

ARTICLE 12 - MECHANISM FOR ECC DECISIONS

12.1 INTRODUCTION

- 12.1.1 Decisions should be the outcome of any decision making process on matters of significant harmonisation in the electronic communications regulatory field, within the context of the long term ECC strategy and policy. The over-riding policy on Decisions should be to maintain their credibility, to use them only when there is a need for significant harmonisation, and to develop and write them in as flexible a way as possible so as to include as many of the Members administrations as possible in their implementation, whilst maintaining the necessary level of harmonisation. Decisions should neither impose nor discriminate in favour of the use of a particular type of technology, although this does not preclude the taking of proportionate steps to promote certain specific services where this is justified.
- 12.1.2 Decisions that "designate" a frequency band for a harmonised application are intended to foster the deployment of an application to meet a market demand in a harmonised manner throughout CEPT. Members implementing the Decision commit themselves to make spectrum available for this harmonised application which includes assessing when and where there is a demand for the harmonised service/application and deciding whether that demand is great enough to exclude other services and applications from the harmonised band. Such Decisions shall not inhibit radiocommunication equipment meeting different standards from operating in an identified frequency band provided it offers the same spectrum use and application as specified in a Decision for the band and is placed on the market in conformity with the essential requirements i.e. it makes effective use of the spectrum allocated to terrestrial/space radio communications so as to avoid harmful interference.
- 12.1.3 Decisions should include a preferred date of implementation or, when necessary, a definite date of implementation. Where a definitive date of implementation is included, a derogation for countries with particular difficulties may be agreed in the form of a footnote listing these countries and giving an agreed later date of implementation in their case.
- 12.1.4 There are four main elements to the Decision making mechanism: development and approval, commitment and implementation, amendment, and withdrawal.

12.2 DEVELOPMENT AND APPROVAL

- 12.2.1 The Plenary shall decide whether a new item of work should lead to a Decision or other deliverable. There should be a minimum of five Members¹ supporting a proposal for the development of a draft Decision before the Plenary approve its development. The Plenary should also consider evidence that the measures will address significant harmonisation matters.
- In exceptional cases, Working Groups may begin work on a draft Decision, pending approval by the Plenary at its next meeting.

¹ Including the Administration initiating the proposal

- 12.2.2 The Plenary may review its approval at any time during the development of the draft Decision, in particular taking account of any difficulties reported to it by the responsible entity.
- 12.2.3 Where more than one entity is involved, before work is started, the Plenary shall appoint the lead entity.
- 12.2.4 The responsible entity developing a draft Decision should seek advice with regard to the regulatory consistency and enforceability of the draft Decision, as described in the Working Methods document.
- 12.2.5 Proposals for draft Decisions shall follow the standard format, and shall include a date for entry into force.
- 12.2.5bis The responsible entity is expected to liaise with ETSI to inform it of the draft ECC Decision² asking for comments.
- 12.2.6 A draft Decision agreed by the responsible entity for Public Consultation shall be notified to Members by the Office using e-mail. A copy of the draft shall either be attached to the e-mail and/or shall be placed within the special section of the consultation area of the CEPT website for downloading by members, as advised in the e-mail. Providing no objections to proceed to Public Consultation are received by the Office from any Member within two weeks of this notification, the draft Decision is considered to be approved for Public Consultation to be carried out during a minimum period of six weeks. If such an objection is received, the draft Decision shall be placed on the agenda of the next Plenary for decision on Public Consultation.
- 12.2.7 In cases where the Plenary approves draft Decisions for Public Consultation this will proceed without the notification referred to in 12.2.6.
- 12.2.8 Proposals for draft Decisions shall be placed in the meeting documents area of the CEPT website at least two weeks prior to the Plenary meeting at which they will be considered.
- 12.2.9 The Plenary will only consider proposed draft Decisions which are referenced on the draft agenda for the meeting.
- 12.2.10 The Plenary shall be informed of the names of any Members of the responsible entity which opposed the draft. The reason for opposition should be given.
- 12.2.11 The Plenary shall approve by consensus a draft text for Public Consultation to be carried out during a minimum period of six weeks. In cases where there is no consensus the voting procedure in accordance with Article 12.2.15 shall be applied.
- 12.2.12 The draft Decision will be published in the consultation area of the CEPT website specifying the deadline for comments and their recipient.
- 12.2.13 If the schedule of meetings allows, the responsible entity shall consider the results of the Public Consultation and shall present proposals to the Plenary on how to incorporate any adopted new element resulting from it into the draft Decision. If the schedule of meetings

² On spectrum matters

does not allow this procedure the Chairman of the responsible entity shall present the results of the Public Consultation directly to the Plenary.

12.2.14 The Plenary shall consider the results of the Public Consultation together with the proposals from the responsible entity, or its Chairman, when approving the draft ECC Decision.

12.2.15 The Plenary shall approve draft Decisions where possible by consensus. Exceptionally, where this is not possible and to avoid a weakening of the text the following voting procedure shall be applied:

a vote in accordance with Article 14, except that the votes shall also be weighted in accordance with the contributory share class specified in Article 21 of the CEPT Rules of Procedure. The Decision shall be approved providing a simple majority of votes cast, totalling two thirds or more of the weighted votes, are in favour.

12.2.16 The Decision shall be included as an annex to the Minutes of the meeting at which it was approved and published by the Office in the documentation area of the CEPT website normally within two weeks following the last day of the Plenary.

12.3 COMMITMENT AND IMPLEMENTATION

12.3.1 The Chairman shall, immediately following the approval of a Decision, ask how many Members intend to implement the Decision. Members attending the meeting who can not implement the Decision should specify the reasons for such, which will be included in the Minutes of the Meeting.

