19th June 2008

FINAL

RADIO SPECTRUM POLICY GROUP
OPINION ON
SPECTRUM ISSUES CONCERNING OUTER EU BORDERS

Note: please note that, unless specifically stated, information included in the annexes to this Opinion provide supporting material and is therefore not integral part of the body of the Opinion.

I. Introduction

This paper represents the Radio Spectrum Policy Group's (RSPG) response to the European Commission's Request for an Opinion on spectrum issues concerning outer EU borders (document RSPG07-194 Final, 22 November 2007).

In accordance with the Commission's request, the RSPG has addressed the following issues:

- Preparation of an inventory of practical cases and analysis of underlying issues.
- Identification of appropriate criteria to select spectrum coordination situations eligible for EU-level support.
- Appropriate tools to be used, including brief assessment of legal bases.
- In the case of a choice between several approaches, an estimate of the merits and disadvantages of each of the proposed approaches.
- A strategy to monitor the results on a periodic basis.

II. General considerations

The implementation of EU spectrum policies and related harmonisation measures often require specific frequency coordination activities between Member States located at the outer borders of the European Union and their neighbouring third countries. The coordination is usually conducted either in the wider context of ITU coordination or via bilateral contacts, or both. Moreover several EU Member States may have common interests and therefore may decide to coordinate through a multilateral agreement with non-EU countries, including acceding countries, consistent with the Radio Regulations.

From a purely technical point of view, coordination difficulties arise mainly from the fact that the Table of Frequency Allocations or the Frequency Utilization Plans of the non-EU neighbouring countries are different from the harmonised EU radio spectrum in the corresponding frequency bands.

The purpose of this opinion is to give advice to the Commission on an EU-level assistance mechanism to support and assist individual Member States, or a sub-group of Member States, who need to coordinate spectrum issues with non-EU countries, including acceding countries. Such an approach would allow mobilising the European Union to support agreed objectives related to spectrum.

The scope of this Opinion covers coordination issues not only in connection with EU harmonization measures, but also in connection with EU spectrum policies in general.

III. Analysis of underlying issues

The RSPG considers that the spectrum coordination issues with third countries could be classified in the following categories:

a) Geographical clusters

In the scope of this Opinion, a geographical cluster is to be understood as a region formed by one or more EU Member States and one or more non-EU countries where coordination issues that may arise are of a same or similar nature.

Given the geographical and/or geo-political situations of EU Member States and their respective non-EU neighbouring countries, several geographical clusters can be potentially identified at the present time, without prejudice to future evolution:

- North-Eastern European cluster: This cluster includes spectrum coordination issues between some EU Member States and Russia, Belarus, and probably with Ukraine or Moldova.
- North African cluster: This cluster includes spectrum coordination issues between some EU Member States and Morocco, Algeria and Tunisia.
- Eastern Mediterranean cluster: This cluster includes spectrum coordination issues between some EU Member States and Libya, Egypt, Jordan, Israel, Lebanon, Syria, Turkey and Palestinian Authority.
- Former Yugoslavia cluster: This cluster includes spectrum coordination situations between some EU Member States and Serbia, Bosnia & Herzegovina, Montenegro, Albania and FYROM.
- Switzerland cluster: This cluster includes spectrum coordination situations between some EU Member States and Switzerland.

The figure in Annex A describes the above identified clusters.

Note that some of the geographical clusters could eventually change with the accession of new countries to the EU, but the concept of geographical cluster is deemed to be a useful one regardless of future evolution.

It should also be noted that some cases may require individual country attention.

b) Coordination issues with acceding countries: During the accession process, candidate countries not only have to fully adopt the EU electronic communications "acquis", but also to cooperate with all EU Member States. The specific spectrum coordination issues that arise between Member States and acceding countries should be addressed in this context.

This category could be extended to future candidate countries.

c) Coordination with EFTA[1] and very small countries. EEA[2]/ EFTA States share an identical regulatory framework for electronic communications and spectrum[3] with the EU-Member States. Due to the good relationship existing between EFTA countries and EU Member States it is unlikely that coordination difficulties will arise. At the moment no single case has been reported for analysis. The same situation applies to very small states like Vatican City, San Marino, Monaco and Andorra.

