

ETNO Reflection Document in response to the call for input on the forthcoming review of the EU regulatory framework for electronic communications and services (Radio Spectrum aspects)

Executive Summary:

This ETNO Reflection Document complements the ETNO Reflection Document RD235¹ with radio spectrum aspects, i.e. statements made are not necessarily valid for non-radio electronic communications.

With regard to the regulation of radio spectrum management, ETNO considers that significant changes to the current regulatory framework – i.e. the Framework Directive, Authorisation Directive and the Radio Spectrum Decision – are deemed not necessary.

This framework should allow for a smooth and coherent transition from the current national regimes towards more flexibility, in harmony with short, medium and long term market needs, based on experience with concrete cases.

The objectives established by the Radio Spectrum Decision are considered relevant. Regarding institutional aspects, the collaboration between RSC, ECC and ETSI provides an appropriate basis to deal with the various spectrum issues of interest for Europe.

ETNO takes the view that a deeper involvement of the affected stakeholders and spectrum users in the work of RSC and RSPG would not only increase transparency, but also facilitate a decision making process closer to market needs.

¹ ETNO Reflection Document RD235 - ETNO contribution to the 2006 Review, January 2006, www.etno.be

Introduction

This ETNO Reflection Document complements the ETNO Reflection Document RD235 - ETNO contribution to the 2006 Review - with radio spectrum aspects, i.e. statements made are not necessarily valid for non-radio electronic communications.

Information and communication technologies have been identified by the European Council as key drivers of development in the European Union (Lisbon strategy). Based on the observation of the progress of digital convergence, the European Commission, taking the opportunity of the revision of the framework for electronic communications in 2006, proposes new policy orientations to promote ICT progress.

Significant parts of new services are based on the use of radio spectrum which allows nomadic and mobile access to rich media content. ETNO agrees with the need for a coherent regulatory framework in order to promote ICT developments. Fast technical evolution and converging digital services are significant issues to be addressed. Moreover, and as a complement to this review, in order to promote the development of wireless electronic communications, more radio spectrum should be made available for this use and appropriate actions taken accordingly by the Commission.

In ETNO's view, the radio spectrum regulatory framework needs to:

- Be stable enough to allow the actors of the domain to develop their strategies and facilitate return on investment.
- Provide appropriate degree of flexibility in the use of the spectrum while keeping the benefits of harmonisation to allow the development of innovative technologies and services and foster investment.
- Establish the conditions for a fair competition.
- Suppress unnecessary administrative and regulatory barriers.

Various aspects should be addressed:

Harmonisation of spectrum use and introduction of some degree of flexibility

ETNO encourages the European regulatory bodies to continue their activities of harmonising the use of frequencies which ensures the best use of this scarce resource and constitutes the basis for the implementation of a European market relying on a powerful industry.

ETNO believes that, in principle, flexibility in the conditions of use of frequency bands would permit evolution towards innovative or improved technologies while preserving harmonisation. This complex task is not to be solved by general regulation but better addressed on a case by case basis as technical conditions of use differ from one band to another.

The removal of unnecessary administrative regulatory barriers to the use of spectrum should be favoured.

Change of radio spectrum use

The change of frequency bands utilisations is considered in Article 9 of the Framework Directive in the context of transfer of rights to use radio frequencies. In ETNO's view, these are two different issues that should be addressed separately. A change of use by the licensee has to be allowed under the same conditions as mentioned in the current regulation (observance of harmonisation measures, notification to the NRA with the obligation to ensure that there is no adverse effect on other radio spectrum users).

Transfer of radio spectrum usage rights / Spectrum trading

ETNO notes that the possibility to transfer rights to use radio frequencies is mentioned in Article 9 of the Framework Directive, but not explicitly spectrum trading which arose in the meantime. The national implementation of spectrum trading is still much varying between European countries. ETNO favours concrete actions to facilitate a coordinated approach throughout Europe to the extent possible.

As proposed in Communication COM(2005)400, the development of common material (formats, rules, ...) throughout the EU and the availability of appropriate information data bases should be encouraged.

The Commission's aim of structuring frequency regulation more flexibly and efficiently is to be welcomed. As part of liberalization, steps need to be taken in particular to ensure that the economic aspect of existing frequency usage rights is retained (e.g. with UMTS/3G). This needs to be taken into account particularly with the introduction of frequency trading, but also with modifications of usage, so-called re-farming. Otherwise there is the risk of extreme competitive distortions. The NRAs should also set up and monitor rules to prevent, for instance, speculative dealing, frequency hoarding and splitting up frequency usage rights.

The bidding process that could be used to assign scarce frequency resources should be welcomed as an economically efficient process. However, the bidding processes must not be set up to offset state financial deficits. To what extent frequency bands, for instance used for broadcasting, need to be excluded require a political decision from the respective Member States.

