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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**FIRST PROGRESS REPORT DIRECTIVE 1999/5/EC
(THE R&TTE DIRECTIVE)**

EXECUTIVE SUMMARY

BACKGROUND

1. Directive 1999/5/EC (hereafter “the R&TTE Directive”) set out new rules for ensuring the internal market of Radio Equipment and Telecommunications Terminal Equipment. It replaced Directive 98/13/EC and over 1000 national approval regulations.
2. The Directive covers most equipment that uses the radio spectrum and all equipment connected to public telecommunications networks (a market of around 80b€ in the EU). It covers amongst others GSM and UMTS handsets, antennas used for mobile telephony networks, normal telephones and data transmission modems. It simplified the technical requirements and facilitated market access for manufacturers, who now can assess the conformity of their products themselves.

OBSERVATIONS

3. The Directive is now applied in the EEA, most of the candidate Member States and Switzerland and overall experience of its simplified arrangements is positive. It has contributed to an internal market for radio and terminal equipment with relatively low market access barriers. No increase of radio interference has been observed. In addition it has not affected the integrity of telecommunications networks. Its administrative provisions are however not sufficiently adhered to, which puts into question the proportionality of these provisions and the effectiveness of communicating them to the sector.
4. The most frequently raised issues of concern of manufacturing industry are:
 - (a) user information (marking, labelling & instructions);
 - (b) bureaucracy and lack of harmonisation surrounding the notification of radio equipment using non-harmonised spectrum;
 - (c) lack of published radio interface regulations;
 - (d) lack of harmonisation of spectrum use and the difficulties in finding information on spectrum use.

5. The standing committee established by the Directive (TCAM) has achieved pragmatic resolution of divergent interpretations of the basic text but the Directive lacks provisions, enabling to render such interpretations legally binding. TCAM has established an Administrative Co-operation Group (ADCO) to deal with surveillance and other matters of direct interest between Member States. The main committee has increasingly identified equivalence of interface regulations, i.e. national spectrum usage regulations at EU level and problems with access to and harmonisation of spectrum. Such issues initially were communicated to the Electronic Communications Committee (ECC) of CEPT. With the adoption of the Spectrum Decision, which sets up an appropriate framework for the harmonisation of spectrum allocation in the European Union in order to satisfy the requirements of Community policies, the Commission can now adopt technical implementing measures to address such requirements.
6. The R&TTE Directive was adopted with a view to overcome barriers to the single market for products. However, the single market for radio equipment continues to be hampered by the fragmentation of the radio frequency spectrum and the difficulties in providing access to harmonised frequencies for new devices and services. Despite the efforts of the Member States working within CEPT, and with some notable exceptions like the bands for mobile cellular services, it has proved difficult to truly harmonise the use of the radio frequency spectrum across Europe and to make adequate spectrum available for new technologies in a timely manner. This has prevented EU industry from benefiting from early market development and significant economies of scale.
7. The rules for obtaining access to spectrum and the decision-making process for new allocations have not been harmonised in the EU and processes of decision making are unpredictable and lengthy. These hurdles specifically affect smaller players and stifle innovation. The Commission observes that in important new areas harmonised decisions in the EU have lagged behind those in other major economies. Within the context of spectrum policy, the Commission and the Member States must discuss how spectrum management decisions can be streamlined and accelerated. This should include possibilities for experimental use within the EU to assist spectrum compatibility studies, which until now are largely theoretical.
8. An important aspect of such discussions would be to address the conditions under which spectrum use should be regulated through explicit licensing of users and/or devices and strong segmentation of the spectrum. Alternatively, generic licence-free spectrum (spectrum “free ways”) with co-habitation rules (laid down in harmonised standards) to have devices gracefully share spectrum, have proven to foster innovation in the area of short-range devices. More flexible and less technology-dependent conditions of individual “exclusive” licenses will also make it easier for market players to innovate. Furthermore, new technological developments (cognitive devices, Software Defined Radio, Ultra Wide Band) will allow regulators to be more flexible and to rely more on technology to ensure efficient and interference free spectrum use. It is important for the EU to have a common and permissive policy based on clear rules to allow such technologies to develop resulting in clear rules (and harmonised standards) for the construction of products.

9. Radio regulators in some Member States display some difficulties in implementing the provisions emanating from the basic concepts of the Directive and to fully accept the role of notified bodies as an appropriate harmonisation tool to set the technical conditions for operating equipment. There is also at times a tendency to maintain decisions on market access for specific technologies as a national radio regulatory prerogative. This is counter to the provisions of the Directive and the principles of the WTO and the Treaty.
10. The European Standardisation Organisations and notably ETSI have responded well to the challenge of drafting the harmonised standards for this Directive. A comprehensive list covering over 95% of equipment on the market has been published in the OJ to support the operation of the Directive.
11. Additional Commission Decisions have been adopted under Article 3(3) (e) and oblige that types of equipment “support certain features ensuring access to emergency services”. The other provisions of Article 3(3) have not been exercised to date. The emergency services addressed by the Article 3(3) (e) Decisions are perhaps not those that were originally envisaged in the Directive. They relate to “safety of life” services such as avalanche beacons and certain marine distress radio functions. In some cases there are parallel sector specific regulations covering other uses of the same or similar equipment and the need for the Directive to regulate them should be reviewed.
12. A simple equipment classification system has been introduced. Equipment is classified such that “Class 1” equipment has no special mark and may be used anywhere in the Community without a licence. “Class 2” equipment bears an “Alert” mark indicating that it is subject to national restrictions related to the use of the radio spectrum. It was decided to refrain from creating a special class for equipment which is technically harmonised, but for which users need to obtain a licence for use. Such equipment remains therefore in “Class 2”. A study to establish frequency bands, which have effectively been harmonised in the EU, demonstrated less harmonisation than expected. Enlargement will not affect the types of equipment in Class 1.
13. Despite a much-reduced role, the number of Notified (conformity assessment) Bodies has increased since the Directive came into force. This is due in part to the correspondingly reduced competencies required and in part to market related factors, which attach importance to Notified Body intervention (e.g. outside the EU). The Annex IV (TCF) procedure involving a Notified Body opinion is being used on a voluntary basis on a wider scale than expected. The Notified Bodies have established the R&TTE Compliance Association to facilitate exchange of information relating to the practical operation of the Directive and liaison with TCAM. Co-operation between notified bodies and the national radio authorities needs to be improved.

