

ICP's reaction to the Green Paper on Radiofrequency Spectrum Policy

I. Introduction

The Instituto das Comunicações de Portugal (ICP), the National Regulatory Authority (NRA) for the communications sector, congratulates the Commission on its Green Paper, which provides a thorough analysis of the various aspects associated with the policy on the radiofrequency spectrum and addresses issues which are crucial to its development.

Spectrum management is an area for which the ICP is legally entrusted with special responsibilities. These include the planning of the Portuguese radiofrequency spectrum within the context of international agreements, the frequency allocation, the licensing of all communications which use the radiofrequency spectrum and the supervision of licensees, including the monitoring of abusive practices and radioelectrical interference. This is an area of considerable economic and political importance, the responsibility for which lies within the sovereign powers of each Member State, and one to which the ICP continues to devote special attention and resources.

The activity of the ICP in this area takes place within a global framework, as it is one with a strong international component.

Portugal, therefore, has closely and continuously followed developments in relevant international *fora* such as the International Telecommunications Union (ITU) and the European Conference of Postal and Telecommunications

Administrations (CEPT), as well as the discussions held at EU level.

Notwithstanding the obligations and responsibilities incumbent on each Member State, the radiofrequency spectrum is an issue which does not know frontiers and one which, therefore, calls for a co-ordinated policy to be applied in a geographical area as broad as possible. This is one of the objectives of the work carried out by the CEPT, which, in close co-operation with the EU, has made remarkable progress in the development of a common European policy as well as in the negotiation and co-ordination at world-wide level (and especially within the framework of the ITU).

In our view this is a practice which should be maintained. But it should also be the object of a continuous critical analysis allowing for the improvement of the existing mechanisms and their adaptation, where necessary, to meet concrete requirements, since there is a strong political component in the planning, use and management of the radiofrequency spectrum.

It has to be recognised that the radiofrequency spectrum is an essential, but increasingly scarce resource. Being of considerable economic importance, it consequently requires a global/horizontal policy approach to replace the essentially technical/sectorial treatment it has often received in the past.

As the Green Paper points out, rapid developments in technology and increasing technological convergence and globalisation place even greater emphasis on the special importance of the radiofrequency spectrum in a wide range of everyday activities (mobile and satellite communications,

broadcasting, transport, research and development), many of which are of relevance to the public at large.

In general terms, therefore, policy on spectrum management should be based on transparent and non-discriminatory principles to ensure effective competition and promote economic growth and technological innovation, ensuring, at the same time, that the public interest is protected.

II. Specific comments

◆ Question 1 (Strategic planning of the use of radio spectrum)

“ “ Question 1(a)

Until now, the planning of the use of the spectrum has been able to satisfy the commercial and non-commercial needs of the different activities. These are needs which, in Portugal, are always given proper assessment and consideration. The legislation governing frequency planning - for which the ICP is responsible, as pointed out above - is drawn up to ensure spectrum availability, effective competition in the relevant markets and the effective and efficient use of frequencies.

The CEPT has worked towards the same objective, in particular under the aegis of the European Radiocommunications Committee (ERC).

The practice currently implemented - consisting in the promotion by the CEPT (in collaboration with the EU, through the Commission, which acts as "Counsellor" in the relevant Committees) of the harmonisation of national

frequency plans - has been implemented in a geographic area considerably wider (43 countries) than that covered by the EU. In this context, reference should be made to the phased project "Detailed Spectrum Investigation (DSI)", which is currently underway and which includes the participation of national Administrations, industry and operators as well as the European Commission.

It is acknowledged, however, that there are advantages to be gained from the introduction of a larger strategic component in the planning carried out at CEPT level, taking into consideration not only the specific characteristics of the radiofrequency spectrum outlined above, but also the need to respond to political imperatives. It is becoming increasingly clear that planning should take into account the medium- and long-term policy and strategy defined at EU level, as well as the specific priorities which have been established in a timely manner.

If this is to become a reality, it is desirable - and necessary - that the relevant EU bodies play a greater and more dynamic role in the work of the CEPT (under the "Counsellor" status of the Commission in its Committees), with the simultaneous and enlarged promotion of the involvement of the European industry (manufacturers and operators).

If the actions of the CEPT and the EU are to match effectively, a permanent liaison mechanism should be set up for the discussion and definition of the various aspects involved in the strategic planning of the radiofrequency spectrum (and consisting in regular high-level meetings, held every six months/yearly, of the two

organisations, in conditions to be discussed and defined in detail).

“ “ **Question 1(b)**

For reasons of transparency, and in view of ensuring to the spectrum users the availability of all the information on frequencies, as well as the access and usage conditions that they may require for the exercise of their activity, it is essential that Member States publicise national frequency plans in sufficient detail and in a convenient manner.

