

RECOMMENDATIONS

COMMISSION

COMMISSION RECOMMENDATION

of 7 April 2008

on authorisation of mobile communication services on aircraft (MCA services) in the European Community*(notified under document number C(2008) 1257)***(Text with EEA relevance)**

(2008/295/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) ⁽¹⁾, and in particular Article 19(1) thereof,

Whereas:

(1) The EU's information society policy and the i2010 initiative stress the benefits of ready access to information and communication resources in all areas of daily life. A coordinated approach to regulate mobile communication services on aircraft (MCA services) would help to secure these benefits and facilitate cross-border electronic communications services across the Community.

(2) When authorising MCA services, Member States must comply with the Framework Directive and with Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) ⁽²⁾.

(3) Pursuant to the Framework Directive, national regulatory authorities in the Member States should contribute to the development of the internal market by, *inter alia*, removing remaining obstacles to the provision of electronic communications networks, associated facilities and services and electronic communications services at European level and by encouraging the establishment and development of trans-European networks and the interoperability of pan-European services, and end-to-end connectivity.

(4) Pursuant to the Authorisation Directive, the least onerous authorisation system possible should be used to allow the provision of electronic communications networks and services in order to stimulate the development of new electronic communications services and pan-European communication networks and services and to allow service providers and consumers to benefit from the economies of scale of the single market. Those aims can generally best be achieved by general authorisation of all electronic communications networks and services.

(5) The technical conditions necessary to reduce the risk of harmful interference with terrestrial mobile networks by MCA operation are dealt with separately in Commission Decision 2008/294/EC ⁽³⁾.

(6) The technical basis for Decision 2008/294/EC is Report 016 of the European Conference of Postal and Telecommunications Administrations (CEPT), which was written in response to the EC mandate given to the CEPT on MCA of 12 October 2006.

⁽¹⁾ OJ L 108, 24.4.2002, p. 33. Directive as amended by Regulation (EC) No 717/2007 (OJ L 171, 29.6.2007, p. 32).

⁽²⁾ OJ L 108, 24.4.2002, p. 21.

⁽³⁾ See page 19 of this Official Journal.

- (7) ETSI Harmonised Standard EN 302 480 provides for presumption of conformity with the essential requirements of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity⁽¹⁾ for equipment used for MCA services in the European Union.
- (8) Issues relating to air safety are of paramount importance and MCA services may be provided only on condition that they have fulfilled air safety requirements via appropriate airworthiness certification and other relevant aeronautical agreements, together with electronic communications requirements. Airworthiness certificates valid for the whole European Union are issued by the European Aviation Safety Agency (EASA).
- (9) Provided the technical conditions specified in Decision 2008/294/EC and in Harmonised Standard EN 302 480 or equivalent standards and relevant airworthiness certificates fulfil the relevant requirements, the risk of harmful interference will be negligible and therefore general authorisations should be considered for MCA services.
- (10) Responsibility for authorisation of MCA services should lie with the country of registration of the aircraft, in accordance with that country's authorisation system.
- (11) The availability and sharing of sufficient information should help to resolve possible cross-border interference issues caused by MCA services.
- (12) Member States are to provide some of the information required to the ERO Frequency Information System (EFIS) pursuant to Commission Decision 2007/344/EC of 16 May 2007 on harmonised availability of information regarding spectrum use within the Community⁽²⁾. Other relevant information may be obtained from operators of MCA services or from civil aviation administrations.
- (13) A dedicated register of relevant data for all MCA-bearing aircraft flying within the European Union, and also into and out of the European Union, could help to resolve interference by gathering all the information on a timely basis and in a common format. At first, and subject to periodic review, such a common register would be maintained by the relevant MCA operators and would be made available to the Commission and to the Member States.
- (14) The resolution of interference issues between Member States may also be helped by the provisions of the international ITU Radio Regulations treaty on notification and recording of frequency assignments and on reporting harmful interference.
- (15) The authorisation of MCA-bearing aircraft flying within the airspace of Member States but registered outside the European Union would be assisted by relevant information provided by industry in its dedicated MCA register and by the application of relevant provisions in the ITU Radio Regulations. A common approach on the mutual recognition of MCA authorisations with countries where non-EU aircraft is registered could be helpful.
- (16) Member States have already granted rights of use of frequencies to terrestrial mobile operators. Such authorisations do not cover MCA services and are generally limited to terrestrial mobile services.
- (17) For the purposes of this Recommendation, the aircraft cabin space is considered to be under the jurisdiction and control of the country of registration of the aircraft.
- (18) Use of MCA services may also have implications for public security. Appropriate measures may be taken nationally or pursuant to Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security⁽³⁾ in order to ensure that mobile phones in aircraft are not used for illegal purposes.
- (19) The regulatory and technical elements of the common approach to authorisation of MCA services in the European Union should be kept under scrutiny to ensure that they remain satisfactory for the overall purpose of avoiding harmful interference, failing which appropriate remedial measures will be considered.
- (20) The measures provided for in this Recommendation are in accordance with the opinion of the Communications Committee,

