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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

on the operation of the Radio Equipment Directive 2014/53/EU

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1. Introduction

The Engineering Industry plays a strategic role in the economy of Europe. It produces approximately 30% of the EU manufacturing value added and provides technological solutions relevant for the main EU policies. Environmentally friendly, innovative and intelligent electrical and mechanical equipment result in more and better jobs in the entire economy and in cleaner, more efficient and competitive products and services. The engineering industries are key enabling sectors for other industries, as well as the suppliers of capital and intermediate goods and services to all sectors of the economy.

One of the main legal European Union (EU) instruments within the domain of Electrical and Electronic Engineering Industries is the Radio Equipment Directive (RED)¹ which establishes a regulatory framework for placing radio equipment on the internal market and is applicable, subject to a number of exceptions, to products using the radio frequency spectrum (radio equipment)². The other instruments in the domain of Electrical and Electronic Engineering Industries are the Low Voltage Directive 2014/35/EU³ and the Electromagnetic Compatibility Directive 2014/30/EU⁴.

Radio equipment, falling within the scope of the RED, is not subject to Directive 2014/35/EU and Directive 2014/30/EU⁵, however it shall comply with the essential requirements of those Directives since Article 3 (1) of the RED refers to their essential requirements.

The RED was published in the Official Journal of the EU (OJEU) on 22 May 2014, entered into effect on 11 June 2014 and is applicable as of 13 June 2016. It repealed the Radio Equipment and Telecommunications Terminal Equipment Directive 1999/5/EC⁶. It provided for one-year transitional period, which ended on 12 June 2017 (Article 48). During the

¹ Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (OJ L 153, 22.5.2014, p. 62).

² Article 1 of the Directive specifies the scope of the Directive and Article 2 defines the term 'radio equipment'.

³ Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits (OJ L 96, 29.3.2014, p. 357).

⁴ Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility (OJ L 96, 29.3.2014, p. 79).

⁵ Article 1 (4) of the RED provides that radio equipment within the scope of the RED is not subject to Directive 2014/35/EU; and Article 2 (2) (a) of Directive 2014/30/EU provides that the latter does not apply to radio equipment.

⁶ Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ L 91, 7.4.1999, p. 10).

transitional phase, manufacturers were allowed to place on the market radio equipment compliant with either the RED or the EU legislation applicable before 13 June 2016 (e.g. Directive 1999/5/EC).

The RED aligned Directive 1999/5/EC with the New Legislative Framework⁷. The revision took account of the need for improved market surveillance, mainly by introducing traceability obligations of manufacturers, importers and distributors. It provides also the possibility to adopt delegated acts in order to require prior registration for those classes of radio equipment affected by low levels of compliance. Other new elements are the inclusion within the scope of pure radio sound and radio TV receive-only equipment and the simplification of certain administrative requirements. For a brief comparison between the RED and Directive 1999/5/EC, see the attached Annex.

The Commission is empowered in the RED to adopt delegated acts on specific matters. Article 44 (2) of the RED provides that the power to adopt delegated acts is conferred on the Commission for a period of five years from 11 June 2014 and requires the Commission to draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period (i.e. by 10 September 2018).

Moreover, under Article 47 (2) of the RED, the Commission shall review the operation of the Directive (i.e. RED) and report thereon to the European Parliament and to the Council, by 12 June 2018 and every five years thereafter.

A report for the purposes of Article 47 (2) of the RED will inevitably cover details on initiatives taken or to be taken for preparing delegated acts under the RED i.e. will also report on issues relating to Article 44 (2). In addition, the timing for submitting a report for the purposes of article 47 (2) is very close with the date for submitting a report for the purposes of Article 44 (2) of the RED

This Report is therefore prepared for the purposes of both Articles 44 (2) and 47 (2) of the RED. In accordance with Article 47 (2) of the RED, this Report covers matters on the transposition and operation of the RED, including the progress on drawing up the relevant standards⁸ and the activities of the Telecommunication Conformity Assessment and Market Surveillance Committee (TCAM).⁹ It also provides information on matters in relation to

⁷ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30);

Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (OJ L 218, 13.8.2008, p. 82).

⁸ Section 4 of this Report.

⁹ Section 3.5 of this Report.

paragraph (a) of Article 47 (2) referring to a coherent system,¹⁰ paragraph (d) of Article 47 (2) referring to consumer protection,¹¹ paragraph (e) of Article 47 (2) referring to common chargers¹² and paragraph (f) of Article 47 (2) referring to e-labelling.¹³ Lastly, this Report provides details and update, in accordance with Article 44 (2) of the RED, on the delegation of power.¹⁴

This is the first report prepared, almost only one year after the end of the transitional period, for the purposes of Article 47 (2). Accordingly, it is too early to provide details on all the items enumerated in Article 47 (2) of the RED and in general to draw conclusions on the effectiveness of the RED. Under Article 47 (2) of the RED, a report shall be prepared every five years which means that the next report will be prepared and submitted in 2023.

2. Better transition and coherence

2.1. Workshop

Due to the new elements introduced by the RED, Member States and stakeholders raised questions on the applicability of the RED as well as on the interpretation of certain provisions in particular in relation to the scope, the Commission organised an open workshop in Brussels in November 2014. The aim of the workshop was to deal with issues and questions on the transposition of the RED, so that Member States would be ready to prepare the national transposition measures on time and coherently and stakeholders (e.g. industry and notified bodies) would be ready to apply consistently the RED, upon its application date.

There was a vast number of participants (approximately 100) coming, mainly, from Member States, EFTA¹⁵ states, European Standardisation Organisations, industry associations, notified bodies, consumer association etc. Afterwards, a "Questions and Answers" document was published on the Commission website.¹⁶

¹⁰ Sections 2 and 3 of this Report.

¹¹ Sections 3.4 and 5.1 of this Report.

¹² Section 5.2.1 of this Report.

¹³ Section 5.3 of this Report.

¹⁴ Section 5.2 of this Report.

¹⁵ European Free Trade Association.

¹⁶

https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp?FormPrincipal:_idcl=FormPrincipal:_id1&FormPrincipal_SUBMIT=1&id=2c3f2fd2-7a1e-498b-b256-c7c85e96891a&javax.faces.ViewState=WxO%2B3DiKvC1sgfiJgWiFpwTJEIZCb7sHCA1Tg7Y4WroVCye3RKhZnoGa5AxXOt1iNR9YAQMn7hmkBcHBMzQVh6vbC225GAC2nNQAJ95%2B6qjnODVKE9YgTSrWWN5p7lXZP4NIUih%2Ft2Xjjfli4tplfoUI%2BqU%3D

2.2. Guidance on the date of applicability relating to the new Directives of the electrical sector

There was a need to provide guidance to Member States and stakeholders, explaining in detail the applicability of the new Directives of the electrical sector (Directive 2014/30/EU, Directive 2014/35/EU and the RED) in relation to the date of the placing on the market of a product. In response, the Commission services prepared such a guidance, which was published on the Commission website.¹⁷

The document clarifies which Directive of the electrical sector is applicable in a given situation, by taking into account the date on which a product is placed on the market, the transitional period of the RED, the scope of the old and new Directives of the electrical sector as well as the date of applicability of these Directives.

