



CONSULTATION PAPER

Future Regulation of Electronic Communications Networks and Services

Rights of Use for Radio Frequencies

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Foreword

This document is the latest in a series of consultations on the future framework for authorisations under the new EU Directives for electronic communications and services. Specifically, this consultation relates to “rights of use” for radio frequencies under the new framework.

The new Directives encompass an innovative framework for spectrum licensing which will replace the current regime which was established in the Wireless Telegraphy (WT) Act of 1926. In broad terms many of the conditions that may be attached to rights of use are similar to those that are currently included in WT licences – the key difference is that the focus in the new EU Directives is on a right to use radio frequencies rather than a right to use equipment. In addition, the new framework offers the flexibility to introduce new services and technologies far more rapidly than under the current legislation.

The new framework makes specific provisions relating to the process for granting and amending rights of use, the duration of rights, the holding of comparative selection procedures and international harmonisation. Each of these areas is addressed in this document.

The implementation of the new framework provides an excellent opportunity to review our approach to the regulation of radio spectrum, enhancing our ability to respond speedily and effectively to the evolving needs of industry and consumers. I look forward to reviewing the responses to the consultation.

Etain Doyle

Chairperson

Commission for Communications Regulation

1 Introduction

Under the Communications Regulation Act, 2002, the ODTR is replaced by the Commission for Communications Regulation (“ComReg”). ComReg is the national body responsible for the regulation of the telecommunications industry and is also the licensing authority for the use of civil radio spectrum in Ireland. Historically, these functions have been carried out by the application of Statutory Instrument 96 of 1998, the European Communities (Telecommunications Licences) Regulations, which amends the Postal and Telecommunications Services Act 1983 and the Wireless Telegraphy Acts 1926 - 1988 (the WT Acts).

On 24th April 2002, the European Union (EU) Communications Regulatory Package was published in the Official Journal of the European Communities (OJEC), volume L 108. This package is a set of new legislative measures which will have a significant impact on how electronic communications networks and services are regulated in all EU Member States. The package includes four Directives and a Decision relating to various aspects of communications regulation, namely:

- i) Directive 2002/21/EC, on a common regulatory framework for electronic communications networks and services (the *Framework Directive*)
- ii) Directive 2002/20/EC, on the authorisation of electronic communications networks and services (the *Authorisation Directive*)
- iii) Directive 2002/19/EC, on access to, and interconnection of, electronic communications networks and associated facilities (the *Access Directive*)
- iv) Directive 2002/22/EC, on universal service and users’ rights relating to electronic communications networks and services (the *Universal Service Directive*)
- v) Decision 676/2002/EC, on a regulatory framework for radio spectrum policy in the European Union (the *Radio Spectrum Decision*).

These documents may be downloaded from the OJEC web site at http://europa.eu.int/eur-lex/en/archive/2002/l_10820020424en.html

This legislation must be applied in Member States from July 25th 2003 and has a somewhat broader scope than the existing Licensing Directive, as it includes not

only telecommunications services but all electronic communications networks and services, including broadcast networks. The EU Directives will replace the Licensing Directive and the corresponding national regulations (SI 96 of 1998), and also establishes a new framework for the way in which radio spectrum is licensed and regulated in Ireland.

This document addresses the implications of the Directives for the future regulation of the radio spectrum. In particular, the consultation will:

- describe how the use of spectrum is currently regulated in Ireland;
- highlight the provisions of the new EU framework relating to the use of radio spectrum; and
- consult on how best to embrace this new philosophy in Ireland.

Specific issues such as the concept of a “right of use for radio frequencies”, approaches to the granting of rights of use for spectrum, the conditions that may be attached to rights of use and how they may be enforced are also addressed.

Other aspects of the new EU framework, some of which also have implications for users of radio spectrum, have been addressed in previous ODTR consultations and the policy on spectrum management generally is set out in document [ODTR 02/43](#) “Strategic Management of the Radio Spectrum in Ireland”. Readers should also refer to the following consultation documents and responses relating to the Future Regulation of Electronic Communications Networks and Services:

- [ODTR 02/22](#) - Consultation on Future Authorisations (general approach)
- [ODTR 02/51](#) – Response to Consultation on Future Authorisations
- [ODTR 02/72](#) – Consultation on General Authorisation Conditions
- [ODTR 02/102](#) – Consultation on Charging Principles for Authorisations and Rights of Use
- ComReg 02/114 - Future Regulation of Electronic Communications Networks and Services – General Authorisation Conditions

All documents are available on the ComReg web site.

Two key differences between current legislation and the new EU Directives are a shift in emphasis from rights to use apparatus to rights to use radio frequencies and

the inclusion of commitments arising from comparative selection procedures in the right of use for radio frequencies rather than an individual telecommunications licence. The implications of these changes are addressed in this consultation.

ComReg considers that the new framework for spectrum rights, as envisaged by the new EU Directives, creates an opportunity for developing a regulatory regime which will provide substantial benefits to the telecommunications industry and will assist in a more flexible approach to radio licensing which is capable of responding rapidly to industry demands and developments in new technologies. In particular it would:

- facilitate a technologically neutral approach to assigning rights of use;
- enable a more flexible and rapid response by ComReg to requests for the introduction of new technologies;
- provide users with greater freedom in choice of technology and systems.

Consequently, it would be helpful if the regulations that are used to transpose the new framework into Irish law are not constrained by existing primary legislation. Transposition is a matter for the Minister of Communications, Marine and Natural Resources. The Minister has published draft regulations for comment on the Departments website. These draft regulations are based on applying the existing WT legislation to the new EU framework. In responding to that consultation, ComReg intends to outline how it would be possible to more fully embrace the new spectrum right of use framework to gain the maximum benefit for spectrum users and consumers.

In advance of decisions on the form of transposition, for the purposes of this consultation the working assumption is that the ComReg's responsibilities and powers will remain broadly as at present, supplemented by specific mandatory provisions of the Directives. This paper is based on the assumption in the draft transposition regulations that the measures in the Directives concerning rights of use for radio frequencies will be implemented under the existing WT Acts.

