



Raising standards for consumers



POSITION PAPER

European Commission Proposal for a Directive on the making available on the market of radio equipment (RED)

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List of Contents

1. Executive summary.....	p.2
2. Background.....	p.4
3. Specific Comments.....	p.5
Annex	
<i>About ANEC.....</i>	p.12

1. Executive Summary

This position paper expresses ANEC's views on consumer-relevant aspects of the European Commission Proposal for a Directive on the making available on the market of radio equipment (RED)¹. We welcome the opportunity to comment on the revision of this Directive not only because it concerns the safety of many consumer-relevant products such as mobile phones and other short range radio devices, but it also contains provisions for effective market surveillance in order to ensure a high level of protection for consumers.

In addition to our general comments on the proposal, the paper contains some suggestions on issues, which ANEC believes need to be further clarified.

In particular we call for the following aspects to be addressed by the proposed Directive:

- The new definition of 'radio equipment' should cover multipurpose devices and/or optional/built-in radio equipments (article 2.1);
- We welcome very much the possibility that interoperability can be required as an additional essential requirement. However, ANEC would like to call on the European Parliament and Council of Ministers to press on the European Commission for the use of this possibility provided by article 3.3. as a matter of priority;
- We welcome article 5 introducing the possibility to require the registration within a central system of products within categories showing low levels of compliance. We would like to suggest shortening the time of applicability of article 5 to two/three years after the entry into force of the revised Directive. This is in line with the timeline of article 47 about review and reporting;
- ANEC thinks that consumers can be effectively protected only if their (foreseeable) behaviour is duly taken into account by manufacturers when designing products. We suggest for the concept of "use in accordance to the intended purpose *or under the conditions which can be reasonably foreseen*" to be used in article 6;
- In addition to the legitimate objectives stated in paragraph 2 of article 47, we would like to suggest that the review of the operation of the Directive by the Commission also covers a high level of consumer protection;
- As consumers are buying more and more products over the Internet, we think that a new provision on Internet sales should be introduced. In addition, we believe this would also benefit market surveillance authorities (so called "Desktop market surveillance");

¹ European Commission Proposal for revision of the Radio and Telecommunication Terminal Directive (R&TTED, 1999/5), COM (2012) 584 final 2012/0238 (COD)

- We welcome very much the removal of the requirement to affix CE marking on user instructions foreseen by the current Annex VII(3);
- National surveillance and monitoring systems should provide consumers with the possibility of submitting complaints to the competent authorities on unsafe or non-compliant products. Bearing in mind the high level of non-compliant radio equipments entering the European market, we believe that a more specific and detailed provision than the New Legislative Framework is needed.

2. Background

The European Commission started the revision process of the Radio and Telecommunication Terminal Directive (R&TTE Directive) in 2007, to which ANEC contributed².

The Commission conducted a further public consultation in 2010 focusing on the impact of some of the measures under consideration. ANEC participated in the public consultation³.

ANEC was also able to express its views on the revision of the R&TTE Directive throughout 2010 and 2011 within the framework of the activities of TCAM, the Committee established under the Directive. In particular, we outlined the major issues we believe should be taken into account in the revised R&TTE, based on the document presented by the European Commission at the TCAM meeting on 10 December 2010 (TCAM 32)⁴.

² ANEC reply to EC public consultation on the R&TTE Directive (ANEC-ICT-2007-G-078)

³ ANEC preliminary contribution to the European Commission Comments/proposals to the review of the R&TTE Directive (1999/5/EC) (ANEC-ICT-2010-G-001)

⁴ ANEC comments on revision of the R&TTE directive (ANEC-ICT-2011-G-001)

3. Specific Comments

3.1. Scope (art. 1 the Proposal) Definitions (art. 2 of the Proposal)

Article 2(1) sets out a new definition of 'radio equipment' which is different from the present scope of the Directive. The new scope includes all and only equipment which intentionally transmits signals using radio spectrum, whether for the purpose of communication or other. This means that pure receivers and fixed-line terminals are not falling under the scope of this Directive but Directive 2004/108/EC (EMC) and Directive 2006/95/EC (LVD).

However, Annex II clarifies that passive antennas, cochlear implants and microwave ovens do not fall under the scope of the Directive while active antennas and jammers are included.

