may further extend that time limit by up to four months. Those time limits shall be without prejudice to any applicable international agreements relating to international frequency and satellite coordination.

Within one week of taking their decisions, national regulatory authorities shall inform both the applicants and the bodies to which the relevant applications were submitted accordingly.

In the case of general authorizations, the national regulatory authorities concerned may require the applicants to wait for up to four weeks after the authorities' formal receipt of all the information required, before starting to provide the services covered by the general authorizations;

(e) the bodies to which applications and notifications may be sumbitted shall report annually to the Commission on the operation of the one-stop-shopping procedure, including information on refusals of applications and objections raised to notifications;

(f) the bodies involved in the one-stop-shopping procedure shall undertake to observe the level of confidentiality prescribed in Article 11.

Article 5

The committee

1. In the implementation of this Decision the Commission shall be assisted by the Licensing Committee set up by the licensing Directive. The Licensing Committee shall proceed in accordance with Articles 6 and 7.

2. In view of the urgency of these matters and until the committee referred to in paragraph 1 is set up, the Commission shall be assisted by an interim *ad hoc* committee which it shall convene when necessary and which shall proceed in accordance with Articles 6 and 7.

Article 6

Committee procedure II b (1)

1. 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.

2. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event:

— the Commission shall defer application of the measures which it has decided for a period of three months from the date of communication;

— the Council, acting by a qualified majority, may take a different decision within the time limit laid down in the first indent.

Article 7

Committee procedure I (1)

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, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition each Member State shall have the right to ask to have its position recorded in the minutes.

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

Article 8

Exchange of information

1. The Commission shall regularly inform the committee of the outcome of consultations with the representatives of telecommunications organizations, users, consumers, manufacturers, service providers and trade unions.

2. The committee shall, taking into account the Community's telecommunications policy, encourage the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities regarding the authorization of satellite personal-communications services.

Article 9

International aspects

1. Member States may inform the Commission of any general difficulties encountered, *de jure* or *de facto*, by Community organizations on the introduction of satellite personal-communications services in third countries which have been brought to their attention.

2. Whenever the Commission is informed of such difficulties it may, if necessary, submit a proposal to the Council for an appropriate mandate for negotiation with the aim of ensuring effective and comparable access for Community organizations in those third countries. The Council shall decide by qualified majority.

3. Measures taken pursuant to paragraph 2 shall be without prejudice to the Community's and Member States' obligations pursuant to relevant international agreements.

Article 10

Notification

Member States shall give the Commission such information as it may require for the purpose of verifying the implementation of this Decision.

Article 11

Confidentiality

1. Neither the Commission nor the national regulatory authorities shall disclose any information covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

2. Paragraph 1 shall be without prejudice to the right of national regulatory authorities to undertake disclosure where it is essential for the purposes of fulfilling their duties, in which case such disclosure shall be proportionate and shall have regard to the legitimate interests of the undertakings in the protection of their business secrets.

3. Paragraph 1 shall not preclude the publication of information on licensing conditions which does not include information of a confidential nature.

Article 12

Duration

This Decision shall enter into force on the 20th day after its publication in the *Official Journal of the European Communities* and shall remain in force for three years after that date.

(1) Procedures set out in Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ No L 197, 18. 7. 1987, p. 33).

Article 13

Report

The Commission shall keep developments in the field of satellite personal communications under review and report to the European Parliament and to the Council on the effectiveness of action taken pursuant to this Decision after two years.

Article 14

Implementation

Member States shall take all measures necessary, by law or administrative action, for the measures provided for in, or agreed on pursuant to this Decision to be implemented.

Article 15

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 24 March 1997.

For the European Parliament	*For the Council*
The President	*The President*
J. M. GIL-ROBLES	H. VAN MIERLO

ANNEX I

CONDITIONS THAT MAY BE ATTACHED TO AUTHORIZATIONS

1. Any conditions which are attached to authorizations must be consistent with the competition rules of the Treaty.

2. Conditions which may be attached to all authorizations, where justified and subject to the principle of proportionality:

2.1. Conditions intended to ensure compliance with relevant essential requirements.

2.2. Conditions linked to the provision of information reasonably required for the verification of compliance with applicable conditions and for statistical purposes.