2 Responding to the Consultation

The consultation period will run from 19th December 2002 to 14th February 2003. Written comments should be marked “Response to ComReg Consultation Paper on Rights of Use for Radio Frequencies” and submitted either electronically or in hard copy before 5.00 p.m. on 14th February 2003, to:

Ms Sinead Devey
Commission for Communications Regulation
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1
E-mail: sinead.devey@comreg.ie

All comments are welcome, and should reference the relevant question numbers from this document (for convenience a summary list of the questions is presented in section 5).

ComReg expects to publish a report on this consultation. If there are elements of any response that are commercially confidential, then it is essential that these be clearly identified and placed in a separate annex to the main document. They will then be treated in confidence. ComReg regrets that it will not be possible to enter into correspondence with those supplying comments.

This document is without prejudice to the legal position or the rights and duties of ComReg to regulate the market generally. Any views expressed are not binding and are without prejudice to the final form and content of any decisions which ComReg may make.

3 Review of current situation and summary of the new EU regime

3.1 Scope of the current radio spectrum licensing framework in Ireland

Under current legislation, possession, installation and use of radio equipment requires an individual licence, unless the equipment is specifically exempt from licensing. Regulations for licensing or exemptions from licensing are issued under Sections 5 or 6 of the WT Act 1926, respectively. ComReg currently has responsibility for the development of such regulations which take the form of either statutory Instruments (S.I.s) or exemption orders. Statutory instruments require the approval of the Minister for Communications, Marine and Natural Resources, and also in certain cases, the Minister for Finance. The development of S.I.s can be cumbersome and generally takes a number of months to finalise.

An exemption order describes the radio equipment which is exempt from the requirement for an individual licence. The equipment description normally contains limiting parameters such as the operational frequency band, the bandwidth and the maximum permissible power. Exemption orders are generally used to cover radio equipment where the requirement for an individual licence would be inappropriate, such as short range devices, cordless and mobile telephones. Recent licence exemptions include fixed wireless access systems operating in the 2.4 GHz and 5.8 GHz bands. Work is ongoing to identify further opportunities to exempt specific equipment or services from licensing and ComReg will continue to implement such exemptions, where appropriate.

Licence exemptions are the exception rather than the rule and in most cases an individual licence is required to operate equipment in order to prevent harmful interference that might otherwise arise and adversely affect the operation of radio systems. Individual licences are required for, example, private mobile radio (PMR), fixed links, most transmitting satellite earth stations, broadcast transmission networks, marine and aeronautical radio and most public telecommunication networks using radio spectrum.

In most cases, licences are issued on a first come, first served basis, following a standard application process. Where spectrum is limited and is required to provide

services of significant economic value or strategic national importance, formal comparative selection procedures are used to ensure that licences are awarded to those who are likely to use the spectrum in the most efficient and effective manner. These procedures, sometimes referred to as “beauty contests” have been used by the ODTR for the licensing of national public mobile and fixed wireless access services (the GSM, 3G and FWPMA national licences). In each case the comparative evaluation process has been preceded by an extensive consultation process. This process puts an emphasis on the development of infrastructure, in line with Government policy in this regard.

For services that are not subject to comparative selection procedures, the amount of information required in the application varies from licence type to licence type, depending on the nature of the radio service. The information provided is used to ensure that the most appropriate radio channels are assigned to each applicant, and to ensure the efficient and effective use of radio spectrum resources. The application process can be as short as 3-5 days and for most services is completed within 2-3 weeks, depending on the level of information supplied by the applicant, the payment of all fees due, and the complexity of the application. If international co-ordination is required, or it is necessary to prepare new regulations to licence the service, the application will take longer.

ComReg provides extensive information on the application procedures, fees, charges and conditions relating to most licences on its web site. A spectrum strategy document has also been issued, following extensive public consultation, providing information on all aspects of spectrum management and licensing within a single document.

Individual licences contain details which are unique to each licence. These details include the conditions under which the radio equipment may operate, such as location, area of operation, radiated power, frequency and any other conditions which are required to ensure the effective and efficient use of the spectrum. Administrative details such as the name and address of the licensee, the intended use of the equipment and the duration of the licence are also included. Amendments to licences may be made from time to time at the discretion of ComReg. Where such changes do not impact on the market, the public or other third parties, they only require the consent of ComReg,

Currently, most individual licences granted by ComReg are renewable on an annual basis. This approach means that spectrum cannot be hoarded by licensees who are no longer using it, and provides an effective tool for ensuring the optimal use of the radio spectrum.

However, during previous consultations on radio spectrum, it was noted that some users expressed a preference for longer licences to match the duration of their investments¹. This is already the case in some EU countries, such as Denmark and the Netherlands where most spectrum licences are valid for five years. ComReg, in its spectrum Strategy document (ODTR 02/43), has already indicated an intention to review current licence durations to bring them in line with investment cycles. This review is likely to take place next year.

Under certain circumstances e.g. where there is a change of ownership or control of the licence holder, some types of licence may be transferred with the consent of ComReg. This is to ensure that no adverse effect on competition in the provision of electronic networks or services would result from any such change, and to ensure that the efficient and effective use of frequencies is not compromised. ComReg considers that this is an appropriate balance between the interests of licence holders and those of consumers.

In cases where radio equipment is used to provide telecommunications networks or services to the public, a basic or general telecommunications licence is also required in addition to the appropriate radio authorisation. These telecommunications licences are issued under Section 111 of the Postal and Telecommunications Services Act, 1983, as amended.

Annex 1 of this document includes a table of the main categories of wireless telegraphy licences issued by ComReg, a list of licensing exemption orders and a list of the main documents relating to spectrum strategy, regulation and licensing.