From a consumer point of view, it is important that the new definition covers multipurpose devices and/or optional/built-in radio equipments. For instance a number of refrigerator's manufacturers propose now the possibility of Bluetooth transmission for functions such as "shopping list management". Although we can understand some reluctance to call a refrigerator a "radio equipment", we believe that these cases shall be, in a way or another, included. Soon, all electronic and household electrical appliances will have such wireless communication capacity.

Our suggestions:

Article 2.1 (1)

'radio equipment' means a product which intentionally emits radio waves in order to serve its [primary, secondary and optional] purposes [as appropriate], or a product which must be completed with an accessory, such as antenna, so as to emit radio waves in order to serve all its purposes;

3.2 Essential requirements (art. 3 of the Proposal)

We welcome that Article 3(3) (a) makes it possible to require radio equipment to interoperate with accessories such as chargers (as a new essential requirement).

For many years now, ANEC and its members have been active in lobbying the manufacturers of mobile phones to provide a common external power supply (CEPS) for mobile phones. The present plethora of chargers – both within brands and among brands - represents unnecessary costs to the consumer in their direct (or implied) purchase, and to the environment in the extraction of the raw materials for their construction and in their disposal⁵.

⁵ ANEC final position paper on interoperability and the role of standards (ANEC-ICT-2012-G-057final)

In 2008, ANEC asked for a mandate to achieve a standardised universal power supply and provided the European Commission with an outline of the technical requirements for the mandate, as well as proposals on the quality aspects. At the same time, the (then) EU Commissioner for Enterprise & Industry, Günter Verheugen, promoted a voluntary agreement with the manufacturers of mobile phones on the provision of standardised chargers. This led to a Memorandum of Understanding (MoU)⁶ on the Harmonisation of a Charging Capability for Mobile Phones, signed by 14 manufacturers on June 5th 2009⁷ for a duration of three years. The MoU committed the signatories to market common charging capability for all new mobile phone models, one year after the availability of the related European Standards.

Following the signature of the MoU, the Commission issued a mandate on a common charging capability for mobile telephones (M/455), on which ANEC commented⁸. The related European Standards have been available since December 2010⁹.

EN 62684:2010 applies only to data-enabled phones and fails to address no-load consumption, so permitting the charger to draw often significant current even when the phone is charged. We believe that a more demanding standard was possible, and that a standard for a common external supply for other devices such as gaming consoles and personal music players, digital cameras and camcorders was also achievable, had the manufacturers had the ambition or been compelled to do so by the Commission.

ANEC has always been sceptical of the voluntary agreement initiated by the European Commission. Today, after the expiry of the industry MoU, it is unclear whether it was successful, not only in terms of adherence by its signatories but the actual compliance of their chargers with EN 62684. Moreover, it is far from clear what will happen to the new phones (and chargers) coming to the market this year, after the expiry of the MoU. Will consumers have to buy new chargers with their new phones? In September 2012, to coincide with the European launch of the Apple iPhone 5, on sale in some countries on 21 September, ANEC issued the press release 'iPhone 5 - Consumers struck by Lightning'¹⁰. In light of our call for the harmonisation of chargers for mobile devices, we expressed our

⁶ <http://tinyurl.com/csskkke>

⁷ Motorola, LGE, Samsung, RIM, Nokia, SonyEricsson, NEC, Apple, Qualcomm, Texas Instruments, Emblaze Mobile, Huawei Technologies, TCT Mobile, Atmel.

⁸ ANEC-ICT-2009-G-036, ANEC-PT-2009-EuP-043

⁹ EN 62684 "Interoperability specifications of common external power supply (EPS) for use with data-enabled mobile telephones", available since December 2010; EN 301 489-34 Electromagnetic compatibility and Radio spectrum Matters (ERM); Electromagnetic Compatibility (EMC) standard for radio equipment and services; Part 34: Specific conditions for External Power Supply (EPS) for mobile phones), available since December 2009.

¹⁰ <http://www.anec.eu/attachments/ANEC-PR-2012-PRL-010rev.pdf>

disapproval of the introduction of Apple's new proprietary connector, 'Lightning', which makes obsolete millions of existing docking and charging accessories, although adapters will be made available at the consumer's expense.

We therefore welcome very much the possibility that interoperability can be required as an additional essential requirement as it is already the case for personal data and privacy protection and accessibility of equipments for people with disabilities. However, ANEC would like to call on the European Parliament and Council of Ministers to press on the European Commission for the use of this possibility provided by article 3.3. as a matter of priority.

