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RADIO SPECTRUM POLICY GROUP

RSPG Report
on *“impact of the EECC on the work of RSPG”*

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**Overview on the impact
of the European Electronic Communications Code on RSPG**

RSPG has carefully analysed the impact of the European Electronic Communications Code (EECC or ‘the Code’) on the RSPG as resulting from DIRECTIVE (EU) 2018/1972 and identifies the following:

The EECC extends the role of RSPG as a high level expert group in the European Union in the field of spectrum to assist and advise the European Commission, the European Parliament and the Council on EU radio spectrum policy in various areas relative to electronic communications. In particular, the Code extends RSPG’s role with respect to the cooperation between Member States (MS) through RSPG and confirms a role on “good offices” (Article 28) and on Peer Review forum (Article 35).

RSPG members are committed to ensuring that the relevant national experts take an active part in the different work flows within RSPG, in particular on cooperation and exchange of best practices regarding the allocation and use of harmonized spectrum for electronic communications services and networks.

RSPG understands that the Commission has committed itself to fully reflect the extended role of RSPG in the future updated EC Decision establishing RSPG.

Concerning the Peer Review Process¹ which will result from the implementation of the EECC (Article 35), RSPG identifies some differences compared to the pre-existing Peer Review Platform².

- RSPG identifies the need to clarify some practical issues in a reasonable timeframe in order to implement the Peer Review process according to Article 35 and RSPG launches relevant action as appropriate.
- RSPG identifies a need to maintain the sharing of best practices, as they are in place in the current Peer Review Platform (continuation of the Peer Review Platform hosted on the CIRCABC website for the sharing of documents and peer discussion) in addition to the Peer review Process in line with Article 35.
- RSPG identifies the possibility to continue with ex post sharing of best practise between Member States.
- In order to avoid any confusion with the Peer review process according article 35 and the already established Peer review platform, RSPG identifies a need to rename its existing Peer review platform.

RSPG welcomes the recognition of the RSPG Good Offices role in the EECC.

¹ Peer review process refers to the process running according to Art. 35

² Peer review Platform refers to the current RSPG peer learning (library, exchange of experiences/of views between experts, workshops)

- The radio spectrum coordination among Member States as described by the EECC (Article 28) is narrower in scope than the current RSPG Good Offices work. The Article 28 applies only to harmonised spectrum bands. The RSPG is of the opinion that this does not prevent to continue its Good Offices on non-harmonised spectrum on request from Member States.
- To implement radio spectrum coordination among Member States as described by the EECC (Article 28), EU Member States benefit from the RSPG Good Offices already in place which is running well. The EECC implies that RSPG may go beyond its current mediator role on request of affected Member State. The possible Commission Decision regulated in the EECC is one of the main elements of the new legislation. Such a Decision would be developed at the request of any affected Member State if the RSPG Good Offices is not sufficient to help to solve the cross border coordination problem or dispute. The Commission would develop a Decision taking utmost account of Opinion of the Radio Spectrum Policy Group,.
- RSPG notes that the comitology committee is the RSC as an exception compared to other part of the EECC, where COCOM is identified as the decision taking Group.
- RSPG notes timing requirements on implementation deadline on harmonised bands (especially 5G bands at Article 54 and "prolongation of the harmonisation deadline" in a specific band in case of an unresolved cross-border coordination issues between Member States by Articles 53(3)(b) or 54). Concerning any 5G cross border coordination issues, RSPG is ready with its "Good Offices" to assist, where needed, the Member States to fulfil the implementation 5G deadlines on 3.6 GHz and 26 GHz (Article 54).

RSPG has identified the need to update the Radio Spectrum Policy Group Decision³, in order to be fully in line with the evolution of the role of RSPG resulting from the EECC, in particular on the following issues:

- Peer Review,
- Cross Border Coordination,
- Potential requests for Opinions, in particular, from the Council or the European Parliament,
- Cooperation between and with Member States through the RSPG (for example on joint authorisation process)
- The involvement of BEREC in its areas of competence.

Moreover, RSPG continues to assist and advise the European Commission when necessary in ensuring the effective coordination of the interest of the European Union

³ Decision 2002/622/EC of the Commission of 26 July 20021 establishing the Radio Spectrum Policy Group as amended by Decision 2009/978/EC of the Commission, ('RSPG Decision')

in the international organisations⁴ and confirms its willingness to assist the European Commission on its international cooperation initiatives⁵ where they involve spectrum matters.

RSPG identifies the need to update the current RSPG rules of procedure in order to address inter alia the following issues: cooperation between and with MS, direct cooperation with European Parliament and Council, Peer Review, “Good Offices”, assistance and advice to Member States on common authorisation process.

RSPG notes that the EECC maintains the possibility for the European Commission, taking utmost account of the opinion of the RSPG, to develop a multi annual radio spectrum policy program (RSPP). This is aligned with the RSPG recommendation to maintain the reference to the RSPP in the new framework Directive – see RSPG Opinion on the implementation of the current RSPP and its revision to address the next period⁶. In this Opinion the RSPG also concludes that the review of the current RSPP is necessary and identifies the key issues that should be addressed. In line with its current Work Program and taking into account the previous Opinion, RSPG intends to assess any impact on the current RSPP due to the new regulatory framework for electronic communications (EECC) and make relevant recommendations.

Concerning the cooperation with BEREC on market regulation and competition issues related to radio spectrum, the voluntary participation of experts from BEREC to the peer review and the formalisation of cooperation between RSPG and BEREC under EECC, RSPG suggests establishing permanent points of contact in both RSPG and BEREC.