3.2 Summary of new EU regime relating to rights of use for radio frequencies

The new EU regulatory framework is intended to create a common approach in Europe for regulating all electronic communication networks and services. This framework will cover not only the provision of electronic communication networks and services to third parties, but also the establishment and operation of electronic

communications networks. This expands on the previous EU Directives which excluded the provision of Broadcast services and networks and also the establishment of private communications networks. It also lays down specific rules relating to the right to use radio frequencies. For the first time, all those who use radio as an internal communications aid such as taxi companies, courier companies, delivery services, the emergency services etc. and also those involved in broadcast transmission and distribution will be regulated under EU law. This means that most existing WT licensees will not only be subject to an individual “right of use” for radio frequencies but will also be subject to the conditions of a general authorisation. The issue of general authorisations has been discussed in a separate consultation (document [ODTR 02/72](#) and the response to that consultation ComReg 02/114).

The new framework includes specific provisions relating to the use of radio spectrum. In particular, the Authorisation Directive makes provision for individual “rights of use” for radio frequencies to be granted, particularly where there is a risk of harmful interference, and for appropriate usage fees to be applied. Where the risk of harmful interference is negligible, the use of radio frequencies should be governed by a general authorisation rather than individual rights of use.

There are also specific provisions relating to the procedures for granting and amending rights of use, the timescales associated with such procedures, and the fees that may be applied to holders of general authorisations and rights of use. Fees are the subject of a separate ComReg consultation (see document [ODTR 02/102](#)) and are not therefore addressed by this document. The main provisions relating to rights of use for radio frequencies under the new EU framework are summarised in Annex 2 to this document.

¹Document 01/06, “ODTR Radio Spectrum Management - Planning for the Future”

4 Implications for the national regulatory regime for radio spectrum in Ireland arising from the new EU framework

4.1 Introduction

The new EU regulatory framework for electronic communications and services makes specific provisions in relation to radio spectrum. In particular, the concept of a “right of use” for radio frequencies is established, which will essentially replace the role of individual licences currently issued under the Wireless Telegraphy Acts 1926 – 1988 (the WT Acts). As a result, there are a number of key areas where the approach to spectrum regulation in Ireland will be affected by the new framework, namely:

- i) the scope of the new framework,
- ii) conditions that may be attached to rights of use,
- iii) processes and procedures for granting rights of use,
- iv) amendments to rights of use and transfer between undertakings, and
- v) international harmonisation, enforcement and compliance

These are discussed in the following sections.

4.2 Scope of the new Framework

The Authorisation Directive applies to the granting of rights of use for radio frequencies where such rights are used for the provision of an electronic communications network or service. This provision also applies where a network is used solely for own use. Use of non-exclusive spectrum for non-commercial applications such as CB or amateur radio is not addressed, but such uses will continue to be subject to the requirements of the current legislation

A key objective of the new framework is to eliminate, where possible, the need for individual rights of use and to minimise the restrictions associated with those rights of use. Furthermore, rights of use should not be restricted except where this is unavoidable in view of the scarcity of radio frequencies and the need to ensure their efficient use. This largely reflects the existing national regime, whereby the preference is to exempt equipment from individual licensing where there is

negligible risk of harmful interference, then to use a first come, first served approach whenever possible. In view of this, ComReg considers that services that are currently subject to an individual licence will under the new regime require an individual right of use for radio frequencies.

Question 1 *Do you agree with the principle that electronic communication networks and services that are currently subject to individual licensing under the Current legislation should be subject to an individual right of use under the new licensing regime? If no, are there any specific services or equipment categories that you believe should not be subject to individual rights of use? Please provide supporting arguments.*

The extension of the new framework to include broadcast and non-public networks within the general authorisation and rights of use regime is not expected to have a major impact on the regulation of spectrum for these services, since they are already subject to licensing under the WT Acts. However, the requirement to apply a common regime to all networks and services has potential implications for the fees that are applied to rights of use, including those for broadcast and non-public networks. These are addressed in a separate consultation document (ODTR 02/102).

The current requirement under the WT Acts to license the use of radio apparatus places certain constraints on the licensing process. This requirement reduces the flexibility of the licensing regime and can delay the introduction of new services. In addition, it increases the administrative cost associated with licensing and also requires the frequent amendment of licences when radio stations are added or removed. ComReg therefore favours a move towards regulating the use of spectrum, and intends to pursue with the Department of Communications, Marine and Natural Resources how this might best be achieved from both a legislative and practical perspective.

Question 2. *Do you agree that in the future, spectrum management should place more emphasis on the right to use specific frequencies for a specific purpose and less on the right to install and use specific radio equipment?*

4.3 Conditions that may be attached to rights of use for radio frequencies

The conditions that may be attached to rights of use of radio frequencies are defined in broad terms in Annex B of the Authorisation Directive, which is reproduced below:

- i) Designation of service or type of network or technology for which the rights of use for the frequency has been granted, including, where applicable, the exclusive use of a frequency for the transmission of specific content or specific audio-visual services;
- ii) Effective and efficient use of frequencies in conformity with the Framework Directive, including, where appropriate, coverage requirements;
- iii) Technical and operational conditions necessary for the avoidance of harmful interference and for the limitation of exposure of the general public to electromagnetic fields, where such conditions are different from those included in the general authorisation;
- iv) Maximum duration in conformity with Article 5.2 of the Directive, subject to any changes in the national frequency plan;
- v) Transfer of rights at the initiative of the right holder and conditions for such transfer in conformity with the Framework Directive;
- vi) Usage fees in accordance with Article 13 of the Directive (see document, ODTR 02/102);
- vii) Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure;
- viii) Obligations under relevant international agreements relating to the use of frequencies;

With the exception of commitments arising from comparative selection procedures (item vii above), which are addressed in section 4.4.3 below, these conditions are similar to those attached to existing licences issued under current legislation. ComReg therefore considers that in most cases there will be no major revisions to the conditions attached to rights of use in the transition from the old to the new framework.

4.4 Process and Procedures for granting Rights of Use for radio frequencies

4.4.1 Introduction

The new framework has specific provisions relating to the processes and timescales for granting of rights of use for radio frequencies, duration of licences, and the specific requirements relating to the use of comparative selection procedures. There are also provisions relating to the information that NRAs must provide in respect of rights of use. Most of these provisions broadly reflect ComReg's existing approach, however the transition from individual telecommunications licences to general authorisations means that obligations arising from comparative selection procedures will in future have to be incorporated into rights of use for radio frequencies.

