

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

Introduction:

This Opinion addresses the two matters that are stated at the Introduction. The comments from Cyprus relate to the first matter:

“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;”

The first matter is also addressed in the RSPP, which, in its current state, includes the following text:

(Recital 35) Member States may also need support on frequency coordination in bilateral negotiations with countries neighbouring the Union, including candidate and acceding countries, to meet their obligations under Union law on frequency coordination issues. This should also help avoid harmful interference and improve spectrum efficiency and spectrum use convergence even beyond Union borders.

(Paragraph 6.4) By 1 January 2013, Member States shall carry out the authorisation process in order to allow the use of the 800 MHz band for electronic communications services. The Commission shall authorise specific derogations until 31 December 2015 for Member States in which exceptional national or local circumstances or cross-border frequency coordination problems would prevent the availability of the band, acting upon a duly substantiated application from the Member State concerned.

If substantiated cross-border frequency coordination problems with one or more countries, including acceding or candidate countries, persist after the end of 2015 and prevent the availability of the 800 MHz band, the Commission shall authorise exceptional derogations on an annual basis until such problems are overcome.

Where the derogations referred to in the first or second subparagraph have been granted, the Member State concerned shall ensure that the use of the 800 MHz band shall not prevent the availability of that band for electronic communications services other than broadcasting in the neighbouring Member States.

This paragraph shall also apply to the spectrum coordination problems in the Republic of Cyprus arising from the fact that the Government of Cyprus is prevented from exercising effective control in part of its territory.

(Paragraph 9.2) The Union shall, upon request, assist Member States with legal, political and technical support to resolve spectrum coordination issues with countries neighbouring the Union, including candidate and acceding countries, in such a way that the Member States concerned can observe their obligations under Union legislation. In the provision of such assistance, the Union shall use all its legal and political powers to promote the implementation of Union policies.

Comments/Remarks

1. The stated objective for including situations of “harmful interference with third countries which prevents them ...” is not referenced in the Opinion (see paragraph 3a). **We would suggest that the text of paragraph 3a is amended accordingly to specifically cover the above stated objective as well** (which is also in line with the text in paragraph 9.2 of the RSPP).

2. The references in the RSPP as to what can be done “to resolve spectrum coordination issues with countries neighbouring the Union, including candidate and acceding countries” clearly hold. **This should be clarified in the Opinion. In addition, it should be clearly stated in the Opinion what is added by this Opinion to the procedure already outlined in the RSPP and what exactly is the role of the RSPG in this regard.**

3. In the section “Identification of the need for EU assistance”, it is stated that member states “may request the RSPG Chairman to put the matter on the agenda of a RSPG meeting”. **It should be clarified in the Opinion whether the RSPG will have any role in determining whether such requests are justified.**

4. The current text under the heading “EU assistance” in paragraph 3a includes 2 bullets. The first one aims to ensure that the required technical material is available before any action is taken. This is certainly an element in addition to what is stated in the RSPP. In other words the role of the RSPG is to evaluate whether the required technical material is available and, if not to determine how to get it. The second bullet is along the lines of paragraph 9.2 of the RSPP. **In order to be accurate, we suggest that the text in paragraph 9.2 is repeated in the Opinion. Furthermore, we suggest that it is clarified in the Opinion whether the RSPG will have any role to play (e.g. express a view/advice to the Commission) in the process of evaluating whether a request for derogation by a member state is indeed “duly substantiated” (see paragraph 6.4 of the RSPP).**

0. Introduction

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;

Article 2 of the 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 market¹. RSPG opinions should help in substantiating by qualitative and, wherever possible, quantitative indicators whether a Union objective can be better achieved at Union level, taking into account the principle of subsidiarity.

1. Background

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

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 Programme²

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

¹ 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>)

² http://rspg.ec.europa.eu/documents/documents/opinions/rspg10_330_rspp_opinion.pdf

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 dividend³

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

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.

³ http://rspg.groups.eu.int/documents/documents/meeting/rspg23/rspg10_347_frequencycoordination%20-%20Digital%20Dividend.pdf

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 their bilateral or multilateral discussions, agreements were reached between the following countries as of 30 August 2011:

- Hungary – Ukraine
- Estonia/Latvia/Lithuania – Russian Federation
- Finland – Russian Federation
- Poland – Russian Federation

Further agreements are expected to be reached in 2011 due to the requirement to finalize them in the course of WRC-12 preparation.

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 should be presented to the RSPG for consideration. The RSPG can make a formal report to the Commission if seen as desirable⁴.

⁴ The RSPG is an advisory group of the European commission. This RSPG “good offices” is not intended to provide specific advice to the EC but is rather to facilitate resolving coordination issues through cooperation between Member States.