⁴ As example ITU : see RSPG Opinions on WRC

⁵ See as example Joint agreements on 5G with China, India, Brazil, Korea established during the previous years

⁶ Doc. RSPG16-006 FINAL: https://circabc.europa.eu/d/a/workspace/SpacesStore/4709f36a-f27b-4850-a19b-95df0154d5aa/RSPG16-006final_RSPP_opinion.pdf.

I. Introduction

The Radio Spectrum Policy Group (RSPG) is a high level expert group in the European Union in the field of spectrum. It was established by the Radio Spectrum Policy Group Decision to assist and advise the European Commission on radio spectrum policy issues. Furthermore the RSPG Decision also foresees that the European Parliament and the Council may request the RSPG to provide advice on radio spectrum policy issues.

The Group gathers high-level experts from each Member State, representing the consolidated and coordinated national view in relation not only to the internal market but also to all policies which affect the use of radio spectrum in that Member State, including public order, public security, civil protection and defence policies.

RSPG consults on technological, market and regulatory developments relating to the use of radio spectrum with radio spectrum users involved, both commercial and non-commercial, as well as with any other interested parties.

RSPG contributed actively to the review of the European Electronic Communications framework. Its Opinion on Digital Single Market and Framework Review provided various analysis and recommendations in order to improve it. RSPG published its views on the results of the public consultation on the Review of the EU Telecommunications Framework and its Opinion on Spectrum issues in the proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Framework .

RSPG welcomes the updated framework in order to pave the way for better harmonisation in Europe and to cope with challenges raised by a dynamic evolution of the spectrum usage and demand. The EECC defines ambitious policy objectives that RSPG is ready to address.

This deliverable addresses the RSPG's role and tasks pursuant to the EECC, including the peer review process (Article 35) and the cross border coordination issues (Article 28), the RSPP (Article 4), the framework establishing the RSPG, the update of RSPG rules of procedures, and the cooperation with BEREC.

II. RSPG's role and tasks pursuant to the EECC

1) Current tasks of RSPG pursuant to present legal framework

The RSPG has been established by Commission Decision 2002/622/EC as amended by Commission Decision 2009/978/EU. The specific scope of RSPG's role and tasks are currently defined by the Directive 2002/21/EC as amended by Directive

2009/140/EC and in line with the spectrum policy in the RSPP. The operational rules applicable to RSPG are regulated by the Rules of Procedure for the RSPG as amended on 16 November 2011. RSPG's concrete work streams are detailed by RSPG's work program 2018 and beyond.

Referring to these documents RSPG is currently entrusted with the following tasks:

- Providing opinions to the Commission with respect to legislative proposals for establishing multiannual radio spectrum policy programmes that shall set out policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum [in accordance with the provisions of this Directive and the Specific Directives].⁷
- Providing opinions to the Commission with respect to proposals of common policy objectives to the European Parliament and the Council which are necessary to ensure the effective coordination of the interests of the European Community in international organisations competent in radio spectrum matters.⁸
- Assisting and advising the Commission on radio spectrum policy issues, on coordination of policy approaches, on the preparation of multi-annual radio spectrum policy programmes and, where appropriate, on harmonised conditions with regard to the availability and the efficient use of radio spectrum necessary for the establishment and the functioning of the internal market.⁹
- Assisting the Commission in proposing common policy objectives to the European Parliament and the Council, when necessary for ensuring the

⁷ Art. 8a(3) of Directive 2002/21/EC as amended by Directive 2009/140/EC provides for the following: *“The Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group (RSPG), established by Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group (*), may submit legislative proposals to the European Parliament and the Council for establishing multiannual radio spectrum policy programmes. Such programmes shall set out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in accordance with the provisions of this Directive and the Specific Directives.”*

This is further explained by Recital 5 of Directive 2009/114/EC, which stipulates: *“[...] It should be examined together with other issues concerning the Community's wireless access policy in the future radio spectrum policy programmes, to be adopted in accordance with Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (6). Those programmes will set out the policy orientations and objectives for the strategic planning of the use of radio spectrum, in close cooperation with the Radio Spectrum Policy Group (RSPG) established by Commission Decision 2002/622/EC.”*

⁸ Article 8a(4) of Directive 2002/21/EC as amended by Directive 2009/140/EC set out: *“Where necessary to ensure the effective coordination of the interests of the European Community in international organisations competent in radio spectrum matters, the Commission, taking utmost account of the opinion of the RSPG, may propose common policy objectives to the European Parliament and the Council.”*

⁹ Cf. Article 2, 1st subparagraph of Commission Decision 2002/622/EC as amended by Commission Decision 2009/978 EU.

effective coordination of the interest of the European Union in international organisations competent in radio spectrum matters.¹⁰

- Adopting opinions to advise or assist the Commission at the Commission's request or at its own initiative.¹¹
- Adopting opinions or reports on radio spectrum policy issues relating to electronic communications addressed to the European Parliament and/or the Council following a request of the European Parliament and/or the Council to the European Commission for such an opinion or report. Where appropriate, they may be in the form of oral presentations to the European Parliament and/or the Council.¹²
- Pursuing specific issues within working groups set up by the Commission, or the Group with the agreement of the Commission.¹³ Building on this RSPG's work program 2018 and beyond foresees that the following working items are pursued within working groups in the years to come:¹⁴
 - European Electronic Communications Code (EECC)
 - European Spectrum Strategy
 - 5G Implementation Challenges
 - RSPG Opinion on WRC-19
 - Pre-existing Peer review platform and Member States cooperation on authorisations and awards
 - "Good offices" to assist in bilateral negotiations between EU countries.