The following sections address the implications of the new framework for ComReg's approach to granting rights of use either on a first come first served or competitive basis, and the provision of information by ComReg relating to rights of use.

4.4.2 Granting rights on a "first come, first served" basis

Under the new framework², NRAs are entitled to require certain information from applicants for rights of use for radio frequencies, so long as this is proportionate and objectively justified, and that the applicant is informed of the specific purpose for which this information is to be used. Where such information is not provided, the application may be rejected.

The new framework³ also requires the NRA's decision on rights of use to be made known as soon as possible after receipt of the complete application, and within six weeks in the case of standard applications where no competitive selection procedure applies. A longer period may also be justified if international co-ordination is involved.

As this essentially reflects the current approach, ComReg does not consider that the new EU framework is likely to require any major change to the application processes or to the information required from applicants for specific services. Therefore the existing application forms and procedures relating to individual licences could, with appropriate modifications to accommodate specific requirements of the new

² Article 11 of the Authorisation Directive

framework as transposed into Irish law, continue to be applicable for individual rights of use granted under the new regime. However, in cases where the granting of a right of use for frequencies requires the development of new regulations under the WT Acts, a significantly longer timescale may be required.

ComReg would however welcome feedback on the current licensing processes and documentation, in particular any suggestions as to where improvements could be made.

***Question 3** Are you aware of any aspects of the existing licence application procedures (e.g. application forms) where improvements could be made? If so, please elaborate on the form such improvements might take.*

The new framework requires the duration of rights of use to be appropriate for the service concerned⁴. Currently most licences are subject to annual renewal and ComReg proposes that in the short term at least this should continue to be the case for individual rights of use. However, ComReg is committed to reviewing this approach (see ODTR 02/43) and a review is likely to take place next year.

4.4.3 Use of Comparative Selection Procedures

The new regulatory framework makes provision for the use of comparative selection procedures where access to limited spectrum resources is concerned and sets out a procedure that must be followed when determining whether the number of rights of use should be limited in this way⁵.

ComReg considers that the current application of comparative selection procedures to licensing services involving scarce resources in Ireland are broadly compliant with the requirements of the new EU framework and does not therefore propose any substantial changes to the current approach at this stage.

Where comparative selection procedures are held, successful applicants are currently awarded both a telecommunications licence and a radio licence. The telecommunications licence contains the voluntary offerings made by the applicant in tendering for the licences, e.g. coverage and rollout conditions, whereas the radio licence contains the conditions of use of the apparatus, including operational

³ Article 5.3 of the Authorisation Directive

⁴ Article 5.2 of the Authorisation Directive

⁵ Article 7 of the Framework Directive

frequencies. Telecommunications licences have a set duration as defined in the competition prospectus.

Under the new framework, telecommunications licences will be replaced by general authorisations, which are of indeterminate duration. Furthermore, the scope of the conditions that can be attached to a general authorisation does not extend to obligations arising from comparative selection procedure, since these procedures may only be used where a limited number of rights of use are involved. The precise scope of the conditions that may be attached to general authorisations and rights of use are addressed in the response to the previous ComReg consultation on general authorisation conditions (document ComReg 02/114). However, in general, commitments made in the course of comparative selection procedures that are currently contained in the telecommunications licence will instead need to be incorporated into the right of use for radio frequencies, which can be of a specific maximum duration. In effect operators will be subject to the rights and conditions of the authorisation for the duration of the right of use for radio frequencies.

***Question 4.** Do you agree that obligations arising from commitments made during comparative selection procedures will need to be included as conditions attached to the right of use?*

Currently, most WT licences are subject to annual renewal and ComReg proposes that in the short term at least this should continue to be the case for individual rights of use awarded following comparative selection procedures. This approach provides for regular reviews of the utilisation of the right of use, to ensure that conditions relating to efficient and effective use are being met. The maximum duration of the right of use, as originally specified in the competition, will continue to apply. As stated in the previous section, ComReg is committed to reviewing this approach (see ODTR 02/43) and a review is likely to take place next year.

4.4.4 Provision of Information on Rights of Use

The new framework⁶ requires Member States to ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning rights of use is published and kept up to date in an appropriate manner so as to provide easy access to that information for all interested parties. The requirement to publish

⁶ Article 15 of the Authorisation Directive

decisions on the granting of spectrum rights of use may be fulfilled by making these decisions publicly accessible via a website.

ComReg wishes to ensure that all relevant information required by applicants for, or holders of, rights of use for radio frequencies is readily available. Feedback is therefore invited on ComReg's current provision of information, along with any suggestions for further improvement.

***Question 5.** Is the information currently provided by ComReg in relation to licensing adequate?*

***Question 6.** Is there any further information that ComReg should make available?*

4.5 Amendment of Rights of Use and Transfer between undertakings

The new framework permits NRAs to amend rights, conditions, procedures, charges and fees relating to rights of use where this is objectively justified⁷. At least four weeks notice must be given (except in special circumstances) and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their views on the proposed amendments. There is no specific provision in the Directive for dealing with amendments that are made at the request of the holder of the right of use.

A requirement for public consultation for all amendments would mark a significant shift from the current situation. ComReg considers that it would be neither appropriate nor proportionate for minor changes to rights of use (e.g. a change in the number of radios) to be subject to public consultation. ComReg therefore proposes that changes to rights of use that do not impinge upon the market, the public or other third parties shall not be subject to public consultation. In this regard, it should be noted that the 'consultation and transparency mechanism' set out in Article 6 of the Framework Directive discusses public consultation only in the context of measures which have a significant impact on the 'relevant market'. Views are invited on this proposal and on the scope of amendments that should be subject to public consultation in accordance with Article 14 of the Directive.

