

COMMISSION DECISION

of 10 October 2011

on modalities for coordinated application of the rules on enforcement with regard to mobile satellite services (MSS) pursuant to Article 9(3) of Decision No 626/2008/EC of the European Parliament and of the Council*(notified under document C(2011) 7001)***(Text with EEA relevance)**

(2011/667/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (MSS) ⁽¹⁾, and in particular Article 9(3) thereof,

Whereas:

- (1) Decision No 626/2008/EC aims to facilitate the development of a competitive internal market for MSS across the Union and to ensure gradual coverage in all Member States by the operators selected to provide these services.
- (2) In particular, it creates a procedure for the common selection of operators of mobile satellite systems that use the 2 GHz frequency band, comprising radio spectrum from 1 980 to 2 010 MHz for earth to space communications, and from 2 170 to 2 200 MHz for space to earth communications.
- (3) Commission Decision 2009/449/EC of 13 May 2009 on the selection of operators of pan-European systems providing mobile satellite services (MSS) ⁽²⁾ lists the selected operators and corresponding frequencies.
- (4) In accordance with Article 7(1) of Decision No 626/2008/EC Member States should ensure that the selected applicants have the right to use the specific radio frequency identified in Decision 2009/449/EC and the right to operate a mobile satellite system according to the time-frame and in the service area to which the selected applicants have committed themselves.
- (5) The rights to use the specific radio frequency and to operate a mobile satellite system are subject to common conditions laid down in Article 7(2) of Decision No 626/2008/EC. In particular the selected operators must use the assigned radio spectrum for the

provision of MSS, they must have met milestones six to nine set out in the Annex to this latter Decision by 13 May 2011 and they must honour any commitments they gave in their applications.

- (6) Monitoring of compliance with these common conditions and enforcement should be undertaken at national level, including the final assessment of any breach of common conditions.
- (7) National rules on enforcement should be in accordance with Union law, in particular Article 10 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services ⁽³⁾.
- (8) The cross-border nature of the common conditions provided for in Article 7(2) of Decision No 626/2008/EC requires coordination at Union level of the national procedures leading to enforcement by Member States. Inconsistencies in the application of national enforcement procedures, in particular regarding the investigation, the timing and the nature of any measures taken, would result in a patchwork of enforcement measures in contradiction to the pan-European nature of MSS.
- (9) This Decision should not cover enforcement of purely national conditions nor apply to enforcement measures concerning conditions other than common conditions referred to in Article 7(2) of Decision No 626/2008/EC. In view of the essentially national dimension of any specific conditions in relation to complementary ground components of mobile satellite systems, enforcement of common conditions referred to in Article 8(3) of Decision No 626/2008/EC should not be included in the scope of this Decision.
- (10) In order to ensure compliance with the common conditions embedded in the general authorisation and/or the rights to use the frequencies granted, enforcement measures may be adopted, pursuant to Article 10 of Directive 2002/20/EC, by Member States that authorised the selected operators.

⁽¹⁾ OJ L 172, 2.7.2008, p. 15.⁽²⁾ OJ L 149, 12.6.2009, p. 65.⁽³⁾ OJ L 108, 24.4.2002, p. 21.

- (11) Article 10 of Directive 2002/20/EC provides for a graduated approach to enforcement, envisaging a first phase where the alleged breach is investigated and measures aimed at ensuring compliance are adopted, if applicable. In accordance with Article 10(3) of Directive 2002/20/EC, such measures should stipulate a reasonable period for the operator to comply with the measure. In general, the determination of a reasonable time to comply should take into account the specific nature of the satellite industry, of the breach concerned, and of the remedy envisaged. In particular, where the launch of a satellite would be necessary to achieve compliance with any of the common conditions concerned, measures adopted may provide for a roadmap including intermediate steps and corresponding time limits. A second phase triggered by the failure to address serious and repeated breaches can then lead to withdrawal of the rights of use.
- (12) This Decision should be without prejudice to the power of the relevant national authorities to adopt interim measures, subject to the conditions provided for in Article 10(6) of Directive 2002/20/EC.
- (13) Notifications to the Commission of any findings made by authorising Member States in accordance with this Decision are without prejudice to the possibility for any Member State to submit written observations in view of discussions at the Communications Committee.
- (14) While the common conditions provided for in Article 7(2) of Decision No 626/2008/EC form an integral part of the national legal framework regulating the activity of the authorised operators, the monitoring of compliance in each Member State, and in particular the analysis of the facts underlying any alleged breach of those common conditions, requires knowledge of all the factual elements of a cross-border nature and effects, and may require information on the provision of the service in other Member States. Sharing the findings of the various competent national authorities and the views stated by the authorised operators concerned would help achieve more consistent and effective enforcement throughout the Union. In addition, a coordinated timescale for enforcement should increase legal certainty for the authorised operators concerned.
- (15) In accordance with Article 10(5) of Directive 2002/20/EC a prohibition to provide the services and the suspension or withdrawal of the right to use the specific radio frequency may be decided in cases of serious or repeated breaches where measures aimed at ensuring compliance within a reasonable period of time have failed. In the specific case of the provision of MSS, the decision to withdraw or suspend the rights of use has relevant cross-border effects. Moreover, depending on the national procedure, appropriate measures leading to the definitive withdrawal of the authorisation might be

needed, such as suspension. Therefore withdrawal or suspension measures should be adopted only after the views of Member States have been shared and discussed within the Communications Committee.