2.3. RED Guide

In May 2017, the new RED Guide was published on the Commission website¹⁸. This Guide is intended to serve as a manual for all parties directly or indirectly affected by the RED. It should assist in the interpretation of the RED. The Guide is not legally binding.

The Guide explains and clarifies some of the most important issues related to the application of the RED, such as the scope, the essential requirements, the applicable conformity assessment procedures, some specific obligations relating to the economic operators etc. It was prepared in collaboration with the Member States and stakeholders (industry associations, consumer associations, notified bodies, European standardisation bodies).

In June 2018, the Commission services published an updated version of this Guide, endorsed also by the Telecommunication Conformity Assessment and Market Surveillance Committee (TCAM),¹⁹ which includes clarifications on issues, raised after the publication of the first version of the Guide and updated references. For example, it clarifies whether the RED is applicable to radio modules, provides update on the applicability of RED to drones and has cross reference to the supplementary guidance on combined equipment.²⁰

¹⁷ http://ec.europa.eu/growth/sectors/electrical-engineering/ec-support_en

¹⁸ http://ec.europa.eu/growth/sectors/electrical-engineering/red-directive_en

¹⁹ On TCAM, see section 3.5.

²⁰ This supplementary guidance relates with the applicability of the Electrical Sector Directives in relation to non-radio products (such as household appliances) when they function with radio equipment as well as electrical/electronic equipment when is included in or attached to non-electrical products (such as shoes, furniture, etc.); it is published on the Commission website:

http://ec.europa.eu/growth/sectors/electrical-engineering/ec-support_en

3. Operation

3.1. Notification of Transposition measures

Article 49(1) of the RED stipulates that Member States shall adopt and publish, by 12 June 2016, the laws, regulations and administrative provisions necessary to comply with this Directive (i.e. RED). They shall forthwith communicate the text of those measures to the Commission.

By July 2016, 14 Member States notified their national transposition measures. As a consequence, in July 2016 the European Commission sent a Letter of Formal Notice to the other 14 Member States that did not comply with Article 49 (1). By the end of the year 2017, all Member States have notified one or more national acts referenced as national transposition measures. The RED has thus been transposed in all the Member States and any infringement files relating to Article 49 (1) of the RED have been closed. Information on the infringement procedures followed, for each Member State, is available on the Commission database.²¹

The Commission services did not receive any complaints in relation to problems caused on the free movement of radio equipment, already compliant with the RED, resulting from the late transposition of the RED.

3.2. Application in EEA-EFTA states

The RED is applicable in the EEA²²-EFTA²³ states (Norway, Iceland and Liechtenstein) as it has been incorporated into the EEA Agreement by a Decision of the EEA Joint Committee²⁴ and subsequently transposed into national law by those States.

Switzerland has adapted its national legislation²⁵ equivalent to RED. Accordingly, the relevant Chapter 7 of Annex I of the Mutual Recognition Agreement concluded between the

²¹ http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=en

²² European Economic Area.

²³ European Free Trade Association

²⁴ Decision of the EEA JOINT COMMITTEE No 89/2016 of 29 April 2016 amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement (COM/2012/0584 final).

²⁵ Ordinance of 25 November 2015 on Telecommunications Equipment (OPT) (RO 2016 179) and Ordinance of 26 May 2016 of the Federal Office of Communications (OFCOM) on Telecommunications Equipment (RO 2016 1673) as last amended on 15 June 2017 (RO 2017 3201).

EU and Switzerland, which entered into force on 1 June 2002²⁶ has been amended²⁷ to reflect the new EU acquis and equivalent Swiss legislation.

3.3. Conformity assessment

In May 2015, the Commission services sent a letter to all Member States inviting them to start notifying their conformity assessment bodies under RED, provided that the relevant provisions of the RED had been transposed. That letter also highlighted the fact that notified bodies under the repealed Directive would be withdrawn as of 13 June 2017 (i.e. after the end of the transitional period provided for in Article 48 of the RED).

By the end of the transitional period (i.e. by 12 June 2017), 61 bodies were notified, by the end of the year 2017 another 4 bodies were notified and by the end of April 2018 the total number of these bodies reached 70.²⁸

No particular problem has been encountered with respect to the notification of conformity assessment bodies under the RED. In addition, the Commission has never received any information indicating that notified bodies were overloaded or unable to perform their tasks. Though there was a delay in the publication of harmonised standards (details are given in section 4) and as result the involvement of a notified body for specific requirements was required,²⁹ still the Commission did not receive any information indicating that they were overloaded.

The RED is a new approach directive. It is mostly based on the system of the EU Declaration of Conformity (DoC), obliging the manufacturers to certify their own products and maintain a technical file, regarding the compliance of the products with the applicable requirements, for inspection by surveillance authorities.

A third party (in this case a notified body) is required to be involved in specific and exceptional situations.³⁰ However, in the past, manufacturers have often preferred to seek an endorsement from a notified body even when that was not needed, as they had applied the

²⁶ OJ L 114, 30.4.2002, p. 369, as amended.

²⁷ Joint Committee Decision 1/2017 of 28 July 2017, OJ L 323, 7.12.2017, p. 51–102.

²⁸ Includes bodies notified by EU/EEA/MRA states. The list containing details and update information may be found at: <http://ec.europa.eu/growth/tools-databases/nando/>

²⁹ For the assessment of compliance with the requirements relating to Article 3 (2) and (3) but there is no such obligation for the requirements relating to Article 3 (1).

³⁰ For the purposes of the essential requirements set out in Article 3 (2) and (3) of the RED, a conformity assessment involving a notified body shall be followed when harmonised standards are partially applied or not applied or do not exist

relevant harmonised standards³¹. It needs to be seen if the alignment of the conformity assessment procedures with the new legislative framework will encourage the manufacturers to seek an endorsement from a notified body only in the specific situations foreseen in the Directive thus leading to a reduction of administrative costs.

The detailed criteria set out in the RED that the conformity assessment bodies have to fulfil, aim at ensuring a sufficient and a uniformly high level of performance of these bodies. Because of the Mutual Recognition Agreements with a number of States,³² manufacturers can benefit from access to a wider market.

