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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	23 September 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2021) 244 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Subsidiarity Grid Accompanying the proposal for a Directive of the European Parliament and of the Council amending Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment

Delegations will find attached document SWD(2021) 244 final.

Encl.: SWD(2021) 244 final



Brussels, 23.9.2021
SWD(2021) 244 final

COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the

proposal for a Directive of the European Parliament and of the Council

**amending Directive 2014/53/EU on the harmonisation of the laws of the Member States
relating to the making available on the market of radio equipment**

{COM(2021) 547 final} - {SEC(2021) 318 final} - {SWD(2021) 245 final} -
{SWD(2021) 246 final}

Subsidiarity Grid

- As proposed by the Committee of the Regions with guidance in blue
- Obviously, the answers to the questions below, the explanatory memorandum and – if applicable – the impact assessment should be consistent. This may require some iterations.
- Please try to stay under 10 pages.

1. Can the Union act? What is the legal basis and competence of the Unions’ intended action?																		
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?																		
The proposal is built on the same legal basis as the legislative act that is being amended, i.e. Article 114 of the Treaty on the Functioning of the European Union according to which the EU may adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.																		
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?																		
In the case of a product safety legislation for the internal market, the Union’s competence is shared.																		
<i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU¹. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU² sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU³ sets out the areas for which the Unions has competence only to support the actions of the Member States.</i>																		
2. Subsidiarity Principle: Why should the EU act?																		
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2⁴:																		
<ul style="list-style-type: none"> - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level? 																		
<ul style="list-style-type: none"> - In the context of the impact assessment on an initiative in support of harmonised charging solutions for mobile phones and other similar devices, various consultation activities were conducted between May 2019 and April 2021. The aim was to assess the potential areas of revision and the impacts of the suggested policy options on different targets. Here below is a summary table of all the consultations activities. 																		
Table 2.1 – Summary of consultation activities against type of stakeholder																		
<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr style="background-color: #cccccc;"> <th style="padding: 5px;">Consulta tion</th> <th style="padding: 5px;">Citiz ens</th> <th style="padding: 5px;">Consum ers</th> <th style="padding: 5px;">Environm ental</th> <th style="padding: 5px;">Mem ber</th> <th style="padding: 5px;">Market Surveill</th> <th style="padding: 5px;">Non Gov. Organisa</th> <th style="padding: 5px;">Manufact urers</th> <th style="padding: 5px;">Manufact urers</th> </tr> </thead> <tbody> <tr> <td style="height: 20px;"></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Consulta tion	Citiz ens	Consum ers	Environm ental	Mem ber	Market Surveill	Non Gov. Organisa	Manufact urers	Manufact urers									
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¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

Activity		Associations	Associations	States	ance Auth.	tions	Associations	
Inception IA (2018-2019)	X	X				X	X	X
Public Consultation 2019	X	X		X		X	X	X
Consumer Survey 2019	X							
Consumer Survey 2021	X							
Stakeholders Survey 2020-2021	X	X		X				X
Targeted Interviews 2021		X	X		X	X	X	X
Expert Groups Meetings		X		X	X	X	X	X

- [The explanatory memorandum at section 2 and Impact Assessment at section 3.1 and 3.2 contains the section on the principle of subsidiarity. You can find the text included in the Explanatory Memorandum in the point 2.2 here below.](#)

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

The internal market is a competence that is shared between the Union and the Member States.

One of the objectives of Directive 2014/53/EU, which establishes a regulatory framework for the making available on the market and putting into service in the Union of radio equipment, is to guarantee the proper functioning of the internal market. Interoperability between radio equipment and accessories such as chargers simplifies the use of radio equipment and reduces unnecessary waste and costs.

The absence of harmonisation in this area will lead to substantial differences between the Member States' laws, regulations, administrative provisions or practices on the interoperability of mobile phones and similar categories of radio equipment with a common

<p>charger and on unbundling.</p> <p>If actions are taken at national level to address the problems, this risks creating obstacles to the free movement of goods. Furthermore, action at national level is limited to the territorial competence of a Member State. In view of the increasing internationalisation of trade, the number of cross-border cases is constantly rising. Coordinated action at European Union level can much better achieve the objectives set, and will in particular render market surveillance more effective. Hence, it is more appropriate to take action at European Union level.</p>
<p>2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?</p>
<p>The proposed action cannot be achieved by the Member States acting alone as this would likely lead to different requirements in each Member State. This would create barriers in the single market, additional administrative burden on manufacturers, and a loss of competitiveness of the European industry also outside the EU.</p> <p>An EU action will guarantee that the objectives of consumer convenience and waste reduction are achieved at the Union level. It will also prevent manufacturers to be subject to different possible national initiatives that aim to achieve the same objectives in a non-harmonised manner thus leading to obstacles to the free movement of goods within the EU. As the measures would ensure that sufficient information is provided to consumers, such measures must have the same content throughout the EU.</p>
<p>(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?</p>
<p>The Radio Equipment Directive is a full harmonisation directive and plays a fundamental role in ensuring the free circulation of radio equipment intra EU. Smartphone sales across the EU increased spectacularly between 2008 and 2015, both in absolute terms and as a proportion of all mobile phone sales. Since then, sales have fallen slightly, from a peak of 164 million in 2015, to 144 million in 2018 in EU. Smartphones now account for over 90% of all mobile phones sold in the EU. Tablets, cameras, handheld videogame consoles, and portable speakers accounted respectively for 22.4 million, 5.4 million, 32.2 million, 32.4 million and 2.6 million of units sold in 2019 in EU.</p>
<p>(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty⁵ or significantly damage the interests of other Member States?</p>
<p>National action or the absence of the EU level action would create an important gap in the internal market. Manufacturers would then have to comply with each requirements for each separate MS that would decide to take action on the interoperability of charging solutions or on unbundling. An EU level action will prevent manufacturers to be subject to different possible national initiatives that aim to achieve the same objectives in a non-harmonised manner and would lead to obstacles to the free movement of goods within the EU</p>
<p>(c) To what extent do Member States have the ability or possibility to enact appropriate measures?</p>
<p>The Radio Equipment Directive has been transposed into all EU Member States legislation. Member States have already put in place appropriate measures to ensure enforcement of the Directive.</p>

