

COMMISSION DECISION
of 11 June 2019
setting up the Radio Spectrum Policy Group and repealing Decision 2002/622/EC
(Text with EEA relevance)
(2019/C 196/08)

THE EUROPEAN COMMISSION,

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

Whereas:

- (1) Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community⁽¹⁾ establishes a legal framework for radio spectrum policy in the Union. This ensures that policy approaches are coordinated and, where appropriate, that there are harmonised conditions for the availability and efficient use of the radio spectrum necessary for the establishment and functioning of the internal market in Union policy areas such as electronic communications, transport and research and development.
- (2) Decision No 676/2002/EC provides that the Commission may organise consultations in order to take into account the views of Member States, Union institutions, and industry, as well as of all radio spectrum users involved (commercial and non-commercial), and other parties with an interest in technological, market and regulatory developments that may relate to the use of radio spectrum.
- (3) An advisory group called the Radio Spectrum Policy Group ('the Group') has been established by Commission Decision 2002/622/EC⁽²⁾ in order to assist and advise the Commission on radio spectrum policy issues. Those include radio spectrum availability, harmonisation and allocation of radio spectrum, provision of information concerning allocation, availability and use of radio spectrum, methods for granting rights to use spectrum, refarming, relocation, valuation and efficient use of radio spectrum and the protection of human health.
- (4) In December 2018, the European Parliament and Council adopted Directive (EU) 2018/1972⁽³⁾, which recast and revised the Union's regulatory framework for electronic communications, including conferring new tasks on the Group.
- (5) The Group should further contribute to the development of a radio spectrum policy in the Union that takes into account not only technical parameters but also economic, political, cultural, strategic, health and social considerations, as well as the various potentially conflicting needs of radio spectrum users with a view to ensuring that a fair, non-discriminatory and proportionate balance is achieved.
- (6) The Group should include high-level governmental experts from the Member States. The Group might also include observers and invite other persons to attend meetings as appropriate, including regulators, competition authorities, market participants, and user or consumer groups.
- (7) As the focal point for addressing radio spectrum policy issues in the context of all relevant Union policies, close operational links should be maintained between the Group and specific groups or committees set up for the purpose of implementing sectoral Union policies including transport policy, internal market policy for radio equipment, audiovisual policy, space policy, and communications.

⁽¹⁾ Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (OJ L 108, 24.4.2002, p. 1).

⁽²⁾ Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group (OJ L 198, 27.7.2002, p. 49).

⁽³⁾ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

- (8) While different national government bodies have responsibility over different parts of the radio spectrum, in order to ensure that discussions are effective, each national delegation that attends a meeting of the Group should have a consolidated and coordinated national view of all policies which affect the use of radio spectrum in that Member State in relation not only to the internal market but also to public order, public security, civil protection and defence policies as the use of radio spectrum for such policies may influence the organisation of radio spectrum as a whole.
- (9) The Group should consult the relevant radio spectrum users, both for commercial use and non-commercial use, as well as any other interested parties on technological, market and regulatory developments relating to the use of radio spectrum. The Group should ensure that those consultations are extensive and carried out in a forward-looking manner.
- (10) As the use of radio spectrum does not stop at borders, the Group should be opened to participation of observers from acceding countries and from European Economic Area countries.
- (11) The European Conference of Postal and Telecommunications administrations (CEPT) should be invited as an observer of the Group's work considering that the activities of the Group have a significant impact on radio spectrum at pan-European level and that CEPT and its affiliate bodies have extensive technical expertise in radio spectrum management. Drawing on CEPT's expertise is also appropriate based on mandates granted thereto pursuant to the Radio Spectrum Decision in order to develop technical implementing measures in the areas of radio spectrum allocation and information availability. In view of the importance of European standardisation for the development of equipment using radio spectrum, it is likewise important to associate as observer the European Telecommunications Standardisation Institute (ETSI).
- (12) Following the entry into force of Directive (EU) 2018/1972 and of Regulation (EU) 2018/1971 of the European Parliament and of the Council⁽⁴⁾, the tasks of the Group should be adapted to that new regulatory framework and the role of the Group should be strengthened accordingly. This should facilitate the shaping of Union spectrum policy in various areas of the European electronic communications market, in particular wireless broadband, further improve the strategic orientation and transparency of spectrum policy and support the strategic planning and coordination of radio spectrum policy approaches at the Union level.
- (13) In line with the new tasks conferred on the Group by Directive (EU) 2018/1972, the Group should provide advice to the European Parliament and to the Council upon their request on matters of radio spectrum. Furthermore, this decision should provide the basis for the Group to become the forum for the coordination of implementation by Member States of their obligations related to radio spectrum under that Directive, including through a peer review process, and to play a central role in fields essential for the internal market such as cross-border radio spectrum coordination and standardisation.
- (14) Considering the number of amendments that are necessary as a result of the entry into force of Directive (EU) 2018/1972, for the sake of clarity, Decision 2002/622/EC should be repealed and replaced.
- (15) Rules on disclosure of information by members of the group should also be laid down in line with Regulation (EC) No 1049/2001 of the European Parliament and of the Council⁽⁵⁾ and personal data should be processed in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council⁽⁶⁾.
- (16) This Decision should be in line with the horizontal rules defined by the Commission on the creation and operation of Commission expert groups⁽⁷⁾ in particular regarding membership of the group, observers, participation of invited experts and meeting expenses,

⁽⁴⁾ Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office) amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 (OJ L 321, 17.12.2018, p. 1).