The sectoral group of notified bodies, the Radio Equipment Directive Compliance Association (REDCA),³³ contributes to the effective implementation of the legislation in cooperation with the Committee set up under the RED i.e. the Telecommunication Conformity Assessment and Market Surveillance Committee (TCAM)³⁴ and facilitates the convergence of conformity assessment practices. The REDCA liaises with relevant organisations such as European Telecommunications Standards Institute (ETSI), Electronic Communications Committee (ECC) and the Administrative Cooperation Group (ADCO RED).³⁵ It is recognized that the application of conformity assessment procedures in a consistent manner facilitates the achievement of an open and competitive market throughout Europe.

3.4. Market Surveillance (compliance and better cooperation)

Overall, the RED, which applies the framework for the market surveillance of products set up by Regulation (EC) 765/2008³⁶ achieves better and more efficient cooperation between national market surveillance authorities, which is indispensable for the success of the market surveillance policy and for guaranteeing an open and competitive market throughout Europe. This cooperation is supported by the operation of the internet-supported information and communication system for the pan-European market surveillance (ICSMS) database and the

³¹ Report from the Commission to the Council and the European Parliament second Progress Report on the operation of Directive 1999/5/EC, on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (COM/2010/0043).

³² https://ec.europa.eu/growth/single-market/goods/international-aspects/mutual-recognition-agreements_en

³³ Article 38 of the Directive requires Member States to ensure that the bodies notified by them participate in the work of the sectoral group of notified bodies (hence that group), directly or by means of designated representatives.

³⁴ On TCAM, see section 3.5.

³⁵ On ADCO RED, see section 3.4.

³⁶ For market surveillance issues, the RED applies in conjunction with Articles 15 to 29 of Regulation no (EC) No 765/2008.

Rapid Alert System for non-food dangerous products (RAPEX) which constitute essential tools to exchange information and optimise work sharing among authorities³⁷.

The cooperation is also ensured with the establishment and operation of the Administrative Cooperation Group of national market surveillance authorities in the specific sector, the ADCO RED Group. One important activity of the ADCO RED is the preparation and submission to the Commission and TCAM of yearly market surveillance statistics for equipment within the scope of RED (and its predecessor, Directive 1999/5/EC).³⁸

By the time of the finalisation of this Report, the ADCO RED presented the market surveillance statistics for the year 2016,³⁹ as during that year Directive 1999/5/EC was still applicable, these statistics provide findings of non-compliant products with Directive 1999/5/EC, found on the market. More specifically until 12 June 2016, Directive 1999/5/EC was applicable while between 13 June 2016 and 12 June 2017, the manufacturers had the choice to apply either Directive 1999/5/EC or the RED due to the transitional period provided for in Article 48 of the RED. Based on these statistics it can be assumed that manufacturers preferred to apply Directive 1999/5/EC during the given period. As a result, no concrete conclusions can be drawn on whether specific types of radio equipment are affected by low level of compliance with respect to the requirements of the RED.

In addition to the above data, the Commission received from Member States⁴⁰ information on the application of the RED in accordance with Article 47 (1).⁴¹ This information leads also to the conclusion that manufacturers, until the end of the transitional period, preferred to use the repealed – but still applicable- Directive i.e. Directive 1999/5/EC. As a result, the conformity of radio equipment, which was on the market, was assessed on the basis of the latter.

³⁷ ICSMS is an IT platform to facilitate communication between market surveillance bodies in the EEA (European Economic Area). It quickly and efficiently shares information on non-compliant products, avoids the duplication of work, and speeds up the removal of non-compliant products from the market. The RAPEX enables quick exchange of information between EEA countries and the European Commission about dangerous non-food products. The legal framework for establishing the RAPEX system is the General Product Safety Directive 2001/95/EC (GPSD). Regulation (EC) 765/2008 extended the scope of RAPEX also to non- consumer products and risks other than health and safety in so far as they are covered by EU harmonisation legislation. The exchange of information is done via the Internet application, which is maintained by the European Commission.

³⁸ For details on the objectives of ADCOs, see:

http://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance/organisation/administrative-cooperation-groups_en

³⁹ <https://ec.europa.eu/docsroom/documents/24223>

⁴⁰ By April 2018: from 21 EU Member States.

⁴¹ Article 47 (1): Member States shall submit to the Commission regular reports on the application of this Directive by 12 June 2017 and at least every two years thereafter. The reports shall contain a presentation of the market surveillance activities performed by the Member States and provide information on whether and to what extent compliance with the requirements of this Directive has been attained, including in particular requirements on identification of economic operators.

Besides, the reports received in accordance with Article 47 (1) do not show or conclude that there is an issue of low level of compliance, in relation to any category of radio equipment, with the essential requirements of the RED.

Member States will be able to assess the compliance of radio equipment with the new Directive (RED) and provide more detailed information and data in the next years.

A specific problem raised by market surveillance authorities during the ADCO RED meetings was the lack of clarity on the application of the RED to unmanned aircraft (drones) and the need to ensure that its requirements on electromagnetic compatibility and radio spectrum are applicable to (at least) consumer and commercial drones. During the discussions for the adoption of a Regulation in the field of civil aviation,⁴² it was agreed to modify the exemption in RED which refers to airborne equipment.⁴³ As a result, new Regulation (EU) 2018/1139, applicable as of 11/9/2018,⁴⁴ amended Annex I (para. 3) of the RED aiming at ensuring that the RED will apply to most categories of drones.

In 2017, the Commission tabled a legislative proposal for a Regulation on compliance and enforcement of single market rules for non-food products⁴⁵ aiming at reducing the number of non-compliant products in the Single Market. More specifically, it will provide the right incentives to businesses, intensify compliance checks and promote closer cross-border cooperation among enforcement authorities by consolidating the existing framework for market surveillance activities. In addition, it will encourage joint actions by market surveillance authorities from several Member States, improve the exchange of information, promote the coordination of market surveillance programmes and create a strengthened framework for controls on products entering the Union market and for improved cooperation between market surveillance authorities and customs authorities. It includes, inter alia, the deletion of Article 39 and the fourth subparagraph of Article 40 (1) of the RED.⁴⁶

⁴² Proposal aiming at repealing and replacing Regulation (EC) No 216/2008, COM/2015/0613 final - 2015/0277 (COD).

⁴³ Annex I.3 of the RED.

⁴⁴ Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (Text with EEA relevance.)

⁴⁵ Procedure 2017/0353/COD.