[1] European Free Trade Association: Switzerland, Iceland, Liechtenstein and Norway
[2] European Economic Area: the EU-Member States and Iceland, Liechtenstein and Norway
[3] In this context specifically the Radio Spectrum Decision 676/2002/EC

At the present time, most of the frequency coordination issues are concentrated in the frequency bands shown below. Some of them have arisen as a result of serious constrains posed by Art. 5 of ITU Radio Regulations (i.e. new RR No 5.316A).

- UHF Band: (especially the sub-band 790-862 MHz).
- L Band: 1452-1479.5 MHz.
- 2500 - 2690 MHz
- C Band: 3.4 -3.6 GHz.
- C Band: 3.6 -3.8 GHz

An example of such constrains is given in Annex B which illustrates the geographical limitations in the 3.4-3.6 GHz band for the North-Eastern European cluster.

IV. Potential tools to be used and assessment of legal bases

The RSPG has identified three types of tools that can ultimately be used by the EU to assist Member States in coordination issues with non-EU and acceding countries:

- Tools possessing legal basis (binding in the Community).
- Tools providing considerable negotiating opportunities.
- Co-operation instruments.

Cross-border spectrum coordinations take into account national specificities on spectrum use by commercial and public services including military services: i.e. number of network operators using harmonised bands, evolution of spectrum needs according to market or public demands, divergences on roadmaps to roll out of new radio infrastructure, etc. Taken into account those national differences, cross-border spectrum coordinations should be handled bilaterally or multilateral under the subsidiarity principle.

a) Tools possessing legal basis (binding in the Community)

As all EU Member States are ITU members, the ITU Radio Regulations should be considered before requesting EU involvement on spectrum coordination issues at the borders of European Union with neighbouring countries.

The ITU Constitution, Convention and the Radio Regulations are international treaties, which are binding to all signatories. Further, Article 6 of the ITU Radio Regulations provides for any bilateral or multilateral agreements on cross-border spectrum coordination.

Also, on the basis of the agreed negotiation framework between every acceding country and the EU, there may be some legal tools that the EU could use to resolve coordination issues between Member States and acceding countries.

b) Tools providing considerable negotiating opportunities

The bilateral and regional dialogues on "Information Society"

Existing bilateral/regional dialogues offer relevant opportunities to discuss international cooperation in the area of the Information Society because they increasingly focus on regulatory issues. The EU has considerable negotiating power where economic and trade partnerships are developed**.**

It is to be noted that conclusion by EU and EEA Member States of bi- and/or multilateral framework agreements on common methodologies and coordination "procedures" with non-EU or non-EEA States could allow faster coordination requests and increased certainty as to the outcome.

Accession Negotiations and Relationships with Candidate countries (Turkey, Croatia, FYROM) as well as with potential Candidate countries

Acceding countries are obliged to adopt the EU electronic communications "acquis" and related policies and to cooperate with all Member States in their implementation. In this respect, accession negotiations are conducted on the basis of an agreed framework between every acceding country and the EU. Within this formal dialogue conducted between the EU and these countries the aim is to prepare them for the information society and electronic communications "acquis" in view of their future EU accession. In this context, issues of particular interest such as specific spectrum policy matters and coordination issues can also be addressed.

c) Co-operation instruments

The European Neighbourhood Policy (ENP) and the Euro-Mediterranean Partnership (EUROMED)

The Euro-Mediterranean Partnership (EUROMED) is the main framework for political, economic, and social relations, for dialogue, and for regional co-operation, in the Mediterranean.

The principal financial instrument of the European Union for the implementation of the Euro-Mediterranean Partnership is the MEDA programme.

The European Commission is launching the second phase of the NATP (New Approaches to Telecommunication Policy) project. This project is set up in the framework of the MEDA program, more recently merged into the European Neighbourhood Policy.

Bilateral ENP Action Plans agreed between the EU and each partner is the central element of the European Neighbourhood Policy, which set out an agenda of political and economic reforms with short and medium-term priorities.

The Commission, in the context of policies like ENP and EUROMED, could support training on spectrum management with assistance from interested Member States to share, first of all, best practices on institutional organisation of spectrum management covering commercial and public uses of spectrum. In a second stage, best practices on border spectrum coordination could be promoted.

