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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	21 August 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2023) 4823 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 20.7.2023 amending Delegated Regulation (EU) 2022/30 as regards the date of application of the essential requirements for radio equipment and correcting that Regulation

Delegations will find attached document C(2023) 4823 final.

Encl.: C(2023) 4823 final



EUROPEAN
COMMISSION

Brussels, 20.7.2023

C(2023) 4823 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 20.7.2023

amending Delegated Regulation (EU) 2022/30 as regards the date of application of the essential requirements for radio equipment and correcting that Regulation

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Radio Equipment Directive 2014/53/EU¹ (the RED, hereinafter) establishes a regulatory framework for placing radio equipment on the Single Market. It concerns mandatory market access conditions of radio equipment. The RED covers electrical and electronic equipment that can use the radio spectrum for communication and/or radio determination purposes. Member States, via their national market surveillance authorities, shall take corrective measures on non-compliant radio equipment.

Article 3 of the RED sets out the essential requirements that radio equipment placed on the Union market shall comply with. Article 3(1)(a) sets out essential requirement in relation to health and safety, Article 3(1)(b) sets out essential requirements in relation to electromagnetic compatibility and Article 3(2) sets out essential requirements in relation to the effective and efficient use of radio spectrum. In addition, Article 3(3) provides for additional essential requirements, which apply to those categories or classes of radio equipment specified in related Commission delegated acts.

As regards the essential requirements of the RED that are set out in Article 3 (3), first subparagraph, points (d), (e) and (f), the Commission adopted Delegated Regulation (EU) 2022/30. That Delegated Regulation was adopted on 29 October 2021, entered into force on 1 February 2022 and will become applicable from 1 August 2024.

By Implementing Decision C(2022) 5637², the Commission made a request to the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (CENELEC) for drafting new harmonised standards in support of Article 3(3), points (d), (e) and (f), of the RED, for the classes and categories of radio specified by Delegated Regulation (EU) 2022/30³.

The purpose of this delegated regulation is to defer the application of Delegated Regulation (EU) 2022/30 so that the European Standardisation Organisations can have sufficient time to address properly the complex matters and problems encountered with respect to the preparation of the relevant harmonised standards.

In addition, an error that has been detected, in Article 1(2) of Delegated Regulation (EU) 2022/30, as regards the expression ‘traffic data and location data’, which should read ‘traffic data or location data’, will be corrected.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Consultation of the expert group on radio equipment (E03587) has occurred on 30 April 2023. Member States experts were also consulted on 30 May 2023. Member States experts unanimously endorsed the draft act.

¹ Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (OJ L 153, 22.5.2014, p. 62).

² Commission Implementing Decision C(2022)5637 of 5 August 2022 on a standardisation request to the European Committee for Standardisation and the European Committee for Electrotechnical Standardisation as regards radio equipment in support of Directive 2014/53/EU of the European Parliament and of the Council and Commission Delegated Regulation (EU) 2022/30.

³ Commission Delegated Regulation (EU) 2022/30 of 29 October 2021 supplementing Directive 2014/53/EU of the European Parliament and of the Council with regard to the application of the essential requirements referred to in Article 3(3), points (d), (e) and (f), of that Directive (OJ L 7, 12.1.2022, p. 6).

A formal 4-weeks publication for feedback was launched. The consultation was open to all citizens and stakeholders, with no restrictions⁴. The final number of contributions received was 45. The profile of respondents' country was as follows:

Inside the European Union: the largest number of responses came from Germany (15) and Belgium (13); the rest of responses came from France (4), Denmark (2), Italy (2), Spain (1), Slovakia (1), Hungary (1), Ireland (1), Finland (1) and Greece (1).

Outside the European Union: 4 contributions were sent from outside the European Union (1 from Switzerland, 1 from Japan, 1 from Taiwan and 1 from the United Kingdom).

The profile of the types of respondents was as follows:

Industry (majority of contributions): 36 contributions.

EU citizens: 4 contributions.

Consumers associations: 2 contributions.

Non-EU citizen: 1 feedback.

Other entities: 2 contributions.

After assessing all these contributions, it has been concluded that it is not necessary to modify the draft act, for the reasons explained below:

Some respondents are concerned about the lack of security of wireless devices in the European Union nowadays and the need of obliging the manufacturers to implement cybersecurity measures urgently. In this respect, the absence of relevant harmonised standards renders compliance with the essential requirements of Directive 2014/53/EU relating to cybersecurity very cumbersome. If such harmonised standards exist, manufacturers will be able to carry out self-assessment and notified bodies, if involved, can take them as a benchmark.

Some other respondents suggested to adopt a larger delay. The extension in this delegated regulation responds, however, to the request of CEN and CENELEC and there are no justified reasons to go beyond. The Commission has decided to find a balance in order to ensure the smooth performance of the EU market, therefore the extension has been adapted in such a way that the relevant harmonised standards are available before the applicability of the corresponding essential requirements.