⁽⁵⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

⁽⁶⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁽⁷⁾ Commission Decision of 30 May 2016 establishing horizontal rules on the creation and operation of Commission expert groups, C(2016)3301 final.

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

An advisory group on radio spectrum policy, called the Radio Spectrum Policy Group ('the Group'), is established.

Article 2

Tasks

- (1) The Group shall assist and advise the Commission:
 - (a) on strategic radio spectrum policy issues in the Union;
 - (b) on the coordination of radio spectrum policy approaches in the Union;
 - (c) by issuing opinions concerning legislative proposals for multiannual radio spectrum policy programmes and for the purpose of releasing harmonised spectrum for shared use or for use not subject to individual rights;
 - (d) by issuing opinions in relation to Commission recommendations regarding the harmonised application of the provisions of the regulatory framework for electronic communications in the field of radio spectrum, without prejudice to the role of the Body of European Regulators for Electronic Communications ('BEREC');
 - (e) on coordination and cooperation between the Commission, Member States and relevant competent authorities in relation to the implementation of existing radio spectrum Union legislation, programmes and policies;
 - (f) where appropriate, on harmonised conditions with regard to the availability and efficient use of radio spectrum, necessary for the establishment and functioning of the internal market.
- (2) The Group shall assist Member States in cooperating with each other and with the Commission and, upon their request with the Council and the European Parliament, in support of the strategic planning and coordination of radio spectrum policy approaches in the Union, by:
 - (a) developing best practices on radio spectrum related matters, with a view to implementing Union law;
 - (b) facilitating coordination between Member States with a view to implementing Union law and to contributing to the development of the internal market;
 - (c) coordinating Member States' approaches to the assignment and authorisation of radio spectrum use and publishing reports and opinions on radio spectrum related matters.
- (3) The Group shall assist Member States in the cross-border coordination of radio spectrum use to ensure that the use of radio spectrum on their territory is organised in a way that ensures that no other Member State is prevented from allowing the use of radio spectrum on its territory, in particular harmonised radio spectrum, in accordance with Union law, especially due to cross-border harmful interference between Member States.

For this purpose, at the request of any affected Member State, the Group shall provide its good offices to resolve any problem or dispute between Member States, as well as with third countries, in relation to cross-border coordination or cross-border harmful interference which prevent Member States from using radio spectrum in their territory.

As regards harmonised radio spectrum, the Group may issue an opinion to propose a coordinated solution to such a problem or dispute between Member States.
- (4) The Group shall assist the Commission in its preparatory work on proposals to the Council for the adoption of decisions in accordance with Article 218(9) of the Treaty on the Functioning of the European Union establishing the positions to be adopted on the Union's behalf in international organisations competent in radio spectrum matters.

(5) The Group may organise meetings to allow national regulatory or other competent authorities, upon their request, to discuss and exchange views and experiences relating to the authorisation processes and conditions of the use of radio spectrum.

(6) Without prejudice to paragraph 5, from 21 December 2020, the Group shall convene, for the purposes of Article 35 of Directive (EU) 2018/1972, peer review forum meetings in relation to radio spectrum for which harmonised conditions have been set by technical implementing measures in accordance with Decision 676/2002/EC in order to enable the use of radio spectrum for wireless broadband networks and services, at the request of the national regulatory authority or other competent authority of the Member State concerned or, in exceptional cases as referred to in Article 35(2) of the Code at the initiative of the Group.

Article 3

Membership

The members of the Group shall be Member States' authorities.

Each Member State shall appoint a high-level representative with overall responsibility for strategic radio spectrum policy.

The Commission shall participate in all meetings of the Group, at the appropriate level, and provide the secretariat to the Group.

Article 4

Operation

(1) At the Commission's request or on its own initiative, the Group shall adopt opinions and reports addressed to the Commission. The opinions and reports shall be based on consensus or, if that is not possible, on a simple majority, with each member having one vote. Members who have voted against shall have the right to have a statement summarising the reasons for their position annexed to the opinions or reports.

(2) Following a European Parliament or Council request for an opinion or a report of the Group on radio spectrum policy issues relating to electronic communications, the Group shall adopt such an opinion or report in accordance with the rules set out in paragraph 1. The Group shall submit its opinion and report to the institution that requested it and to the Commission. Where appropriate, the opinion or report may be in the form of an oral presentation to the European Parliament or the Council by the chairperson of the Group or a member nominated by the Group.

(3) The Group shall elect a chairperson from among its members. The Commission may set up sub-groups for the purpose of examining specific questions based on terms of reference defined by the Commission. Sub-groups shall operate in compliance with the horizontal rules defined by the Commission on the creation and operation of Commission expert groups⁽⁸⁾ and shall report to the Group. The sub-groups shall be dissolved as soon as their mandate is fulfilled.

