

**SAP REG Comments on
Public consultation on the draft RSPG Opinion on
"Streamlining the regulatory environment for the use of spectrum"**

The satellite industry formed the European Union Satellite Action Plan Regulatory Group (SAP REG) in 1997 under a mandate from the European Commission, to address from an industry perspective, regulatory provisions affecting satellite communications services in the community. SAP REG members include Aeromobile, Alcatel-Lucent Mobile Broadcast, Boeing, EADS Astrium, ESOA, Europa-Max, Eutelsat, France Telecom, GVF, Globalstar, Hispasat, Hogan & Hartson, Hughes Network Systems, ICO Global Communications, Inmarsat Ventures PLC, Intelsat, ISI, Iridium, Mobile Satellite Ventures L.P., MSUA, New Skies Satellites N.V., ONDAS Media, ROSE Vision, SES Global, Solaris Mobile, Squire Sanders, Thales Alenia Space, Telespazio, Terrestar, Thuraya and WorldSpace Europe / WorldSpace.

RSPG has provided an apposite summary of the key issues facing spectrum managers at a time when many new uses of spectrum are proposed and developed that can potentially threaten the continued safe operation of important existing services (section 4.1 of the consultation document):

“In order to maintain confidence in the regulatory process, it is essential to ensure that:

- Existing spectrum rights holders have a secure basis to maintain existing and develop new services, in particular when asked to share with new spectrum users (possibly with innovative technical sharing solutions).
- Technical regulations for new services are defined at a level appropriate for the protection of existing services (i.e. not made too conservative to compensate for a lack of confidence that the requirements will be respected).
- Technical regulations for new services can be defined and adapted as quickly as possible, to minimise the barriers for new and evolved applications to access spectrum.

Confidence, clarity and certainty regarding the regulatory environment are needed in order to avoid impairment of flexibility and innovation, causing confusion, misunderstanding and delay.

Sharing conditions are developed as a result of detailed negotiations, studies and investigations which have to balance between the protection requirement of existing users and the requirement to facilitate the access to spectrum for new users. In order to achieve the necessary confidence, it is important that all relevant users of spectrum, i.e. governmental and non governmental, and all other stakeholders (industry, operators, users ...) are involved and take an active role in finding solutions to enable sharing where possible. All stakeholders should provide the required information on their spectrum usage and participate in the establishment of sharing solutions in order to maintain confidence that the sharing solution will work effectively and will be effectively implemented.”

These issues are especially critical for satellite services for several reasons. In particular, satellite systems require large upfront investment, have long amortisation time and are very sensitive to interference both in the uplink and in the downlink. The

Commission has recognised this fact very recently in the context of the EU review of the telecoms policy:

“a particular case was the fear among satellite operators that terrestrial uses would overwhelm the weak satellite signals. This shows the need for a level of continuing technical regulation.” (Impact Assessment, SEC(2007)1472, section 6.4)

In light of these general comments, SAP REG is pleased to submit the following response to the specific questions raised in the subject consultation.

Detailed Comments

- What are the strengths and weaknesses of the current regulatory process and where do you think it can be streamlined and improved?

SAP REG: Although it is desirable to avoid duplication of work, the same subject can be both studied in the ECC to evaluate the feasibility of foreseen harmonisation measures and subject to adoption of implementation measures at the EC/EU level.

- What aspects of the regulatory environment for the use of spectrum should be subject to spectrum regulation or subject to standardization (Harmonised Standards)?

SAP REG: Satellite services need internationally harmonised spectrum. Spectrum regulation is required to achieve this. It should further be recognised that for satellite services, harmonisation is required not only within Europe, but at an even wider level, preferably globally. Global harmonisation can only happen within the framework of the ITU.

- To what extent should spectrum decisions specify technical details such as mitigation techniques and do you consider that this could be in contradiction with the principle of technology neutrality?

SAP REG: If mitigation is required, specific measures should be identified to ensure that undue interference is avoided. In most cases where mitigation is required by a particular application, the operator of that application will have an incentive not to apply the mitigation technique, e.g. to save costs or to improve availability to its service. Hence there must be a high level of certainty that the necessary mitigation will actually be applied, which might require their specification in spectrum decisions or reference to standard. In addition, there should be an opportunity to review the rules if the implementation of such a technology is not satisfactory.