14. The expected increase in notifications of non-compliant equipment following the reduction of pre-market controls on radio equipment has as yet not materialised. This may partly be due to the fact that most Member States are still in the process of developing market surveillance strategies. A high level of administrative non-compliance is being observed, without this leading to an increase of interference. Many national actions are not becoming visible at EU level or to other Member States. This raises concern on the effectiveness of the current system of market surveillance, whereas it furthermore demonstrates that the formal procedures for handling safeguards are overly complex and time consuming. This calls for a review of the provisions on the handling of non-compliant equipment.
15. The potential harmful effects of exposure to electromagnetic fields are covered by the essential requirements of the Directive. The Commission mandated that the development of harmonised standards be based on the exposure limits set by Council Recommendation 1999/519/EC. For GSM handsets such standards are available, while standards for base stations are not yet complete. Public concern on this issue pertains. The Directive allows Member States to introduce regulations restricting the putting into service of base stations for health reason. In some of the Member States substantial delays in the roll-out of mobile networks is caused by local legislation and procedures relating to the planning of masts. Harmonisation of health protection standards should overcome such problems in the future. Many considerations leading to decisions on the location of base stations are however scientifically ill founded and do not have the effect of reducing the exposure of the public to electromagnetic fields.
16. Mutual Recognition Agreements (MRAs) with an annex for R&TTE equipment have been concluded between the EU and certain third countries. These recognise the competence of Conformity Assessment Bodies but maintain the separate national or regional procedures for placing on the market and/or putting into service. They do not foster a level of deregulation in third countries, which is comparable with that in the EU, but require substantial resources by the Commission and Member States authorities for their implementation. They have fostered improved co-operation with regulators in these countries but policies to lower market access barriers in 3rd countries need to be reviewed. In the case of Switzerland the MRA harmonises the procedures for accessing the Swiss market with those of the EEA. With regard to acceding countries, they are expected to have transposed the Directive in full at the time of their accession.
17. The Directive covers interference caused by radio transmitters and terminal equipment but the EMC Directive covers interference caused by other equipment. The aim in both cases is the same and one or the other Directive may cover equipment depending on its specific application, in particular certain broadband access equipment. Equipment may be considered part of the network or a terminal depending upon the operator's network demarcation point or a decision of a national regulatory authority (NRA).

CONCLUSIONS

The policy set by the Directive needs to be continued. In order to optimise its operation a number of actions are proposed.

18. As regards the Directive itself, a limited revision of its provisions should be pursued, addressing the following issues:
 - Create possibilities for rendering implementing details and interpretations of the Directive legally binding through a comitology procedure;
 - Reconsider the use of Article 3.3 Decisions for “safety of life” purposes and consider their inclusion in sector specific regulations.
 - Discuss the borderline of its scope: coverage of aeronautical equipment, radio equipment not used for radiocommunication.
 - Review the provisions on the handling of non-compliant products, so as to ensure effective market surveillance but avoiding where possible the need for Commission opinions;
 - Rationalise requirements for user information and marking arising under this Directive and other New Approach Directives (particularly the Low Voltage and EMC Directives) so as to arrive at obligations which are proportional to the objective; consider how to make relevant information accessible to all types of users, in particular the disabled, where relevant;
 - Review the provisions obliging operators to publish the characteristics of their networks and consider whether certain provisions should be removed for smaller operators;
 - Consider whether terminal equipment that is not radio equipment should be removed from the Directive and thus only be covered by the EMC and Low Voltage Directive. In so doing, attention would need to be paid to the existence of dominant players, the possible reintroduction of national regulations and bundling of equipment with network services and the need for stability for manufacturers;
 - Consider how to ensure a coherent legal framework for avoiding harmful interference from radio and other equipment;
 - Ensure coherence of the Directive, its provisions and terminology with the Electronic Communications framework.

- Consider the application of art 3(3)f to include accessibility requirements for certain types of terminals. This is particularly important for emergency equipment where accessibility should be guaranteed. To this extent discussions should be launched with the Member States to clarify the borderline between equipment and networks for issues related to accessibility and to undertake joint actions to foster harmonised solutions at European level.

19. As regards the management of the Directive a number of actions are proposed:

- the co-operation between notified bodies (R&TTE Compliance Association) and the national spectrum regulators should be improved so as to ensure that the guidance on innovative products is not contentious.
- The Commission should study the compatibility of technical provisions of local planning regulations for base stations with the Directive.

20. As regards spectrum harmonisation and management:

- Migrate more equipment from Class 2 (subject to national restrictions) to Class 1 (use anywhere in the Community). The Spectrum Decision¹ should be used to arrive at more harmonised spectrum, especially for consumer products and short-range devices.
- Launch discussions with Member States in the context of the Radio Spectrum Decision on streamlining the decision-making process for frequency allocations for emerging applications, including the creation of possibilities for experimentation in the EU so as to arrive at a more permissive environment, which fosters competitiveness of EU industry;
- Discuss in the same context the policy benefits of lowering access barriers to spectrum and on the potential for new technological developments to reduce the need for individual licences and rigid segmentation of the spectrum.

21. As regards international trade:

- Given the level of deregulation existing and the substantial resources required for managing MRAs, the real added value of such arrangements for EU manufacturers and certification interests is questionable. The Commission is studying more effective ways to address market access problems for EU manufacturers.

¹ Activities under the Radio Spectrum Decision (676/2002/EC) since its adoption in March 2002 are due to be presented to the European Parliament in the first quarter of 2004, and will include a further analysis of the relationship of spectrum regulation with the R&TTE Directive.

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(Text with EEA relevance)

TABLE OF CONTENTS

1.	Introduction	9
2.	Report on the operation of the Directive	10
2.1.	State of play implementation.....	10
2.2.	Operation of TCAM.....	10
2.3.	Harmonised Standards.....	11
2.4.	Commission Decisions	12
2.5.	Notified Body operation.....	14
2.6.	Market Surveillance	15
2.7.	Electromagnetic Fields.....	16
2.8.	Jammers.....	18
3.	Appreciation of the effectiveness of the Directive.....	18
3.1.	General	18
3.2.	Compliance of radio equipment	18
3.3.	No effects on network integrity.....	19
3.4.	Problems identified by stakeholders	19
3.5.	Divergences between the Directive's objectives and provisions and national radio regulations	20
3.6.	Problems in obtaining information on spectrum	21
3.7.	Should terminal equipment continue to be regulated under this Directive?	22
3.8.	The borderline of the Directive	22
3.9.	Need to review the provisions governing non-compliance	22
3.10.	Relationship and overlaps with other Directives.....	23
4.	International aspects.....	23
5.	Conclusions	25

1. INTRODUCTION

The market for telecommunications and radio equipment accounted for around 80b€ in 2000 . After years of growth a period of stagnation has followed, notably in the area of telecommunications equipment, as many debt-laden operators have minimised investments. European industry is competitive in certain areas, in particular in the mobile communications area, but its continued competitiveness will depend amongst others on an innovation-friendly regulatory environment and well-functioning internal market.

Directive 1999/5/EC (the R&TTE Directive) facilitates the creation of an open and competitive market in the Community by establishing a regulatory framework for the placing on the market, free movement and putting into service of radio equipment and telecommunications terminal equipment. It covers a wide range of equipment, including garage-door openers, hand held mobile phones, normal telephones, data communication modems and antennas used for mobile networks. The previous regime (98/13/EC), mainly based on mandatory standards, was not able to keep up with changes in technology and market developments. In addition, it left a substantial proportion of the radio equipment market covered by more than 1000 national regulations in the Member States.