⁴⁶ Due to this modification, if adopted, for market surveillance issues, the RED will apply in conjunction with the provisions of this Regulation and not with Articles 15 to 29 of Regulation no (EC) No 765/2008.

3.5. The Committee (TCAM)

Article 45 of the RED establishes the Telecommunication Conformity Assessment and Market Surveillance Committee (TCAM), which is a committee within the meaning of Regulation (EU) No 182/2011.⁴⁷ TCAM⁴⁸ delivers its opinion on proposed implementing acts under the RED and in general discusses any other matter concerning the application of the Directive raised either by its chair or by a representative of a Member State in accordance with its rules of procedure.

The Committee, chaired by the Commission services, updated its rules of procedures which were first prepared by the Commission services, approved by TCAM⁴⁹ and entered into force on 19 September 2017. Hence, it has been ensured that the Committee is in operation.

It should be noted that a similar committee existed under Directive 1999/5/EC (the repealed Directive). The committee established under Directive 1999/5/EC appointed a working group chaired by the Commission services⁵⁰, in order to provide assistance and advice on specific issues. That working group continues its operation as a group of the Committee established by the RED.

In 2015, a subgroup was also established by TCAM⁵¹ on “airborne products, parts and appliances”. This subgroup was set up to discuss questions and proposals raised in a TCAM document dealing with the exemption of airborne equipment, parts and appliances in Annex I of the RED and specific cases under study within the European Standardisation Organisations, such as drones and obstacle radars. In 2016, this subgroup has presented a report before the TCAM with findings and recommendations for further assessment⁵².

There was one voting procedure in accordance with Article 45 (2) - advisory procedure – relating to the draft Commission Implementing Regulation specifying how to present the

⁴⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁴⁸ Representatives from Member States participate as members and representatives from EEA-EFTA states, Turkey and Switzerland participate as observers.

⁴⁹ The draft rules were submitted to the TCAM members for approval, via CIRCABC, during the period 3 August and 18 September 2017

⁵⁰ Comprises experts from Member States, EEA-EFTA states, Turkey and Switzerland as well stakeholders (such as industry associations, consumer associations, notified bodies, European Standardisation bodies).

⁵¹ TCAM WG 07.

⁵² TCAM WG 08(13).

information provided for in Article 10(10) of Directive 2014/53/EU, on which the Committee gave a positive opinion.⁵³

Joint meetings of TCAM and the Committee established by the Radio Spectrum Decision (676/2002/EC),⁵⁴ the Radio Spectrum Committee (RSC), are organised aiming at discussing common issues relating to radio equipment and therefore facilitating the operation of the RED as appropriate. The last meeting of this joint group took place in October 2017.

4. Harmonised Standards

4.1. Purpose of Harmonised Standards

The application of harmonised standards, whose references are published in the OJEU under the Directive, is voluntary but has the advantage of giving “presumption of conformity” with the corresponding essential requirements that they aim to cover.⁵⁵

If a manufacturer chooses not to follow a harmonised standard or to apply it only partly, he has the obligation to prove that the radio equipment is in conformity with the essential requirements by other means and to provide a full technical justification to show compliance with these requirements. If harmonised standards do not exist or are not applied, the manufacturer is required to consult a notified body for the assessment of compliance with the requirements relating to Article 3 (2) and (3) but there is no such obligation for the requirements relating to Article 3 (1).

The EU has, since the mid-1980s, made an increasing use of standards in support of its policies and legislation. Standardisation has contributed significantly to the completion of the Internal Market in the context of 'New Approach' legislation, which refers to European standards developed by the European Standardisation Organisations. These European organisations have special agreements (respectively the Vienna and Frankfurt Agreements) with International Standardisation Organisation/ International Electrotechnical Commission that ensure collaboration on most standardization subjects and avoid overlapping activities. In particular, where there is international work that can be adopted in Europe, the preference is given to the work at the international level.

⁵³ See Section 5.2.3

⁵⁴ 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 (OJ L 108, 24.4.2002).

⁵⁵ Article 16 of the Directive provides that radio equipment which is in conformity with harmonised standards or parts thereof the references of which have been published in the Official Journal of the European Union shall be presumed to be in conformity with the essential requirements set out in Article 3 covered by those standards or parts thereof.

4.2. Preparation of Harmonised Standards

The Commission, acting in accordance with Article 10 of the Standardisation Regulation (EU) No 1025/2012⁵⁶, requested the European Committee for Electrotechnical Standardisation (CENELEC) and European Telecommunications Standards Institute (ETSI) to draft, in support of the implementation of Article 3 of the RED, harmonised standards for radio equipment⁵⁷ (the Mandate).

The Mandate was delivered to CENELEC and ETSI almost two years before the expiration of the transitional period foreseen in the RED. The Mandate was delivered on 4 August 2015 while the transitional period ended on 12 June 2017.

The deadline for delivery – 15 March 2016 - of the standards was laid down in the Mandate.

CENELEC and ETSI had been consulted during the preparation of that Mandate. Hence they were aware of the need to start preparing harmonised standards, for the purposes of the RED, well on time.

The latest list of harmonised standards under Directive 1999/5/EC included 252 harmonised standards, more specifically 21 related to the essential requirements in Article 3(1)(a), 52 for those in Article 3(1)(b) and 179 for those in Article 3(2) and 3(3).⁵⁸ Not all of these harmonised standards needed to be updated.⁵⁹ The changes to the existing body of standards available under the repealed Directive (Directive 1999/5/EC) needed, in order to appropriately reflect the changes in the RED, were limited. Without prejudice to any new standards that should have been prepared due to the new scope of the RED (compared to the scope of Directive 1999/5/EC), it was necessary to update 187 standards, whose references were published under Directive 1999/5/EC, for the purposes of publication under the RED.⁶⁰

There was, however, a delay in the publication of harmonised standards under the RED because a vast number of standards either were not delivered within the timeframe or were not updated or adapted for the purposes of the RED.

⁵⁶ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council.

⁵⁷ Commission Implementing Decision of 4.8.2015 on a standardisation request to the European Committee for Electrotechnical Standardisation and to the European Telecommunications Standards Institute as regards radio equipment in support of Directive 2014/53/EU of the European Parliament and of the Council.

⁵⁸ Every Harmonised Standard, with its amending versions or in multiple versions (new and superseded versions), has been counted as a single Harmonised Standard.

⁵⁹ For example some of them were superseded or covering equipment not within the scope of the RED.

⁶⁰ CENELEC had to update 26 harmonised standards and ETSI 161.

According to the Standardisation Regulation (EU) 1025/2012, the Commission can only publish the harmonised standards in the OJEU if they have been formally delivered by the standardisation organisations and if they satisfy the requirements they aim to cover.

