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RADIO SPECTRUM POLICY GROUP

RSPG Opinion

on

EU coordination at ITU-R

Radiocommunication Conferences

RSPG Opinion on EU Coordination at ITU-R Radiocommunication Conferences

1. Introduction

This Opinion supplements the existing and still valid Opinion RSPG 09-294 on the preparation of ITU Radiocommunication Conferences. It will focus on the EU coordination activity and on the EU process for issues to be covered by a Council decision pursuant to Article 218(9) of the Treaty on the Functioning of the European Union, noting the existing preparation and negotiations of the Conference of European Postal and Telecommunication Administrations (CEPT).

The role of the Radio Spectrum Policy Group (RSPG) is to assist and advise the European 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 regards to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market.

The RSPG notes that the reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators.

The RSPG considers it necessary to update the approach for the preparation of the ITU-R Radiocommunication Conferences in light of recent developments in the EU¹. It is a common view of the RSPG that the European spectrum community should address these issues in a comprehensive and well thought forward manner.

RSPG notes the importance of relying on the strength of CEPT within ITU:

- CEPT is the regional group recognized by ITU as representing the European geographical area.
- CEPT includes 48 countries, i.e. with the potential for more voting power than EU Member States alone (ITU as a specialized organisation of the U.N. applies the principle of one State, one vote).
- CEPT was very successful during the previous WRC negotiations, including for issues of EU interest², which represents an asset for EU to be preserved.
- All ITU Member states have the common understanding to aim for consensus at each radiocommunication conference and to sign the final acts, in order to retain the Radio Regulations as the cornerstone of international spectrum management. The consensus principle contrasts with the situation in other multilateral fora where voting or opt-out

¹ See Judgement of the ECJ - C646/15 on WRC-15

² See Commission Communication on WRC-07 (COM(2007)371 final) and WRC-12 (COM(2011)180 final) and the RSPG Report on WRC-15 (RSPG16-017 final) .

mechanisms are practiced and is due to the physical nature of spectrum.

Section 2 below presents the way in which the European Union is preparing for ITU radiocommunication conferences. Section 3 considers the coordination process between CEPT and EU for a WRC. Section 4 contains the RSPG Opinion on how to enhance the EU coordination.

2. EU preparation

RSPG notes that the preparation of, and coordination during World Radiocommunication Conferences form part of a complex and comprehensive process which starts as early as the previous WRC ends and spans the full period (generally up to 4 years) between two conferences. WRC preparation is covered in relevant meetings of CEPT, ITU-R working parties, cooperation with other regional groups, as well as Intra-EU coordination.

For a complete preparation of a WRC and to meet Union interests, it is essential to include the view and policies on spectrum issues with Union relevance as early as possible. In this regard it should be noted that EU member states, which constitute a majority in CEPT, have a determining influence in the CEPT preparation process.

To illustrate the current EU preparation process, it is essential to begin with RSPG work towards an Opinion which takes into account the preparatory work done in ITU and CEPT. The RSPG Opinion on a specific WRC³ identifies the main topics of the WRC Agenda which it considers of relevance for the Union and provides recommendations on an appropriate course of action, for three identified cases:

Case a), which requires an EU position to be adopted by the Council because a WRC decision may affect common rules;

Case b), for which an EU position to be adopted by the Council is desirable and

In addition there are instances where RSPG notes an emerging convergence of views, but where an EU position is not required. Those instances are marked as *Case c)*.

For the benefit of the preparation in Europe it is recommended that the CEPT Conference Preparatory Group (CPG) and the European Commission continue to hold joint public workshops to ensure that European stakeholders (e.g. industry, academia) can voice their priorities and views on specific issues of the WRC agenda and the preliminary European positions. The RSPG welcomes the existing structure that at least one workshop should be held at the beginning of the WRC preparation process dealing with the identification of main Union interests.

