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RSPG Report on the results of the RSPG "Good offices" in bilateral negotiations between EU countries

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1 Introduction

The Radio Spectrum Policy Group (RSPG) has defined the principles for the use of the “good offices” of the RSPG in its Opinion on the process for EU assistance in bilateral negotiations with third countries and between EU countries ¹.

The “good offices” process was defined to respond to the situation where “*one or several Member States have difficulties in cross-border coordination or from harmful interference with another EU country or third country*”. In such a situation, the RSPG may create a group “*to investigate the coordination or harmful interference issue and propose a balanced approach or solution to the concerned countries*”.

All Member States are first and foremost bound by their International Telecommunication Union (ITU) Treaty obligations with respect to cross-border coordination, as well as to the avoidance of and resolution of cross-border disputes relating to harmful interference. The sophisticated technical expertise of regional groups, such as the European Conference of Postal and Telecommunications Administrations (CEPT) within the European landmass, in developing co-existence solutions means that to a large extent, harmful interference is avoided. Where instances of interference have occurred Member States have generally been able to resolve these bi-laterally.

The RSPG “Good Offices” Working Group is a complimentary process for Member States that operates alongside existing work of Member States within CEPT and the ITU. Indeed, the “good offices” group has only been called upon twice thus far, and only in respect of digital terrestrial television (DTT) and frequency modulation (FM) broadcasting services.

This RSPG “good offices” has been active for about four years and this Report describes in which situations such “good offices” have been applied, which results have been achieved and what lessons can be learnt from their application.

2 Requests for the application of the “good offices”

The “good offices” have been applied for two distinct situations.

2.1 Request from Malta and from other Member states neighbouring Italy

On 30 July 2012 the Maltese administration officially requested the RSPG Chairman, Mr. Roberto Viola, , to use the RSPG “good offices” in the “resolution of harmful interference being caused by transmissions originating from Italy to digital terrestrial broadcasting services

¹ RSPG 12-409 “RSPG opinion on the process for EU assistance in bilateral negotiations with third countries and between EU countries”

in Malta”. In its request Malta indicated that the situation was also “hampering Malta’s ability to adopt the EU decision on the implementation of the 800 MHz band”. The reason was that the only Maltese GE-06 broadcasting channel free of interference was within the 800 MHz band and that the Maltese administration could not consider the migration of the broadcasting multiplex using this channel to another channel below 790 MHz until a replacement channel can be guaranteed free of harmful interference.

Later, some other EU Member states neighbouring Italy, namely Slovenia², France and Croatia joined this request and complained about harmful interference from Italy to their terrestrial broadcasting transmissions (digital television and FM radio) operating in accordance with bilateral and international agreements, and/or registered in ITU’s master international frequency register (MIFR). For these countries, there was no direct linkage with the implementation of EU law on the 800 MHz band. The harmful interference from Italy, however, aggravates the migration process of television services below 790 MHz and reduces the success of implementation and competitiveness of DTT with respect to other digital television platforms (e.g. in Croatia, Slovenia, ...).

The problem of Italian interference towards its neighbouring countries exists for decades, and is a result of transmissions by Italian broadcasting stations on uncoordinated frequencies. Although most of the discussions with Italy focused on solving TV harmful interference problems caused by Italian transmissions to its neighbouring countries, the “good offices” also addressed the issue of harmful interference in the FM broadcasting band.

2.2 *Request from Belgium*

In January 2013, the Belgian administration requested the application of the “good offices” due to difficulties encountered with Germany to sign a coordination agreement with Germany. Such agreement was necessary to define technical compatibility criteria for the implementation of the WEDDIP plan³.

3 Results of the application of the “good offices”

3.1 *Interferences from Italy to neighbouring administrations (TV terrestrial broadcasting)*

3.1.1 *Background*

Italian neighbouring countries have a longstanding problem dealing with harmful interferences caused by uncoordinated Italian TV transmissions. This is stemming from the fact that in the 80s, broadcasters obtained the right to transmit without prior authorisation in

² RSPG 13-542, letter from APEK Director to the Chairman of RSPG, dated 22/10/2013.

