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RADIO SPECTRUM POLICY GROUP

Subject: Chairman's Report of RSPG#11, 25 October 2006

RSPG #11
Brussels, 25 October 2006

Summary

(1) Introduction to RSPG#11; new appointments.

Agenda

Matthias Kurth, President of the German Bundesnetzagentur, opened the meeting and presented the agenda¹.

New appointments

Francois Rancy, Directeur Général of the Agence Nationale des Fréquences, was confirmed as **new Chairman of RSPG** for a period of one year ending at RSPG#14 (November 2007). Mr. Kurth then handed over the Chairmanship to him.

Marianne Treschow, Director General of the Swedish National Post & Telecom Agency, was elected by unanimity as **Vice-Chairwoman**, replacing the exiting former Chairman and until now Vice chairman Mike Goddard (OFCOM).

Following the “troika” system, the new Vice Chairperson, Mrs. Treschow, will become automatically the Chairman of the RSPG at the end of the one-year term of Mr. Rancy, and the outgoing Chairman, Mr. Kurth, will serve as Vice-Chairman for an additional period of one year.

Mr. Kurth expressed great satisfaction at the end of a fruitful year under his chairmanship. He stressed that the RSPG is now genuinely driven by priorities of substance and that the Group has accumulated a "lot of common ground".

The **Commission representative** in the RSPG², **Mr. Bernd Langeheine**, Director for Electronic Communications Policy, expressed his gratitude to the outgoing chairman for his leadership and vision, and, as the third Chairman of the RSPG, for consolidating the role of the group as a strategic element of European spectrum policy. He also welcomed Mr. Rancy's accession to chairmanship, as well as the election of Mrs. Treschow as the first woman to hold the vice-chair position.

Mr. Rancy outlined his **proposed priorities for the RSPG during his term**. Besides the continuation of the important work on the digital dividend and the WRC-07, he expressed

¹ Document RSPG06-145 rev. available at http://rspg.groups.eu.int/meeting_documents/index_en.htm

² Mr. B. Langeheine was standing in for the permanent Commission representative in the RSPG, Mr. Fabio Colasanti, Director General of DG Information Society.

the wish to deepen further the strategic thinking of the Group, thus avoiding addressing issues in emergency. M. Rancy mentioned among possible topics, unlicensed services, civil aviation and transport in general, a reflection on how EU Directives, others than the regulatory framework Directives, like the R&TTE and the EMC Directives, have contributed to modify the usage of spectrum and whether any improvements may be required in this respect.

Mrs. Treschow also expressed her **future priorities as for RSPG**, in full continuity with Messrs Kurth and Rancy, indicating that she will focus on the high strategic level of the RSPG to foster further liberalisation of spectrum in a world of convergence, and with appropriate EU level harmonisation when required. She will also look at strengthening the cooperation between the RSPG and ERG.

(2) Adoption of the Opinion on the introduction of multimedia services in particular in the frequency bands allocated to the broadcasting services

Presentation of the proposed Opinion

Mr. Kurth in his quality as chairman of the responsible RSPG working group, provided a **summary of the public consultation on the draft Opinion**, which he qualified as "very successful". The feedback received has been incorporated in the final draft Opinion. Mr. Kurth then recalled the essential objectives of the proposed Opinion, namely **to facilitate the mass uptake of mobile TV, and of multimedia services in general, by alleviating spectrum related obstacles**. He also reminded the Group that this Opinion is aimed at setting a **framework at EU level** but that each Member State has now to define its own approach within that framework in order to take national specificities into account. It is clear for example that the Opinion will not affect the way TV and radio broadcasting content licensing is done at national level. Leveraging the many ongoing parallel initiatives, the purpose of the RSPG Opinion is rather **to broaden opportunities for content providers** and to speed up the overall process. The goal is not to try to achieve the same results at the same time everywhere in Europe. Mr. Kurth stressed that **it is also the responsibility of industry to seize the opportunity** and to set up the appropriate business models. This may require new forms of cooperation between sectors, namely between the broadcasting and mobile sectors.