The above issues with the timely availability of standards raised political and media attention.

4.3. General steps followed by the Commission to solve the problems

In an effort to solve the above-mentioned issues and to avoid such situations arising again in the future, Commission services worked in close collaboration with the ESOs.

Firstly, the Commission has assessed as fast as possible the harmonised standards when they were submitted by CENELEC and ETSI. The average time for assessing the standards was less than 2 months from their informal delivery and in the order of 1 month from their formal delivery. The Commission also established monthly publications of harmonised standards in order to ensure that suitable harmonised standards could be made available to the manufacturers in the shortest possible time, as provided for in Article 10(6) of the Standardization Regulation 1025/2016. As a result, the publication of suitable harmonised standards could be done, on average, within 2 and 3 months from their delivery by the CENELEC and ETSI. Whenever asked for, the Commission also provided comments on the draft standards in order to prevent potential problems with their subsequent publication in the OJEU.

Furthermore, the Commission services organised a joint workshop with the European Standardisation Bodies to describe and explain the quality requirements required for harmonised standards and the most common errors in drafting harmonised standards with a view to avoiding them in the future.⁶¹ During the workshop, specific case studies have been identified in order to explain the reasons for non-publication and show examples of some of the most common errors made. Recommendations and possible way forward for selected problems were also discussed.

Because of the delay in the preparation and publication of harmonised standards under the RED,⁶² Commission services received many questions regarding the applicability of the RED, the applicable provisions during the transitional period and whether supply of radio equipment (e.g. mobiles) placed on the market before the end of the transitional period (i.e. before 13 June 2017) would be affected. In order to give better clarity to stakeholders, Commission services prepared a document with the title 'Frequently Asked Questions', which

⁶¹ The workshop was organised in January 2017 in Brussels and there were also participants from National Standardisation Bodies, the market surveillance authorities, and industry associations

⁶² See below.

was first published on the Commission website in April 2017⁶³ that has been updated since then when needed.

In general, as part of the Single Market Strategy,⁶⁴ the Commission is working on the modernisation of the European standardisation system and launched the so-called joint initiative on standardisation. The objective of this initiative is to work in a public and private partnership with standardisation bodies and Member States to better respond to European standardisation challenges; to exchange information on new rules and developments; and to improve the understanding on the role of standards.

4.4. Specific situations and solutions

Beyond the steps followed for finding solutions to the problems encountered with respect to the preparation of the harmonised standards under the RED, Commission services, in an effort to increase the number of published standards, followed also pragmatic solutions in two particular situations described below.

4.4.1. WiFi standard (EN 301 893)

A particular situation arose with the new version of a standard, delivered by ETSI in May 2017, covering a large number of WiFi products (EN 301 893).⁶⁵

The Commission introduced as a solution a period of transition allowing industry to have sufficient time to adjust to the specifications of this new harmonised standard.

4.4.2. Harmonized standards which did not include specifications on receiver performance parameters

A number of ETSI Harmonised Standards, published under Directive 1999/5/EC, did not address fully the essential requirements of the new RED (e.g. receiver performance parameters). A specific solution followed by the Commission was, at the time of inclusion in the list of harmonised standards published in the OJEU⁶⁶ under the RED of the references of

⁶³ http://ec.europa.eu/growth/sectors/electrical-engineering/red-directive_en

⁶⁴ The Single Market Strategy is the Commission's plan to unlock the full potential of the Single Market:

http://ec.europa.eu/growth/single-market/strategy_en

⁶⁵ EN 301 893: 5 GHz RLAN; Harmonised Standard covering the essential requirements of article 3.2 of Directive 2014/53/EU

⁶⁶ Published on 8 June 2017, just before the end of the transitional period, which ended on 12 June 2017.

those harmonised standards, to insert a note, specifying that these standards do not confer a presumption of conformity as regards those missing parameters. For the relatively limited missing parameters, the manufacturers would have to follow a conformity assessment procedure that involves a notified body (i.e. any of the procedures set out in Annex III or Annex IV of the RED).

4.5. Status of harmonised standards under the RED

Due to the efforts made and the steps followed, the number of ETSI harmonised standards, whose references were published under the RED before the end of the transitional period⁶⁷, was even higher than the number of standards whose references were published under the Directive 1999/5/EC (RED: 134; Directive 1999/5/EC: 125)⁶⁸. At the beginning of March 2018, the references of 5 additional ETSI standards as well as 5 CENELEC standards were published in the OJEU under the RED, reaching the total of 144 harmonised standards⁶⁹.

5. Requirements

5.1. Requirements based on new approach

The RED sets out essential requirements for safety and health, electromagnetic compatibility and the efficient use of the radio spectrum. It also provides the basis for further regulation governing some additional aspects, e.g. protection of privacy and personal data, protection from fraud, interoperability, access to emergency services, compliance of the combination of radio equipment and software.

The safety essential requirements of the RED, as of Directive 1999/5/EC, refer to the safety objectives of Directive 2014/35/EU. These objectives, applicable in the EU for more than 35 years, cover all public interest safety hazards, aiming at ensuring a coherent system and high level of protection to users. The market surveillance data received by the time of the finalisation of this Report did not raise any concerns or problems in relation to the safe level of radio equipment placed on the market and did not indicate any accidents caused by radio equipment.

⁶⁷ i.e. before 12 June 2017.

⁶⁸ Every Harmonised Standard, with its amending versions or in multiple versions (new and superseded versions), has been counted as a single Harmonised Standard.

⁶⁹ 139 ETSI standards: relate with Article 3 (2) and (3) essential requirements. 5 CENELEC standards: 4 CENELEC standards relate with Article 3(1)(a) essential requirements and 1 CENELEC standard relates with Article 3(1)(b) essential requirements.

The essential requirements of the RED are supported by voluntary harmonised standards⁷⁰.

5.2. Empowerment conferred on the Commission to adopt delegated and implementing acts

5.2.1. Article 3.3 (additional essential requirements) and Article 4 (combinations of radio equipment and software)

Article 3 (3) empowers the Commission to adopt delegated acts in order to specify which categories or classes of radio equipment are concerned by each of the requirements set out in points (a) to (i) of Article 3 (3). These requirements relate with interoperability, emergency services, software, fraud, accessibility, privacy, personal data and misuse.

By the finalisation of this Report, the Commission has not adopted any delegated acts concerning Article 3 (3) though some initiatives have already taken as described below. Commission Decisions, adopted under Directive 1999/5/EC, remain applicable under the RED to the extent that they are not incompatible with the RED, until they are repealed. Consequently, there are five Commission Decisions which are valid and applicable for the purposes of Article 3 (3) (g)⁷¹.