⁷ Article 14 of the Authorisation Directive

Question 7. *Do you agree with the interpretation that it would not be appropriate or proportionate to require minor amendments to rights of use which do not impinge upon the public or other third parties to be subject to public consultation?*

Question 8. *Do you have a view on the type of amendment that should be subject to public consultation?*

Question 9. *Do you have any further comments with regard to the implications of Article 14 of the Authorisation Directive for holders of rights of use for radio frequencies?*

Question 10. *What do you feel is an appropriate notice period for substantive changes to the conditions attached to rights of use for radio frequencies (e.g. changes to frequencies or technical characteristics)?*

The new framework also makes provision, at Member States' discretion, for undertakings to transfer rights of use for radio frequencies with other undertakings⁸. ComReg considers that the current arrangement, where some licences may be transferred where there is a change of ownership or control of the licence holder, and subject to ComReg's consent is an appropriate balance between the interests of licence holders and those of consumers; therefore no changes to the current rules relating to the transfer of licensed undertakings are anticipated.

Question 11. *Do you agree that the current rules relating to transfer of Licences, as described in section 3.1, should be applied to rights of use for radio frequencies when the new EU framework is adopted?*

4.6 International Harmonisation, Enforcement and Compliance

4.6.1 European Harmonisation of Spectrum Use

Special provisions are contained in the Authorisation and Framework Directives and the Spectrum Policy Decision with regard to harmonised European use of radio spectrum. For example, Article 8 of the Authorisation Directive relates to the granting of rights of use for harmonised radio spectrum and constrains the imposition of further conditions, criteria or procedures which would adversely affect the common assignment of such spectrum.

⁸ Article 9.3 of the Framework Directive

Ireland has a strong track record of implementing European harmonisation measures, such as the implementation of GSM networks in the 900 MHz and 1,800 MHz frequencies, 3G, mobile as well as the exempting from licensing of services such as PMR 446 and a wide range of short range devices. It should be noted that in some cases the lead time for the introduction of harmonised services can be substantial, for example, spectrum was first identified for 3G mobile services over a decade ago, but services are only now being launched. In some such cases, it may be possible to use spectrum on an interim basis for other, non-harmonised applications, so long as this does not delay the eventual introduction of the harmonised service.

Occasionally, particular national requirements have been catered for by initiatives that are not based on European harmonisation measures. These include provision for MMDS services and more recently, licence-exempt fixed wireless access in the 5.8 GHz band. In such cases, use of the spectrum is subject to possible future changes as a result of longer-term European harmonisation measures.

Ireland will continue to play an active role in promoting European harmonisation where there are sound economic justifications, balancing this with further national initiatives where these provide particular benefits in the Irish context.

Question 12. *Do you have a view on how Ireland should approach the introduction of new services that require access to radio spectrum, in particular where there is the possibility of longer-term moves to harmonise the use of the spectrum concerned?*

Question 13. *How should spectrum that has been earmarked for future harmonisation be used in the interim period, prior to the launch of harmonised services which may be many years away?*

5 Summary of Consultation Questions

1. Do you agree with the principle that electronic communication networks and services that are currently subject to individual licensing under the Current legislation should be subject to an individual right of use under the new licensing regime? If no, are there any specific services or equipment categories that you believe should not be subject to individual rights of use? Please provide supporting arguments.
2. Do you agree that in the future, spectrum management should place more emphasis on the right to use specific frequencies for a specific purpose and less on the right to install and use specific radio equipment?
3. Are you aware of any aspects of the existing licence application procedures (e.g. application forms) where improvements could be made? If so, please elaborate on the form such improvements might take.
4. Do you agree that obligations arising from commitments made during comparative selection procedures will need to be included as conditions attached to the right of use?
5. Is the information currently provided by ComReg in relation to licensing adequate?
6. Is there any further information that ComReg should make available?
7. Do you agree with the interpretation that it would not be appropriate or proportionate to require minor amendments to rights of use which do not impinge upon the public or other third parties to be subject to public consultation?
8. Do you have a view on the type of amendment that should be subject to public consultation?
9. Do you have any further comments with regard to the implications of Article 14 of the Authorisation Directive for holders of rights of use for radio frequencies?
10. What do you feel is an appropriate notice period for substantive changes to the conditions attached to rights of use for radio frequencies (e.g. changes to frequencies or technical characteristics)?

11. Do you agree that the current rules relating to transfer of Licences, as described in section 3.1, should be applied to rights of use for radio frequencies when the new EU framework is adopted?
12. Do you have a view on how Ireland should approach the introduction of new services that require access to radio spectrum, in particular where there is the possibility of longer-term moves to harmonise the use of the spectrum concerned?
13. How should spectrum that has been earmarked for future harmonisation be used in the interim period, prior to the launch of harmonised services which may be many years away?

Annex 1: Current National Legislation relating to the licensing and exemption of radio equipment

Individual Licences

Service	Relevant Legislation
Business Radio	S.I. No. 320 of 1949
Community Repeaters	S.I. No. 83 of 1988.
Mobile Radio Systems	S.I. No. 435 of 2002
Fixed Links	S.I. No. 319 of 1992
Experimenters	No.450 of 2002
Aircraft Radio	1926 Act & others
Ships Radio	1926 Act
Satellites: VSAT TES LES Teleports	S.I. No. 261 of 2000 S.I. No. 18 of 2001
FWA	S.I. No. 287 of 1999 S.I. No.467 of 2002
GSM	S.I No. 442 of 1999
UMTS (3G)	S.I. No. 345 of 2002
Radio Communications Test	S.I. No. 320 of 1949 or S.I. No. 319 of 1992 (As appropriate)
Cable	S.I. 67 of 1974 & S.I. No. 73 of 1999
MMDS	S.I. No. 73 of 1999
Deflector	S.I. No. 73, 347 & 348 of 1999