The present Directive came into force on 7 April 1999 and its transitional provisions were exhausted on 8 April 2001. Member States were required to transpose and apply its provisions no later than 8 April 2000.

It deals with spectrum harmonisation issues to the extent that there is a common basis for dealing with harmful interference. However, there is no mechanism in the Directive for addressing the basic issue of fragmentation of spectrum allocation and assignment, which impacts the overall goal of supporting the single market for radio equipment.

This report is prepared in accordance with Article 17 of the Directive, which requires the Commission to review the operation of the Directive and regularly report on its operation to the European Parliament and the Council specifically as regards:

- progress on drawing up the relevant standards;
- problems that have arisen in the course of implementation;
- the activities of TCAM;
- progress in achieving an open and competitive market for apparatus;
- development of the regulatory framework for placing on the market and putting into service so as to:
 - ensure a coherent system at Community level for all apparatus;
 - allow convergence of telecom, audiovisual and information technology sectors; and
 - enable harmonisation of regulatory measures at international level.

- examination of whether essential requirements are still necessary for all categories of apparatus;
- consideration of whether the procedures of Annex IV (seeking a notified body opinion on a Technical Construction File) are proportionate for apparatus covered by that Annex; and
- proposals for further measures to achieve full implementation of the aim of the Directive.

Section 2 of this report gives a factual report on the operation of the Directive since its adoption, following which section 3 appreciates to what extent the Directive has been effective in meeting its objectives. Section 4 addresses international aspects, after which section 5 concludes with a number of recommendations in- and outside the context of the Directive in order to achieve full implementation of the aim of the Directive.

2. REPORT ON THE OPERATION OF THE DIRECTIVE

2.1. State of play implementation

The Directive is now applied throughout the EEA, Switzerland and most new Member States. Few Member States adopted the laws, regulations and administrative provisions necessary to comply with the Directive before the 7 April 2000 deadline. Some found it necessary to introduce interim measures pending a full implementation in national law.

Screening of the national implementations by the Commission has identified no divergences of substance in the basic texts. In large part, this is due to the Steering Group and Ad-hoc Groups set up by the Commission with wide representation from administrations, NRAs, industry, and experts. These helped in interpreting ambiguities and studied key areas for decision (essential requirements, equipment classes, interface publications and surveillance) in advance of the first meeting of TCAM.

Information about the national implementations can be found on the Europa website². The primary instruments appear to be satisfactory in all Member States but the secondary measures leading to publication of interface regulations (Article 4(1)) and technical specifications for network interfaces (Article 4(2)) do not yet seem to be fully effective.

2.2. Operation of TCAM

The Standing Committee (Telecommunication Conformity Assessment and Market Surveillance Committee or TCAM) has met on 14 occasions in the first four years of operation. The committee has invited representatives from the new Member States, manufacturers, network operators, standards organisations and notified bodies to participate as observers but meets in restriction session, when necessary.

² <http://europa.eu.int/comm/enterprise/rtte>

In an advisory role, the committee has concentrated on finding pragmatic resolution of ambiguities and interpretations of the basic text of the Directive. The fruits of this work have been made publicly available on the Europa website. Many of these issues could be resolved by unanimously supported interpretations. Lack of harmonised implementation on certain secondary aspects of the Directive (e.g. the types of apparatus to be notified to spectrum authorities, the level of information to be provided, the list of parameters in national radio interface regulations) however remain. This complicates the application of the Directive and creates uncertainty for manufacturers. This could be avoided by introduction of mechanisms in the Directive, which allow for such interpretations to be rendered legally binding.

In its regulatory role, the committee has agreed a simple equipment classification under Article 4(1) and considered a number of proposals for imposing essential requirements under Article 3(3) of the Directive.

There is a need to maintain focus on policy issues in the formal committee and ensure that there is adequate preparatory discussion in suitably constituted sub-groups. Temporary ad-hoc groups have advised on radio interface definitions and equipment classification. A more permanent sub-group, the “Administrative Co-operation Group” (ADCO) deals with matters of direct interest between national administrations such as surveillance and notifications of non-harmonised spectrum use.

Now that early operational issues have been addressed, TCAM increasingly focuses on market access problems, which are caused by lack of harmonisation of radio spectrum use. This provides opportunity for applying the Directive’s provisions to identify areas where spectrum fragmentation in the Community exists and where harmonisation would be beneficial to the single market. In this connection it is important to develop an effective co-operation with the Radio Spectrum Committee and with the EU national radio regulatory administrations.

2.3. Harmonised Standards

The standards organisations, particularly ETSI, have responded well to the challenge to develop a set of harmonised standards supporting the Directive. A list of titles and reference numbers for relevant harmonised standards is published in the Official Journal and updated at approximately quarterly intervals³.

There is no evidence that absence of harmonised standards is an obstacle to the operation of the Directive with, perhaps, the exception of the standards for RF exposure that are required to support the Council Recommendation 1999/519/EC⁴. In general, some work directed towards rationalising and reducing the number of standards would be beneficial.

³ <http://europa.eu.int/comm/enterprise/rtte/harstand.htm>, standards published under the “Low Voltage” Directive (73/23/EEC, http://europa.eu.int/comm/enterprise/electr_equipment/lv/index.htm) and the EMC Directive (89/336/EEC, http://europa.eu.int/comm/enterprise/electr_equipment/emc/index.htm) may also be used to demonstrate compliance with the relevant essential requirements of the R&TTE Directive.

⁴ Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz), OJ L 199 of 30.7.1999.

The Commission observes concerns of national regulators to lower access barriers to spectrum by allocating more spectrum for licence-free or exempt applications. There is at times a concern expressed by regulators for widespread “abuse” of this approach and of a consequent unmanageable situation. A trend towards introducing detailed rules for certain applications in ISM bands is visible (e.g. 2.4 GHz band). In general however these bands demonstrate that low barriers to spectrum foster innovation. A more effective application of the Directive and in particular of its Article 3(2) would be achieved by setting more equitable and clear spectrum co-habitation rules through harmonised standards. This is an aspect of a wider discussion on lowering barriers to spectrum, addressed later in this report in Section 3.

No shortcomings of published harmonised standards have been formally identified under Article 5 of the Directive. Deficiencies that were found could be handled directly at standardisation level and never required invoking the formal safeguard procedure. Accordingly, the Commission has not published any guidelines on interpretation or conditions of compliance as permitted under Article 5(1). Equally, no notices to withdraw harmonised standards have been published for this reason.

2.4. Commission Decisions

2.4.1. Additional product requirements

The Commission has consulted with TCAM over a number of proposals to introduce particular essential requirements under Article 3(3). Requirements have been agreed and corresponding Commission Decisions⁵ published in relation to: avalanche beacons, radio equipment used on vessels for certain inland waterways, certain equipment intended to participate in the Global Maritime Distress and Safety System (GMDSS) and equipment for the Automatic Identification of Ships (AIS) service. In all cases, the Decisions invoke Article 3(3) (e) in that the equipment concerned “supports certain features ensuring access to emergency services”. More specifically, they relate to securing particular safety of life services and are, in that sense, peripheral to the original aim of the Directive. A further discussion is ongoing on the possibility of the Directive (Article 3(3) (d) to combat the fraudulent use of stolen mobile phones.

