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►B DECISION No 243/2012/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 March 2012

establishing a multiannual radio spectrum policy programme

(Text with EEA relevance)

(OJ L 81, 21.3.2012, p. 7)

Amended by:

		Official Journal		
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►M1	Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018	L 321	36	17.12.2018

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DECISION No 243/2012/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 March 2012

establishing a multiannual radio spectrum policy programme

(Text with EEA relevance)

Article 1

Aim and scope

1. This Decision establishes a multiannual radio spectrum policy programme for the strategic planning and harmonisation of the use of spectrum to ensure the functioning of the internal market in the Union policy areas involving the use of spectrum, such as electronic communications, research, technological development and space, transport, energy and audiovisual policies.

This Decision shall not affect the sufficient availability of spectrum for other Union policy areas such as civil protection and disaster relief, and the Common Security and Defence Policy.

2. This Decision is without prejudice to existing Union law, in particular to Directives 1999/5/EC, 2002/20/EC and 2002/21/EC, and subject to Article 6 of this Decision, to Decision No 676/2002/EC, and to measures taken at national level, in compliance with Union law.

3. This Decision is without prejudice to measures taken at national level in full compliance with Union law, which pursue objectives of general interest, in particular those relating to content regulation and audiovisual policy.

This Decision is without prejudice to the right of Member States to organise and use their spectrum for public order and public security purposes and for defence. Where this Decision or measures adopted thereunder in the frequency bands specified in Article 6 affect spectrum used by a Member State exclusively and directly for its public security or defence purposes, the Member State may, to the extent necessary, continue to use that frequency band for public security and defence purposes until the systems existing in the band at the date of the entry into force of this Decision or of a measure adopted thereunder, respectively, are phased out. That Member State shall duly notify the Commission of its decision.

Article 2

General regulatory principles

1. Member States shall cooperate with each other and with the Commission in a transparent manner, in order to ensure the consistent application of the following general regulatory principles across the Union:

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(a) applying the most appropriate and least onerous authorisation system possible in such a way as to maximise flexibility and efficiency in spectrum use. Such an authorisation system shall be based on objective, transparent, non-discriminatory and proportionate criteria;

(b) fostering development of the internal market by promoting the emergence of future Union-wide digital services and by fostering effective competition;

(c) promoting competition and innovation, taking account of the need to avoid harmful interference and of the need to ensure technical quality of service in order to facilitate the availability of broadband services and to respond effectively to increased wireless data traffic;

(d) defining the technical conditions of the use of spectrum, taking full account of relevant Union law, including on the limitation of the exposure of the general public to electromagnetic fields;

(e) promoting technology and service neutrality in the rights of use of spectrum, where possible.

2. For electronic communications, in addition to the general regulatory principles defined in paragraph 1 of this Article, the following specific principles shall apply, in accordance with Articles 8a, 9, 9a and 9b of Directive 2002/21/EC and with Decision No 676/2002/EC:

(a) applying technology and service neutrality in the rights of use of spectrum for electronic communications networks and services and the transfer or lease of individual rights of use of radio frequencies;

(b) promoting the harmonisation of use of radio frequencies across the Union, consistent with the need to ensure effective and efficient use thereof;

(c) facilitating increased wireless data traffic and broadband services, in particular by fostering flexibility, and promoting innovation, taking account of the need to avoid harmful interference and ensure the technical quality of service.

Article 3

Policy objectives

In order to focus on the priorities of this Decision, Member States and the Commission shall cooperate to support and achieve the following policy objectives:

(a) encourage efficient management and use of spectrum to best meet the increasing demand for use of frequencies reflecting the important social, cultural and economic value of spectrum;

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(b) seek to allocate sufficient and appropriate spectrum in a timely manner to support Union policy objectives and to best meet the increasing demand for wireless data traffic, thereby allowing the development of commercial and public services, while taking into account important general interest objectives such as cultural diversity and media pluralism; to that end, every effort should be made to identify, based on the inventory established pursuant to Article 9, at least 1 200 MHz of suitable spectrum by 2015. That figure includes spectrum already in use;