(4) The Commission may convene the meetings of the Group on any matter within its competence through the secretariat in agreement with the chairperson. The Commission shall do so where necessary for the application of Article 2(2) of this Decision.

(5) The Group shall adopt its rules of procedure upon a proposal from the Commission, by consensus or, in the absence of consensus, by a simple majority vote, with one vote expressed per Member State. The rules of procedure shall be subject to the approval of the Commission.

(6) The Group may invite observers, including those from European Economic Area countries and those countries that are candidates for accession to the Union, from the CEPT and ETSI to attend its meetings; it may also hear experts and interested parties. The observers shall nominate their representatives. The observers and their representatives may be permitted by the chairperson to take part in discussions and share their expertise. However, the observers shall not have voting rights and shall not participate in the formulation of the Group's recommendations or advice. Where the Group considers it appropriate to collect evidence in preparing an opinion or a report, it may invite relevant representatives from the industry to present positions at its meetings.

(7) Where the Group considers it appropriate, it may invite experts from national regulatory or other competent authorities and from BEREC to participate in its meetings.

⁽⁸⁾ Commission Decision of 30 May 2016 establishing horizontal rules on the creation and operation of Commission expert groups, C(2016)3301 final.

For the purposes of Article 35 of Directive (EU) 2018/1972, the Group shall allow the participation of experts from national regulatory or other competent authorities referred to by Directive (EU) 2018/1972 and from BEREC.

Subject to detailed rules to be agreed with BEREC and with the Commission, the Group shall allow BEREC to participate in its activities on issues relating to market regulation and competition related to radio spectrum that fall within BEREC competence.

Article 5

Relationship with the European Parliament

Without prejudice to Articles 2 and 4, as regards information to be transmitted to the European Parliament and participation of European Parliament experts in the meetings of the Group, point 15, Annex I and Annex II of the Framework Agreement on relations between the European Parliament and the European Commission⁽⁹⁾ shall apply.

Article 6

Consultation

The Group shall consult extensively and at an early stage with market participants, consumers and end-users in an open and transparent manner.

Article 7

Confidentiality

Where the Commission states that the opinion requested or the question raised is of a confidential nature, members of the Group as well as observers and any other person attending a Group meeting shall be under an obligation not to disclose information which has come to their knowledge through the work of the Group, its subgroups or expert working groups. In such cases, the Commission may decide that members of the Group only may attend meetings.

Article 8

Professional secrecy and handling of classified information

The members of the group and their representatives, as well as invited experts and observers, are subject to the obligation of professional secrecy, which by virtue of the Treaties and the rules implementing them applies to all members of the institutions and their staff, as well as to the Commission's rules on security regarding the protection of Union classified information, laid down in Commission Decisions (EU, Euratom) 2015/443⁽¹⁰⁾ and (EU, Euratom) 2015/444⁽¹¹⁾. Should they fail to respect these obligations, the Commission may take all appropriate measures.

Article 9

Transparency

- (1) The group and sub-groups shall be registered in the Register of expert groups.
- (2) As concerns the group composition, the following data shall be published on the Register of expert groups:
 - (a) the name of observers;
 - (b) the name of Member States' authorities;
 - (c) the name of third countries' authorities.

⁽⁹⁾ OJ L 304, 20.11.2010, p. 47.

⁽¹⁰⁾ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

⁽¹¹⁾ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

(3) All relevant documents, including the agendas, the minutes and the participants' submissions, shall be made available either on the Register of expert groups or via a link from the Register to a dedicated website, where this information can be found. Access to dedicated websites shall not be submitted to user registration or any other restriction. In particular, the agenda and other relevant background documents shall be published in due time ahead of the meeting, followed by timely publication of minutes. Exceptions to publication shall only be foreseen where it is deemed that disclosure of a document would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) No 1049/2001.

(4) In agreement with the Commission, the Group may, by simple majority of its members, decide that deliberations shall be public.

Article 10

Meeting expenses

(1) Participants in the activities of the Group and sub-groups shall not be remunerated for the services they offer.

(2) For the meetings of the Group, the reimbursement of travel expenses by the Commission is limited to one person per Member State delegation. Travel expenses of observers and experts or other interested parties covered by Article 4(6) shall not be reimbursed by the Commission, nor expenses involved where the Group, its Chairperson or his representatives meet interested parties.

(3) The costs involved in the organisation of meetings of the Group shall be covered by the Commission in so far as such meetings take place in Brussels. For meetings of the Group held outside Brussels in the European Union, only travel expenses shall be covered by the Commission.

(4) The Commission may order external studies to support the work of the Group. In this case, the Commission shall have the right to decide on the need for the study, shall cover the costs involved and shall be responsible for the management of such studies.

(5) The costs involved in the establishment and maintenance of the Group's website shall be covered by the Commission.

Article 11

Repeal

Decision 2002/622/EC is repealed.

Done at Brussels, 11 June 2019.

For the Commission

Mariya GABRIEL

Member of the Commission