Other proposals for essential requirements under Article 3(3) have proved more controversial. Consideration has been given, for example, to the provision of emergency access from terminals under mains power fail conditions and the sensitivity of security systems to false alarms. After discussions within TCAM, the Commission concluded that such requirements were not justified and could inhibit innovation. Market forces are such as to allow informed choices to be made in these cases.

⁵ A full list of Decisions adopted under the Directive is maintained on:
<http://europa.eu.int/comm/enterprise/rtte/decision/present.htm>

Ad-hoc groups were also set up to consider, in particular, Article 3(3) (f) “features in order to facilitate use by users with a disability”. The group considered a considerable number of accessibility problems for people with disabilities to telecommunications equipment. Some of the issues were at the borderline with networks issues. It was found that:

- a mandatory requirement for assistive equipment to be interoperable in Europe is needed.
- accessibility must be a requirement in emergency terminals and in public terminals.

There are no Article 3(3) requirements for telecommunications terminal equipment (that is to say, non-radio equipment). In the absence of Article 18(3) requirements (see below), this means that all essential requirements for such equipment are covered by Article 3(1). For this purpose, the standards harmonised under the Low Voltage and EMC Directives suffice.

Under Article 18(3), the Commission accepted a request from France for additional technical requirements to protect certain features of the national voice telephony service. A corresponding Commission Decision was published. The Decision is of little current practical significance and expired formally on 7 October 2002. No other Member State exercised this option.

2.4.2. Classification of equipment

Assignment of an equipment class identifier in accordance with Article 4(1) proved to be a substantive and ongoing task. An ad-hoc group studied the matter and recommended a very simple classification of radio equipment into two categories. This was given effect in Commission Decision 2000/299/EC⁶. Class 1 equipment carries no special mark and can be placed on the market and put into service anywhere in the Community. Class 2 carries an alert symbol signifying that particular national restrictions apply. An enquiry demonstrated that the new Member States have adapted their frequency spectrum to be compatible with the current Class 1 definitions. The Commission further aims to give legal certainty to the current Class 1 list and to extend this list, by approving harmonisation technical implementing measures via Commission Decisions pursuant to the Spectrum Decision.

Ongoing consideration of class identifiers seems to have served to emphasise differences rather than focus on ways of extending Class 1. A proposal for a subdivision of Class 1 for equipment that is technically harmonised but for which there are national administrative arrangements such as individual licence fees was not sustained. However, it was agreed that the Class 2 indicative list on the Europa web site should be annotated to show whether notification of such items of equipment under Article 6(4) is required. The lack of alignment between classes and the need for equipment to be notified has led to some difficulties and needs to be further looked into. There is however a risk that over-complex classification will hinder an open and competitive market and be too complex for consumers and manufacturers to understand.

⁶ Commission Decision 2000/299/EC of 6 April 2000 establishing the initial classification of Radio Equipment and Telecommunications Terminal Equipment and associated identifiers, OJ L 97 of 19.4.2000.

2.5. Notified Body operation

The role of Notified Bodies is significantly reduced under the Directive. The conformity assessment procedure based on Full Quality Assurance (Module H of the Global Approach) is carried over from the previous regime. Otherwise, there are no explicit test or certification activities. Notified Bodies may be required to advise on appropriate test suites for radio products or to give an opinion on a Technical Construction File.

Although manufacturers always have the choice of involving a Notified Body, they are under no obligation to do so for terminal equipment that is not also radio equipment or for radio equipment that is covered by a harmonised standard that references appropriate test suites⁷. Nevertheless, the voluntary involvement of a Notified Body using the procedures of Annex IV (Technical Construction File) is used. This suggests that such involvement might continue in the absence of regulation and calls into question the need to retain voluntary opinions or even to retain mandatory involvement in any circumstances. However, one aspect that requires study is whether there is sufficient harmonisation in the way opinions are given. There is lack of transparency in the way that notified bodies are appointed for this purpose and the procedure for issuing their opinions. Since most products are now covered by harmonised standards, the work of notified bodies can increasingly focus on innovative radio products. Co-operation between notified bodies and national spectrum regulators needs to ensure that such guidance is not contentious.

Harmonised standards are available for most products and so it is perhaps surprising that the number of Notified Bodies has increased substantially since the Directive came into force. In many cases, organisations that had previously been appointed as Competent Bodies under the EMC Directive sought designation under the R&TTE Directive. The explanation of this increase seems to have two components.

First, the nature of the Notified Body tasks is simpler and so more bodies are able to perform them. The tasks do not necessitate investment in test equipment or other expensive facilities. The Notified Body designation is therefore a marginal addition to an organisation already active in the field of radio and telecommunications test or certification whether this is in the voluntary sphere or in relation to other directives.

Second there are issues of market forces. For Notified Bodies, designation as a Notified Body is perceived as an advantage in a highly competitive market. Manufacturers reinforce this view. In so far as a manufacturer may choose to involve a third party in assessing conformity of his products, he is likely to choose one that is also able to act as a Notified Body even if such action is not required in a particular case. A virtuous relationship is thereby established that encourages use of a Notified Body even where there is no legal obligation so to do. A similar but more extreme pattern of behaviour has been observed in relation to the Low Voltage Directive where there is no pre-market conformity assessment role defined for Notified Bodies yet market forces endow value to such appointment.

From outside the Community, there is a further dimension to this second point. The formally documented opinions of Notified Bodies quite often look like earlier type approval certificates and have gained some recognition in third countries as replacements for such certificates.

⁷ In the absence of harmonised standards covering acoustic shock and health risks from electromagnetic fields, a discussion developed, whether these requirements necessitated notified body involvement. Such is legally the case, even though the legislator never intended this.

In response to Document Certif. 94/6⁸, the Notified Bodies have established the R&TTE Compliance Association, which has a liaison officer in TCAM. The main objective of the Association is to ensure coherency between opinions issued by notified bodies. It invites wider participation from manufacturers, test laboratories, and conformity assessment bodies in third countries but reserves the possibility of notified bodies working as a private group with the Commission, if necessary. It is entirely self-funding and meets approximately twice each year. It has published a number of guidance documents to its membership that can be freely downloaded at the Association's website⁹.

2.6. Market Surveillance

In moving away from a priori type approval schemes, effective market surveillance becomes a key element of the Directive. Member States have specific responsibilities for dealing with non-compliant products and are required to notify the Commission of the authorities responsible for surveillance tasks. However, the allocation of specific duties to individual authorities and the operational detail are national matters.

In some Member States organising the financing of market surveillance has proven difficult in the absence of a possibility to transfer its costs to manufacturers. In other Member States it is possible to transfer such costs, where products prove to be non-compliant.

