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Switchover to the Digital Dividend

2010-6

LEAD ARTICLE

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- Institutional and Regulatory Framework
- Policy Developments
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ZOOM

Overview of Digital Television Switchover in Europe

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IRIS *plus* 2010-6
Switchover to the Digital Dividend

ISBN (Print Edition): 978-92-871-7011-8 ISBN (PDF-Electronic Edition): 978-92-871-7014-9
Price: EUR 24,50 Price: EUR 33
European Audiovisual Observatory, Strasbourg 2010

IRIS *plus* Publication Series
ISSN (Print Edition): 2078-9440 ISSN (PDF-Electronic Edition): 2079-1062
Price: EUR 95 Price: EUR 125

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Typesetting:
Pointillés, Hoenheim (France)

Print:
Pointillés, Hoenheim (France)
Conseil de l'Europe, Strasbourg (France)

Cover Layout:
Acom Europe, Paris (France)

Publisher:
European Audiovisual Observatory
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Please quote this publication as:
IRIS *plus* 2010-6, Switchover to the Digital Dividend, (Susanne Nikoltchev (Ed.), European Audiovisual Observatory, Strasbourg 2010)

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Switchover to the Digital Dividend

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Foreword

Like Siamese twins, the switchover to digital television is inseparable from the spectrum liberated as a result of the process. The twin of the switchover is called digital dividend. If we look closer at these twins, we realize that they are non-identical, as far as at least one important point is concerned. Whereas lots of facts and figures are being collected to document how countries are moving from analogue to digital television, much less information seems available on how they might wish to, or are obliged to, use the resulting digital dividend. Admittedly, when it comes to describing developments concerning the digitization of television the usable data are significantly more concrete than they are regarding policies for the digital dividend. And it is these policies that are decisive for determining the use of the freed up spectrum. Tracking policies becomes easier, however, if we take stock of existing legal frameworks within which these policies are being developed. This IRIS *plus* deals, in its Lead Article, with the rules and regulations currently determining the possible uses of the digital dividend, while its Related Reporting and its Zoom section provide legal and market information relevant to the implementation of digital television.

Clearly, the hunt for a share in the digital dividend is intensifying; among the hunters are incumbent broadcasters, new audiovisual media service providers, citizens' groups and even states. Yet the digital dividend is not fair game that may be shot by whoever possesses a gun. Rules exist that not only regulate the hunting but also the division of the prey and there are certified hunters. Among the latter we find various institutions concerned with shaping the legal conditions for the use of the digital dividend. For example, the Council of Europe views the digital dividend in light of fundamental rights such as the freedom of information and media pluralism related to this. The European Union guided by its internal market approach emphasizes the potential that the digital dividend has for economic benefit. More technically oriented institutions such as the ITU and CEPT focus on the demands of efficient spectrum management and common standards. Thanks to the efforts of these and several other institutions, states dispose of a core of rules and principles when establishing their national legal frameworks concerning how to use their portion of the digital dividend. The first part of the Lead Article details these core rules and principles and it stresses that even they are only work in process. Consequently, the second part of the Lead Article, looks at the latest developments concerning the policies of the international and European players.

How much time is left for the states before they have to produce viable concepts for the digital dividend? Again much depends on the twins and more precisely in our context on the pace for the switchover to digital television, which in turn is not only determined by

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the status quo of technology and business models but also by law. As the Related Reporting shows, much remains to be done on the legal side in Albania, Bosnia Herzegovina, Bulgaria, the Czech Republic, Greece, Latvia, Poland, Romania, Russia and the Ukraine. How different the routes might be that eventually all lead to Rome becomes clear in the ZOOM section that describes and analyses the much more advanced situation in France, Germany, Italy, Spain, and the United Kingdom.

Strasbourg, December 2010

Susanne Nikoltchev
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European Audiovisual Observatory

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The Digital Dividend: Opportunities and Obstacles

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Law- and policy-makers at the European level are engaging with the "digital dividend" – the radio spectrum freed as a result of switch-over from analogue to digital television – with an increasing sense of urgency. The issues involved are manifold and multidimensional. Unsurprisingly, relevant approaches to those issues by the Council of Europe and the European Union reflect their respective institutional priorities. Thus, for the Council of Europe, the promotion of various public interests and values (e.g. innovation, pluralism, cultural and linguistic diversity, education, knowledge, the prevention of digital exclusion, etc.) is of paramount importance.[2] The European Union, on the other hand, is more explicitly preoccupied with economic objectives (e.g. innovation, competition, consumer benefits, single market goals, etc.).[3]

Whereas the main approaches being pursued at the European level reveal differences in their focuses and emphases, they are both grounded in a realisation that coordinated, efficient strategies are necessary for maximising the full potential of the digital dividend. This concern for a coordinated approach across Europe is well placed for there are powerful dynamics at play at the national level. European States are at different stages in the switch-over process; some have already completed the transition to digital broadcasting,[4] others are actively anticipating and/or addressing relevant law and policy issues[5] and, inevitably, a final group of states is lagging behind.[6]

The emergent drive for European-level coordination of national approaches to the digital dividend has to contend not only with the phased reality of the digital switch-over, but also with divergent priorities in how the released spectrum is (to be) used. Policy decisions about the use to which the digital dividend is put have clear implications for regulatory authorities, audiovisual media service providers and users. It is therefore important to consider the translation of policy into practice from the differing perspectives of the various stakeholders.

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1) Tarlach McGonagle would like to acknowledge that the lion's share of the work on this article was done by David Korteweg. The authors would like to thank Nico van Eijk for useful comments on a draft of this article.
2) See, for example, the Council of Europe Committee of Ministers' Declaration on the allocation and management of the digital dividend and the public interest, 20 February 2008.
3) European Commission Communication, Reaping the full benefits of the digital dividend in Europe: A common approach to the use of the spectrum released by the digital switchover, COM(2007) 700 final, 13 November 2007; European Commission Communication, Transforming the digital dividend into social benefits and economic growth, COM(2009) 586 final, 28 October 2009; European Commission Recommendation, Facilitating the release of the digital dividend in the European Union, 2009/848/EC, 28 October 2009.
4) Finland, Germany, Luxemburg, the Netherlands, Sweden and Switzerland.
5) E.g. Croatia, France, Ireland, Poland, Serbia and the United Kingdom.
6) See generally: relevant reporting in *IRIS – Legal Observations of the European Audiovisual Observatory* and *IRIS Merlin - database on legal information relevant to the audiovisual sector in Europe*, http://merlin.obs.coe.int/; María Trinidad García Leiva & Michael Starks, "Digital switchover across the globe: the emergence of complex regional patterns", *Media, Culture & Society*, 2009 vol. 31 no. 5, pp. 787-806.

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This article sets out to trace the main lines of relevant law and policy debates at the European level; identify the key issues at stake and critically analyse how the Council of Europe and European Union are engaging with the same. Other international standards and debates in other international fora will be examined too, as relevant. The article will conclude with a distillation of continuing and expected opportunities and challenges relating to the digital dividend.

A sense of how the key issues are dealt with in selected national laws and policy initiatives can be gleaned from the "Related Reporting" section following this article. Important comparative insights will be gained from selected national regulatory policies, strategies and experience to date, as set out in the "Zoom" section following this article.

I. General introduction

In Europe analogue terrestrial TV signals were and are generally transmitted in the 470-862 MHz frequency band, also called the UHF IV and V bands.[7] The radio spectrum that becomes available as a result of the switch-over from analogue to digital terrestrial television broadcasting (DTT) in the UHF IV and V bands is called the digital dividend. The European Commission has defined the digital dividend as the radio spectrum that is available "over and above the frequencies required to support existing broadcasting services in a fully digital environment, including public service obligations."[8] The freed up spectrum is the result of the better transmission efficiency of television signals by DTT compared to analogue broadcasting. Recent policy developments at the EU level concerning the digital dividend have focused on opening up the 790-862 MHz frequency (the 800 MHz band) for electronic communications services (ECS) in order to ensure the availability of this spectrum for wireless broadband.[9] However, it is not precluded that other parts of the spectrum will eventually be subject to policy and regulatory intervention as well. For instance, the unused interleaved spectrum between broadcasting coverage areas (also called the "white spaces") could possibly be used by cognitive radio equipment, if the necessary technical conditions are met.[10]

The 800 MHz band is considered very valuable because of its optimal balance between transmission capacity and distance coverage and its good signal propagation.[11] Due to these characteristics, this frequency band is not only very attractive for its current users – mainly legacy television broadcasters, but also for new users like wireless broadband operators.[12] Other legacy users and/or potential new users of this sub-band are, *inter alia*, users providing transport services, radiolocation services, applications such as wireless microphones, and public services such as security and safety services. As radio frequencies are a scarce resource, their allocation and assignment is of utmost importance to the various stakeholders using the radio spectrum for their services. In addition to being a scarce resource, radio spectrum is also considered a public good that can be used for both commercial and public purposes. The allocation, assignment and management of the radio spectrum is therefore a complex task involving various policy considerations and wide range of public and private stakeholders.[13]

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7) UHF stands for Ultra High Frequency which is a range of electromagnetic waves with a certain frequency. Bands IV (470-582 MHz) and V (587-862 MHz) in the UHF range are used mainly for analogue and digital television broadcasting in Europe.
8) Commission Communication, "Reaping the full benefits of the digital dividend in Europe", *op. cit.*, p. 3.
9) See the recently adopted European Commission Proposal for a Decision of the European Parliament and of the Council establishing the first radio spectrum policy programme. COM(2010)471 final. See Section III.5, below. Broadband means a high-speed fixed or mobile connection which allows the fast transmission of large amounts of data. Source: http://ec.europa.eu/avpolicy/info_centre/a_z/index_en.htm#b
10) See Commission Communication, "Transforming the digital dividend into social benefits and economic growth", *op. cit.* For further analysis, see: Andrew Stirling, "White Spaces - the New Wi-Fi?", I*nternational Journal of Digital Television*, 2010 vol. 1 no. 1, pp. 69-83 and Sascha D. Meinrath & Michael Calabrese, "White Space Devices & the Myths of Harmful Interference", 11 *N.Y.U. J. Legis. & Pub. Pol'y* 495 (2008).
11) Analysys Mason, "Exploiting the digital dividend – a European approach", Final report – Executive summary, 14 August 2009, p. 9.
12) See particularly Article 6 of the European Commission Proposal for a Decision establishing the first radio spectrum programme, COM(2010)471 final.
13) The European Commission refers in its proposal to the economic, safety, health, public interest, cultural, scientific, social, environmental and technical implications, *ibid.*, p. 9.

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Although radio spectrum management is in principle the responsibility of individual states, it is clearly bound by an international – and particularly a European – regulatory and institutional framework. Radio spectrum does not respect national borders and without any international cooperation the exploitation of the radio spectrum would be seriously impaired by cross-border interference. The following section of this article will explore this regulatory and institutional framework at the international and European levels, in order to give a sense of the complexities of radio spectrum management. Particular emphasis will be placed on the European Union due to its detailed engagement with relevant issues. After sketching the regulatory and institutional framework, the policy developments at the EU level will be outlined to give an indication of the direction in which the EU is heading with regard to the digital dividend.

II. Institutional and regulatory framework

1. Council of Europe

The Council of Europe's interest in the digital dividend has so far primarily been articulated in texts adopted by the Committee of Ministers and the Parliamentary Assembly (PACE). The overall approach comprises incidental references in various standard-setting documents and a more detailed and concentrated focus in the Committee of Ministers' Declaration on the allocation and management of the digital dividend and the public interest (2008).[14]

1.1. Committee of Ministers

Despite the recent emergence of the term "digital dividend", underlying policy concerns had already been highlighted and addressed by the Council of Europe in its earlier standard-setting work. An example is the Committee of Ministers' Recommendation Rec(2003)9 to member states on measures to promote the democratic and social contribution of digital broadcasting.[15] The substantive part of the Recommendation opens with a call on states' authorities to "create adequate legal and economic conditions for the development of digital broadcasting that guarantee the pluralism of broadcasting services and public access to an enlarged choice and variety of quality programmes, including the maintenance and, where possible, extension of the availability of transfrontier services". It contemplates the protection or adoption of "positive measures to safeguard and promote media pluralism, in order to counterbalance the increasing concentration in this sector".

The Appendix to the Recommendation sets out a set of basic principles for digital broadcasting, as well as key points for consideration in the context of the transition to the digital environment, from the perspectives of the public on the one hand, and broadcasters (especially public service broadcasters) on the other. According to those basic principles, states should adopt strategies for digital switch-over which seek to promote "co-operation between operators, complementarity between platforms, the interoperability of decoders, the availability of a wide variety of content, including free-to-air radio and television services, and the widest exploitation of the unique opportunities which digital technology can offer following the necessary reallocation of frequencies". It is also recommended that relevant authorities encourage regional or local services in their licensing processes for digital broadcasting services.

As suggested by its title, the focus of Recommendation Rec(2003)9 (and its Appendix) is on digital broadcasting generally, but it gives pride of place to the public interest and public service dimensions. These emphases are recurrent across relevant standard-setting spearheaded by the Committee of Ministers, as is evident from other adopted texts such as the Declaration on guaranteeing the independence of public service broadcasting in the Member States[16] and Recommendation Rec(2007)3 on the remit of public service media in the information society.[17]

14) Adopted on 20 February 2008; see further: IRIS 2008-4/5.
15) Adopted on 28 May 2003; see further: IRIS 2005-3/Extra.
16) Adopted on 27 September 2006; see further: IRIS 2006-10/5.
17) Adopted on 31 January 2007; see further: IRIS 2007-3/5.

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The policy concerns raised in the aforementioned texts, especially Recommendation Rec(2003)9 are of clear relevance for the digital switch-over generally, but their predominant focus on broadcasting means that they do not capture the full breadth of the digital dividend debate, which is, of course, also relevant for non-broadcasting services and interests. In light of this observation, it is important to consider the Committee of Ministers' Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet.[18] There, the central aim is to involve all relevant stakeholders in the development of measures to promote the public service value of the Internet. The Recommendation's focus is therefore broader than digital broadcasting and the range of issues it addresses is organised into five main pillars: democracy, access, openness, diversity and security. Although the Recommendation does not include the digital dividend under any of the five pillars, the principles constituting those pillars are relevant to the digital dividend, perhaps most obviously the pillars of access and diversity.

As already noted, the Council of Europe's most direct engagement with the digital dividend to date has come in the form of the Committee of Ministers' Declaration on the allocation and management of the digital dividend and the public interest. The Declaration draws explicitly on relevant earlier Committee of Ministers' Recommendations, particularly Recommendation Rec(2003)9 and Recommendation Rec(2007)3. The Declaration's preamble points out the need to safeguard essential public interest objectives in the digital environment and to ensure that strategies for digital switch-over and for spectrum allocation and management strike a balance between economic objectives and public-interest objectives (e.g. the promotion of pluralism, cultural and linguistic diversity, and public access to audiovisual services). The Preamble recognises that the digital dividend presents an opportunity for broadcasters to "significantly develop and expand their services". It also acknowledges "the importance of stepping up efforts to ensure effective and equitable access for all persons to the new communications services, education and knowledge, especially with a view to preventing digital exclusion and to narrowing or, ideally, bridging the digital divide".