³ WEDDIP: Western European Digital Dividend Implementation Platform, provides a basis for bilateral discussions and agreements in order to address complex situations resulting from the difficult compatibility configuration in the area of the Benelux countries.

any «free» TV channel. Although interference to a neighbouring country on a given channel operating in accordance with bilateral and/or international agreements and/or notified in the MIFR means that the corresponding channel is not «free», it resulted in a situation where the Italian administration had difficulties in applying and enforcing the bilateral and/or international agreements. The Italian administration had insufficient legal power to prevent the use of internationally uncoordinated channels by Italian broadcasters. Furthermore, the Italian administration faced difficulties in eliminating interference through judicial or administrative actions. When legal actions were taken by the Italian administration against the Italian broadcaster, the Italian administration had to prove the existence of such harmful interference, with endless discussions focusing on which changes needed to be effected to the transmission parameters of the broadcasting station which were considered to be sufficient to solve the interference problem. The interfered country was not a direct party to these discussions.

These harmful interferences were reported by all Italian neighbouring countries to the ITU and to the Italian ministry responsible for communications based on Article 15 of the ITU Radio Regulations. The matter was regularly addressed by the ITU's Radio Regulatory Board since September 2005.

The Italian independent communication regulatory authority, AGCOM, took the responsibility to define a TV plan providing channels for national programmes as well as channels for regional and local programmes. National programmes were planned based on large single frequency network (SFN) coverage preferably using channels which were agreed with neighbouring administrations. On the other hand, the channels which were allocated to regional and local programmes were often not coordinated with neighbouring countries, i.e. used by neighbouring administrations in accordance with their international rights (i.e., GE-06 plan or bilateral agreements).

According to the general applicable procedure, in case of a neighbouring administration complaining about interference, the Italian ministry requested the regional broadcaster to propose technical solutions to solve the interference, through a «new project», which could consist in a change of site, a reduction of transmitting power or a change of the antenna characteristics. The «new project» is submitted to the Italian ministry for its consideration. In some cases the regional broadcaster did even not propose any technical solution. Furthermore, the neighbouring administrations were not systematically informed about the actions being taken by the Italian administration, giving the impression that the interference case was not really being dealt with.

The enforcement of any such project is carried out by the ministry and its local offices located in each Italian region. In several cases, the administrative courts suspended or cancelled a decision from the ministry on the basis that the interference to the neighbouring administrations was not sufficiently demonstrated.

3.1.2 First phase of application of the RSPG “good offices”

Until the beginning of 2014, the RSPG “good offices” working group analysed the results of the measurements of interference carried out by all concerned administrations, with a focus on the case of the Maltese administration, in order to help the Italian administration identifying the source of the interference and the possible solutions.

In the case of interference to Malta, the “good offices” identified the actions to be taken by the Italian administration. These actions were generally successful in the case of national programmes interfering to Malta’s DTT broadcasts.

However, soon after the start of the process, it was evident that the Italian ministry encountered difficulties to enforce definitive solutions with respect to regional and local programmes.. An interference problem which should have been solved following implementation of corrective measures on a given regional transmitter reappeared again from the same or a different transmission site. The efforts from neighbouring administrations in measuring interference and identifying interferers seemed to be useless with interference always back. In addition, the majority of harmful interference cases towards other neighbouring countries were not resolved.

3.1.3 Replacing Malta’s TV channel 66

It was necessary for Malta to migrate its existing broadcasting multiplex operating on channel 66, i.e. within the 800 MHz band, in order to carry out the authorisation process for mobile operators in this band, as required by Decision No. 243/2012/EU of the European Parliament and the Council.

The “good offices”, as well as bilateral discussions between Malta and Italy, enabled to identify channel 43 as the replacement of channel 66. This was fully accepted by both administrations. However, two conditions were additionally needed:

1. AGCOM had to make a new plan excluding channel 43 in the southern part of Sicily.
2. Malta had to carry out the GE-06 procedure to record this new entry in the GE-06 plan.

The first condition was accepted by Italy but it was carried out using a new “compensation scheme” (refer to section 3.1.4 of this Report).

Concerning the second condition, the agreement from Italy under the GE-06 procedure, was given rapidly, but more discussions were needed between Malta and the two concerned countries outside EU, namely, Libya and Tunisia. After having accepted some conditions imposed by Tunisia on the use by Malta of TV channel 43, on 6 November 2015, Malta submitted to the ITU the electronic notice file to register this channel in Malta's name in the GE-06 Plan. This process was concluded successfully and channel 43 has been registered in Malta’s name in the said Plan since 1st March 2016.

