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**Radio Spectrum Policy Group**  
**RSPG Secretariat**

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## **RADIO SPECTRUM POLICY GROUP**

### **Progress Report of the RSPG Working Group on the “European Electronic Communications Code”**

## **Progress Report of the RSPG Working Group on “EECC”**

The RSPG Working Group on “EECC<sup>1</sup>” (hereinafter: WG) held three meetings since the last RSPG plenary (31 January and 14 March 2019 in Brussels, Belgium and 9 May 2019 in Dublin, Ireland). Progress has been made also by correspondence between WG meetings (The WG mailing list includes more than 50 subscribers).

Focusing on the Peer Review, the WG continued the deeper analysis of the consequence of Art. 35 EECC (European Electronic Communications Code, Directive (EU) 2018/1972) on the existing Peer Review Platform and carried on preparing the skeleton draft of a separate report with regard to the procedures established by Art. 35 EECC.

### **1. Report on the impact of the EECC on the role of RSPG**

During the last plenary, the RSPG adopted the report on the impact of the EECC on the role of the RSPG. The plenary requested an informative annex for publication together with the report. This informative annex has been developed on the basis of Annex 1 as submitted to the RSPG plenary. Editorial changes have been made to the RSPG report in accordance with the amendments made to the Annex.

### **2. Revision of the EC decision establishing the RSPG**

The WG continued the discussion of the informal draft for a reviewed Commission Decision 2002/622/EC establishing the RSPG. The European Commission gave the members of the WG the opportunity to provide written comments to the informal draft. The Commission intends to adopt the amendment of the Commission Decision establishing the RSPG before summer.

During the exchange of views, some possible revisions have been suggested. Nevertheless, this could not be considered as the agreed position of the WG due to the different views expressed.

Possible improvements discussed within the WG according to the written comments of the members were:

- Align the wording of the (informal draft) decision with the wording of the Code, in particular with Art. 4, 28 and 35 EECC

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<sup>1</sup> Directive of the European Parliament and of the Council on European Electronic Communications Code (under final adoption process)

- Make clear that RSPG is delivering opinions and reports not only to the Commission (i.e. EP, Council)
- Clarify that the procedures laid down in Art. 28 and 35 EECC do not prevent the RSPG from carrying on with Peer Review Processes and Good Offices Process which do not fall under the scope of Art. 28 and 35 EECC, i.e. in the case of radio spectrum, for which no harmonised conditions have been set by the technical implementing measures in accordance with Commission Decision 676/2002/EC.

The WG thanks the European Commission for its good cooperation with the WG and welcomes the possibility to comment on the informal draft of the reviewed European Commission Decision establishing the RSPG.

### **3. Peer Review Process**

The WG continued the elaboration of the draft report on the implementation of Art. 35 EECC. An intensive exchange of views took place on the basis of the skeleton draft (including various written comments provided prior to the meetings).

There is consensus within the WG that the procedures established by Art. 35 EECC are to be implemented in a way that is as unbureaucratic as possible and that avoids unnecessary administrative burden.

#### ***General provisions / Voluntary Peer Review (PR)***

In general, the PR under Art. 35 EECC is a voluntary tool and it is up to the respective national regulatory authority or other competent authority (NRA/CA) to initiate the PR and to request an opinion and/or a report on the respective draft measure.

The one thing the relevant NRA/CA is obligated to do according to Art. 35(1) EECC is to inform the RSPG about any draft measure which falls within the scope of the comparative or competitive selection procedure pursuant to Art. 55(2) EECC and to indicate whether and when it is to request the RSPG to convene a PRF.

The WG had an exchange of views on

- the possible ways in which the information about draft measures could be provided by the relevant national NRA/CA (form, language, availability on CIRCAB),
- the ways in which this information is distributed to the MS (e.g. Peer Review WG-rapporteurs, RSPG-Secretariat),
- the possibility to offer preset dates for voluntary PR. These preset dates could be offered notwithstanding the right of the national NRA/CA in charge to ask for another separate date for the PR.