Mr. Kurth also pointed to the **longer term implication of the Opinion** regarding **access to the UHF band**. Now that the RRC-06 conference is behind us, it is also time to include multimedia services in the discussion on the **digital dividend**. The UHF frequencies seem particularly adequate to secure the longer term needs for mass market distribution. In addition, investors will only step up investments once they have sufficient reassurance that harmonisation and interoperability strategies are in place in the Single Market, in order to allow reaching the needed high market penetration levels and economies of scale. Obviously, this puts pressure on the need to progress on the digital dividend debate.

Adoption of the Opinion

The discussion highlighted the need for a few adjustments to the Opinion text, in relation to constraints imposed on some EU members by countries outside the Union with respect to the switchover date, the use of the 1.5 GHz band by satellite services, the articulation of the opinion with the WAPECS opinion and with the opinion under development on the digital dividend in respect of the pros and cons of possible spectrum harmonisation measures. With these adjustments, the **RSPG adopted the proposed Opinion** by consensus and congratulated Mr. Kurth and his working group for the excellent and timely result.

The **full text of the Opinion**³ is publicly available on the RSPG web site.

The Commission representative, **Mr. Langeheine**, intervened to congratulate all contributors to the development of the Opinion. He mentioned **two important steps ahead**:

- the report from the European Mobile Broadcasting Council (EMBC), which is expected at the end of the year, and
- the forthcoming Commission Communication on Mobile TV planned for the first quarter of 2007.

Mr. Langeheine also indicated that he receives increasing signs from industry that **imminent access to vacant UHF frequencies** (even on a temporary channel basis) **would be highly desirable, even before the deployment of the digital dividend** (in combination, or not, with other frequency bands such as the L-Band). He suggested that this be followed up without delay.

(3) Presentation on outcome of RRC-06

Report by the CEPT Representative

On behalf of CEPT, **Mr. Van Diepenbeek**, Chairman of the ECC, gave an assessment of the results of RRC-06 and outlined the post-RRC activities which are currently being planned by the ECC, in particular regarding issues affecting the use of the digital dividend, either for broadcasting or for other services.

The main elements of the report are mentioned below:

- The RRC-06 is a great success, in particular for CEPT, which provided continued support to the conference. In particular, practically all the requirements of CEPT member states were fulfilled whilst gaining maximum flexibility for the future use of spectrum. Also, the regulatory end of protection of analogue TV stations in 2015 is a significant success for CEPT.
- The ECC RRC-06 working group which met in Seville on 18 and 19 October 2006, proposed several "post-RRC-06" activities which correspond to the steps arising from the RSPG opinion of multimedia services and draft opinion on the digital dividend:

³ Document RSPG06-143 available at http://rspg.groups.eu.int/rspg_opinions/index_en.htm

- the direct consequences of the RRC: revision/abrogation of the related European Agreements.
- the longer term implications of the RRC for the digital dividend: service compatibility issues related to the implementation of flexibility, possibility of harmonising sub-bands for multimedia or mobile (including uplinks) applications while minimizing the impact on the GE-06 plan.
- the use of the 1.5 GHz band (no direct relation with RRC).

Summary of RSPG debate on this topic

The **RSPG** expressed appreciation for the role of the CEPT in the RRC negotiations. The Commission in its turn also congratulated the CEPT for its role in making the RRC a success. The **Commission representative** further expressed the view that the EU should take advantage of the flexibility offered by the new Agreement and if this flexibility is not sufficient, identify as soon as possible any corrective action that may be considered between EU Member States, without impact on third parties.

The **Chairman** concluded that the CEPT has shown great "pro-activity" in this difficult area by taking in consideration the work of the RSPG as it developed and this will be useful as the time frame is very demanding. He also expressed the commitment of the RSPG to conduct the policy discussions timely in order to maximise synergies between the CEPT work and the EU policy work.