⁽¹⁾ OJ L 91, 7.4.1999, p. 10. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 129, 17.5.2007, p. 67.

⁽³⁾ OJ L 355, 30.12.2002, p. 1. Regulation as amended by Regulation (EC) No 849/2004 (OJ L 158, 30.4.2004, p. 1; corrected by OJ L 229, 29.6.2004, p. 3).

HEREBY RECOMMENDS:

1. This Recommendation aims to coordinate national authorisation conditions and procedures relating to use of the radio spectrum for mobile communication services on aircraft (MCA services) in order to facilitate their introduction in the Community and to avoid harmful interference caused by MCA services on cross-border flights.

Human factor issues relating to use of MCA services and satellite communications between aircraft and space stations are outside the scope of this Recommendation.

National authorisation conditions and rules referred to in this Recommendation will apply without prejudice to legal obligations concerning air safety and public security.

2. 'Mobile communication services on aircraft (MCA services)' mean electronic communications services, as defined in Article 2(c) of the Framework Directive, provided by an undertaking to enable airline passengers to use public communication networks during flight without establishing direct connections with terrestrial mobile networks.
3. Not later than six months after adoption of this Recommendation, Member States should take all steps necessary to be able to authorise provision of MCA services in aircraft registered within their jurisdiction.

Member States should authorise MCA services in accordance with the principles set out in this Recommendation. No provision in this Recommendation should be contrary to maintaining optimum air safety conditions.

Member States should require no additional authorisation for operation of MCA services above their territory in aircraft registered in other Member States in compliance with the conditions agreed pursuant to point 4.

MCA services in aircraft registered outside the Community should also be exempted from authorisation in the Community, provided such services are in compliance with the conditions agreed pursuant to point 4 and registered in accordance with the relevant ITU rules.

4. Member States should not authorise MCA services unless they satisfy the technical conditions set out in Decision 2008/294/EC.

5. Member States should consider making provision of MCA services in aircraft registered within their jurisdiction subject to general authorisations.

Where use of spectrum for operation of MCA services is subject to individual rights, Member States should periodically reassess the need for such individual rights in the light of the experience acquired, with the objective of incorporating the conditions attached to such rights into a general authorisation.

In such cases, Member States should ensure that MCA services and terrestrial mobile electronic communications services in the same frequency bands are authorised on distinct bases.

6. Member States should inform the Commission and other Member States in a timely manner of the MCA services authorised to operate in aircraft registered within their jurisdiction and of the request for operation in their national airspace by MCA services in aircraft registered outside the European Union.

Where necessary, Member States should request operators of MCA services to supply data relevant for the purpose indicated in the previous paragraph.

7. Member States should cooperate actively, constructively and in a spirit of solidarity, using existing ITU procedures where appropriate, to manage any issues concerning harmful interference allegedly caused by operation of MCA services.

Member States should promptly bring issues concerning harmful interference allegedly caused by MCA services authorised in another Member State to the attention of the Member State responsible for authorisation of the MCA service concerned and should inform the Commission. Where appropriate, the Commission should inform the Communications Committee and the Radio Spectrum Committee of the above-mentioned issues in order to seek solutions to any difficulties.

Member States which have authorised MCA services which are suspected of interfering harmfully with services on the territory of another Member State should respond and promptly resolve any such interference.

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8. Member States should keep use of spectrum by MCA services under scrutiny, in particular concerning actual or potential harmful interference, and should report their findings to the Commission to allow a timely review of this Recommendation if necessary.
 9. This Recommendation is addressed to the Member States.

Done at Brussels, 7 April 2008.

For the Commission
Viviane REDING
Member of the Commission