Taking the aforementioned points strictly into account, the frequencies to be assigned should be sufficiently flexible in their usage rights in order to be of interest for potential buyers.

Convergence of services networks and devices

The current Framework Directive 2002/21/EC states in "Whereas 5" that "The convergence of the telecommunications, media and information

technology means all transmission should be covered by a single regulatory framework ...".

ETNO fully supports the expressed need for a coherence of regulation in order to allow the development of convergent services based on fair competition. This is a matter for national implementation of the European framework and covers in particular licensing conditions and fees.

Fixed-mobile convergent use of frequency bands is becoming reality with the progress of nomadic applications which establish continuity between fixed and mobile services. While technical conditions of sharing of fixed point to point and mobile applications remain distinct, wireless access usage (in particular for broadband applications) stresses the need for an evolution in the regulation in order to remove barriers which could impede development.

The **convergence of broadcasting and telecommunications services** appears to be a significant example of the difficulties to establish fair competition conditions and a level playing field.

In particular, a clear separation of the regulation of transmission from the regulation of content should be specially established. Likewise, "Whereas 12" of the authorisation Directive (2002/20/EC) states that "[The] Directive does not prejudice whether radio frequencies are assigned directly to providers of electronic communication networks or services or to entities that use these networks or services. Such entities should be sound or television broadcast content providers." Consequently, in some countries, the assignment of frequencies designated for broadcast is still restricted to broadcast content providers raising significant barriers for the provision of broadcast-telecommunication convergent services by other entities than content providers. Such limitation should be addressed by the review process.

As well, the availability of the so called "digital dividend" expected from the transition from analogue to digital broadcasting is a matter for policy decision. This is a unique opportunity to change the use of spectrum for alternative/complementary applications. ETNO supports the proposal of the Commission to identify a significant amount of harmonised spectrum in the "digital dividend" for possible new applications including mobility, interactivity and/or enhanced image definition.

Lastly, the debate on the progress of convergence should not be confused by wrong ideas. Convergence of services is mostly experienced at the network or terminal level and should not be understood as the need to use the same frequency band by different converging elements. The correct use of spectrum is based on technical characteristics of the systems which favour or hinder their sharing of frequency bands, independently of the contents. Any departure from the present organisation of the frequency spectrum has to be carefully considered before any general regulatory decision is taken.

Conclusion

ETNO does not deem necessary that significant modifications are brought to the existing European regulatory framework concerning spectrum management. The European organisation and leading principles established by the Spectrum Decision are considered satisfactory and the cooperation between CEPT, ETSI and the Commission covers in a complementary manner the different aspects of spectrum management and ensures a correct treatment of radio spectrum issues.

Special mention should be given to the development of convergent services which could be encouraged by removing inappropriate regulatory barriers. As well, the opportunity of the transmission from analogue to digital broadcasting should be taken in order to favour the development of innovative services.

While evolutions in radio spectrum management are needed to keep pace with the services and technology changes, harmonisation of the use of frequency bands is still considered as the basis for the development of innovative services in the European market for the benefits of the customers.

Concerning the main issues raised by the CALL FOR INPUT on the forthcoming review on the EU regulatory framework for electronic communications and services, ETNO would like to provide the following comments concerning radio spectrum management.

Scope and objectives

Do changes in technology, markets and society call into question the scope of the EU regulatory framework as set out in the Framework Directive? Do the current objectives need to be changed or prioritised?

Issues related to radio spectrum management are different from the general regulation of Electronic Communications as we are dealing with the use of a resource and the way to optimise its efficiency. In the field of radio spectrum the current objectives (harmonisation of spectrum use, availability of information, coordination of Community interest in international negotiations) are considered satisfactory.

Convergence and technological development

Does the regulatory framework allow technological development and convergence to be adequately accommodated (bearing in mind the current review of the Recommendation on relevant markets)? What adjustments to the framework could be made?

As far as radio spectrum regulation is concerned, ETNO considers that the initiatives to improve flexibility and efficiency in radio spectrum utilisation currently under consideration in RSPG (e.g. the initiatives on Spectrum Trading and WAPECS) as well as the regulatory action in the RSC and within the ECC could provide suitable means on a case by case basis. However, significant changes to the radio spectrum regulatory framework - i.e. in the relevant parts of the Framework Directive and of the Radio Spectrum Decision - are deemed not necessary.

Within this framework, regulatory separation between content and networks should be reaffirmed in order to ease broadcast-telecommunication convergence. Clear distinction should be made between convergence of services to customers which is mainly based on the use of different radio-services (in the radio regulation meaning) through a single terminal and convergence of the use of frequencies which necessitates electro magnetic compatibility between different technologies.

Spectrum management

What are the changes required to the current regulatory package concerning the management of radio spectrum in the Community, so as to consolidate the internal market for wireless electronic communications services and equipment and to optimise the use of this resource?