2.3. Conditions intended to prevent anti-competitive behaviour in telecommunications markets, including measures to ensure that tariffs are non-discriminatory and do not distort competition.

2.4. Conditions relating to the effective and efficient use of numbering capacity.

3. Specific conditions which may be attached to general authorizations for the provision of publicly available telecommunications services and of public telecommunications networks that are required for the provision of such services, where justified and subject to the principle of proportionality:

3.1. Conditions relating to the protection of users and subscribers, in relation particularly to:

— the prior approval of the national regulatory authority of the standard subscriber contract,

— the provision of detailed and accurate billing,

— the provision of a procedure for the settlement of disputes,

— publication and adequate notice of any change in access conditions, including tariffs, quality and the availability of services.

3.2. Financial contributions to the provision of universal service in accordance with Community law.

3.3. Communication of customer-database information necessary for the provision of universal directory information.

3.4. Provision of emergency services.

3.5. Special arrangements for disabled people.

3.6. Conditions relating to the interconnection of networks and the interoperability of services in accordance with the interconnection Directive and obligations pursuant to Community law.

4. Specific conditions which may be attached to individual licences, where justified and subject to the principle of proportionality:

4.1. Specific conditions linked to the allocation of numbering rights (compliance with national numbering schemes).

4.2. Specific conditions linked to the effective use and efficient management of radio frequencies.

4.3. Specific environmental and specific town and country planning requirements, including conditions linked to the granting of access to public or private land and conditions linked to collocation and facility sharing.

4.4. Maximum duration, which shall not be unreasonably short, in particular in order to ensure the efficient use of radio frequencies or numbers or to grant access to public or private land, without prejudice to other provisions concerning the withdrawal or the suspension of licences.

4.5. Provision of universal service obligations in accordance with the interconnection Directive and Directive 95/62/EC of the European Parliament and of the Council of 13 December 1995 on the application of the principles of open network provision (ONP) to voice telephony [1].

[1] OJ No L 321, 30. 12. 1995, p. 6.

4.6. Conditions applied to operators having significant market power, as notified by Member States within the meaning of the interconnection Directive, intended to guarantee interconnection or the control of significant market power.

4.7. Conditions concerning ownership which comply with Community law and the Community's commitments *vis-à-vis* third countries.

4.8. Requirements relating to the quality, availability and permanence of a service or network, including the financial, managerial and technical competence of the applicant and conditions setting a minimum period of operation and including, where appropriate and in accordance with Community law, the mandatory provision of publicly available telecommunications services and public telecommunications networks.

4.9. Specific conditions relating to the provision of leased lines in accordance with Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines [1].

This list of conditions is without prejudice to:

— any other conditions which are not specific to the telecommunications sector,

— measures taken by Member States in accordance with public interest requirements recognized by the Treaty, in particular Articles 36 and 56, specifically in relation to public morality, public security, including the investigation of criminal activities, and public policy.

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[1] OJ No L 165, 19. 6. 1992, p. 27. Directive as amended by Commission Decision 94/439/EC (OJ No L 181, 15. 7. 1994, p. 40).

ANNEX II

TIMETABLE

1997	
July	Work on mandates on harmonization for the 1.6/2.4 GHz and 1.9/2.1 GHz frequency bands
July	One-stop-shopping procedure for services planning to operate in the 1.6/2.4 GHz and 1.9/2.1 GHz frequency bands
July	To determine if the limited number of frequencies in the 1.6/2.4 GHz and 1.9/2.1 GHz frequency bands represents a constraint on the number of satellite personal-communications services which can be provided in those bands in the Community
September	Harmonization of procedures for the authorization of systems planning to operate in the 1.6/2.4 GHz and 1.9/2.1 GHz frequency bands.