Legal protection for encrypted services, consultation on theneed for Community action. Green Paper

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OBJECTIVE: the Commission Green Paper examines the problems created by the lack of specific legislation on the legal protection of encrypted services in certain Member States and by the disparities between existing rules in the other Member States. SUBSTANCE: in its Green Paper the Commission makes the point that encrypted services (pay-TV, videos and games on demand, tele-shopping, etc.) constitute a rapidly growing market, particularly as a result of the advent of digital technology. It takes the view that, because of the specialist nature of these services, they will have to have a trans-national dimension but that the development thereof is under threat because of piracy. For this reason it is important to ensure that encrypted services are legally protected against illegal reception. It emerges from a comparative study of the laws adopted in the various Member States that there are significant variations between the solutions devised to remedy the problem of the illegal reception of encrypted services. Whereas certain Member States have adopted specific rules, a number of others (A, P, E, GR, DK, D, LUX) still lack such legislation. In addition there are major differences between the Member States which do have specific rules, as regards the scope of the prohibited activities and the level of penalties. The Green Paper comes to the conclusion that the lack of an equivalent level of legal protection in all the Member States hinders the free circulation of encrypted services and decoders and also distorts competition between operators. In view of this situation the Commission is intending to hold consultations which should enable it to make a final decision regarding the need and the nature of possible Community intervention to harmonize national laws. Such an initiative could lead to minimum harmonization which would leave the Member States free to establish stricter principles. The initiative could thus: - ban the manufacture, sale for commercial and private purposes, installation and marketing of decoding devices intended to permit access to encrypted services without the authorization of the encryptor; - require the Member States to adopt effective, proportionate and deterrent penalties for breach of the above provisions and enable any interested party to bring a claim for damages and interest. As regards provisions on protection against the release into circulation of goods from third countries, the proposed measure should prohibit the importation of decoding devices intended to permit access to encrypted services without the authorization of the encryptor.