(c) bridge the digital divide and contribute to the objectives of the Digital Agenda for Europe, fostering access to broadband at a speed of not less than 30 Mbps by 2020 for all Union citizens and making it possible for the Union to have the highest possible broadband speed and capacity;

(d) enable the Union to take the lead in wireless electronic communication broadband services by freeing up sufficient spectrum in cost-efficient bands for those services to be widely available;

(e) secure opportunities for both the commercial as well as public sectors by means of increased mobile broadband capacities;

(f) promote innovation and investment through enhanced flexibility in the use of spectrum, through a consistent application across the Union of the principles of technology and service neutrality between the technological solutions that may be adopted and through adequate regulatory predictability as provided for, inter alia, in the regulatory framework for electronic communications through the freeing up of harmonised spectrum for new advanced technologies, and through the possibility of trading rights of use of spectrum, thereby creating opportunities for future Union-wide digital services to be developed;

(g) facilitate easy access to spectrum by harnessing the benefits of general authorisations for electronic communications in accordance with Article 5 of Directive 2002/20/EC;

(h) encourage passive infrastructure sharing where this would be proportionate and non-discriminatory, as envisaged in Article 12 of Directive 2002/21/EC;

(i) maintain and develop effective competition, in particular in electronic communication services, by seeking to avoid, through *ex ante* measures or *ex post* remedies, the excessive accumulation of rights of use of radio frequencies by certain undertakings which results in significant harm to competition;

(j) reduce the fragmentation and fully exploit the potential of the internal market in order to foster economic growth and economies of scale at the level of the Union by enhancing the coordination and harmonisation of technical conditions for the use and availability of spectrum, as appropriate;

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(k) avoid harmful interference or disturbance by other radio or non-radio devices, inter alia, by facilitating the development of standards which contribute to the efficient use of spectrum, and by increasing immunity of receivers to interference, taking particular account of the cumulative impact of the increasing volumes and density of radio devices and applications;

(l) foster the accessibility of new consumer products and technologies so as to secure consumer endorsement for the transition to digital technology and to secure efficient use of the digital dividend;

(m) reduce the Union's carbon footprint by enhancing the technical efficiency and energy efficiency of wireless communication networks and equipment.

Article 4

Enhanced efficiency and flexibility

1. Member States, in cooperation with the Commission, shall, where appropriate, foster the collective use of spectrum as well as shared use of spectrum.

Member States shall also foster the development of current and new technologies, for example, in cognitive radio, including those using 'white spaces'.

2. Member States and the Commission shall cooperate to enhance flexibility in the use of spectrum, in order to promote innovation and investment, through the possibility of using new technologies and through the transfer or lease of rights of use of spectrum.

3. Member States and the Commission shall cooperate to foster the development and harmonisation of standards for radio equipment and telecommunications terminals as well as for electric and electronic equipment and networks based, where necessary, upon standardisation mandates from the Commission to the relevant standardisation bodies. Special attention shall also be given to standards for equipment to be used by disabled people.

4. Member States shall foster R&D activities in new technologies such as cognitive technologies and geolocation databases.

5. Member States shall put in place, where appropriate, selection criteria and procedures for granting rights of use of spectrum that promote competition, investment and the efficient use of spectrum as a public good, as well as promoting coexistence between new and existing services and devices. Member States shall promote the ongoing efficient use of spectrum for networks, devices and applications.

6. Where necessary in order to ensure the effective use of rights of use of spectrum and avoid spectrum hoarding, Member States may consider taking appropriate measures, such as financial penalties, incentive fees tools or the withdrawal of rights. Such measures shall be established and applied in a transparent, non-discriminatory and proportionate manner.

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7. For electronic communications services, Member States shall, by 1 January 2013, adopt allocation and authorisation measures appropriate for the development of broadband services, in conformity with Directive 2002/20/EC, with the aim of achieving the highest possible capacity and broadband speeds.

