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## **RADIO SPECTRUM POLICY GROUP**

**Subject: Chairman's Report of RSPG#16, 4 June 2008**

**RSPG #16**  
**Brussels, 4 June 2008**

Summary

**(1) Introduction to RSPG#16**

**The RSPG chairman, Mrs Marianne Treschow**, Director General of the Swedish National Post & Telecom Agency, opened the meeting and noted the approval of the agenda<sup>1</sup>.

**(2) Streamlining the regulatory environment for the use of spectrum**

*Progress of the preparation of the RSPG Opinion*

The progress of the preparation of the Opinion was presented by the Rapporteur, **Mr Eric Fournier** (ANFR, France). Mr Fournier indicated that, in addition to progressing with the substance, the draft Opinion attempted to respond to the comments made by several RSPG members during the last plenary meeting. He indicated that the core issue identified in the draft report was how to ensure the development of equitable conditions of sharing which would in each specific case form the basis to the downstream spectrum and equipment regulation process. He also reported that at the present stage there was no full consensus in the working group on the draft report and consequently that decision needed to be taken whether to go already at this stage in a public consultation or to allow for to discuss differences of views and to adjust the draft Opinion accordingly.

*Discussion*

The ensuing discussion among **RSPG Members** revealed that there were diverging positions in at least three areas, which should be further clarified:

- The assessment of the level of adequacy of the current framework for equipment regulations (R&TTE directive) with respect to ensuring sufficient confidence in the marketplace and to allowing proper enforcement by authorities;

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<sup>1</sup> Document RSPG08-222. This document as well as all subsequently quoted RSGP documents are available at [http://rspg.ec.europa.eu/meeting\\_documents/index\\_en.htm](http://rspg.ec.europa.eu/meeting_documents/index_en.htm).

- The extent to which the consequence of the WAPECS approach on equipment standardisation and spectrum regulations has been taken into account in the current version of the draft Opinion as presented to the Group;
- The degree of relevance of institutional / operational issues in the particular context of this Opinion.

RSPG members agreed that the forthcoming public consultation would be an opportunity to get a better view of the stakeholders' opinion on these same issues. Hence, the RSPG members stressed the importance of putting forward adequate questions in addition to presenting the draft Opinion when going into public consultation. It was also decided to attempt a readjustment of the finding so the draft report in the light of input provided by several delegations.

*Next steps*

At **Mr Fournier's** invitation, it was agreed to hold at least **one more meeting of the working group to revisit the draft Opinion** and formulate the questions in view of public consultation. The revised draft Opinion will be submitted to the RSPG members by written procedure before undergoing a public consultation envisaged to take place in the August to October timeframe. This time schedule would still permit adoption of this Opinion at the RSPG#17 meeting in November 2008, as initially foreseen.

**(3) European approach to collective use of spectrum**

*Progress of the preparation of the RSPG Opinion*

**Mr Chris Woolford** (Ofcom, UK), **Rapporteur** of the working group developing the Opinion, presented the **third progress report**<sup>2</sup> and the proposed **draft Opinion**<sup>3</sup> in view of obtaining the RSPG's approval to submit it to a public consultation. Mr. Woolford drew the attention of the Group on the particular aspect of the availability of experimental spectrum in the context of collective use. This issue was discussed at length in the working group, also in the light of the recent experience in Ireland. It was felt that making experimental spectrum available on a larger scale following a collective use approach has the potential to boost innovation and would therefore deserve further attention in the future. Finally, Mr Woolford introduced the main questions to be put out for public opinion in the context of the public consultation, which inter alia address the issue of the effectiveness of the current implementation of the R&TTE directive from a collective use viewpoint<sup>4</sup>. In particular, the

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<sup>2</sup> Document RSPG08-226.

<sup>3</sup> Document RSPG08-227.

<sup>4</sup> Please also note the link with the Opinion on streamlining the regulatory environment for the use of spectrum.

Rapporteur pointed out that it would be useful to better understand if the current framework fully meets the objective of supporting innovation which is associated to the collective use model.

*Discussion of the draft Opinion and approval of the launch of the public consultation*

The RSPG overwhelmingly supported the draft Opinion. The working group was congratulated in particular for the clarity and comprehensiveness of the proposed recommendations. Some delegations highlighted the need for increased consistency between this Opinion and some aspects of the Opinion on the "regulatory environment for the use of spectrum", in particular regarding issues related to the R&TTE Directive. The issue of giving preference to the collective use model for higher frequencies was also discussed. While higher frequencies offer naturally better conditions to share spectrum due to the reduced propagation and are more readily available given the congestion of lower bands, it was also noted that making high frequencies predominantly accessible under the collective use model could create a legacy situation preventing individual licensed use to expand in these frequencies in the future. It was therefore noted that further reflection at EU level could be useful on this issue. It was also noted that while users of spectrum managed under the collective use approach do not have a guarantee for an interference free spectrum space, this does not mean that spectrum regulators do not have a responsibility and role to play for ensuring an efficient use of the band and avoiding interference with respect to neighbouring bands.

