



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

The Director-General (acting)

Ref. Ares(2020)518723 - 28/01/2020

Brussels,
GROW C3/ [REDACTED] Ares 378561

SENSITIVE: *Commission*
internal

**NOTE FOR THE ATTENTION OF MR V. MOUTARLIER
HEAD OF CABINET OF COMMISSIONER THIERRY BRETON**

Subject: Common charger file

This note elaborates on the possible options for the way forward concerning the common charger file.

In the European Parliament plenary meeting of 13 January 2020, there was an unanimous call for action by the Commission to implement a common charger. MEPs criticised the fact that the problem has been on the table for 10 years and has not been solved yet.

A European Parliament Resolution is being prepared and may be adopted at the 29 – 30 January 2020 plenary session (still to be confirmed).

1. BACKGROUND

In 2009, the Commission facilitated a voluntary agreement on the ‘common charger’ for mobile phones. This agreement was operational in 2011 through a Memorandum of Understanding (MoU) and expired in 2014 when negotiations to renew it had started. Following the implementation of the agreement, charging solutions for mobile phones were effectively reduced from 30 to 2 (USB-B, currently being phased out and replaced by USB-C and lightning solutions).

Given the success of the first MoU, the Commission fostered the renewal of a new voluntary approach from the industry, which, however, failed to deliver on a common charging solution.

The Commission decided then to launch an impact assessment study on a possible regulatory initiative aiming to limit the fragmentation of the charging solutions for mobile phones and similar devices (the study). The study was carried out by Ipsos and Trinomics with support from Fraunhofer FOKUS and should be published by the end of January/beginning of February. It assesses the impacts of different policy options on consumers, industry and the environment.

2. WAY FORWARD-OPTIONS

Option 1: Continue pursuing a voluntary approach

The impact assessment study suggests that only regulating the charging interface would not result in substantial benefits (or costs). More specifically, the ‘benefits would be minor rather than major, and will result mainly from the elimination of proprietary connectors (over 20% of

the market), and/or the guarantee that all EPS (external power supply) will be interoperable with all mobile phones, which in practice is already the case.’ This option would hence maintain the status quo, whereby in the last draft of the MoU of DigitalEurope no solution for a single common charger was proposed.

Pros: This option may be justified based on pure cost-benefit considerations, taking into account the above-quoted conclusion of the study. Moreover, a voluntary approach may be argued to be the most appropriate means to allow future innovation.

Cons: The negative impact of this option is that the Commission will be sharply criticised for continuing relying on the industry, whose unwillingness to agree on a single common solution is reflected in the lastly proposed MoU, at the detriment of consumers and environmental objectives.

Option 2: Impose a common charger through regulatory means [within the framework of the Radio Equipment Directive (RED)]

2A: Impose a common charger through a delegated act under the RED

2B: Amend the RED, through the ordinary legislative procedure, to reinforce the Commission empowerments in this area, and then supplement it with a delegated act.

The RED applies to radio equipment (mobile phones and wireless chargers are thus covered by the RED while wired chargers are not).

Option 2A: Article 3 (3) (a) of the RED provides that radio equipment shall interwork with accessories, in particular with common chargers. This requirement, however, applies only if a Commission delegated act is adopted.

Pros: The advantage of this option is that a delegated act can be adopted in a relatively short timeframe. Furthermore, this would be in line with the expectation of the co-legislators, which have granted the above empowerment to the Commission.

Cons: The disadvantage of this option is that it might lead to litigation, based on the plea of alleged 'illegality', because the Commission would exceed the powers conferred by RED. It has to be noted in this respect that the RED does not include any definition of common charger. On the other hand, the Commission's empowerment is limited to the identification of the categories and classes of products to which the essential requirement of interworking with common chargers should apply and, would not, in principle, allow the Commission to introduce a definition of common charger. In the absence of such definition, it is unclear how the objective of imposing one solution can be achieved. If the 'common charger' definition is nonetheless included in the delegated act, there is a risk that a party who has a legitimate interest (e.g. a manufacturer of mobile phone) may contest the legal validity of such an act before the Court of Justice of the EU, on grounds that the Commission has exceeded its empowerment conferred by the co-legislators. In that case, if the action is successful, the Court of Justice of the EU may annul the delegated act.