Taking utmost account of the RSPG Opinion on a specific WRC, the Commission develops a proposal for a Council Decision defining the EU positions on those WRC issues where EU

³ e.g. for WRC-19 RSPG18-038

common rules may be affected or where an EU position is desirable.

For all cases where EU positions have been adopted by the Council:

- The Member States have the obligation to defend and negotiate on the basis of such EU position(s).
- The unity of the EU shall remain even in case where there is a need to evolve an EU position due to the negotiation process during WRC.

3. Cooperation between CEPT and EU for radiocommunication conferences

CEPT and the EU engage before the Conference in order to support coherence during the preparation. The Commission attends CEPT meetings regularly and provides relevant views on EU objectives and policy development as necessary. At the Conference, this enables the EU and CEPT to support common interests.

Due to the large number of issues considered at a WRC and the objective to conclude on a revision of the Radio Regulations within the conference duration of about 4 weeks, the negotiations during WRC are conducted in many parallel meetings and activities. Therefore, CEPT has appointed CEPT Coordinators at the beginning of the preparatory process. They lead the discussions during the Conference and provide reports and suggestions for further negotiation steps within CEPT's Coordination meetings. The highest level of such meetings is the CEPT Head of Delegation meeting, which has the task to coordinate the general line of negotiation and consider changes to the relevant CEPT position on an issue taking into account the current negotiation situation of all issues. The Commission together with the Heads of Delegation from the EU Member States are present at that meeting.

Depending on the issue and urgency to further proceed in the negotiations, coordination meetings can be scheduled daily or immediately preceding the relevant sessions at WRC. Due to the very tight time schedule of a WRC, it follows that any EU position has to be forward looking and objective oriented to allow the Commission and Member States to be active.

Where CEPT coordination is in line with the EU position, EU coordination meetings could be kept to the minimum necessary to ensure that delegates from EU Member States remain fully engaged in WRC meetings. EU coordination may be needed on ad hoc basis, e.g. to further develop an EU position or address issues outside of the scope of a WRC.

RSPG notes that in many cases the CEPT coordinator is from an EU Member State. For cases where the CEPT coordinator is not from an EU Member State, an EU Rapporteur from an EU Member State should be designated by an EU coordination meeting and, in case negotiations lead to a deviation from the relevant EU position, report to the EU coordination meeting. This would ensure an equal level of information for EU Member States to enable a further development of the EU position.

4. The Opinion of the RSPG

On the basis of the organisation and of the experience of European preparations and coordination in past WRCs, **the RSPG is of the opinion that:**

1. The Commission should continue to attend the relevant preparatory CEPT meetings and provide in due time relevant views on EU legislation objectives and policy development as appropriate.
2. The Commission should continue to organise workshops together with CEPT on the status of the preparation.
3. It is essential that any EU position adopted by the Council is forward looking and objective oriented to allow active negotiations.
4. Member States have the obligation to actively defend the EU position(s) during a WRC.
5. The unity of the EU is to be retained on all issues subject to an EU position.
6. EU Coordination meetings should be kept to a minimum, where CEPT coordination is in line with the EU position.
7. In cases where a deviation from an EU position is likely to occur, EU Rapporteurs will need to report to EU coordination meetings.
8. The attached Annex contains section 5 of RSPG Opinion 09-294 which remains fully relevant in terms of description of the negotiations process before and during WRC although specific examples may be out of date and the instrument of a Council Decision was not available.

Annex

This Annex contains the original section 5 of RSPG09-294 for information.