Under Article 4 of the RED, manufacturers of radio equipment and of software allowing radio equipment to be used as intended shall provide the Member States and the Commission with information on the compliance of intended combinations of radio equipment and software with the essential requirements set out in Article 3 of the RED. This requirement is applicable if related delegated and implementing acts are adopted by the Commission. Until to date no delegated or implementing act has been adopted, for the purposes of Article 4.

A Commission expert group on radio equipment has been registered on the Commission register⁷² with the task to assist the Commission in the preparation of any potential delegated acts in relation to the RED and in general to provide expert advice on any issue in relation to the RED. By the finalisation of this Report, a call for applications was published for selecting its members and complete its establishment.

⁷⁰ See Section 4.

⁷¹ These Commission Decisions are listed in the Annex.

⁷² Name: Commission expert group on Radio Equipment (E03587)

Articles 3 (3) (i) and 4: Connected products

With the advent of emerging digital technologies, such as the Internet of Things (IoT), Artificial Intelligence (AI)-powered advanced robotics and autonomous systems, 3D printing or cloud computing, our economy and society could be faced with legal challenges exceeding those prompted until now by the age of computerisation.

The Commission is taking initiatives in this field⁷³. In April 2018, a Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions was adopted⁷⁴. This Communication highlights the initiatives taken and steps forward in relation to Artificial Intelligence.

The RED can be relevant in this field as it is applicable to connected products (i.e. equipment that communicates) and sets out related requirements so that this equipment supports features ensuring that its compliance is not affected due to the use of new or modified software and also when in use protects certain elements such as personal data, privacy etc.

One area under consideration is to prepare one or more delegated/implementing acts under Article 3(3)(i) and Article 4(2) of the RED, both referring to the use of software, aiming at ensuring that the compliance of certain classes of radio equipment is not affected due to the use of new or modified software.

The Commission established a Commission Expert Group on Reconfigurable Radio Systems (E03413) with limited duration⁷⁵. Though a new expert group on radio equipment will be established which will have a broad mandate, the Commission Expert Group on Reconfigurable Radio Systems will be maintained as a separate expert group in order to allow it to complete its work.

The Commission is also considering making use of the empowerment set out in Article 3 (3), relating to fraud, privacy and personal data. The Commission services are examining and discussing within TCAM and its Working Group recent problems raised regarding the security of certain categories of products which communicate (such as dolls or smart watches) and the risks they pose especially to children.

Following the problems raised within the TCAM Working Group regarding the security of certain categories of products which communicate (such as dolls or smart watches), further discussions will be held in the group on radio equipment, which will be established by the Commission.

⁷³ <https://ec.europa.eu/digital-single-market/en/artificial-intelligence>

⁷⁴ COM(2018) 237 final.

⁷⁵ Publication in Commission RegExp: 09 Dec 2016. For more information see:

<http://ec.europa.eu/transparency/regexpert>

To this end, the Commission services intend to launch studies, one on smartwatches and connected toys and another one on Reconfigurable Radio Systems, to analyse the extent of the criticalities and provide a cost-benefit analysis.

Article 3 (3) (a): Common charger

Regarding the common charger, the RED empowers the Commission, under Article 3(3) (a) of the RED, to define the categories or classes that shall be so constructed so that they interwork with accessories, in particular with common chargers. The RED, in recital (12), refers to renewed effort to develop a common charger for particular categories or classes of radio equipment.

In 2009, manufacturers of mobile telephones agreed on a voluntary agreement (Memorandum of Understanding) in relation to mobile phones coming onto the market as of 2011⁷⁶. The signatories agreed to develop a common specification based on the USB 2.0 Micro B (Micro-USB) interface, which would allow full charging compatibility with mobile phones to be placed on the market. For those phones that did not have a Micro-USB interface an adaptor was allowed under the terms of the Memorandum of Understanding.

The Memorandum of Understanding aimed at guarantying interoperability between chargers and new mobile phones on the market, therefore reducing the need to buy or continuously exchange chargers and cables and a consequent reduction of e-Waste in line with the Circular economy and Energy Union strategies⁷⁷. At the same time, interoperability was considered key for the development of a competitive Digital Single Market, at the benefit of both industry and consumers. The Memorandum of Understanding was aiming also at ensuring that citizens could benefit from reliable, energy-efficient and safe chargers, whether they were provided by the smartphones' manufacturers or they were sold as standalone products.

Before the Memorandum of Understanding, there were 500 million mobile phones in use in the EU countries, but they were only compatible with specific mobile telephone chargers as more than 30 different types of charger were on the market. Other than inconvenience to the consumer, that situation was estimated to generate more than 51,000 tons of electronic waste per year in the EU.

A study, assessing the Impact of the Memorandum of Understanding on Harmonisation of Chargers for Mobile Telephones and Possible Future Options, was commissioned by the Commission. It was delivered in August 2014⁷⁸ and confirmed that the chosen method (a voluntary agreement facilitated by the Commission, together with the development of a

⁷⁶ The Memorandum of Understanding, after two letters of renewal, expired in 2014.

⁷⁷ http://ec.europa.eu/environment/circular-economy/index_en.htm

⁷⁸ Published on the Commission website:

http://ec.europa.eu/growth/sectors/electrical-engineering/red-directive/common-charger_en

technical standard) increased harmonisation of mobile phone charging in the EU and improved consumer convenience.

The study has, in particular, provided the following information and conclusions: even manufacturers of mobile phones which did not sign up to the Memorandum of Understanding appear to have also adopted Micro-USB charging solutions, leading to the indication that almost 100% of data enabled phones sold in Europe in 2013 were compliant with Micro-USB charging solution.; due to the Memorandum of Understanding, it is estimated to have resulted in six to 21 million fewer standalone chargers over the period 2011 to 2013; the increasing prevalence of Micro-USB charging has limited the need to purchase standalone chargers and consequently reduced the use of raw materials than might otherwise have been the case.

Since the previous experience of the Memorandum of Understanding had proven to be successful for the reasons mentioned above, the Commission wished to continue the approach already followed based on a voluntary agreement. Moreover, a voluntary solution could more readily accommodate new technology and innovation compared to a regulatory option. Additionally, a voluntary approach may have had the advantage of having a wider scope, compared to the regulatory option, for example, it may have covered both ends of the charging cable⁷⁹.

However, given the unsatisfactory outcome so far of the progress in the voluntary option, the Commission will shortly launch a study to assess costs and benefits of different options, including the regulatory one.

