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Subject: Proposal for a Decision of the European Parliament and of the Council
establishing the first radio spectrum policy programme
- *Progress Report*

I. INTRODUCTION

1. The Commission adopted its proposal for a Decision of the European Parliament and of the Council establishing the first radio spectrum policy programme (hereinafter RSPP proposal) on 20 September 2010.¹
2. Under the Belgian Presidency, the Council Working Party on Telecommunications and Information Society examined the RSPP proposal in various meetings and the majority of delegations made use of the possibility to submit written comments. On the basis of the discussions and the written comments, the Belgian Presidency put together the present progress report with the aim to inform Ministers about the progress made to date and to identify political issues in the RSPP proposal where divergences of views exist among delegations.

¹ Doc. 13872/10

On 24 November 2010, the Permanent Representatives' Committee agreed to submit the Presidency's progress report to the Council.

3. The progress report and the exchange of views at the TTE Council of 3 December 2010 should help shape the Council's position for the upcoming discussions with the European Parliament, where a first exchange of views on the proposal is planned to take place in Parliament's ITRE Committee on 9 December 2010.
4. The Presidency is proposing to the Council to have an exchange of views on the RSPP proposal with the purpose of taking stock of the examination of the Commission's proposal so far and to identify and discuss issues where future work in the Working Party under the Hungarian Presidency could benefit from the political guidance of the Ministers. In order to steer such discussions, the Presidency has also produced in a separate document *Guidelines for the exchange of views at the Council*.²

II. THE COMMISSION'S RSPP PROPOSAL

1. Radio spectrum policy and management issues were subject of intense debate in the context of the 2008-2009 negotiations on the new regulatory framework for electronic communications services (hereinafter "ECS"), which, while confirming the current practice of achieving the harmonised use of spectrum through the Radio Spectrum Decision³, resulted *inter alia* in an update of certain radio spectrum related provisions in the Framework Directive (2002/21/EC, hereinafter "FWD") and the Authorisation Directive (2002/20/EC, hereinafter "AD"). Member States shall adopt and publish by 25 May 2011 the laws, regulations and administrative provisions necessary to comply with these Directives.

² Doc. 16567/10

³ Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision).

2. Article 8a(3) of the recently updated FWD stipulates that the Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group (hereinafter "RSPG"), may submit legislative proposals for establishing multi-annual radio spectrum policy programmes, which shall set out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in the Community in accordance with the ECS regulatory framework.
3. The RSPP proposal aims to establish a 5 year policy programme to promote efficient radio spectrum management and, in particular, ensuring that sufficient spectrum is made available by 2013 for wireless broadband, which will significantly contribute bringing fast broadband connections to people in remote areas and to make innovative services available across Europe. The proposal not only covers ECS but also seeks to apply to other EU policies depending on radio spectrum, as efficient and competitive use of spectrum will help to establish a Single Market for ECS and for other policy areas such as transport and the environment.
4. The Commission presented the RSPP proposal as part of the "Broadband Package", i.e. a series of measures⁴ designed to facilitate the roll-out and take-up of fast and ultra-fast fixed and wireless broadband in the EU. The three measures aim to help the EU realise the commitments in the Digital Agenda for Europe⁵ to give every European access to basic broadband by 2013 and fast and ultra-fast broadband by 2020. This would be in accordance with the Europe 2020 Strategy⁶ for smart, sustainable and inclusive growth as installing broadband infrastructure in Europe is essential to create jobs and prosperity.

⁴ Two other measures were adopted at the same time as part of the 'broadband package': a Commission Recommendation on Regulated Access to Next Generation Access (NGA) networks [C(2010) 6223], which sets out a common regulatory approach for access to new high-speed fibre networks that requires national telecommunications regulators to ensure an appropriate balance between the needs to encourage investment and to safeguard competition. The package also included a Broadband Communication [doc. 13874/10] that sets out a coherent framework for meeting the Digital Agenda's broadband targets and, in particular, outlines how best to encourage public and private investment in fast and ultra-fast broadband networks. The TTE Council of 3 December 2010 plans to adopt conclusions on "European Broadband: investing in digitally driven growth" [doc. 16836/10]

⁵ Doc. 9981/1/10

⁶ Doc. 7110/10

5. The Commission has based the RSPP proposal on the Single Market rules of the Treaty on the Functioning of the European Union (TFEU - Article 114), as the availability and efficient use of spectrum is important for the establishment of a Single Market for ECS as well as for other EU policy areas.

