

RULES OF PROCEDURE FOR
THE RADIO SPECTRUM POLICY GROUP

THE RADIO SPECTRUM POLICY GROUP,

Having regard to Commission Decision C/2019/4147 of 11 June 2019 setting up the Radio Spectrum Policy Group and repealing Decision 2002/622/EC¹ (hereinafter ‘RSPG Decision’) and in particular Article 4(5) thereof,

Having regard to Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code, hereinafter ‘the Code’²,

Considering the standard rules of procedure of expert groups³,

HAS ADOPTED THE FOLLOWING RULES OF PROCEDURE ON 9 OCTOBER 2019:

Article 1

Operation of the Group

The group shall act as requested in line with the RSPG Decision.

Article 2

Convening a Meeting

1. Meetings of the Radio Spectrum Policy Group (hereinafter ‘the Group’) are convened by the Commission through the secretariat in agreement with the Chairperson. The Chairperson or a majority of the members of the Group may ask the Commission to convene a meeting.
2. Meetings shall be held by the Group on Commission premises.

¹ OJ C 196 of 12 June 2019, p.8.

² OJ L 321, 17.12.2018, p. 36

³ C(2016) 3301 (Annex 3)

3. Joint meetings of the Group with other groups or entities, such as the Body of European Regulators for Electronic Communications (BEREC)⁴, may be convened to discuss matters falling within their respective areas of responsibility.

Article 3

Agenda

1. The secretariat shall draw up the agenda under the responsibility of the Chairperson and send it to the members of the Group. Upon request from a member, or from the Commission, the Chairperson may decide to add an item to the agenda.
2. The Group shall adopt its agenda at the start of the meeting, based on consensus or if not possible, on a simple majority of the votes cast, each member having one vote. In calculating whether a text has been adopted or rejected, account shall be taken only of votes cast for and against.
3. The conclusions on the agenda items shall be recorded in line with Article 19 below.

Article 4

Documentation to be sent to Group Members

1. The secretariat, in agreement with the Chairperson, shall send the invitation to the meeting and the draft agenda to the members of the Group no later than thirty calendar days before the date of the meeting.
2. The secretariat shall send documents on which the Group is consulted to the Group members in accordance with Article 22(2) no later than fourteen calendar days ahead of the date of the meeting. To this end, members submitting working documents for consideration at a meeting shall provide the documents to the secretariat no later than 16 calendar days before that meeting.
3. In urgent or exceptional cases, the secretariat, in agreement with the Chairperson or at the request of a Group member, may reduce the time limits for sending the documentation mentioned in paragraphs 1 and 2 to five calendar days before the date of the meeting.

⁴ Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office) amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 (OJ L 321, 17.12.2018, p. 1).

Article 5

Opinions and reports of the Group

1. At the Commission's request or on its own initiative, the Group shall adopt opinions and reports addressed to the Commission. Without prejudice to Article 11, the adoption of opinions, reports and of any other decision shall be based on consensus or, if that is not possible, on a simple majority of the votes cast, with each Member State having one vote. In calculating whether a text has been adopted or rejected, account shall be taken only of votes cast for and against. Members who have voted against shall have the right to have a statement summarising the reasons for their position annexed to the opinions or reports.
2. Following a European Parliament or Council request for an opinion or a report of the Group on radio spectrum policy issues relating to electronic communications, the Group shall adopt such an opinion or report in accordance with the rules set out in paragraph 1. The Group shall submit its opinion and report to the institution that requested it and to the Commission. Where appropriate, the opinion or report may be in the form of an oral presentation to the European Parliament or the Council by the chairperson of the Group or a member nominated by the Group.

Article 6

Presentations to the European Parliament and/or Council

In case of oral presentation to the European Parliament and / or Council, the Group shall formally authorise its Chairperson or a member of the Group and grant a specific mandate for this purpose. Such authorisation shall be referred to pursuant to Article 19.

