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(Acts whose publication is obligatory)

**DECISION No 128/1999/EC OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL**

of 14 December 1998

**on the coordinated introduction of a third-generation mobile and wireless
communications system (UMTS) 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 from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social
Committee ⁽²⁾,

Having regard to the opinion of the Committee of the
Regions ⁽³⁾,

Acting in accordance with the procedure laid down in
Article 189b of the Treaty ⁽⁴⁾,

- (1) Whereas on 29 May 1997 the Commission presented to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions a communication on the further development of mobile and wireless communications;
- (2) Whereas on 15 October 1997 the Commission presented a communication on strategy and policy orientations with regard to the further development of mobile and wireless communications (UMTS);
- (3) Whereas on 1 December 1997 the Council invited the Commission to submit, by early 1998, a proposal for a European Parliament and Council Decision which would enable orientations to be established on the substance of the issue and facil-

itate, within the existing Community legal framework, the early licensing of UMTS services and, if appropriate and on the basis of the existing allocation of competences, in respect of coordinated allocation of frequencies in the Community and pan-European roaming; whereas on 29 January 1998 the European Parliament adopted a resolution expressing its strong support for the Commission's communication of 15 October 1997;

- (4) Whereas a new generation of innovative systems needs to be developed for the provision of wireless wideband multimedia services, including Internet and other Internet Protocol (I/P) based services, for the provision of flexible and personalised services and for the support of high volume data rates, each combining the use of terrestrial fixed and mobile as well as satellite components; whereas this Decision will apply to satellite components without prejudice to European Parliament and Council Decision 710/97/EC of 24 March 1997 on a coordinated authorisation approach in the field of satellite personal-communication services in the Community ⁽⁵⁾; whereas there is a need to ensure rapid market access for seamless, global coverage and low cost and innovative service offering through a sufficient level of competition;
- (5) Whereas in 1992 the International Telecommunications Union (ITU) World Administrative Radio Conference (WARC 92) identified the frequency spectrum for the development of both the satellite and terrestrial parts of the Future Public Land Mobile Telecommunications System (FPLMTS), later renamed IMT-2000; whereas, according to ITU Resolution 212 and to the World Radiocommunications Conference in 1995 (WRC 95), the initial implementation of the terrestrial element should take place around the year 2000;

⁽¹⁾ OJ C 131, 29. 4. 1998, p. 9 and OJ C 276, 4. 9. 1998, p. 4.

⁽²⁾ OJ C 214, 10. 7. 1998, p. 92.

⁽³⁾ Opinion delivered on 16 September 1998 (OJ C 373, 2. 12. 1998).

⁽⁴⁾ Opinion of the European Parliament of 18 June 1998 (OJ C 210, 6. 7. 1998), Council Common Position of 24 September 1998 (OJ C 333, 30. 10. 1998, p. 56) and European Parliament Decision of 18 November 1998 (OJ C 379, 7. 12. 1998). Council Decision of 30 November 1998.

⁽⁵⁾ OJ L 105, 23. 4. 1997, p. 4.

- (6) Whereas the concept of Universal Mobile Telecommunications System (UMTS) in the Community needs to be compatible with the third-generation mobile system concept called International Mobile Telecommunications-2000 (IMT 2000) developed by the ITU at world level on the basis of ITU Resolution 212;
- (7) Whereas mobile and wireless communications are of strategic importance both for the development of the Community telecommunications industry and the information society as well as for the economy and employment in the Community as a whole; whereas on 3 December 1997 the Commission adopted a Green Paper on the convergence of the telecommunications, media and information technology sectors, and the implications for regulation; whereas on the basis of the consultations resulting from that Green Paper, the Commission will take into consideration the impact of convergence on UMTS considering, in particular, the review of Community telecommunications regulation by 1999;
- (8) Whereas in order to create a favourable climate for investment and deployment of UMTS and to allow the development of Community-wide as well as pan-European and global services with the widest possible territorial coverage, early and specific action at Community level is necessary; whereas Member States should allow the rapid and coordinated introduction of compatible UMTS networks and services in the Community on the basis of internal market principles and pursuant to European standards for UMTS approved or developed by the European Telecommunications Standards Institute (ETSI), where available, including in particular a common, open and internationally competitive air-interface standard; whereas diverging national laws, regulations and administrative action would hinder or prevent the provision of Community-wide and global UMTS services and the free movement of related equipment;
- (9) Whereas Community legislation, including the competition rules, apply to this sector, in particular: Commission Directive 96/2/EC of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and personal communications⁽¹⁾, Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets⁽²⁾, European Parliament and Council Directive 97/13/EC of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services⁽³⁾, European Parliament and Council Directive 97/33/EC of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP)⁽⁴⁾ and European Parliament and Council Directive 97/66/EC of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector⁽⁵⁾; whereas the list of conditions which may be attached to authorisations for UMTS pursuant to Directive 97/13/EC is without prejudice to measures taken by Member States in accordance with public interest requirements recognised by the Treaty, in particular Articles 36 and 56, especially in relation to public security including the investigation of criminal activities;
- (10) Whereas organisations providing UMTS networks or services over those networks should be able to enter the market without unnecessary constraints or excessive fees to allow for a dynamic market and a broad competitive service offering;
- (11) Whereas pursuant to Community law, in particular European Parliament and Council Directive 97/13/EC and Commission Directive 96/2/EC: firstly, individual licences should be limited to the establishment and/or the operation of UMTS networks, secondly, the number of UMTS licences may be limited only for reasons of demonstrated lack of frequency spectrum capacity and thirdly, licences should be granted on the basis of objective, non-discriminatory, detailed and proportionate criteria, regardless of whether or not individual applicants for licences are existing operators of other systems;
- (12) Whereas licences should allow, and Member States should encourage, transnational roaming in order to secure Community-wide and pan-European services; whereas there should be cooperation with the European Conference of Postal and Telecommunications Administrations (CEPT) through the European Committee for Telecommunications Regulatory Affairs (ECTRA) for UMTS; whereas in particular mandates may be issued when necessary, to establish a one-stop shopping procedure for services;