List of Exemption Orders

- S.I. 211/1972:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of Sound Broadcasting Receivers) Order, 1972
- S.I. 200/1976:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of Certain Wired Broadcast relay Stations) Order, 1976
- S.I. 409/1997:** Wireless Telegraphy (Mobile Telephones) Exemption Order, 1997
- S.I. 410/1997:** Wireless Telegraphy (Cordless Telephones) Exemption Order, 1997
- S.I. 93/1998:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of Short Range Business Radios) Order, 1998
- S.I. 214/1998:** Wireless Telegraphy Act, 1926 (Section 3) (Exemption of Satellite Earth Stations for Satellite Personal Communication Services (S-PCS)) Order, 1998
- S.I. 436/1998:** Wireless Telegraphy Act, 1926 (section 3) Exemption of Citizen's Band (CB Radios) Order, 1998
- S.I. 100/1999:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of Inmarsat -D Terminals for Land Mobile Applications) Order, 1999*
- S.I. 101/1999:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of Inmarsat -C Terminals for Land Mobile Applications) Order, 1999*
- S.I. 102/1999:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of Inmarsat -M Terminals for Land Mobile Applications) Order, 1999*
- S.I. 103/1999:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of Omnitrac Terminals for the Euteltracs system) Order, 1999*
- S.I. 104/1999:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of (I) ARCANET Suitcase Terminals) Order, 1999*
- S.I. 105/1999:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of EMS - PRODAT Terminals for Land Mobile Applications) Order, 1999*
- S.I. 106/1999:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of EMS - MSSAT Terminals for Land Mobile Applications) Order, 1999*
- S.I. 107/1999:** Wireless Telegraphy Act, 1999 (section 3) (Exemption of DCS1800 Mobile Terminals) Order, 1999
- S.I. 108/1999:** Wireless Telegraphy Act, 1999 (section 3) (Exemption of ERMES Paging Receivers) Order, 1999

- S.I. 109/1999:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of Inmarsat Mini-M Terminals for Land Mobile Applications) Order, 1999*.
- S.I. 110/1999:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of (ii) ARCANET Suitcase Terminals) Order, 1999*.
- S.I. 173/2000:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of Mobile Earth Stations for Satellite Personal Communication Systems operating in bands below 1 GHz (S-PCS<1GHz)) Order, 2000.
- S.I. 398/2001:** Wireless Telegraphy Act, 1926 (section 3) (Exemption of certain classes of Land Mobile Earth Stations) Order, 2001
- S.I. 405/2002:** Wireless Telegraphy Act, 1926 (Section 3) (Exemption of Short Range Devices) Order, 2002

*Revoked by SI 398 of 2001

ODTR/ComReg Documents relating to Radio Spectrum Strategy and Licensing

Document Number	Document Title
02/114	Future Regulation of Electronic Communications Networks and Services – General Authorisation Conditions
02/102	Future Regulation of Electronic Communications Networks and Services - Charging Principles for Authorisations and Rights of Use
02/78	Part VI: Technical Conditions of Experimenter's Station - Amateur Radio Regulations
02/77R	Experimenter's Licence : part IV Particulars of Experimenters Station
02/72	Future Regulation of Electronic Communications Networks and Services - General Authorisation Conditions
02/71	Permitted Short Range Devices in Ireland
02/51	Future Regulation of Electronic Communications Networks and Services - Future Authorisations
02/49	Expanding Opportunities in the Radiocommunications Market: Fixed Wireless Access (FWA)
02/48	Response to request for comments From the Forum on Broadcasting - 2002
02/43	Strategic Management of the Radio Spectrum in Ireland
02/22	Future Regulation of Electronic Communications Networks and Services - Future Authorisations - Consultation Paper
02/19	Expanding Opportunities in the Radiocommunications Market: Fixed Wireless Access (FWA) - Consultation Paper
02/18	Notification of Proposed Amendment to Wireless Telegraphy (Programme Services Distribution) regulations 1999 - Information Notice
02/16	Wireless Local Area Networks - Briefing Note
02/13	Maritime Mobile Radio Station Licence - Application Form & Guidance Notes
02/12	Paging Permit (On-site)- Application Form
02/11	Point To Point Radio Link Licence Below 1 GHz - Application Form & Guidance Notes
02/10	Radio Experimenter Licence: Visitor Permit - Application Form
02/09	Radio Experimenter Licence: Repeater Operation - Application Form
02/08	Radio Experimenter Licence: Maritime Mobile Operation - Application Form
02/07	Radio Experimenter Licence: Secondary Bands* / Additional Modes (FSTV, SSTV, RTTY) Operation - Application Form
02/06	Radio Experimenter Licence: 6m Band (50 – 52 MHz) And/Or 4m Band (70.125 – 70.450 MHz) Operation - Application Form
02/05	Radio Experimenter Licence - Guidance Notes
02/04	Radio Experimenter Licence - Application Form
02/03	Community Repeater Licence - Application Form & Guidance Notes
02/02	Temporary Business Radio Licence - Application Form
02/01	Aircraft Radio Licence - Application Form
01/97	Licensing Regional or Locally Based Digital Television Delivery- Response to Consultation
01/96	Four Licences to Provide 3G Services in Ireland - Information Notice
01/90	Digital Audio Broadcasting Technical Conditions - annex to Information Notice
01/89	Digital Audio Broadcasting Technical Conditions - Information Notice
01/81	Strategic Management of the Radio Spectrum in Ireland - Draft Publication
01/71	New Opportunities in the radio communications market- Public Mobile Data and Automatic Vehicle Location/Tracking - Response to Consultation