The substantive part of the Declaration focuses on the need to acknowledge the public nature of the digital dividend and to manage it in the public interest. It also focuses on the promotion of "innovation, pluralism, cultural and linguistic diversity, and access of the public to audiovisual services in the allocation and management of the digital dividend", while taking into account the needs of different types of broadcasters and other media (i.e., public service and commercial), as well as the needs of other existing or new spectrum users. Importantly, this widens the parameters of the Council of Europe's engagement with relevant issues beyond its erstwhile tendency to frame the debate primarily in terms of digital broadcasting and public service media. The Declaration's third and final substantive focus concerns the societal benefits that can accrue from the digital dividend: "an increased number of diversified audiovisual services, including mobile services, with potentially improved geographical coverage and interactive capability, as well as services offering high definition technology, mobile reception, or easier and more affordable access".

Furthermore, the Declaration acknowledges in a forthright manner a crucial dynamic in policy debates centring on the digital dividend, *viz.* that individual states have different policies for digital switch-over, as is their right, and that efforts at the international level to harmonise approaches to the digital dividend can therefore prove difficult to realise in practice.

1.2. Parliamentary Assembly

Like the Committee of Ministers, the Parliamentary Assembly (PACE) also strongly and consistently advocates a central role for public service media and the concerted promotion of public interest values in a changing media environment. In a couple of recently adopted texts, the PACE has sought to place attention for the digital dividend on the backcloth of its general emphasis on these policy priorities.

18) Adopted on 7 November 2007; see further: IRIS 2008-2/3.

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Thus, in Paragraph 7 of its Recommendation 1855 (2009), entitled "The regulation of audio-visual media services",[19] the PACE expressly endorses the Committee of Ministers' Declaration on the allocation and management of the digital dividend and the public interest. It observes that "[w]hen deciding on the allocation of the radio-frequency spectrum, member states should also balance the spectrum needs of various technologies relating to both broadcasting and telecommunications". It continues by noting that it "will be particularly relevant to look at the availability of the spectrum for countries outside the European Union and, for all countries, how spectrum resources can be allocated to optimise opportunities for public-service broadcasting".

In Paragraph 8 of its Recommendation 1878 (2009), entitled "Funding of public service broadcasting",[20] the PACE again explicitly references the Committee of Ministers' Declaration on the digital dividend and the public interest – and other relevant Committee of Ministers' Recommendations. In Paragraph 16.4, it describes the need to "ensure the allocation of an adequate radio-frequency spectrum for public service broadcasters during the digital switch-over and after analogue radio frequencies have been switched off" – in accordance with the Committee of Ministers' Declaration. It calls on "parliaments of all member states" of the Council of Europe to ensure that this aim is achieved.

In light of the above, it can be concluded that the approach taken by the PACE is by and large consistent with that pursued by the Committee of Ministers. The central feature of both approaches is a clear emphasis on the importance of public interest values and public service activities.

2. Organization for Security and Co-operation in Europe

The Office of the OSCE Representative on Freedom of the Media has also demonstrated an interest in some of the central themes in the digital dividend debate. Earlier this year, it presented a new commissioned study – *Guide to the Digital Switchover*.[21] The Guide's aim is to highlight the "legal provisions (changes to existing laws, new laws or other legal instruments) and [the] regulatory interventions [that] are needed to allow and to encourage digitalization, and how to manage it".[22] In doing so, the Guide examines selected "practical examples of the switchover and provides appropriate recommendations, both good and bad practices".[23] The digital dividend, however, does not feature as a separate focus in the Guide.

3. European Platform of Regulatory Authorities

Digital switch-over and the digital dividend are appearing with increasing regularity on the agenda of the European Platform of Regulatory Authorities (EPRA).[24] This is due not only to the licensing issues raised by the digital switch-over, but also to the new regulatory challenges posed by the interactive services facilitated by digital television. Relevant issues have been discussed at a number of EPRA meetings over the past few years. At the EPRA's 26th meeting in 2007, the issues were dealt with extensively in the context of the discussion "Regulatory Challenges of the Digital Future". The relevant Background Paper to that meeting sets out clearly and comprehensively the technical and regulatory background, as well as the aims and advantages of engagement with the

19) Adopted on 27 January 2009; see further: IRIS 2009-3/3.
20) Adopted on 25 June 2009; see further: IRIS 2009-8/4.
21) Katrin Nyman-Metcalf & Andrei Richter, *Guide to the Digital Switchover*, Study commissioned by the Office of the OSCE Representative on Freedom of the Media, March 2010; see further: IRIS 2010-4/1.
22) *Ibid*., p. 14.
23) *Ibid*.
24) Deirdre Kevin, "Plenary session: Regulatory Challenges of the Digital Future: Including the impact of the new telecom regulatory package on broadcasting and frequency issues", Background Paper, EPRA/2007/13 and "WG II: Current Status & Problems of Digital TV and Radio Implementation", Information Paper, EPRA/2007/11, 26th EPRA Meeting, Sofia, 3-5 October 2007, and "WG III: Regulatory Approach to Digital TV – Experiences and Lessons Learned", Information paper on status of digital television, EPRA/2008/12, 28th EPRA Meeting, Dublin, 29-31 October 2008.

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digital dividend.[25] It also provides an overview of relevant developments at the international and national levels.

4. Intergovernmental Organisations' (IGO) Special Mandates on Freedom of Expression

On an annual basis, the four IGO Special Mandates for protecting freedom of expression – the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS[26] Special Rapporteur on Freedom of Expression and the ACHPR[27] Special Rapporteur on Freedom of Expression – adopt joint declarations. The thematic focuses of these joint declarations vary from year to year and they offer keen insights into current thematic priorities for the realisation of the right to freedom of expression in practice. Although the texts are not legally binding in a formal sense, "as statements by leading official freedom of expression mandates, appointed by inter-governmental organisations, they provide authoritative interpretation of the scope of international guarantees of freedom of expression in different thematic areas".[28] In recent years, a couple of the joint declarations have contained focuses on the digital dividend and related issues.

In the preamble to their Joint Declaration on Diversity in Broadcasting, adopted at the end of 2007,[29] the Special Mandates emphasised "the complex nature of diversity, which includes diversity of outlet (types of media) and source (ownership of media), as well as diversity of content (media output)." In the section of the Joint Declaration entitled "On Diversity of Outlet", it is stated:

> Consideration of the impact on access to the media, and on different types of broadcasters, should be taken into account in planning for a transition from analogue to digital broadcasting. This requires a clear plan for switchover that promotes, rather than limits, public interest broadcasting. Measures should be taken to ensure that digital transition costs do not limit the ability of community broadcasters to operate. Where appropriate, consideration should be given to reserving part of the spectrum for analogue radio broadcasting for the medium-term. At least part of the spectrum released through the "digital dividend" should be reserved for broadcasting uses.

In their expansive Joint Declaration of 2010, entitled "Ten Key Challenges to Freedom of Expression in the Next Decade", the IGO Special Mandates stated that they "are particularly concerned about … [t]he risk that the benefits from the switchover to digital frequencies will go largely to existing broadcasters, and other uses such as telecommunications, to the detriment of greater diversity and access, and public interest media".[30] This concern was voiced in the section of the Joint Declaration dealing with "Commercial Pressures" which "pose a threat to the ability of the media to disseminate public interest content, which is often costly to produce".

It is therefore clear that the interest of the IGO Special Mandates in the digital dividend is firmly grounded in a concern for the preservation and promotion of public interest content and, more generally, diversity of content, as secured by media activities.

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25) Deirdre Kevin, "Plenary session: Regulatory Challenges of the Digital Future: Including the impact of the new telecom regulatory package on broadcasting and frequency issues", *op. cit*.
26) Organization of American States.
27) African Commission on Human and Peoples' Rights.
28) Toby Mendel, "2007 Joint Declaration by the Four Special Mandates for Protecting Freedom of Expression", IRIS 2008-4/2.
29) Joint Declaration on Diversity in Broadcasting by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, 12 December 2007; see further: IRIS 2008-4/2.
30) Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade by the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 3 February 2010, para. 6(c); See further, IRIS 2010-5/1.

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5. International Telecommunications Union

On the global level, the International Telecommunications Union (ITU), a United Nations agency, plays an essential role in the management and coordination of the spectrum.[31] The ITU, *inter alia*, allocates frequencies and registers frequency assignments.[32] With regard to spectrum management, the ITU Radiocommunication Sector (ITU-R) is responsible for the radiocommunications sector. Its principal aim is to ensure "the rational, equitable, efficient and economical use of the radio-frequency spectrum by all radiocommunications services".[33] It tries to achieve this aim by implementing legally binding Radio Regulations and Regional Agreements, in order to determine how radio spectrum should be allocated and used without harmful interference[34] between radio communications services.[35] These instruments can be revised by a World Radiocommunication Conference (WRC) or a Regional Radiocommunication Conference (RRC).[36] Although all EU Member States are independent members of the ITU, the European Commission represents the Union's interests at the ITU as a non-voting sector member.[37]

In order to facilitate new uses of the radio spectrum that becomes available as a result of the digital switch-over, the ITU-R revised the Radio Regulations at the last WRC in 2007 (WRC-07).[38] It identified and allocated the 800 MHz band to mobile broadband services other than broadcasting on a primary basis for Region 1[39] as from 17 June 2015. Prior to this revision to the Radio Regulations, a Regional Agreement (GE-06) was adopted, setting 17 June 2015 as the end of the switch-over period from analogue to digital broadcasting.[40] After this date, countries will no longer be required to protect analogue broadcasting services from neighbouring countries in, *inter alia*, the 800 MHz band. The GE-06 Agreement also established a frequency plan allocating the UHF IV and V bands to DTT by means of the DVB-T[41] standard.[42]

These developments have established the international framework necessary to allow for the introduction of mobile broadband services other than broadcasting in the 800 MHz band. Since WRCs are only held every three to four years, the upcoming WRC in 2012 (WRC-12) will be a crucial moment for the further development of an international framework governing the digital dividend.[43]

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31) For the ITU Constitution & Convention, see: http://www.itu.int/net/about/basic- texts/index.aspx
32) Article 1.2 (a) ITU Constitution.
33) Article 12.1 (1) ITU Constitution.
34) According to Article 2(2)(b) of the Authorization Directive, "'harmful interference' means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable Community or national regulations".
35) Article 4 ITU Constitution in conjunction with Article 54.1 ITU Constitution. Frequency allocations are contained in the Frequency Allocation Table (Article 5 Radio Regulations).
36) Article 13 ITU Constitution; Article 7 and Article 9 ITU Convention.
37) Christian Koenig *et al.* (Eds.), *EC Competition and Telecommunications Law* (2nd Edition), (Alphen aan den Rijn, Kluwer Law International, 2009), p. 582.
38) See the official website of the ITU for the documents of the WRC-07 (subscription/fee required): www.itu.int
39) Region 1 comprises Europe, Africa, the Middle East, west of the Persian Gulf including Iraq, the countries making up the former Soviet Union and Mongolia.
40) The GE-06 Agreement, covering both Region 1 and 3, was adopted during the RRC held in Geneva in 2006.
41) DVB-T is a technical standard for terrestrial television as set by the Digital Video Broadcasting Project (DVB), an industry-led consortium of, amongst others, broadcasters, manufacturers, network operators, software developers and regulatory bodies. See also: www.dvb.org
42) "Final Acts of the Regional Radiocommunication Conference for planning of the digital terrestrial broadcasting service in parts of Regions 1 and 3, in the frequency bands 174-230 MHz and 470-862 MHz (RRC-06)", Geneva 2006; see also: Nicola Weißenborn, "Broadcasters' Access to Broadcasting Frequencies", IRIS *plus* 2007-2, p. 4.
43) Article 13.3 ITU Constitution. The official website of WRC-12: http://www.itu.int/ITU-R/index.asp?category=conferences&rlink=wrc-12&lang=en

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6. European Conference of Postal and Telecommunications Administrations

On a regional level, the European Conference of Postal and Telecommunications Administrations (Conférence européenne des administrations des postes et des télécommunications – CEPT) offers a European forum for regulatory issues in the telecommunications and postal sector.[44] The CEPT was established in 1959 by the monopoly-holding postal and telecommunications administrations of 19 European countries in the "Arrangement establishing the European Conference of Postal and Telecommunications Administrations" (CEPT Arrangement).[45] It is a regional organisation that operates independently of, but cooperates with, the European Union.[46] The CEPT currently has 48 European countries, including all EU Member States, as members.

One of the CEPT's principal aims is to promote "further European harmonisation, *inter alia* of the radio spectrum, with an emphasis on practical cooperation between European countries to help realise Europe-wide regulatory harmonisation."[47] In order to achieve this aim the CEPT can adopt non-binding recommendations, take decisions concerning its own *modus operandi*, and it can make special arrangements to reach certain commitments.[48] CEPT's tasks are divided between the Assembly, the European Communications Office (ECO) and several committees, including the Electronic Communications Committee (ECC).[49] For the purposes of this article, only the latter will be briefly discussed, since the ECC's principal task is to adopt measures to harmonise the efficient use of radio spectrum, and because it has a task group that is working specifically on technical harmonisation measures concerning the digital dividend.[50]

The ECC can develop what it calls "deliverables", including ECC Decisions and CEPT Reports. ECC Decisions are measures on significant harmonisation matters that are, in principle, not legally binding on the member states except for the member states which voluntarily commit themselves to these ECC Decisions. CEPT Reports are the final studies by the ECC in response to mandates from the European Commission.[51] The ECC has developed both kinds of deliverables mentioned above with regard to the issue of the digital dividend. As already mentioned, the CEPT cooperates with the European Commission on issues of spectrum management. Both actors signed a Memorandum of Understanding to expound the principles of their cooperation in 2004.[52] Pursuant to Article 4 of the Radio Spectrum Decision, the European Commission issues mandates to the CEPT to develop "technical implementing measures" regarding the harmonisation of radio frequency allocation and of information availability.[53] Furthermore, the European Commission is able to make the results of the mandates it issues to the CEPT, binding on member states.[54]

On the basis of two mandates issued by the European Commission, the CEPT carried out several studies to define the technical conditions applicable to the 800 MHz band optimised for mobile/fixed communications networks.[55] Consequently, the CEPT adopted several CEPT Reports containing

44) Nicola Weißenborn, "Broadcasters' Access to Broadcasting Frequencies", *op. cit.*, p. 4.
45) CEPT Arrangement (last revised: April 2009); available at: http://www.cept.org/.
46) Article 2 CEPT Arrangement.
47) Article 4 CEPT Arrangement.
48) Article 8.1 CEPT Arrangement.
49) See the official website of CEPT for an organisational chart and more details on the respective tasks of the Assembly and the ECO.
50) See the task group (TG4) webpage at: http://www.ero.dk/TG4?mid=58898BA5-D86D-4444-A6CF-0C2B7BD6A0EB&frames=no
51) Article 10.1, Article 10.2 (together with Article 12) and Article 10.6, Rules of Procedure for the Electronic Communications Committee (and its subordinate entities), Edition 8, October 2009.
52) "Memorandum of Understanding Between the European Commission and the European Conference of Postal and Telecommunications Administrations ('CEPT')", 30 January 2004, available at: http://www.cept.org/DED471D2-A68C-4577-AD70-1F01EF3C9A72?frames=no&
53) 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).
54) Article 4.3 Radio Spectrum Decision. See also Recital 13 of the Radio Spectrum Decision.
55) "Commission mandate to CEPT on technical considerations regarding harmonization options for the digital dividend", 30 January 2007 DG INFSO/B4 and "Draft second Mandate to CEPT on technical considerations regarding harmonisation options for the digital dividend in the European Union", 3 April 2008.

