

Brussels, 25 November 2013

Radio Equipment Directive: Keep legal certainty in mind

Position Paper referring to the European Parliament's Report on Radio Equipment Directive [A7-0316/2013](#)

1. INTRODUCTION

Orgalime welcomes the Report of the European Parliament's Internal Market and Consumer Protection Committee (IMCO) as it significantly improves the Commission's Proposal for a Radio Equipment Directive.

We hope that the Parliament will strongly support its main amendments to the Commission's proposals during the inter-institutional dialogue. For the European engineering industries the following issues are of the utmost importance:

2. EXCESSIVE SCOPE EXTENSION: A SOURCE OF CONFUSION AND COST

We embrace the Parliament's decision for the existing Directive's scope to remain unchanged.

The only way to avoid extending the scope beyond the purpose of this legislation is by defining radio equipment as **products that intentionally emit or receive radio waves for communication purposes.**

An extended scope, as suggested by the European Commission, would result in the Radio Equipment Directive covering a vast number of product categories that are already sufficiently regulated under the Low Voltage Directive and Electromagnetic Compatibility Directive. These include inductive heating appliances, inductive power transfer appliances, medical devices such as high frequency surgery equipment, industrial sensing devices, public railways/trams, robot joints and inductive proximity switches.

If all these products were covered by the Directive, then their manufacturers would have to:

1. Revise their technical files to take into account the efficient radio spectrum use
2. Revise harmonised standards applicable for these products
3. Provide the Declaration of Conformity to accompany the product
4. Inform users about available interfaces and geographical areas for use
5. Alert users on restrictions to use¹

¹ These elements are mentioned in the Commission's impact assessment, but are not taken properly into account.

Orgalime, the European Engineering Industries Association, speaks for 38 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10.3 million people in the EU and in 2012 accounted for some €1,840 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.

Trying to avoid this problem by excluding vast product categories through an annex (such as Annex II is currently suggesting) would cause never ending discussions among policy makers on which products to exclude. This would inevitably cause legal uncertainty for manufacturers.

Consequently, **Orgalime requests keeping the “communication” criterion for defining radio equipment**. A limited amount of problems in spectrum’s usage can be resolved by adding the concerned products (such as traffic radars) to the Directive’s scope through the use of implementing acts.

3. REGISTER

We fully support the Parliament’s choice to delete the possibility of establishing a registration procedure for certain radio equipment categories as suggested in the Commission’s proposal (article 5).

We hope that the inter-institutional negotiations will not restore this option for the following reasons:

1. Registers raise **confidentiality questions**. According to the Commission’s impact assessment manufacturers would be obliged to upload parts of their technical file to the register. This would be a cause for major concern, given that the technical file is part of manufacturers’ intellectual property and thereby should be transmitted to authorities only further to a reasoned request.
2. It would **cause disproportionate costs to legitimate manufacturers** and thereby widen the gap in sales prices with unfair competitors. Legitimate manufacturers would need to undergo a registration procedure, update the product information and attach the registration number to all concerned products. On the contrary, rogue traders would save time and money by skipping the registration procedure.
3. It would be **ineffective**. Rogue traders would simply affix a fake registration number on their products, depriving market surveillance authorities of the ability to trace them back.

Overall, introducing product registration would not be more effective than existing traceability requirements outlined in the New Legislative Framework legislation, such as the Low Voltage Directive or the Electromagnetic Compatibility Directive. On the contrary, they would create substantial costs and confidentiality concerns to legitimate manufacturers.

4. ADMINISTRATIVE REQUIREMENTS

The European Parliament’s Report aligns the Radio Equipment Directive with the New Legislative Framework in two points.

Firstly, it deletes the manufacturer’s obligation to **accompany the product with a full or simplified Declaration of Conformity** (article 10.8).

Given that a vast number of new product categories risk falling under the Directive’s scope, we consider the Parliament’s decision as the only reasonable option. Otherwise, manufacturers would need to complete further administrative tasks before placing their products on the market.

Secondly, the Parliament deletes article 21.5 which **obliges manufacturers to translate parts of the technical file into the Member State’s language within 30 days** further to a request by market surveillance authorities.

Orgalime supports this choice, because translation requirements are covered by article 10.11, which is in line with the New Legislative Framework. There is no reason for the Radio Equipment Directive to have stricter translation requirements than the rest of the harmonised legislation.

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