8. In order to avoid the possible fragmentation of the internal market due to divergent selection criteria and procedures for harmonised spectrum allocated to electronic communication services and made tradable in all Member States pursuant to Article 9b of Directive 2002/21/EC, the Commission shall, in cooperation with Member States and in accordance with the principle of subsidiarity, facilitate the identification and sharing of best practices on authorisation conditions and procedures and encourage sharing of information for such spectrum to increase consistency across the Union, achieved in line with the principles of technology and service neutrality.

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Article 6

Spectrum needs for wireless broadband communications

1. Member States shall, in cooperation with the Commission, take all steps necessary to ensure that sufficient spectrum for coverage and capacity purposes is available within the Union, in order to enable the Union to have the fastest broadband speeds in the world, thereby making it possible for wireless applications and European leadership in new services to contribute effectively to economic growth, and to achieving the target for all citizens to have access to broadband speeds of not less than 30 Mbps by 2020.

2. In order to promote wider availability of wireless broadband services for the benefit of citizens and consumers in the Union, Member States shall make the bands covered by Decisions 2008/411/EC (3,4-3,8 GHz), 2008/477/EC (2,5-2,69 GHz), and 2009/766/EC (900-1 800 MHz) available under terms and conditions described in those decisions. Subject to market demand, Member States shall carry out the authorisation process by 31 December 2012 without prejudice to the existing deployment of services, and under conditions that allow consumers easy access to wireless broadband services.

3. Member States shall foster the ongoing upgrade, by providers of electronic communications, of their networks to the latest, most efficient technology, in order to create their own spectrum dividends in line with the principles of service and technology neutrality.

4. By 1 January 2013, Member States shall carry out the authorisation process in order to allow the use of the 800 MHz band for electronic communications services. The Commission shall grant specific derogations until 31 December 2015 for Member States in which exceptional national or local circumstances or cross-border frequency coordination problems would prevent the availability of the band, acting upon a duly substantiated application from the Member State concerned.

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If a Member State's substantiated cross-border frequency coordination problems with one or more countries, including candidate or acceding countries, persist after 31 December 2015 and prevent the availability of the 800 MHz band, the Commission shall grant exceptional derogations on an annual basis until such problems are overcome.

Member States to which a derogation has been granted under the first or second subparagraph shall ensure that the use of the 800 MHz band does not prevent the availability of that band for electronic communications services other than broadcasting in neighbouring Member States.

This paragraph shall also apply to the spectrum coordination problems in the Republic of Cyprus arising from the fact that the Government of Cyprus is prevented from exercising effective control in part of its territory.

5. Member States shall, in cooperation with the Commission, continuously monitor the capacity requirements for wireless broadband services. On the basis of the results of the analysis referred to in Article 9(4), the Commission shall assess and report to the European Parliament and the Council by 1 January 2015 on whether there is a need for action to harmonise additional frequency bands.

Member States may, where appropriate and in conformity with Union law, ensure that the direct cost of migration or reallocation of spectrum usage is adequately compensated in accordance with national law.

6. Member States shall, in cooperation with the Commission, promote access to broadband services using the 800 MHz band in remote and sparsely populated areas, where appropriate. In doing so, Member States shall examine ways and, where appropriate, take technical and regulatory measures, to ensure that the freeing of the 800 MHz band does not adversely affect programme making and special events (PMSE) users.

7. The Commission shall, in cooperation with Member States, assess the justification and feasibility of extending the allocations of unlicensed spectrum for wireless access systems, including radio local area networks.

8. Member States shall allow the transfer or leasing of rights of use of spectrum in the harmonised bands 790-862 MHz, 880-915 MHz, 925-960 MHz, 1 710-1 785 MHz, 1 805-1 880 MHz, 1 900-1 980 MHz, 2 010-2 025 MHz, 2 110-2 170 MHz, 2,5-2,69 GHz, and 3,4-3,8 GHz.