⁽¹⁾ OJ L 20, 26. 1. 1996, p. 59.

⁽²⁾ OJ L 74, 22. 3. 1996, p. 13.

⁽³⁾ OJ L 117, 7. 5. 1997, p. 15.

⁽⁴⁾ OJ L 199, 26. 7. 1997, p. 32.

⁽⁵⁾ OJ L 24, 30. 1. 1998, p. 1.

- (13) Whereas the amount of spectrum made available will have a direct impact on how competitive the market will be; whereas estimated demand should therefore be taken into account when determining the amount of spectrum to be allocated; whereas sufficient spectrum must be allocated and cleared sufficiently in advance to foster a broad competitive offering of mobile multimedia services;
- (14) Whereas spectrum allocation is most efficiently pursued in the context of the CEPT by the European Radiocommunications Committee (ERC); whereas it should be ensured that appropriate and timely regulatory measures are taken to achieve the implementation in the Community of ERC decisions if necessary; whereas Member States should be encouraged to provide the Commission with regular information as to the implementation of ERC measures; whereas complementary Community action may be required to ensure the timely implementation of CEPT decisions within Member States;
- (15) Whereas sufficient spectrum will be necessary to foster the development of a market with a broad competitive offering of mobile multimedia services; whereas on 30 June 1997 the ERC adopted Decision ERC/DEC/(97)07 on the frequency bands for the introduction of UMTS which entered into force on 1 October 1997;
- (16) Whereas this ERC decision has designated the frequency bands 1900-1980 MHz, 2100-2205 MHz and 2110-2170 MHz to terrestrial UMTS applications, and accommodates UMTS satellite component applications within the bands 1980-2010 MHz and 2170-2200 MHz; whereas sufficient spectrum must be allocated within the bands identified by WARC 92 according to the increasing needs for this spectrum before UMTS services are commercially deployed; whereas additional frequency spectrum may become necessary within a few years;
- (17) Whereas at ITU level the review of spectrum and regulatory issues relating to UMTS and the facilitation of multimode terminal operation and worldwide roaming of IMT-2000 have been included in the next WRC agenda in order to identify additional frequency spectrum to satisfy market demand by 2005 to 2010; whereas therefore European common positions need to be developed and promoted at global level with the participation of all parties interested;
- (18) Whereas spectrum availability and appropriate pricing, coverage and quality will be essential aspects to the success of UMTS development; whereas any spectrum pricing method should not adversely impact on the competitive structure of the market, and respect the public interest, while ensuring efficient use of the spectrum as a valuable resource;
- (19) Whereas specific cooperation among operators may be necessary to provide coverage of less-populated areas; whereas this Decision does not prevent Member States from imposing appropriate forms of national roaming between authorised operators on their territory to the extent needed to ensure balanced and non-discriminatory competition;
- (20) Whereas a proposal was presented by the Commission for a Council and European Parliament Directive on connected telecommunications equipment and the mutual recognition of the conformity of equipment to replace European Parliament and Council Directive 98/13/EC of 12 February 1998 relating to telecommunications terminal equipment and satellite earth station equipment, including the mutual recognition of their conformity⁽¹⁾; whereas appropriate harmonised standards developed by ETSI and recognised under Directive 98/13/EC will ensure free movement of terminal equipment including for UMTS;
- (21) Whereas the second generation cellular digital mobile communications systems were originally defined in Council Directive 87/372/EEC of 25 June 1987 on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community⁽²⁾ as operating in the 900 MHz bands; whereas DCS-1800 has to be considered as part of the GSM family and of such second generation; whereas the Community should build on the success of the current generation of mobile digital technology including GSM both in Europe and in the world, taking into consideration interworking between UMTS and second-generation systems; whereas there should be, pursuant to Community law, no discrimination between GSM operators and new entrants in UMTS markets; whereas UMTS should develop in one seamless environment including full roaming with GSM as well as between the terrestrial and satellite components of UMTS networks, which is likely to make hybrid terminals such as dual mode/band GSM/UMTS terminals and terrestrial/satellite terminals necessary;