*Next steps*

After incorporating minor textual changes, the RSPG cleared the draft Opinion and **authorised the launch the public consultation** as soon as possible.

The adoption of the Opinion is tentatively planned for the next RSPG meeting on 19 November 2008.

**(4) European Parliament's proposals on spectrum reforms and future role of the RSPG**

*Introduction by the Chairman and vice-chairman*

**The RSPG chairman, Mrs Treschow**, reported on the recent spectrum-related developments in the European Parliament's committees regarding the proposed review of the regulatory framework. She emphasised that the Radio Spectrum Decision itself is not formally part of the directives currently under review, and hence the role of RSPG is not directly discussed. However, MEP Mrs Trautmann has suggested establishing a new group, the RSPC (Radio Spectrum Policy Committee), to build on some of the tasks of the RSC and RSPG and allegedly streamline some of the activities. This proposal must be seen in conjunction with her proposal to repeal the Radio Spectrum Decision. Mrs Treschow invited the RSPG to comment about these proposals made in parliamentary committees and to try to see if common views by RSPG members can already be identified on particular aspects concerning the future of the RSPG.

**The RSPG vice-chairman and ERG Chairman, Mr Pataki**, stressed that the importance of spectrum in electronic communications services will increase in coming years. The reform of spectrum policy is therefore very high on the political agenda in the context of the regulatory review and the discussions in the upcoming six months will be critical. Mr Pataki also highlighted that, contrary to many other areas of the review, it was difficult to identify at this stage clear political positions and concrete answers besides the recognition that there is a need for an EU approach. He invited the RSPG to seize the current window of opportunity to hold a structured debate on this topic and provide a professional and strategic view on how to architecture a future-proof EU approach for spectrum policy.

*Discussion among RSPG members:*

**RSPG's members's main comments** can be summarised as follows:

- The scope of activity of the RSPG is wider than electronic communications as illustrated by the agenda of this meeting. Any solution will have to take due account of this wider scope, and several delegates expressed the view that they do not see the proposal of repealing the Radio Spectrum Decision as appropriate and called for maintaining the present setting RSGP / RSC. Several delegations underlined that the Radio Spectrum Decision was formally not touched by the current review proposal and wondered on what basis the Parliament could therefore propose to repeal it.
- Discussing strategic issues such as the future use of the digital dividend at a strategic and political level was identified as relevant by several delegates. However, RSPG members stressed that there is a clear advantage of keeping the day day-to-day spectrum management activities, such as most frequency usage harmonisation issues, operational-wise independent and efficient.
- One should avoid multiplying the number of reporting lines: a committee that would have to report to the European Parliament, the Council and the Commission might become too political to ensure timeliness and objectivity. It was also pointed out by one delegation that introducing majority voting on spectrum management issues would favour adopting rather conservative solutions as opposed to the present approach of working through consensus which very often allow creative solutions.
- Delegations pointed out that the present member profile of RSPG includes both representation of ministries and regulators, which is appropriate in the case of spectrum policy activities. It was pointed out that the EP report and its proposals are unclear about this aspect.

**The Commission representative, Mr. Niepold**, stressed to the need to ensure a proper representation relevant instances in strategic spectrum policy at the right level of decision making. This would include foreseeing that Council and Parliament can validate the broad strategic policy orientations, and involving all appropriate constituencies. At the same time, he warned against losing the benefits of the current working method under the Radio Spectrum Decision on the spectrum management side which has proved to deliver. Its methodology is the result of a continuous and steep learning curve over the last years

amongst concerned players and responds to the need for an efficient, accurate and fast decision process, fully associating the Member States spectrum regulators and political instances. He therefore pleaded for preserving these benefits when considering changing the setting as they are key features of a successful EU spectrum policy system covering all relevant areas including but also beyond electronic communication services. Finally, Mr Niepold regretted that the valuable strategic work of the RSPG, e.g. on WAPECS or the digital dividend, has not always been sufficiently visible outside the closed circle of experts, and in particular at political level.