In order to support EU public policies, RSPG has adopted deliverables covering a large range of domains including beyond Electronic Communications (see RSPG Web site).

2) Tasks of RSPG pursuant to the EECC

Principally the tasks of RSPG assigned by the Code, as summarised hereafter, complement the already existing tasks which follow from the Commission Decision

¹⁰ Cf. Article 2, 2nd subparagraph of Commission Decision 2002/622/EC as amended by Commission Decision 2009/978 EU.

¹¹ Cf. Article 4, 1st subparagraph of Commission Decision 2002/622/EC as amended by Commission Decision 2009/978 EU, Article 4 of the Rules of Procedure as amended on 16 November 2011.

¹² Cf. Article 4, 2nd subparagraph of Commission Decision 2002/622/EC as amended by Commission Decision 2009/978 EU, Article 5 of the Rules of Procedure as amended on 16 November 2011.

¹³ Cf. Article 13 of the Rules of Procedure as amended on 16 November 2011.

¹⁴ Cf. RSPG Work Programme for 2018 and beyond.

establishing the RSPG. However, the EECC replaces the present 5 European Directives on electronic communications and their content.

Implementation of Policy objectives

- In general, RSPG is requested to contribute to the achievement of the policy objective specified in Art. 3 (2).¹⁵

Benchmarking

- Assisting the Commission, where necessary, regarding establishing benchmarks and reports on the effectiveness of Member States measures towards achieving the objectives referred to in Article 3(2).¹⁶
 - The main task here is directed to the European Commission which may or may not decide to perform benchmarks. European Commission could request support from RSPG on ad hoc basis.

Cooperation

- Facilitating and promoting the cooperation of Member States with each other and with the Commission and upon their request with the European Parliament and the Council, in support of the strategic planning and coordination of radio spectrum policy approaches in the Union.¹⁷
 - The EECC extends the cooperation responsibility of RSPG since it adds cooperation between and with MS and also, on request with the European Parliament and the Council. In this regard it might be concluded that the cooperation with MS is principally initiated in advance in the RSPG work programme and on an ad hoc basis while the co-operation with the European Parliament and the Council is always initiated by the two EU institutions.
 - The extension of the scope of the RSPG's tasks is reflected in the "tool box" that is set out in Article 4 (3) (a) – (c), which specifies that the RSPG is entrusted with¹⁸
 - Developing best practices on spectrum related matters in view of the implementation of this Directive¹⁹;

¹⁵ Cf. Article 3(1) draft-EECC: "Member States shall ensure that in carrying out the regulatory tasks specified in this Directive, the national regulatory and other competent authorities take all reasonable measures which are necessary and proportionate for achieving the objectives set out in paragraph 2. Member States, the Commission, the Radio Spectrum Policy Group, and BEREC shall also contribute to the achievement of these objectives";

¹⁶ Cf. Article 3(2a) draft EECC.

¹⁷ Cf. Article 4 (3) in conjunction with Article (1) and (2).

¹⁸ Cf. Article 4 (3) (a)-(c).

¹⁹ Cf. Article 4 (3) (a).

- Facilitating coordination between Member States with a view to the implementation of this Directive and other Union law and contributing to the development of the internal market;
- Coordinating the approaches of Member States regarding the assignment and authorisation of use of radio spectrum;
- Publishing reports or opinions on spectrum related matters.

Multiannual Radio Spectrum Policy Programmes (Article 4 (4))

- Assisting and advising the EC on the preparation of multiannual radio spectrum policy programmes.

Harmonised spectrum for shared and unlicensed uses (Article 4(4))

- EECC refers to the possibility for the European Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group, to submit legislative proposals to the European Parliament and the Council for the release of harmonised spectrum for shared and unlicensed uses.
 - It is not clear at this stage how the European Commission will use this possibility either within the next update of the RSPP, which is not planned at this stage, or on ad hoc basis.
 - In any case, due to its expertise on strategic issues dealing with shared use of spectrum , the RSPG is ready to engage with that issue either on this own initiative or at the request of the European Commission whenever that arises.
 - This issue could be managed on an ad hoc basis within the RSPG work programme.

Cross border coordination (Article 28)

- Cooperation between the Member States through the RSPG to assist in ensuring compliance with Article 28(1) especially to solve any problem or dispute in relation to cross-border coordination or cross-border harmful interference between Member States as well as with non-EU countries which prevent Member States from using the harmonised radio spectrum in their territory.
- Using its Good Offices in order to ensure compliance with paragraph 1, to address any problem or dispute in relation to cross-border coordination or cross border harmful interference.

- Proposing, where appropriate, in an opinion a coordinated solution regarding such a problem.

Peer Review process (Article 35)

- Receiving information from NRA/CA on intended spectrum awards and whether NRA/CA will request peer review forum
- Convening and organizing a Peer Review Forum usually on request of the NRA/CA.
- Defining objective criteria for the exceptional convening of a Peer Review Forum.
- Adopting a report on request of the NRA/CA that requested the Peer Review Forum on how the relevant draft measure subjected to a peer review forum achieves the objectives provided in Article 35 (4).
- Publishing an annual report concerning the draft measures discussed.
- Adopting an opinion on request of the NRA/CA that requested the Peer Review Forum on the relevant draft measure subjected to a peer review forum

Common authorisation process (Article 37)

- Assisting and advising Member States on jointly establishing common aspects of an authorisation process and, where appropriate, also on jointly conducting the selection process to grant individual rights of use for radio spectrum aspects of joint authorisation processes.