3.3 Registration of radio equipment within some categories (art. 5 of the Proposal)

ANEC is very pleased with article 5 introducing the possibility to require the registration within a central system of products within categories showing low levels of compliance, on the basis of information on compliance provided by Member States.

We would like to reiterate our support for introducing an obligation for manufacturers to register their products on a EU-wide system prior to their placing on the market. This could increase traceability of both the manufacturer/person responsible of placing equipment on the market and raise conformity without delaying the so called "time to market" nor representing an "undue burden" for manufactures.

The Report on the Third Joint Cross Border R&TTE market surveillance campaign¹¹ identified an alarming low level of compliance with the directive's legislative requirements, also including safety aspects. In 2012, joint market surveillance actions (administrative checks) carried out in Germany and the Netherlands showed that only 7 out of 40 tablets PCs (20 from each country) fulfill administrative requirements (18%). The most common problems are affixing of CE marking, users information and Declaration of Conformity. If technical compliance is also added, then only 13% of products were compliant.

In ANEC's opinion, despite the application of the New Legislative Framework, which should increase market surveillance effectiveness, more needs to be done to ensure that consumers can buy only safe and compliant radio equipments. Effective product traceability is therefore essential to ensure consumer protection from unsafe and non-compliant products.

¹¹ October 2009

For this reason we would like to suggest shortening the time of applicability of article 5 to two/three years after the entry into force of the revised Directive. This is in line with the timeline of article 47 about review and reporting.

Our suggestions:

1. As from [date - ~~four~~ *three years after the date of entry into force of the Directive*], manufacturers shall register radio equipment types within categories of equipment affected by a low level of compliance with the essential requirements set out in Article 3 within a central system referred to in paragraph 3 prior to radio equipment within those categories being placed on the market.

3.4 Placing on the market (art. 6 of the Proposal)

Among other issues, the concept of safe use of a product is a key element of any legislation aimed at ensuring safety of consumers. From the point of view of consumers, and especially vulnerable ones, the concept of “intended use” of a product does not correspond with real-life situations and neglects expectations of consumers in modern society. However, apart from the General Product Safety Directive¹² and the Toys Directive¹³, the other consumer-relevant product safety pieces of legislation do refer to the concept of “intended use”.

The safety concept of the R&TTE Directive is not in line anymore with the EU legislation adopted since its publication, such as the General Product Safety Directive, as far as consumer-relevant radio equipments are concerned. It ensures safety only in situations of intended use of a product (article 6 “when properly installed and maintained and used for its intended purpose”).

ANEC thinks that consumers can be effectively protected only if their (foreseeable) behaviour is duly taken into account by manufacturers when designing products. If manufacturers are allowed to rely on the concept of “intended use” of the product as laid down in the instructions for use, consumers who are too young to read or cannot read, are at a higher risk of being exposed to harm or injury. ANEC calls to align the safety concept of the R&TTE Directive with the concept the General Product Safety Directive¹⁴. This call was endorsed by the European Consumers Consultative Group in their opinion on Consumers and Vulnerability adopted in February 2013¹⁵.

This is now even recognized by article 16.2 of Regulation 765/2008 where reference is made to “products covered by Community harmonisation legislation

¹² Directive 2001/95/EC

¹³ Directive 2009/048

¹⁴ Art. 2b) of the General Product Safety Directive (GPSD) 2001/95.

¹⁵http://ec.europa.eu/consumers/empowerment/docs/eccg_opinion_consumers_vulnerability_022013_en.pdf

which, when used in accordance to their intended purpose *or under the conditions which can be reasonably foreseen* and when properly installed and maintained". We suggest for this wording to be used in article 6 of the revised R&TTE directive. We also made the same call on the occasion of the alignment with the New Legislative Framework of the Low Voltage and Lifts Directives, currently being recasted¹⁶.

Our suggestions:

Member States shall ensure that radio equipment is made available on the market only if it complies with this Directive ~~when it is properly installed and maintained and used for its intended purpose~~ **when used in accordance to its intended purpose or under the conditions which can be reasonably foreseen and when properly installed and maintained.**

3.5 Obligations of manufacturers - Alert Mark (art. 10.9 of the Proposal)

We welcome that the Commission decided not to delete completely the provision on the "alert mark" for restriction of use/geographical coverage but we recognise the need to ensure objective and effective consumer information about the meaning of such a mark or information (current article 6.3).

ANEC believes that consumers need to be informed about the properties and use of the equipments they buy in a transparent and reliable manner. This information should be provided both on the product and the instructions manual for consumer to be able to make an informed choice before they purchase the equipment. In addition, without proper marking, it could be more difficult for market surveillance authorities to check the compliance of such products.