(4) Progress on the RSPG Opinion on "Spectrum implications of the switchover to digital broadcasting - Planning the digital dividend"

State of Play

Mr. Rancy in his quality of **Chairman of the RSPG working group** in charge of this activity, presented the main elements of a **preliminary draft text of the Opinion** developed by the working group during the three meetings which took place since the last RSPG and relied, in particular, on the responses received from EU Member States to a detailed questionnaire sent out during the summer. He outlined the **main chapters**:

- the definition and scope of the expected dividend;
- the candidate services to access the dividend;
- the thirteen points of the actual proposal for action.

From a strategic viewpoint, the draft opinion makes a distinction between, on one hand, broadcasting applications which benefit from a clear path forward on the basis of the Geneva-06 Agreement and, on the other hand, mobile applications (including uplinks) which would require a higher degree of spectrum harmonisation. Integrating the latter would have consequence on the already planned broadcasting use and possibly create a need for some spectrum re-planning.

Mr. Rancy invited the RSPG to approve the launch of public consultation on the preliminary draft Opinion.

Presentation of the PTS report on the digital dividend to the Swedish Government by Mrs M. Treschow

Mrs. Treschow recalled that Sweden is among the very first countries which will switch off analogue broadcasting before 1 February 2008 (target date is November 2007). In this context, Mrs Treschow presented the outline of a recent report to the Swedish government which includes a pragmatic analysis of the implication of the RRC-06, post-conference, and a set of strategic recommendations.

On the technical side, Mrs Treschow highlighted the **significant size of the digital dividend** which could be obtained **in Sweden** (almost 189 MHz in bands I, II, IV and V combined). She pointed to the high resilience of digital systems which makes them more tolerant to interference from adjacent channels. In addition, she also explained that there is a **large "hidden" resource**, often overlooked, constituted by **"reusable spectrum" between official allotments**. On the market side, a study was commissioned to NetLight Consulting, mainly to assess the commercial potential of reference applications ranging from more TV programs to mobile broadband or Fixed Wireless Access. Mrs Treschow concluded that the spectrum previously used for broadcasting can technically to a large extent be used in other ways. Thus the underlying challenge is to determine whether such alternative use provides increased value for society and consumers. She insisted on the fact that **international coordination, in particular at European level, would be of a "very great value"**, and also that **future technological developments should not be prevented by precipitated decisions at national level**.

The report was well received by the RSPG. The UK delegation mentioned that Ofcom has also embarked in a very comprehensive analysis on the digital dividend which should be relevant for the work of the RSPG, and announced that the main results of this work should become available in December.

The chairman concluded by emphasizing the narrow window of opportunity given to the RSPG to contribute to this issue, since as highlighted in the draft opinion, practically no EU Member has yet decided on its use of the digital dividend. Any proposal for common steps at EU level in this regard would therefore be timely, but only for a limited time.

Summary of ensuing discussion in the RSPG

There was a **wide support for the work achieved so far by the working group on the digital dividend** and a **general agreement that the preliminary draft Opinion is an appropriate basis for a public consultation** despite the fact that it does not constitute an official position of Member States at this stage. It was also noted that the current draft Opinion will need **further development in the light of the comments to be received during the public consultation**, in particular, on the extent of the need for EU harmonisation, the degree of flexibility (WAPECS) that should be considered, the possible need to re-plan spectrum at a point in time, and possible consequences on WRC-07 negotiations.

It was decided not to include an explicit reference to PPDR (Public Protection / Disaster Recovery) services as one of the potential uses of the dividend since it is already included under Electronic Communications Services.

Next steps

The RSPG agreed to launch the public consultation on the current preliminary draft Opinion as a document in progress. The consultation will last until **15th December 2006** and details are available on the RSPG web site⁴. The RSPG sub-group will meet in Paris on 11-12 January 2007 in order to consider the responses received to the consultation and propose any consequential amendments to the current text, with a view to final adoption of the opinion by the RSPG on 14 February 2007.