**Mrs Treschow** concluded that the RSPG needs to decide quickly how it wants its voice to be heard in this debate as the September-October period will already be critical for the review of the ECS regulatory framework. She added that she will consult and will come back to the Group soon with a proposal.

**(5) Future work as a result of RSPG/ERG meeting in Gothenburg: Request for an Opinion on "new competition challenges resulting from a more flexible management of spectrum" (in coordination with the European Regulators Group)**

Background

**At the joint meeting between the RSPG and the ERG in Gothenburg on 27 February 2008**, the two chairmen, respectively **Mrs Treschow** and **Mr Pataki**, committed to **explore potential areas of cooperation between the two groups**. Many facets of the ERG work are related to spectrum and several aspects of the RSPG activities have a link to economic regulations. Therefore, the chairmen proposed to start a reflection on the **interaction between a more flexible management of spectrum and competition issues**. The work could include the impact on market definitions, competition distortions in downstream market, the topic of transparency and access to information, and the risk of abuse of dominant positions arising from the accumulation of spectrum rights.

Introduction

The RSPG Chairman **Mrs Treschow** suggested that the work could consist of an **inventory of best practices** as well as **expert advice** regarding the main regulatory challenges. She also proposed to set up a joint working group including participants from both the RSPG and the ERG in order to produce a common paper which could then be issued both as an RSPG Opinion and as an ERG Report.

The ERG Chairman **Mr Pataki** informed the Group that the ERG has already accepted this proposal at its recent plenary meeting in Vilnius and fully support to launch this new activity. The ERG is now looking forward to the response of the RSPG on this proposal.

Discussion

**The RSPG** welcomed the proposed initiative and generally supported the scope as outlined in the initial paper<sup>5</sup> which was tabled by the Chairman. A few comments of details covered some legal aspects and possible improvement of the text. A few delegations supported to adapt the schedule to add sufficient time for a public consultation. One intervention stressed that it is important to avoid any confusion between the objective of "promoting competition" which is key to support innovation and growth, and the "application of competition law" aimed at avoiding competition distortions. The focus of the future work will require a clarification on the intended focus, also because in some Member States, different authorities would be concerned.

**The Commission representative** also welcomed this initiative. He echoed some of the comments made by Member States on the sensitivity and relevance of the subject. He pointed out that one of the most difficult conceptual issues is to better understand the link between rights to use spectrum and the effect on downstream services/markets due to the fact that spectrum can as an input, or production factors, be used for addressing several service markets. Today, economic regulations apply to markets of services and spectrum regulations to the access rules to use spectrum. These are different but related domains addressed differently by the RSPG and ERG. Mr. Niepold also pointed out that national decisions in the competition field have often an effect beyond the national borders. Hence it makes sense to compare approaches and best practices amongst Member States, also in order to avoid a fragmentation. The planned work should cover this dimension.

In conclusion, all interventions expressed support for this activity as long as there is a common understanding that the objective is not to consider new EU regulations but rather to establish a platform to share information and exchange "best practices". This opinion work should assist national authorities when dealing with issues of competition and spectrum which are relevant in all Member States. The **Chairman** acknowledged the sensitivity of this topic and agreed with the need to limit the objective to a common reflection and in full respect of the existing competencies already clearly defined at both national and EU level.

#### Next step

**Mrs Treschow** concluded that there is a support to take this activity forward. She proposed that two co-chairmen be appointed to further develop the mandate to ERG and RSPG (**Mr Jonas Wessel for the RSPG** and **Mr Ola Bergstrøm for ERG**). This proposal was accepted by the RSPG. The co-chairmen will establish a small working group to elaborate the final document to be submitted to both the RSPG and ERG for final approval. This means that the RSPG should be in a position to approve a Request for Opinion on this topic at RSPG#17 in November.

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<sup>5</sup> This paper is not a public document at this stage as it is work in progress.

## (6) Spectrum issues concerning outer EU borders

### *Presentation of the final draft Opinion in view of adoption*

**The Rapporteur** for this RSPG opinion, **Mr Díez de Frutos** (Directorate General for telecommunications and information technology, Spain), presented the final draft Opinion which was submitted for adoption. In his summary of the Opinion, Mr Díez de Frutos highlighted three areas which he presented as essential contributions: the approach by geographical clusters, the clarification on how to deal with situations where EC harmonisation measures risk to conflict with constraints resulting from coordination obligation with respect to third countries, and the inventory of practical cases that was derived from the questionnaire.