The imposition of mitigation does, to some extent, go against the principle of technology neutrality. However it is important to recognise that technology neutrality is a desirable objective, and not an absolute requirement. The requirement to avoid interference to other users should take precedence and has already been identified as one reason for an exemption from the principle of technology neutrality.

- What is your assessment of the consistency between the activities of the European Commission, CEPT (European Conference of Postal and Telecommunications

Administrations) and ETSI (European Telecommunications Standards Institute) and what are the ways to improve it?

SAP REG: The way to ensure consistency is to avoid duplication of work and have good liaison between the different bodies.

- Do you support the recommendations expressed in section 5?

SAP REG: Generally the recommendations are reasonable. Please see detailed comments below.

General principles

5.1 The R&TTE Directive has been successful in introducing a liberal approach with the removal of the previous type-approval approach, this is currently unique at worldwide level, and the future ECN&S regulatory framework will introduce more flexibility in terms of spectrum use.

SAP REG: When reviewing the R&TTE Directive, it is important to ensure coherence with the Review of the Framework and the Authorisation Directive. One aspect in particular that would benefit from clarification is whether the right to put a product on the market in a certain category needs to be complemented or not by an authorisation before the product can be used.

5.2 The RSPG considers that the interplay of spectrum and equipment regulation is a key element in achieving the policy objective that the societal and economic value of spectrum use should be maximised. Furthermore, smooth functioning of spectrum management and standardisation encourages innovation and technological development, and enhances the competitiveness of European industry.

5.3 The RSPG considers that spectrum regulation should be limited to the minimum necessary to avoid harmful interference and to maximize the benefits to society of the use of spectrum, including economic, social and cultural benefits. Radio interfaces should be adopted in accordance with these principles of common, minimal and least restrictive conditions for spectrum use.

SAP REG: First, it is important to ensure that the drive to minimise regulation does not undermine the need for regulations to avoid interference. Second, spectrum regulation should be operational to avoid interference well before it becomes 'harmful' and before the corresponding service is getting disrupted.

5.4 The RSPG considers there is a need to continuously review the use of spectrum. The conditions for the use of spectrum should provide sufficient certainty to the market and spectrum stakeholders. However, they should also adapt to the evolution of radio systems characteristics and sharing situation.

SAP REG: The time required to develop and deploy satellite systems is long compared to some other radio technologies and the same is true for the operational lifetime of satellite systems. These factors should be taken into account in

implementing this principle that should be subject to the need to guarantee amortisation of investments.

5.5 The RSPG considers that the requirements and views of all stakeholders should be taken into account in a fair and transparent manner through a regulatory process involving both spectrum management and standardisation activities.

SAP REG: Strongly support this. This is not always the case currently in the EC process, where commitology rules sometimes prevent access to information, direct participation and consultation of stakeholders. Substantial improvement is required in this area to ensure that the views of stakeholders are taken into account.

5.6 The RSPG notes that the development of wireless applications will increase the demand and therefore the requirement for regulators to review new and innovative method of sharing between applications. However, the possibility to introduce new innovative applications and to increase spectrum sharing relies on the confidence of all spectrum users that the conditions and parameters required to ensure compatibility will be effectively considered, met and enforced.

SAP REG: Support this principle. Confidence in the process can only be achieved by open and transparent studies that involve all stakeholders.

Short term recommendations

5.7 The RSPG notes that the more detailed technical issues associated with spectrum sharing conditions and parameters are defined in cooperation between ETSI and CEPT. These spectrum sharing conditions should be clearly identified and reflected in ETSI Harmonised Standard(s) and in appropriate CEPT deliverable(s). Technical overlap between the various regulatory deliverables should be limited to cases where such parameters are an essential part of the spectrum management decision.

5.8 The RSPG recommends that CEPT and ETSI should consider how to quickly adapt sharing conditions and parameters in response to new market development or interference situations.

SAP REG: Support, noting that operational parameters cannot always be changed quickly.

