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RADIO SPECTRUM POLICY GROUP

Subject: Chairman's Report of RSPG#22, 9 June 2010

RSPG#22
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(1) Introduction to RSPG#22

The Chairman of RSPG, **Mr Roberto Viola (Agcom, Italy)**, opened the meeting and noted the approval of the agenda¹.

(2) New Rules of Procedure

Adoption of new Rules of Procedure, reflecting the enhanced remit of RSPG arising from the new telecom regulatory framework

The Chairman introduced the agenda item by reminding the Group that a preliminary version of the draft Rules of Procedure had already been presented at the previous RSPG meeting (RSPG#21). Mr Viola also explained that some changes have been made to the previous draft version but that they were limited in scope. In particular, Mr Viola referred to the addition of a paragraph on transitional arrangements in Article 8 (paragraph 5) in order to ensure continuity with past engagements of the Group, in particular to confirm the appointment of the chairman elect, **Mr Mike Byrne**, to succeed the current chairman from 1 January 2011. Mr Viola also thanked the Commission for the good work achieved during the preparation of the new rules and for the close coordination with the chairman and the vice-chairman.

For the Commission, **Mr Pearse O'Donohue**, head of the spectrum policy Unit, gave an outline of the key features of the new rules. He indicated that the rules had to follow the Commission's new standard template for rules of procedures, as established in the context of the entry into force of the Lisbon Treaty and applicable to all Commission advisory bodies. It is natural that the standard rules do not foresee all the specificities existing in the various advisory groups. There is therefore some degree of flexibility to adapt them. However, Mr O'Donohue explained that any change has to be approved by the Commission's Legal Service and Secretariat General. One of the specificities introduced for the RSPG is the extension of the duration of the chairmanship to two years, and the simultaneous election of the chairman and vice-chairman. In Mr O'Donohue's view, this should ensure greater continuity in the work of the Group and reinforce the visibility of the RSPG. He also pointed out that the RSPG, together with providing expert opinions to specific requests from the Commission, could continue to adopt on its own initiative an annual work programme that would shape its activity throughout the year.

The Chairman then opened the floor for comments by RSPG members and observers. Several members requested clarifications on the rationale for some of the changes as compared to the previous rules. A few members expressed concern that more formal and stricter rules may affect negatively the spirit of cooperation that has

¹ Document RSPG10-325. This document, as well as all subsequently quoted RSGP documents, are available on the public RSPG web site at http://rspg.ec.europa.eu/ref_doc/index_en.htm

prevailed up to now, especially if it would result in less unanimity in the group regarding opinions to be adopted in the future.

The Chairman, while acknowledging the comments, reminded the Group that more formal rules, in particular voting rules, were necessary in view of the new roles of the RSPG, including its role in advising the European Parliament and the Council. He expressed the hope that the Group could continue to operate by consensus wherever possible, but stated that it was necessary to have clear rules in cases where the Group would be called on to provide formal input. The Chairman proposed to establish a small group in charge of studying the Rules and making suggestions for adaptations, where found necessary, to be presented and discussed at one of the next plenary meetings. This proposal was accepted by the Group.

The draft Rules of Procedure² were then formally adopted by unanimity by the RSPG.

Finally and as formally required, the **Commission representative, Mr Antti Peltomäki**, Deputy Director-General of DG Information Society and Media, accepted the adopted Rules of Procedure on behalf of the Commission, pursuant to Article 4 of the Commission Decision of 26 July 2002 establishing a Radio Spectrum Policy Group.

(3) Radio Spectrum Policy Programme (RSPP)

Presentation and discussion of the draft RSPG Opinion in relation to the first Radio Spectrum Policy Programme

The Chairman first invited **Mr Laszlo Toth** (Hungarian National Communications Authority), Rapporteur of the working group that developed the document, to present the draft opinion proposed for adoption. Mr Toth presented the key elements included under each of the three pillars:

- contribution to the EU's 2020 vision, i.e. in the context of the digital agenda;
- spectrum governance;
- external relations,

concentrating on the parts that had been subject to review after the public consultation.

Mr Toth explained in particular that a new paragraph (par. 16) had been added since the extraordinary plenary meeting on 23 March. This new paragraph underlines the importance of maintaining a balanced approach with regards the management of interference in future spectrum policy measures, and stresses the role of harmonised standards for equipment in achieving this goal. Mr Toth also mentioned that he received a request to expand the scope of foreseen derogation requirements in relation to the proposed deadline for allocation of the 800 MHz band to electronic communications services. This request had not been discussed with the working group

² Document RSPG10-328

due to the late submission. Finally he described the other parts that were amended following the input from stakeholders.

Discussion

The discussion among RSPG members revealed a quasi unanimous support on all aspects of the proposed opinion with the exception of the proposed modalities allowing for a postponement of the implementation date of 2015 otherwise binding to achieve a coordinated availability of the 800 MHz band for electronic communications services other than broadcasting throughout the EU. A few Member States considered that the conditions for such postponement were not sufficiently clear in the current draft opinion. Some delegations additionally expressed the view that it should be up to the concerned Member States to decide whether a postponement of the implementation date is needed and not to the Commission. Due to the potential impact of this Opinion on the future regulation of the applicability of an implementation date, some of the Member States concerned indicated that they would have to abstain during the vote. This abstention would not however mean that they would oppose the policy goals supported in the opinion.