Harmonisation Procedures (Preparation of Recommendations) (Article 38)

- Assisting and advising the European Commission, where relevant, in the preparation of recommendations to overcome divergences in the implementation by competent authorities of the regulatory tasks specified in this Directive and which may create a barrier to the internal market.

Authorisation Regime (Article 45)

RSPG identifies that according to EECC,

- *“in preparation for the adoption of technical harmonisation measures for a radio spectrum band under Decision No 676/2002/EC, the Commission may request the RSPG to adopt an Opinion recommending the most appropriate authorisation regime(s) for the use of radio spectrum in the harmonised band or parts thereof.*
- *The European Commission where appropriate, taking utmost account of such opinion, adopt a recommendation with a view to promote a consistent*

approach in the EU with regard to the authorisation regime(s) for the use of the band.”

RSPG considers that this process should be implemented on case by case basis taken into account in particular:

- The CEPT response to an EC mandate granted under Spectrum Decision. In practice, in relation to the technical studies, CEPT could advise the European Commission of the assumptions about the authorisation regime considered when developing the technical conditions, the timing for the implementation of the harmonisation measures (see Article 53);
- The exchange of best practices between RSPG members.

RSPG can already respond to a request for Opinion on this topic, where appropriate, due to its shared expertise for example either on authorisation for ECS or on shared use of spectrum. Nevertheless there is a need to update the Decision establishing the RSPG in order to ensure better visibility of this competence.

Standards (Article 45)

RSPG noted that according to EECC, *“Where the Commission is considering adopting measures in accordance with Article 39 (1), (4), (5) and (6), it may seek the opinion of the Radio Spectrum Policy Group with regard to the implications of any such standard or specification for the coordination, harmonisation and availability of radio spectrum. The Commission shall take utmost account of the opinion of the Radio Spectrum Policy Group in taking any subsequent steps”*.

RSPG highlighted in its previous Opinion (see RSPG Opinion on RSPP) that the RSPG is ready to address the foreseeable spectrum needs of all the sectors that are part of general or specific EU Policy Objectives and to recommend concrete actions for those sectors concerning strategic spectrum policies (see recent RSPG Opinion on ITS for example).

RSPG noted that the scope of this article does not limit the process to compulsory standards and does not cover the standards under the Radio Equipment Directive. RSPG highlights its previous recommendation from its RSPG Opinion on RSPP *‘In order to avoid the drafting of sectoral EU regulation before the proper spectrum studies have been done, the RSPG recommends that standardisation bodies (ETSI) and CEPT are both involved early in the process via relevant EC mandates, as appropriate. ‘ RSPG is ready to contribute as appropriate .*

Moreover, in order to ensure practical implementation of this Article 45, when European Commission is considering possible publication of standards in the OJ of the EU, the European Commission should also assess the need, when appropriate, for a request for Opinion from RSPG on the implications of such standards or specifications for the coordination, harmonisation and availability of radio spectrum.

Small areas wireless access point (Article 57)

RSPG notes that

- a first implementing act to specify in particular the technical characteristics of a small-areas wireless access point has to be adopted by the 30 June 2020;
- the European Commission assigned a study to assist it in implementing the requirements of Article 57 (Deployment of small area wireless access points) of the EECC.

The EECC does not give the RSPG any role on that issue. However due to the expertise within RSPG on 5G, strategic spectrum issues dealing with small area wireless access could be considered by RSPG in its current WP. RSPG noted that the committee for this Article is the CoCom.

3) Framework establishing RSPG

RSPG was established under the Radio Spectrum Policy Group Decision to assist and advise the European Commission and, on their request the European Parliament and the Council on radio spectrum policy issues. The last update in 2009 referred to assistance of the Commission in the preparation of multiannual radio spectrum policy programmes (the RSPP), and on the proposal of common policy objectives to the European Parliament and the Council, when necessary for ensuring the effective coordination of the interest of the European Union in international organisations competent in radio spectrum matters.

When analyzing the EECC, RSPG noted the following:

- The EECC maintains the possibility for the European Commission, taking utmost account of the opinion of the RSPG, to develop a multi annual radio spectrum policy program.
- the EECC has assigned to the RSPG a key role to help shaping EU spectrum policy in various areas relative to electronic communications, and in particular wireless broadband, that are essential for the internal market and in contributing to the achievement and implementation of the general objectives of the Code, in relation also with the European Parliament, the Council and the Member States. In particular, in various areas relative to electronic communications networks and services, the Code extends RSPG's role on cooperation with and between Member States (MS) through RSPG and in the development of best practices. It also confirms a role on Good Offices and on Peer Review. This includes a key role on authorization and use of harmonized spectrum for electronic communications services and networks in particular on wireless broadband.

- The European Parliament and the Council on EU radio spectrum policy can request support from RSPG on the strategic planning and coordination of radio spectrum policy approaches in the Union.

The RSPG notes that during the negotiations on the EECC the European Commission has committed itself to amend the Commission Decision establishing a Radio Spectrum Policy Group in order to reflect the new tasks conferred on the RSPG by the EECC.