Strategic partnership between the European Union and the Russian Federation

The Partnership and Cooperation Agreement (PCA) is the basis for EU bilateral relations with the Russian Federation. The PCA covers a wide range of policy areas and establishes an institutional framework for regular consultations between the European Union and Russia.

The Cotonou Agreement

The Cotonou Agreement is a treaty between the European Union and the group of African, Caribbean and Pacific states, aiming to the gradual integration of ACP countries into the world economy.

The Commission in the framework of the Cotonou Agreement could support training and exchange of best practice of ACP states on spectrum management.

Cooperation between European Commission and CEPT

Further to the relevant provisions of the Radio Spectrum Decision (676/2002/EC), an MoU between the EU and CEPT entered into force in 2004. Within the framework of this MoU, CEPT has provided several CEPT Reports in response to mandates from the European Commission. Such CEPT Reports form the basis of EC Decisions on spectrum harmonisation in the EU and are often used by CEPT to develop non-binding Decisions. CEPT reports may also include information on relevant cross border coordination issues at the outer European borders, if any.

As the membership of CEPT includes not only all EEA countries but an additional 18 (non-EEA) neighbouring countries, the adoption of ECC Decisions, with comparable technical specifications to those of EC Decisions, by non-EEA countries, could extend EU spectrum harmonisation to non EEA countries. The wide implementation of CEPT spectrum harmonization measures by non-EEA countries may also prove an effective mechanism for reducing the number and limiting the severity of frequency coordination problems at the outer European borders.

Additionally, EFIS, a database managed by ERO under an EU mandate and updated by CEPT administrations provides visibility on the usage of spectrum in the CEPT countries, and could be used as a reference tool in promoting training on spectrum management and on best practices on border spectrum coordination to EU neighbouring countries.

V. The Opinion of the RSPG

1. The RSPG recommends tackling the spectrum coordination issues by geographical clusters. The given set of geographical clusters could eventually change with the accession of new countries to the EU. Nevertheless, the concept of geographical clusters is considered to provide added value in the treatment of coordination issues with neighbouring countries. It should be noted however, that some cases may require individual country attention.

Such spectrum coordination issues could be issues related to implementing EU harmonization measures, provisions of the Radio Regulations particularly the ones related to safety of life, EU policies and regional and international agreements.

2. The RSPG considers that two different coordination situations with neighbouring countries should be acknowledged:

   - Coordination situations with non-EU countries.
   - Coordination situations with acceding (and potentially acceding) countries.

3. The RSPG considers that Member States should request the assistance of the European Commission only after making all practicable efforts to reach an agreement with the non-EU neighbouring or acceding countries on a bilateral/multilateral basis. In all qualified cases the Commission should use the tools at its disposal, as described in section 6 below, to resolve the related coordination issues.

4. The RSPG recommends that the European Commission promote exchange of best practices in cross border coordination in a larger geographical footprint than EU countries (see 12).

   In connection with the above mentioned goal, the RSPG encourages the European Commission to explore the possibility of requesting CEPT to issue guidance and methods to manage cross-border spectrum coordination at national level. Such CEPT Report could form the basis for guidance to be used by the Commission for its strategic initiatives and tools to help solving future coordination issues.

5. The RSPG recommends that the European Commission promote closer collaboration between EU and CEPT at the stages of conception and development of spectrum harmonization measures with comparable technical specifications in order to achieve the widest possible implementation of these harmonization measures by non-EEA CEPT countries, thereby reducing the number and limiting the severity of frequency coordination problems at the outer European borders.

6. When addressing coordination situations with non-EU neighbouring countries, the RSPG recommends that the following tools be used by the European Commission to assist Member States (refer to section IV):

   - Tools possessing legal basis (binding in the Community).
   - Tools providing considerable negotiating opportunities.
   - Co-operation instruments.

   Additionally, the RSPG recommends that the European Commission explore a MEDA NATP II[4] like initiative for those clusters concerned by spectrum coordination, as appropriate.

7. The RSPG considers that the previous point is applicable principally to terrestrial services. Concerning space services, international coordination of space and earth stations should be handled within the ITU framework. The ITU manages frequency

[4] Refe rence: http://www.natp2.org/

assignments at global level and establishes the regulatory procedures that govern the use of orbital positions and associated frequency bands. However, spectrum coordination issues of specific satellite systems, in particular pan-European satellite systems, that may arise between Member States and acceding or non-EU countries could be also addressed using the tools described in point 6 above.

