Encrypted services: legal protection of services based on or consisting of conditional access

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This document contains the first report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access. More specifically, this report deals with the implementation of the Directive since its adoption in November 1998 through to the end of 2002. It describes and analyses the important facts relating to the key provisions of the Directive and their implementation in national legislation. The report is based on the transposition information provided by Member States, the views expressed by market players, in particular on the development of piracy and enforcement by national authorities, and the Commission's own views and analysis. It also takes account of the results of an independent study commissioned in 1999 on the use of conditional access for reasons other than the protection of remuneration. Furthermore, this report is part of the Commission's comprehensive Internal Market strategy to remove barriers to services. As regards the implementation of the Directive, the report states that the Directive granted Member States a period of one and a half years to implement its provisions. By the deadline for transposition, i.e. 28 May 2000, only very few Member States had notified implementation legislation to the Commission. In accordance with the procedure laid down in Article 226 of the Treaty (ex Article 169) for non-notification of national implementing measures, letters of formal notice were sent out to the Member States that had failed to do so. Following these letters, a large majority of Member States duly notified their implementing measures. The Commission concludes that implementation of the Directive in national legislation does not yet appear to have been fully achieved by all Member States. Two Member States (Greece and Spain) still have to complete their national implementation process, while there is some uncertainty in several others as to their completeness and compatibility. The Commission will continue to examine the national measures in question and vigorously pursue its efforts to have the Directive fully implemented. As far as the candidate countries are concerned, the report states that they are showing encouraging progress with the implementation of the Directive, although much effort still has to be made. The Commission will continue to work together with all Candidate Countries towards an adequate level of administrative and judicial capacity by the time of accession. With the help of specialised industry players, special training seminars for the police and judicial authorities can be planned. The Commission urges Member States and Candidate Countries to step up enforcement and to give providers of pay services adequate protection against pirates enriching themselves at their expense. The Commission will continue to consult Member States and Candidate Countries on any remaining enforcement difficulties in an attempt to identify and combat loopholes in the legislation. Industry and enforcement authorities should continue to developjoint efforts to curb piracy. The Commission will continue supporting these developments as much as possible both from its funding programmes, including the AGIS Framework Programme on police and judicial co-operation in criminal matters and from the resources available for assisting Candidate Countries to boost their administrative and judicial capacity. The Commission calls upon the providers of electronic pay services to actively seek ways to prevent and reduce piracy, for example, by developing together with right holders contractual solutions to provide legitimate non-resident subscribers access to protected electronic pay services under reasonable, non-discriminatory and transparent conditions if those services are by their inherent nature available throughout the internal market. Overall, the following action can be taken to strengthen the effect of the Directive: - the Commission will vigorously pursue its efforts to have the Directive fully implemented. It will work together with Member States and Candidate Countries to ensure full implementation of the Directive and to clarify all remaining legal uncertainties. If necessary, the Commission will commence infringement proceedings; - the Commission will consult Member States on the practical difficulties they encounter when enforcing the national provisions to implement the Directive. - the Commission will encourage industry and national authorities to engage in joint efforts to fight piracy as efficiently and effectively as possible. - the Commission will continue to co-operate with

other European countries and the respective international organisations in order to enforce coherent application of European rules against the piracy of electronic pay-services; - the Commission recommends right holders and service providers to actively seek contractual solutions to provide legitimate non-resident subscribers access to protected electronic pay services under reasonable, non-discriminatory and transparent conditions throughout the internal market. The Commission will contribute to this process in the context of its review of Directive 93/83/EC.