Moreover the RSPG noted the effective coordination of the interests of the European Union in international organizations competent in radio spectrum matters is not addressed by the EECC although it is in the current framework establishing the RSPG. Nevertheless, the RSPG has an extensive experience and competence in assisting the European Commission in the preparation of Common Policy Objectives, now the Union Position, for WRC. Moreover, in its previous Opinion on RSPG (RSPG 16-006), RSPG recommends to apply the principle of sincere cooperation by involving the Member States in the decision making process of cooperation agreements with other regions covering spectrum aspects in order to ensure a coherent EU strategic policy regarding the development of 5G.

RSPG recommends

- maintaining the possibility for RSPG to assist the European Commission in proposing a Union position for WRC and identifying actions recommended to the European Commission in order to provide political support to promote the objectives of common policy approaches in regular meetings between the European Commission and non-EU countries.
- applying the principle of sincere cooperation by involving the Member States in the decision making process for cooperation agreements with other regions) covering spectrum aspects in order to ensure a coherent EU strategic policy (for example regarding the development of 5G). The RSPG could assist the European Commission where appropriate.

Finally, there is a need to maintain the expertise gathered from each Member State, representing the consolidated and coordinated national views in relation not only to the internal market, but also to all policies which affect the use of radio spectrum in that Member State, including public order, public security, civil protection and Defence policies, which are sole competences of the Member State. RSPG members are committed to ensuring that the relevant national experts take an active part in the different work flows within RSPG, in particular on cooperation and exchange of best practices regarding the allocation and use of harmonized spectrum for electronic communications services and networks.

In consequence, RSPG is proposing relevant improvements of the EC Decision establishing RSPG. .

RSPG has furthermore analysed the impact of the EECC and recommends some updates to the current framework in order to embed new tasks resulting from the EECC..

III. Peer review Process (Article 35 EECC)

RSPG has already established a work item on Peer Review to better enable RSPG members to exchange experiences and views on spectrum awards and national assignment procedures relating to spectrum harmonised for ECS. Key initiatives undertaken by RSPG over recent years are:

- Internal Peer Review Platform;
- Workshop with a series of presentations from RSPG members on experience of awarding or plans to award spectrum;
- Workshops organised by RSPG member s focusing either on recent awards or on award in preparation.

A RSPG pre-existing Peer Review Platform has been established to enable RSPG members to learn from each other's experiences and to seek support, as appropriate, from peers on issues of spectrum management, focusing on spectrum harmonised for ECS. The RSPG pre-existing Peer Review Platform is based on voluntary principles and is not intended to impose additional obligations for the members.

RSPG members are encouraged to continue providing information about spectrum awards in their countries as more information becomes available and to continue the existing sharing of best practices not falling under Article 35.

Concerning the Article 35 peer review process which will result from the implementation of the EECC, RSPG identified some differences compared to the pre-existing Peer Review Platform.

RSPG conducted a careful analysis of Article 35. In consequence, RSPG developed an additional deliverable in order to clarify the practical implementation of the peer review process resulting from Article 35, in particular:

- Scope and limits of peer review under Article 35,
- Information to be shared,
- Criteria to trigger the exceptional peer review at the RSPG initiative,
- Organisation of peer review meetings (e.g. chair number of peer review meetings per year, location of peer review meetings);
- Scope of RSPG annual report,

- Procedural aspects for adopting reports and/or opinions on request of the NRA/CA requesting the Peer Review Forum,
- Involvement of BEREC experts.

IV. Cross Border Coordination issues (EECC Article 28)

RSPG Good Offices activity has existed for a number of years. It was established to assist in bilateral spectrum management negotiations at the political level in cases where one or more Member States have difficulties in cross-border coordination or from harmful interference which prevents them achieving the benefits of the implementation of an EU policy. The basis of the Good Offices is the cooperation between RSPG members. RSPG welcomes the recognition of the RSPG “Good Offices” role in the EECC.

Article 28 EECC includes a step-by-step procedure, starting with a general obligation of cooperation, through the RSPG Good Offices on the initiative of the Member States, which may lead to an EC implementing decision, as described by the EECC.

RSPG Good Offices acts as a mediator which helps the affected Member States to reach a common understanding on the technical political solutions to be implemented at national level in order to solve the cross-border issue. The RSPG noted that a Directive approved by Council and the EP is a stronger sign of commitment for the Member States to cooperate in border areas especially in light of the regulation on coordinated timing of assignments (Article 53 (3) and (4)) in EECC.

The RSPG highlights that its “Good Offices” activity goes beyond the EECC which is focussed on on harmonised spectrum bands²⁰.

The issue of EU assistance in bilateral negotiations with countries neighbouring the Union and between EU countries had been raised in previous RSPG deliverables, justifying the need for RSPG to develop its opinion on such EU assistance and to propose a process to achieve it. The EECC further formalises the RSPG assistance on frequency coordination activities in EU.

RSPG Good Offices are usually utilised only 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.

RSPG Good Offices is also engaged in “releasing 700 MHz”. The RSPG Good Offices with its proactive project helped in reaching EU target for the 700 MHz band:

²⁰ See definition EECC : harmonised spectrum bands

“all necessary cross-border coordination agreements, including transitional arrangements, will be finalized at the latest by the end of 2017” by gathering and sharing information in a systematic way about the status of the implementation of the Decision of the European Parliament and of the Council on the use of the 470-790 MHz frequency band in the Union.