5. The Opinion of the RSPG

On the basis of the organisation described in Section 2 and of the experience of European preparations and coordination in past WRCs detailed in Annex 3, and taking into account the comments received from public consultation, **the RSPG notes:**

1. that World Radio Conferences adopt the modifications to the Radio Regulations, which are an international treaty and need to be applied by all ITU Member States in order to preserve access to spectrum and orbit resources in all parts of the world without harmful interference, and to facilitate the efficient and effective operation of all radiocommunication services;
2. that, although voting is possible in principle during WRCs, such a process is to be avoided and consensus is the rule, i.e. no sustained objection to WRC decisions by any country, or at least by not more than one country;
3. that preparation and negotiations associated to WRCs are part of a comprehensive process which starts as early as the previous WRC and spans the whole period between two subsequent conferences;
4. that, since 1993 and in response to the rapid evolution of technologies, WRCs have agendas encompassing all fields in radiocommunications (as opposed to the more specialised conferences held until 1988) and have been meeting as frequently as possible;
5. that this evolution has required the need for extensive technical preparations within the ITU- R sector, culminating in the ITU Conference Preparatory Meetings (CPM), where all technical preparations are finalised 9 months before the WRC, in order to be used by administrations for their formal proposals to the WRC;
6. that this evolution has prompted European countries, within CEPT to organise their preparation for WRCs and their coordination during WRCs in a more systematic way, in particular to develop European Common Proposals (ECPs) on the basis of ensuring consensus as much as possible (support by at least 10 countries and opposition by no more than 6 countries), with the aim of reducing the need for multiple proposals by different European countries, resolving any potential disagreements between European countries and increasing the likelihood of success of ECPs during WRCs;

- 7.** that European industry is actively involved in the preparation of WRCs, in particular in the technical work carried out within CEPT. This is essential for ensuring that ECP take into account the European industry interests and are based on reliable technical information;
- 8.** that as a result of this CEPT organisation, which was put in place in 1994 and improved at each WRC since 1995, most ECPs have been co-signed by an overwhelming majority of CEPT countries and adopted by WRCs with minimum changes. In some cases however, full consensus could not be achieved, which resulted in opposition to the ECP by some CEPT countries, including EU Member States;
- 9.** that this model of organisation has been followed by other parts of the world for the preparation of WRCs within other regional groups (CITEL for the Americas, APT for Asia- Pacific, ATU for Africa, RCC for ex-USSR countries and the Arab Group);
- 10.** that, for a WRC to be effective, achieving consensus between regional groups has now become a necessity for taking decisions at WRCs and that, as a consequence, close cooperation needs to be maintained with other regional groups in order to better understand the positions of others regions and to build this consensus prior to each WRC, in particular on issues where significant disagreement exists. In other words, European views are unlikely to be accepted if they are not supported by at least one of the other regional groups;
- 11.** that to this aim, preparatory meetings of each regional group are attended regularly by observers from other regional groups and joint meetings between regional groups have been held frequently since 1996, when the first CEPT-Arab Group meeting was held in Amman;
- 12.** that WRC agenda are made of a number of items, each of them involving highly qualified expertise to take part in the debate ;
- 13.** that on each of these items, it is usual that at least one European country has important (and sometimes vital) interests at stake, hence is ready to expend significant resources in order to ensure the success of its views at the WRC,
- 14.** that the CEPT organisation for WRCs, where the European speaker on each agenda item is selected from a country having co-signed the corresponding ECP is the most efficient one since it ensures that CEPT views will be promoted by the best person in terms of competence and motivations;
- 15.** that all agenda items are part of the WRC negotiations, i. e., it may not always be possible to decouple the discussion on a single agenda item from the discussions on other agenda items;

