

EXPLANATORY MEMORANDUM ON EUROPEAN UNION LEGISLATION

Commission Delegated Decision supplementing Decision No 1104/2011/EU of the European Parliament and of the Council as regards the Common Minimum Standards to be complied with by the Competent PRS Authorities.

Submitted by the Department for Business, Innovation and Skills on 27th October 2015

SUBJECT MATTER

1. Galileo is the EU's satellite navigation system. It is under construction and is due to be fully operational in 2020. It will offer four services, one of which is the Public Regulated Service (PRS). This is a restricted service for government-authorised users, such as law enforcement, similar to the GPS military signal. The signal is encrypted, which means it is difficult to fake.
2. To maintain the security of PRS, authorised users must take certain actions to ensure that the encrypted signal is not compromised. Decision 1104/2011/EU therefore required the Commission to adopt a technical document, the Galileo Common Minimum Standards (CMS), to outline the minimum requirements to be adhered to. According to the Decision, this document is to be adopted as a Commission Delegated Act.
3. The main text of the Delegated Decision is 'Limité' i.e. for limited distribution. Given its sensitive content we are unable to share the document with the Committees for reasons of national security. For these reasons, the Commission has decided not to publish the Delegated Act once adopted. There is no intention to make this document public. This EM only sets out the non-sensitive elements.

SCRUTINY HISTORY

4. The proposal that resulted in Decision No 1104/2011/EU was the subject of EM 14701/10 submitted by the Department for Transport on 4 November 2010. The House of Commons European Scrutiny Committee considered the EM on 17 November 2010. The Committee recommended that the document was politically important and did not clear it pending further developments (Report 8, Session 2010/2011, 32068). On 13 January 2011 a Ministerial letter was sent to the Chair providing an interim account of progress. The Committee considered this on 19 January 2011, maintained its recommendation that the document was politically important and held it under scrutiny (Report 14, Session 2011/2012). A further Ministerial letter was sent to the Chair on 15 February 2011. The Committee considered the letter on 16 February 2011, together with EM 5530/11 submitted on 15 February 2011 on the Commission's Report on the Mid-term review of the European satellite radio navigation programmes. The Committee recommended that both documents were politically important and should be

debated (Report 19, Session 2010/2011). The proposal was cleared from scrutiny following a debate in Standing Committee on 21 March 2011.

5. The House of Lords Select committee on the European Union referred the EM to Sub-Committee B at the 1407th sif on 15 November 2010. On 14 December 2010 the Chair wrote to the Minister, requesting further information and holding the proposal under scrutiny. On 13 January 2011 a Ministerial letter was sent to the Chair providing an interim account of progress. The Chair replied on 26 January 2011 requesting further information and holding the proposal under scrutiny. A further Ministerial letter was sent to the Chair on 15 February 2011. The Chair replied on 15 March 2011 requesting further information on costs. This was provided in a letter of 21 March 2011 to the Chair, who replied on 30 March 2011, clearing the document from scrutiny.

MINISTERIAL RESPONSIBILITY

6. The Secretary of State for BIS is primarily responsible for space policy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

7. Space policy is a reserved matter. The devolved administrations have not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

8. The Commission has adopted the Common Minimum Standards Delegated Decision. The Council and European Parliament have the possibility to object to its adoption.

i) Legal Basis

The legal basis is Article 290 TFEU and Article 8(2) of Decision No 1104/2011/EU of the European Parliament and of the Council.

ii) European Parliament Procedure

The European Parliament will scrutinise this document (albeit in a controlled environment given its sensitive nature) and has two months from the date of Commission adoption to object, extendable by a further two months if requested. The European Parliament acts by majority of its component members as regards any objection.

iii) Voting Procedure

Any objection in Council to the Commission Delegated Decision would need to be adopted on the basis of qualified majority voting.

iv) Impact on UK law

There is no impact on UK law.

v) Gibraltar

The Delegated Decision may apply to Gibraltar

vi) Fundamental Rights Analysis

No fundamental rights are engaged.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

9. The Commission's Delegated Decision is only applicable to those members of the European Economic Area that request access to the PRS, via a third-country access negotiation.

SUBSIDIARITY

10. The Commission Delegated Decision results from a programme run at EU level and the action is necessary at EU level.

POLICY IMPLICATIONS

11. The text contains the technical detail required to deliver an encrypted service across Europe and ensure that a minimum level of security is maintained.
12. The adoption of this text is an important pre-requisite both for UK industry to fully exploit Galileo PRS, and for the UK Government to access the PRS service.
13. The CMS will only apply to Member States and those who voluntarily wish to be bound by its provisions (manufacturers and users of PRS equipment). Due to the sensitive content, including details that could prejudice third country negotiations, the Commission has decided that the CMS will not be published in the Official Journal. Only those who have sought and received government authorisation to access the PRS, who will therefore be required to apply the standards, will be granted access to the parts of the text that will be relevant to them. The Commission considers the CMS to be unique and is clear that this does not set a precedent for future non-publication of Delegated Acts; it confirms this position in the preamble to the text. The Commission will notify the Act to Member States and it will take effect on notification in accordance with Article 297 TFEU. The Government was consulted and is content with this approach.

CONSULTATION

14. No consultations are planned.

IMPACT ASSESSMENT

15. It applies only to the Member States or those that voluntarily wish to be bound by its provisions. No impact assessment was produced.

FINANCIAL IMPLICATIONS

16. The UK wishes to be an active participant in PRS, both to benefit from this EU infrastructure and to ensure UK industry is at the forefront of exploiting this technology. The Government has therefore established a Competent PRS Authority to oversee UK use and manufacture of PRS-enabled technology. The cost of this function is already within the UK Space Agency baseline funding arrangement.

TIMETABLE

17. This Act will be discussed and agreed at the ECOFIN Council on 11 November.

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