

JBCE input on draft Delegated Act on Radio Equipment Directive

27 August 2021

Introduction

JBCE appreciates the opportunity to provide comments on the draft delegated act for Articles 3(3)(d), (e) and (f) of the Radio Equipment Directive and supports the initiative to improve the cybersecurity of Radio Equipment.

We would like to provide our comments on 2 points below.

Scope

As the Radio Equipment Directive was not designed with cybersecurity in mind, it seems important to limit the scope as much as possible to the classes of radio equipment for which clear risks were identified during the impact assessment. While risks for internet-connected radio equipment have been clearly identified, this might not be the case for all categories of wearable devices.

Our membership believes that the proposed definition for wearable devices used in the draft delegated regulation is not very clear and open to interpretation. Different interpretations of manufacturers and market surveillance authorities might lead to legal uncertainty and should be avoided to ensure a level playing field. It is recommended that the Commission's RED guide¹ is updated with more information on the actual products covered by this definition.

More importantly, the wider scope of all wearable equipment seems to lack evidence of identified risks related to the protection of personal data and privacy of the user. According to the Commission's impact assessment² and initial roadmap³, it was needed to protect location data and other personal data from users wearing a smartwatch or wrist-worn fitness trackers. For example, recent smart watches can measure health parameters (heart rate, steps,...) and track the location of the user. While it is important to protect such personal data of the users, expanding this category to any radio equipment being worn on, strapped to, or hung from the human body or clothing, seems disproportionate. A digital camera strapped around the neck, a noise cancelling headphone worn on the head or a portable music player attached to a T-shirt is not presenting the same risks in term of privacy or personal data protection. The final report of the impact assessment indicated for example that "penetration wireless headphones or microphones will have few consequences, because they contain little information".

JBCE members are therefore of the opinion that the scope should be improved to make it clearer and more proportionate. Our membership therefore suggests reverting to the earlier Commission proposal⁴ of **"any wrist or pocket watch falling within the scope of Directive 2014/53/EU, other than connected devices"**.

¹ Guide to the Radio Equipment Directive 2014/53/EU

² Impact Assessment on Increased Protection of Internet-Connected Radio Equipment and Wearable Radio Equipment

³ Inception impact assessment - Ares(2019)476926

⁴ EG RE(08)04r01

Date of applicability

The draft text suggests that the regulation “shall apply from... 30 months after the date of entry into force of this Regulation”. While JBCE understands the importance and urgency of these measures, sufficient time needs to be allowed for industry to adapt and place compliant products on the market. Our membership is concerned that providing compliant products in only 30 months after entry into force of the regulation might be impossible.

Most of our members count on the availability of Harmonised Standards cited in the EU Official Journal to demonstrate compliance to the Essential Requirements of the Radio Equipment Directive. As it stands today, the Harmonised Standards necessary to facilitate compliance and verification of the Essential Requirements under Article 3(d), (e) and (f) are not available. Based on experience with the Harmonised Standards for the Essential Requirements covering Health & Safety, EMC and Radio spectrum under the RED, the lead times for development by the European Standardisation Organizations (ESOs) and for citation by the Commission services has significantly increased in the past years. As the subject matter of cybersecurity is new to all stakeholders involved in these processes, it is anticipated that the development of completely new Harmonised Standards will take even more time. The ESOs are still in the phase of analyzing the Standardization Request and it is expected it would take a minimum of 24 months from adoption of the Standardization Request to implementation.

In addition, it is important to understand that manufacturers can only design or modify products when the specifications are clear. This means that any hardware/software design or potential redesign can only start from the point when Harmonised Standards are cited in the EU Official Journal. As Japanese manufacturers typically work with international supply chains and products are shipped from overseas, it requires considerable time to import into the European Union. We believe that 18 months is the usual transition time to adapt to new Harmonised Standards cited in the EU Official Journal and request that such time is available to place compliant products on the EU market.

As such it does not appear practicable that the Harmonised Standards can be in place to support implementation of the Essential Requirements within the 30-month deadline from entry into force of the Delegated Act. Sufficient time for the ESOs to adopt quality Harmonised Standards is of paramount importance to ensure the effective implementation of the Essential Requirements; as is sufficient time from the citation of the Harmonised Standards in the OJ for manufacturers to implement the technical requirements as recognized in Recital 18.

Considering the expected longer lead time for development of the Harmonised Standards by ESOs and the 18-month timeframe needed to adapt to the new requirements and place products on the market, it is anticipated that 30 months is too short to comply with these requirements. JBCE therefore submits that the **ideal date of application of the Essential Requirements should be 36 to 42 months from entry into force**. If the Commission is to proceed with the 30-month timetable, the standardization request for the Harmonised Standards must be limited to minimum baseline requirements.

JBCE kindly requests the European Commission to take its comments into account and is willing to provide more details on its position where needed.



About JBCE

Founded in 1999, the Japan Business Council in Europe (JBCE) is a leading European organization representing the interests of about 90 multinational companies of Japanese parentage active in Europe. Our members operate across a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceutical, textiles and glass products.

For more information: <https://www.jbce.org/> / E-mail: info@jbce.org
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