### *Discussion and adoption*

**The draft Opinion was well received by the RSPG.** A few delegations and the Commission submitted some final requests for minor corrections, mainly regarding legal details. As a result, **the Opinion was tentatively adopted** at the meeting<sup>6</sup>, pending the inclusion of changes to the text as agreed by RSPG delegates to be confirmed by written procedure.

The Group commended the Rapporteur for his efficient leadership and the high quality of the Opinion.

## (7) Best practices regarding the use of spectrum by some public sectors

### *Progress of the preparation of the RSPG Opinion*

The **Rapporteur** of the working group developing the draft Opinion, **Mr Stelios Himonas (Ministry of Communications and Works, Cyprus)**, presented the latest progress report<sup>7</sup>.

Mr Himonas described the various sections of the progress report and preliminary draft opinion. He also highlighted three particular issues that will require more work:

- The merits and possible disadvantages of various methodologies to determine quantitatively the need for spectrum for public use;
- The issue of integrating social value in the assessment of the value of spectrum;

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<sup>6</sup> Document RSPG08-232 (adopted Opinion).

<sup>7</sup> Document RSPG08-225. The annex is not public as the draft Opinion is considered as work in progress at this stage.

- The identification of possible criteria to determine cases where market mechanisms could be advantageously applied in the management of spectrum for public use.

Mr Himonas informed the RSPG that the cooperation with the Commission study is working well.

### Discussion

**The progress report was positively received by the RSPG.** The discussion addressed diverse detailed aspects of the work. The particular issue of the valuation of social benefits retained most attention. The general opinion of the RSPG on this important aspect was that it is a difficult issue but which can not be avoided since any spectrum assignment has an opportunity cost. This issue also exists in many other sectors and areas of public service where decisions have to be made on a daily basis to choose between different uses or different destinations of financial resources, often with various social impact and/or fulfilling different general interests. Therefore, the assessment of the social value of spectrum use should not be side-lined in the context of this Opinion development.

The **Commission representative** reacted to the question submitted by the Rapporteur on the link between "quality of service" and "quantity of spectrum" in the context of the assessment of spectrum needed for public use. He argued that, with the exception of "safety of life" services for which spectrum usually must be exclusively reserved, the required quality of service is relevant and determines the degree of spectrum sharing that is achievable and hence the spectrum needed. Therefore, Mr Niepold invited the working group developing the opinion to properly take this dimension into account.

The Rapporteur will report again on the progress of this activity at the next RSPG meeting in November

## **(8) Report on Commission activities in radio spectrum policy**

### Report on Commission activities in radio spectrum policy

The **Commission** provided an overview of the relevant activities in radio spectrum policy since RSPG#15. Details are available in the related report<sup>8</sup>.

### Presentation by EC DG TREN and GSA on Galileo

**Mr Paul Verhoef, the Head of the Galileo unit in the Commission Directorate-General "Energy and Transport"** (DG TREN), gave a presentation<sup>9</sup> on the **latest spectrum-**

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<sup>8</sup> Document RSPG08-234.

<sup>9</sup> Presentation available at [http://rspg.ec.europa.eu/meeting\\_documents/index\\_en.htm](http://rspg.ec.europa.eu/meeting_documents/index_en.htm)

**related issues and preparation of WRC-11 from the Galileo programme perspective.** He informed that Galileo is now operating on the basis of 100% public financing of the €3.4 billion deployment costs. The programme will be managed by the Commission and the European Global Navigation Satellite System (GNSS) Committee. The Galileo system is foreseen to be fully operational in 2013, and the European Geostationary Navigation Overlay Service (EGNOS) system, Europe's contribution to the first generation GNSS, starts operating already next year.

Mr Verhoef indicated that the main frequency related challenges include maintaining of appropriate regulatory framework to protect Radio Navigation Satellite Services (RNSS) and preparing the ground for future system evolutions, especially in the WRC context. This means that good coordination based on cooperation with national frequency administrations will be necessary as well as coordination with other existing and planned RNSS systems at global and regional level are essential. To complete the Galileo information package, **Mr Dominic Hayes from GNSS Supervisory Authority (GSA)** presented the main objectives for Galileo in WRC-11, related to agenda items 1.4 (potential AM(R)S C-band allocations) and 1.18 (global RDSS allocation at 2.5 GHz). He concluded that as there are many regulatory challenges ahead, continued support from European regulators will be needed to achieve optimal results in the WRC negotiations.

**(9) Other matters**

The Chairman called for candidacies regarding the future appointment of a new Vice-Chairperson at the next RSPG meeting in November.

The next RSPG meeting (RSPG#17) is scheduled to take place in Brussels on **Wednesday 19 November 2008.**

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