Article 3 (3) (g): Effective access to emergency services for smartphones

One topic which is under consideration is a delegated act, in accordance with Article 3(3)(g) of the RED, so that advanced computing capability mobile telephones (i.e. ‘smartphones’) are subject to the requirement relating to emergency services. The aim is to ensure that ‘smartphones’, when placed on the European Union market, support effective access to emergency services e.g. 112.

5.2.2. Article 5 (registration)

Article 5 of the RED establishes a system of registration, in relation to categories or classes of radio equipment affected by a low level of compliance, applicable if related delegated and implementing acts are adopted by the Commission.

There are currently no sufficient data, statistics or evidence showing that specific categories or classes of radio equipment are affected by a low level of compliance. As clarified above, manufacturers preferred to use, until the end of the transitional period, the repealed Directive

⁷⁹ Article 3 (3) (a) of the RED allows only to regulate the side of the mobile phone (interface).

and as a result, the conformity of the vast majority of radio equipment on the market was assessed only based on Directive 1999/5/EC.

Hence, until to date the Commission has not adopted any delegated or implementing act under Article 5.

5.2.3. Other provisions

Beyond Articles 4 and 5 (mentioned above), other specific provisions of the RED empower the Commission to adopt implementing acts⁸⁰.

Until to date the Commission has adopted one implementing act which relates with the implementation of Article 10 (10) of the RED⁸¹.

Article 10 (10) of the RED requires manufacturers to add information on the package that allows the identification of the Member States or the geographical area within a Member State where restrictions on putting into service or requirements for use exist in relation to the radio equipment. In addition, the same provision requires the manufacturer to complete the information on the actual restrictions or requirements in the instructions accompanying the radio equipment. The implementing act provides two options on how the information can be presented on the packaging⁸². In addition, the implementing act provides that detailed information shall be provided in the instructions in a language easily understood by end-users as determined by the Member State concerned.

5.3. Removal of unnecessary administrative obligations and ambiguities

According to the Impact Assessment relating to the proposal for a Directive on the Radio Equipment⁸³, the previous Directive (i.e. Directive 1999/5/EC) contained a number of ambiguities and unnecessary administrative obligations for example requirements relating to notifications or markings.

The RED, by removing the requirement on notification, as required by Article 6 (4) of the Directive 1999/5/EC, removed a potential barrier to trade imposed on manufacturers who are not anymore required to notify the relevant spectrum management authorities of their

⁸⁰ Articles 2 (2), 8 (2), 10 (10), 33 (4), 41 (1) and 42 (4).

⁸¹ Commission Implementing Regulation (EU) 2017/1354 of 20 July 2017 specifying how to present the information provided for in Article 10(10) of Directive 2014/53/EU of the European Parliament and of the Council (Text with EEA relevance), OJ L 190, 21.7.2017, p. 7–10.

⁸² The manufacturer may either provide, visibly and legibly, a brief written statement or a pictogram on the packaging.

⁸³ 52012SC0300

intention to place on the market radio equipment that uses frequencies, which are not harmonised throughout EU. The Commission has consequently terminated the operation of the OSN system (One Stop Notification), the online tool available to registered users on the GROW e-Services Portal to notify the relevant spectrum management authorities of their intention to place on the market radio equipment that uses frequencies which are not harmonised throughout EU⁸⁴, eliminating therefore any operational costs.

The class identifier 'alert sign' required to be affixed under Directive 1999/5/EC is not required by the RED. The practical value of this sign for consumers was very limited, there was confusion as to when it was required to be affixed and this requirement therefore created an unnecessary administrative burden for industry. The RED has clearer provisions on the information to be provided when there are restrictions of use⁸⁵. The Commission adopted an implementing act specifying how to present this information minimising the administrative burden such an obligation could trigger (see section 5.2.3).

In order to avoid unnecessary barriers to trade in radio equipment within the internal market, the RED, as well as Directive 1999/5/EC when it was in force, requires Member States to notify to the Commission and the other Member States their projects in the area of technical regulations, such as radio interfaces. The RED, compared to Directive 1999/5/EC, eliminated unnecessary administrative workload since this requirement on notification is not always applicable, for example, the RED exempts from the obligation to notify those national interface regulations that comply with binding Union acts. The Commission services prepared a template to be used by Member States and EFTA states when preparing and publishing national Interface Regulations that require the notification, facilitating therefore the operation and application of that provision.

The requirements of the RED on CE marking⁸⁶ mostly follow the principles of the New Legislative Framework. The main difference, compared to the New Legislative Framework, is the obligation to affix the CE marking on the packaging as well. There is no however indication to date since the applicability of the RED that this requirement creates any undue additional burden on manufacturers⁸⁷. Radio equipment can be subject to several pieces of EU legislation, in addition to the RED, providing for CE marking⁸⁸. Thus, the alignment with the

⁸⁴ For a transitional period, until end of 2017, the data remained available.

⁸⁵ Article 10 (10) of the Directive requires manufacturers to add information on the package that allows the identification of the Member States or the geographical area within a Member State where restrictions on putting into service or requirements for use exist in relation to the radio equipment. In addition, further information on the actual restrictions or requirements shall be completed in the instructions accompanying the radio equipment.

⁸⁶ The affixing of CE marking indicates the conformity of the product with the Union legislation applying to the product.

⁸⁷ According to Recital 45 of the RED, a requirement to affix the CE marking on the packaging of equipment has been found to simplify the task of market surveillance.

⁸⁸ e.g Directive 2011/65/EU (Restriction of Hazardous Substances in Electrical and Electronic Equipment), Directive 2006/42/EC (Machinery), Directive 2009/48/EC (Safety of Toys).

principles of the New Legislative Framework simplifies the burden imposed on manufacturers, since they can follow and apply uniform principles.

The introduction of onscreen CE marking and in general of e-labelling is an option that could be assessed within the sphere of the horizontal framework⁸⁹ should a need to revise any of these uniform principles arise further to an horizontal evaluation of existing legislation. In fact the recent Impact Assessment on the Goods Package⁹⁰ dealt with the costs and benefits of e-labelling, concluding that the economic advantage of e-labelling is not clear.

6. Conclusion

Overall, the implementation of the RED (as new Directive) worked well and without major problems with the exception of a delay from Member States to notify their transposition measures and a delay in the publication of harmonised standards.

The Commission provided the necessary support, by organising a workshop and issuing guidance documents, ensuring an easy transition to the new Directive (RED)⁹¹.

Regarding the transposition of the RED, though there was a delay from a number of Member States to notify their national transposition measures within the timeframe, the Commission did not receive any complaints in relation to problems caused on the free movement of compliant radio equipment. By the end of the year 2017, all Member States notified their national transposition measures⁹².