01/70	New Opportunities in the Radiocommunications Market - Fixed Wireless Access (FWA) - Response to Consultation
01/69	Licencing Regional or Locally based Digital television Delivery - Consultation Paper
01/52	Licensing Digital Terrestrial Television (DTT) - Draft DTT Multiplex and Transmission Licences Regulations - Information Notice
01/50	Review of Licensing of Trunked On-Site and Local Area Business Radio in the 410-430 MHz Frequency Band - Response to the Consultation
01/44	New Opportunities in the radio communications market: Public Mobile Data and Automatic Vehicle Location/Tracking - Consultation Paper
01/43	New Opportunities in the Radiocommunications Market: Fixed Wireless Access (FWA) - Consultation Paper
01/33	Teleport Facility Licence In The Fixed Satellite Service In Spectrum Above 3GHz - Application form
01/32	Guidelines for Applications for a teleport facility licence in the fixed satellite service in spectrum above 3 GHz
01/31	ODTR Radio Spectrum Management - Planning for the Future - Response to the Consultation
01/25	Review of Licensing of Trunked On-Site and Local Area Business Radio in the 410-430 MHz Frequency Band - Consultation Paper
01/23	Table of Frequency Allocations for Ireland – April 2001
01/17	Licensing Digital Terrestrial Television - Response to the Consultation
01/07	A response to Department of Public Enterprise's Invitation to comment on Review of legislation relating to the licensing and use of the radio spectrum
01/06	Managing Spectrum Management - Planning for the Future - Consultation Paper
00/93	Guidelines for applicants for Point to Point Radio Link Licences in Spectrum Above 1 GHz - Reponse to the Consultation
00/92	Extending Choice - Opening the Market for Third Generation Mobile Services (3G Mobile) - Response to the Consultation
00/82	Competition for Award of Licences to provide Fixed Wireless Access (FWA) - Information Notice
00/81	Extending Choice...Expanding the choice for Fixed Wireless Access (FWA) - Response to the Consultation
00/76	Competition for Award of a National Tetra Public Access Mobile Radio Licence - Information Notice
00/69	Guidelines for point to point radio link licences in bands above 1 GHz - Consultation Paper
00/68	Licence Exempt Earth Stations
00/67R	Fixed Satellite Earth Station Licences in the Fixed Satellite Service in Spectrum Above 3GHz Transportable - Application Form
00/66	Fixed satellite earth station licences in the fixed satellite service in spectrum above 3GHz - VSAT - Application form
00/65R	Fixed Satellite Earth Station Licences in the Fixed Satellite Service in Spectrum Above 3GHz - Application Form
00/64	Guidelines for applicants for satellite earth station licences in the fixed satellite service in spectrum above 3 GHz
00/62R	Licensing Requirements for Radio Services
00/61	Information on the R& TTE Directive - Information Notice
00/54	Opening the Market for Terrestrial Trunked Radio (TETRA) - Response to the Consultation
00/52	Extending Choice - Opening the Market for Third Generation Mobile Services (3G Mobile) - Consultation Paper
00/48	Introduction of 3G in Ireland - Response to Consultation

00/47	Extending Choice Expanding the local market for FWA - Consultation Paper
00/39	Licence Details of Television Deflector Licensees
00/37	Pro-Forma Television Deflector Licence
00/29	Introduction of 3G Services in Ireland -Briefing note and request for views
00/24	Television Deflector Licensing Guidance Notes for Applicants - May 2000
00/23	Television Deflector Licensing May 2000 - Application Form
00/11	Extending Choice... Opening the market for Terrestrial Trunked Radio (TETRA) - Consultation Paper
00/07R	Business Radio Licence - Application Form & Guidance Notes
99/70	Pro-forma Mobile Licence Terms
99/65	Television Deflector Licensing - Guidance Notes for Applicants
99/64	Deflector Licensing - Application Form
99/57	Licensing Digital Terrestrial Television - Consultation Paper
99/55	Deflector Licensing - Response to the Consultation
99/49	Opening the market for Satellite Services - Response to the Consultation
99/44	MMDS TV Licences
99/32	Deflector Licensing - Consultation Paper
99/30	Selection of Appropriate Guard Interval for Irish Digital Terrestrial Television
99/28	Proposed Amendment to General Telecommunications Licence: Additional Provisions relating to the right to use Fixed Wireless Point to Multi-Point Access for the provision of Telecommunications Services - Information Notice
99/15	Licences for Radio Communications Tests - Guidance Note and Application Form
99/09	Opening the market for Satellite Services - Consultation Paper
99/07	Competition for Award of Licences to Provide Fixed Wireless Point to Multipoint Access - Information Notice
99/06	Competition for Fixed Wireless Point to Multipoint Access (FWPMA) Licences in Ireland - Tender Document
98/61	Extending Choice & Opening the market for Fixed Wireless Point to Multi-point Access Services - Response to Consultation
98/32	Opening the market for fixed wireless point to multi-point access services - Consultation Paper
98/20	The Future of TV Transmission in Ireland - The Way Forward
98/15R	Point to Point Radio Link Licences above 1 GHz - Application Form
98/14R	Guidelines for applicants for Point to Point Radio Link Licences in Spectrum Above 1 GHz - Guidance Notes
98/06	The Future Delivery of Television Services - NERA Report
98/02	Licencing radio links above 1 GHz - Consultation Paper
97/17	Third Mobile Licence Competition - Information Notice
97/03	Point to Point Radio Link Licence 1 GHz Stage 1 - Application Form <i>This document has been superseded by 98/15R</i>
97/02	Explanatory Notes for Applicants for Point to Point Radio Link Licences in Spectrum above 1 GHz <i>This document has been superseded by 98/14R2</i>
97/01	Competition for licences to Provide Digital Cellular System(s) at 1800 MHz (DCS-1800) In Ireland -Consultation Paper

Annex 2: Provisions in the new EU Framework relating to spectrum rights of use

1. Scope of Rights of Use

The key provision relating to spectrum rights of use under the new EU Framework is Article 5 of the Authorisation Directive, which is reproduced below:

- 1 Member States shall, where possible, in particular where the risk of harmful interference is negligible, not make the use of radio frequencies subject to the grant of individual rights of use but shall include the conditions for usage of such radio frequencies in the general authorisation.² Where it is necessary to grant individual rights of use for radio frequencies and numbers, Member States shall grant such rights, upon request, to any undertaking providing or using networks or services under the general authorisation, subject to the provisions of Articles 6, 7 and 11(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/EC (Framework Directive).
- 2 Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through open, transparent and non-discriminatory procedures. When granting rights of use, Member States shall specify whether those rights can be transferred at the initiative of the right holder, and under which conditions, in the case of radio frequencies, in accordance with Article 9 of Directive 2002/21/EC (Framework Directive).
- 3 Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned³ Decisions on rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within six weeks in the case of radio frequencies that have been allocated for specific purposes within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.