(5) RSPG Report and Opinion on “a coordinated EU spectrum approach for scientific use of radio spectrum”

Presentation of the proposed report and Opinion

Mr F. Bos (Dutch Ministry of Economic Affairs, Directorate-General for Telecommunication and Post), presented the proposed Opinion in his quality as co-chairman of the RSPG working group on scientific use of spectrum. Mr. Bos clarified that the working group had decided to call the document "**Report and Opinion**" to reflect the fact that it also includes a significant amount of background information and tutorial material, in addition to the Opinion itself.

Conclusion of the discussion and adoption

RSPG Members supported the proposed Report and Opinion, with a minor modification to specify that impact assessment studies should be proportionate to the potential risks of specific proposed allocations in the future. This is to avoid costly administrative analyses, and associated delays, when not reasonably justified. Some delegations expressed doubts about the strategic nature of the Opinion but without opposing its adoption by the RSPG. The **full text of the Report and Opinion**⁵ is publicly available on the RSPG web site.

(6) Strategic issues concerning the future of the 900 MHz (GSM) and 2.6 GHz bands

Introduction by the Commission

The Commission representative **Mr. Langeheine** recalled the context of the bands in question and the main objectives of a coordinated EU approach as detailed in the letter of July 2006 from the Director General of DG Information Society and Media to the Members of RSPG.

The Commission reiterated that it is open to any solution that would meet the **objectives of coherence, flexibility, and legal certainty**. The package proposal offered by the Commission is based on the rapid opening up of the 900 MHz band to IMT-2000 technologies (i.e. GSM and UMTS) (while the more generic discussion on applying the WAPECS principle to these bands will only deliver in the longer range) and at the same time allocate the 2.6 GHz on a more flexible basis based on the WAPECS approach, for example to IMT-2000 technologies and all other technically compatible technologies that adhere to the channelling plan defined by CEPT. Such an approach would be proportionate in that it

⁴ Public consultation section at web address: http://rspg.groups.eu.int/consultations/index_en.htm

⁵ Document RSPG06-144 available at http://rspg.groups.eu.int/rspg_opinions/index_en.htm

enables both the GSM incumbents holding the 900 and 1800 MHz spectrum usage rights, as well as new market participants, which would have access to the 2.6 GHz band, to benefit from the flexibility to choose their preferred technology.

The Commission representative underlined some important **principles underpinning the Commission position**:

- this is a critical issue which **affects a major industry in Europe**;
- the **objective to open up the usage of spectrum** as a long term goal but also needs to be kept in mind when short term solutions have to be found;
- **coherence of approaches** throughout Europe is needed whatever the solution will be;
- the **solution must be legally binding to avoid legal quarrels and uncertainty for market actors**;
- **measures should be "even-handed" and proportionate**, not to favour unduly specific categories of market players.

Main elements of the debate

A majority of delegations indicated their opposition or outright opposition to link the 900MHz and the 2.6 GHz issues, since such linkage would slow down the decision process regarding the 900 MHz band, which needs to be completed urgently to respond to market requirements. Nevertheless, some delegations recognised that they are conceptually related.

All delegations supported the principle to move closer to a WAPECS approach, but most of them highlighted the need for progressive, step by step action in this regard, in the framework of the RSC, taking into account legacy and competition issues.

Although some delegations considered the colloquially called GSM Directive⁶ as technology neutral and hence intend to allow UMTS technologies under the current Directive, most delegations considered that it has outlived its usefulness and may be abrogated without the need for a new Directive;

Some delegations expressed the view that the **current CEPT ECC Decision on 2.6 GHz** is appropriate and self-sufficient, despite the degree of ambiguity it carries regarding access by non IMT-2000 technologies.