3.1.4 Implementation of Decreto-Legge n°145

A Decreto-Legge was adopted by Italy in the beginning of 2014 in order to respond to the difficulties highlighted in sections 3.1.1 and 3.1.2, as regards regional and local programmes operating on frequencies not internationally coordinated for use in Italy. This Decreto Legge established a compensation fund for broadcasters accepting to switch-off their interfering transmission on a voluntary basis. As a second step, in cases where the channels voluntarily vacated were not sufficient to eliminate the interferences, the Decreto-Legge has given the right to the Italian administration to force the switch-off of regional and local transmissions. This measure could also be executed even in cases where the broadcaster did not voluntarily applied to the compensation scheme, to the extent necessary to free all channels creating interferences.

In accordance with this legal text, in September 2014 AGCOM published a plan for channels to be switched-off by regional and local broadcasting stations in regions identified as interfering with the TV reception of neighbouring administrations. The maps showing the exclusion zones around each neighbouring country were discussed within the "good offices" working group.

Italy's intention was to complete the implementation of this Decreto-Legge and to resolve the cases of harmful interference by the end of 2014. However, Italy encountered difficulties in executing this Decreto-Legge and this resulted in several delays in resolving the various harmful interference problems. Following end 2014 Italy announced that the interference will be eliminated in April 2015, then by end 2015, then April 2016 and then November 2016.

First, the 2015 Italian Budget Law modified the Decreto-Legge 145 by:

- Extending the date for the switch-off of the interfering frequencies until the 30th April 2015.
- Increasing the overall compensation budget from €20M to €51M.
- Allocating to regional transmissions additional internationally coordinated spectrum resources previously allocated to national broadcasting, to accommodate local TV content providers that would have lost their right to transmit on channels causing cross-border interference.

The application of the procedure was detailed in a decree published only in June 2015. It was further delayed after the Ministry questioned the possibility to improve the new AGCOM plan published in July 2015. Consequently the procedure was started only in October 2015.

The Italian administration considered as a first priority the issue of interference from Sicily to Malta and in this regard, on the 9th February 2016, it published the list of the operators and channels planned to be switched-off. On the same day, the list for the Tuscany region was published. On the 11th February the results for the Ligurian region, followed by Veneto (11th March), by Friuli Venezia Giulia (15th March) and by Puglia (26th April) were also published.

However, the Italian administration decided to suspend the process by arguing about a legal difficulty: in some regions around the Adriatic Sea, the switch-off of regional channels would

have brought the number of such regional channels below the minimum number of channels defined by law (at least 1/3 of the total number of channels have to be allocated to regional broadcasters). In order to overcome this problem, additional spectrum resources had to be made available for regional and local broadcasting. For that reason, the Italian Ministry published, on the 2nd May 2016, a comparative bidding process⁴ in order to identify local network operators who may transport regional programmes, on Italian channels having international rights (i.e. GE-06), which had previously been reserved for national programs but which had not yet been assigned. The Italian administration intends to resume the process of switching-off interfering transmissions only following issuance of the new licenses.

The purpose of the comparative bidding process that was published on the 2nd May 2016 was to help in solving existing cases of harmful interference caused by regional Italian broadcasters. However, as a result, the process of the implementation of the Decreto-Legge n°145 was delayed further.

Italy announced that they intend to switch-off interfering transmitters before the **8th November 2016** for Friuli Venezia Giulia, Veneto and Puglia and before **the end of November 2016** for other regions bordering the Adriatic Sea. Italy stated that the reported cases of DTT harmful interferences towards its neighbouring countries will be resolved by this date.

It should be noted that the AGCOM plan, in line with the Ministerial Decree, was excluding transmissions **only** for the protection of internationally coordinated channels **actually operated** by neighbouring administrations. Furthermore, the Ministry's procedure was looking for a reallocation of the channel rather than simple switched-off whenever possible. As a result, the application of the Decreto-Legge also increased the use by Italy of channels for which neighbouring countries have rights in accordance with bilateral and international agreements, although these rights are currently not being operated.

This is a significant issue, in particular in relation to the reallocation of the 700 MHz band, since it prevents the Italian neighbouring countries to use such channels for migrating television broadcasting below 694 MHz.