Article 7

Decision making procedure and quorum

1. Without prejudice to Article 11, any decision of the Group shall, as far as possible, be adopted by consensus or, if not possible, on the basis of a simple majority of the votes cast, each member having one vote. In calculating whether a text has been adopted or rejected, account shall be taken only of votes cast for and against.
2. No meeting and no vote shall take place with less than two-thirds of the Group members represented.
3. The Chairperson, on his own initiative or at the request of a member of the Group, may postpone the adoption of an opinion, report or other decision until the end of the meeting or to a later meeting:
 - if a substantive change is made to the proposed opinion, report or other decision in discussion during the meeting,
 - if the text of the draft opinion, report or other decision in discussion has been submitted to the Group only during the meeting.

4. If a member of the Group so requests, the adoption of an opinion, report or other decision shall be postponed if the documents relating to a specific agenda point have not been sent to the members within the timeframe laid down in Article 4 (2) and (3). However, at the proposal of the Commission or of the Chairperson or at the request of any other member of the Group, the Group can decide by simple majority vote of the votes cast to keep this point on the agenda for adoption, due to the urgency of the matter. In calculating whether a text has been adopted or rejected, account shall be taken only of votes cast for and against.
5. If the Group has not decided within the timeframe laid down by the Chairperson, and except in cases of urgency, the latter may extend this timeframe to no longer than the end of the next meeting. If necessary, the written procedure provided for in Article 15 may be applied.

Article 8

Cross-Border Coordination and Good Offices

1. Pursuant to Article 28 of the Code and Article 2(3) of the RSPG Decision, the good offices procedure shall apply with the purpose of ensuring cooperation between Member States in the cross-border coordination of the use of radio spectrum.
2. Any affected Member State may request the Group or the sub-group that may be created for the task to start the good offices procedure. At any time, the affected Member State may ask the Group to suspend or terminate the process.
3. The Group or the relevant sub-group shall decide on the organisation of the process, taking into account the urgency of the matter. In case of absence of the representative of a Member State involved in the cross-border coordination issue at stake at a scheduled meeting, it shall be decided whether or not to postpone that meeting.
4. The Group or the relevant sub-group shall investigate the matter, taking into account all available information submitted by the Member States concerned, or any other information including information provided by CEPT and ITU as appropriate. The relevant sub-group if any shall report to the Group at each meeting of the Group, taking into account any possible need for confidentiality.
5. In the case of a problem or dispute between Member States in relation to cross-border coordination or cross-border harmful interference which prevents a Member State from allowing the use of spectrum in their territory and after internal consultation, the Group or the relevant sub-group shall seek to find a compromise between the concerned Member States, where necessary by proposing a coordinated solution. Regarding harmonised spectrum, where no compromise can be found to the satisfaction of the concerned Member States, the relevant sub-group if any shall report on the disagreement to the Group together, where appropriate, with a draft opinion with a proposed coordinated solution regarding the problem or dispute, for possible adoption by the Group at its next meeting.

6. In the case of any problem or dispute in relation to cross-border coordination or cross-border harmful interference between one or more Member States and third countries which prevent Member States from allowing the use of the harmonised spectrum in their territory, the relevant sub-group if any shall report to the Group, which shall inform the Commission about the difficulties encountered and possible solutions, that may also require the coordination with, or the cooperation or assistance from another Member State. At the request of the Commission, the Group, through the relevant sub-group, if any, shall assist the Commission in case of request by the affected Member State for legal, political or technical support from the Union to resolve the spectrum coordination issue with the third country.

