

Background note

The R&TTE Directive 1999/5/EC (hereafter ‘the Directive’) establishes a framework for the placing on the market, free movement and putting into service in the EU of radio equipment and telecommunications terminal equipment. It addresses a large part of the €90bn market for telecommunications and radio equipment, covering inter alia mobile telephones, broadcast transmitters, fixed telephones and data transmission modems. Non-radio telecommunications infrastructure such as most internet routers and switching systems is excluded from its scope. The Directive is applied in the European Economic Area (EEA) and also in Turkey in application of the EU-Turkey Customs Union agreement. Switzerland has aligned its national legislation with the provisions of the Directive on a voluntary basis.

The Directive has been instrumental in the completion of the internal market for radio equipment, replacing thousands of national type-approval schemes and introducing a light-touch regulatory regime facilitating innovation and competition. Overall, the regulatory framework set up by the Directive has allowed to achieve its intended goals, i.e. a high level of protection of health and safety for users, the electromagnetic compatibility (EMC) for telecommunication terminals and radio equipment as well as the avoidance of harmful interference.

The products covered by the Directive are also strongly impacted by other European legislation such as the electronic communications regulatory framework, and in particular by the Radio Spectrum Decision and its implementing measures for the progressive harmonisation of spectrum.

Following the 2004 Commission Report on the Operation of the Directive (COM(2004)288), the Council already invited the Commission to propose a revision. The Commission has been working within TCAM, the standing committee of the Directive, in order to develop the objectives for a revision of the Directive, and a broad and deep public consultation was performed in 2007. The European Parliament has recently raised its interest in spectrum management for the provision of electronic communication services, a matter which as said above has an important impact on R&TTE equipment. The 2010 Commission Report on the Operation of the Directive (COM(2010)43) draws attention to some difficulties in the operation of the Directive in view to achieve its desired effects, and indicates the need to consider options to address them within a future revision of the Directive, for which a Commission proposal would be scheduled for end 2010.

Overall, the regulatory framework set up by the Directive has allowed to achieve its intended goals, i.e. a high level of protection of health and safety for users, the electromagnetic compatibility for telecommunication terminals and radio equipment as well as the avoidance of harmful interference. Without a change in the approach, some adaptations are required in order to optimise operations, to provide better tools for market surveillance authorities and to align the Directive with the New Legal Framework for the Internal Market. There are a number of issues which present clear room for improvement:

- a. A low level of compliance in certain product categories with the technical and with the administrative requirements established by the Directive. Related to this, a limited traceability of the manufacturers and importers and other entities or persons

responsible for placing a product on the market, which prevents market surveillance authorities from being efficient and effective

- b. the scope of the Directive includes equipment already covered by more specialised EU legislation or by international agreements, which creates issues of demarcation and consistency, in particular with equipment for maritime, terrestrial transport and aerospace applications.
- c. within the scope of the Directive is currently included equipment for which the provisions of the Directive are not well adapted (e.g. very low power radio equipment, complex installations, reconfigurable equipment, equipment likely to create cumulative effects)
- d. the Directive includes many administrative provisions, such as notifications to authorities of certain categories of equipment being placed on the market, and the clarity and the value-of some of them appear to be questionable. This creates unnecessary burden to business and administrations as well as dissimilar approaches among national administrations operating with the Directive. Provisions intended to support competition, such as the publication of radio interfaces, also seem to pay a limited contribution to their goal. Inconsistencies between the Directive and other New Approach (eg Toys Directive) and non-New Approach pieces of legislation (eg RoHS, WEEE, Eco Design Directive) covering the same products also create unnecessary difficulties. These problems are common to other Single Market legislation and are at the origin of the NLF (New Legislative Framework for the Internal Market). Alignment with the NLF is therefore the baseline to address these issues
- e. Market access for new radio technologies depends in practice on the availability of applicable harmonised standards facilitating compliance with the R&TTE Directive and of usable spectrum. Processes for putting in place regulatory decisions concerning spectrum use and harmonised standards are relatively complex, and market entrance for innovative radio technologies in the EU is consequently delayed or discouraged. Difficulties in the notified body route to market access have also been identified, as it appears that notified bodies would have difficulties in issuing opinions on the conformity of radio equipment with the essential requirements of the R&TTE Directive where an applicable harmonised standard is not available. Consequently, when moving from the research and development phase to commercial deployment, the lack of harmonised standards allowing to place innovative products on the market in compliance with legal requirements, and availability of suitable spectrum allocations and associated conditions of use may create legal uncertainty and thus can deter potential investors in technology.

A draft Roadmap for the revision of the Directive is available at:

http://ec.europa.eu/governance/impact/planned_ia/docs/197_entr_radio_equipment_en.pdf

Annex A: Compliance with the Directive:

- **Introduction of obligations for importers and distributors:** Both actors must check that products bear the CE marking, are accompanied by the required documents and carry the name of the manufacturer and the importer (if relevant). Importers must furthermore check that the manufacturer outside the EU has applied the correct conformity assessment procedure and establish a link to the manufacturer that allows him to obtain the technical documentation, when it is requested by authorities. They must carry out sample tests on products which they have supplied, when this is appropriate in the light of the risks presented by a product to the health and safety of consumers. If necessary, they must also keep a register of complaints, non-conforming products and product recalls and keep distributors informed about such monitoring (Articles R4 and R5 in Annex 1 of Decision 768/2008).
- **Additional manufacturer obligations:** In addition to the obligations that the current legislation already foresees for manufacturers they must provide instructions and safety information in the language easily understood by consumers and end-users. Furthermore they are subject to the same obligations on sample testing and product monitoring as importers (Article R3 in Annex 1 of Decision 768/2008).
- **Introduction of traceability requirements:** New obligations are introduced for all economic operators to ensure traceability of products throughout the whole distribution chain. Manufacturers and importers must put their name and address on the product or, where this is not possible, on the packaging or an accompanying document. Furthermore every economic operator must be able to inform the authorities from whom he purchased a product and to whom he supplied it. This obligation does not include sales to end-users (Article R7 in Annex 1 of Decision 768/2008).
- **Reorganisation of safeguard clause procedure (market surveillance):** The safeguard clause procedure has been reorganised and streamlined. The new procedure ensures that the relevant enforcement authorities are informed about dangerous products and that equivalent action is taken against that product in all Member States (Articles R31-33 in Annex 1 of Decision 768/2008).

Annex B: Product registration

The problem of non-compliance could also be addressed by introducing **an obligation for manufacturers to register their products on a EU-wide system** prior to their placing on the market. The system could work as follows

- * *The manufacturer registers, and is allocated a unique manufacturer identifier (mID)*
- * *The manufacturer assigns himself a unique product identifier (pID) to each particular product. This may be performed well in advance of placing a product in the market, so that the manufacturer has details of both mID and pID prior to product development if necessary.*
- * *The manufacturer assesses the conformity of his product, and affixes the product identifier (mID+pID) to his product*
- * *The manufacturer uploads in a central registration system the following information:*
 1. *Unique product identifier + complementary information allowing identification including pictures*
 2. *Contact point information specific to the product (if applicable)*
 3. *Declaration of Conformity*
 4. *Technical information of the product (as per current article 6.4 of the Directive) or, at the choice of the manufacturer, a link to a web-page of the manufacturer giving access online to MSAs to the same information*

Note: The other elements of the technical documentation do not need to be made available online. The manufacturer (or other economic operators down the supply chain) would have to provide them on request from the MSAs as required by the NLF.