5.9 The RSPG notes that the TCAM and RSCOM committees are often addressing similar issues of interference from the view point of the R&TTE Directive and spectrum management, respectively. Therefore, the activity of these committees should be even more closely coordinated. In addition, mandates to ETSI and CEPT should complement each other both in content and timing.

5.10 The RSPG recommends that in order to ensure transparency and consistency in spectrum management decisions, the Commission Decision should normally not be adopted before the final adoption of CEPT report after the public consultation process.

5.11 Receiver parameters are important for spectrum management and for facilitating the introduction of new applications in spectrum. Therefore, the RSPG considers that

the receiver parameters should be defined by ETSI in the harmonised and/or product standard for all equipment and be used consistently by CEPT in sharing studies as part of the assumptions for the intended use of the band.

SAP REG: SAP REG notices that the receiver parameters of certain equipments (e.g. TVROs) are not covered by the R&TTE Directive (per annex 1 of the Directive) and as such are not included in the ETSI harmonized standards. We would prefer this situation to remain unchanged to maintain the present flexibility on these equipments.

5.12 The RSPG urges spectrum managers to specify radio interfaces in accordance with the model laid down by the joint working group RIG-2 of TCAM and RSCOM. The implementation of this model may have to be examined in light of the WAPECS and cognitive radio concepts.

5.13 The RSPG considers that when a certain frequency band is designated for a specific application, this should not prevent the same frequency band to be designated later for another application.

SAP REG: SAP REG: SAP REG agrees in principle with this recommendation. However, any additional designation should only be approved if detailed technical co-existence studies, involving appropriate consultation with all stakeholders, show that the existing services can be protected. In many cases, in particular those involving satellite services, such studies need to be carried out at an international level. It is also important to ensure that the new designation is consistent with the ITU allocations.

Long term recommendations

5.14 The RSPG considers that enforcement is a key part of the spectrum management process in developing confidence amongst users sharing spectrum. It is recommended that Members States need to review their enforcement and market surveillance approach to improve confidence. In particular, the RSPG recommends that administrations ensure that sufficient resources are afforded to market surveillance, which is a key element of the ex-post approach of the R&TTE Directive.

SAP REG: Agree, but such ex-post consideration should not be a replacement for ex-ante consideration.

5.15 The RSPG recommends that solutions or procedures be identified to increase confidence that the safeguard clause of the R&TTE Directive would be applied effectively in cases of interference situations that need to be addressed urgently. It is also recommended in the context of the revision of the R&TTE Directive to include a provision for a Member State to apply for an enforcement measure to remove equipment from the whole of the EU market if necessary due to national services experiencing harmful interference from equipment operating under general authorisation.

SAP REG: It is unclear what “national services” designates here. If a service provided to millions of citizens or / and essential for safety / security reasons is getting disrupted, the equipment causing the harmful interference should be removed as expeditiously as possible.

5.16 The RSPG considers that solutions should be identified in order to provide means for notified bodies to determine if any deviation from Harmonised Standard would impact the sharing conditions, in particular by ensuring closer relationship with CEPT/ETSI to give guidance where necessary to notified bodies. This could also be considered in the context of the revision of the R&TTE directive.

SAP REG: It is unclear what exactly is meant by this recommendation. We assume it is not meant to allow agreed protection measures to be changed without appropriate studies. Notified bodies should not be allowed to unilaterally approve exceptions to Harmonised Standards. If any relaxation of a standard is proposed it should be studied in the appropriate fora and the standard changed through the usual process. SAP REG supports close relationships between the relevant bodies to enable such changes to be considered as quickly as possible.

It is also noted that there is no need for this kind of provision if the principle of minimum regulation is followed in the first place.

5.17 The RSPG recommends that every effort should be made to ensure the consistency of the minimum sharing conditions referred to in Commission and ECC decisions. There is also a need to clarify further the role of detailed technical elements in each of the regulatory deliverables and to investigate the possibility for the Commission to enshrine ECC decision technical elements into community law or to cite ECC decision in a way similar to what is done with Harmonised Standards in the R&TTE process.