The Decreto-Legge n°145 was not designed to address interference cases notified after December 2013, nor interferences to the coordinated frequencies of neighbouring countries that were not in operation in December 2013, as well as nor any remaining interference caused by Italian national broadcasters. In addition, it did not cover the requirements of some neighbouring administrations to introduce and to protect new TV multiplexes. The Decreto-Legge was considered to be a first step towards solving most problematic and long-lasting interference problems on some channels used by some regional programmes. It, however, will not completely resolve the issues of DTT interference to Italy's neighbouring countries.

However, it has to be noted that the Italian Ministry will now have the possibility to move regional programmes currently using channels for which neighbouring countries have rights

⁴ <http://www.mise.gov.it/index.php/it/comunicazioni/televisione>

in accordance with bilateral and international agreements to channels operated by the new local network operators selected through the comparative bidding process.

3.1.5 Results of the implementation of the Decreto-Legge n°145

The Decreto-Legge n°145 was implemented to the limited extent, since the switch-off process was suspended by Italy. The majority of the Italian broadcasting transmitters causing interference were not switched off. This situation is particularly relevant to the Adriatic region where no progress was achieved in eliminating the aforementioned harmful interference caused by Italian transmissions.

3.1.5.1 Malta

Measurements carried out by Malta confirmed the effective switched off of the interfering Italian TV stations operating on channels 28 and 31. The interference situation on channels 38, 43 and 45 was improved and the following presents the interference situation on these channels:

- Channel 38, which is used by national programmes in Italy: Malta and Italy identified that the remaining source of interference is Sardinia. The nature of this interference is sporadic. Some solutions are studied by Italy so as to reduce the interference towards Malta.
- Channel 43, which is the replacement channel of channel 66: The remaining interference is caused by a national broadcaster probably operating from Sardinia. The nature of this interference is sporadic. Some solutions are studied by Italy so as to reduce the interference towards Malta.
- Channel 45: The nature of the interference is a sporadic one, caused by a regional station probably located in the north-west side of Sicily.
- Channel 5 (VHF): The source of the interference could be originations from the north of Sicily. This channel is also a GE-06 channel registered to Italy.

3.1.5.2 Slovenia

Italian TV stations use non-coordinated frequencies assigned to Slovenian broadcasting transmitters. These Italian stations violate international agreements dealing with spectrum and cause harmful interference towards Slovenian TV receivers. This does not only prevent quality reception or reception in general, but also causes significant economic damage to Slovenian broadcasting. During the past years Slovenia has sent a few hundred of harmful interference reports to the Italian administration. Unfortunately, after many years of efforts Slovenia still cannot report any progress in this regard.

Slovenia is still waiting for the implementation of the Decreto-Legge n°145 in the areas affecting Slovenia. Until September 2016, the changes announced by Italy were not detected in the TV spectrum as yet. It should be noted that the implementation of the new plan by Italy is expected to only solve problems affecting DTT stations that are in operation in Slovenia. Those channels that are not yet in operation and for which Slovenia has rights to use near the

Italian border (in accordance with international agreements) are not addressed by the same Decreto-Legge.

Measurements were also carried out to measure the interferences on the VHF band (used by TV in Italy and by T-DAB in Slovenia) and the reports of harmful interference were sent to the Italian administration. Italy stated that the use of the interfering channel is temporary until the end of November 2016.

3.1.5.3 Croatia

Harmful interference from uncoordinated Italian broadcasting stations (TV and FM) to Croatian broadcasting stations entries in the MIFR, GE-84 and GE-06 Plans, lasts for decades. During the last years the situation has worsen resulting in damaged or no coverage to Croatian sound and television broadcasting services within the Croatian territory. The Croatian administration has requested the Italian administration to cease transmissions of uncoordinated Italian broadcasting stations which cause harmful interference to Croatian coordinated broadcasting networks. These requests were substantiated by more than 3,200 interference reports, drawn up in accordance with ITU procedures which were also sent to the Italian administration during the last few years.

Uncoordinated TV transmissions from Italy cause harmful interference, reduce the quality and availability of TV service and cause significant economic damage to the TV broadcasters and users. For these reasons several major TV broadcasters in Croatia have submitted a complaint to the European Commission requesting to initiate an infringement procedure against Italy due to breach of EU law.

