

Draft RSPG opinion on the process for EU assistance in bilateral negotiations with third countries and between EU countries

0. Introduction

Article 2 of the amended Commission Decision establishing a Radio Spectrum Policy Group states that "*the RSPG shall assist and advise the Commission on radio spectrum policy issues, on coordination of policy approaches, on the preparation of multiannual radio spectrum policy programmes and, where appropriate, on harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market*". RSPG opinions should help in substantiating by qualitative and, wherever possible, quantitative indicators whether a European Union objective can be better achieved at EU level, taking into account the principle of subsidiarity.¹

This Opinion addresses the following matters:

- A process for assistance from the Union at the political level to support bilateral negotiations in cases where one or more Member States have difficulties in cross-border coordination or from harmful interference with third countries which prevents them reaching the envisaged benefits of the implementation of an EU policy or where there is a strong EU interest;
- A process to assist one or more Member States, with “good offices” from the RSPG, in finding a solution for cases of harmful interference or unresolved coordination issues with other Member States;

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1. Background

1.1 Previous activity of the RSPG in the area of cross-border coordination

¹ Article 5(3) of the Treaty on European Union and Article 5 of the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

² COMMISSION DECISION (2002/622/EC) of 26 July 2002, amended by EU Decision 2009/978/EU, establishing a Radio Spectrum Policy Group (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:198:0049:0051:EN:PDF> and <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:336:0050:0051:EN:PDF>)

The issue of EU assistance in bilateral negotiations with third countries and between EU countries had been raised in previous RSPG deliverables, justifying the need for RSPG to develop its opinion on such EU assistance.

a) RSPG10-330, RSPG Opinion on Radio Spectrum Policy Programme³

This opinion emphasized for the first time the areas where RSPG and EU could help in issues relating to cross-border coordination, making clear the distinction between cross-border coordination between EU countries and with third-countries:

Coordination between EU countries: “The RSPG recommends that competent national authorities should be encouraged to share experiences and best practices, in particular where cases of technical issues, such as harmful interference, have arisen during coordination activities. Specific cooperation among national authorities should be based on a ‘collective support mechanism’. According to this mechanism, upon request of affected parties, a team of experts within RSPG would be set up with the mandate to provide an independent expert opinion.”

Coordination with third countries: “During bilateral negotiations with non-EU countries, including candidate and acceding countries, political and technical support should be provided for individual Member States requesting assistance for solving frequency coordination issues (e.g. on the 800 MHz band), in particular when several countries are faced with the same difficulties and EU policy is concerned. In the provision of such assistance, the EU should use all its legal and political powers to promote the implementation of EU policies. Given the political dimension of these negotiations, RSPG invites the European Parliament and the Council to consider whether such assistance could constitute an integral part of the EU’s wider international engagements and policy.”

b) RSPG10-347, RSPG report on frequency coordination and digital dividend⁴

This RSPG report addressed the issue of cross-border coordination in the context of the implementation of the digital dividend, recognizing that intervention at the political level may be appropriate in cases where frequency coordination agreement can not be reached solely by technical means and there may be circumstances where frequency coordination processes are tabled but agreement cannot be reached

1.2 Cross-border coordination between EU countries and countries using aeronautical radionavigation service in the band 790-862 MHz

³ http://rspg.ec.europa.eu/_documents/documents/opinions/rspg10_330_rspp_opinion.pdf

⁴ http://rspg.groups.eu.int/_documents/documents/meeting/rspg23/rspg10_347_frequencycoordination%20-%20Digital%20Dividend.pdf

The issue of cross-border coordination highlighted in the Report RSPG10-347 can be considered as the first example of EU intervention in cross-border coordination and provides a useful guidance on an efficient approach to such intervention.