4 With regard to competitive or comparative selection procedures for radio frequencies Article 7 shall apply.

5 Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.

The terms “electronic communication network” and “electronic communications service” are defined in Article 2(a) and 2(c) respectively of the Framework Directive, as follows:

“electronic communications network means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed”

“electronic communications service means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but excludes services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks”

2. Restrictions on the Number of Rights of Use

Article 7 of the Authorisation Directive specifies a procedure for limiting the number of rights of use to be granted for radio frequencies, where this can be objectively and transparently justified in terms of a scarcity of spectrum resources:

1. Where a Member State is considering whether to limit the number of rights of use to be granted for radio frequencies, it shall, inter alia:

- (a) give due weight to the need to maximise benefits for users and to facilitate the development of competition;
- (b) give all interested parties, including users and consumers, the opportunity to express their views on any limitation in accordance with Article 6 of Directive 2002/21/EC (Framework Directive);
- (c) publish any decision to limit the granting of rights of use, stating the reasons therefor;
- (d) after having determined the procedure, invite applications for rights of use; and
- (e) review the limitation at reasonable intervals or at the reasonable request of affected undertakings.

2. Where a Member State concludes that further rights of use for radio frequencies can be granted, it shall publish that conclusion and invite applications for such rights.

3. Where the granting of rights of use for radio frequencies needs to be limited, Member States shall grant such rights on the basis of selection criteria which must be objective, transparent, non-discriminatory and proportionate. Any such selection criteria must give due weight to the achievement of the objectives of Article 8 of Directive 2002/21/EC (Framework Directive).

4. Where competitive or comparative selection procedures are to be used, Member States may extend the maximum period of six weeks referred to in Article 5(3) for as long as necessary to ensure that such procedures are fair, reasonable, open and transparent to all interested parties, but by no longer than eight months. These time limits shall be without prejudice to any applicable international agreements relating to the use of radio frequencies and satellite co-ordination.

5. This Article is without prejudice to the transfer of rights of use for radio frequencies in accordance with Article 9 of Directive 2002/21/EC (Framework Directive).

3. Requirements for Information from Applicants for Rights of Use

Article 11.1(c) of the Authorisation Directive (Information required under the general authorisation, for rights of use and for the specific obligations) allows NRAs to request information from applicants that is proportionate and objectively justified for assessment of requests for granting rights of use.

4. Amendments of Rights of Use

Article 14 of the Authorisation Directive covers amendments to conditions attached to rights of use, and states that:

“Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner. Notice shall be given in an appropriate manner of the intention to make such amendments and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their views on the proposed amendments, which shall be no less than four weeks except in exceptional circumstances.”

5. Compliance with Rights of Use

Article 10 of the Authorisation Directive defines the approach for ensuring compliance with the conditions attached to Rights of Use:

- 1 National regulatory authorities may require undertakings providing electronic communications networks or services covered by the general authorisation or enjoying rights of use for radio frequencies or numbers to provide information necessary to verify compliance with the conditions of the general authorisation or of rights of use or with the specific obligations referred to in Article 6(2), in accordance with Article 11.
- 2 Where a national regulatory authority finds that an undertaking does not comply with one or more of the conditions of the general authorisation, or of rights of use or with the specific obligations referred to in Article 6(2), it shall notify the undertaking of those findings and give the

undertaking a reasonable opportunity to state its views or remedy any breaches within:

- one month after notification, or
- a shorter period agreed by the undertaking or stipulated by the national regulatory authority in case of repeated breaches, or
- a longer period decided by the national regulatory authority.

- 3 If the undertaking concerned does not remedy the breaches within the period as referred to in paragraph 2, the relevant authority shall take appropriate and proportionate measures aimed at ensuring compliance. In this regard, Member States may empower the relevant authorities to impose financial penalties where appropriate. The measures and the reasons on which they are based shall be communicated to the undertaking concerned within one week of their adoption and shall stipulate a reasonable period for the undertaking to comply with the measure.
- 4 Notwithstanding the provisions of paragraphs 2 and 3, Member States may empower the relevant authority to impose financial penalties where appropriate on undertakings for failure to provide information in accordance with obligations imposed under Article 11(1)(a) or (b) of this Directive or Article 9 of Directive 2002/19/EC (Access Directive) within a reasonable period stipulated by the national regulatory authority.
- 5 In cases of serious and repeated breaches of the conditions of the general authorisation, the rights of use or specific obligations referred to in Article 6(2), where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, national regulatory authorities may prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw rights of use.
- 6 Irrespective of the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation, rights of use or specific obligations referred to in Article 6(2) that represents an immediate and serious threat to public

safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services, it may take urgent interim measures to remedy the situation in advance of reaching a final decision. The undertaking concerned shall thereafter be given a reasonable opportunity to state its view and propose any remedies. Where appropriate, the relevant authority may confirm the interim measures.

- 7 Undertakings shall have the right to appeal against measures taken under this Article in accordance with the procedure referred to in Article 4 of Directive 2002/21/EC (Framework Directive).

6. Provision of Information by NRAs

Article 15 of the Authorisation Directive requires that:

“Member States shall ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations and rights of use is published and kept up to date in an appropriate manner so as to provide easy access to that information for all interested parties.”

7. Status of Existing Licences

The status of existing licences is addressed by Article 17 of the Authorisation Directive, which states that:

“Member States shall bring authorisations already in existence on the date of entry into force of this Directive into line with the provisions of this Directive by at the latest the date of application referred to in Article 18(1), second subparagraph.

Where application of paragraph 1 results in a reduction of the rights or an extension of the obligations under authorisations already in existence, Member States may extend the validity of those rights and obligations until at the latest nine months after the date of application referred to in Article 18(1), second subparagraph, provided that the rights of other undertakings under Community law are not affected thereby.

Member States shall notify such extensions to the Commission and state the reasons therefor.”