This is what happens in Portugal, where the ICP is obliged to publish, on an annual basis, frequency plans with the following information: the frequency bands and the number of channels already allocated to licensed bodies and operators of private telecommunications networks (i.e. public and private services); reserved frequency bands to be made available during the following year, including the allocation criteria (for both public and private services); a brief description of the allocation process for the latter frequencies, with the indication of those reserved for new services/operators and for previously-licensed operators.

In the light of our experience on this matter, such information (also available on the ICP website) in its current format makes a decisive contribution to the transparency required vis-à-vis all the market players (existing and potential), to whom it is a valuable tool. And we do not feel that it is necessary to enter into greater detail on the aspects for which publication is required.

It happens, nevertheless, that - despite the ERC Decision of 21/03/97 on the publication of national tables of frequency allocations - the information available in many European countries is rather scant. Since this information is essential to market development and the safe operation of licensees, the CEPT and the EU should make a concerted effort under the current framework to harmonise the **format for the presentation** of national frequency plans, including the licensing requirements.

The collection and availability of this information by the respective NRA should also be conducted in a harmonised way, via simple and efficient media, easily accessible to interested parties (i.e. Internet sites). In this respect we reiterate that the publication format adopted by the ICP is a good starting point.

“ ” **Question 1(c)**

A suitable strategic medium and long-term planning of the radiofrequency spectrum should necessarily take into account the evolution and the substitution of technologies and the consequent need for its reorganisation in order to accommodate new services, always in a global/european strategic perspective. However, each Member State should remain responsible for defining the methods to be adopted as part of its own spectrum reorganisation policy.

In exceptional situations involving pan-European services, and depending on their characteristics, it may be worth considering an integrated EU approach, namely in terms of schedules. This should be done on a case-by-case basis, taking into account the different interests at

stake and without affecting the national sovereignty on spectrum management.

.. **Question 2 (Harmonisation of radio spectrum allocation)**

.. " **Questions 2(a)-(b)**

We repeat here our comments on Question 1: the mechanisms currently in use by the CEPT have worked, ensuring the availability of the radiofrequency spectrum for pan-European applications in the corresponding geographic area (which covers 43 countries).

This does not mean that there is no need to identify strategic areas of interest to the EU, as a whole. In these cases future actions should be defined and coordinated through the permanent liaison mechanism whose creation is envisaged in connection with Question 1(a).

The legislation adopted in the EU at a political level should, therefore, continue to be decided on a case-by-case basis and be limited, as a rule, to pan-European services (as it was the case with GSM, SPCS and UMTS) as well as to the situations where such services are not served by the CEPT mechanisms (in terms of schedules, effectiveness of measures, etc.).

.. " **Question 2-(c)**

Though the Decisions it produces are of a voluntary nature, an advantage of the mechanism in force in the ERC/CEPT is that, in addition to broader geographic application, it involves all those players with an

interest in the process (via the public consultation carried out previously to the adoption of each Decision).

Other actions might also be considered, such as the presentation (at annual conferences to be held by the CEPT, with the active and catalysing participation of the EU, for example) of the action plans currently being drawn up, as well as those envisaged. Additionally, EU Member States could be obliged to notify to the Commission their domestic situation with regard to the implementation of CEPT Decisions (in areas to be identified), including the specific measures they have adopted. Notices to this effect could be regularly published in the Official Journal of the EU.

“ **Question 3 (Radio spectrum assignment and licensing)**

“ “ **Questions 3(a)-(d)**

Here we reiterate the perspective which Portugal has always adopted, according to which the criteria used for licensing should remain within the sovereignty of the Member States, being based on their respective legal frameworks (which, of course, must be in line with the relevant EU provisions). Harmonisation is neither desirable nor necessary here. Similarly, options on spectrum allocation should remain within the jurisdiction of each Member State.

Problems arising from diverging situations such as the example given in **Question 3(a)** (which, incidentally, exists in Portugal as a reality) do not justify the modification of the current procedure; they should rather be assessed on a case-by-case basis, with possible

situations of discrimination among operators being settled by reference to competition law.

The choice between the mechanisms identified in **Questions 3(b)** and **(c)** for spectrum allocation is a policy option for which each Member State is responsible. We see no reason to change the current situation. Whatever the solution adopted, it is of vital importance that the principles of transparency, objectivity and non-discrimination are respected - and the EU should make sure that they are respected. In Portugal, the solution to situations where there is spectrum scarcity has been found in the form of public tenders - "beauty parades" or "comparative bidding" - which have proved to be the most suited method to guarantee the public interest as well as the interest of the user. The "auction" method has not been implemented, as it is liable to favour entities with greater economic power and to lead to an increase on the costs of providing the service, which are borne by the end user.