At the end of April 2016, which was the last agreed deadline for the elimination of the harmful interference after several postponed dates, there was no improvement on the terrain. This implied that Croatian TV and FM broadcasting networks continued to experience strong interference caused by uncoordinated Italian stations. This was confirmed by measurements carried out between May and September 2016 in Croatia, along the Adriatic coast.

Results of measurements show that Italian broadcasting stations are causing harmful interferences to the reception of the Croatian channels operating in the accordance with the GE-06 Plan and MIFR:

- Region D5 (Istria and Primorsko-Goranska): channels 28, 29, 39, 45, 53, 57.
- Region D7 (North Dalmatia): channels 21, 29, 31, 35, 45, 51, 59.
- Region D8 (Mid Dalmatia): channels 23, 33, 34, 41, 46, 53.
- Region D9 (South Dalmatia): channels 21, 22, 28, 45, 51, 59.

One case of harmful interference from Italy falls outside the scope of Decreto-Legge n°145. Channel 57 is operated by an Italian national broadcaster causing interference to a Croatian TV broadcasting network in Region D5 (Istria). The administration of Italy has not proposed a solution to remove this harmful interference.

Furthermore there are a number of reported cases of interferences to Croatian coordinated channels currently not in operation (e.g. Region D5: channels 23, 43, 46; Region D7: channels 22, 27, 41; Region D8: channels 29, 43; Region D9: channels 21, 29, 34, 45). This situation is preventing the introduction of new TV networks and the migration of existing TV broadcasting networks below 700 MHz band in order to release the spectrum for the second digital dividend.

3.1.5.4 France

Two channels, 43 and 45, were identified in the Decreto Legge n°145 as interfering with France and have been switched off in Tuscany (47 and 29 sites on channels 43 and 45 respectively) and Liguria (103 and 17 sites on channels 43 and 45 respectively).

Two cases of interference with France were outside the scope of Decreto Legge n°145:

- on channel 37, where the Italian ministry forced the broadcaster not to transmit from the sites causing the interference, i.e. from Monte Serra, Monte Argentario and Roselle. In addition, the Italian Court recently rejected the broadcaster request.
- on channel 34, a new project has been implemented by the broadcaster and the effectiveness of the implementation is currently being assessed.

Measurements from France has shown that, for the time being, the interference has been reduced to an acceptable level on these channels, but France remains concerned about the risk of modifications of the transmission characteristics which would give rise again to the interference.

3.2 Interferences from Italy to neighbouring administrations (FM Broadcasting)

The interference situation around Italy in the FM broadcasting band is in many ways similar to the interference situation in the TV bands and a number of countries neighbouring Italy are affected. This is even worsened by the absence of any FM frequency Plan in Italy and by the fact that Italy does not apply the Geneva 1984 agreement.

At the international level, the FM interference problems caused by Italy to its neighbouring countries were collectively discussed at the 2012 World Radiocommunication Conference, where Italy defined roadmaps on how to solve the reported cases of harmful interference. Within the RSPG “good offices” the matter was firstly raised by Slovenia following a bilateral coordination meeting between Italy and Slovenia in June 2014 addressing the process for solving cases of FM interference. Malta, Croatia and France highlighted that they also experience harmful interference from Italy on frequencies that are operating in accordance with their international rights.

Slovenia sent over 250 interference reports to the Italian administration in past years, but practically no interference was eliminated since then. All frequencies in the western part of Slovenia are interfered, many of them with transmitters just across the border.

The issue at the border between Slovenia and Italy was specifically addressed by the “good offices” and showed the “lose-lose” situation which is caused by the absence of FM planning

in Italy . Italy is trying to define “projects” to improve the interference situation, where such projects include the migration of transmitters to alternative sites to provide better protection. However, this is unlikely to result in a fully satisfying solution.

The “good offices” will closely analyse the results of the measurements carried out in the Slovenian territory with the objectives to ensure that Italy has applied technical conditions, including possible switch-off, to protect neighbouring countries’ transmissions,. The Italian law is envisaging a plan for FM broadcasting, to be developed by AGCOM, but only after the completion of the digital radio broadcasting plan and the full development of the DAB+ market. One of the reasons for this policy is that it would enable those FM radio stations which could not be accommodated in the envisaged FM plan to migrate to a DAB+ transmission platform.