The Chairman also wished to recall that only specific and exceptional reasons for postponement of the implementation date should be considered, such as coordination problems with non-EU countries, national public security or defence circumstances, national transitional harmful interference issues, or planned transitional coordination programs between Member States.

A few other non controversial adjustments were agreed to improve the clarity of the document on specific issues and to add references to specific documents.

Adoption of the Opinion on the RSPG

The Opinion³ was formally adopted by simple majority voting (22 positive votes and 5 abstentions).

Closing comments by the Chairman

Mr Viola closed the agenda item by thanking once again the Group for the adoption of what he called "a landmark" RSPG Opinion since it is the first time that an RSPG opinion is legally required in the context of a formal legislative process. He thanked particularly Mr Toth for his personal contribution and the group of experts that developed the document. He also informed the members that a special ceremony would be organised soon for the formal "handover" of the RSPG Opinion to the Commissioner Mrs Kroes.

Mr Viola concluded by expressing the personal view that an RSPG Opinion should be considered as an input to EU policy at a given time and, as such, should be open to evolutions in the future. For example, depending on the technical feasibility, an even faster transition regarding the 800 MHz band could be considered, subject to the

³ Document RSPG10-330

agreement of the Council and European Parliament. Mr Viola also referred to the recent strategic report of former Commissioner Monti to the Commission to accelerate the completion of the Single Market, which identifies the coordination of the spectrum authorisation regimes as one of the area where progress should be made.

(4) Follow-up on the digital dividend

As the **Rapporteur** in charge of the activity, **Mr Mike Byrne** presented the **proposed Report** on Improving Spectrum Efficiency & Utilisation in Frequency Bands Relevant to the Digital Dividend. He thanked the working group for having reached an agreement on the proposed text on time, despite the cancellation of the meeting in May due to the air traffic restrictions related to the volcanic ashes. He particularly thanked those who contributed to resolve the last divergence of views concerning the impact of SFNs (Single Frequency Networks) on spectrum efficiency.

The discussion among RSPG members showed a high degree of consensus on the proposed report. In relation to the 800 MHz band, one RSPG member made a comment regarding the right of Member States to derogate from EU harmonisation for military or national security purposes as allowed by the Radio Spectrum Decision. The same comment in the same context had already been raised in the earlier discussion on the Opinion related to the RSPP. Finally, it was decided that this could be best resolved by referring to such provision in another part of the document.

The Report⁴ was approved unanimously.

The Chairman commended the Rapporteur and the working group for this achievement. The current Report also provides a basis for the continuation of work which should lead to the adoption of a second Report in November.

(5) Cognitive radio

The Rapporteur, Mr Fokko Bos (Ministry of Economic Affairs, Netherlands), reported on the progress of preparation of the RSPG Opinion. In his presentation, he singled out areas which may require specific attention such as the responsibility to identify pro-actively the frequency bands which are best suited for use by cognitive radio, the cross-border issues, the implication for the applicability of the provisions of the R&TTE directive to Cognitive Radio equipment, including specific requirements for certification, or the adequacy of existing chip set standardisation fora (e.g. IEEE) to meet the EU market requirements for cognitive radio applications.

The RSPG discussed the orientation of the work and showed a clear support for the priorities expressed by Mr Bos. A few concerns were raised regarding the relevance of selecting particular spectrum bands before a generic approach to cognitive radio is defined at EU level. Potentially all frequency bands could be subject to some degree of sharing. It would therefore be important to first concentrate on the market needs before seeking for frequencies.

⁴ Document RSPG10-331

The Commission noted the relevance of the work of the Group notably in relation to the possible use of cognitive radio in the "white spaces" in the UHF band, including possibly for PMSE⁵ applications. The Commission has committed to look at this issue in the context of the digital dividend policy.

The Rapporteur concluded by stressing the importance of cognitive radio in terms not only of spectrum efficiency improvements but also with regards future business innovation. He called therefore to look at the business case at the same time as assessing the spectrum regulatory aspects.

The Chairman reiterated his high expectation for the recommendations which will be part of this Opinion which is due in November, and reminded the RSPG of the date of the next Working Group meeting: 6 July in Brussels.

(6) Joint RSPG/BEREC activity on "new competition challenges resulting from a more flexible management of spectrum"

Adoption of the third Report on impact of spectrum on market definition

The Rapporteur, Mr Davide Gallino (Agcom, Italy), gave an overview of the changes to the third report since the last RSPG meeting. The Report had been recently approved by BEREC, paving the way for the adoption by the RSPG.

One Member State indicated that it was not able to approve the Report because the proposed text could be understood as recognition that a concept of "spectrum market" may exist under the definition of the regulatory framework, which is not appropriate in the opinion of the delegate. The Rapporteur stressed that this issue was discussed at length in the working group as well as in the BEREC and consensus was reached on a text that should not, for the proponents, raise this concern any more.