Against this background, the need for co-operation between administrations to exchange best practices on handling non-compliant products is particularly important. The Group of Administrative Co-operation under the R&TTE Directive (ADCO) was established under TCAM with this particular aim in mind, even though it initially focused on other matters. To some extent, ADCO parallels CEPT ECC working group RR11 that has worked on a report on enforcement aspects of market surveillance. The scope of RR11 is broader than market surveillance in the context of the Directive. It includes mechanisms to verify compliance with licence conditions, for example. ADCO and RR11 increasingly co-operate, recently on a campaign on administrative non-compliance.

The results of a survey supporting work on the RR11 report show a wide variety of surveillance practices between the Member States. Some only act on the basis of a complaint, others have structured programmes for random and routine surveillance activities. The extent of these activities would typically be limited by available budget. Effective co-operation between the various authorities to ensure an effective and uniform surveillance in the EU has not fully developed. Electronic means to exchange information has been put into place, but seem insufficiently effective.

⁸ Framework for Co-ordination and Co-operation between Notified Bodies, Member States and the European Commission under the Community Harmonization Directives based on the New Approach and the Global Approach.

⁹ <http://www.rtteca.com>

Given the extent of the changes that the Directive has brought, particularly the reduction of pre-market controls on radio equipment, it might be expected that there would have been a significant number of safeguard notifications. However, this is as yet not the case. As per 1 June 2003 only 20 such actions have been notified by only 3 Member States, out of which 1 dealt solely with EMC compliance. It is however expected that, once stable, the amount of safeguards would be comparable to those under the EMC Directive, i.e. between 100-200 per year. The campaign on administrative compliance has shown a high level of non-compliance, demonstrating that manufacturers are insufficiently aware of their obligations under the Directive, which thus may be too complex.

Experience with the notified safeguard actions has clearly demonstrated that the formal procedure of Article 9 is too burdensome and the time to deliver an official opinion too long (typically between 6 to 12 months). The provisions of the Directive are not realistic. They oblige the Commission to give an opinion on all notified safeguard actions. Where products are not further on the Community market as result of the national action and the manufacturer doesn't object to the action, the added value of such an opinion is questionable. This opinion should further be adopted within 2 months of the notification, after having consulted the standing committee. As in reality Member States take also about 6 to 12 months to notify national measures, this implies that by the time the Commission adopts its opinion, the product wasn't on the market anymore for 1-2 years.

This situation calls for a fundamental review of the purpose and the detail of the procedures of the Directive, that aim at ensuring effective market surveillance and an efficient handling of non-compliant products. This situation is not specific to this Directive. The Council, in its Resolution on the New Approach communication calls for a horizontal review of such provisions.

2.7. Electromagnetic Fields

Council Recommendation 1999/519/EC set a framework to limit the exposure of the general public in the range 0 Hz to 300 GHz. Prior to this, mandates had been issued to CEN, CENELEC and ETSI to develop standards covering the effects of the most commonly used frequency ranges, in particular, those used by GSM equipment.

The level of public concern about electromagnetic fields is evidenced by the number of parliamentary questions raised on the matter (over 30 written questions¹⁰ in the period to August 2003). Overall, questions about base stations (informally often referred to as masts) have been more frequent than questions about handsets, probably because of the more obvious visible impact of masts.

Article 3(1) (a) of the R&TTE Directive sets out the following essential requirement: "the protection of the health and safety of the user and any other person, including the objectives with respect to safety requirements contained in Directive 73/23/EEC¹¹, but with no voltage limit¹² applying." The essential requirement clearly affords protection from all apparatus

¹⁰ <http://www.europa.eu.int/comm/enterprise/rtte/questions.htm>

¹¹ Council Directive 73/23/EC of 19 February 1973 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits, OJ L 77 p. 29 of 26.3.1973

¹² The term "voltage" here applies to the supply voltage of equipment.

covered by the R&TTE Directive including battery operated radio equipment such as mobile phones which are not covered by Directive 73/23/EEC itself.

Progress under the original mandates was poor. The mandates were updated in 2000 to reference the Council Recommendation and the R&TTE Directive. The urgency of the harmonised standards covering GSM handsets, in particular, was emphasised. These and became available in summer 2001. Others covering low power devices and anti-theft ports have since been adopted.

Standards for base stations will address equipment, installation and in situ measurement aspects and so should provide complete coverage of exposure effects from mobile masts. In the context of the R&TTE Directive, these standards give equipment a presumption of conformity to the essential requirements “when it is properly installed and maintained and used for its intended purpose”. Since masts will often accommodate several items of equipment, possibly belonging to more than one network operator, then it is clear that “putting into service” of each item must take account of the aggregate effect of all equipment. Pending the availability of all the relevant standards from CENELEC, Member States are at liberty to operate national standards¹³ interpreting the essential requirements of the Directive. Article 7(2) further allows Member States to limit the putting into service of base stations and other radio equipment for reasons related to health. The Commission stresses that technical aspects of such regulations must be notified under Directive 98/34/EC. Such regulations should not seek to impose more onerous limits than envisaged by the Directive. Many of such regulations are issued as planning regulations at local or regional level and it is unclear as to whether they must be notified. They typically lay down co-location obligations to minimise the number of masts, minimum distances of masts from the public or the prohibition to build masts close to schools and hospitals. The main objective of these regulations is to address public concern on perceived health hazards of masts. With few exceptions exposure from base stations is in practice greatly (a factor of 1000-100.000) below the limits recommended by the Council, which is considered to give a high protection against adverse effects. It should be considered however that the positioning of masts at large distances from the public leads to higher exposure levels as the power required for communication rises with distance and thus runs counter to the objective to lower exposure levels.

Directorate-General Health and Consumer Protection reviewed the suitability of the Council Recommendation as a framework for ongoing standardisation work on electromagnetic fields in late 2001. Its Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) issued an “Opinion on Possible effects of Electromagnetic Fields (EMF, Radio Frequency Fields (RF) and Microwave Radiation on human health” in Brussels on 30 October 2001. They concluded that the additional information that had become available in recent years did not justify a revision of the exposure limits set in the Council Recommendation and that there was insufficient scientific evidence to propose an alternative. A further review of this recommendation is foreseen for 2004.

¹³ See, for example, the Commission’s “Implementation report on the Council Recommendation limiting the public exposure to electromagnetic fields (0 Hz to 300 GHz)” available at http://europa.eu.int/comm/health/ph/programmes/pollution/implement_rep_en.pdf

2.8. Jammers

With the widespread deployment of mobile services, notably GSM, the need has arisen to deal with social problems caused by inappropriate use (irritating ring tones and usage), but also with security and safety concerns (in prisons or hospitals, for instance). Although in general one relies on voluntary mechanisms to deal with such problems (signs forbidding use, social controls, banning of handsets), some interested parties have expressed the desire to address them by preventing the communications through technical means. This development has given rise to major concerns in the standing committee and other regulatory fora. Such an approach would legalise the sales and uncontrolled deployment of so-called “simple jammers”. These could have the effect of creating a large number of holes in GSM coverage and associated reduction of quality of service and access to emergency services, as well as voiding part of the coverage legally granted to operators via licences.