It is also our understanding that the industry representatives are keen on using the "alert mark" to inform consumers.

We also suggest that instructions for use of radio equipment need to be drawn up in the official language of the country, as well as another popular language. ANEC believes that having sufficient and adequate knowledge about the safety of products is a vital consumer need. Information must be reliable, understandable and transparent.

3.6 Review and Reporting (art. 47 of the Proposal)

In addition to the legitimate objectives stated in paragraph 2 of article 47, we would like to suggest that the review of the operation of the Directive by the Commission also covers a high level of consumer protection.

¹⁶ ANEC position on EC proposal to align nine directives with New Legislative Framework (NLF), March 2012 (ANEC-SC-2012-G-008)

Our suggestions:

2. The Commission shall review the operation of this Directive and report thereon to the European Parliament and to the Council, by [date - 4 years after the entry into force of this Directive] and every five years thereafter. The report shall cover progress on drawing up the relevant standards, as well as any problems that have arisen in the course of implementation. The report shall also outline the activities of the Committee, assess progress in achieving an open competitive market for radio equipment at Union level and examine how the regulatory framework for the placing on the market and putting into service of radio equipment should be developed in order to achieve the following:

- (a) ensure that a coherent system is achieved at Union level for all radio equipment;
- (b) allow for convergence of the telecommunications, audiovisual and information technology sectors;
- (c) enable harmonisation of regulatory measures at international level;
- (d) reach a high level of consumer protection.***

It shall in particular examine whether essential requirements are still necessary for all categories of radio equipment covered. Where necessary, further measures may be proposed in the report for full implementation of the aim of this Directive.

3.7 Additional comments

3.7.1 Obligations of manufacturers and distributors -Internet Sales

As consumers are buying more and more products over the Internet, we think that a new provision on Internet sales should be introduced. We must also raise our concerns about the protection of consumers when purchasing radio equipment directly from manufacturers or importers using the Internet. Manufacturers and distributors should ensure all relevant information displayed on the package (e.g. instructions for use, warnings, geographical restrictions) is available to the buyer prior to the purchase, irrespective of the selling technique, including distance selling (eg: e-commerce).

In addition, we believe this would also benefit market surveillance authorities (so called "Desktop market surveillance").

3.7.2 CE Marking (current Annex VII(3))

We welcome very much the removal of the requirement to affix CE marking on user instructions foreseen by the current Annex VII(3). The positioning of CE Marking towards consumers has been of much concern to ANEC, and our sister consumer associations at national and European level, since the adoption of the New Approach in 1985 and the subsequent use of CE Marking in 1993. Our

particular concern is the implicit or explicit reference to CE Marking as a mark of safety for consumers¹⁷. For many consumer products, CE Marking is no more than a claim from the manufacturer that the product meets European legislation. What is more, the manufacturer does not have to provide an independent confirmation of the claim.

Moreover, not all products are required to bear CE Marking. Hence does the absence of CE Marking mean that a product taken at random is exempt or unsafe? ANEC wants to see CE Marking relegated to the technical file of a product that European legislation also requires¹⁸.

3.7.3 Right to complain (new article 47 bis)

ANEC would also like to suggest a new article. National surveillance and monitoring systems should provide consumers with the possibility of submitting complaints to the competent authorities on unsafe or non-compliant products. Bearing in mind the high level of non-compliant radio equipments entering the European market, we believe that a more specific and detailed provision than the New Legislative Framework is needed¹⁹.

Our suggestions:

(new) *Article 47 bis 'Right to complain'*

1. Member States shall ensure that consumers and other interested parties are given an opportunity to submit complaints to the competent authorities on unsafe and non-compliant products. Member States shall ensure that these complaints are followed. They shall also inform consumers and other interested parties of the procedures established to that end and make the public aware of the existence, responsibilities, identity and contact details of national competent authorities."

¹⁷ ECCG opinion on CE Marking, 20 February 2008

¹⁸ ANEC Position Paper on CE Marking "Caveat Emptor - Buyer Beware" (ANEC-SC-2012-G-026final)

¹⁹ Article 17.2 of Regulation 765/2008

About ANEC

ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and conformity assessment, as well as related legislation and public policies.

ANEC was established in 1995 as an international non-profit association under Belgian law and is open to the representation of national consumer organisations in 33 countries.

ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.



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