III. PRINCIPAL REACTIONS OF THE DELEGATIONS

1. Delegations generally welcomed the Commission's proposal, acknowledging that radio spectrum could make an important contribution to the digital society, fast wireless services, economic recovery, growth, high-quality jobs and long-term EU competitiveness. The RSPP proposal as well as the accompanying Impact Assessment⁷ were examined by the delegations in various meetings of the Working Party on Telecommunications and Information Society. Delegations, already committed to the broadband objectives set out in the Europe 2020 Strategy and in the Digital Agenda for Europe, identified the provisions on wireless broadband as the main and most urgent elements of the RSPP proposal, i.e. to earmark sufficient spectrum for wireless services, including broadband, and to make available to operators spectrum bands which have already been technically harmonised at EU level for the use of wireless broadband.⁸ Delegations could also support in principle to use frequencies that have become available as a result of the digitisation of broadcasting (i.e. the Digital Dividend), in the 800 MHz band where the propagation characteristics are good for indoor coverage or in remote and rural areas. However, several delegations were concerned that the proposed timetable for implementation and in particular the clearing of the 800 MHz band was problematic due to the specific circumstances in certain Member States related to the use of the frequency bands for national security and defence purposes and to cross-border frequency co-ordination problems with third countries.

⁷ Doc. 13872/10 ADD2

⁸ Commission Decisions 2008/477/EC (2.5–2.69 GHz), 2008/411/EC (3.4–3.8 GHz) and 2009/766/EC (900/1800 MHz).

2. Some delegations were more reserved about the proposed actions and common principles in the area of spectrum management, that the Commission deems necessary to ensure that Europe's finite radio spectrum is used more efficiently than is currently the case. Some delegations believed that the provisions on radio spectrum in the new regulatory framework for ECS, which awaits transposition by May 2011, may meet the concerns of the Commission. The Commission explained, however, that the proposed RSPP does not review or alter the newly agreed provisions on radio spectrum management. The Commission agreed with many delegations that the RSPP proposal should make appropriate reference to the new ECS regulatory framework. Some Member States also expressed concern about the proposals regarding coverage obligations, arguing that decisions on authorisation conditions fall within the sole competence of Member States.
3. The Council's Audiovisual Working Party submitted an opinion on the RSPP proposal⁹, calling on the Working Party on Telecommunications and Information Society to take into account in its deliberations objectives of general interest, such as freedom of expression, promoting cultural and linguistic diversity and ensuring media pluralism, objectives which are recognised in the new regulatory package for ECS.
4. In view of the limited time available to the Belgian Presidency and due to the preliminary yet substantial comments of the delegations, and because the Parliament had not yet a chance to discuss the Commission's RSPP proposal, the Belgian Presidency took the decision not to produce a modified text of the proposal but rather to seek strategic and political guidance from the Ministers by means of a progress report and an exchange of views.

⁹ Doc. 15229/10

IV. MAIN ISSUES TO BE DISCUSSED FURTHER

1. At this stage in the negotiations on the RSPP proposal in the Working Party on Telecommunications and Information Society, the main fundamental questions that require a common view from the Council include the following:

- Objectives of the RSPP proposal: what are the main objectives of the RSPP proposal? Is it to facilitate the timely roll-out of wireless broadband or is it also to urge the Member States to manage their spectrum more efficiently, supplemented by further actions and increased coordination at EU level?
- Legal basis and scope of the proposal: the regulatory framework for ECS is based on Article 114 TFEU but is this also appropriate for other sectors using spectrum, such as R&D and transport? Is there a need to also co-ordinate spectrum availability for other internal market services, as is currently being done for ECS services? Should and could there be a role for the EU in respect of spectrum harmonisation for public security purposes?
- Spectrum for wireless broadband: taking into account that certain Member States face difficulties in opening up the 800 MHz band for wireless broadband because of national (security or defence) situations or because of cross-border frequency co-ordination problems with third countries, would it be feasible to agree on a common EU date for implementation?
- Spectrum management issues: is there a justified need for further changes to the current spectrum management practices at this stage pending the transposition of the new regulatory framework for ECS by May 2011?

2. Pending the formulation of a common view on the above mentioned questions, it would be difficult to identify at this stage of the negotiations the level of support from the delegations for the individual elements contained in the RSPP proposal. However, the following sections provide an overview of some of the most pertinent arguments put forward by the delegations on the main elements of the proposal.

i Spectrum for wireless broadband communications

Delegations generally agree that the proposals on spectrum for wireless broadband communications (Article 6 in conjunction with Article 4(1)) are of key importance in the contexts of the EU2020 Strategy and the Digital Agenda for Europe. The relevant provisions recall the agreed political objective to be reached, i.e. all citizens should have access to broadband of a speed of at least 30Mbps by 2020. And they also spell out a number of measures that need to be taken in order to reach that objective, i.e. authorisation of existing harmonised EU spectrum by 2012 and the making available of the 800 MHz band for wireless broadband by 2013 or, where justified, 2015. With regard to those deadlines, a significant number of Member States pointed out that they expect to continue to have frequency co-ordination problems with third countries after those deadlines as those countries use the 800 MHz band for other purposes than wireless broadband.

