

European Regulatory Approach to Orbital / Spectrum Registrations

Efficient Use of Orbit / Spectrum by Satellite Systems

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THEME

- Proposed changes to the EU Electronic Communications Regulatory Framework could alter Europe's role in the ITU orbital / spectrum system
 - The European Commission seeks a more active role in selecting amongst space networks and applying spectrum standards that govern satellite operations
 - The European Parliament proposes for the Commission to take on a direct negotiating role in ITU activities
- The commercial satellite sector is anxious to retain an ITU system that has worked well for orbital / spectrum registrations

The importance of the RR

- ITU Radio Regulations and procedures for registering orbital slots and associated frequencies are of critical importance to the satellite industry
- Four decades of European commercial satellite filings are based on ITU registration and frequency allocation tables
- Europe has registered numerous satellites under the current approach – something is working!
 - A rough estimate is that over 50 commercial satellites in GSO orbit are registered to European Union Member States, representing about 15% of such satellites in orbit
 - A more precise count shows EU Member States are responsible for 108 of 874 orbiting artificial satellites (USC Satellite Database – includes GSO and NGSO / commercial and military)
 - Many billions of Euros and many upcoming satellite networks are predicated on the long term stability of the ITU system

The legal context of the RR in Europe

- EU Member States are signatories to ITU RR and other conferences, establishing these obligations as pending treaty level obligations
- However, all EU Member State signatures on WRC Final Acts are conditioned on compliance to EU law
 - “The delegations of the Member States and future Member States of the European Union declare that [they] will apply the revision of the Radio Regulations adopted at this Conference in accordance with their obligations under the EC Treaty” WRC 03 Declaration 6
- Pragmatically, EU activities affect satellite communications across Region 1 and beyond – managing spectrum issues is necessarily international and not just pan-European

The current EU Regulatory Framework recognizes ITU activities

- Member States should encourage adherence to ITU standards if no European standards apply – Framework Dir. 2002/21/EC Art. 17(2)
- EU radio spectrum activities should take “due account” of the work of the ITU – Radio Spectrum Dec. 676/2002/EC Art. 1(3)
- Common policy objectives shall be agreed to ensure EU coordination – without prejudice to the EU and Member States’ “rights and obligations under relevant international agreements” – Radio Spectrum Dec. Art. 6
- Transborder satellite communications services require the EU to be adequately represented in ITU activities – Radio Spectrum Dec. recital 18
- Authorization Dir. 2002/20/EC recognizes “applicable international agreements relating to the use of radio frequencies and satellite coordination” Arts. 5(5) and 7(4) and permits national regulators to impose conditions relating to international obligations (Annex condition 8)

Selection of orbit / spectrum resources (I)

- Current procedures are based on national selection, coordination and registration through ITU procedures
- Historically, the EU has focused on access to space segment and licensing of ground segment (i.e., market entry issues) rather than registration or international coordination issues.
From the Satellite Green Paper COM(90) 490 November 1990:
 - “A coherent Community approach to satellite communications must take full account of the international environment of satellite communications in Europe and of the Community’s general interests in external relations”
 - “The [ITU] is central to the development of satellite communications, notably via its key role in international frequency co-ordination and the allocation of the orbital resource....”

Selection of orbit / spectrum resources (II)

- EU procedures took a detour on mobile satellite issues
- The EU adopted a coordinated authorization approach towards satellite personal communication services in Decision No. 710/97/EC
 - This approach was congruent with CEPT ECC Decision (97)03. Both permitted market entry only by those networks that met certain milestones, rather than by reference to ITU priorities
 - “[T]he Member States’ final assignment of frequencies to individual systems should comply with established [ITU] procedures” (recital 9)
- The EU is seeking a new selection process for 2 GHz MSS, which would rely on Commission selection amongst applicants
 - drawing a bright line between selection and ITU priorities / coordination

Selection of orbit / spectrum resources (III)

- Proposed changes to the E-Comms Framework lead to concern that the ITU's role and coordination system should be further reflected in the language of the changes
 - Limited recognition of the key role of the ITU system of registering orbital / spectrum resources
 - Expansive EC definition of technology and service neutrality seem to “trump” ITU service definitions and technical standards
 - “Member States shall ensure that all types of radio network or wireless access technology may be used in the radio frequency bands open to electronic communications services.” EC proposed Framework Dir. Art. 9(3)
- Explicit reference to the ITU role in the framework would foster consistency of EU structure with international obligations

Selection of orbit / spectrum resources (IV)

- Explicit reference to the ITU role might be supplied in proposals from pending Parliamentary committee report:
 - “The spectrum management provisions of this Directive should be consistent with the work of international and regional organisations dealing with radio spectrum management, such as the International Telecommunications Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT), so as to ensure the efficient management of and harmonisation of the use of spectrum across the Community and globally.”
 - Draft Report PE398.542, Proposed Framework recital 16a (Amendment 4), 23 April 2008
- Such an approach would support consistency of EU structure with international standards and obligations

Europe's role in the ITU (I)

- The European Commission has acted as an observer at ITU committees and conferences since 1988
- Community positions are expressed both before and after radio conferences
 - Commission communications regularly assess Europe's high level positions and the results of conferences
 - The Radio Spectrum Decision Art. 6 calls on the Commission to monitor developments and for Member States to inform the Commission of "any difficulties" caused by international organizations, possibly leading to common policy objectives
- Nevertheless, only Member States participate directly in ITU conferences and make commitments in their sovereign capacity

Europe's role in the ITU (II)

- Parliamentary proposals to the Framework Directive might expand the Commission's participation in ITU activities
 - “Member States shall ensure the effective coordination of Community interests in international organisations where radio spectrum use affects Community policies.” proposed Framework Art. 8a(4) (Amendment 23)
 - “Whenever necessary for ensuring the effective coordination of Community interests in international organisations, the Commission may, with the agreement of the RSPC, propose to the European Parliament and the Council a negotiation mandate.” proposed Framework Art. 8a(9)
 - Explanatory statement: “While spectrum management remains a national competence, only an EU approach ensures that EU interests can be effectively defended at world level. As in the case of commercial policy, power should be conferred upon the Community to conduct international negotiations based on clear mandates granted by the EU co-legislators.”
 - Draft Report PE398.542, 23 April 2008

Timing for the EU proposals:

- Draft reports were discussed 6 May and will be subject to a vote on 16 June in the European Parliament's industry committee.
- Full Parliament likely will review reports starting 8 July
- European Council likely will be reviewing Commission proposals at the Telecommunications Council of 12-13 June in Luxembourg – further action is foreseen at November Council.

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