9. In order to ensure that all citizens have access to advanced digital services including broadband, in particular in remote and sparsely populated areas, Member States and the Commission may explore the availability of sufficient spectrum for the provision of broadband satellite services enabling internet access.

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10. Member States shall, in cooperation with the Commission, examine the possibility of spreading the availability and use of picocells and femtocells. They shall take full account of the potential of those cellular base stations and of the shared and unlicensed use of spectrum to provide the basis for wireless mesh networks, which can play a key role in bridging the digital divide.

Article 7

Spectrum needs for other wireless communication policies

In order to support the further development of innovative audiovisual media and other services to Union citizens, taking into account the economic and social benefits of a single digital market, Member States shall, in cooperation with the Commission, aim at ensuring there is sufficient spectrum available for satellite and terrestrial provision of such services, if the need is clearly substantiated.

Article 8

Spectrum needs for other specific Union policies

1. Member States and the Commission shall ensure spectrum availability and protect the radio frequencies necessary for monitoring the Earth's atmosphere and surface, allowing the development and exploitation of space applications and improving transport systems, in particular for the global civil navigation satellite system established under the Galileo programme ([1]), for the European Earth monitoring programme (GMES) ([2]), and for intelligent transport safety and transport management systems.

2. The Commission shall, in cooperation with the Member States, conduct studies on saving energy in the use of spectrum in order to contribute to a low-carbon policy, and shall consider making spectrum available for wireless technologies with a potential for improving energy saving and efficiency of other distribution networks such as water supply, including smart energy grids and smart metering systems.

3. The Commission shall, in cooperation with the Member States, seek to ensure that sufficient spectrum is made available under harmonised conditions to support the development of safety services and the free circulation of related devices as well as the development of innovative interoperable solutions for public safety and protection, civil protection and disaster relief.

([1]) Regulation (EC) No 683/2008 of the European Parliament and of the Council of 9 July 2008 on the further implementation of the European satellite navigation programmes (EGNOS and Galileo) (OJ L 196, 24.7.2008, p. 1).

([2]) Regulation (EU) No 911/2010 of the European Parliament and of the Council of 22 September 2010 on the European Earth monitoring programme (GMES) and its initial operations (2011 to 2013) (OJ L 276, 20.10.2010, p. 1).

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4. Member States and the Commission shall collaborate with the scientific and academic community to identify a number of research and development initiatives and innovative applications that may have a major socio-economic impact and/or potential for investment and consider the spectrum needs of such applications and, where necessary, consider the allocation of sufficient spectrum to such applications under harmonised technical conditions and with the least onerous administrative burden.

5. Member States shall, in cooperation with the Commission, seek to ensure the necessary frequency bands for PMSE, in accordance with the Union's objectives to improve the integration of the internal market and access to culture.

6. Member States and the Commission shall seek to ensure spectrum availability for radio-frequency identification (RFID) and other 'Internet of Things' (IoT) wireless communication technologies and shall cooperate to foster the development of standards and the harmonisation of spectrum allocation for IoT communication across Member States.

Article 9

Inventory

1. An inventory of existing uses of spectrum, for both commercial and public purposes is hereby established.

The objectives of the inventory shall be:

(a) to allow the identification of frequency bands in which the efficiency of existing spectrum uses could be improved;

(b) to help identify frequency bands that could be suitable for reallocation and spectrum-sharing opportunities in order to support Union policies set out in this Decision, while taking into account future needs for spectrum based, inter alia, on consumers' and operators' demand, and of the possibility to meet such needs;

(c) to help analyse the various types of use of the spectrum by both private and public users;

(d) to help identify frequency bands that could be allocated or reallocated in order to improve their efficient use, promote innovation and enhance competition in the internal market, to explore new ways for sharing spectrum, to the benefit of both private and public users, while taking into account the potential positive and negative impact of allocation or reallocation of such bands and of adjacent bands on existing users.