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their findings.[56] This led eventually to the adoption of an ECC Decision on harmonised technical and regulatory conditions in the 800 MHz band, defining the frequency arrangements and technical conditions for this band.[57] This ECC Decision sets out the common and minimum (least restrictive) technical conditions for using the 800 MHz band, once a member state designates this frequency band for mobile and/or fixed communications networks. Thus, even if countries adopt this ECC Decision, they do not have to adhere to these technical conditions as long as this frequency band is used for broadcasting services. At the time of writing only Germany, Slovenia, France (partly) and Switzerland have implemented this ECC Decision.[58]

These CEPT deliverables provide the technical basis for the recently adopted European Commission Decision that sets out the technical requirements for the future use of the 800 MHz band for low- and medium-power electronic communications networks.[59]

7. European Union

The so-called Telecommunications Package[60] of 2002 and particularly the Radio Spectrum Decision,[61] established the regulatory framework to coordinate policy approaches and harmonise conditions regarding the availability and efficient use of the radio spectrum in the EU.[62] In the context of the recent reform[63] of the Telecommunications Package, the regulatory framework for electronic communications networks (ECN) and services (ECS) has been revised in several significant respects as regards the issue of radio spectrum management, and thus the digital dividend.[64] The framework is based on a cooperation mechanism that mainly involves the European Commission and EU Member States.[65] The member states are represented in the Radio Spectrum Committee and the Radio Spectrum Policy Group, which will be discussed below (see ss. I.7.1.1. and I.7.1.2., below). The EU framework should be consistent with and take due account of the work of the ITU and other international organisations like the CEPT.[66]

56) The relevant reports can be found at: http://www.erodocdb.dk/doks/doccategory.aspx?doccatid=16
57) ECC Decision on harmonised conditions for mobile/fixed communications networks (MFCN) operating in the band 790 - 862 MHz, (ECC/DEC/(09)03), 30 October 2009. See: http://www.ero.dk, under ECC Activities/Public consultations on ECC Decisions/Recommendations and Reports.
58) See: http://www.erodocdb.dk/doks/implement_doc_adm.aspx?docid=2324 (last visited: 10 September 2010).
59) Commission Decision 2010/267/EU of 6 May 2010 on harmonised technical conditions of use in the 790-862 MHz frequency band for terrestrial systems capable of providing electronic communications services in the European Union, OJ L 117/95.
60) Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive), Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), Directive 2002/20/EC on the authorisation of electronic communications networks and services (Authorisation Directive), Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).
61) Decision No 676/2002/EC on a Regulatory Framework for Radio Spectrum Policy in the European Community (Radio Spectrum Decision).
62) For an overview of the 2002 Telecommunications Package, see: Nico van Eijk, "New European Rules for the Communications Sector", IRIS *plus* 2003-2; Nico van Eijk, "Comments on Electronic Communications Regulatory Framework", in: Oliver Castendyk, Egbert Dommering & Alexander Scheuer, Eds., *European Media Law* (Alphen aan den Rijn, Kluwer Law International, 2008), p. 1111 and Nico van Eijk, "Comments on Directive 2002/21/EC – 'Framework Directive' and Directive 2002/20/EC – 'Authorization Directive': Allocation of Frequencies for Broadcasting", in *ibid.*, p. 1153.
63) Directive 2009/140/EC amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (Better Regulation Directive); Directive 2009/136/EC amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (Citizens' Rights Directive); Regulation (EC) No 1211/2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office.
64) For a general discussion of the EU Telecoms reform and its impact on audiovisual media services, see: Sebastian Schweda, "The 'Telecoms Review': New Impetus for Audiovisual Media?", IRIS *plus* 2009-10.
65) Christian Koenig *et al.*, Eds., *EC Competition and Telecommunications Law* (2nd Edition), *op. cit.*, p. 588.
66) Recital 30, Better Regulation Directive; Article 1.3, Radio Spectrum Decision.

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The following paragraphs provide a brief introduction to the legislative acts and regulatory actors that are relevant to the digital dividend discussion.

7.1. Radio Spectrum Decision

The Radio Spectrum Decision establishes a cooperation mechanism between the European Commission and the member states via the Radio Spectrum Committee as well as the Radio Spectrum Policy Group.[67] The latter is established by a separate Commission Decision (see s. I.7.1.2., below).[68] The Radio Spectrum Decision's principal aim is to establish a "policy and legal framework in the Community in order to ensure the coordination of policy approaches and, where appropriate, harmonised conditions with regard to the availability and efficient use of the radio spectrum necessary for the establishment and functioning of the internal market."[69] While referring to several procedures to achieve this aim, the European Commission's main instrument is its ability to adopt binding technical implementing measures in order to ensure "harmonised conditions for the availability and efficient use of radio spectrum, as well as the availability of information related to the use of radio spectrum".[70] In creating this Community regulatory framework, the Radio Spectrum Decision refers to a broad range of aspects that should be taken into account, such as economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects.[71] Furthermore, according to Recital 3, radio spectrum policy should also contribute to freedom and plurality of the media. It also identifies the need for a coordinated approach towards EU interests in international negotiations where radio spectrum use affects EU policies.[72]

7.1.1. Radio Spectrum Committee[73]

The Radio Spectrum Committee (RSC), established under Article 3 of the Radio Spectrum Decision, assists the European Commission in the development and adoption of the aforementioned binding technical implementing measures. This advisory body mainly focuses on the technical aspects of spectrum harmonisation.[74] According to the Draft RSC Work Programme for 2010, the RSC will assist the member states and the European Commission in trying to gain the best results out of the negotiations with regard to the digital dividend during the upcoming WRC in 2012 (WRC-12).[75]

7.1.2. Radio Spectrum Policy Group[76]

The Radio Spectrum Policy Group (RSPG) comprises governmental experts from each member state, as well as a representative from the European Commission. Third party observers, such as from the CEPT, the European Parliament, or from EEA States, can also be invited to the RSPG meetings.[77]

The RSPG has the task to assist and advise the Commission on radio spectrum policy issues, on coordination of policy approaches and on harmonised conditions with regard to the availability and efficient use of radio spectrum.[78] It assists and advises the European Commission on the

67) Article 4, Radio Spectrum Decision.
68) Commission Decision of 26 July 2002, establishing a Radio Spectrum Policy Group, 2002/622/EC, amended by Commission Decision of 16 December 2009, 2009/978/EU.
69) Article 1, Radio Spectrum Decision.
70) Articles 1.2 and 4.1, Radio Spectrum Decision.
71) Article 1.2 (a), Radio Spectrum Decision
72) Article 1.2 (d), Radio Spectrum Decision.
73) Information about the activities of the RSC can be found at: http://ec.europa.eu/information_society/policy/ecomm/radio_spectrum/manage/eu/rsc/index_en.htm
74) Article 3, Radio Spectrum Decision. Council Decision 1999/468/EC (Comitology Decision), as amended by Council Decision 2006/512/EC.
75) http://ec.europa.eu/information_society/policy/ecomm/radio_spectrum/manage/eu/rsc/rsc_subsite/meeting_planning/index_en.htm
76) Information about the activities of the RSPG can be found at: http://rspg.ec.europa.eu/.
77) Articles 3 and 4, Commission Decision 2002/622/EC, amended by Commission Decision 2009/978/EU.
78) Article 2 Decision 2002/622/EC as amended by Decision 2009/978/EU.

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preparation of legislative proposals establishing multiannual radio spectrum policy programmes. The RSPG also assists the European Commission in its proposals for common policy objectives, securing the interests of the European Union in international organisations, like the ITU.[79] The RSPG takes into account the economic, political, cultural, strategic, health and social aspects, as well as the various needs of radio spectrum users with the aim to ensure a fair, non-discriminatory and proportionate balance between the different interests.[80]

Although several opinions adopted by the RSPG in the last couple of years are of relevance to the issue of the digital dividend, only the RSPG Opinion that specifically targets the digital dividend issue (RSPG09-291) and the recent RSPG Opinion on the Radio Spectrum Policy Programme (RSPG10-330) will be discussed later when dealing with the policy developments.[81]

7.2. Framework Directive and Authorization Directive[82]

The general regulatory principles for radio spectrum management are also laid down in the Framework Directive and Authorization Directive, as amended by the Better Regulation Directive. Due to the amendments by the Better Regulation Directive, these two directives have gained in importance in establishing the regulatory principles governing the field of radio spectrum management in the EU.[83] The key principles laid down in these two directives reflect the general aim of harmonisation and liberalisation of radio spectrum management in a coordinated manner, while recognizing that radio frequencies are a scarce public resource that has an important social, cultural and economic value.[84] Regulatory intervention should essentially be limited to a minimum so as to avoid harmful interference.[85] However, with regard to the aforementioned values, Recital 24 of the Better Regulation Directive explicitly states that, *inter alia*, the objectives of cultural diversity and media pluralism, and of social and territorial cohesion, should be taken into account in the process of spectrum management.

Recital 26 of the Better Regulation Directive is of particular importance for the digital dividend. It explicitly states that the switch-over from analogue to digital broadcasting increases the availability of radio spectrum in the EU, while it simultaneously recognises that the different situations in member states should be taken into account. In this respect, Recital 9 is also of potential relevance, because it recognises that easier access to radio spectrum facilitates the development of broadband services in remote regions, and can therefore help to tackle the problem of a territorial divide in the EU regarding broadband services (also called the "digital divide"). Hence, the digital dividend could play a role in the development of broadband services in remote regions, by increasing the availability of, and thus the accessibility to, radio spectrum. However, increased availability of radio spectrum alone is probably not sufficient to tackle the digital divide. A lower threshold to access radio spectrum is of pressing importance as well.

Against this background, a number of key considerations for policy makers at the member state level and EU level when deciding about the use of the digital dividend, will now be covered.

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79) Article 2, Commission Decision 2009/978/EU in conjunction with Article 8a.3 and Article 8a.4 Framework Directive.
80) Recital 4, Commission Decision 2002/622/EC, as amended by Commission Decision 2009/978/EU.
81) Adopted RSPG Opinions of relevance are: RSPG Opinion on the EU Spectrum Implications of Switchover to Digital Broadcasting, RSPG04-55, 19 November 2004; RSPG Opinion on WAPECS, RSPG05-102, 23 November 2005; RSPG Opinion on Multimedia Services, RSPG06-143, 25 October 2006; RSPG Opinion on the EU Spectrum Policy Implications of the Digital Dividend, RSPG07-161, 14 February 2007; RSPG Opinion on the Digital Dividend, RSPG09-291, 18 September 2009; RSPG Opinion on the Preparation of ITU World Radiocommunication Conferences RSPG09-294, 5 November 2009; RSPG Opinion on the Main themes of WRC-12 of interest for EU- Wide support, RSPG09-295, 5 November 2009.
82) Directive 2002/21/EC (Framework Directive), amended by Directive 2009/140/EC (Better Regulation Directive); Directive 2002/20/EC (Authorisation Directive), amended by Directive 2009/140/EC (Better Regulation Directive).
83) See the new Article 8a and the amended Article 9 of the amended Framework Directive, and the recitals of the Better Regulation Directive.
84) Recital 24, Better Regulation Directive; Article 9 Framework Directive, as amended by the Better Regulation Directive.
85) Recital 31, Better Regulation Directive.

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7.2.1. A coordinated spectrum management strategy

One of the principal aims of the reform is to achieve a single European information space, through an efficient and coordinated spectrum management strategy.[86] Recital 28 of the Better Regulation Directive sets forth that "strategic planning, coordination and, where appropriate, harmonisation at Community level can help ensure that spectrum users derive the full benefits of the internal market and that EU interests can be effectively defended globally".

Although radio spectrum management remains within the competence of the member states, it should be in accordance with the policy objectives and regulatory principles of Articles 8 and 8a Framework Directive, as amended by the Better Regulation Directive.[87] The introduction of Article 8a Framework Directive contributes to the cooperative approach towards spectrum management by the European Commission and the member states. In pursuing this goal of cooperation, member states are now obliged to take a wide range of aspects into account, such as economic, freedom of expression, cultural, social and technical aspects. The introduction of a new legislative instrument to strategically plan and coordinate spectrum policy at the European level – the multiannual radio spectrum policy programme (RSPP) – is probably the biggest step towards a more coherent approach to radio spectrum policy.

Pursuant to Article 8a Framework Directive, the European Commission may submit an RSPP that sets out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum, to the European Parliament and the Council. The scope of these policy orientations and objectives are limited to "the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market" and, in appropriate cases, "to the harmonisation of procedures for the granting of general authorisations or individual rights of use for radio frequencies where necessary to overcome barriers to the internal market."[88] Furthermore, the RSPP is bound by the provisions and common principles of the Framework Directive and other Directives that are part of the Telecommunications Package, such as the principle of technological and service neutrality as discussed below.[89] In addition to the RSPP, the European Commission may also propose common policy objectives to the European Parliament and the Council in order to ensure the effective coordination of the interests of the EU in international organisations, like the ITU.[90]

The RSPG's advisory role has extended to the new powers conferred upon the European Commission pursuant to the new Article 8a Framework Directive. Hence, the European Commission has to take "utmost account" of the opinion of the RSPG when proposing an RSPP or common policy objectives.[91] The RSPG recently adopted its Opinion on the Radio Spectrum Policy Programme which is covered in the section on the policy developments below. The European Commission has also held a public consultation on the possible content of the RSPP.[92] This has culminated in the recent adoption by the European Commission of a Proposal for a decision establishing the first radio spectrum policy programme which also addresses the digital dividend discussion.[93]

86) Recital 3, Better Regulation Directive.
87) Article 8.1 and Article 9.1, Framework Directive.
88) Recital 28, Better Regulation Directive.
89) Article 8a.3, Framework Directive.
90) Article 8a.4, Framework Directive.
91) Article 8a.3, Framework Directive.
92) Public Consultation/Call for Input in preparation for the Radio Spectrum Policy Programme: http://ec.europa.eu/information_society/policy/ecomm/radio_spectrum/_document_storage/consultations/2010_rspp/rspp_consultation.pdf . The responses to the Consultation can be viewed at: http://ec.europa.eu/information_society/policy/ecomm/radio_spectrum/eu_policy/rspp/rspp_pc_rep/index_en.htm
93) European Commission, Proposal for a Decision of the European Parliament and of the Council establishing the first radio spectrum policy programme. COM(2010) 471 final.

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7.2.2. Principle of technological and service neutrality

In order to increase flexibility in spectrum management and access to radio spectrum, the Better Regulation Directive incorporated the principle of technological and service neutrality.[94] This means that radio spectrum users should in principle be able to provide all types of ECS, and use all types of technology to provide these ECS in the radio frequency bands that are declared available for ECS.[95] However, there are exceptions to the principle of technological and service neutrality.

Besides proportionate and non-discriminatory restrictions to the principle of technological neutrality for mainly technical reasons,[96] restrictions are also possible in order to fulfil a non-exhaustive list of general interest objectives.[97] Of particular importance to audiovisual media service providers is the justification for an exception to promote "cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services".[98] The same general interest objectives allow exceptions to the principle of service neutrality.[99] Hence, member states could require that certain services, such as digital broadcasting services, can only be provided in certain parts of the digital dividend. But even if member states require certain specific services to be provided in a specific band, they cannot prohibit the provision of any other services in that specific band. Exceptions to this principle of non-exclusionary use of radio frequency spectrum are only allowed when they are justified to protect safety of life services or, "exceptionally" to fulfil other general interest objectives as defined by the member states.[100] This means that a member state has the option to prohibit the use of any other ECS in the digital dividend if it meets the requirements set in Article 9.4 of the Framework Directive.