Compared to the current practices, the RSPG identifies new elements of the EECC in the context of Cross border coordination:

- formal right of a Member States to request RSPG good offices,
- formalised name of RSPG Good Offices,
- involvement in solving problems or disputes with third countries;
- the scope of Good Offices as defined by the EECC is limited to the use of harmonised radio spectrum,
- RSPG is tasked (on request) to propose a coordinated solution and may issue an opinion,
- the European Commission has the right (on request) to adopt a Decision with a view to resolving cross-border harmful interference issues between two or several Member States,
- the European Commission shall take utmost account of any Opinion of RSPG and its recommendations, and
- the RSC will be the committee in the examination procedure within the meaning of Regulation (EU) No 182/2011.

RSPG identifies the need for an amendment to the operational arrangements in the EC decision establishing RSPG (e.g. on adoption of RSPG deliverable) in line the new elements of the EECC regulation on RSPG good office.

- the amendment of Article 2 “Tasks” and Article 4 “Operational arrangements” of the Commission Decision establishing a Radio Spectrum Policy Group²¹ should be considered in line with the new element of the EECC on RSPG good office.

²¹ CELEX: 32002D0622 / <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002D0622&from=EN>

RSPG recommends taking into account the additional aspects of current Good Offices practices during the amendments of EC decision establishing RSPG. The principles for EU assistance and use of the Good Offices in bilateral spectrum co-ordination should be the same:

- Member States have full responsibility for 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 are affected by harmful interference, in particular in a band which is subject to EU implementation measures, they should have the possibility to ask for the assistance of the good offices of the RSPG.
- Necessary technical regulatory conditions will be developed in CEPT and, when relevant, ITU. These are distinct from harmonised technical conditions developed under the Radio Spectrum Decision.
- Common EU political approaches may be deployed regarding frequency coordination with countries neighbouring the Union in order to facilitate resolution of the issue. This assistance shall only be provided when requested by one or more Member States
- These processes are not intended to replace ITU coordination procedures, when applicable.

V. RSPG

RSPG noted that the EECC maintains the possibility for the European Commission, taking utmost account of the opinion of the RSPG, to develop a multi annual radio spectrum policy program.

According to the EECC, the RSPG is able to provide opinions to the Commission with respect to legislative proposals for establishing multiannual radio spectrum policy programmes²², as it has been done in the past (existing tasks Cf. Article 8a (3) of the Framework Directive and EC Decision establishing the RSPG). This is aligned with the RSPG recommendation to maintain the reference to the RSPP in the new framework Directive (see RSPG Opinion on the implementation of the current RSPP and its revision to address the next period, document RSPG 16-006 FINAL).

RSPG noted that there is no need to update either the EC Decision establishing the RSPG or the RSPG Rules of Procedure with respect to the RSPP.

RSPG have commenced work on a European Spectrum Strategy. Previously, RSPG had issued the Opinion referred to above on the implementation of the RSPP, which

²² Cf. Article 4(4) draft-EECC

concludes that the review of the current RSPP is necessary and identifies the key issues that should be addressed. In line with its current WP and taking the previous Opinion into account, RSPG intends to assess any impact on the current RSPP due to the new regulatory framework for electronic communications (EECC) and make relevant recommendations.

VI. Cooperation with BEREC

RSPG identifies that BEREC shall participate in RSPG activities on issues concerning their competencies relating to market regulation and competition related to radio spectrum. The EECC also invites the voluntary participation of experts from BEREC in the peer review process to be established according to Article 35. In addition Article 4(1) (f) of the BEREC Regulation tasks BEREC to participate in the Article 35 peer review forum where relevant.

As above, concerning the cooperation with BEREC on market regulation and competition issues related to radio spectrum, the voluntary participation of experts from BEREC in the peer review and the formalisation of cooperation between RSPG and BEREC under EECC, RSPG suggests establishing permanent points of contact in both RSPG and BEREC.

VII. Conclusions

With this deliverable, RSPG shares its analysis of the impact of the EECC on RSPG. It describes various impacts from the EECC on RSPG, in particular, on

- its extended role,
- the “Peer Review Process”²³,
- the recognition and formalisation of the RSPG Good Offices: to implement radio spectrum coordination among Member States as described by the EECC (Article 28), RSPG benefits from the Good Offices already in place, which is running well.

This analysis includes also proposals to update the EC Decision establishing RSPG and the current RSPG RoP²⁴, in order to be fully in line with the evolution of the role of RSPG resulting from the ‘EECC’. On this basis, RSPG cooperates with the European Commission on the update of these legal basis.

RSPG noted that the EECC still maintains the possibility for the European Commission to develop a multi annual radio spectrum policy program (RSPP) taking

²³ Peer review process refers to the process running according to Art. 35 . The term “peer review platform/workshop” is used to describe the current RSPG peer review.

²⁴ RSPG rules of procedure (RoP); See http://rspg-spectrum.eu/wp-content/uploads/2013/11/rules_of_procedure_1_jan_2012.pdf

utmost account of the Opinion of the RSPG. In line with its current Work Program and taking into account the previous Opinion, RSPG intends to assess any impact on the current RSPP due to the new regulatory framework for electronic communications (EECC) and make relevant recommendations.

Concerning the cooperation with BEREC on market regulation and competition issues related to radio spectrum, the voluntary participation of experts from BEREC to the peer review and the formalisation of cooperation between RSPG and BEREC under EECC, RSPG suggests establishing permanent points of contact in both RSPG and BEREC.