Article 9

General Organisation of a Peer Review Forum

1. The Peer Review Forum meeting shall be held in line with Article 35 of the Code.
2. Where a national regulatory authority or other competent authority of a Member State informs the Group about a draft measure which falls in the scope of Article 23(2) of the Code, it shall:
 - a) indicate whether and when it requests the Group to convene a Peer Review Forum meeting on a voluntary basis, pursuant to Article 10;
 - b) inform the Group about the timing and duration of the public consultation under Article 23 of the Code and about the time necessary for the competent authority to adopt its draft measure after the end of the public consultation.
 - c) provide the links to the full public documentation relating to the draft measure;
 - d) provide a substantiated summary of such documentation taking into consideration the explanations referred to in Article 35(4) of the Code; this summary shall be, whenever possible, based on a common reporting format provided by the Group and shall be drawn up in the national language of that authority, and where possible provide a translation in English; upon request, and to the extent possible, this translation may be provided by the Commission.
3. The secretariat shall transmit all information received to all the members of the Group through a web site accessible to the members of the Group only. All high-level representatives of the members of the Group as well as the dedicated contact persons designated pursuant to paragraph 5, who have expressed such a desire shall be notified when any information is added to the web site. This information shall remain in the archives of the Group and access thereto shall be organised in line with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001⁵ regarding public access to European Parliament, Council and Commission documents and Article 24 hereof.

⁵ OJ L 145 of 31.5.2001, p. 43. See also: Commission Decision of 5 December 2001 amending its rules of procedure (notified under document number C(2001)3714) (2001/937/EC, ECSC, Euratom), OJ L 345 of 29.12.2001, p. 94.

4. The Peer Review Forum meeting may, if this is acceptable for all the national regulatory authorities or other competent authorities concerned, cover draft measures from more than one Member State.
5. Each member of the Group shall designate one or several dedicated contact persons to whom all information shall be communicated regarding the activities and meetings of the Forum and who shall represent the member and be responsible for the Peer Review Forum.
6. The secretariat of the Group shall assist the Chairperson of the Group and the Chairperson of the Peer Review Forum.
7. The Group shall update at each meeting the schedule of dates available for Peer review Fora for the following twelve months, during which a Peer Review Forum can be organised upon request. The members of the Group shall inform the Chairperson of the Group, to the extent possible, six months in advance about any intended measures which would fall in the scope of Article 23(2) of the Code.
8. The Peer Review Forum shall be open to the participation of any member of the Group, and of experts from the competent authorities of the Member States as well as from BEREC, in line with Article 4(7) of the RSPG Decision, who shall inform in advance the Chairperson of the Group about their presence. The information provided by the competent authority concerned shall be transmitted to BEREC's liaison officer for transmission to the relevant BEREC experts unless the competent authority concerned objects to such transmission, in which case only the public information shall be made available to BEREC's liaison officer and experts.
9. At the meeting of the Peer Review Forum, the relevant national authority shall provide an explanation on how the draft measure meets the elements required by Article 35(4) of the Code and participate in the resulting exchange of views.
10. In line with Article 10 of the RSPG Decision, travel expenses of participants to the meetings of the Peer Review Forum shall not be reimbursed by the Commission.

Article 10

Peer Review Forum on a voluntary basis

1. Any request for a Voluntary Peer Review Forum shall be accompanied by
 - a. a proposed time to hold the Peer Review Forum, taking into account to the best extent possible the sessions which shall have been pre-scheduled by the Group pursuant to Article 9(7); the venue will be the Commission's premises in Brussels unless otherwise agreed by the Member State concerned and the Chairperson of the Group.
 - b. Where possible together with the request, an indication whether the Member State concerned is requesting a report pursuant to Article 35(7) of the Code and/or an opinion pursuant to Article 35(9) of the Code. Such request for a report or an opinion shall be made at the latest during the meeting of the Peer Review Forum;
2. For each case, the chairperson of the voluntary Peer Review Forum shall be agreed by the Member State concerned and the Chairperson of the Group, or if not, designated by the Commission.

3. Upon request by the national competent authority which requested the voluntary peer review and in agreement with the Chairperson of the Group, the secretariat shall send an invitation to the members of the Group and to the liaison officers of BEREC, two weeks in advance, or 5 working days in the case of urgency. Such invitation may also be published on the dedicated web site at the request of the national competent authority which requested the voluntary peer review.
4. In accordance with the request by the relevant competent authority, to be filed at the latest at the start of the Peer Review Forum meeting to the secretariat, the Chairperson of the Peer Review Forum shall prepare:
 - a. a draft report on how the relevant draft measures achieve the objectives in Article 35(4) of the Code and reflecting the views expressed in the peer review forum, and/or
 - b. a draft opinion on the draft measure which was discussed at the Peer Review Forum.