Despite the fact that the aforementioned exceptions to the principle of technological and service neutrality are subject to a public consultation and a regular review process to test the necessity of these exceptions, member states still have a lot of leeway.[101] Not only does the ability "to define the scope and nature of an exception regarding the promotion of cultural and linguistic diversity and media pluralism" lie within the competence of the member states, the Framework Directive's use of the term "broadcasting" leaves open the question of whether the exceptions for broadcasting services also apply to television services transmitted, for example, via wireless broadband services.[102]

7.2.3. General authorizations and individual usage rights

Another principle of the EU regulatory framework is that the use of radio frequencies shall be granted on the basis of general authorizations, unless it is necessary to grant individual rights of use in order to achieve a limited list of technical and general interest objectives.[103] In principle, rights of use for radio frequencies should be granted through open, objective, transparent, non-

94) Recital 34, Better Regulation Directive. The principle of technology and service neutrality is also known as the "Wireless Access Policy for Electronic Communications Services" (WAPECS). See: European Commission, Communication on Rapid Access to Spectrum for Wireless Electronic Communications Services Through More Flexibility, COM(2007) 50 final, 8 February 2007; RSPG Opinion on Wireless Access Policy for Electronic Communications Services (WAPECS), RSPG05-102, 23 November 2005.
95) This principle is enshrined in Article 9 Framework Directive.
96) Restrictions are allowed to avoid harmful interference, ensure technical quality of services, maximise radio frequency sharing, safeguard efficient use, and protect public health against electromagnetic fields: Article 9.3 Framework Directive.
97) Restrictions are allowed to fulfil a general interest objective as defined by member states in conformity with Community law, such as, and not limited to: safety of life; the promotion of social, regional or territorial cohesion; the avoidance of inefficient use of radio frequencies; or the promotion of cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services. Article 9.4 Framework Directive.
98) Article 9.4 (d) Framework Directive.
99) *Ibid.*
100) Article 9.4, Framework Directive.
101) *Ibid*; Recital 38, Better Regulation Directive.
102) Recitals 37 and 68, Better Regulation Directive. Article 5.2 Framework Directive. See also: S. Schweda, "The 'Telecoms Review': New Impetus for Audiovisual Media?", IRIS *plus* 2009-10, p. 13.
103) Article 5, Authorisation Directive. For the definition of the term general authorisation, see: Article 2.2 (a) Authorisation Directive.

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discriminatory and proportionate procedures, and are subject to the requirements of Article 9 of the Framework Directive. Also in the context of usage rights, broadcasters are treated differently if they fulfil a general interest objective. They are exempt from the requirement of an open procedure with regard to granting individual usage rights.[104]

7.2.4. Frequency trading

The liberalization of radio spectrum management is embodied in the introduction of the possibility to transfer or lease individual rights to use radio frequencies.[105] Member states are even obliged to allow this form of frequency trading in the bands that have been identified in implementing measures by the European Commission.[106] Also in this context, broadcasters are treated differently. Pursuant to Article 9b.3 Framework Directive, frequencies which are used for broadcasting are not covered by the aforementioned implementing measures. Member states can still voluntarily decide to allow undertakings using these frequencies to transfer or lease individual rights to use radio frequencies to other undertakings. As a consequence, broadcasters using frequencies within the digital dividend can only transfer or lease their individual rights, if the member states' national policies provide for this.

8. Conclusion

It can be concluded that the institutional and regulatory framework of radio spectrum management comprises multiple actors and guiding principles that each play a different but important role. In its approach, the Council of Europe could be described as being more hands-off than, say, the EU. It tends to expound relevant principles and offer a measure of guidance as to how those principles could be operationalised in practice. The same is true of the selected Joint Declarations by the IGO Special Mandates on Freedom of Expression, discussed above, which offer very limited operational guidance. Whereas the ITU sets out the main global and regional guiding principles for the allocation of radio frequencies with the aim of avoiding harmful interference, it is particularly the Radio Spectrum Decision and the Directives from the Telecoms Package that have created a substantive European regulatory framework. A cooperative process between the European Commission, the RSPG, the RSC, the European Parliament and the European Council establishes the strategic policies and rules that govern radio spectrum management in the EU. Despite the fact that the CEPT is not part of the EU, its cooperation with the European Commission affects the European regulatory framework considerably.

Certain key aspects are: the centrality of a cooperative approach on European Union level, fostering a flexible and liberal approach towards spectrum management through the principle of technological and service neutrality, frequency trading, general authorisations, and the exceptions that are available to the member states in order to fulfil certain public interest objectives. Regarding the latter, it should be noted that broadcasters are granted special treatment in order to promote cultural and linguistic diversity and media pluralism. In other words, according to the EU regulatory framework, member states should allocate radio spectrum in such a way as to bring the highest benefit to society in cultural, economic and social terms. This should be done gradually and with sufficient flexibility, in order to take due account of the different national contexts and legacy situations.[107]

All these actors and principles are to be taken into account when dealing with the issue of the digital dividend. The following section of this article will trace the main lines in the policy developments by the relevant actors at the EU level, in light of the previously discussed key principles set out by the institutional and regulatory framework.

104) Article 5.2 Authorisation Directive.
105) Article 9b Framework Directive.
106) Article 9b.1 and 3 Framework Directive.
107) See further the references at fn. 6, *supra*.

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III. Policy developments

1. Background

The EU has been working on policy considerations concerning the issue of the digital dividend since 2003, when the European Commission addressed the digital switch-over process in a Communication.[108] The European Commission recognised that the digital switch-over is not merely a technical matter but also has economic and social implications. Initially, a common switch-off date was not envisaged by the European Commission.[109] However, in 2005 it proposed a common switch-off date in all member states by the beginning of 2012.[110] After an Opinion[111] of the RSPG on the policy implications of the digital dividend and two Communications on the RRC-06[112] and WRC-07,[113] the European Commission outlined the need for, and possible approaches to, achieving a coordinated approach towards the digital dividend on EU level.[114] It recognised that the full benefits of the digital dividend can only be realised through cooperation and the adoption of a common approach towards spectrum planning.

Political support for the further development of a coordinated approach was reached with the adoption of Council Conclusions and a Resolution by the European Parliament in 2008.[115] The Council, *inter alia*, invited the European Commission to initiate the necessary preparatory steps "to define a coherent basis for the coordinated usage of spectrum on a non exclusive, non mandatory basis".[116] The European Parliament particularly underlined the potential benefits of a coordinated approach in terms of economies of scale, interoperable wireless services and the avoidance of a fragmented situation. It also stressed that "decisions on digital dividend management should promote and protect general interest objectives linked to audiovisual and media policies such as freedom of expression, media pluralism, cultural and linguistic diversity and the rights of minors".[117] The Council also recognised that the principle of flexible usage of the digital dividend should not trump the promotion of general interest objectives such as media pluralism and cultural and linguistic diversity.[118] It should be recalled (as already discussed, *supra*) that these general interest objectives are also central to the approach taken by the Council of Europe.

In 2009, just before the adoption of the reformed Telecommunications Package, the European Commission adopted a Communication (see s. III.2., below) and Recommendation (see s. III.3.1., below) that provided a real impetus to the development of a common EU policy regarding the digital dividend.[119] This has subsequently led to the adoption of a Commission Decision harmonising the technical requirements for the future use of the 800 MHz band for low- and medium-power

108) Commission Communication on the transition from analogue to digital broadcasting (from digital "switchover" to analogue "switch-off"), COM(2003) 541 final, 17 September 2003.
109) *Ibid.*
110) Commission Communication, "Accelerating the transition from analogue to digital broadcasting", COM (2005) 204, 24 May 2005
111) RSPG Opinion on "EU Spectrum Policy implications of the digital dividend", 14 February 2007
112) Commission Communication, "EU spectrum policy priorities for the digital switchover in the context of the upcoming ITU Regional Radiocommunication Conference 2006 (RRC-06)", COM (2005) 461 final, 29 September 2005.
113) Commission Communication on the preparation of the World Radio Conference 2007, COM (2007) 371, 2 July 2007.
114) Commission Communication, "Reaping the full benefits of the digital dividend in Europe: a common approach to the use of the spectrum released by the digital switchover", COM (2007) 700 final, 13 November 2007.
115) Council Conclusions, "Reaping the full benefits of the digital dividend in Europe: A common approach to the use of the spectrum released by the digital switchover", 2877th Council meeting, 12 June 2008; European Parliament Resolution, "Reaping the full benefits of the digital dividend in Europe: A common approach to the use of the spectrum released by the digital switchover", (2008/2099(INI)), 24 September 2008.
116) Council Conclusions, p. 4 (7a).
117) European Parliament Resolution of 24 September 2008 on reaping the full benefits of the digital dividend in Europe: a common approach to the use of the spectrum released by the digital switchover, *op. cit*.
118) Council Conclusions, p. 3 (4c).
119) Commission Communication, "Transforming the digital dividend into social benefits and economic growth", COM(2009) 586 final, 28 October 2009; European Commission Recommendation 2009/848/EC on "Facilitating the release of the digital dividend in the European Union".

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ECN in 2010.[120] Together with the recently adopted Proposal for a Decision establishing the first radio spectrum policy programme, these recent policy actions highlight the attention the digital dividend has gained from the European Commission as an important EU policy objective.[121]

These policy actions used the input of an Opinion by the RSPG on the digital dividend, and a study, commissioned by the European Commission and conducted by the consultancy firm Analysys Mason, on the socio-economic impact of the digital dividend (Study).[122]

In its Opinion on the Digital Dividend (RSPG09-291), the RSPG provided policy advice on how to efficiently use the 800 MHz band for ECN and ECS, other than broadcast transmission networks and services. The key objective of the Opinion is to help the member states to exploit the digital dividend on a technological and service neutral basis. Since all actors recognise the societal and economic benefits, according to the Opinion, the key issue is to identify what additional benefits can be realised if the digital dividend becomes available in a coordinated manner, and how to maximise the benefits from a combined social, cultural and economic perspective.[123] After identifying seven issues[124] member states will face when making the sub-band available to ECN and ECS, the Opinion concludes with nine recommendations[125] to the European Commission, which are largely incorporated in the European Commission's subsequent policy documents.

The Study analysed and evaluated various social and economic aspects by applying different economic models, and concluded that the added economic value of the digital dividend largely depends on the quick development of a coordinated approach. According to the Study, a coordinated approach to the digital dividend, if achieved before 2015, would increase its potential economic impact by an additional EUR 17 - 44 billion over 15 years, depending on the demand scenario that is chosen.[126]

2. Communication on "Transforming the digital dividend into social benefits and economic growth"

The aforementioned Commission Communication outlines a set of proposals for a common approach to the digital dividend: the EU roadmap.[127] The goal of the EU roadmap is, *inter alia*, to achieve the necessary coordination, further increase the size and quality of the digital dividend beyond what can be achieved by member states alone, and foster convergence between different national approaches. At the same time, sufficient flexibility is required so as to take due account of the different national legacy situations concerning terrestrial broadcasting.[128] The urgency for policy action at the EU level is underlined by the digital dividend's potential contribution to the Lisbon goals and the economic recovery of Europe by increasing spectrum resources.[129] According to the European Commission, this could greatly help in providing broadband access to rural areas, meet the growing demand for radio spectrum, stimulate innovation, and support the development of digital terrestrial broadcasting. Urgent actions addressing the immediate policy objectives of

120) Commission Decision 2010/267/EU on harmonised technical conditions of use in the 790-862 MHz frequency band for terrestrial systems capable of providing electronic communications services in the European Union, OJ L 117/95.
121) European Commission, Proposal for a Decision of the European Parliament and of the Council establishing the first radio spectrum policy programme, COM(2010) 471 final.
122) RSPG Opinion on the Digital Dividend, RSPG09-291, 18 September 2009; Analysys Mason, "Exploiting the digital dividend – a European approach", *op. cit*.
123) RSPG Opinion on the Digital Dividend, p. 4.
124) The seven issues are: the potential range of services that could use the digital dividend; the making available of the digital dividend on a coordinated basis; the timeframe for switch-over to DTT and country-specific specificities; the limits imposed by international frequency coordination requirements; cost issues; the risk of interference to terrestrial broadcasting by new ECN and ECS operating in the digital dividend; the risk of interference to cable systems operating in the 800 MHz band. See Chapter 4 of the RSPG Opinion on the Digital Dividend.
125) See Chapter 7 of the RSPG Opinion on the Digital Dividend.
126) Mason Study, p. 7.
127) *Supra*, fn. 119, para 2.2, p. 5.
128) *Ibid.*, para 2.2, p. 5.
129) *Ibid.*, p. 3-4.

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economic growth, the prevention of a fragmented situation, and to provide clarity to member states, are established in the aforementioned Recommendation, adopted on the same day as the Communication (and discussed in s. III.3.1, below).[130]

The European Commission proposes three strategic orientations for the mid- to long-term:

1. To tackle the issue of cross-border interference and increase the "knock-on effect",[131] it proposes the adoption of a common EU position regarding cross-border coordination with non-EU countries.[132] Taking the upcoming WRC in 2012 into account, the European Commission emphasises the importance of a common EU position on key objectives concerning the digital dividend. The fourth paragraph of the newly introduced Article 8a of the Framework Directive provides the legal basis that will allow the European Commission to propose such a common EU position.[133]
2. According to the Mason Study, the added value that could be generated by opening up the 800 MHz band to ECS, other than broadcasting, on an EU-wide level, would be at least EUR 17 billion and up to EUR 44 billion.[134] Therefore, the European Commission might propose to the European Parliament and Council to set a deadline for member states to make the 800 MHz band available to ECS other than broadcasting, and cease the use of high-power broadcasting services in that sub-band.
3. Because radio spectrum is a scarce public resource, the European Commission proposes the possibility to agree on a minimum level of spectrum efficiency that should be reached by spectrum users. However, it also notes that a minimum level may entail costs, like the development of new technologies and appliances.

Besides these three strategic orientations, the European Commission identifies several promising long-term initiatives that could lead to further increases in the size and usability of the digital dividend.[135] Although these long-term initiatives should be preceded by an impact assessment and analysis of their potential competitive impact, it is likely that they will be discussed during the preparatory phase of the upcoming RSPP.

3. Recommendation and Decision: Facilitating the release and technical harmonisation of the sub-band

3.1. Commission Recommendation

In order to avoid potential negative cross-border effects and harmful interference, member states are asked to refrain from introducing national measures that would impede the implementation of technical harmonisation measures as set forth in the Decision mentioned below.[136] Therefore, the European Commission adopted a Recommendation in which it recommends member states to urgently undertake two actions:[137]

130) These two urgent actions are: 1) timely switch-off of analogue TV broadcasting by 2012; 2) harmonised technical conditions applicable to the 800 MHz band, when used for ECS other than broadcasting.
131) The likelihood that actions by a country will influence the neighbouring countries, and vice versa, could increase the potential of economies of scale if a common EU approach is being adopted.
132) Communication, para 4.1.
133) See also the paragraph on the Framework Directive.
134) Communication, p. 8.
135) Communication, p. 9-10. These seven initiatives are: (1) sharing future broadcasting network deployment plans between member states; (2) introducing a minimum digital transmission compression standard; (3) setting a standard of immunity to interference for receivers; (4) possible wider deployment of Single Frequency Networks; (5) EU support for research into "frequency-agile" mobile communications systems; (6) identifying future harmonised frequencies for legacy services; (7) adopting a common position on the potential use of the "white spaces".
136) Recitals 14 and 15, European Commission Recommendation 2009/848/EC on "Facilitating the release of the digital dividend in the European Union".
137) European Commission Recommendation 2009/848/EC.