For the time being (November 2003) these devices remain illegal as no Member State has introduced a concrete regulation, which specifies the conditions under which they can be used. It is also imperative for public authorities in the EU to engage in an informed debate with those organisations, which seek to ban generic GSM communications in some places. Solutions need to be found which are effective in achieving this goal, but which do not undermine the widespread availability of mobile communications.

3. APPRECIATION OF THE EFFECTIVENESS OF THE DIRECTIVE

3.1. General

The experience with the Directive is positive. The single market for radio equipment and telecommunication terminal equipment has improved substantially with the removal of divergent national administrative procedures and increased reliance on harmonised standards instead of national type approvals. The simplified procedures reduce administrative work for manufacturers, administrations and certification agencies. The consequent consolidation in the EU certification industry has given rise to some job losses but this is not significant compared with other major economic factors that have affected the telecommunications industry.

3.2. Compliance of radio equipment

No increase in harmful radio interference has become apparent. Initial surveillance results do demonstrate some technical non-compliance, but there are no indications that this is higher than under previous regimes. At the end of 2002 a special market surveillance campaign was started in a number of Member States, which focused on administrative non-compliance (incorrect marking, information provision, etc.). This campaign demonstrated a high rate of non-compliance, although it does not seem that such administrative non-compliance correlates either with technical non-compliance and increased interference or with problems for consumers. This puts into question the proportionality of these provisions. Some manufacturers seem to incorrectly assume that a notified body opinion is not required in the absence of harmonised standards covering health and safety requirements.

3.3. No effects on network integrity

The integrity of public telecommunication networks has not been compromised and accordingly it has not proved necessary to impose interworking requirements on terminal equipment. There are indications that some network operators introduced former conformity assessment requirements as part of their procurement specifications or position the network demarcation point so as to maintain certain equipment within the network itself. Notably in the mobile area a development of bundling of equipment with (notably multimedia) services becomes visible, which risks affecting consumers choice.

3.4. Problems identified by stakeholders

A fact-finding exercise in TCAM identified problems observed by the Member States and other stakeholders. The most frequently raised issues were user information (marking, labelling & instructions) under Articles 6(3); notification of radio equipment using non-harmonised spectrum under Article 6(4) (which some Member States consider a superfluous obligation) and notification of interfaces under Article 4 of the Directive. A large number of comments were also made about various aspects of the conformity assessment procedures but without any single issue prevailing.

Points raised on Article 4(1) relate mostly to administrations' concerns about potential overlap with similar obligations to notify technical regulations under Directive 98/34/EC. The points on Article 4(2) come from the much smaller representation of manufacturers and operators who have concerns about disclosure of proprietary information, its required content and the potential impact on commercial advantage. In consideration of these latter points and noting that not all Member States have ensured publication of all network interfaces, the publication of network interface information by operators of public telecommunications networks is seen as disproportionate for smaller operators. It should be discussed whether this should be restricted to those operators having significant market power. Manufacturers wish those to be readily available, where possible on the Internet.

A small number of linguistic deviations in the Directive texts in the official languages were noted and corrected.

The issues of user information (which are not considered as proportional by some) and conformity assessment are of a horizontal nature and are best addressed in the overall review of New Approach Directives. For apparatus that is not radio equipment, there are no other issues.

For radio equipment, the TCAM exercise did identify issues of practical significance and these do impair the full positive benefits of the Directive. For the most part, they involve secondary measures in national implementations and matters outside the strict scope of the Directive such as national spectrum planning and associated restrictions.

3.5. Divergences between the Directive's objectives and provisions and national radio regulations

Harmonised standards developed by ETSI do take account of compatibility studies and an MoU between ETSI and the CEPT ECC ensures that radio regulatory elements are taken into account in them. Radio regulators in some Member States have nonetheless difficulties with the role of standardisation and harmonised standards as an element in the radio regulatory environment. A number of interface regulations were notified to the Commission under the procedures set by Directive 98/34/EC, which regulated matters covered by the Directive and on which the Commission had to issue observations or detailed opinions. In a number of cases, such regulations put into place usage conditions, which were conflicting with requirements in harmonised standards. Some radio regulators seem to have insufficient confidence in the standardisation infrastructure, resulting in a tendency to maintain decisions on market access for specific technologies as a radio regulatory prerogative. This generates tension with the aims of the Directive, which envisages transparent spectrum usage rules and an innovation friendly environment.

Rules for obtaining access to spectrum and the decision-making process for new allocations have historically not been harmonised in the EU. Obtaining spectrum for new technologies currently requires substantial investments in “lobbying” efforts, technical compatibility studies, time and sometimes usage or access fees. These hurdles specifically affect Small and Medium sized Enterprises and stifle innovation. The Commission observes that in potentially important new technological domains, the development of harmonised regulatory decisions in Europe allowing access to the radio spectrum have lagged behind those in other major economies. There is a risk that an inflexible regulatory framework will make the EU appear less attractive for innovative products than the USA, where there is a more transparent and integrated procedure for rule making, and a greater degree of urgency to let new technologies be validated in the marketplace. The Commission has set up an advisory Radio Spectrum Policy Group¹⁴ which may be the appropriate forum to have a policy discussion on how decision-making can be streamlined and accelerated. This should include possibilities for experimental use within the EU to assist compatibility studies, which until now are largely theoretical, and the development of more transparent procedures leading to EU harmonised decisions on spectrum access.

¹⁴ http://europa.eu.int/information_society/topics/ecom/shortcuts/radiospectrum/word/radio_spectrum_policy_group_decision/en.doc

An important aspect of such discussions will be under which conditions spectrum use should be regulated through explicit licensing of users and/or devices and strong segmentation of the spectrum in terms of different technology-specific regulation of spectrum use in the different Member States. Experience in ISM bands has demonstrated that making available generic licence-free spectrum (spectrum “free ways”) with co-habitation rules (the “traffic rules” laid down in harmonised standards) to have devices gracefully share spectrum, can foster innovation. This certainly applies to short-range devices, which form an increasing part of the radio equipment market. At the same time, an issue for consideration is the possibility to make greater use of more flexible and less technology-dependent conditions for use of licensed spectrum bands. New technological developments (cognitive devices, Software Defined Radio, Ultra Wide Band) will allow regulators to be more flexible and to rely more on technology to ensure efficient and interference-free spectrum use. It is important for the EU to have a common and permissive policy to allow such technologies to develop, resulting in clear rules (and harmonised standards) for the construction of products.

