

## Introduction

Please find below the response from the Netherlands administration to the public consultation of the draft RSPG Opinion to the European Commission on streamlining the regulatory environment for the use of spectrum.

We would like to express our appreciation for the work done to date by the RSPG and its working group. We hope our response to the consultation is a useful contribution, and we look forward to the final Opinion of the RSPG to the Commission.

In the course of our response, in addition to a vision of some specific points in the draft RSPG Opinion, we will address the five main questions you posed in this consultation.

## General

Partly because of familiarisation with the rules of the current regulatory framework, manufacturers, suppliers and spectrum users now have sufficient confidence in the system of market and spectrum access. We are therefore seeing a wide variety of telecommunication equipment and applications available in the market. Internal market size means that much of this equipment is affordable, and therefore accessible to virtually everyone. These are important advantages we must certainly maintain.

The draft Opinion rightly refers to the one-shot nature of the Decisions on spectrum use. In our view, the Commission should take a less active approach in using this instrument when dealing with rapidly changing market conditions (avoiding the risk that the evolution of market and technologies may detract from the assumptions made in the studies).

The draft Opinion also emphasises that there is insufficient confidence in the effect of the safeguard clauses. We do not agree. Could the RSPG provide further explanation of its view in its recommendation?

We acknowledge the wish of the RSPG to remove radio equipment from the entire EU market if a case of harmful interference has been established in one of the EU Member States. This is however not possible due to the fact that enforcement and the application of safeguard measures are still areas of national competence. This means that safeguard measures can only be enforced on the national territory of the Member State that issued the measure. Therefore it is of the utmost importance that market surveillance is further improved by strengthening the cooperation, coordination and exchange of information between the market surveillance authorities of the EU Member States.

The RSPG points to the importance of market surveillance and enforcement as an equal part of the chain. We support this line of thinking. As we said before we underline the importance of further reinforcing cooperation and coordination in terms of supervision in Europe. The initiatives taken in ADCO to promote this cooperation must, in our opinion, be pursued vigorously. We also believe that the desire expressed by the RSPG, to have the level of enforcement at a satisfactory level in all member states, is important. However, market surveillance and enforcement must not be seen as a structural safety net for shortcomings or faults in other parts of the chain, such as the harmonisation process or the creation of spectrum decisions.

## The specific questions

Question 1. What are the strengths and weaknesses of the current regulatory process and where do you think it can be streamlined and improved?

There is a complex set of interrelated legal provisions laid down in several Directives, Decisions, etc. This fragmentation means that the Member States have to employ a relatively large amount of personnel. Furthermore this requires extensive coordination within the Member States.. This could be seen as a weakness in the current regulatory process. Although the review of the regulatory framework is expected to put in place (?)important principles, it appears that this fragmentation of regulation will in fact continue unchanged. Could the RSPG advise the Commission to strive for a more logical arrangement of legal instruments regarding the spectrum, with a view to reducing the complexity and related burden on Member States?

The review of the regulatory framework for electronic communications provides a number of fundamental principles for a future European spectrum policy. This aspect is not discussed in the draft recommendation. Could the RSPG working group include this in its considerations?

In this context we also refer to our statement about the “one shot nature” of Decisions on spectrum use and to our position regarding market surveillance which are laid down in the first paragraph (“general”).

Question 2. What aspects of the regulatory environment for the use of spectrum should be subject to spectrum regulation or subject to standardisation (Harmonised Standards)?

The Netherlands believes it is very important to provide clarity on the delimitation between regulations regarding the use of frequencies (radio interface parameters) and those regarding equipment (such as in harmonised standards). Clarity in this respect will contribute to a favourable implementation of the R&TTE Directive and the Radio Spectrum Decision. The Netherlands has actively participated in meetings of the RIG 2 group and agrees with the list of radio interface parameters created by the group.

The importance of a ‘broad use’ of this RIG 2 list is emphasised by the Netherlands. The list should not only be used by Member States in setting up radio interfaces, but also by the European Commission, in Decisions based on the Radio Spectrum Decision, and by the ECC in creating the technical Annexes to ECC Decisions. Furthermore the European Commission should issue a general mandate to ETSI for class 1 equipment. This general mandate should contain the applicable radio interface specifications. After all, the radio interfaces must provide the framework for ETSI in which the harmonised standards are to be developed. This means that all parties involved in developing and establishing requirements for market access and/or use of radio equipment (EC, ECC, ETSI and Member States) will be ‘speaking the same language’. This will also provide clarity for all parties involved on the requirements they may establish in that context.

Question 3. 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?

We see no contradiction with the principle of technology neutrality when, in relation to mitigation, spectrum Decisions only specify minimum interference mitigation level(s). In our opinion, levels refer only to a certain behaviour, and therefore mitigation levels quantify, in a

technology-neutral way, the level of protection against harmful interference given to other users of the same spectrum.

A mitigation technique should be described by a harmonised standard and should reflect the state of the art. In order to fulfil the radio-interface requirements (read: behaviour) described in a spectrum Decision, the mitigation technique<sup>1</sup> must achieve the minimum interference mitigation level.

Question 4. What is your assessment of the consistency between the activities of the European Commission, CEPT and ETSI and what are the ways to improve it?

We also regularly see an overlap of activity between EU and ECC working groups . The RSPG recommendation rightly notes that this can result in inconsistencies between the outcomes of the different groups.

We would like to add that aside from the outcomes, this also leads to inefficient use of people and resources. We therefore support the RSPG recommendation (5.9) to coordinate work further between TCAM and RSCOM, but would like to see this recommendation expanded to the other groups as stated in the footnote that sometimes show overlaps.

## Recommendations

### General principles

We support the general principles stated under 5.1 to 5.6.

### The short-term recommendations

#### Rec. 5.7

Support, with the exception of the last sentence. It is not clear in which cases certain parameters are so important that an overlap in regulatory deliverables is justifiable.

#### Rec. 5.8

Support

#### Rec. 5.9

Support; see our remarks about this issue under question 4.

#### Rec. 5.10

Support

#### Rec. 5.11

Support

#### Rec. 5.12

Support

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<sup>1</sup> Mitigation techniques are the techniques that can be used to achieve the required level of protection against harmful interference. Generally there are various mitigation techniques that can be used to achieve the required level of protection. Examples of mitigation techniques are: Listen before Talk, Dynamic Frequency Selection, Transmitter Power Control, etc..

Rec. 5.13

Standing policy, so we support it.

The long-term recommendations

Rec. 5.14

We basically agree that market surveillance is an important link in the chain. However, we have difficulty with the position that EU Member States should review their approach to market surveillance to increase confidence in the approach of all involved. We cannot recognise or endorse this, based on our experience in the Netherlands. Perhaps the RSPG could provide further reasoning and support for this point.

Rec. 5.15

In general, we support the idea that, in interference situations, a quick response is required. The recommendation to include a provision for a Member State to apply for an enforcement measure to remove equipment from the whole of the EU market will be very difficult because of national enforcement competencies.

Rec. 5.16

No comment

Rec. 5.17

Support