The draft report and/or the opinion shall be presented for possible adoption at the subsequent meeting of the Group pursuant to Article 4(1) of the RSPG Decision and Article 5 hereof. Any adopted reports or opinions shall be transmitted to the Commission, to BEREC, to the participants to the Peer Review Forum and to the relevant competent authority.

5. In line with Article 35(8) of the Code, the Chairperson of the Group or a person acting on his/her authority shall prepare an annual report concerning the draft measures discussed in the Peer Review Forum including experiences and best practices noted and present it to the Group for adoption, transmission to the Commission and publication on the public website of the Group.

Article 11

Peer Review Forum in exceptional cases

1. Where no request has been made for a peer review forum on a voluntary basis, pursuant to Article 35(2) of the Code, at the latest during the public consultation conducted pursuant to Article 23 of the Code, where so requested by at least three members of the Group or by the Commission in agreement with the Chairperson in line with Article 4(4) of the RSPG Decision, who shall provide a reasoned justification on why it is considered that the draft measure would significantly prejudice the ability of the national regulatory or other competent authority to achieve the objectives set in Articles 3, 45, 46 and 47 of the Code, the Chairperson of the Group shall call for a vote by written procedure on whether to convene an exceptional Peer Review Forum pursuant to Article 35(2) of the Code. Article 15 on written procedure shall not apply. The member representing the competent authority concerned shall not vote.
2. The voting period shall close after five days or by the end of the public consultation conducted pursuant to Article 23 of the Code if the period is started less than five days before such end. Until the closure of the voting period, the national competent authority concerned may request a peer review forum on a voluntary basis under Article 10 hereof. In that case, the vote for the exceptional Peer Review Forum shall be cancelled.

3. An exceptional Peer Review Forum shall be held upon a decision in line with Article 4(1) of the RSPG Decision by a simple majority of the votes cast. In calculating whether a decision has been adopted or rejected, account shall be taken only of votes cast for and against. By derogation from Article 15(1), absence of reaction by a Member of the Group in a written procedure shall not be considered as a tacit positive vote. The secretariat shall immediately inform the Group about the outcome of the vote. The position of each member of the Group when voting shall remain confidential.
4. Unless otherwise agreed with the competent authority concerned, the exceptional Peer Review Forum shall be convened within 14 days from the closure of the vote in the Commission's premises in Brussels and chaired by the Chairperson, the Vice-Chairperson of the Group or the previous Chairperson, or their delegate as they decide.

Article 12

Sub-Groups

1. Without prejudice to Article 8, before setting up a sub-group pursuant to Article 4(3) of the RSPG Decision, the Commission shall consult the members of the Group on its remit, chairmanship and composition. The Commission shall include any member of the Group having expressed the desire to be a member of the sub-group. Other members of the sub-group shall be appointed on a clear and transparent basis.
2. Composition of a sub-group may be confined to the members of the Group and to observers of the Group. Where necessary, the Commission may open sub-groups to external participants. Sub-groups shall only be chaired by a member of the Group.
3. Members of the public shall be informed via the website of the Group about the establishment of any sub-group.
4. The Chairperson of each sub-group shall report on the activities of the sub-group to the Group at the latter's following meeting.
5. The reports of the sub-groups shall include a list of organisations and individuals which have contributed to the work, as well as of all documents considered.

Article 13

Invited Experts

The participation of experts and interested parties, pursuant to Article 4(6) of the RSPG Decision, shall be limited to the relevant agenda items; they shall withdraw when the Group moves to a vote.

Article 14

Observers

Observers, invited as provided for in Article 4(6) of the RSPG Decision, can be represented by up to two persons. They shall withdraw when the Group moves to a vote.