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1. Member states should fully switch over from analogue to digital transmission technology by 1 January 2012.
2. Member states should support harmonised conditions of use of the 800 MHz band for ECS other than broadcasting services and refrain from any actions that could hinder or impede the deployment of these ECS in that particular sub-band.

3.2. Commission Decision

The European Commission, with the assistance of the RSC and on the basis of the CEPT Decision and other deliverables mentioned above, recently adopted a Decision[138] that harmonised the technical requirements for the future use of the 800 MHz band for low- and medium-power ECN.[139] Member states are only obliged to apply the proposed harmonised technical requirements if they decide to open this sub-band for services other than broadcasting. This reflects the European Commission's recognition of the different national contexts and legacy situations which require a gradual and flexible approach towards the digital switch-over and the allocation of the spectrum.[140] In preparing this Decision, the CEPT provided the European Commission with several reports concerning the least restrictive technical conditions and other technical guidance to avoid harmful interference in the 800 MHz band.[141] The Decision also takes into account the issue of cross-border interference. Member states are obliged to facilitate cross-border coordination agreements in order to enable the operation of terrestrial systems providing ECS.[142] However, member states are exempt from the technical harmonisation requirements of the Decision in geographical areas where spectrum coordination with third countries requires them to deviate from the technical parameters of the Decision.[143]

4. RSPG Opinion on the Radio Spectrum Policy Programme[144]

In accordance with Article 8a of the Framework Directive (see above at s. II.7.2.), the RSPG has issued an Opinion on the soon to be adopted Radio Spectrum Policy Programme. The policy recommendations included in the Opinion are built upon three pillars: contribution to the EU2020 vision and the Digital Agenda, the issue of spectrum governance in the EU, and the issue of external relations.

The Opinion starts with underlining that one of the key objectives of the EU spectrum policy should be to enhance the quality of life of European citizens. This objective can be achieved by, *inter alia*, lowering access barriers for new and current uses and users of the radio spectrum. Ubiquitous broadband access, it is suggested by the RSPG, can also help to bridge the digital divide.[145]

It also reaffirms the consensus among the European stakeholders that there are significant societal and economic benefits to be gained by making available a digital dividend in the 800 MHz band. It therefore recommends a coordinated, EU-wide approach based on the guiding principles of service and technology neutrality and harmonised standards. The RSPG considers 2015 as the appropriate deadline to make the 800 MHz band available for ECS other than broadcasting in a coordinated manner.[146] It even suggests that the implementation date might be postponed if member states face frequency coordination issues with non-EU countries or if exceptional national or local circumstances would prevent the availability of this sub-band. With respect to member

138) *Supra*, fn. 59.
139) Since this Decision is a technical implementing measure its adoption is governed by the decision process of Article 4 of the Radio Spectrum Decision. See also the paragraphs on the Radio Spectrum Decision, RSC and CEPT.
140) Recital 4 European Commission Recommendation 2009/848/EC.
141) See paragraph on CEPT.
142) Article 2.3, Decision.
143) Article 2.4, Decision.
144) **RSPG Opinion on the Radio Spectrum Policy Programme, 9 June 2010, RSPG10-330.**
145) **RSPG10-330, p. 3.**
146) *Ibid*, p. 3-4. See also Policy Objective 3 on p. 9.

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states that have to negotiate bilateral agreements with non-EU countries, the RSPG suggests that technical and political support should be provided to member states requesting assistance in solving frequency coordination issues.[147]

The considerations mentioned above are a part of more considerations that culminate into eleven policy objectives that, according to the RSPG, should form an essential part of the RSPP. The third policy objective reaffirms the consideration mentioned above that the 800 MHz band should be made available for ECS other than broadcasting services by 2015 with the exceptions as stated above.

5. Commission Proposal for a Decision establishing the first radio spectrum policy programme

The recent Commission Proposal for a Decision establishing the first RSPP (Commission Proposal) has proposed the policy orientations and objectives that should govern radio spectrum policy until 2015. The Proposal confirms the application of the regulatory principles of the Telecoms package in Article 2 and sets out its main policy objectives in Article 3.[148] Of particular interest to the issue of the digital dividend is Article 6, which mandates the freeing of the 800 MHz band by 2013 with the aim of using this spectrum for wireless broadband services.[149] Although Article 6 provides an exception to this deadline for member states because of exceptional national or local circumstances, an exemption to postpone the freeing up until 2015 has to be authorised by the European Commission. The deadline proposed by the Commission seems to clearly deviate from the deadline of 2015 as was suggested by the RSPG in its Opinion.

Another aspect of particular interest in the Commission Proposal is the introduction of a coverage obligation in order to ensure that access to broadband content and services using the 800 MHz band is encouraged in sparsely populated areas.[150] The Commission Proposal also explicitly demands from member states to ensure that the freeing up of the 800 MHz band does not adversely affect users that use the spectrum for programme making and special events.

IV. Conclusion: Towards the adoption of the first Radio Spectrum Policy Proposal

The common denominator of all these policy initiatives is that radio spectrum, being a scarce public good, is a "precious treasure"[151] that should be allocated and managed as efficiently and flexibly as possible, taking into account the wide variety of issues involved and interests of the member states and various stakeholders. To achieve flexibility the policy proposals focus on lowering the threshold of *access* to spectrum, ensuring flexibility in spectrum *use* through the principle of technological and service neutrality, and allowing frequency trading. Exceptions to these principles should only be allowed to fulfil general interest objectives. These principles are clearly reflected in the policy framework that is incorporated in the reformed Telecoms Package.

Specific key issues concerning the digital dividend are the importance of EU-coordination in international negotiations concerning the digital dividend, particularly during the upcoming WRC-12; how to incentivise and agree on a deadline for the opening of the 800 MHz band to ECS other than broadcasting; encouraging access to wireless broadband services in the 800 MHz band in sparsely populated areas; and the adoption of minimum common objectives to secure and foster efficient use of spectrum in the digital dividend.

147) *Ibid*, p. 8.
148) Commission Proposal, Explanatory Memorandum, p. 5-6.
149) *Ibid*. p. 6. Recital 13 Commission Proposal.
150) Article 6.4 Commission Proposal.
151) This characterisation of the radio spectrum was coined by Mr Pearse O'Donohue, Head of Unit, Radio Spectrum Policy of the European Commission, during a workshop about the Digital Dividend at the Spectrum Summit in Brussels 22 March 2010.

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The question is not whether coordination, or in some instances, harmonisation is necessary, but to what extent coordination and/or harmonisation is needed to achieve all these principles and objectives. This will be a difficult question to answer, but decisions have to be made. The next step will be the incorporation of the policy initiatives that need the political support of the European Parliament and the Council in the first RSPP for 2011-2015.

Finally, in order to complete the regulatory, institutional and policy framework governing the digital dividend, it is important to recall the contributions of other international organisations, such as the Council of Europe, which are not formally driving the management and coordination of spectrum issues. The importance of their contribution – primarily in terms of promoting key principles and general policy statements about how those principles could be operationalised – should not be downplayed. They are an important complement to the announced attention for public interest objectives within relevant EU texts and activities.

Beyond the IGO framework, meaningful public consultations, involving all interested parties – industry and other stakeholders alike, as well as civil society representation – will remain a crucial dynamic in the advancement of the digital dividend on the international agenda. Due regard for the situational variety in member states' engagement with digital switch-over will also be a key determinant of progress at the policy and regulatory levels.

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Digital Television's Eastbound End

Draw a half circle from Nicosia to Tirana, Sarajevo, Prague, Warsaw, Riga, Saint Petersburg and further North and you'll find yourself within the scope of this Related Reporting that stems from our IRIS newsletter of 2010 (see http://merlin.obs.coe.int/newsletter.php).

Eastern European countries are gearing up to accommodate digital television: they are developing, changing and executing switchover strategies; they are introducing digital standards and adapting legal frameworks. They are auctioning, assigning and reallocating frequencies, they are welcoming the first digital television services, new service operators and they may already be forced to look into competition law issues. They are struggling with delays and technical challenges and the needs of consumers. Had we drawn information from even earlier newsletter issues we could have, for example, added articles on Croatia (IRIS 2009-4/18), Hungary (IRIS 2009-1/24, IRIS 2009-8/23) and Serbia (IRIS 2009-8/27), which offer variations of the shared themes.

With the likely exception of Cyprus, the other ten countries, on which we wrote reports in 2010, have still a stony path ahead of them but for all of them there is certainly no question of return.

Albania

Public Consultation on the Strategy for Digital Broadcasting

Ilda Londo
Albanian Media Institute

The transition to digital broadcasting in Albania is expected to face a series of challenges, according to the latest public discussion among stakeholders.

On 27 April 2010 the *Këshilli Kombëtar i Radios dhe Televizionit* (National Council of Radio and Television), the regulatory authority for broadcasting, and the Organisation for Security and Cooperation in Europe (OSCE) representation in Albania jointly organised a conference on "Digital Television: Near and Far". This conference marked the conclusion of a two-year long awareness and discussion campaign on the strategy for the transition to digital broadcasting. Participants included representatives of the regulatory authority, national and local media outlets, civil society representatives, etc.

One of the main concerns of the discussions during the conference was the role of the public broadcaster in the digital switchover and in the allotment of national frequencies. According to the current strategy *Radio Televizioni Shqiptar* (Albanian Radio Television, RTSH) has the right to

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two national frequencies out of a maximum of eight frequencies. Many participants claimed that RTSH has not shown any evidence of being able to create and administer two multiplexes and that therefore one of them should be reserved for operators that can invest in such an effort. However, concerns about the provision of content of public interest arise in such scenarios.

Another main concern was the fate of numerous local radio and television stations against the backdrop of the digital switchover. The strategy discusses several options of ownership and administration of network operators, giving preference to ownership of networks by consortia of existing TV stations. However, representatives from these TV stations said that this would be difficult to implement due to high investment costs and inability to reach agreement among competing TV stations. As a result the pluralism of information and media outlets would be endangered.

Finally, the issue of existing digital broadcasting platforms in the country is a major one. Terrestrial and satellite digital broadcasting was started in Albania in July 2004 by the Digitalb company (see IRIS 2007-8/5), later followed by the Tring company and Shijak TV. Although the exact number of subscribers is not known, a significant number of households already has had access to the packages offered by these platforms.

The licensing of the existing and new companies will be a new test for the authority and fairness of the regulator. The Albanian Parliament has already passed the Law on Digital Broadcasting in 2007 (see IRIS 2007-8/5), which will be implemented after the strategy is approved by an ad hoc commission established for this purpose.

- *Strategjia* (Strategy for the transition to digital broadcasting) http://merlin.obs.coe.int/redirect.php?id=12430

- Analysis of the strategy by the OSCE http://merlin.obs.coe.int/redirect.php?id=12431

IRIS 2010-6/6

Bosnia-Herzegovina

Recent Developments in PBS Transition to Digital Broadcasting

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Communications Regulatory Agency

On 14 July 2010 *Vijeće ministara Bosne i Hercegovine* (the Council of Ministers of Bosnia and Herzegovina) adopted a Decision endorsing the Project of the digitalisation of public broadcasting service microwave links. The Project is aimed at building a new, modern system for digital transmission of radio and TV programmes and increasing network capacity for a bilateral and multilateral exchange of programmes among the three public broadcasting services in Bosnia and Herzegovina (BiH), as well as programmes from the neighbouring countries.

In April 2010 *Regulatorna agencija za komunikacije* (the Communications Regulatory Agency) established terms and conditions for the utilisation of Multiplex A (MUX A) by public broadcasting services for terrestrial digital television broadcasting during the transition period. Public broadcasting services in BiH are thus enabled to launch the process of transition to digital terrestrial broadcasting through shared building and usage of synchronous assignments in the digital allotments.

The process of transition of public broadcasting services in BiH to digital broadcasting is however not expected to be without difficulties. There are concerns over the funding of the above mentioned Project threatening to delay the entire digitalisation process.

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Issues that remain to be addressed also concern the unfinished reform of the public service broadcasting system. *Zakon o javnom radiotelevizija kom sistemu* (Law on the Public Broadcasting System) namely stipulates the creation of a Corporation of Public Broadcasting Services as an umbrella organisation over all three public broadcasting services in the country. Once established, the Corporation would be in charge of, among other things, the joint operation of the transmission network and the introduction of new technologies including digital terrestrial broadcasting (see IRIS 2009-9/8).

The national Strategy on the Digital Switchover in BiH sees public broadcasting services as leading stakeholders in the process of transition to digital broadcasting due to their traditionally central position in the BiH broadcasting market but also to their important role in providing universally available services which can help bridge the digital divide.

- *Donesena Odluka o usvajanju Projekta digitalizacije* (Press release on the Decision on the Endorsement of the Digitalisation Project) http://merlin.obs.coe.int/redirect.php?id=12666
- Decision on the manners of utilisation of Multiplex A (MUX A) by public broadcasting services for terrestrial digital television broadcasting in transition period, BiH Official Gazette No. 38/10 of 10 May 2010
- Strategy on the digital switch-over within the frequency bands of 174-230MHz and 470-862MHz in Bosnia and Herzegovina http://merlin.obs.coe.int/redirect.php?id=12668

IRIS 2010-9/12

Bulgaria

Licence for Digital Broadcasting of Public Television

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On 24 March 2010 the Council for Electronic Media (CEM) issued to the Bulgarian National Television (BNT) a licence for the operation of television activities: the creation of a programme offer for terrestrial digital broadcasting by means of electronic communications networks of companies, to which the Communications Regulation Commission has issued a permit for the use of individually-defined scarce resources (radio frequency spectrum for carrying out electronic communications through terrestrial digital radio broadcasting, see IRIS 2009-5/12).

The licence is issued for a programme called BNT 1, the programme profile of which is general (poly-thematic) with a national broadcasting coverage and a term of 15 years. The BNT shall fulfil its activity acting as the national public operator.

The reasoning of the CEM for issuing the licence is as follows:

- According to §35 of the temporary and concluding provisions of the Act on the Amendment and Supplementation of the Radio and Television Act the programme of BNT shall be transmitted through a public electronic communications network for digital terrestrial television and radio broadcasting with a national coverage, constructed in accordance with the First Transitional Stage of the Plan for the Introduction of Digital Terrestrial Television Radio Broadcasting (DVB-T) in the Republic of Bulgaria, as approved by the Council of Ministers (see IRIS 2008-4/13).

- According to Article 44 para. 2 of the Radio and Television Act the State shall take all necessary measures to guarantee the broadcasting of programmes of the Bulgarian National Radio (BNR)

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and BNT on the whole territory of the country for the implementation of policy in the field of electronic communications.

- Furthermore, the State shall implement its obligation under the said provision through the CEM which shall issue licences to the BNR and BNT for the transmission of their programmes through electronic communications networks for digital terrestrial radio broadcasting.

- Article 105 para. 3 of the Radio and Television Act introduces an easier regime for issuing licences for television activities to the BNT in its capacity as the national public operator, since the Act envisages licences shall be issued without a tender or a competition.