The “good offices” concluded that this is not providing a satisfactory solution since such migration, which can only provide a limited capacity, is not likely to happen in a reasonable timeframe. Therefore, a solution to enable the Italian administration to respect international agreements and enforce the protection of FM rights of other administrations is yet to be identified under national law. Until such a solution is identified and fully implemented, the FM broadcasting stations of the concerned countries neighbouring Italy will continue to be interfered by uncoordinated Italian transmissions.

The Commission raised this issue in the context of meetings with the Italian authorities on the implementation of the framework and is following the developments concerning the planning of analogue and digital radio broadcasting frequencies.

3.3 *Belgium-Germany case*

After having analysed the case, the “good offices” working group concluded that the difficulties to formally sign the agreement between Belgium and Germany was only related to the two countries anticipating the 700 MHz reallocation to the mobile service, with two areas of disagreement :

- a) the way the existing unbalanced situation regarding the availability of spectrum below 694 MHz could be resolved at a latter point of time; and
- b) the demand from Germany to have an agreement valid only until 2017.

Acknowledging that these remaining coordination issues between Belgium and Germany had no impact on the availability of 800 MHz band for mobile services in Belgium, which band was already planned to be assigned via an auction by end 2013, both administrations agreed that the discussion should continue on a bilateral basis, taking into account the wider context of the 700 MHz band. Therefore, the RSPG “good offices” no longer discussed this case since June 2014.

4 Lessons from the application of the “good offices”

The RSPG “good offices” only apply in exceptional circumstances in support of challenging bilateral frequency agreement negotiations and their implementation. However, the RSPG “good offices” is without prejudice to national enforcement which falls under the full responsibility of national administrations.

The application of the “good office” since the year 2012 showed that, although certain European Union decisions provide harmonization in the 800 MHz and 700 MHz frequency bands, Member states neighbouring Italy are, however, faced with harmful interference which, apart from making direct damage to the broadcasting service of the affected Member states, it indirectly affects the successful implementation of harmonization decision for these two bands by preventing interference free operation and successful migration of broadcasting services below 790 MHz and 694 MHz.

4.1 «Good offices» have been called upon so far only in relation with broadcasting cross-border coordination, i.e. in the FM or TV broadcasting bands

Broadcasting, i.e. high power high tower transmission, has a strong potential to interfere with the spectrum use in neighbouring countries. This is the reason why broadcasting has been subject to international Plans and also why it was necessary to consider a coordinated approach at the Union level for the reallocation of the 800 MHz band, and now the 700 MHz band. On the other hand, it is not expected that the “good offices” be normally applied in cross-border coordination issues between electronic communication networks which are not “high power high tower”.

4.2 “Good offices” can help in reaching a common understanding on what are the technical solutions but does not provide a solution where national enforcement does not work properly

The application of the “good offices” between Italy and its neighbouring countries has shown that it is possible to agree on technical solutions as a means to solve harmful interference problems. The enforcement difficulty in Italy has resulted in delays in the implementation of the agreed actions as well as in taking an effective action on the remaining cases of harmful interference. The initiative from the Italian administration to create the compensation fund was a good step forward. However, many interference issues still need to be resolved and this manifest the need for Italy to: a) devote more efforts to resolve interference issues as a matter of urgency, b) have in place broadcasting plans (television and FM radio) fully respecting the rights of neighbouring administrations, and c) improve the national legal enforcement framework.

In this context, the way to speed up the process and to implement the agreed actions and timeframes within the RSPG “good offices” is to be questioned. The issue of lack of implementation of agreed actions has to be tackled with more efficient methods to resolve harmful interference cases from Italy.

It has to be noted that this situation seems to be specific to Italy, and is probably due to the way the broadcasting bands are managed and licensed in Italy.

However, the “good offices” is not enough, per se, to solve harmful interference problems particularly in cases where an administration does not have sufficient legal power to enforce effectively a solution, or in taking measures to avoid that the interference would come back again.