⁽¹⁾ OJ L 74, 12. 3. 1998, p. 1.

⁽²⁾ OJ L 196, 17. 7. 1987, p. 85.

- (22) Whereas it is important for UMTS networks to provide secure and reliable communications and ensure high level security, including protection against fraudulent use, at least commensurate with that of second-generation mobile communications;
- (23) Whereas UMTS aims at a global market; whereas a common European UMTS standard should be adopted and proposed as a member of the 'IMT 2000 family concept' developed by the ITU in order to increase the chances of UMTS being adopted in markets outside Europe; whereas the deadlines set by the ITU therefore need to be met within the Community and the final ITU technical requirements to be taken into account;
- (24) Whereas while voluntary application of standards remains the general rule, recourse to mandatory standards may be required for interfaces and situations where necessary to ensure interoperability and facilitate roaming of mobile networks and services; whereas harmonised standards are adopted by standardisation bodies such as ETSI, which facilitates regulatory action;
- (25) Whereas in 1995 the Commission granted to ETSI a general standardisation mandate related to UMTS pursuant to Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁾ and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of information technology and telecommunications⁽²⁾, and may issue further mandates in the future;
- (26) Whereas social and societal effects should be taken into account in the transition towards the wireless information society; whereas development of UMTS and relevant standards should be coordinated with related efforts, such as the development of a Community-wide information society, support of training on UMTS related technologies, access for elderly and disabled persons and research into the possible health hazards of mobile communications;
- (27) Whereas Community undertakings should benefit fully from international trade agreements such as agreements signed within the World Trade Organisation (WTO), including those relating to tariffs, such as in the Information Technology Agreement, and from the Istanbul Convention on the elimination of customs duties on personal effects and professional equipment and have effective market access under the specific terms and conditions, including national treatment, binding on the member countries of the WTO; whereas the Commission may take all necessary actions to implement international agreements; whereas these may need to be supplemented by specific bilateral or multilateral agreements and negotiations which the Commission may start on the basis of mandates from the Council;
- (28) Whereas in implementing this Decision, the Commission should be assisted by the Licensing Committee established by Directive 97/13/EC; whereas in implementing this Decision the Commission, assisted by the committee, should cooperate closely with relevant outside bodies,

HAVE ADOPTED THIS DECISION:

Article 1

Purpose

The aim of this Decision shall be to facilitate the rapid and coordinated introduction of compatible UMTS networks and services in the Community on the basis of internal market principles and in accordance with commercial demand.

Article 2

Definition

For the purpose of this Decision, 'Universal mobile telecommunications system (UMTS)' shall mean a third-generation mobile and wireless communications system capable of supporting in particular innovative multimedia services, beyond the capability of second generation systems such as GSM, and capable of combining the use of terrestrial and satellite components. This system shall at least be capable of supporting the characteristics referred to in Annex I.

⁽¹⁾ OJ L 109, 26. 4. 1983, p. 8. Directive replaced by Directive 98/34/EC (OJ L 204, 21. 7. 1998, p. 37).

⁽²⁾ OJ L 36, 7. 2. 1987, p. 31.

*Article 3***Coordinated authorisation approach**

1. Member States shall take all actions necessary in order to allow, in accordance with Article 1 of Directive 97/13/EC, the coordinated and progressive introduction of the UMTS services on their territory by 1 January 2002 at the latest and in particular shall establish an authorisation system for UMTS no later than 1 January 2000.

2. Member States shall be granted on request an additional implementation period of up to 12 months beyond the dates referred to in paragraph 1 for establishing an authorisation system and the introduction of UMTS services, to the extent justifiable by exceptional technical difficulties in achieving the necessary adjustments in their frequency plan. Such a request must be filed before 1 January 2000. The Commission shall assess such requests and take a reasoned decision within a period of three months. Any information provided shall be made available to any interested party on demand having regard to legitimate interests in the protection of business and security secrets.