• *Р Е Ш Е Н И Е № 142 24 март 2010 г. Съветът за електронни медии на свое заседание, проведено на 24 март 2010 г., разгледа заявление с вх. № 18-00-6/02.03.2010 г.* (Decision of the CEM, 24 March 2010) http://merlin.obs.coe.int/redirect.php?id=12433

IRIS 2010-6/12

Cyprus

Auction Process, Adopted Standard and Strategy for Digital Terrestrial Television Networks

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The process of the introduction of DTT officially started on 4 December 2009 with a public invitation to tender for the granting of licences. This will include the authorisation to use radio frequencies and create and operate DTT and electronic communications networks. The invitation was published on behalf of the Commissioner for Electronic Communications and Postal Regulation (CECPR), the authority competent for electronic communications networks, and of the Ministry of Communications and Works, responsible for the radio frequencies spectrum and radio communications in general. Two licences will be issued to one applicant, a licence for radio communications (use of frequencies for DTT) and a licence for electronic communications (creation and operation of digital networks for both terrestrial TV and electronic communications).

The procedure that will be followed is an "ascending multiple round auction". It provides for the submission of applications by interested parties and at a first stage the selection of those who fulfill the terms and conditions set down in the invitation. The deadline for applications was 29 January 2010 and following the first round of selection, which is expected to be completed in April 2010, a second round of offers will start. Licences will be issued to the highest bidder for a duration of 15 years. The winner will be given 12 months to reach the required territorial coverage of 75% of the areas under the effective control of the Government of the Republic of Cyprus. Among its obligations are the following:

To provide networks for DTT of a hybrid type (free-to-air, with encoded signal, subscription services, local channels) and information society services; to carry the signal of all licensed analogue TV channels, to provide information on programmes (EPG) and to comply with the rules and laws related to technical specifications of the equipment, town planning, public health and other matters. The reserve price for the auction is EUR 850,000. This auction procedure is for the licensing of a platform of DTT and communications for private TV channels. A second platform will be leased to the public service broadcaster CYBC on the basis of negotiations with the government.

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The standard for digital TV receivers in Cyprus will be MPEG-4. The CECPR announced this decision in November 2009 and an order was published in the Official Gazette in the form of a Normative Administrative Act (KDP 397/2009, Official Gazette on 27 November 2009).

Cyprus will shift fully to digital TV on 1 July 2011 with two digital networks, one for the public service broadcaster and one for the private operators. On that date, all licences for analogue transmission will expire and radio frequencies will be returned to the Ministry of Communications and Works. The main provisions of the strategic plan are as follows:

Two licences will be granted for the operation of two digital terrestrial radio networks for a duration of 15 years. One licence will be granted to the public broadcaster and one to a private operator for commercial TV services. The first network will be offered on the basis of negotiations between the government and the public broadcaster while the second will be auctioned.

The public broadcaster will carry audiovisual services only, must avoid competition with private operators and will not be allowed to develop other electronic communications services except very specific public utility ones. It must offer TV services for all with universal coverage. The private network will have the obligation to carry the signal of all licensed TV (and radio) channels, on special contracts and terms set in a framework decided by the CECPR. Only the operator of the commercial network will be allowed and obliged to offer services of both electronic communications and information society ones.

The transition period from analogue to digital TV shall be the shortest possible. The Government has decided to subsidise the purchase of digital decoders and to lead an information campaign both on the advantages and benefits of digital technology and the technical requirements for access to DTT.

In the framework of the digital switch-over the role of the Radio and Television Authority will change to focus more on content regulation. Its new role and functions will be set down in the amending law on Radio and TV Stations which will be changed to the law on Audiovisual Media Services. The draft is expected to be sent to the House of Representatives in the next few weeks in order to harmonise Cypriot legislation with the EU Directive on Audiovisual Media Services 2007/65/EC.

- Invitation of the OCECPR to tenders for granting licences to use radio frequencies spectrum, and establish and operate networks of digital terrestrial television and provide electronic communications services http://merlin.obs.coe.int/redirect.php?id=12172
- KDP 397/2009, Official Gazette 27 November 2009 http://merlin.obs.coe.int/redirect.php?id=12173
- Policy and Regulation Framework for Licensing Networks of Digital Terrestrial Television http://merlin.obs.coe.int/redirect.php?id=12174

IRIS 2010-2/7

Czech Republic

Amendment of the Law on Electronic Communication

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The Czech Parliament recently approved amendments to the Law on Electronic Communication.

The essence of the amendments lies in an introduction and withdrawal possibility concerning the allocation of radio frequencies. Until now the authorities were not able to modify or withdraw

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an allocation of radio frequencies. As a result, parts of the frequency spectrum were sometimes blocked. Now, it is possible to withdraw unused frequencies.

Another change involves the financing of universal services. Universal services have been funded in two ways: By the operators - a fund of universal services to which operators contribute - and by the State - with regard to the costs for disabled persons. But the universal service is a legal requirement to perform certain duties in the public interest. The State should therefore need to reimburse the businesses for their expenses. Thus, the new law provides for the unification of the financing of universal services from the State budget.

The new legislation lifted the ban on cross-ownership in the Law on Radio and Television Broadcasting. The Law prevented electronic communications businesses from obtaining a licence to operate also in the fields of radio and television broadcasting. The competition in the media market was limited in this way. Furthermore, restrictions on the ownership of electronic communications networks for the transmission of radio and terrestrial digital broadcasting according to the Law on Radio and Television Broadcasting were annulled. The limitation on entrepreneurs to own or operate more than two networks previously impeded free competition in the market for electronic communications.

The competence of the Council for Radio and Television Broadcasting (RRTV) to make changes to the set of technical parameters of broadcasters has been specified. The provisions on the transition from analogue to digital television broadcasting address the situation where the television broadcaster operates simultaneously on the same territory with both analogue and digital broadcasting. RRTV obtains the permission to initiate administrative procedures of restrictions to the set of technical parameters, namely limitations to analogue broadcasting.

There is also an amendment to the Copyright Act: the payments for the use of copyright-protected content due to the reception of digital television through joint television antennas were annulled. The reception of analogue television broadcasting was not subject to this payment until now.

Several obligations have been adopted for the public Czech Television's switchover to digital television broadcasting. The legislation restricts the duplication of analogue and digital terrestrial television broadcasting in one area outside the framework provided for by the Government Plan on the technical transition to digital television broadcasting.

- *Zákon č. 153/2010 Sb. kterým se mění zákon č. 127/2005 Sb. o elektronické komunikaci a některé další zákony* (Law No. 153/2010 Coll. Amending the law No. 127/2005 Coll. on electronic communications and some other laws dated 21 May 2010)
  http://merlin.obs.coe.int/redirect.php?id=12536

IRIS 2010-7/11

Greece

The Transition Process to Digital Terrestrial Television in Motion in Greece

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National Council for Radio and Television, Athens

The first digital terrestrial transmission in Greece of private television channels of national reach through the digital network provider Digea took place on 24 September 2009 in an area of the North Peloponnese, while current planning envisages the immediate launch of transmissions

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in big, urban centres as well. Greece has thus officially entered the period of digital transition envisaged in the ministerial decision, published in August 2008, which determined the frequencies on which the existing television stations can digitally transmit their analogue programme. On the institutional level, these stations have already received the necessary licence from the *Εθνικό Συμβούλιο Ραδιοτηλεόρασης* (National Council for Radio and Television - ΕΣΡ) for the digital simulcasting of their analogue programming in January 2009, while 42 stations of regional reach have also been issued the same licence. Across the country, two digital frequency bands of the public service broadcaster *Ελληνική Ραδιοφωνία Τηλεόραση* (Greek Radio and Television - EPT) have already been in operation since 2006, on which the existing four analogue channels are rebroadcast and three digital channels broadcast. However, the technical method for the encoding of the signal of the private channels of national reach is MPEG-4, while public service television has chosen the MPEG-2 system, a fact that inhibits the dissemination of the new method of transmission among consumers.

On the legislative level, a delay has occurred in relation to the publication of the Presidential Decree with which, according to the recent Law 3592/2007, the process for the issuance of licences for digital terrestrial television (DTT) will be decided, while the frequencies that will be used for this purpose have not yet been determined. The progress of DTT is meeting with obstacles in the face of the absence of central planning and of a strict timeframe, while the general coordination of the frequencies is also hindered by the fact that not all television stations have a permit. The new political leadership of the Ministries of Internal Affairs and of Transport and Communications, who took office after the recent parliamentary elections in Greece on 4 October 2009, are now called upon to provide immediate answers to these problems.

- *Απόφαση Αριθμ. 604/20.11.2008 του Εθνικού Συμβουλίου Ραδιοτηλεόρασης* (Decision No. 604/20.11.2008 of the National Council for Radio and Television)
  http://merlin.obs.coe.int/redirect.php?id=12107

IRIS 2010-1/27

Latvia

Launching Digital Terrestrial Television

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The launch of digital terrestrial television shall be implemented finally during the year 2010, but not all issues of the implementation are clear yet.

At the end of 2008 the Ministry of Transport organised a tender during which it had to select a provider of digital broadcasting in accordance with the Regulations of the Cabinet of Ministers (see IRIS 2008-10: 15). The rules of the tender provided that the winner will have to carry out a complete transfer to digital terrestrial broadcasting by 1 December 2011. The provider has to ensure that public and commercial broadcasters have the opportunity to broadcast their programmes, as well as to make sure that certain channels nominated by the National Broadcasting Council (NBC) are available to viewers on free-TV.

As a result of this tender the Ministry of Transport selected SIA Lattelecom, the incumbent fixed telephony operator of Latvia, to carry out the transfer to digital broadcasting. The Cabinet of Ministers approved Lattelecom's role in the introduction of digital terrestrial television on 27 January 2009. Lattelecom now has technically enabled the transfer and is negotiating with the broadcasters on the inclusion of channels in the digital packages on offer.

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Regarding the inclusion of channels, the NBC decided according to the Regulations of the Cabinet of Ministers that the channels broadcast by public broadcasters (LTV1, LTV2) have to be included in the free-to-air package. Also, the commercial broadcaster LNT has agreed with Lattelecom that its channel will be included in the free-to-air package. These programmes should be available only in digital mode as of 1 April 2010 in the surroundings of Riga and as of 1 June 2010 in other parts of Latvia. The analogue broadcasting of these channels will then be switched off.

The other major commercial broadcaster TV3 (MTG Group) has failed to agree with Lattelecom on the inclusion of its channel in the free-to-air package for want of consent on the price for the inclusion. Therefore, TV3 announced that at least in 2010 it will continue to broadcast analogue, using the services of the State-owned Latvian Radio and Television Centre. The latter, however, indicated that it would be unprofitable to broadcast only one channel in the analogue mode. Therefore, the companies may still reach a deal, particularly as TV3 and Lattelecom in the beginning of January 2010 have agreed on the retransmission of TV3 channel within Lattelecom's IPTV offer.

Another problematic issue is that the Regulations of the Cabinet of Ministers do not provide any compensation to households who have to purchase new technical equipment due to the switch-off of analogue retransmission. Taking into account the difficult economic situation of Latvia, the costs for the equipment may be significant for many households. Moreover, according to recent research, terrestrial television is used as the single mode of transmission only by 27% of households, the majority of which constitutes elderly, rural people and people with low incomes. Economically more powerful households have already switched to other reception modes such as cable, satellite and IPTV. For these, the transfer to digital terrestrial TV is relatively insignificant.

IRIS 2010-2/27

Latvia

Disputes on Digital Terrestrial Television in Latvia

Ieva Bērziņa-Andersone
Sorainen, Riga

Two major Latvian commercial broadcasters have approached the Latvian Competition Authority with complaints that SIA Lattelecom, the introducer of the digital terrestrial television, is abusing its dominant position.

As reported before (see IRIS 2010-2/27) SIA Lattelecom (Lattelecom), the incumbent fixed telephony operator of Latvia, has been selected to carry out the implementation of digital broadcasting. Lattelecom's task has been approved by the Cabinet of Ministers as well as by the National Broadcasting Council. Lattelecom acquired the rights to use the relevant frequencies until the end of the year 2013. In fact, this results in the legal monopoly of Lattelecom in the transmission of programmes within the digital terrestrial television format. Television broadcasters must conclude agreements with Lattelecom for their channels to be included in the broadcasting packages (multiplexes). According to the regulations of the Cabinet of Ministers, Lattelecom is obliged to provide a free-to-air package, but simultaneously it may also offer pay-TV packages.

Two commercial broadcasters are dissatisfied with the above situation and in February 2010 submitted complaints to the Latvian Competition Authority. One of the complainants is the major commercial terrestrial broadcaster TV3 (member of the MTG group) who has failed to agree with Lattelecom on the inclusion of its channel in the free-TV package, as the companies have not reached an agreement on the price for the inclusion. TV3 is arguing that the price requested by

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Lattelecom is too high, also in comparison with the neighbouring countries. Thus, TV3 is of the opinion that Lattelecom is abusing its dominant position by charging unfair prices.

A further major commercial cable broadcaster, Baltkom, launched a similar complaint with the Competition Authority. Besides complaining about excessive prices, Baltkom pointed out that Lattelecom uses the same broadcasting infrastructure for transmission of both free-to-air programmes and paid programmes. Thus, it is possible that the transmission of paid programmes is cross-subsidised from the income gained from the transmission of free-to-air programmes (for which other TV broadcasters have to pay Lattelecom). As a consequence, other TV operators may be squeezed out of the market. Baltkom also noted that Lattelecom already has a dominant position in the fixed voice telephony, internet and data transmission markets in Latvia.

The Competition Authority has assessed both complaints and decided to initiate a formal investigation.

IRIS 2010-4/33

Poland

Digital Terrestrial Television in Poland - New Developments

Małgorzata Pęk
National Broadcasting Council of Poland

At the beginning of 2010 the Ministry of Infrastructure conducted public consultations on the Draft Act on launching digital terrestrial television (DVB-T), in which major industry stakeholders took part. After the results of the consultations had been published, the Draft was to be sent for intergovernmental consultations in March 2010.

The aim of the Draft Act is to facilitate the complex process of launching DVB-T by providing for a legal framework. The emphasis has been put on the first phase of this process, within which all present analogue terrestrial TV broadcasters would start digital terrestrial transmissions. The Draft Act establishes the date of the switch-off of analogue TV, the procedure of choosing the transmission networks' operator that would provide services for the DVB-T multiplex operator, the duties of the DVB-T multiplex operator, the duties of TV broadcasters referring to an information campaign on the switchover to digital terrestrial television.

The Draft Act takes into account former developments in this field. On 30 September 2009 the Office of Electronic Communications issued a decision on frequency reservations for the five broadcasting companies (Telewizja Polska SA, Telewizja Polsat SA, TVN SA, Polskie Media SA and Telewizja Puls Sp. z o.o) granting them the right to co-use the frequencies in the first digital terrestrial multiplex (making them in fact together an operator of MUX 1). The aim was to reflect the current analogue terrestrial TV offer, having nation-wide or cross-regional character at the digital multiplex and to establish clear conditions when analogue frequencies might be freed. The time limit for co-using these frequencies has been established differently for public and commercial broadcasters: Telewizja Polska has gained the right to co-use the frequencies in MUX 1 until 31 July 2013 (the end of the transition period). It was agreed that after that date Telewizja Polska would broadcast its TV programme services on its own multiplex (MUX 3). The commercial broadcasters have been granted the right to co-use the frequencies of MUX 1 until 29 September 2024.