- (16) Since the objective of this Decision, namely to define the modalities for the coordinated application, across the European Union, of the rules on enforcement of the common conditions attached to the authorisation to provide MSS services and/or the right to use the selected frequencies, cannot be sufficiently achieved by Member States alone and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective.
- (17) The measures provided for in this Decision are in accordance with the opinion of the Communications Committee,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter, objective and scope

1. This Decision lays down the modalities for the coordinated application of Member States' rules on enforcement applicable to an authorised operator of mobile satellite systems in the event of an alleged breach of the common conditions attached to its authorisation.
2. Taking into account the cross-border nature of MSS, coordination with the assistance of the Communications Committee shall aim in particular at facilitating a common understanding of the facts underlying any alleged breach and its gravity, leading to consistent application of national enforcement rules across the European Union, including coordinated timing of any measures taken, in particular where breaches are similar in nature.
3. This Decision does not apply to enforcement measures concerning conditions other than the common conditions referred to in Article 7(2) of Decision No 626/2008/EC.

Article 2

Definitions

1. The definitions laid down in Decision No 626/2008/EC shall apply for the purposes of this Decision.

2. The following definitions shall also apply:

- ‘authorised operator’ shall mean an operator selected pursuant to Decision 2009/449/EC which has been granted the right under general authorisation or individual rights of use to use the specific radio frequencies identified in Decision 2009/449/EC and/or the right to operate a mobile satellite system,
- ‘common conditions’ shall mean the common conditions to which the rights of an authorised operator are subject in accordance with Article 7(2) of Decision No 626/2008/EC,
- ‘authorising Member State’ shall mean a Member State which has granted authorised operators rights under general authorisation or individual rights of use to use the specific radio frequencies identified in Decision 2009/449/EC and/or the right to operate a mobile satellite system.

Article 3

Coordination of enforcement of common conditions

1. Where an authorising Member State finds that an authorised operator does not comply with one or more of the common conditions and informs that operator of its findings pursuant to Article 10(2) of Directive 2002/20/EC, it shall at the same time inform the Commission which shall in turn inform the other Member States.
2. Following the transmission by the Commission to the Member States of the information as referred to in paragraph 1, the other authorising Member States shall investigate whether there is a breach of the relevant common conditions within their jurisdiction and give the authorised operator concerned the opportunity to state its views.
3. Within 5 months of the transmission by the Commission to the Member States of the information as referred to in paragraph 1, the authorising Member States shall notify a summary of their findings and of the views submitted by the authorised operator concerned to the Commission, which shall inform all the other Member States. Within 8 months from the transmission by the Commission to the Member States of the information as referred to in paragraph 1, the Commission shall convene a meeting of the Communications Committee in order to examine the alleged breach and, if applicable, to discuss any appropriate measures aimed at ensuring compliance, in line with the objectives referred to in Article 1(2).
4. Member States shall refrain from adopting any final decision on the alleged breach before the meeting of the Communications Committee as referred to in paragraph 3.
5. After the meeting of the Communications Committee as referred to in paragraph 3, each authorising Member State

which has notified the authorised operator concerned of its findings pursuant to Article 10(2) of Directive 2002/20/EC and concludes that one or more common conditions have been breached shall take appropriate and proportionate measures, including financial penalties, aimed at ensuring compliance by the authorised operator concerned with the common conditions, with the exception of withdrawal, or suspension if applicable in accordance with their national law, of any authorisation or right of use held by the authorised operator concerned.

6. In the event of serious or repeated breaches of the common conditions, any authorising Member State which after having taken the measures referred to in paragraph 5 intends to adopt a decision to withdraw the authorisation pursuant to Article 10(5) of Directive 2002/20/EC shall inform the Commission of its intention and provide a summary of any measure taken by the authorised operator concerned to comply with the enforcement measures. The Commission shall communicate this information to the other Member States.

7. Within 3 months of the transmission by the Commission to the Member States of the information as referred to in paragraph 6, a meeting of the Communications Committee shall be convened with the objective to coordinate any withdrawal of an authorisation in line with the objectives referred to in Article 1(2). In the meantime all authorising Member States shall refrain from adopting decisions entailing withdrawal, or suspension if applicable in accordance with their national law, of any authorisation or right of use held by the authorised operator concerned.

8. Following the meeting of the Communications Committee as referred to in paragraph 7, the authorising Member States may adopt appropriate decisions with a view to withdrawing the authorisation granted to the authorised operator concerned.

9. Any enforcement decision referred to in paragraphs 5 and 8 and the reasons on which it is based shall be communicated to the authorised operator concerned within 1 week from its adoption, as well as to the Commission, which shall inform the other Member States.

Article 4

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 10 October 2011.

For the Commission

Neelie KROES
Vice-President