4.3 RSPG “good offices” have helped in some limited extent in the implementation of the 800 MHz band

The RSPG “good offices” process has been used only twice in relation to the re-planning of TV below 790 MHz so as to make the 800 MHz band available for mobile networks. Concerning the Belgium-Germany case, it appeared that there was no element in the dispute which would have had the potential to delay the process in making the 800 MHz band available for mobile networks. Concerning the Malta-Italy case, the “good offices” clearly helped in reaching a commonly agreeable solution.

It is striking that the number of cases referred to the RSPG “good offices” is limited when compared to the number of derogations concerning the implementation of the EU Decision on the availability of the 800 MHz band. It should be recalled that the European Commission has in various occasions advised Member states having coordination difficulties with other EU Member states to address the case to the RSPG “good offices”. The delays for implementing the 800 MHz band might therefore be associated more either to a delay in national migration of broadcasting below 790 MHz band or to cross-border coordination with countries outside EU.

4.4 How to foster the application of the “good offices” in case it is applied for the 700 MHz band?

The RSPG has recognized in its opinion on a long-term strategy on the future use of the UHF band⁵, the need to ensure that “all necessary cross-border coordination agreements, including transitional arrangements, will be finalized at the latest by the end of 2017”. The European Commission followed this recommendation by proposing to implement this deadline in its proposal for a decision of the European Parliament and of the Council on the use of the 470-790 MHz frequency band in the Union.

Unresolved cross-border coordination issues and harmful interference to broadcasting could significantly jeopardize the process of the reallocation of the 700 MHz band in Member states due to causes which are beyond the responsibility of the said Member states.

⁵ RSPG 15-595 FINAL “RSPG Opinion on a long-term strategy on the future use of the UHF band (470-790 MHz) in the European Union”

This may justify a more systematic and proactive review of the cross-border coordination difficulties as well as of harmful interference cases in the implementation of the 700 MHz band by the RSPG so as to ensure the timely identification of any unresolved cross-border issues and to apply the RSPG “good offices” accordingly. A questionnaire to Member states has been developed to facilitate such a review of the 700 MHz implementation and to identify the related cross-border issues, if any.

In addition, the “good offices” should monitor and facilitate the implementation of the cross-border coordination agreements, i.e. without harmful interference to channels used by neighbouring administrations in accordance with these agreements. Cases where an administration is not effectively implementing the agreements in relation to the 700 MHz band, would be considered to constitute a breach of the coordination agreement. In such cases an administration may not be able to fulfil its obligation under the future decision of the European Parliament and of the Council concerning this band if it includes, as proposed, the obligation for such agreements. The latter case may result in the European Commission initiating an infringement procedure.

5 Future activities for the “good offices”

The RSPG “good offices” will need to continue to monitor whether the Italian administration succeed in switching-off the interfering TV transmitters by end November 2016. Other actions are necessary regarding the Italian case so as: a) to solve the remaining cases of harmful interference (e.g. from national multiplexes), b) to ensure that regional programmes will not occupy channels for which neighbouring administrations have international rights to use, even if they are not in operation, and c) to facilitate cross-border negotiations and in resolving harmful interference problems in the FM band.

The Commission reported that it has introduced in its proposal for a European Electronic Communications Code provisions regarding the cooperation in cross-border coordination cases, including the possibility to have solutions proposed by the RSPG binding upon the Member States concerned by way of a Commission implementing measure

Recognizing the widespread interest to ensure the timely implementation of the 700 MHz band and the migration of broadcasting below 694 MHz, the RSPG decided to extend the “good offices” programme of work to a new project, focusing on 700 MHz spectrum re-planning and clearance, and particularly to identify at an early stage whether there are potential issues of cross-border co-ordination or harmful interference. The RSPG “good offices” will have to flag, in a proactive mode, any difficulties to the RSPG and to recommend actions to overcome these difficulties in advance. Questionnaire(s) will be issued to source information about national plans for clearance and details of the plans at a high level and bilateral/multilateral negotiations with regard to 700 MHz re-planning of broadcasting frequencies.

In this respect, it is reminded that the RSPG Report on “proposed spectrum coordination approach for broadcasting in the case of a reallocation of the 700 MHz band” already recommends strengthening the action of multilateral groups such as WEDDIP, NEDDIF and SEDDIF in order to facilitate cross border coordination for the implementation of the 700 MHz band. Member states should be encouraged to join the activity taking place within the group relevant to them and to create other multilateral groups, as deemed necessary.