.. **Question 3(e)**

The possible separation between spectrum allocation licences and licences/authorisations for service provision, with the subsequent emergence of a secondary spectrum retail market, would have unforeseeable consequences. We have the greatest reservations with regard to this possibility.

Taking measures capable of ensuring transparency of the system - i.e. equal access for all operators - would be essential to avoid the abusive practises likely to occur.

It is our conviction that the award of licences for the provision of certain services should, in principle, be linked to the allocation of the minimum number of channels necessary to make the service viable, with simultaneous returns on associated investment. Any other course of action would, in our opinion, be detrimental to the efficient use of the spectrum as well as the promotion and supply of pan-European services.

“ **Question 4 (Radio equipment and standards)**

“ “ **Question 4(a)**

There is a close and insoluble relationship between spectrum requirements and the production of standards and specifications: the former are the basic premise for the creation of the latter. This relationship assumes still greater importance in a globalisation and convergence framework, where standards for global communications systems - and not just for the satellite component - have to be developed. Standardisation, together with the radiofrequency spectrum management, is of crucial importance to the effective promotion of pan-European services, and is clearly in the best interest of the industry, the operators and the users.

Incentives towards the creation of co-ordination mechanisms between the CEPT and the various standards organisations are, therefore, highly desirable. These could take a form similar to that of the MoU currently in place between the CEPT and the ETSI, on the basis of which an extremely efficient co-operation policy has been developed.

“ “ **Question 4(b)**

Creation of a database containing national regulations on the use of the radiofrequency spectrum, notification procedures and provisions for market supervision will be an invaluable mechanism for ensuring the effective implementation of the EU standardisation policy on radio equipment and its interaction with efficient spectrum management.

We consider, therefore, that priority should be given to the CEPT's development of this database, with the backing (i.e. financial support) of the European Commission.

“ **Question 5 (The institutional framework for radio spectrum co-ordination)**

“ “ **Question 5(a)-(d)**

The present framework at the CEPT level for co-ordination of the radiofrequency spectrum has proved sufficiently open and transparent to make a decisive contribution to the co-ordinated introduction of pan-European services in a significantly extensive geographic area, on the basis of recognised technical ability and expertise.

In this respect it is worth noting the example of the DSI projects which are open to all interested parties, the public consultations for the adoption of ERC Decisions and the openness of the ERC to all those involved in the sector.

The fact that ERC/CEPT Decisions are not binding should not affect their relevance and efficiency, which is reflected in current experience.

Much the same can be said about the European Common Positions (ECP), which as part of the preparation for the World Radiocommunications Conferences of the ITU are developed and adopted by the CEPT and have proved to be extremely useful and efficient in the defence of European interests and concerns. Their success has been remarkable. The CEPT thus assumes even greater weight (not just in terms of geographic coverage but also of the high technical quality of its proposals, in whose development the involvement of different actors has been influential): its positions are effectively taken into account in the important and difficult negotiation processes of these ITU conferences. While the ECP are not, strictly speaking, binding, the current co-ordination system is restrictive and extremely detailed, providing both the flexibility and the openness which are essential to the type of negotiation in question. We can in fact assert that a good part of the efficiency of the ECP stems from the flexibility that their non-binding nature confers to them.

As we observed earlier (Question 1), however, we consider that the current procedure can be improved. Such improvement could take the form of a stronger political component concerning the various regulatory and policy-making areas involved (such as competition, external trade, consumer protection and industry policy, among others), as well as the promotion of a greater involvement by market actors.

These are areas in which the European Commission is particularly well positioned to play an active role, in view of the political and horizontal nature of its activity and its market liaison capacity. It could, and should, make the most of its influence within the CEPT through the status it has, to contribute to a greater dynamism and progress of the work being carried out.

Besides, not to be desired is the introduction of mechanisms likely either to make the current process less flexible and more time-consuming or to use up more resources.

We consider that the present institutional framework for the international harmonisation and co-ordination of the radiofrequency spectrum operates efficiently and meets the objectives that have been set. The importance of the role played by the CEPT (in conjunction with the EU) deserves recognition, particularly with regard to the Radiocommunications Conferences of the ITU. Any changes to the existing procedures which entail the introduction of EU-wide legislative mechanisms would, in all cases, require previous in-depth appraisal of the advantages to be accrued from such modifications (which to all appearances are none) and the consequences of the corresponding restrictions on the geographical area covered - in terms of the resources which would have to be mobilised at the level of the European Commission services, the measures necessary to avoid overlapping of resources across the EU and the CEPT, and the legal, budgetary and political basis on which the whole scheme is likely to be based.