The Commission welcomed the Report but reiterated its view that the document should not be considered as guidance to formal EU procedures such as the article 7 procedure, since there is no dedicated spectrum market.

The Chairman highlighted that one of the merits of the Report is that it analyses for the first time in detail at EU level the effect of possible substitution between fixed and mobile services.

The Report was approved by 26 votes in favour and one abstention.

Status of the joint RSPG/BEREC work on transitional issues

The **Rapporteur** for this part of the activity, **Mr Chris Woolford (Ofcom, UK)**, gave a preliminary feedback concerning response from Member State to the questionnaire on re-farming issues. He expressed great satisfaction to having received 26 detailed responses. In Mr Woolford's viewpoint, the number of responses illustrates the high level of interest of administration regarding this issue. He further commented that the challenge for the working group is now to compile the data and to find a coherent format to summarise the information, and to draw common themes allowing to derive

⁵ Programme Making Special Events

general conclusions. In this context, Mr Woolford said that it may be difficult to finalise the report on time for adoption at the RSPG meeting in November. He will consult with the Chairman in due time if any change to the planning would be required.

Status of the joint RSPG/BEREC work on infrastructure sharing

Mr Davide Gallino informed the RSPG that the working group has started working on this topic and agreed, in the first meeting held the previous day, on the content of a questionnaire to be issued to administrations before the end of June. Responses will be requested within one month.

(7) Future of radio broadcasting – Spectrum implications

Mr Jonas Wessel (PTS, Sweden) presented the status of activities⁶ on behalf of the Rapporteur, Mr Magnus Falk (PTS), in particular the outcome of the first meeting of the working group which took place on 30-31 March 2010. Mr Wessel explained that the working group came to the conclusion that, besides an inventory of the current situation in Member States, it needs to receive more input regarding possible scenarios for the future, in particular how digital radio can create added value to the benefit of EU citizens. This is why, in addition to a questionnaire which was sent to administrations, the Group also addressed a questionnaire to relevant sectoral and industry EU associations having an interest in radio broadcasting matters. The questionnaire is asking for informed views on expected business developments and on any possible issues of an EU-wide nature affecting the roll-out of digital radio in the single market. The first draft of the Report is expected to be ready in July. A second meeting of the working group is planned in September in order to be able to submit the final draft to the RSPG by mid October for discussion in the November plenary meeting.

The Commission expressed its support for the wide scope approach proposed by the Rapporteur, and the fact that the planned analysis addresses the inter-play between all potential platforms including Internet radio.

The RSPG approved the proposed orientation of work. **The Chairman** thanked the Rapporteur and the working group, and looked forward to a deeper discussion at the next meeting.

(8) Other policy matters

Coordinated EU participation in international spectrum negotiations

Mr Eric Fournier, Rapporteur for this activity, gave a brief reporting on the results of the working group meeting of 1 June⁷. Although the work is concentrated on the preparation of WRC-12, the working group will also consider identifying objectives associated to WRC agenda items for which a common EU position would provide

⁶ Document RSPG10-336

⁷ Document RSPG10-337

political steering when negotiating bilaterally with third countries (such as through the regular EU dialogues with third countries).

As part of the ensuing discussion, **an RSPG member** drew the attention of the Group to the importance of addressing properly, in addition to active agenda items for WRC-12, also future agenda items that should be proposed for WRC-15 to progress EU interests in ITU.

Mr Fournier also informed the Group on the latest status of preparation of the joint **EC/ECC stakeholders workshop on WRC-12** scheduled on 10 June in Brussels.

Information on the spectrum auctions in Germany, by the representative from BNetzA

On behalf of the German delegation, **Dr Rüdiger Hahn** gave a report on the outcome of the recent auctions which took place in Germany (April-May). The presentation was very much appreciated by the RSPG as it contained interesting suggestions and advice to Member States envisaging a similar spectrum assignment initiative in a near future. Dr. Hahn was grateful to the RSPG to have been instrumental in helping shaping the German policy on wireless broadband access, that finally led to the auctions. He said that the RSPG meeting in **Gothenburg** on 27 February 2008 had probably been the turning point where Germany came to the conclusion to make the digital dividend available also to other services than broadcasting to maximise the benefits for German citizens.

Report on Commission activities in radio spectrum policy

This information was made available to the RSPG in the form of a written report⁸.

(9) Organisational matters

Following a proposal by the Chairman, the **RSPG approved the list of documents** eligible for **public access**. The Chairman also referred to the list of RSPG meeting dates for 2011⁹.

The Chairman informed the RSPG on the key messages that he was intending to convey at **stakeholders briefing session** following the plenary meeting, and reminded the Group about the ceremony that will take place to formally hand over the RSPG Opinion on the RSPP to Commissioner Mrs N. Kroes (tentatively on 23 June).

The Chairman called on RSPG Members to support the two European candidates in the forthcoming ITU elections, as a matter of solidarity, and taking into account the high quality of both candidates.

The **next RSPG meeting** (RSPG#22) is scheduled to take place in Brussels on **Wednesday 17 November 2010**.

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⁸ Document RSPG10-338

⁹ Document RSPG10-340

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