During the Conference Preparatory Meeting for WRC-12 (CPM), in February 2011, discussions took place between the Regional Commonwealth in the field of Communications (RCC) and CEPT, in relation with WRC-12 agenda item 1.17. The idea was to ensure that all necessary bilateral agreements will be reached before WRC-12 with satisfying conditions so that the regulatory procedure of the Radio Regulations would not need to be applied or amended under agenda item 1.17. The results of these discussions were:

- a summary record detailing actions to reach bilateral agreements between CEPT countries wishing to operate mobile service in the band 790-862 MHz and RCC countries operating ARNS before WRC-12 and explaining the relation with WRC-12 agenda item 1.17
- a framework agreement that concerned administrations can use as a starting point for bilateral discussions

Although there was no formal request for an EU intervention in this cross-border coordination issue, several member states indicated during the development of an EU policy on the 800 MHz band that they would have difficulties in implementing the legislation due to cross-border coordination issues with countries operating aeronautical radionavigation services. Therefore, the EC gave a political dimension to this agenda item through high level discussions between the President of the European Commission, José Manuel Barroso and the Prime Minister of Russia, Vladimir Putin, as well as between the Vice President of the European Commission and European Digital Agenda Commissioner, Neelie Kroes, and the Ministry of Communications and Mass Media of the Russian Federation. Igor Shchegolev. This was certainly key to ensuring that the matter was considered with the highest priority by the Russian Federation.

After CPM EU member states continued or initiated cross-border coordination discussions with concerned administrations. The situation was regularly reviewed within CEPT in relation to the discussion on WRC-12 agenda item 1.17 and the application of the RCC-CEPT agreement. In addition, contacts between the two organizations helped to alleviate difficulties.

As a result of bilateral or multilateral discussions, most of the required agreements have been reached between the involved countries.

All the above illustrates well the benefit of combined actions from CEPT and EC which take the best of CEPT expertise in technical multilateral/bilateral negotiations combined with the political weight of the EC.

2. Principles for EU assistance and use of the “good offices” of the RSPG in bilateral negotiations with third countries and between EU countries

- Member States have the responsibility of negotiating cross-border frequency coordination agreements with their neighbours (EU or non EU countries).
- In the case where one or more Member States face a difficulty in reaching cross-border frequency agreement or is affected by harmful interference, in particular in a band which

is subject to EU implementation measures, they should have the possibility to ask for EU assistance or use of the “good offices” of the RSPG.

- Necessary technical background shall be developed in CEPT and, when relevant, ITU.
- Common EU political approaches may be deployed regarding cross-border frequency coordination with non-EU countries in order to facilitate resolution of the issue. This assistance shall only be provided when requested by one or more Member States.
- In case of an internal EU cross-border frequency coordination issue, the RSPG may be requested to act by providing “good offices”.
- These processes are not intended to replace ITU coordination procedures, when applicable.

3. Opinion of the RSPG

a. Recommended process for EU assistance in bilateral negotiations with third countries

The process described below details how the RSPG may advise the EC on relevant actions to provide assistance to one or more Member States in bilateral negotiations with third countries.

Identification of the need for EU assistance: When one or more Member States have difficulties in cross-border coordination or from harmful interference with third countries which prevents them reaching the envisaged benefits of the implementation of an EU policy in a frequency band, they may request the RSPG Chairman to put the matter on the agenda of a RSPG meeting. This may also apply in cases where there is a strong EU interest even if no implementation measures have yet been adopted. The intention would be to inform the RSPG group and the European Commission about their difficulties during the meeting and ask for EU assistance.

EU assistance:

- First step is to ensure that all technical material is available through CEPT or ITU deliverables. If not, the technical material should be provided by CEPT, possibly under an EC mandate, or by the individual Members States.
- Second step, when it is clear that the cross-border coordination or harmful interference issue can not be solved by normal ITU and bilateral negotiation processes, the EC may act at the political level with the third country in order to facilitate resolution of the issue.

Reporting: Involved parties should report regularly to RSPG on the progress regarding actions and their outcomes

b. Recommended process for use of the “good offices” of the RSPG in bilateral negotiations between EU countries

The process described below details how the RSPG may provide “good offices” to assist in bilateral negotiations between EU countries.

Identification of the need for an EU assistance: When one or several Member States have difficulties in cross-border coordination or from harmful interference with another EU

country, they may request the RSPG Chairman to put the matter on the agenda of a RSPG meeting. They would report their difficulties during the meeting and ask for RSPG to bring its good offices to bear on the issue. RSPG may decide to respond positively to this request and set up relevant actions.

RSPG good offices:

- The RSPG would request a representative of a Member State, not directly involved and agreed by concerned parties, to chair a working group addressing the matter. This group should investigate the coordination or harmful interference issue and propose a balanced approach or solution to the concerned countries.
- The use of the good offices of the RSPG does not provide for any “enforcement” and still relies on the good will of the EU Member States.

Reporting: The results of the working group shall be presented to the RSPG for consideration.