The above-mentioned decision was possible, because on 31 July 2009 the Chairman of the National Broadcasting Council signed a decision amending the licences for terrestrial broadcasting of TV programmes; broadening the scope of existing analogue terrestrial TV licences by providing for the

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possibility of broadcasting also on MUX 1 (on the new additional frequencies), while simulcasting by analogue means would be also possible for some time. The four commercial terrestrial TV programme services (nation-wide and cross-regional using no fewer than seven transmitting stations) are broadcast on the basis of amended licences, while the three public TV programme services are broadcast directly under the provisions of the Broadcasting Act and do not require a licence.

The Draft Act announces that the switch-off of the analogue TV signal should take place until 31 July 2013. Broadcasters have been obliged in the Draft to cover by digital transmission 95% of the area indicated in the aforementioned frequency reservation decision. The Draft provides detailed obligations of the MUX 1 operator, the procedure of choosing a network provider in 3 different options. A special chapter of the Draft has been devoted to the information campaign on DVB-T. Broadcasters that obtained a frequency reservation for MUX 1 would be obliged to broadcast until 31 July 2013 information on the transition to the DVB-T standard within their own programme services. The Draft also provides technical requirements for TV-sets to be sold after 1 April 2010. Moreover, it provides numerous amendments to the Telecommunication Law of 16 July 2004. These changes establish new rules on the equal, non-discriminatory, clear and transparent rules on access to multiplex, multiplex operator duties in this respect, the minimum requirements of agreement on the access to multiplex (between multiplex operator and broadcasters). The Draft also provides amendments to the Broadcasting Act of 29 December 1992 (referring to the licensing process).

The preparations to launch MUX 1 faced some troubles, notably because of difficulties with the appropriate procedure of choosing the network operator; while commercial broadcasters have already agreed on one, the public broadcaster can do so only after completing a tender procedure as envisaged in the Public Procurement Law. In order to find a workable solution to this problem, broadcasters recently expressed a view that public and commercial broadcasters should be placed on separate multiplexes (MUX 1 and 3 for public broadcasters, MUX 2 for commercial ones). Broadcasters said they were considering proposing appropriate motions to the regulatory authorities.

A great number of households in Poland already have access to digital TV offers, through digital satellite and cable TV platforms, and the amount of households with access to such digital platforms is growing. Still, the digital switchover of terrestrial TV is considered important.

- *Projekt ustawy o wdroïeniu naziemnej telewizji cyfrowej DVB-T* (Draft Act on launching digital terrestrial television (DVB-T)) http://merlin.obs.coe.int/redirect.php?id=12364

- *Rozpoczęcie cyfryzacji telewizji naziemnej w Polsce* (Launching of digitisation of terrestrial television in Poland) http://merlin.obs.coe.int/redirect.php?id=12418

- *Plan wdrażania telewizji cyfrowej w Polsce* (Plan to implement digital television in Poland) http://merlin.obs.coe.int/redirect.php?id=12366

- *Ogłoszenie Przewodniczącego KRRiT z dnia 3 lutego 2009 r. o możliwości uzyskania koncesji na rozpowszechnianie programu telewizyjnego* (Announcement of the President of the National Broadcasting Council of 3 February 2009 on the possibility to obtain licence to television broadcast.) http://merlin.obs.coe.int/redirect.php?id=12367

IRIS 2010-5/32

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Romania

Government Decision on the Switchover to Digital Television

Eugen Cojocariu
Radio Romania International

The Romanian Government adopted on 12 May 2010 a decision that regulates the switchover to digital television and enables the National Authority for Administration and Regulation in Communications (ANCOM) to start the procedures to award the first two licences in this field (see IRIS 2010-3/34).

The Government decision regarding the granting of licences for the use of radio frequencies within the digital television system modified the Government's Decision no. 1213/2009 (HG 1213/2009), which approved the Strategy of transition from analogue terrestrial television to digital television and the introduction of digital multimedia services at national level (see IRIS 2009-9/26).

The decision sets the conditions, licence fees and the type of procedures to award licences for the switchover to digital television.

According to the decision, the first two digital multiplexes will be granted on a comparison-based selection by 30 July 2010 and the next four digital systems will be awarded by 31 October 2010. Romania's population will be able to receive free to air 14 digital TV channels through the first two multiplexes.

The Romanian Communications Minister said the licence fee will range between EUR 1 million and 2.5 million, adding that the fee for the first two licences will be set taking into account the reception equipment that future licence winners will subsidise. The Minister further stated that the licence fee for the offer of digital television services cannot be below EUR 1 million.

The first two licences will cover 60% of the country's population and 50% of its territory by 30 June 2011. By the end of 2011, the digital services of the first two licence winners will cover 80% of the population and 70% of the territory, respectively 90% of the population and 80% of Romania's territory by 30 June 2012.

The initial schedule to switch from analogue to digital television on 1 January 2012 was delayed for six months. Romania has a total of six allocations (multiplexes) which will cover the national territory.

- *Hotărârea Guvernului privind acordarea a licenţelor de utilizare a frecvenţelor radio în sistem digital terestru de televiziune şi de modificare a Hotărârii Guvernului nr. 1213/2009 pentru aprobarea Strategiei privind tranziţia de la televiziunea analogică terestră la cea digitală terestră şi implementarea serviciilor multimedia digitale la nivel naţional, 12.05.2010* (Government Decision with regard to the grant of licences for the use of radio frequencies for the digital television system and the modification of Government Decision no. 1213/2009, HG 1213/2009 approving the Strategy of transition from analogue terrestrial television to digital television and the introduction of digital multimedia services at national level, 12 May 2010)
  http://merlin.obs.coe.int/redirect.php?id=12543

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Romania

Digital Switchover Postponed

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The Romanian Government decided on 11 August 2010 to postpone the switchover from analogue to digital television until 1 January 2015. The previous deadline foreseen for the switchover was 1 January 2012.

The new Decree repealed Government Decree no. 464/2010 on the granting of licences to use radio frequencies in the digital television system and the modified Strategy of transition from analogue terrestrial to digital television and the introduction of digital multimedia services at national level, approved by Government Decree no. 1213/2009 (Official Journal of Romania no. 357 of 31 May 2010). The Strategy was first published in the Official Journal of Romania no. 721 of 26 October 2009 and modified afterwards (see IRIS 2009-9/26, IRIS 2010-1/36, IRIS 2010-3/34 and IRIS 2010-7/32).

The postponement of the switchover put an end to the ongoing tender for the granting of the first two national digital television multiplexes. Seven companies had bought the Terms of References (tender specifications) for the first two Romanian national DVB-T digital multiplexes, which should have been granted by way of distinct comparison-based selections organised by the *Autoritatea Naţională pentru Reglementare şi Administrare în Comunicaţii* (National Authority for Administration and Regulation in Communications, ANCOM). The tenderers will be reimbursed by ANCOM the Terms of References costs.

The analogue television UHF band frequencies services will be terminated by 1 January 2015, but can coexist with digital services until then. The Government will adopt another Decree to establish the new calendar to implement the above mentioned Strategy.

The postponement decision, which surprised the broadcasting market, was officially explained by the will of the Government to release Romanian citizens of buying new TV devices during the economic crisis and to assure the operators a reasonable amount of time to comply with the new technical demands. Allegedly, the decision was taken in order to find a solution to offer one of the licences to RADIOCOM, the Romanian State-owned public radio and television programmes provider, without breaching EU legislation.

- *Hotărârea Guvernului României nr. 833/2010 din 11 august 2010 pentru modificarea Strategiei privind tranziţia de la televiziunea analogică terestră la cea digitală terestră şi implementarea serviciilor multimedia digitale la nivel naţional, aprobată prin Hotărârea Guvernului nr. 1213/2009, publicată în Monitorul Oficial al României nr. 609 din 27 August 2010* (Government Decree no. 833/2010 of 11 August 2010 on the modification of the Strategy of transition from analogue terrestrial to digital television and the introduction of digital multimedia services at national level, approved by Government Decree no. 1213/2009, published in the Official Journal of Romania no. 609 of 27 August 2010)

IRIS 2010-9/35

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Russian Federation

Government Adopts Plan for Digital Switchover

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On 3 December 2009 Prime Minister Vladimir Putin signed an Ordnance of the Government of the Russian Federation No. 985 that approved the Federal Target Programme *"Развитие телерадиовещания в Российской Федерации на 2009 - 2015 годы"* (Development of TV and radio broadcasting in the Russian Federation in 2009-2015). It is a natural law-making development after the approval on 21 September 2009 of the Resolution of the Government of the Russian Federation on the Concept of the Federal Target Programme "Development of TV and radio broadcasting in the Russian Federation in 2009-2015"(see IRIS 2009-10/26), and earlier development and approval (in 2007) by the Government of the RF of the Concept for the development of TV and radio broadcasting in 2008-2015 (see IRIS 2008-2/28).

By the Ordinance of 3 December 2009 the Government allocated a maximum of RUB 76,366 million from the federal budget for its implementation out of the total evaluated cost of the programme of RUB 122,445 million (to be adapted to inflation) (currently EUR 1 equals RUB 40). The Government shall spend RUB 4,615 million annually after the completion of the Federal Target Programme (FTP) for the dissemination of the free must-carry programmes.

Among the aims of the FTP its Passport points to the maximum number of the population that shall have no access to television by 2015 - less than a thousand persons (today - 1,6 million persons). Access to 20 free television channels that include 8 must-carry programmes (approved by the Decree of the President of the Russian Federation of 24 June 2009, see: IRIS 2009-10/18) shall be provided to 100 percent of the population, while penetration of digital terrestrial television (DTT) shall reach 98.8 percent.

The Passport of the FTP points to the activities envisioned to implement the switchover in stages in four zones from the far eastern to the European part of Russia with special focus on regions bordering foreign countries (earlier the Concept of the FTP spoke of five zones). The switch-off will take place when more than 95 percent of the households have set-top boxes, which must be purchased individually at the householders' own expense (currently they cost about RUB 1000).

The Minister of Communications and Mass Communication is appointed head of the implementation of the FTP and personally responsible for its results and spending of the allocated funds.

The FTP does not discuss issues of digital dividend, principles of licensing, access to free multiplexes of regional or other free television companies, incentives for broadcasters in the switchover process or other essential issues.

- *Распоряжение Правительства РФ № 985 «О федеральной целевой программе "Развитие телерадиовещания в Российской Федерации на 2009 - 2015 годы"»* (Ordinance of the Government of the Russian Federation No. 985 "On the Federal Target Programme "Development of TV and radio broadcasting in the Russian Federation in 2009-2015", Collection of Law of the Russian Federation (*Собрание законодательства РФ*), 14 December 2009, N 50, st. 6097) http://merlin.obs.coe.int/redirect.php?id=12312

IRIS 2010-4/39

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Ukraine

Decree on Digital Television

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Just before the termination of his powers, President Viktor Yushchenko issued a Decree on the development of digital television. On 18 February 2010 the relevant Decree of the President of Ukraine No. 189/2010 was signed. Its full title is "On the Decision of the National Security and Defense Council of Ukraine" of 11 September 2009 "On the concept of creation of public service broadcasting system and the implementation of digital television". In this document the President of Ukraine states that the situation with the implementation of digital broadcasting in Ukraine is "threatening for national security". The activity of the Cabinet of Ministers of Ukraine on the implementation of digital broadcasting was found insufficient for the purposes of protecting the national interests of Ukraine in the informational sphere. The decree says that the government "endangers the ensuring of the constitutional right of citizens to access information as well as the fulfillment of the international obligations of Ukraine in the aforementioned sphere".

This document also established an Interdepartmental commission on the issues of the coordination of implementation of digital broadcasting as a working body of the National Security and Defense Council of Ukraine. The Cabinet of Ministers of Ukraine was given six months to make amendments to the State programme of digital broadcasting implementation, approved by the Decree of the Cabinet of Ministers of Ukraine of 26 November 2008 No. 1085. The aforementioned changes shall concern the specification of technical conditions of the transition from analogue to digital broadcasting; solution of the procedure of supplying citizens with the set-top boxes for the reception of digital signals; solutions on the set of activities necessary to complete the transition to digital terrestrial broadcasting in the border regions and the Crimea.

Together with the National Television and Radio Broadcasting Council the Cabinet of Ministers of Ukraine is due to develop and introduce for consideration by the Supreme Rada of Ukraine (the parliament) a draft law on amendments to certain legislative acts of Ukraine on licensing broadcasting based on digital technologies. The Cabinet of Ministers of Ukraine together with the Security Service of Ukraine should work out and ensure the practical solution of the issues related to the release of radio-frequency resources for the needs of digital broadcasting.

- *УКАЗ ПРЕЗИДЕНТА УКРАЇНИ № 189/2010 Про рішення Ради національної безпеки і оборони України від 11 вересня 2009 року «Про концепцію створення системи Суспільного телебачення і радіомовлення України та хід упровадження цифрового телерадіомовлення»* (Decree of the President of Ukraine No. 189/2010 "On the Decision of the National Security and Defense Council of Ukraine" of the 11th of September 2009 "On the concept of creation of public service broadcasting system and the implementation of digital television")
  http://merlin.obs.coe.int/redirect.php?id=12428

IRIS 2010-6/42

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Overview of Digital Television Switch-over in Europe

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I. Introduction

The switch from analogue to digital television is currently an established global phenomenon that has not, though, proved financially or politically simple. Several of the pioneering countries faced crises at some point whereas newcomers are influenced not only by domestic dilemmas and disputes but also by regional and international forces. The first European analogue terrestrial switch-off was achieved in Berlin in 2003 but the first national one was accomplished in the Netherlands at the end of 2006. Finland and Sweden followed in 2007 and the United Kingdom and Spain started regionally phased processes in 2008. Whereas the United States committed to a nationwide switch-off in 2006 that was postponed until June 2009, Japan has a plan to switch-off in 2011. Further waves of countries – in Europe, the Americas, Australasia and South Africa – have been embarking on digital switch-over policies during the last two years.[1]

Motives have varied in emphasis from country to country, but a simple classification would outline the following. The main consumer benefits are increased technical quality, the option of high-definition (HD) television and/or more channels, plus data and interactive services. For the electronics industry it is a fantastic business opportunity. From the broadcasters' point of view, the most important advantage is the possibility to upgrade their services and expand thanks to the spectrum savings resulting from the migration to digital television. At the same time, such greater spectrum efficiency can be key to regulators and governments in order to, for example, change the audiovisual *status quo* (introducing further competition allowing new entrants to the market) or obtain additional resources (from spectrum auctions).

It is evident that industrial, technical, economic/financial as well as sociopolitical reasons for the switch-over can be easily identified. Additionally, it is essential to note the importance of terrestrial television in the world – a service universally available and dominant as audiovisual platform in most countries – and thus the significance of the impact of the switch-over Talking about DTV switch-over policies means referring to the transition from analogue to digital terrestrial television (DTT) and the switch-off of the former. Interestingly, the full benefits of re-using the spectrum can only be captured by enforcing the policy on all analogue terrestrial broadcasters and thus, in the end, compelling all analogue terrestrial viewers to switch. That is why sooner than later countries embarking on switch-over set a hard date for the end of analogue transmissions.

1) The author would like to acknowledge that this piece is partially based on the article "Digital switch-over across the globe: the emergence of complex regional patterns", co-authored with Michael Starks and published in *Media, Culture & Society*, Vol. 31(5), 2009; and that it has relied on data from the MAVISE database, developed by the European Audiovisual Observatory for the European Commission.