In addition, the Commission proposes a number of side measures related to the use of the 800 MHz band in rural areas, to the tradability of harmonised spectrum bands and to the availability of spectrum for satellite broadband services. Although no consensus exists amongst delegations regarding the dates set forth in this article and although it needs to be clarified further which specific obligations for Member States result from this article, e.g. with regard to the proposed coverage obligations, the general view is that action is needed in support of the roll-out of wireless broadband. Some delegations regret that quick progress on the wireless broadband provisions will be slowed down because of the lack of general support for the other spectrum management proposals, which, for various reasons, may require lengthy negotiations among the delegations, with the Commission and with the European Parliament.

ii Aim and scope

Regarding the aim and scope of the RSPP proposal, a considerable number of delegations call for further clarifications in the text (Article 1), both as regards which internal market areas would be covered (ECS but also R&D, transport and energy, space policy, environmental protection, civil protection and disaster relief? - see Article 7) and how the Decision would relate to existing EU law¹⁰, which already defines a number of principles and related procedures as regards radio spectrum issues. Delegations are not clear as to whether or not the principles put forward in the RSPP proposal should be seen in addition to those already existing in EU law or whether the aim is to have these principles also apply to non-ECS areas, such as R&D, transport and energy. A number of delegations questioned the Commission's proposal (in Article 7 on "Spectrum needs for specific Union policies") to ensure harmonised spectrum availability for applications such as Earth observation and safety services (i.e. public safety and protection, civil protection and disaster relief). Especially where the proposed actions go beyond and outside the scope of the internal market, some Member States are reluctant to accept any EU actions. Most delegations agree that the RSPP should avoid duplicating existing provisions in the new regulatory framework for ECS and many delegations question whether or not an extension of well-known principles in the ECS domain to all spectrum use is possible in view of the (regulatory) specificities of these sectors.

¹⁰ Such as Directives 1999/5/EC (R&TTE - Radio and Telecommunications Terminal Equipment) and Directives 2002/20/EC (Authorisation Directive) and 2002/21/EC (Framework Directive), as well as Decision No 676/2002/EC (Radio Spectrum Decision).

iii Legal basis and link with the new regulatory package for ECS

In case the political choice is taken to accept that the scope of the RSPP goes beyond the ECS sector and also applies to other EU policy areas, delegations could most likely accept Article 114 TFEU as a legal basis. However, delegations insist on more explicit links to be made between the various articles in the RSPP and the existing provisions in the new regulatory framework for ECS, where appropriate. This would ensure that the implementation of the RSPP as regards ECS is strictly in conformity with the rules set forth in the new regulatory framework for ECS, the transposition of which by the Member States is still in progress.

iv Spectrum management issues: enhanced efficiency and flexibility, spectrum inventory and monitoring, cooperation among various bodies

The proposed RSPP provisions on "Enhanced efficiency and flexibility" (Article 4), on "Inventory and monitoring of existing uses of and emerging needs for spectrum" (Article 8) and to a certain extent on "Cooperation among various bodies" (Article 10), is based on the argumentation that the *fragmentation* of the management of access to spectrum rights limits investment and innovation and does not allow operators and equipment manufacturers to realise economies of scale, and this would hinder the development of an internal market for ECS and other services using radio spectrum.

Although some delegations agree with the Commission that spectrum efficiency could be enhanced by improving spectrum management, many Member States regret that the RSPP proposals in this area are not based on practical experience with the application of the new provisions on spectrum management in the new regulatory framework for ECS, since this awaits transposition by May 2011. A general view among delegations in this regard is that the RSPP should be consistent with the ECS regulatory framework and that it should therefore make appropriate references to the existing legislation.

As for the monitoring of existing use of radio spectrum (Article 8), concern was expressed about the associated (administrative) costs, the resources needed and the possible confidential nature of the (security related) information to be provided.

v. Competition and international aspects

The provision on "Competition" (Article 5) aims to promote competition by listing various remedies that Member States could adopt against possible distortions resulting from flexibility, trading and hoarding or other accumulation of spectrum rights. Apart from the question how the proposed RSPP provisions on competition would fit with the ECS regulatory framework and with EU competition policy generally, many Member States argued in respect of this provision that it should be limited in scope to ECS as this appears to be the only area where the proposed provisions could apply, e.g. with respect to the accumulation, transfer or modification of rights of use for radio frequencies.

With the proposed provision on "International negotiations" (Article 9), the Commission seeks to raise the EU's profile in international negotiations, such as in the context of the World Radiocommunications Conferences (WRCs) of the International Telecommunication Union (ITU), and to support those Member States facing difficulties in frequency coordination with non-Union neighbouring countries, including accession or candidate countries. Many delegations support the continuation of the current practice, whereby the Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group (hereinafter "RSPG"), may propose common policy objectives to the Parliament and to the Council, which the Member States should seek to achieve in WRCs, possibly backed up by on-the-spot EU coordination. Although some Member States experience frequency coordination problems with non-EU neighbours, the RSPP proposal does not make it clear what "technical support" the "Union" could provide in such bilateral negotiations but certain Member States suggested that the EU could adopt policy measures and tools described in the RSPG opinion on "Spectrum issues concerning outer EU borders".¹¹

¹¹ Doc. RSPG 08/232.