Radio equipment and telecommunication terminal equipment and mutual recognition of their conformity

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The Commission presents its 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. The Directive establishes a framework for the placing on the market, free movement and putting into service in the European Union of radio equipment and telecommunications terminal equipment. This report draws attention to some difficulties in the operation of the Directive. Possible remedies will be addressed in a comprehensive Impact Assessment in the context of a future revision of the Directive, for which a Commission proposal is scheduled for end 2010.

In its assessment, the Commission states that 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.

Regarding use of spectrum, in spite of the limited technical compliance observed in some types of products, there is no evidence of an increase of levels of harmful interference. This may suggest that standards may be too stringent, and that a review of the technical approach in this area may allow a more intense and efficient use of spectrum.

There are two main issues that merit a more in-depth investigation: market entrance for innovative radio technologies due to the existing process for putting in place the necessary regulatory decisions concerning spectrum use and harmonised standards, and the traceability of the manufacturer or the person responsible for placing products on the market.

The report also states that the **scope of the Directive needs to be reviewed**. For instance, the radio and TV receivers which are not able to transmit by radio or cable do not fall within the scope of the Directive, while those which are able to transmit signals do.

Traceability of defective products is an issue of concern: market surveillance authorities (MSA) can often not identify the manufacturer or the person responsible for placing a product on the market, especially for smaller market players. Strong, often costly effort is spent on finding manufacturers or importers, preventing a more efficient allocation of the limited resources of MSAs. In consultation, a compulsory on-line registration of either the manufacturers or their products and/or an adaptation of the Directive to the New Legal Framework (NLF) have been suggested to improve traceability.

The Directive provides for a safeguard measure (Article 9) such as a “sales ban’. The existing procedure allows for national measures only with a notification to the Commission. This procedure has been considered as too lengthy since it can usually not be completed before the end of the life cycle of the non-compliant product. The Radio Spectrum Policy Group recommended investigating the possibility of an extension of a national safeguard clause to the whole of the EU market, where appropriate.

The Directive and the general framework for competitiveness and innovation in this area: since its entry into force the Directive has been instrumental in consolidating the Internal Market for products within its scope. The framework works well for placing on the market equipment using established technologies, and also facilitates their evolution, in particular through the timely revision of harmonised standards. The Directive appears to be less suited to allow the placing on the market of products based on fundamentally new radio technologies not yet covered by harmonised standards. In the absence of harmonised standards, the manufacturer has to consult a Notified Body for placing a product on the market. In its Opinion on "Streamlining the regulatory environment for the use of spectrum", the RSPG noted "that stakeholders (notified bodies, manufacturers…) seem unable to establish, with any certainty, the conformity of radio equipment with the essential requirements of the R&TTE Directive where a harmonised standard has not been applied or does not exist." Regulators also tend to submit innovative radio products to conservative usage constraints within the bands that are allowed. Furthermore, outside the scope of the Directive, but strongly linked to the introduction of innovative radio technologies, is the issue that innovations may not sufficiently fit within existing spectrum allocations and are therefore legally prevented from being used. Member States do offer the possibility of experimental rights of use which can support the development of innovative technologies at national level. 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. However increased flexibility for spectrum use as introduced by the 2009 review of the electronic communications regulatory framework may offer a solution to this issue. Due to these challenges related to a complex, and somewhat inflexible regulatory environment, companies may choose to move their pilot-tests, pre-commercial and initial commercial deployment to other trading areas, such as the United States of America. This prevents innovation in radio technologies in Europe from reaching its full potential.