Option 2B:

Pros: This option has the advantage of overcoming a litigation risk based on the plea of alleged 'illegality' for exceeding the powers conferred by the RED.

Additionally, compared to a delegated act, a revision of RED through the ordinary legislative procedure act can have a more complete scope. It can, for example, empower the Commission to define in a delegated act the characteristics of the common wired charger itself, which currently does not fall within the scope of the RED.

Cons: The disadvantages of this option are the longer time of an ordinary legislative procedure for a delegated act and the fact that, if a revision of RED is proposed, a risk arises to open up discussions on other issues covered by the Directive but not related to the common charger. Though it is difficult to predict, proposals might be brought forward for, e.g., amending the scope by inserting specific exclusions (for example to exclude from RED any test equipment or cochlear implants), introducing new elements (such as e-labelling), etc.

Option 3: Impose a common charger + decoupling

3A: Option 2 + decoupling through implementing acts in the framework of the Ecodesign Directive

3B: Prepare a new act (basic act) under the Internal Market provisions of the TFEU (Article 114)

According to the study, harmonising solely the chargers' interface may not be the optimal solution. This option would be therefore combine it with decoupling (i.e. the unbundling of the charger from phone sales).

Option 3A:

Pros: Decoupling would enhance the effectiveness of imposing a common charger. According to the study, improving decoupling alone could provide e-waste savings of more than 10,000 tons per year.

Cons: It should be noted that according to the study, the higher decoupling scenarios would lead to a growth in the market for standalone chargers and, by extension, to a higher risk that unsafe and/or counterfeit chargers are placed on the market. Therefore, this option should be complemented by measures to minimise the risk of unsafe products on the market.

Additionally, consumers may not be ready to accept that they are not provided with a charger when they buy a mobile phone. This regulatory measure on decoupling should be accompanied by consumers' awareness campaigns.

The feasibility of regulating the decoupling through implementing regulations in the framework of the Ecodesign Directive should be explored. Decoupling may be made compulsory (i.e. via an obligation of not equipping a specific product with its charger) or may be incentivised (e.g. assigning less stringent energy or material efficiency requirements to products placed on the market without the charger).

The Commission will start in Q1 2020 a preparatory study on potential Ecodesign requirements for smartphones. This could represent a case to investigate the abovementioned regulatory approaches.

Option 3B:

A new act (basic act) under the Internal Market provisions of the TFEU (Article 114) could impose a common charger and address decoupling.

Pros: As mentioned above, according to the study, only harmonising the chargers interface may not be the optimal solution and so the benefits of a new act on a common charger would be enhanced by including provisions on decoupling.

Moreover, a new basic act, enacted via the co-decision procedure, could overcome any potential legal hurdles or questions about the empowerments of the Commission to adopt implementing acts on decoupling in the framework of the Ecodesign Directive.

Cons: Given that a new act shall be enacted via the co-decision procedure, the disadvantage of this option is the long-time process that is expected to take until its adoption.

Moreover, a risk arises to open up long discussions on how to formulate the exact scope of this new act and what requirements and aspects will be finally covered by this new act. For example, questions might be raised on whether only recharging should be addressed or also other areas of interoperability, such as the size and power of batteries, the interface of all cables, etc.

3. CONSIDERATIONS ON THE SCOPE

If a regulatory process is followed for imposing a common charger, the question should be considered whether the scope should only cover mobile phones or also other electronic devices that may be charged with the same common charger.

The study concludes that tablets, e-readers and cameras, but not laptops, are other portable electronic devices, whose charging profile is similar to that of mobile phones.

The question should also be considered whether a regulatory option should only regulate wired charging or also wireless charging (ensuring the interoperability of the wireless chargers).

4. OTHER CONSIDERATIONS AND ASPECTS

The above options should be complemented by other initiatives.

Firstly, market surveillance campaigns under the safety legislation applicable to stand-alone wired chargers (i.e. the Low Voltage Directive or the General Product Safety Directive) shall be carried out to ensure that unsafe (non-compliant chargers) are not made available.

Secondly, consumers' awareness campaigns (what chargers can be used with what devices, etc.) should be initiated.

Lastly, measures to enhance waste management (recycling), aiming at reducing environmental problems, should be considered.

(e-signed)
Gwenole Cozigou

C.c.: [REDACTED], CAB Breton, [REDACTED]