Article 15

Written procedure

1. If necessary and justified, any opinion, report or other decision may be adopted via a written procedure, under the same voting rules as provided by Article 4(1) of the RSPG Decision. To this end, the secretariat, in agreement with the Chairperson, shall send the opinion, report or other decision to the members of the Group, in accordance with Article 22(2). Any member of the Group which does not express its opposition or intention to abstain within the response deadline laid down is considered to have given its tacit agreement to the proposal; the deadline must not be less than 14 calendar days.
2. However, if at least two members of the Group request that the proposed opinion, report or other decision be examined at a meeting of the Group, the written procedure shall be terminated without result; the issue will then be considered at the next scheduled meeting or, if the matter is urgent, the Chairperson may convene a meeting of the Group as soon as possible.

Article 16

Chair

1. A Chairperson and a Deputy Chairperson shall be elected from among the members of the Group. In the event of absence or incapacity of the Chairperson, or by delegation of the Chairperson, the Deputy Chairperson shall be empowered to exercise the responsibilities of the Chairperson.
2. The election shall be conducted at the last Plenary meeting before the end of the outgoing Chairperson's term of office. The Chairperson and the Deputy Chairperson shall each be elected by a simple majority vote of the members of the Group.
3. The duration of the term of office of the Chairperson and of the Deputy Chairperson shall be for a period of two years, unless it is decided unanimously by the members of the Group that the duration shall be limited to one year, starting on the first of January of the first year of the term of office. A Chairperson and Deputy Chairperson may stand for re-election for a maximum of one additional period of one or two years. In any case, the duration of the term of office of the Chairperson and of the Deputy Chairperson shall be identical except in case of anticipated resignation of one of them.
4. In the event of resignation or permanent incapacity of the Chairperson or of the Deputy Chairperson, a new Chairperson and/or Deputy Chairperson shall be elected at the next meeting of the Group for the remainder of the term of office of the person(s) to be replaced. In the interim period, the Deputy Chairperson shall replace the Chairperson.

Article 17

Membership

1. Each member of the Group as well as the Commission may appoint an alternate representative who, in the event of absence or incapacity of the nominated representative, shall be empowered to exercise the responsibilities of the representative appointed under Article 3 of the RSPG Decision.
2. Each Member State shall inform the secretariat of the Group through its Permanent Representation about its appointments in line with Article 3 of the RSPG Decision and paragraph 1 above as well as about any change thereof.
3. Without prejudice to paragraph 1 above, each Member State decides on the composition and size of its delegation, which shall be headed by the high-level representative or its alternate. The reimbursement of travel expenses by the Commission will however be limited to one person per delegation.
4. A member may represent a maximum of one other member as proxy. The member of the Group that wishes to be represented must inform the secretariat of the Group thereof in writing, where possible at least 5 days before any meeting.
5. A list with the names and affiliation of the representatives of the members of the Group as well as of their alternates shall be made public on the website of the Group. Collection, management and publication of the names of any natural person shall be carried out in the limits of Article 27 and Regulation (EU) 2018/1725⁶.

Article 18

Secretariat

1. The Commission shall provide the secretariat to the Group. In addition, the Commission may provide assistance to sub-groups upon request, subject to the availability of secretarial resources.
2. The secretariat of the Group shall ensure document management and access.

⁶ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC n°45/2001 and Decision n°1247/2002/EC (OJ L 295, 21.11.2018, p.39).

Article 19

Minutes of the meetings

Minutes of each meeting of the Group shall be drafted in the form of a Chairperson's report by the secretariat of the Group and approved by the Chairperson. The minutes do not need to mention the individual position of the members during the Group's deliberations. However, each member and the Commission shall have the right to ask to have its position recorded in the minutes on specific issues and in exceptional circumstances. They shall also refer to any authorisation granted pursuant to Article 6.

Article 20

Attendance list

At each meeting of the Group, the secretariat shall draw up, under the responsibility of the Chairperson, an attendance list specifying the authorities or bodies to which the person appointed by the Member States' authorities to represent them, as well as any other persons in that Member State's delegation, belong⁷. Observers and experts shall be included in the attendance list.