2. For the purposes of ensuring the uniform implementation of paragraph 1 of this Article, the Commission, taking utmost account of the views of the Radio Spectrum Policy Group, shall adopt implementing acts by 1 July 2013:

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(a) to develop practical arrangements and uniform formats for the collection and provision of data by the Member States to the Commission on the existing uses of spectrum, provided that the business confidentiality rules under Article 8 of Decision No 676/2002/EC and the right of Member States to withhold confidential information are observed, taking into account the aim of minimising the administrative burden and existing obligations on the Member States under other Union law, in particular obligations to provide specific information;

(b) to develop a methodology for the analysis of technology trends, future needs and demand for spectrum in Union policy areas covered by this Decision, in particular for those services which could operate in the frequency range from 400 MHz to 6 GHz, in order to identify developing and potential significant uses of spectrum;

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(2).

3. The Commission shall administer the inventory referred to in paragraph 1 in accordance with the implementing acts referred to in paragraph 2.

4. The Commission shall conduct the analysis of technology trends, future needs and demand for spectrum in accordance with the implementing acts referred to in point (b) of paragraph 2. The Commission shall submit to the European Parliament and to the Council a report on the results of that analysis.

Article 10

International negotiations

1. In international negotiations relating to spectrum matters, the following principles shall apply:

(a) if the subject matter of the international negotiations falls within the competence of the Union, the Union position shall be established in accordance with Union law;

(b) if the subject matter of the international negotiations falls partly within the competence of the Union and partly within the competence of the Member States, the Union and the Member States shall seek to establish a common position in accordance with the requirements of the principle of sincere cooperation.

For the purpose of applying point (b) of the first subparagraph, the Union and the Member States shall cooperate in accordance with the principle of unity in the international representation of the Union and its Member States.

2. The Union shall, upon request, assist Member States with legal, political and technical support to resolve spectrum coordination issues with countries neighbouring the Union, including candidate and acceding countries, in such a way that the Member States concerned can observe their obligations under Union law. In the provision of such assistance, the Union shall use all its legal and political powers to promote the implementation of Union policies.

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The Union shall also support efforts by third countries to implement spectrum management that is compatible with that of the Union, so as to safeguard the spectrum policy objectives of the Union.

3. When negotiating bilaterally or multilaterally with third countries, Member States shall be bound by their obligations under Union law. When signing or otherwise accepting any international obligations regarding spectrum, Member States shall accompany their signature or any other act of acceptance by a joint declaration stating that they will implement such international agreements or commitments in accordance with their obligations under the Treaty on European Union and the Treaty on the Functioning of the European Union.

Article 11

Cooperation among various bodies

1. The Commission and the Member States shall cooperate to enhance the current institutional setting, in order to foster coordination at the level of the Union of the management of spectrum, including in matters directly affecting two or more Member States, with a view to developing the internal market and ensuring that the Union's spectrum policy objectives are fully achieved.

2. The Commission and Member States shall encourage standardisation bodies, CEPT, the Commission's Joint Research Centre and all relevant parties to cooperate closely in technical issues to promote the efficient use of spectrum. To that end, they shall maintain a coherent link between spectrum management and standardisation in such a way as to enhance the internal market.

Article 12

Public consultation

Wherever appropriate, the Commission shall organise public consultations to collect the views of all interested parties as well as the views of the public in general on the use of spectrum in the Union.

Article 13

Committee procedure

1. The Commission shall be assisted by the Radio Spectrum Committee established by Decision No 676/2002/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act, and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

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Article 14

Compliance with policy orientations and objectives

Member States shall apply the policy orientations and objectives set out in this Decision by 1 July 2015 unless otherwise specified herein.

Article 15

Reporting and review

By 10 April 2014, the Commission shall report to the European Parliament and the Council on the activities developed and the measures adopted pursuant to this Decision.

Member States shall provide the Commission with all information necessary for the purpose of reviewing the application of this Decision.

By 31 December 2015, the Commission shall conduct a review of the application of this Decision.

Article 16

Entry into force

This Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 17

Addressees

This Decision is addressed to the Member States.