

European Convention on the legal protection of services based on, or consisting of, conditional access

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PURPOSE: to approve the European Convention on the legal protection of services based on, or consisting of, conditional access.

PROPOSED ACT: Council Decision.

LEGAL BASE: Article 207(4) in conjunction with Article 218(6)(a)(v) of the Treaty on the Functioning of the European Union (TFEU).

IMPACT ASSESSMENT: no impact assessment was carried out.

CONTENT: on 20 November 1998, the Council and the European Parliament adopted Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access.

This Directive created a common EU legal framework for combating illicit devices which allow unauthorised access to television services offered against payment and for the effective protection of such services. This protection covers both television and radio broadcasting services and transmission by internet.

The primary objective of this Directive was to provide legal protection to all services for which payment depends on conditional access, i.e. access to the protected service is made conditional upon prior individual authorisation. More specifically, this protection consists of declaring unlawful all commercial activity relating to equipment which allows or facilitates access to services without authorisation or payment to the provider, and establishing sanctions.

In 1999, the Council of Europe started to draft a European convention on the legal protection of services based on, or consisting of, conditional access. The Council therefore authorised the Commission to represent the European Community in the negotiations on the Convention.

The negotiations were successful and the Convention was adopted on 24 January 2001 and entered into force on 1 July 2003.

The Convention establishes a regulatory framework almost identical to Directive 98/84/EC. The wording of the two texts differs slightly in places. For instance, the Convention not only defines as a criminal offence the manufacture of illicit devices but also their production. It also gives a clearer definition of the sanctions established for activities defined as unlawful, since it describes them as penal, administrative or other.

The Convention is open for participation by the European Union. The Commission indicated that the signing of the Convention by the European Union should encourage broader ratification by the Member States of the Council of Europe and thus make it possible to extend legal protection for services based on conditional access beyond the borders of the EU.

Consequently, the Commission recommends that the Council conclude this convention, as it will make it possible to extend the scope of the legal framework established by Directive 98/84/EC and thus make it possible to effectively combat threats to protected services.

BUDGETARY IMPLICATION: this proposal has no implication for the EU budget.