INFORMATIVE ANNEX

- Responsibilities of RSPG under the current framework, EC Decision establishing RSPG and under the EECC

Informative Annex

Responsibilities of RSPG under the current frameworkⁱ, EC Decisionⁱⁱ establishing RSPG and under the EECC

A. RSPG responsibilities under the current Framework	
<i>Directive 2002/21/EC as amended by Directive 2009/140/EC:</i>	
1	<i>Art. 8a (3) of Directive 2002/21/EC as amended by Directive 2009/140/EC: The Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group (RSPG), established by Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group), may submit legislative proposals to the European Parliament and the Council for establishing multiannual radio spectrum policy programmes. Such programmes shall set out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in accordance with the provisions of this Directive and the Specific Directives.</i>
2	<i>Art. 8a (4) of Directive 2002/21/EC as amended by Directive 2009/140/EC: Where necessary to ensure the effective coordination of the interests of the European Community in international organisations competent in radio spectrum matters the Commission, taking utmost account of the opinion of the RSPG, may propose common policy objectives to the European Parliament and the Council</i>
<i>Commission Decision 2002/622/EC as amended by Commission Decision 2009/978 EU</i>	
3	<i>Article 2, 1st subparagraph of Commission Decision 2002/622/EC as amended by Commission Decision 2009/978 EU: The Group 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.</i>

4	<i>Article 2, 2nd subparagraph of Commission Decision 2002/622/EC as amended by Commission Decision 2009/978 EU: Furthermore, the Group shall assist the Commission in proposing common policy objectives to the European Parliament and the Council, when necessary for ensuring the effective coordination of the interest of the European Union in international organisations competent in radio spectrum matters.</i>
5	<i>Article 4, 1st subparagraph of Commission Decision 2002/622/EC as amended by Commission Decision 2009/978 EU: At the Commission's request or at its own initiative, the Group shall adopt opinions to be addressed to the Commission, [...].</i>
6	<i>Article 4, 2nd subparagraph of Commission Decision 2002/622/EC as amended by Commission Decision 2009/978 EU: Following a request of the European Parliament and/or the Council to the European Commission for an opinion or a report of the Group on radio spectrum policy issues relating to electronic communications, the Group shall adopt, according to the same rules as in the preceding subparagraph, such an opinion or report. [...] Where appropriate, they may be in the form of oral presentation to the European Parliament and/or the Council by the chairman of the group or a member nominated by the Group.</i>
6a	<i>Article 4, 3rd subparagraph of Commission Decision 2002/622/EC: The Group shall elect a chairperson from among its members. The Commission may organise the work of the Group into subgroups and expert working groups as appropriate.</i>
6b	<i>Article 4, 4th subparagraph of Commission Decision 2002/622/EC: The Commission shall convene the meetings of the Group through the secretariat in agreement with the chairperson. The Group shall adopt its rules of procedure upon a proposal from the Commission, by consensus or, in the absence of consensus, by a two-thirds majority vote, one vote being expressed per Member State, subject to the approval of the Commission.</i>
6c	<i>Article 4, 5th subparagraph of Commission Decision 2002/622/EC: The Group may invite observers, including those from EEA States and those States that are candidates for accession to the European Union, as well as from the European Parliament, CEPT and ETSI, to attend its meetings and it may hear experts and interested parties.</i>
B. RSPG responsibilities under the EECC	
7	Art. 3 (2a) of the EECC: <i>Where the Commission establishes benchmarks and reports on the effectiveness of Member State's measures towards achieving the objectives referred to in paragraph 2, the Commission shall where necessary be assisted by Member States, national regulatory authorities, BEREC and the RSPG.</i>

8	<p>Article 4 (3) of the EECC: <i>Member States shall, through the Radio Spectrum Policy Group, established by Commission Decision 2002/622/EC, cooperate with each other and with the Commission in accordance with paragraph 1, and upon their request with the European Parliament and the Council, in support of the strategic planning and coordination of radio spectrum policy approaches in the Union, by</i></p> <p><i>a) developing best practices on spectrum related matters, in view of the implementation of this Directive;</i></p> <p><i>b) facilitating the coordination between Member States with a view to the implementation of this Directive and other Union law and to contributing to the development of the internal market;</i></p> <p><i>c) coordinating their approaches to the assignment and authorisation of use of radio spectrum and publishing reports or opinions on spectrum related matters.</i></p>
9	<p>Article 4 (4) of the EECC: <i>The Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group may submit legislative proposals to the European Parliament and the Council for establishing multiannual radio spectrum policy programmes [...]. Such programmes shall set out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in accordance with the provisions of this Directive.</i></p>
10	<p>Article 4 (4) of the EECC: <i>The Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group may submit legislative proposals to the European Parliament and the Council [...] for the release of harmonised spectrum for shared and unlicensed uses. [...]</i></p>
11	<p>Article 28 EECC: 1. [...]</p> <p>2. <i>Member States shall cooperate with each other and through the Radio Spectrum Policy Group where appropriate, in the cross-border coordination of the use of radio spectrum in order to:</i></p> <p><i>(a) ensure compliance with paragraph 1;</i></p> <p><i>(b) solve any problem or dispute in relation to cross-border coordination or cross-border harmful interference between Member States as well as with non-EU countries which prevent Member States from using the harmonised radio spectrum in their territory.</i></p> <p>3. <i>In order to ensure compliance with paragraph 1, any Member State concerned may request the Radio Spectrum Policy Group to use its good offices to address any problem or dispute in relation to cross-border coordination or cross border harmful interference. Where appropriate, the Radio Spectrum Policy Group may propose in an opinion a coordinated solution regarding such problem or dispute.</i></p>