ETNO considers the standardisation of radiocommunication equipment and the harmonisation of radio spectrum use as the basis for a successful development and placing on the market. Seamless availability of radio communications services in the single European market requires large investments in infrastructure by network operators. These investments are based on the existence of a fair and stable regulatory framework providing confidence for return on investment.

The present regulatory framework for radio spectrum management enabled pan-European development of high quality radio communication services in terms of service availability, network interoperability, free equipment circulation and economies of scale for the benefit for all parties involved, i.e. manufacturers, network operators, service and content providers, and last but not least end customers.

Technological evolutions and increasing convergence of services call for changes in regulation in order to allow fair competition between actors in the domain. Services provided using different means should be submitted to coherent authorisation and charging conditions. However, possible changes towards more flexibility of use should be evaluated carefully so as to encourage necessary investments and enhance European competitiveness in the global market. Due care should be taken not to lose the aforementioned benefits of global radio spectrum harmonisation. Therefore, ETNO calls for a smooth transition from the current regime to a more flexible one, in harmony with short, medium and long term market needs, based on experience with concrete cases.

The Spectrum Decision focuses on four essential objectives:

- facilitating strategic planning and harmonisation of radio spectrum use in the Community;
- establishing harmonised conditions for the availability and efficient use of radio spectrum;
- ensuring a coordinated and timely provision of information on availability and use of radio spectrum;
- ensuring the effective coordination of Community interests in international negotiations.

ETNO considers that these objectives are relevant and satisfactory and provide the appropriate basis for the development of a European market. Furthermore, as already mentioned under our answer on *Convergence and technological development*, ETNO takes the point of view that significant changes to the regulatory framework – i.e. the Framework Directive (as far as radio spectrum is concerned) and the Radio Spectrum Decision – are deemed not necessary.

Competition and access regulation

The current framework requires national regulatory authorities to promote competition in networks and services, and to encourage efficient investment in infrastructure. Should there be any changes in the provisions of the Directives that deal with access and related regulation, in order to achieve these objectives?

Concerning the provision of wireless communications, competition aspects are related to clear and transparent conditions for frequency band assignments and an appropriate balance between harmonisation of the use of the bands. Such conditions promote investments and technological development and offer sufficient flexibility to allow evolutions. The current regulatory framework provides the basis for appropriate treatment of these issues by the relevant European and national bodies.

Authorisation and rights of use

Is the current system of national authorisations an appropriate model going forward? Is there a need for further harmonisation in the management of numbering, naming and addressing and radio spectrum resources? To what extent does the existing model affect the emergence of trans-national, European-wide services?

As already mentioned before, concerning radio spectrum resources, ETNO considers the standardisation of radiocommunication equipment and the harmonisation of radio spectrum as the basis for a successful development and placing on the market.

Therefore, the general framework provided by the Authorisation Directive is considered appropriate in general. Possible difficulties are mainly related to the transposition into national legislation. The harmonisation of expenditures for access to radio resources on the level of administrative costs is supported. Also common criteria for licensing awarding (e.g. beauty contest or auction) as established by the current framework are favoured.

The transfer of rights to use radio spectrum between undertakings could possibly gain from the definition of common treatment through Europe. The possibility for spectrum trading is already included in the current regulatory framework.

Standards and interoperability

To what extent does the process in Article 17 of the Framework Directive, whereby the Commission publishes a List of Standards in the OJ, serve to promote interoperability of services and freedom of choice of users? Are there better ways to secure interoperability?

For radio standards, the production and publication of Harmonised Standards is considered as a valid means to enhance flexibility. However, ECC Decisions or Commission Decisions designating radio spectrum Europe-wide should continue to promote interoperability, provision of seamless services, the strengthening of the single market and economies of scale.

Institutional aspects

Are the mechanisms designed to ensure harmonisation between the Member States (Communication Committee, Radio Spectrum Committee, Radio Spectrum Policy Group, European Regulators Group) working efficiently with respect to the development of the Internal market? What could be improved?

ETNO believes that there is no need to modify the current organisation of radio spectrum management in Europe as based on the Radio Spectrum Decision. The collaboration between the RSC, CEPT and ETSI covers in a complementary manner the different aspects of spectrum management and ensures a correct treatment of radio spectrum issues.

ETNO appreciates the RSPG advisory activities and encourages the group to continue to establish balanced positions based on public consultations on important radio matters. Also the role played by the Commission as a proposal force giving life to debates is welcomed. The transparency of the work of RSC and RSPG has been improved as a RSPG website has been established, and the RSC minutes and a number of RCS documents are made now available after the meetings.

However, compared to CoCom and ERG, where at least stakeholder associations are permitted as observers, there is still a considerable difference in transparency. ETNO take the view that a deeper involvement of the affected stakeholders and spectrum users in the work of RSC and RSPG would not only increase transparency, but also facilitate a decision making process closer to market needs.