16. that the European Commission involvement in CEPT preparation for WRCs and coordination during WRCs has so far been limited to agenda items with direct community relevance
17. that the European Commission, following confirmation by the EU Council, has established policy level objectives for previous WRCs;
18. that the large number and diversity of countries participating in the European preparation process, while representing a challenge, is an asset for CEPT in that, if an ECPs has met with consensus within CEPT, it generally has a good likelihood of doing so at world level.
19. that CEPT has been generally successful in reaching its objectives by having ECPs adopted by WRCs, especially when it had a clear view of its priority objectives and was able to achieve early compromise with several other regional groups (WRC-2000 with global agreement with Arab Group and African Group on the five main issues of the conference) or when efforts have been made until the last minute to achieve consensus within CEPT on very divided positions (e.g. NGSO FSS at WRC-97, 13.75-14 GHz at WRC-03). In other words, a strong ECP is not only an ECP supported by CEPT as a whole, but also by other regions;
20. that in cases where CEPT was not successful in having its ECPs adopted by WRCs with little or no change, the reasons may be found in:
 - a lack of perception of the degree of opposition from other regional groups (e.g. HF allocations at WRC-07, C-band identification for IMT at WRC-07);
 - a lack of consensus within CEPT, because key interests (hence opposition) of some CEPT members were not sufficiently considered during the preparation process and therefore had to be dealt with at the conference itself (C-band and UHF band identification for IMT at WRC-07);
 - a lack of consensus within other regional organisations;and consequently, a lack or adequate coordination/compromise with other regions;
21. that other regional organisations face the same difficulties. For example, almost all regions were divided on the identification of UHF or C-band spectrum for IMT at WRC-07;
22. that, due to the nature of regional coordination, transparency before and during WRCs is a necessity. For this reason, draft European Common Proposals and Briefs are public documents from the beginning of the preparation and fall back positions do not remain undisclosed;
23. that, in order to reach satisfactory solution at WRCs, any EU co-ordination on key WRC agenda items must take account of the 21 non-EU Member States of the CEPT,

particularly to avoid any potential difficulties at EU borders and facilitate effective harmonisation within EU in the future. While guidance on the wider policy implications of ECPs could be helpful, mandatory negotiation lines are likely to be counter-productive.

24. that the standard declaration of EU countries at the end of each WRC states that they "will apply the revision of the Radio Regulations adopted at this conference in accordance with their obligations under the EC Treaty". This does not mean that they are not bound by their signature of WRC Final Acts and the resulting modifications to the Radio Regulations vis-à-vis countries outside the EU;
25. that, as indicated in its previous opinion on the spectrum issues concerning outer EU borders, there are occasions when application of EU spectrum harmonisation decisions and the Radio Regulations results in a double set of obligations for Member States at the EU borders. As a consequence, every effort should be made in WRCs so that EU spectrum harmonisation can deliver the expected benefits also in these countries.
26. that the amended EU regulatory framework on electronic communication, still under discussion, will most probably involve the European Parliament and the EU Council in the definition of "Policy level objectives" on spectrum in parallel and that the preparation of these objectives will be taken into account in future by EU Member States in the development of future ECPs.

The RSPG recommends:

1. that EU and CEPT preparations for WRCs give more emphasis on
 - a) avoiding active opposition by European Member States during WRCs, by taking into account the views of the minority as much as possible in the development and finalisation of the ECPs;
 - b) ensuring that ECPs are coordinated with other regional groups at the earliest possible stage, and incorporate the necessary amendments with the aim to achieve consensus at WRC;
2. that EU and CEPT make all possible efforts to identify, early in the WRC preparation process and in consultation with stakeholders, the corresponding policy objectives and associated priorities, in order to facilitate the involvement of the political level for decision at the earliest possible stage;
3. to develop and adopt an RSPG opinion for each WRC, proposing to the European Parliament, the EU Council and the European Commission "Common Policy

objectives” for the corresponding conference, to be adopted in time for the CPM (i.e. 9 months before WRC);

4. that, if, as result of the current Framework Review, a multi-annual spectrum policy programme is developed and adopted, this programme addresses policy issues related to WRC agenda items and provides guidance on strategic objectives;
5. that political awareness on the priority issues to be discussed at WRCs should also be raised, as appropriate, at the level of regular summits between EU and other regions;
6. that, where possible and desirable, the EU and CEPT give increased importance for the Radio Regulations to provide sufficient flexibility at the EU level in the use of allocations and facilitate harmonisation at European level;
7. that, in line with its previous opinion on the spectrum issues concerning outer EU borders, the EU and CEPT should give more emphasis on WRC decisions which facilitate coordination at EU borders.