

Brussels, 15/02/2017

Orgalime Report

Workshop on the publication of references of harmonised standards in the OJ. Radio Equipment Directive 2014/53/2014 (RED), Low Voltage Directive 2014/35/EU (LVD) and EMC Directive 2014/30/EU (EMC)

27-01-2017

1. Welcome

- **Goal of workshop:** issues surrounding the non-publication in the OJEU. Developing a set of actions to “untangle” the non-publication.
- **Non-publication of Standards:** the James Elliot Case sheds light on the issue, focusing on the formal deficiencies of standards.
- **Issues with other standards besides RED:** for example, no new standards have been cited under the EMCD since the beginning of 2015. With LVD there are issues with new rules, mostly Annex ZZ.

2. Horizontal issues

2.1 Regulation (EU) No 1025/2012 since 1.1.2013 including Vademecum

- **The EC has a role in assessing the compliance of harmonised standards:** the EC should get involved in the standardisation process only if there is a public interest, as standardisation should be mainly for the industry to engage in.
- **Annex ZZ:** a consequence of the NLF, to assess compliance it is necessary to understand which requirements are covered by each standard.
- The EC cannot refuse a standard. However, the James Elliot case confirms the EC's obligation to scrutinise the standards.
- **When no standards are available:** NLF legislation can operate without HSs as they never cover all products.
- **Presumption of conformity:** gives industry an extra incentive to produce standards.
- **Double listing:** It is possible for a harmonised standard to support several Directives. This is foreseen for the cases of LVD Standards used under RED. Existing examples can be found for Machinery and LVD, RTD and LVD, LVD, RTD and GPSD.
- **Justification for dated references:** Presumption of conformity has a start and end date. This is under the competence of the EC. The use of undated references means that the

Orgalime, the European Engineering Industries Association, speaks for 41 trade federations representing the mechanical, electrical, electronic, metalworking & metal articles industries of 24 European countries. The industry employs some 10.9 million people in the EU and in 2015 accounted for more than €1,900 billion of annual output. The industry accounts for over a quarter of manufacturing output and a third of the manufactured exports of the European Union.

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EC does not have control over the ending dates for the presumption of conformity. However, it must be noted that there is a chain of undated references inside standards.

2.2 Directive 2014/53/EU on Radio Equipment

- **Granularity:** annex ZZ needs to be detailed so it can help manufacturers. RED articles 3.1(a) and 3.1(b) take all essential requirements from respectively LVD and EMC. It is necessary to mention the specific essential requirements from those directives and not the general RED 3.1. Furthermore, EMC essential requirements mention immunity, disturbance and fixed installations, some RED standards only mention 2 of those essential requirements;
- **Data on RED standards:** 97 unique RED standards, not counting the revisions of the Standards under RED articles 3.2 and 3.3. 95 have been assessed and communicated to the appropriate ESO. Out of the 95, 51 have no issues, 31 have issues, 11 have major issues, 2 are on hold, to be discussed with ESOs, and 2 are to be assessed.
- **Data on R&TTE standards:** there are 166 listed standards. The EC is waiting for 71 that have not been sent.

2.3 Directive 2014/35/EU on Low Voltage

- **Main issue:** annex ZZ, missing references of the annexes.
- **Non-published standards and formal objections.** The procedure of formal objections has not been followed as they have not been voted in the Committee of Standards. Furthermore, the point is not on the provisional agenda of the March 2017 CoS.

2.4 Directive 2014/30/EU on Electro-Magnetic Compatibility

- **Non-published EMCD standards:** New approach consultant system has been in place since December 2015, as such, its work is delayed. Furthermore, a list of EMCD standards was uploaded but the EC cannot publish it as it has not been able to assess it. The EC published another list in August where it removed the Standards that were not assessed and maintained the ones that are still “active”.

Legal Aspects

- **Combined equipment chapter in the RED Guide:** there are guidelines in the Blue Guide that deal with products that fall under different directives. This was already the case under the R&TTED;
- **A possible solution for undated references - indirect dated reference;** instead of giving a date, the solution would be to add a footnote statement explaining what version applies at which given time, such as: “all references were valid at the date of the publication”. **Long term solution:** a general rethinking of the drafting rules of standards and ways of referencing them.

3. Discussing typical cases: example standards (ESO and EC examples) (14h00)

Common issues impeding the publication of standards:

- Equipment is not in the scope of the RED;
- Standards contain legal text that goes beyond RED article 3, which is the basis of the standardisation request. For example, the standard requests the marking of the equipment;
- Empty or incorrect Annex ZZ;
- RED mandate not mentioned;

- Undated normative reference ;
- State of the art is more advanced than the standard. Not possible to implement state of the art because of the dated reference;
- Relevant EC decisions are not respected (such as receiver parameters);

4. **Agreed way forward and conclusions**

- EC to examine a 'note' in the OJEU: undated references have to mention a certain date (such as the date of publication in the OJEU of the harmonised standard it makes reference to). The EC will check the possibilities with EC Legal Services;
- European Standards Organisations to look into the possibility of creating a 'mending' mechanism for 'minor' errors in ratified/published standards;
- Process for making the standard (and IEC text + assessment results) available to EC services has to be further clarified (both for the ESO part as for further treatment by the EC);
- CEN-CLC with EC to make inventory of harmonised standards pending for citation in the OJEU and main reasons for not citing;
- To improve the comprehension and logics/interfaces to HAS (EC software);
- CEN and CENELEC members to provide guidance to technical experts on the correct use of normative references (dated/undated).