3.6. Problems in obtaining information on spectrum

From a manufacturer’s perspective information on spectrum use is not easily accessible. It took until 2003 to harmonise the format of notifications for equipment that uses non-harmonised spectrum in accordance with Article 6(4). There is a reluctance to apply internal market principles to such matters. Many spectrum plans have been published but are not providing information essential for equipment design and placing on the market such as licensing conditions. Furthermore, there is a lack of harmonisation in technical licensing conditions. This has resulted in manufacturers “probing” Member States with notifications of their intention to place equipment on the market in order to obtain spectrum information and legal certainty. Although the notification procedure thus serves as a method for providing information for manufacturers, this demonstrates that attempts to make information on spectrum usage rules available at European level (notably through the EFIS¹⁵ project) have as yet not been sufficient.

Only a limited list of harmonised frequency bands where there is no need for equipment notification has been established. Progress is hampered by diverging details in spectrum usage rules, even where the frequency band itself is harmonised. There is a need for a mechanism to compare each notified regulation with the regulation of other Member States and a need to effectively render specific CEPT spectrum harmonisation measures mandatory in the EU through the Radio Spectrum Decision¹⁶. This Decision itself establishes the need to improve the delivery of information on spectrum usage conditions in the EU, and a constructive synergy between the information requirements of these two acts will be beneficial.

In any event, a relative lack of information does make it difficult for manufacturers to identify all the conditions that must be met before a product can be used in a particular Member State.

¹⁵ <http://www.efis.dk/search/general>

¹⁶ Decision 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) OJ L 108 of 24.4.2002.

3.7. Should terminal equipment continue to be regulated under this Directive?

The absence of any essential requirements under Article 3.3 for telecommunications terminal equipment that is not radio equipment and the expiry of the opportunity for special requirements for such equipment under Article 18.3 mean that the only relevant essential requirement for such equipment are those of Article 3.1. This article directly cross-references the protection requirements of Directives 73/23/EEC and 89/336/EEC. The question therefore arises whether telecommunications terminal equipment could be removed from this Directive and handled under general competition law and the horizontal LVD and EMC measures (assuming that the lower voltage limit of the LVD will be removed during its revision). In so doing, note must be taken that there are still dominant players in this market and that administrative provisions of these Directives differ from those of the R&TTE Directive. Attention would have to be given to preventing the reintroduction of national terminal regulations, the need for stability for industry and the bundling of equipment with network services, e.g. by maintaining existing obligations on the publication of network interfaces under services regulations. This will be offset by the further liberalisation of this class of equipment and removal of the ambiguity that arises in respect of equipment that has application both as a terminal and as component of a public telecommunications network infrastructure¹⁷.

Another issue to consider before deciding to exclude telecom terminal equipment from the R&TTE is whether accessibility that could be fostered via the application of article 3(3).f could be properly safeguarded by the use of other directives instead.

3.8. The borderline of the Directive

The application of the Directive to equipment that operates in aeronautical bands must be reviewed. The exclusions of annex I are ambiguous and are interpreted differently between Member States. The Commission has made proposals to the Council to handle such equipment in separate Directives.

The restriction of the Directive to only cover “radio communications” equipment has given rise to discussions on coverage of e.g. jammers, radars and radar detectors. Even though the application of the Directive was clarified for such equipment, defining its coverage as “equipment, capable of emitting and/or receiving radio waves” would facilitate the operation of the Directive.

3.9. Need to review the provisions governing non-compliance

Proper operation of the Directive depends on an efficient and effective market surveillance system uniformly applied in Member States. This has yet to be fully developed and a clear picture of market surveillance activity and its findings to emerge. Non-enforcement of the surveillance aspects of the Directive risks undermining the level of compliance, notably of radio products. The overall review of the New Approach Directives will look at the generalities of this, but as yet the mechanisms supporting day to day co-operation are insufficient.

¹⁷ Infrastructure equipment (other than radio equipment) used in telecommunications networks is not in the scope of the Directive and should not be regulated beyond the requirements of the Low Voltage Directive (73/23/EEC) and the EMC Directive (89/336/EE). However, one Member State tolerates a national approval regime for non-radio infrastructure equipment. This fragments the market for xDSL broadband access modems, in particular.

3.10. Relationship and overlaps with other Directives

For historic reasons a distinction is made in the regulatory treatment of interference caused by intentional radio transmitters (now covered by the Directive, in the past by national approval regulations) and by interference of non-intentional radiators (covered by the EMC Directive). The main aim of both Directives is to avoid interference to radio and telecommunication services. The question arises whether the diverging provisions in the two Directives are justified. The present situation is not favourable to the development of the market for low power radio devices. Medical equipment and notably inductively coupled medical devices at 175 kHz are a case in point. TCAM asked the ECC group in CEPT to address this matter and to find a general solution for such type of devices in April 2001. Progress was made with the inclusion of changes in ECC Recommendation 70-03 in July 2002. At the date of this report implementation of that recommendation in some Member States is however pending, reason for which a solution using the Radio Spectrum Decision provisions should be considered.

Some Member States have started to introduce national regulations to deal with interference caused by cables used in telecommunication networks using Power Line Telecommunication, xDSL, coax cable or Local Area Network technologies outside the context of the current R&TTE or EMC Directives. After discussion, it was agreed that these are EMC phenomena, which are already covered by the existing Directives. Setting appropriate harmonised standards under these Directives has proven to be a difficult and even contentious exercise. The Commission is pursuing discussions on this issue with Member States in all appropriate fora¹⁸.

The impact of the regulatory framework for electronic communications services on this Directive is as yet unclear. That framework goes beyond the traditional scope of public telecommunications, which still remains the basis for the R&TTE Directive. The abolition of the term public telecommunications network and the non-harmonised treatment of new technologies by Member States were identified by industry as potential issues. The next review of the regulatory framework for electronic communications 2006 provides for an opportunity to address these issues.

There is overlap in coverage of requirements under this Directive and the Directive on electromagnetic compatibility of equipment intended for use in motor vehicles (95/54/EEC). The Commission intends to address these issues in a review of that Directive.

4. INTERNATIONAL ASPECTS

Article 16 of the Directive addresses matters relating to placing on the market in third countries. These barriers consist of a mix of conformity assessment, administrative and tariff barriers. Several policies have been pursued so as to lower market access barriers for EU industry.

Protocols to the Europe Agreements on Conformity Assessment and Acceptance of Industrial Products (PECAs) aim at integrating the markets of candidate Member States prior to accession. Under the PECAs, the candidates should approximate their legislation to that of the Community. Even though a number of PECAs under negotiation included R&TTE only a single agreement includes R&TTE (Malta).

¹⁸ Proceedings of a recent workshop on this matter can be found on http://europa.eu.int/comm/enterprise/electr_equipment/emc/plcworkshop.htm

A special Mutual Recognition Agreement, based on the R&TTE Directive, has been concluded with Switzerland that integrates its regime with the arrangements in the EU.

Other (MRAs) have been concluded between the EU and Australia, Canada, Japan, New Zealand and the USA. Each of these includes a Telecommunications sectoral annex that allows for certain conformity assessment procedures of the respective third country to be undertaken by designated organisations (Conformity Assessment Bodies, CABs) in the EU and vice-versa. On the part of the EU, the procedures in question are those of the R&TTE Directive. In the third countries, they are the respective national procedures.