12.3.2 Members having implemented a Decision shall inform the Office, including on which national implementation measure has been used. The names of the Members that have implemented a Decision accompanied by the national implementation measures will be published in the documentation area of the CEPT website.

12.3.3 The national implementation measures shall, if practicable, contain a reference to the Decision. This reference could be made for example as a footnote to the national frequency table.

12.3.4 Members may commit themselves to Decisions at any time. The list of the Members that have implemented the Decisions or committed themselves to them will be updated regularly by the Office and published in the documentation area of the CEPT website. This information should be: "Yes", if implemented; "Committed"; or "No", if not implemented. The first response shall be accompanied by a reference to the national measures implementing the Decision, the second may include the intended date of implementation, and the last response could be qualified by information on any parts of the Decision that have been implemented.

12.3.5 Members may withdraw their commitment in the case of prevailing legislation and shall inform the Office accordingly.

12.4 REVIEW

12.4.1 Each Decision shall be reviewed³ on a regular basis, but not later than every five years. The start of the review of a Decision shall be decided by the responsible entity and the review should take account of an initial assessment made by the Office, and any other relevant information. As a consequence of this review the Plenary shall decide whether to maintain, amend or withdraw the Decision.

12.4.2 The criteria for reviewing ECC Decisions shall be agreed by the Plenary.

12.5 AMENDMENT⁴

12.5.1 The Plenary should decide whether or not a process to amend a Decision should start.

12.5.2 With the exception of amendments in accordance with Article 12.5.3, the development and approval of amended Decisions shall follow the provisions of Article 12.2.

12.5.3 Amendments of editorial nature, that is, amendments relating to the correction of editorial errors, such as typographical errors or errors in calculations or any other similar oversight as well as updates of factual information, e.g. references to standards, provided that these corrections or updates do not impact on the original decides of the Decision, would not require Public Consultation.

12.5.3bis Also national information included in a Decision, typically in annexes/appendices, may be updated by means of communication between the country in question and the Office, without Public Consultation. The latest date of update of national information is to be identified at the bottom of the relevant page, stating "Edition of < date >".

12.5.4 In justified cases, where there would be severe difficulties in implementing the amended Decision, a derogation for Members which have implemented the existing Decision may be incorporated in the amended Decision, in order to allow an extended period for its implementation.

12.5.5 On the approval of the amended Decision, the previous version of the Decision is automatically withdrawn. The ECC plenary decides whether the commitment for implementation by Members according to article 12.3 with regard to the previous version of the Decision continues to be in force or will be reset.

12.5.6 Unless agreed otherwise, the reference number shall remain unchanged, but the new version shall have a reference next to the title, stating "Amended < date >".

12.5.6bis For amended Decisions in accordance with Article 12.5.3, the reference number shall remain unchanged, but the new version shall have a reference next to the title, stating "Corrected < date >" or "Updated < date >" depending upon the nature of the amendments.

12.5.7 In the case where an error⁵ in an approved Decision is identified the Plenary may provisionally approve a corrigendum for final approval at its following meeting providing there is no objection. This corrigendum shall be notified to Members by the Office using

³ The Decisions withdrawing other Decisions shall not be subject to review

⁴ These provisions are also applicable to ERC and ECTRA Decisions

⁵ With the exception of editorial errors which are corrected in accordance with Article 12.5.3.

e-mail. Corrected Decisions shall be published in the documentation area of the CEPT website keeping their original numbers followed by the date of correction.

12.5.8 In case an EC Decision is published, which for the EU Member States, Iceland, Liechtenstein and Norway, overrides the contents of an ECC Decision, the ECC may decide to:

- either include a statement in its ECC Decision, following the title of the Decision, reading as follows:
“Comparable technical specifications to those given in this ECC Decision are given in EC Decision no. {<year>/no./EC}. EU Member States and, if so approved by the EEA Joint Committee, Iceland, Liechtenstein and Norway are obliged to implement the EC Decision.”
- or amend its ECC Decision accordingly Article 12.5.6 applies.

12.5.9 In case an ECC Decision makes additional provisions to an existing ECC Decision which has a direct correspondence with EC Decisions, the following statement shall be included after the title of such an ECC Decision:

“For EU Member States, Iceland, Liechtenstein and Norway, this Decision is without prejudice to provisions in EC Decision {<year>/no/EC} containing comparable technical specifications to those given in ECC Decision {ECC/DEC/(xx)YY} referenced in this Decision. EU Member States and, if so approved by the EEA Joint Committee, Iceland, Liechtenstein and Norway are obliged to implement the EC Decision.”
Article 12.5.6 applies.

12.6 WITHDRAWAL⁶

12.6.1 For withdrawal of a Decision the procedures given in either 12.6.2 or 12.6.3 shall be followed.

12.6.2 If a Decision is to be withdrawn because it is outdated and not superseded by a new Decision, a new Decision withdrawing the said Decision shall be developed in accordance with Article 12.2. Such withdrawing Decision may withdraw one or more approved Decisions and shall follow the format specified in the Working Methods document.

12.6.3 If the Decision is to be withdrawn because it is superseded by a new Decision, withdrawal shall be reflected as one of the *Decides* of the new Decision.

12.6.4 A withdrawn Decision shall be kept in the documentation area of the CEPT website with the following note: “*Withdrawn - Replaced by ECC/DEC(XX)YY on dd/mm/yyyy*”, where (XX)YY refers to the reference number of the new Decision that withdrew or superseded the old Decision

⁶ These provisions are also applicable to ERC and ECTRA Decisions