8. When addressing coordination situations with acceding countries, the RSPG recommends taking into account the fact that all these countries have to adopt the EU electronic communications and spectrum "acquis" and cooperate with all Member States in implementing EU legislation and policy. In particular:

    - It should be a requirement for all acceding countries to cooperate with all Member States for the purpose of effective application of the provisions of Article 9, paragraphs 1 and 2, of the Framework Directive (2002/21/EC) ("management of radiofrequencies for electronic communication services") throughout the Community.
    - It should be a requirement for all acceding countries to cooperate with all Member States in all international and regional forums as regards the establishment and coordination of radiocommunication systems.
    - If an acceding country does not act in accordance with the requirements above, all available tools should be utilized by EU institutions to ensure compliance.

9. After an EU intervention, the Commission should inform the RSPG on the outcome of such intervention. The RSPG might then consider preparing an assessment of the process and possible recommendations to improve its effectiveness.

10. The RSPG recognises that the prime objective of EC spectrum harmonisation Decisions is to ensure and maintain coherence in the internal market. Nevertheless, in the case of insurmountable spectrum coordination difficulties with non-EU neighbouring countries, certain geographical areas of the EU may be unable to implement EC harmonisation Decisions. In such cases the RSPG recommends that:

    a) In order to avoid sterilisation of the spectrum, the affected EU Member States be allowed to make a different use of the particular frequency bands or sub-bands, thus safeguarding the principle of efficient use of the spectrum. Such permission is to be considered of an exceptional nature, and will be granted only as long as the incompatibility with non-EU countries persists.

    b) If the difficulties with third countries can already be identified before the Decision is put in place, they can be addressed by the mechanism foreseen in the Radio Spectrum Decision (Article 4.5) whereby derogation provisions can be included in harmonisation measures.. To this end, Member States should in the course of preparation of a new harmonisation Decision, aim to anticipate the need for such derogation in view of permitting temporary use(s) not initially foreseen in the Decision. The derogation should, once accepted, exempt Member States from implementing certain obligations of the Decision, and should not unduly defer implementation or create undue difference in the competitive or

regulatory situations between Member States. At the same time, the principle of flexible use of spectrum should be taken into account when preparing EC harmonisation Decisions, as this flexibility could, in certain cases, avoid such difficulties with non EU countries.