The EU has managed to secure recognition of a number of CABs under these agreements and thus to facilitate access to these third country markets. However, the MRA approach has shown severe limitations. Principally, they underline the differences in technical regulations with little opportunity for harmonisation even where there is technical compatibility. Sustaining these differences is resource intensive both for the Commission and the Member States.

This is compounded by the contrast between the totally integrated approach for safety EMC and radio compliance under the R&TTE Directive and the separate provision of all or some of these in third country legislation. This means that for telecommunication products entering the third country from Europe it is necessary to apply more than one of the Sectoral Annexes of the MRA (typically Safety and EMC in addition to telecommunications). A particular case in point is the USA where discussion with the Occupational Health and Safety Agency (OSHA) on implementation of the Safety Annex, which is equally required for telecommunications equipment, has been suspended. The considerable efforts and success in bringing the telecommunications arrangements to the operational phase are therefore frustrated for exports from the EU to the USA.

In contrast, the R&TTE Directive approach is integrated and straightforward. Deregulation in some other markets such as Australia and New Zealand has substantially reduced market access barriers and calls into question the usefulness of further work on MRAs. On the other hand, de-facto voluntary technical requirements and certification schemes such as VCCI in Japan can present barriers outside the scope of an MRA.

For reasons such as these, the direct real added value of the agreements for EU manufacturers and certification interests remains to be demonstrated. An indirect effect of the MRAs is that it fosters harmonisation through exchange of good practices and a better understanding of problems caused by the differences between the legal systems. Various systems have already been simplified, partially resulting from such contacts. Unfortunately, lack of resource on the part of the Commission and the regulators in the EU has meant that it has not been possible to make an appropriate allocation to pursue of the MRA dossiers.

Outside the context of the MRAs, the World Trade Organisation has put in place a Non-Tariff Measures Work Programme in the context of the Information Technology Agreement (ITA). This embraces not only conformity assessment and other technical measures but also issues such as customs procedures, import licensing, government procurement etc. On the technical measures, an in-depth study of EMC issues has been performed, demonstrating that market access barriers are mainly related to conformity assessment procedures and less to diverging technical standards.

The United Nations Economic Commission for Europe has a Working Party on Technical Harmonisation and Standardisation policies. It provides opportunity to exchange information on implementing various regulatory and standardisation policies and makes recommendations for harmonising policies. Initiatives have been taken to apply their proposed global model on conformity assessment, with which the New Approach¹⁹ is compatible, to a certain set of R&TTE products.

The OECD has performed a study on “Standards-Related Barriers and Trade Liberalisation: Telecommunications Sector”²⁰. It has been found that regulatory simplification could be achieved by increasing use of international standards, removal of interoperability requirements especially for radio interfaces and reliance on suppliers’ declaration of conformity for conformity assessment.

Strategies to lower trade barriers for EU industry need to be reviewed. The current focus on MRAs seems ineffective.

5. CONCLUSIONS

The Directive has successfully achieved its original objectives. However, the creation of an internal market for Radio & Telecommunications Equipment, which promotes innovation and fosters competitiveness continues to be hampered by matters beyond its scope. Further progress in achieving these objectives depends on harmonising and facilitating the rules for getting access to spectrum for new applications and for using the radio spectrum.

The nature of the difficulties experienced in operating this Directive does not justify a change in policy. Some observed deficiencies and experiences however merit a limited revision of its legal provisions:

- Possibilities should be created for rendering implementing details and interpretations of the Directive legally binding through a committee procedure;
- It should be studied whether sector specific regulations should not replace the current use of Article 3(3) Decisions for “safety of life” and other public interest purposes.
- Its application to aeronautical equipment should be clarified, whereas it should be considered whether radio equipment that is not used for radiocommunication should be included.
- The provisions on the handling of non-compliant products must be improved. It needs to be ensured that these provisions ensure efficient market surveillance, that the use of resources is optimised that formal Commission opinions are only called for in contentious cases of non-compliance;

¹⁹
²⁰

http://www.unece.org/trade/tips/docs/wp6_01/model-17r4e.doc
[http://www.oecd.org/olis/2001doc.nsf/LinkTo/td-tc-wp\(2001\)11-final](http://www.oecd.org/olis/2001doc.nsf/LinkTo/td-tc-wp(2001)11-final)

- Requirements for user information, marking and other administrative provisions arising under this Directive and other New Approach Directives (particularly the Low Voltage and EMC Directives) should be reviewed and aligned. Obligations in this respect must be proportional to the objective; consider how to make relevant information accessible to all types of users, in particular the disabled, where relevant;
- There is a need to review whether certain provisions obliging operators to publish the characteristics of their networks could be removed for smaller operators;
- It should be considered whether terminal equipment that is not radio equipment could be removed from the Directive and thus only be covered by the EMC and Low Voltage Directives. In so doing, attention would need to be paid to the existence of dominant players, the possible reintroduction of national regulations and bundling of equipment with network services and the need for stability for manufacturers;
- It should be considered how to ensure a coherent regime governing interference to the radio frequency spectrum from both radio and other products;
- Ensure that the provisions and terminology of the Directive are rendered compatible with the Electronic Communications framework.

Consider the application of art 3(3).f to include accessibility requirements for certain types of terminals. This is particularly important for emergency equipment where accessibility should be guaranteed. To this extent discussions should be launched with the Member States to clarify the borderline between equipment and networks for issues related to accessibility and to undertake joint actions to foster harmonised solutions at European level. Within the context of the current Directive, a number of actions are proposed with the aim to improve its application:

- The co-operation between notified bodies (R&TTE Compliance Association) and the national spectrum regulators should be improved so as to ensure that guidance on innovative products is not contentious.
- The Commission should study the compatibility of technical provisions of local planning regulations for base stations with the Directive.

As further measures to achieve full implementation of the aim of creating an internal market for Radio & Telecommunications Equipment, which promotes innovation and fosters competitiveness the following actions are proposed:

- More equipment should be migrated from Class 2 (subject to national restrictions) to Class 1 (use anywhere in the Community). The Spectrum Decision should be used to arrive at more harmonised spectrum, especially for consumer products and short-range devices, where single market benefits for manufacturers and consumers would be substantial.
- Discussions should be launched with Member States in the context of the Radio Spectrum Decision on streamlining the decision making process for frequency allocations for emerging applications, including the creation of possibilities for experimentation in the EU so as to arrive at a more permissive environment aimed at fostering the competitiveness of EU manufacturing industry and the societal benefits within the EU;
- In the same context, discussions should be launched with Member States on the policy benefits of lowering access barriers to spectrum and the opportunities of new technological developments in terms of reducing the need for individual licenses and rigid segmentation of the spectrum.

As regards international aspects, the real added value of the current set of MRAs needs to be studied. The Commission should study more effective ways to address market access problems for EU industry.