⁵ https://europa.eu/european-union/about-eu/eu-in-brief_en

(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
The problem and causes are nearly identical among all national, regional and local levels. In fact, the great majority of consumers owns smartphones and other similar electronic devices.
(e) Is the problem widespread across the EU or limited to a few Member States?
The problem is widespread across the EU.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
No, the objectives of the planned measure will be achieved through the revision of the Radio Equipment Directive 2014/53/EU. Therefore, no additional burden is expected.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
On the basis of the consultations carried out, it results that a majority of MS support the proposed measure.
2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?
An EU action will guarantee that the objectives of consumer convenience and waste reduction are achieved at the Union level. It will also prevent manufacturers to be subject to different possible national initiatives that aim to achieve the same objectives in a non-harmonised manner thus leading to obstacles to the free movement of goods within the EU. It would ensure that sufficient information is provided to consumers. The objectives pursued can therefore be better achieved at Union level by reason of the EU proposed action's scale and effects.
(a) Are there clear benefits from EU level action?
An EU action will guarantee that the free movement of equipment in scope and the objectives of consumer convenience and waste reduction at the Union level.
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?
Yes, the reduction of waste is proportionate to the scale of applicability. The more consumers are incentivised to buy less chargers, the less the production of those charger will be and therefore bigger environmental benefit will be achieved. Additionally, increasing the consumer convenience is also proportionate to the scale of applicability. By ensuring interoperability of charge for all EU consumers, it will guarantee that wherever consumers are within Europe, their electronic device will charge efficiently while using it with a compatible charger. The wider the action, the most the quantity of consumers that will enjoy of this improved consumer convenience.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
an EU homogeneous approach will prevent manufacturers to be subject to different possible national initiatives that aim to achieve the same objectives in a non-harmonised manner thus

<p>leading to obstacles to the free movement of goods within the EU.</p>
<p>(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?</p>
<p>Yes specifically thanks to the scaling capacity of this initiative. The broader the action the bigger the impacts.</p>
<p>(e) Will there be improved legal clarity for those having to implement the legislation?</p>
<p>Yes, currently the empowerments of interwork with a common charger are vague, the revised directive will set out clear technical requirements that manufacturers will need to respect in order to place their product on the market.</p>
<p>3. Proportionality: How the EU should act</p>
<p>3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?</p>
<p>The explanatory memorandum and the impact assessment contain justifications regarding the proportionality of the proposal. In accordance with the principle of proportionality, the proposal does not go beyond what is necessary to achieve the objectives set. The new obligations do not impose unnecessary burdens and costs on industry - especially on small and medium sized enterprises - or administrations. Where measures (e.g. unbundling) have been identified to have negative impacts (e.g. consumer convenience), they also provide a positive impact on other aspect (i.e. environmental) that outweighs the negative impact. The selected option serves to provide the most proportionate response to all the problems identified with the best overall impact on reduction of e-waste and improvement of the consumer convenience.</p>
<p>3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?</p>
<p>The proposed action is an appropriate way to achieve the intended objectives. The initiative is limited to the setting of specific product technical requirements, that are better dealt with at EU level, leaving the enforcement to the Member States. Empowerments to update the requirements to technical progress are included, so that innovation will be quickly taken into account. The benefits of this initiative offset the costs incurred.</p>
<p>(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?</p>
<p>The initiative sets out the essential technical requirements the manufacturers of radio equipment need to comply with when designing and manufacturing their products for the EU market. Only taken at EU level can this action ensure harmonisation of products’ requirements and allow the free circulation of radio equipment within the EU. Member States are responsible for the enforcement of the Directive, which is better dealt with at national level.</p>

<p>(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?</p>
<p>The instrument proposed for the revision of the Radio equipment is an amendment, since it is seen as the most effective and efficient solution, for it minimises the potential differences in interpretation and minimises costs and delays of transposition.</p>
<p>(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)</p>
<p>The Radio Equipment Directive is a fully harmonised piece of legislation; hence, Member States cannot alter the requirements laid down in the directive. However, this is the basis for achieving an EU wide level of safety for radio equipment users and the free circulation of radio equipment across EU countries.</p>
<p>(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?</p>
<p>The initiative creates additional costs in some areas (costs for manufacturers of mobile phones and similar devices) and other adaptation costs for manufactures, but bring overall more benefits (environmental benefits from unbundling and increased consumer convenience from guaranteeing the interoperability of charge). On the other hand, the initiative is expected to bring benefits for retailers and distributors that will see the sales of standalone chargers increase due to unbundling. The initiative will also create savings for consumers as they will not be forced to buy their electronic device with an EPS anymore and as the guaranteed interoperability of charge will reduce the number of purchase of EPS.</p>
<p>(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?</p>
<p>No special circumstances applying in any individual Member State in the framework of this initiative have been identified.</p>