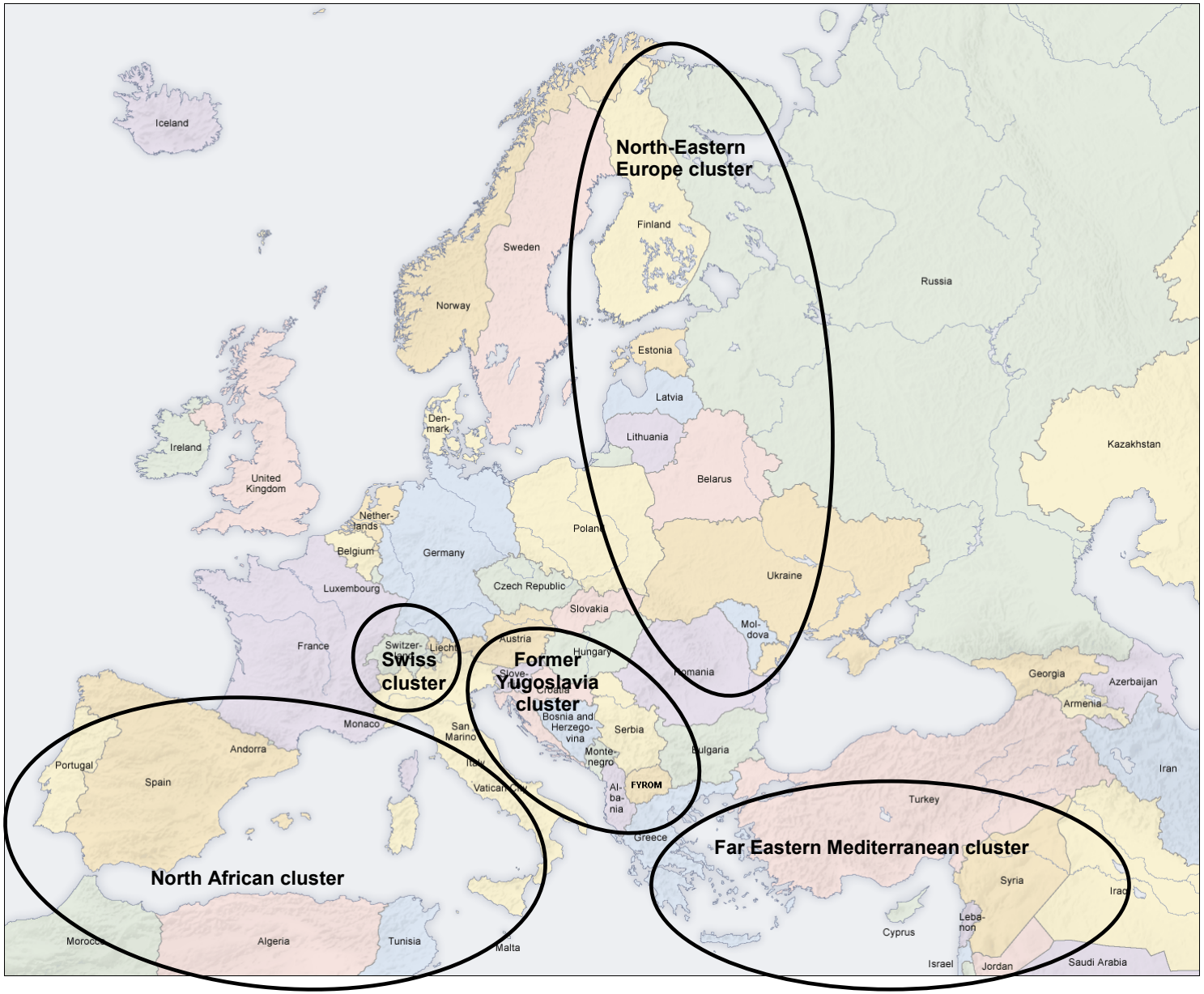
c) If the difficulties with third countries appear after a Decision involving the use of spectrum in the internal market has been put in place, there are two possible situations:
i) The possibility for a derogation is already foreseen in the existing Decision (reference to art. 4.5 of the Radio Spectrum Decision): Member State(s) can use the existing derogation mechanisms even after the expiry of the implementation deadline.
ii) The possibility for a derogation is not foreseen in the existing Decision: Member State(s) can call upon the Commission for an amendment of the corresponding Decision to add a derogation provision and use it as described above. However, this requires approval to amend the Decision by qualified majority of Member States.

d) The European Commission exercises control over the duration of the alternative use (such control mechanism could periodically check if the coordination problem persists, in order to assess whether the derogation is still relevant).

11. The RSPG encourages the European Commission to explore the extension of EFIS to non-CEPT countries which are EU neighbouring countries and to those non EU CEPT countries which are not currently using it.

12. The Commission, in the context of policies like ENP and EUROMED, could support training on spectrum management with assistance from interested Member States to share, first of all, best practices on spectrum management institutional organisation covering both commercial and public uses.

ANNEX A


North-Eastern Europe cluster
Swiss cluster
Former Yugoslavia cluster
North African cluster
Far Eastern Mediterranean cluster
Iceland
Finland
Sweden
Norway
Russia
Estonia
Latvia
Lithuania
Belarus
Kazakhstan
Ireland
United Kingdom
Den-mark
Nether-lands
Belgium
Germany
Poland
Luxembourg
Czech Republic
Slovakia
Ukraine
Mol-dova
France
Switzer-land
Liech-
Austria
Hungary
Slove-
Croatia
Romania
Georgia
Azerbaijan
Armenia
Monaco
San Marino
Bosnia and Herzego-vina
Serbia
Monte-negro
Bulgaria
Andorra
Portugal
Spain
Italy
Vatican City
Al-ba-nia
FYROM
Greece
Turkey
Iran
Syria
Iraq
Leba-non
Cyprus
Israel
Jordan
Saudi Arabia
Morocco
Algeria
Tunisia
Malta

Example of geographical clusters

ANNEX B

Buffering zone necessary to protect fixed-satellite service of Russia and Belarus in the 3.4-3.6 GHz band