The fact that certain laboratories are already prepared, according to them, is not incompatible with this extension because it does not impede manufacturers from complying with the requirements in advance.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The objective of this delegated regulation is to amend Delegated Regulation (EU) 2022/30, in order to defer the application of its provisions, and correct an error.

The delegated regulation has no implications for the EU budget.

⁴ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13847-Cybersecurity-privacy-and-fraud-protection-extending-the-application-date-Radio-Equipment-Directive-delegated-act-/feedback_en?p_id=32158722

COMMISSION DELEGATED REGULATION (EU)

.../... of 20.7.2023

amending Delegated Regulation (EU) 2022/30 as regards the date of application of the essential requirements for radio equipment and correcting that Regulation

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC⁵, and in particular Article 3(3), second subparagraph, in conjunction with Article 3(3), first subparagraph, points (d), (e) and (f), thereof,

Whereas:

- (1) Directive 2014/53/EU establishes a regulatory framework for the making available on the market and putting into service in the Union of radio equipment. The essential requirements for such equipment are laid down in Article 3 of that Directive.
- (2) As regards the application of essential requirements of Directive 2014/53/EU that are set out in Article 3(3), first subparagraph, points (d), (e) and (f), the Commission adopted Delegated Regulation (EU) 2022/30⁶, specifying which categories or classes of radio equipment are concerned by each of those essential requirements, that is to apply from 1 August 2024.
- (3) By Implementing Decision C(2022)5637⁷, the Commission made a request to the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC) for drafting new harmonised standards in support of Article 3(3), first subparagraph, points (d), (e) and (f), of Directive 2014/53/EU, for the categories and classes of the radio equipment specified by Delegated Regulation (EU) 2022/30 by 30 September 2023.
- (4) The matters that need to be addressed by the harmonised standards that are prepared in support of the essential requirements that will become applicable from the date of application of Delegated Regulation (EU) 2022/30, are very complex. They relate to cybersecurity, namely protection of network, personal data and privacy and protection from fraud, in support of Article 3(3), first subparagraph, points (d), (e) and (f), of

⁵ OJ L 153, 22.5.2014, p. 62.

⁶ Commission Delegated Regulation (EU) 2022/30 of 29 October 2021 supplementing Directive 2014/53/EU of the European Parliament and of the Council with regard to the application of the essential requirements referred to in Article 3(3), points (d), (e) and (f), of that Directive (OJ L 7, 12.1.2022, p. 6).

⁷ Commission Implementing Decision C(2022)5637 of 5 August 2022 on a standardisation request to the European Committee for Standardisation and the European Committee for Electrotechnical Standardisation as regards radio equipment in support of Directive 2014/53/EU of the European Parliament and of the Council and Commission Delegated Regulation (EU) 2022/30.

Directive 2014/53/EU. Moreover, it is the first time that harmonised standards in relation to protection of network, personal data and privacy and protection from fraud and for the categories and classes of the radio equipment specified by Delegated Regulation (EU) 2022/30, are being developed. CEN and CENELEC have asked for an extension of the period specified in the request, for at least nine months, in order to be able to address the complex issues and problems encountered with respect to the preparation of the relevant harmonised standards and to provide harmonised standards of high quality.

- (5) Though the use of harmonised standards under the conformity assessment procedures laid down in Article 17 of Directive 2014/53/EU is not mandatory, the absence of harmonised standards renders compliance with the essential requirements of Directive 2014/53/EU very cumbersome. It is therefore appropriate to extend the period for the application of essential requirements of Directive 2014/53/EU that are set out in Article 3(3), first subparagraph, points (d), (e) and (f), so that the European standardisation organisations may be given sufficient time to develop standards of high quality.
- (6) An error has been detected in Article 1(2) of Delegated Regulation (EU) 2022/30, as regards the description of data which the radio equipment needs to be capable to process. That error should be corrected.
- (7) Delegated Regulation (EU) 2022/30 should therefore be amended and corrected accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2022/30

In Article 3 of Delegated Regulation (EU) 2022/30, the second paragraph is replaced by the following:

‘It shall apply from 1 August 2025.’

Article 2

Correction to Delegated Regulation (EU) 2022/30

In Article 1(2), of Delegated Regulation (EU) 2022/30, the introductory wording is replaced by the following:

‘2. The essential requirement set out in Article 3(3), point (e), of Directive 2014/53/EU shall apply to any of the following radio equipment, if that radio equipment is capable of processing, within the meaning of Article 4(2) of Regulation (EU) 2016/679, personal data, as defined in Article 4(1) of Regulation (EU) 2016/679, or traffic data or location data, as defined in Article 2, points (b) and (c), of Directive 2002/58/EC.’

Article 3

Entry into force

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20.7.2023

For the Commission
The President
Ursula VON DER LEYEN