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The following pages will not present an extensive survey of the European situation as regards the transition to DTT per country but an overview of it through some examples and key elements focusing on the five major national markets: Germany, the United Kingdom, France, Italy and Spain.[2]

II. The emergence of DVB

If the transition to digital television has been a preoccupation of the advanced economies of the world since, at least, the 1980s, the major markets have undoubtedly been the USA, Japan and Europe. Japan's development of – analogue – HD technology and its interest in having it recognized as the basis for a new global standard triggered rival television initiatives in Europe and the USA, both standard and HD. When Japan put forward its analogue HD system in 1986, Hi-Vision, what happened was that Europe reacted immediately by developing its own analogue satellite system, also HD, called MAC, Multiplex Analogue Component. It was approved by a European Directive (1992/38) that proved technically over-ambitious and commercially disastrous and was *de facto* abandoned in 1993.

After such failure, the European Commission became reluctant to impose technical standards and European broadcasters and receiver manufacturers reacted against politically driven technology strategies and were in favour of implementing what the market would support. That is why in 1990s consensus was reached around the Digital Video Broadcasting consortium and a new set of standards was supported: DVB. The European Union ended up favouring a market-driven approach to the digital transition, endorsing the commercially based and collectively developed DVB standards, deciding not to be prescriptive in detail.

Once consensus was achieved around DVB, why, unlike the USA and Japan, did Europe support standard definition digital television? Because many countries with a history of state or public service dominated broadcasting and/or modest options of cable/satellite services had relatively few television channels. The market was therefore ready for the multi-channel choice DTT could supply. On the contrary, the agenda in the USA centred on HD from the very beginning because, worried about the Japanese strategy, US companies reacted by lobbying for a national version of terrestrial HDTV.

The Federal Communications Commission set up an Advisory Committee that recommended an all-digital system and that, after much testing, established the Advanced Television Systems Committee standards for digital television (ATSC). Japan had to catch up and it certainly did adopting its own set of digital technical standards, named Integrated Services Digital Broadcasting (ISDB), designed, along with spectrum allocation policy, to support digital terrestrial, cable and satellite television, also through mobile connections.

In a few words, the technology of digital television was extensively standardized in three main international families of standards known by their acronyms: the DVB in Europe, ATSC in the United States and ISDB in Japan. Digital Multimedia Broadcasting (DMB), a fourth alternative of technical specifications, has been under development in China since 2006 and some national adaptations of existing technologies are also under way (e.g. the case of SBTD-T, the Brazilian adaptation of ISDB).

2) Detailed information about DTT multiplexes and channels in these countries can be found at: http://www.ueberallfernsehen.de/technik.html ; www.ofcom.org.uk/static/tvlicensing/dtt/main.htm and www.dtg.org.uk/industry/dtt_channels.html; www.televisiondigital.es/Terrestre/OperadoresTDT/Paginas/OperadoresTDT.aspx and http://www.impulsatdt.es/consumidores/contenidos-TDT/canales-y-servicios-de-tdt ; www.dgtvi.it/stat/Canali/Canali_nazionali/Page1.html ; and www.csa.fr/infos/operateurs/operateurs_television_accueil.php and http://www.tvnt.net/les-chaines-220.html

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III. The European mosaic

In the late 1990s the United Kingdom, Sweden and Spain were among the first countries in the world to begin unpredictable journeys towards digital switch-over through the introduction of DTT. They launched pay TV platforms to lead the deployment of the service that however collapsed (ITV Digital and Quiero TV) or experienced serious trouble (Boxer). Finland, Switzerland, Belgium and Germany followed, whereas the Netherlands and Italy waited until 2003 to launch their services. France, the Czech Republic, Denmark and Greece, for example, did so during 2005 and 2006. They benefited from the mistakes made by the early adopters who, influenced by the British experience from 2002 on, started to consider the successful free-to-air option developed by Freeview to re-launch or reorganize DTT services. The last wave of countries to join had to wait until 2009 (Portugal and Poland, for instance) or even 2010 (Ireland) and, as a matter of fact, Bulgaria and Romania had yet to launch official DTT services by October 2010.

As regards the completion of analogue switch-off the target has already been met by 12 countries and most of those with services on air have begun switching-off analogue frequencies in one or more areas.[3] Not only at least three chronological phases but also two distinct patterns of switch-over developments can be identified in Europe. On the one hand, the kind represented by countries with extensive cable and/or satellite reception, where switch-off is proving easier to achieve and the scale of the risk is reduced because only a small proportion of main sets are affected by digital switch-over. Switzerland, the Netherlands and Belgium would be good examples. On the other hand, the group constituted by the biggest markets – with the exception of Germany – where terrestrial television is hegemonic and therefore plays a central role.

In short, when 2011 begins DTT will be up and running in most European nations, with pay services and HD channels in 19 and 8 countries, respectively, and approximately a total of 1460 channels available on all platforms (of which nearly 700 are local). Pay DTT models can be found organized around pay-per-view events, near video-on-demand contents or simply traditional pay bouquets. Public channels do still play an important role on national free-to-air platforms because they account for more than one third of the channels offered.

In any case beyond the European Union's call to end analogue broadcasting by 2012, in line with the ITU's GE06 Agreement, and all member states having confirmed their intention to do so, it is unclear how the newcomer countries will meet the deadline. Furthermore, analogue switch-off will not necessarily correspond with the availability of frequencies in the 800 MHz band. And these might well affect the European Union roadmap for the harmonization and use of the digital dividend. The Commission's interest in member states reserving the 790-862 MHz sub-band for pan-European services, such as mobile broadband services, has had an impact on some countries that have already decided to benefit telecom applications (Denmark, Finland, France, Germany, Spain, Sweden, Switzerland and the United Kingdom). Nevertheless, it is still too early to know up to what extent full harmonization will be possible throughout Europe.

1. Germany: the first example

By the end of the 1990s cable and satellite reception was so extensive in Germany that the digitization of analogue terrestrial TV was seen as a way of offering a non-disruptive and affordable option for consumers that, additionally, was valued because of its indoor reception and mobile service capabilities. With scarce spectrum for an extended period of simulcasting, Germany designed and succeeded in implementing a series of switches, region-by-region but based on "islands"[4], that also reflected the country's decentralized media system and its political organization by *Länder*.

3) The analogue terrestrial switch-off has taken place in Belgium, Switzerland, Germany, Denmark, Estonia, Spain, Finland, Luxembourg, Latvia, the Netherlands, Norway and Sweden and by January 2011 it will also be the case in Austria, Iceland, Malta, Slovenia and Croatia.

4) The geographic delineation of such islands was identified by the Länder, starting digitization in zones with high population density.

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The diversity produced as a consequence did not influence the process in a negative way and, if the early European migration of Berlin was considered an example to be followed, five years after the first analogue transmitters were switched-off, broadcasting went completely digital. In most areas the time between the launch of DTT and the end of analogue services varied from three to six months. As expected, the national rate of terrestrial reception remained stable (approximately 4.2 million TV households[5]). Adoption was favoured from the very beginning by a free-to-air business model. In some regions private broadcasters received subsidies to launch free-to-air DTT. Nevertheless, in 2005 and 2007 the European Commission declared aids provided in Berlin and North Rhine Westphalia illegal.

It is also important to mention that in Germany switch-over encouraged early trials and plans for the introduction and development of HD-DTT services, mobile TV via DVB-H or wireless broadband Internet supply – especially in rural areas. The latter was made possible due to the systematic release of frequencies after analogue switch-off that allowed the *Bundesnetzagentur*, the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway, to auction the 800 MHz band to telecom operators in May 2010. Such digital dividend raised a total of EUR 4.3 billion.

2. Spain: financial challenges

Following the *Plan Técnico Nacional de la Televisión Digital Terrestre* (the National Technical Plan) on DTTV approved by the government in September 2007, digital switch-over was achieved in Spain as planned in April 2010. By then, according to Impulsa TDT, the association created by broadcasters to promote the adoption of DTT, nearly 90% of all homes had access to DTT services. The migration took place progressively in three phases beginning in 2008, implemented throughout the 73 technical areas into which the country was "divided". Stakeholders were mainly coordinated by the Ministry of Industry, Tourism and Trade and Impulsa TDT. The government elected in 2004 had decided to re-launch the service in 2005, after the failure of the aforementioned DTT pay TV platforms. Free-to-air operations were favoured with a new regulatory framework that reassigned Quiero's multiplexes mainly to the existing national broadcasters, analogue and digital.

A distinctive three-layer structure then emerged because frequencies were also granted for regional as well as local services. Nevertheless, the financial viability of so many channels was rapidly put into question and worsened with the advertising crisis that led to important revenue decreases in 2009. Regulations relaxing media concentration, allowing pay services and reforming the funding of the national public service broadcaster RTVE – eliminating advertising as a source of income – were approved with the final sprint of migration taking place. And even though most would agree with the idea that the switch-over was completed with few disruptions, soon afterwards the association that represents communication consumers, *Asociación de Usuarios de la Comunicación* (AUC), reminded that contents being broadcast were still subject to improvement and that most households did not have appropriate equipment to enjoy pay, HD or future 3D services.

Following the approval of a new General Law of Audiovisual Communications by the Parliament in March 2010, the government issued a Royal Decree that organizes the allocation of digital terrestrial TV multiplexes after the switch-off in two phases. They have been established in order to free the frequency band 790-862 MHz by 1 January 2015. Each national commercial broadcaster has already been allocated a multiplex, RTVE having been assigned two. In line with international radio communication regulations and European Union interests it is expected that the frequencies to be released will be allocated for the provision of mobile broadband services.

5) Source : *Kommission für Zulassung und Aufsicht* (ZAK) *der Landesmedienanstalten* (the latter are the State Media Authorities of Germany).

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3. United Kingdom: consensus and coordination

It is evident that in the United Kingdom and Spain the mistake was to place so much faith in the commercial success of a new digital terrestrial platform that would have to develop in a highly competitive and even turbulent pay TV market where other platforms were well established. So, after initial failures, in both countries DTT was re-launched as primarily free-to-air and much more dependent on publicly funded services. Nonetheless, both experiences resulted in authorizing pay TV channels on digital terrestrial television (Top up TV in the United Kingdom since 2004). Both countries also decided for a switch-off timetable spread over some years and will preserve the role of terrestrial television as a universal and affordable service.

In the United Kingdom switch-over is on course since 2008, it will reach more than a quarter of homes by the beginning of 2011 and is expected to be completed across the country by the end of 2012. The process, coordinated by the industry-based company Digital UK, relies on a detailed plan that has organized the migration in 15 TV regions of which 5 have successfully completed the process. According to the British regulatory authority, Office of Communications (Ofcom), the number of homes claiming DTT was their primary means of digital TV reception had reached 10.2 million by April 2010. Among the distinctive features of the British DTT policy the following can be mentioned: granting of licenses to multiplex operators rather than to broadcasters, prominent role for the BBC and design of a Digital Switch-over Help Scheme for vulnerable groups with licence fee funding. It should also be mentioned that, following intensive consultations, Ofcom announced that after switch-off released spectrum will be awarded for new uses through an auction process.

But what has certainly called its neighbours' attention has been the launch of HD Freeview services using DVB-T2 technology in December 2009, turning the United Kingdom into the first country to deploy what is the newest digital terrestrial transmission system developed by the DVB Project. To do so, Ofcom authorized the conversion of one nationwide multiplex that was soon accompanied by the existence of DVB-T2-ready equipment in the market. As had already happened with the re-launch of DTT and the agreement over the switch-over plan, cooperation between the government, Ofcom, broadcasters, transmission operators, manufacturers and retailers was crucial to secure the emergence of five HD channels on the terrestrial platform.

4. Italy: the expansion of pay services

Since 2008 DVB-T2 trials have also been taking place in Austria, Denmark, the Czech Republic, Germany and Spain. Sweden and Finland have committed to start their DVB-T2 HD services in 2011. But the type of services to be launched using DVB-T2 will vary between countries because where HD services are already offered using DVB-T in combination with MPEG-4 as compression technology the new transmission standard could be used to launch new possibilities such as 3DTV. This might well be the situation in Norway or France. In the meantime, Italy accounted for the first launch of DVB-T2 for pay TV services in September 2010.

This is absolutely coherent with the Italian history of DTT. Even though the model initially encouraged was free-to-air counting on Mediaset's and RAI's importance and support, event-based pay TV premium content was soon launched. The Italians' interest in the possibility of watching single matches of the "A & B Series" football championship using prepaid cards gave a first impulse to DTT take-up. Initial penetration was also boosted by a legally controversial receiver industry subsidy that gave aids for the purchase of MHP set-top-boxes (those granted in 2004 and 2005 were in fact questioned by the European Commission[6]). But take up was slow until coverage was improved and 2012 was mandated as the hard date for the switch-off of analogue signals (it had to be postponed twice). The timetable agreed upon implies a progressive migration through 20 regions subdivided into 16 areas starting from the second semester of 2009. And although by

6) See Mara Rossini, European Commission: Subsidies for Digital Decoders in Italy Endorsed, IRIS 2007-8/4, available at: http://merlin.obs.coe.int

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mid-2010 there were already 6 all-digital regions, modifications to the switch-over planning were approved in September due to delays.

DGTVi, the association created to support the introduction of the service, estimates that DTT penetration will cover 82% of TV households by the end of the year. What might be more crucial though is the fact that the regulator, the *Autorità per le Garanzie nelle Comunicazioni* (AGCOM), backed a new national frequency allocation plan in June that reorganizes television frequencies to make room for telecommunication services but also for further audiovisual services (national, local, as well as HD). It has been stated too that the efficient use of the so called "white spaces" will be considered.

5. France: switch-over at its own pace

French DTT services, along with the Italian ones, rapidly overtook longer-established platforms, for example, in Sweden or Spain. Official DTT launch took place in 2005 with a challenging architecture: linked to switch-off when penetration was high enough, a hybrid business model was favoured with MPEG-2 free-to-air services and MPEG-4 HD and pay services. To promote adoption a free-to-air platform with 18 channels was created under the name of TNT, Télévision Numérique Terrestre, and local and national pay TV channels were also made available. *France Télé Numérique* is the body constituted in 2007 by the government and public and private broadcasters to manage the digital switch-over process through a region-by-region scheme, hand in hand with the regulator, the *Conseil supérieur de l'audiovisuel* (CSA).

After two pilots, analogue broadcasting is gradually and officially being replaced since February 2010 and will definitely be so by the end of 2011. The latest regional switch-off achieved in October increases to 8 the number of areas having made it out of a total of 22. According to the CSA, DTT penetration reached 48.3% of TV households (12.9 million) by the beginning of 2010. Financial aid for the upgrade of equipment is in place for those already exempt from payment of the television licence fee or living in areas where digital terrestrial coverage is not available. TNTSAT and FRANSAT resemble a type of initiative already taken in the United Kingdom, Italy and Spain. Technical assistance will also be available to help the elderly or those with disabilities. More specifically, while terrestrial television will remain the key to offer a universal service, two satellite-based alternatives were launched to provide free audiovisual services where the terrestrial signal is weak or does not exist.

Finally, as regards the digital dividend, it is worth mentioning that the plan *France-numérique* 2012, released at the end of October 2008, stated that although 11 multiplexes for DTV and two for mobile TV are to be preserved in the band 470-790 MHz, the spectrum between 790 and 862 MHz will be allocated to mobile services from 30 November 2011 on.

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