	<p>4. Where actions pursuant to paragraphs 2 and 3 have not solved the problem or dispute, and at the request of any affected Member State, the Commission may, taking utmost account of any opinion of the Radio Spectrum Policy Group recommending a coordinated solution pursuant to paragraph 3, adopt decisions to resolve cross-border harmful interferences between two or several Member States which prevent them from using the harmonised radio spectrum in their territory. Those decisions shall be adopted in accordance with the examination procedure referred to in Article 110(4) and shall be addressed to those Member States concerned by the unresolved harmful interference..</p>
12	<p>Article 35 Peer Review:</p> <p>2. Where the national regulatory and/or other competent authority intends to undertake a selection procedure in accordance with Article 54(2) in relation to radio spectrum bands for which technical conditions have been harmonised in order to enable their use for wireless broadband electronic communications networks and services, it shall inform, pursuant to Article 23, the RSPG about any such draft measures and indicate whether and when it requests RSPG to convene a Peer Review Forum.</p> <p>When requested to do so, the RSPG shall organise a Peer Review forum in order to discuss and exchange views on the draft measures transmitted and shall facilitate the exchange of experiences and best practices on the draft measures transmitted by national regulatory or competent authorities.</p> <p>The Peer Review forum shall be composed of the members of RSPG and organised and chaired by a representative of RSPG.</p> <p>3. At the latest during the public consultation conducted pursuant to Article 23 the RSPG may exceptionally take the initiative to convene a Peer Review forum in line with the rules of procedure for organizing it in order to exchange experiences and best practices on a draft measure relating to a selection procedure where it considers that the draft measure would significantly prejudice the ability of the competent authority to achieve the objectives and principles set in Articles 3, 45, 46 and 47.</p> <p>3a. The RSPG shall define in advance and make public the objective criteria for the exceptional convening of the peer review forum.</p> <p>4. During the Peer Review forum, the competent authority or the national regulatory authority shall provide an explanation on how the draft measure:</p> <p>(a) promotes the development of the internal market, the cross-border provision of services, as well as competition and maximise the benefits for the consumer, and overall achieve the objectives set in Articles 3 and 45, 46 and 47, as well as Decisions 676/2002/EC and 243/2012/EC;</p> <p>(b) ensures effective and efficient use of radio spectrum; and</p>

	<p><i>(c) ensures stable and predictable investment conditions for existing and prospective radio spectrum users when deploying networks for the provision of electronic communications services which rely on radio spectrum.</i></p> <p><i>5. The Peer Review forum shall be open to voluntary participation by experts from other competent authorities and BEREC.</i></p> <p><i>5a. The Peer Review forum shall be convened only once during the overall national preparation and consultation process of a single selection procedure concerning one or several radio spectrum bands, unless the national regulatory or competent authority requests that it is reconvened.</i></p> <p><i>6. At the request of the competent authority that requested the meeting RSPG may adopt a report on how the relevant draft measure achieves the objectives provided in paragraph 4, reflecting the views exchanged in the Peer Review forum.</i></p> <p><i>6a. RSPG shall annually publish a report concerning the draft measures discussed pursuant to paragraphs 2 and 3. The report shall indicate experiences and best practices noted. That report shall be published every February.</i></p> <p><i>7. Following the Peer Review Forum, at the request of the competent authority that requested the meeting, the RSPG may adopt an opinion on the draft measure.</i></p>
13	<p>Article 37 (1) EECC: <i>Two or several Member States may cooperate with each other and with the RSPG, taking into account any interest expressed by market participants, by jointly establishing the common aspects of an authorisation process and, where appropriate, also jointly conducting the selection process to grant individual rights of use for radio spectrum.</i></p>
14	<p>Article 38 (1) EECC: <i>Where the Commission finds that divergences in the implementation by the national regulatory authorities or by other competent authorities of the regulatory tasks specified in this Directive may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of BEREC, or of the RSPG where relevant, issue a recommendation or, in accordance with paragraph 3, a decision on the harmonised application of the provisions in this Directive and in order to further the achievement of the objectives set out in Article 3.</i></p>
15	<p>Article 45 (2.2) EECC <i>For this purpose, in preparation for the adoption of technical harmonisation measures for a radio spectrum band under Decision No 676/2002/EC, the Commission may request the Radio Spectrum Policy Group to adopt an opinion recommending the most appropriate authorisation regime(s) for the use of radio spectrum in the harmonised band or parts thereof and where appropriate, taking utmost account of such opinion, adopt a recommendation with a view to promote a consistent approach in the EU with regard to the authorisation regime(s) for the use of the band.</i></p>

16	Article 45 (2.3) EECC: <i>Where the Commission is considering adopting measures in accordance with Article 39 (1), (4), (5) and (6), it may seek the opinion of the Radio Spectrum Policy Group with regard to the implications of any such standard or specification for the coordination, harmonisation and availability of radio spectrum. The Commission shall take utmost account of the opinion of the Radio Spectrum Policy Group in taking any subsequent steps.</i>
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ⁱ *Directive 2002/21/EC as amended by Directive 2009/140/EC*

ⁱⁱ *Commission Decision 2002/622/EC as amended by Commission Decision 2009/978 EU*

Statement by the European Commission on the RSPG Report on ‘impact of the EECC on the work of RSPG’

Considering that the report by the RSPG on the impact of the EECC on the work of the RSPG touches upon complex institutional and legal issues which remain subject to internal consultation, the European Commission does not intend at this stage to take a position on the content of the report and will therefore refrain from expressing a view thereon during the adoption procedure. However, the European Commission welcomes the efforts by the RSPG and will take the report carefully into account when adopting the necessary modifications to its Decision 2002/622/EC, in line with EU law and the institutional balance.
