

POSITION PAPER

Brussels, 9 October 2020

Orgalim comments for the upcoming delegated act for internet-connected radio equipment and wearables

1. EXECUTIVE SUMMARY

Orgalim, Europe's technology industries, welcomes the opportunity provided by the European Commission to give comments and suggestions in view of the activation of a delegated act pursuant to article 3(3) of the Radio Equipment Directive (RED) (sub-articles d,e,f).

We would first and foremost like to stress that Orgalim members are still of the opinion that a horizontal approach to cybersecurity requirements would be more beneficial than delegated acts by holistically addressing the risks and concerns related to cybersecurity, without creating a patchwork of requirements in product specific legislation, while ensuring the necessary level of protection.

This paper will however only focus on the following four aspects which were raised at the RED Expert Group, in order to support the Commission in drafting the delegated act, namely:

- The definition of the scope of the delegated act
- The applicable articles
- The exemptions
- The implementation period

2. ORGALIM COMMENTS AND PROPOSALS

2.1. Scope

- **Toy device and wearable device**

Orgalim is aware that the original discussions on this delegated act included toy devices and wearables and supports the proposed definitions which includes 'non-internet connected' devices. This ensures that short-range devices (SRD) toys and wearables are covered e.g. bluetooth.

Orgalim represents Europe's technology industries, comprised of 770,000 companies that innovate at the crossroads of digital and physical technology. Our industries develop and manufacture the products, systems and services that enable a prosperous and sustainable future. Ranging from large globally active corporations to regionally anchored small and medium-sized enterprises, the companies we represent directly employ 11.5 million people across Europe and generate an annual turnover of over €2,100 billion. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.

- **Internet-connected device**

Orgalim believes that the initial definition is very vague and would lead to a considerable risk of legal uncertainty both for the market surveillance authorities and manufacturers. We think that a clear definition is crucial for the correct application of this delegated act. The concept of "directly or indirectly" is unclear and shall be avoided. There is an unfortunate precedent with Radio and Telecommunications Terminal Equipment (R&TTE) Directive, which included precisely this formulation (directly/indirectly) and led to endless discussions between the European Commission, ADCO R&TTE-D and industry about the right interpretation.

We would also like to highlight that "internet" is not used or defined in the RED. To provide certainty to the delegated act, we propose to re-formulate this definition to cover radio equipment having an individually assigned public internet protocol (IP) address. It is essential that the delegated act specifically covers those devices that could potentially present cybersecurity risks. These devices are those able to connect to the internet directly by means of its own public IP address.

→ **Orgalim proposal:** We propose the following **definition for internet-connected device**. internet-connected device: any radio equipment, falling within the scope of Directive 2014/53/EU, which is capable to communicate directly to the internet having an individually assigned public internet protocol (IP) address;

- **Public internet protocol (IP) address**

In order to avoid any misunderstanding or leave room for misinterpretation of the scope of the delegated act, Orgalim believes it is important to add a **new definition for "Public internet protocol (IP) address"**. This new definition clarifies that "internet-connected devices" under the scope of the delegated act are those which have obtained a unique IP address from an internet service provider (ISP). These devices are the only ones which can be publicly visible and potentially accessible by other devices connected to the internet. Devices without a public IP address (e.g. local home private networks without direct connection to the internet) are not included in this definition.

→ **Orgalim proposal:** The **public internet protocol (IP) address** is defined as the unique address that is individually assigned to a device which allows it to become publicly visible and directly addressable by any other device connected to the internet.

2.2 Applicable articles and essential requirements

- **Article 3(3) (d): internet-connected devices**

The Essential Requirement of article 3.3(d) is: "Radio equipment does not harm the network or its functioning nor misuse network resources, thereby causing an unacceptable degradation of service".

The intention is to protect "networks", but "network" is not defined in the RED. The scope of the RED is limited to radio communication and determination in order to protect the radio spectrum. Network is usually for instance in article 3.2 referring to radio (communication) networks. Applying article 3.3(d) to internet-connected devices creates a deviating understanding of network: instead of radio communication, network it is enlarged to the "internet".

→ **Orgalim proposal:** Orgalim argues that it is sufficient to enforce article 3.3(e) and (f), to cover cybersecurity. This will also reduce the risk of inconsistent and overlapping requirements.

- **Article 3(3) (e) and (f): internet-connected devices, toy devices and wearable devices**

Orgalim supports the proposed scope definition for article 3(3)(e) to include internet-connected devices, toy devices and wearable devices, insofar as they are capable of processing any information or data covered by Regulation (EU) 2016/679 (GDPR) or Directive 2002/58/EC (ePrivacy). We are also supportive of the inclusion of article 3(3) (f) in the delegated act, defined as internet-connected devices, in so far as they enable the holder or user to transfer money, monetary value or virtual currency

2.3 Exclusions

Orgalim is in favour of the proposed exclusions for medical devices (Regulations 2017/745 and 2017/746), drones and airborne products (Regulation (EU) 2018/1139, EASA); and motor vehicles (Regulation 2019/2144). In line with the support for a more horizontal approach, Orgalim would further support exclusions in other areas, which already have cybersecurity requirements in their applicable legislation and/or standards.

2.4 Date of application

We would like to point out that the essential requirements of article 3.3 are new requirements for radio equipment which need to be considered in the product planning design and production. Before this consideration can be started, applicable standards need to be published and cited in the EU Official Journal (OJ). This means industry needs realistic time after EU OJ listing.

→ **Orgalim proposal:** Orgalim propose a transition period of five years before the applicable requirements of the delegated act become applicable. As a justification for this duration, we expect the standardisation and listing process to take three years and manufacturers need another two years to implement the technical requirements defined in the standard. In other words, if the intended publication of the delegated act is Q3 of 2021, it would apply as from Q3 of 2026.

3. CONCLUSION

In a nutshell, Orgalim has put forward the following concrete suggestions:

- Narrowing the scope down to equipment that is able to communicate with the internet directly (i.e. having an own public IP address). Equipment able to access the internet only through another device (e.g. via a wireless router) is not to be included.
- Considering only articles 3.3(e) and (f) in the delegated act, and not 3(3)(d), as the former would sufficiently cover cybersecurity aspects.
- Supporting the exclusions proposed by the EU Commission for medical devices, drones and airborne products, as well as for motor vehicles.
- A transitional period of five years (i.e. five years after publication – estimated in Q3/2026).