With respect to harmonised standards, the situation has been consistently improving due to the collective efforts of the implicated parties (Commission and Standardisation bodies) as well as the pragmatic approach followed, when needed, by the Commission. Consequently, the references of the vast majority of standards have been finally cited in the OJEU.⁹³

It should be noted that, under the RED, radio equipment shall be compliant with the essential requirements. The application of harmonised standards, whose references are published in the OJEU under the RED, is voluntary. When harmonised standards do not exist or are not applied, the manufacturer is required to consult a notified body for specific requirements⁹⁴.

⁸⁹ Radio equipment is subject to other EU acts as well which provide for CE marking. Thus if onscreen CE marking is introduced, these other EU acts shall be modified as well.

⁹⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2017:0466:FIN>

⁹¹ See section 2.

⁹² See section 3.1.

⁹³ See section 4.

⁹⁴ For the assessment of compliance with the requirements relating to Article 3 (2) and (3) but there is no such obligation for the requirements relating to Article 3 (1).

No problems have been encountered with respect to the notification of conformity assessment bodies under the RED⁹⁵ and the Commission has never received any information indicating that notified bodies were overloaded or unable to perform their tasks.

The RED, applicable as of 13 June 2016, provided for a one-year transitional period⁹⁶ (ended on 12 June 2017). Manufacturers preferred to use, until the end of the transitional period, Directive 1999/5/EC. Hence, by the finalisation of this Report, the vast majority of radio equipment, which was on the market, was assessed on the basis of Directive 1999/5/EC.

In the absence of sufficient data, statistics or evidence on the basis of the RED, no definitive conclusion can be drawn as to the question whether specific categories or classes of radio equipment were affected by a low level of compliance.

The RED conferred to the Commission specific empowerments⁹⁷ while certain Commission Decisions adopted under the repealed Directive (Directive 1999/5/EC) remain applicable under the RED.⁹⁸ Using these empowerments, the Commission already adopted one implementing act for the purposes of Article 10 (10) of the RED and is in the process of preparing a delegated act to ensure that 'smartphones' support effective access to emergency services e.g. E112.

There are also calls within the Working Group of TCAM for delegated acts under the RED for ensuring that: the security and privacy of the user are protected; the compliance of the radio equipment is not affected due to the use of new or modified software; and radio equipment interworks with common chargers.

It however first needs to be explored which classes or categories of radio equipment could be covered by such delegated acts. In order to gather experts' advice and discuss in depth these issues, the Commission established a Commission Expert Group on Reconfigurable Radio Systems and is in the process of establishing a new expert group on radio equipment with a broader mandate⁹⁹. The adoption of a delegated act should be preceded by an impact assessment in line with the Better Regulation Guidelines.

Under Article 47 (2) of the RED, a report shall be prepared every five years which means that the next report will be prepared and submitted in 2023.

⁹⁵ See section 3.3.

⁹⁶ Article 48 of the RED.

⁹⁷ See section 5.2.

⁹⁸ See attached Annex.

⁹⁹ See section 5.2.1.

Annex

Changes Introduced by the RED

Changes between the scopes

With regard to Directive 1999/5/EC, the RED has introduced the following changes:

- Pure radio sound and radio TV receive-only equipment, which has been excluded from Directive 1999/5/EC, falls within the scope of the RED;
- Equipment operating below 9 kHz falls within the scope of the RED;
- Radio-determination equipment is clearly included within the scope of the RED;
- Pure wired telecom terminal equipment does not fall within the scope of the RED;
- Custom built evaluation kits destined for professionals to be used solely at research and development facilities for such purposes is explicitly excluded from the RED.

Other changes (non-exhaustive list), not relating with the alignment with the NLF

- For the essential requirement set out in Article 3.1.a, the assessment shall also take into account the reasonably foreseeable conditions of use;
- The essential requirements set out in Article 3.2 refer also to the efficient use of radio spectrum;
- No publication of the public interfaces from network operators (Article 4.2 of Directive 1999/5/EC was removed);
- Manufacturer's notification to Member States of radio equipment that uses frequencies which are not harmonised throughout EU is no longer required (Article 6.4 of Directive 1999/5/EC was removed).

Commission Decisions taken according to Directive 1999/5/EC

Commission Decisions taken according the Article 3.3 of Directive 1999/5/EC remain applicable under the RED to the extent that they are not incompatible with the RED. These are the following:

- Commission Decision 2005/631/EC of 29 August 2005 concerning essential requirements as referred to in Directive 1999/5/EC of the European Parliament and of

the Council ensuring access of Cospas-Sarsat locator beacons to emergency services (OJ L 225, 31.8.2005, p. 28);

- Commission Decision 2005/53/EC of 25 January 2005 on the application of Article 3(3)(e) of Directive 1999/5/EC of the European Parliament and the Council to radio equipment intended to participate in the Automatic Identification System (AIS) (OJ L 22, 26.1.2005, p. 14);
- Commission Decision 2013/638/EU of 12 August 2013 on essential requirements relating to marine radio communication equipment which is intended to be used on non-SOLAS vessels and to participate in the Global Maritime Distress and Safety System (GMDSS) (OJ L 296, 7.11.2013, p. 22);
- Commission Decision 2001/148/EC of 21 February 2001 on the application of Article 3(3)(e) of Directive 1999/5/EC to avalanche beacons (OJ L 55, 24.2.2001, p. 65);
- Commission Decision 2000/637/EC of 22 September 2000 on the application of Article 3(3)(e) of Directive 1999/5/EC to radio equipment covered by the regional arrangement concerning the radiotelephone service on inland waterways (OJ L 269, 21.10.2000, p. 50). Commission Decision 2005/631/EC.

In addition, Commission Decision 2000/299/EC of 6 April 2000 establishing the initial classification of radio equipment and telecommunications terminal equipment and associated identifiers (OJ L 97, 19.4.2000, p. 13), adopted under Article 4.1 of Directive 1999/5/EC, remains valid with the exception of the provisions that refer to the 'Alert sign'.

The class identifier as “information sign” or “alert sign”, required by the Directive 1999/5/EC for alerting the user to potential restrictions or requirements for authorisation of use of the radio equipment in certain Member States, is not required by the RED. Instead the manufacturer is required to provide information in accordance with Article 10 (10) of the RED when restrictions on putting into service or of requirements for authorisation of use exist in one or more Member States.

The Commission adopted an implementing act specifying how to present this information. In particular, the implementing act provides two options on how the information can be presented on the packaging. The manufacturer may either provide, visibly and legibly, a brief written statement or a pictogram on the packaging.

In addition, the implementing act provides that detailed information shall be provided in the instructions in a language easily understood by end-users as determined by the Member State concerned.