Another open issue is the organization of the PR. In practice, the Peer Review WG-rapporteurs, the RSPG secretariat and the concerned NRA/CA will work together to organize the PR. But no common understanding has yet been reached on who will be the representative

of the RSPG who – according to Art. 35(2) – will chair the PR. Under the current Peer Review Process, the MS who is hosting the PRF, chairs the meeting.

***Rules for the initiation of an Exceptional Peer Review***

Only in exceptional circumstances, the RSPG may take the initiative to convene a Peer Review Forum in accordance with the rules of procedure for organising it, where it considers that the draft measure would significantly prejudice the ability of the national NRA/CA to achieve the objectives set in Art. 3, 45, 46 and 47 EECC.

With regard to the procedural aspects of the initiation of an Exceptional Peer Review (EPR) according to Art. 35(2) EECC, the WG identified a possible approach:

The Group so far agreed to recommend a two-step procedure to the plenary:

**Step 1:** A certain number of MS has to request that a vote be taken within RSPG on the initiation of an EPR (so called “trigger”), based on their concerns that the draft measure would significantly prejudice the ability of the national NRA/CA to achieve the objectives set in Art. 3, 45, 46 and 47 EECC.

**Step 2:** If the required number of MS “trigger” that an EPR Forum should be held, then the RSPG should hold, within a prescribed number of days, a vote by written procedure on whether an EPR Forum should be held. If a positive majority of the members of the RSPG votes in favour of the initiation of the EPR, the EPR has to take place.

The WG confirmed the need to update the rules of procedure (RoP) with regard to the majority requirements in order to make sure that a positive majority vote within RSPG (majority of the members of the RSPG) is necessary for the initiation of an EPR.

An agreement is still pending on the required number of MS demanding a vote within RSPG (Step 1) with regard to the initiation of an EPR. The WG discussed the pros and cons of the number of MS required do trigger the demand for a vote. Members of the WG pointed out the relatively short timeframe for the MS to demand for a vote within RSPG (possibly no more than 5 working days), since there might be only a timeframe of 30 days in general to take the initiative to convene an EPR Forum (see. Art. 35 (2) and Art. 23 EECC). Diverging views have been expressed ranging from 2 MS to up to 9 MS. Some MS were requesting more visibility on the overall process in order to decide on the exact number.

The WG agreed that the final decision on the “triggering number” (Step 1) needs to be made with the amendment of the RoP.

Further questions which are under discussion within the WG are:

- Required reasoning for the initiation of an EPR
- If and to what extent there is a possibility for the concerned NRA/CA to opt for a voluntary Peer Review after Step 1 of the procedure is fulfilled.

After the EPR Forum has been held, the EECC does not require any further measures by the RSPG with regard to the EPR (no opinion or report of the RSPG).

### ***General provisions***

The annual report regarding experiences and best practices with respect to the discussed draft measures comprises the voluntary Peer Reviews as well as the Exceptional Peer Reviews. All Peer Reviews are open to voluntary participation of other competent authorities and of BEREC.

An overview of the current state of the debate within the WG on the PR according to Art. 35 EECC is given in the Annex.

## **4. RSPG Rules of Procedure**

The WG noted that there is a need to adopt amendments to the RoP of the RSPG. The WG intends to start the work on this topic after the adoption of the amended EC Decision establishing the RSPG. Relevant WG work could start in June.

The WG welcomes the possibility to cooperate with the European Commission on this future update of the RoP.

## **5. RSPP**

In line with the current Work Programme, the WG intends to assess any impact on the current RSPP due to the new regulatory framework for electronic communications (EECC) and make relevant recommendations. An initial exchange of views might take place during the WG meeting in July.

## **6. Cooperation with BEREC**

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 the cooperation between RSPG and BEREC under the EECC, the WG suggests establishing permanent points of contact in both RSPG and BEREC.

## **7. Next Steps**

The next meetings will take place in Brussels on 13 June (day after plenary) and on 11-12 July (just after RSC#68 - save the date).

**Proposed course of actions**

The RSPG Plenary Meeting #49 is invited:

- to take note of the progress report, including the flow charts in the Annex, and the planned remaining steps and
- to support the further cooperation of the WG with the EC on the amendment of the RSPG RoP.

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