Article 21

Conflicts of interest

1. External independent experts consulted by the Group or its sub-groups shall be required to inform the Commission before the meeting of any interest which may compromise their capacity to act independently and in the public interest when advising the Commission.
2. Should a conflict of interest arise on one or several particular items in relation to a participant in a Group or sub-group meeting, who is not representative of a member of the Group, such as an observer, that person shall inform the Commission and the chairperson of the sub-group, as soon as possible, who will then inform the other members of the sub-group. In that event, that person shall abstain from discussing the item on the agenda concerned and from any possible vote or deliberation thereupon.
3. Conflicts of interest shall be reported in writing, e.g. in the minutes of the group's meeting or in the report from the sub-group to the group. Information registered must be adequate, relevant and not going beyond what is necessary for the purpose of the management of the conflict of interest.

⁷ The names of the representatives of organisations, Member States' authorities or other public entities may be included only subject to their prior freely given, specific, informed and unambiguous consent, in compliance with Article 3(15) and Article 7 of Regulation 2018/1725.

Article 22

Correspondence

1. External correspondence addressed to the Group as a whole should be sent to the secretariat for the attention of the Chairperson of the Group. The secretariat shall transmit any such correspondence to the Chairperson who shall decide on the follow-up.
2. Other correspondence for members of the Group shall be sent by the secretariat, normally by e-mail, to the person designated for this purpose by that Member State. All documents for a meeting of the Group shall be made available to its members and observers via secured web-site access.

Article 23

Consultation

1. In line with Article 6 of the RSPG Decision, the Group shall, whenever appropriate, publish draft reports and opinions for public consultation to assist it in its work. Comments received in response to consultation documents shall as a rule be published, unless contributors have requested confidentiality in line with Regulation 1049/2001, in which case they shall be accessible by the members only.
2. The opinions, as well as reports where appropriate, shall indicate the extent to, and the manner in which the public has been consulted and in which inputs received have been taken into account with regard to the issue under consideration; a list of the consulted parties and of the documents considered shall be included in the opinion.
3. The Group may decide to meet interested parties to discuss matters of common interest. As appropriate, the Chairperson will normally represent the Group in such contacts or will nominate representatives to do so, assisted in all cases by the secretariat.
4. Public hearings and workshops may be organised by the Group.

Article 24

Transparency

1. The group and sub-groups shall be registered in the Register of expert groups.
2. As concerns the group composition, the following data shall be published on the Register of expert groups:
 - (a) the name of observers;
 - (b) the name of Member States' authorities;
 - (c) the name of third countries' authorities.

3. With regard to the Group, the Commission shall make available all relevant documents, including the agendas, the minutes and the participants' submissions, either on the Register of expert groups or via a link from the Register to a dedicated website, where this information can be found. Access to dedicated websites shall not be subject to user registration or any other restriction. In particular, the Commission shall publish the agenda and other relevant background documents in due time ahead of the meeting, followed by timely publication of minutes. Exceptions to publication shall only be foreseen where it is deemed that disclosure of a document would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) N° 1049/2001⁸.

Article 25

Access to documents

Applications for access to documents held by the group shall be handled in accordance with Regulation (EC) No 1049/2001⁹.

A Member State concerned is entitled to object to the disclosure of documents originating from it on the basis of the substantive exceptions laid down in Article 4(1) to (3) of Regulation No1049/2001 and subject to proper justification.

Article 26

Deliberations

In agreement with the Commission, the Group may, by simple majority of its members, decide that deliberations shall be public.

Article 27

Protection of Personal Data

All processing of personal data for the purposes of these rules of procedure shall be in accordance with Regulation (EU) 2018/1725¹⁰.

⁸ These exceptions are intended to protect public security, military affairs, international relations, financial, monetary or economic policy, privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections/investigations/audits and the institution's decision-making process.

⁹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

¹⁰ Regulation (EU)2018/1725of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC n°45/2001 and Decision n°1247/2002/EC (OJ L 295, 21.11.2018, p.39).

Article 28

Repeal

The Rules of Procedure adopted on 16 November 2011 shall hereby be repealed.

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