3. When preparing and applying their authorisation systems, Member States shall ensure, in compliance with Community legislation, that the provision of UMTS is organised:

- in frequency bands which are harmonised by CEPT in accordance with the procedure laid down in Article 5,
- pursuant to European standards for UMTS approved or developed by ETSI, where available, including in particular a common, open and internationally competitive air-interface standard. Member States shall ensure that licences allow transnational roaming in the Community.

4. Given that, in line with efficient use of radio frequencies, it may be necessary to limit the number of UMTS systems authorised in Member States, if it is established in accordance with the procedure laid down in Article 17 of Directive 97/13/EC and in conjunction with CEPT, that potential types of systems are incompatible, Member States shall coordinate their approach with a view to authorising compatible types of UMTS systems in the Community.

*Article 4***Roaming rights and obligations**

1. Member States shall encourage organisations providing UMTS networks to negotiate among themselves cross-border roaming agreements to ensure seamless Community-wide service coverage.

2. Member States may where necessary take action, in accordance with Community law, to ensure the coverage of less-populated areas.

*Article 5***Cooperation with CEPT**

1. The Commission shall, in accordance with the procedure laid down in Article 16 of Directive 97/13/EC give CEPT/ERC and CEPT/ECTRA mandates, *inter alia*, to harmonise frequency use. Those mandates shall define the tasks to be performed and lay down a timetable.

2. The timetable for the first mandates is that 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 17 of Directive 97/13/EC whether the result of the work done pursuant to the mandates shall be made applicable in the Community.

4. Notwithstanding paragraph 3, if the Commission or any Member State considers that work done pursuant to the mandate given to the CEPT/ECTRA or CEPT/ERC is not progressing satisfactorily having regard to the timetable laid down, it may refer the matter to the Licensing Committee, which shall act in accordance with the procedure laid down in Article 17 of Directive 97/13/EC.

*Article 6***Cooperation with ETSI**

The Commission shall take all necessary measures, where appropriate in cooperation with ETSI, to promote a common and open standard for the provision of compatible UMTS services throughout Europe, in accordance with market requirements, taking into account the need to present a common standard to the ITU as an option for the worldwide ITU IMT 2000 recommendation.

*Article 7***The committee**

In the implementation of this Decision the Commission shall be assisted by the Licensing Committee set up by Article 14 of Directive 97/13/EC.

*Article 8***Exchange of information**

1. The Commission shall regularly inform the committee of the outcome of consultations with the representatives of organisations providing telecommunications services or networks, users, consumers, manufacturers 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 authorisation of UMTS services.

*Article 9***International aspects**

1. The Commission shall take all necessary measures to facilitate the introduction of UMTS services and the free circulation of UMTS equipment in third countries.
2. For this purpose, the Commission shall seek the implementation of international agreements applicable to UMTS, and shall, in particular and where necessary, submit proposals to the Council for appropriate mandates for the negotiation of bilateral and multilateral agreements with third countries and international organisations. The Council shall decide by qualified majority.
3. Measures taken pursuant to this Article 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**

The provisions of Article 20 of Directive 97/13/EC shall apply to information pursuant to this Decision.

*Article 12***Report**

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

*Article 13***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 14***Duration**

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

*Article 15***Addressees**

This Decision is addressed to the Member States.

Done at Brussels, 14 December 1998.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

W. MOLTERER

*ANNEX I***CHARACTERISTICS WHICH UMTS IS TO BE CAPABLE OF SUPPORTING***System capabilities needed to accommodate service features*

1. Multimedia capability; full mobility and low mobility applications in different geographical environments beyond the capability of the second-generation systems such as GSM.
2. Efficient access to the Internet, Intranets and other Internet Protocol (I/P) based services.
3. High-quality speech transmission commensurate with that of fixed networks.
4. Service portability across distinct UMTS environments where appropriate (e.g. public/private/business; fixed/mobile).
5. Operation in one seamless environment including full roaming with GSM as well as between the terrestrial and satellite components of UMTS networks.

Radio access networks

- new terrestrial air interface for access to all services including to packet data based services, supporting asymmetric traffic and allowing for band width/data rate on demand in harmonised frequency bands,
- good overall spectral efficiency including the use of paired and unpaired frequency.

Core network

- call handling, service control and location and mobility management including full roaming functionality based on an evolution of existing core network systems, for example on an evolved GSM core network, taking the convergence between mobile/fixed networks into account.

*ANNEX II***TIMETABLE**

From February 1999 issue mandates to CEPT on further spectrum allocation including availability of additional spectrum beyond WARC-92 FPLMTS bands for UMTS.

From February 1999 issue mandates to CEPT to establish one-stop-shopping procedure for services where necessary.