Reacting to these comments, **the Commission acknowledged the wide support to the WAPECS objective** in the context of the bands in question while expressing some doubts whether such flexibility will be introduced in a coherent way across the EU if no action was taken. The Commission indicated that, unfortunately, it is **not clear whether the current GSM Directive allows for using the 900 MHz band (and by extension the 1800 MHz band) for IMT2000 beyond GSM**, since the Directive is linked to a Council Recommendation referring explicitly to the GSM standard. A complex legal interpretation of the current Directive could therefore lead to challenges in Court by market players. This

⁶ Council Directive of 25 June 1987 on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community (Directive 87/372/EEC).

perspective by itself jeopardises legal certainty. Regarding the **relation between the two bands 900/1800 and 2.6 GHz**, the **Commission sees it as essential to make the link if one wants to address the competition issue**: opening up only the 900 MHz could give existing licensees a disproportionate competitive advantage. However, implementing access to the 2.6 MHz on a flexible basis should alleviate this risk. The Commission indicated that it will scrutinise very carefully the justifications for any constraining measures imposed by Member States in this context when issuing usage rights. In practical terms, the Commission recognised that the two band sets could be subject to separate Decisions and different timelines in the RSC while maintaining the close link as for substance.

The Chairman concluded that full consensus was not possible on all aspects and that the discussion should continue in the Radio Spectrum Committee.

(7) Complementary RSPG Opinion on WRC-07

Status of work

Mr. Goddard (OFCOM) summarised, in his quality as Rapporteur to RSPG on this activity, the main issues contained in a proposal which he prepared for the purpose of the general discussion. This is a follow-up of the first RSPG Opinion on the topic, adopted at RSPG#8, which identified Community policy objectives and priorities for WRC-07.

Mr. Goddard underlined some of the key issues: future allocation for IMT-2000 applications, difficulty to obtain satellite allocations, furthering the discussion on flexibility at ITU level, more stringent review of future conference agenda items.

The RSPG recognised once again the importance of reaching a consensus position on key issues at EU policy level before finalizing the technical preparatory work (the European Common Positions)

Next steps:

RSPG members are asked to provide written comments on the draft proposal provided by Mr. Goddard. A dedicated meeting to discuss a revised version of the draft is to be scheduled in December.

The **Commission** indicated its intention to use the RSPG's advice as a basis when preparing a Communication to Council and Parliament on WRC-07 objectives, scheduled for April 2007, in line with the agenda of the conference preparation at CEPT and ITU levels (notably the finalisation of the European Common Proposals and negotiating brief) and in time to obtain political support from the Council of Ministers.

In order to fit with the above time table, the adoption of the supplementary Opinion on WRC-07 must take place at the next RSPG meeting in February 2007 at the latest.

(8) Report on Commission activities in radio spectrum policy

Prior to the meeting, the Group was provided with a document highlighting the relevant **Commission activities in radio spectrum policy since RSPG#10** on 11th May 2006⁷. This information was complemented by a verbal report from the Commission including the status and key milestones of the ongoing Review of the Regulatory Framework for Electronic Communications Services and a report on the progress of the experts group on spectrum usage rights in the context of secondary trading⁸. In the context of the last topic, it was noted the further involvement of the RSPG will soon be required.

(9) Other matters

In his conclusion, the **Chairman** announced several items likely to be included in the agenda of the next RSPG meeting: adopting the draft Opinion on the Digital Dividend, adopting the supplementary Opinion on WRC-07, updating of the priorities and work plan of RSGP for 2007-2008, including deciding on future work items such as on "unlicensed" or shared use of spectrum, and a consideration for an activity on spectrum for public and governmental services.

The next RSPG meeting (RSPG#12) is scheduled to take place in Brussels on **14th February 2007**.

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⁷ Document RSPG06-148 available in the section of documents related to RSPG#11 at http://rspg.groups.eu.int/documents/meeting_documents/index_en.htm

⁸ Document RSPG06-156 available in the section of documents related to RSPG#11 at http://rspg.groups.eu.int/documents/meeting_documents/index_en.htm