Basic information

1997/0198(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Encrypted services: legal protection of services based on or consisting of conditional access **Subject** 3.30.05 Electronic and mobile communications, personal communications 3.50.15 Intellectual property, copyright	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs, Citizens' Rights	ANASTASSOPOULOS Georgios (PPE)	14/10/1997

Former committee responsible	Former rapporteur	Appointed
JURI Legal Affairs, Citizens' Rights	ANASTASSOPOULOS Georgios (PPE)	14/10/1997

Former committee for opinion	Former rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs, Industrial Policy	WOLF Friedrich (V)	12/12/1997
ENVI Environment, Public Health and Consumer Protection	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
General Affairs	2111	1998-06-29
Competitiveness (Internal Market, Industry, Research and Space)	2130	1998-11-09
Competitiveness (Internal Market, Industry, Research and Space)	2094	1998-05-18

Key events

Date	Event	Reference	Summary
		COM(1997)0356	Summary

09/07/1997	Legislative proposal published		
01/10/1997	Committee referral announced in Parliament, 1st reading		
15/04/1998	Vote in committee, 1st reading		Summary
15/04/1998	Committee report tabled for plenary, 1st reading	A4-0136/1998	
30/04/1998	Debate in Parliament		Summary
18/05/1998	Modified legislative proposal published	COM(1998)0332	Summary
29/06/1998	Council position published	08710/1/1998	Summary
16/07/1998	Committee referral announced in Parliament, 2nd reading		
23/09/1998	Vote in committee, 2nd reading		Summary
23/09/1998	Committee recommendation tabled for plenary, 2nd reading	A4-0325/1998	
07/10/1998	Debate in Parliament		
09/11/1998	Act approved by Council, 2nd reading		
20/11/1998	Final act signed		
20/11/1998	End of procedure in Parliament		
28/11/1998	Final act published in Official Journal		

Technical information

Procedure reference	1997/0198(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (before Amsterdam) E 100A EC Treaty (before Amsterdam) E 066 EC Treaty (before Amsterdam) E 057-p2
Stage reached in procedure	Procedure completed
Committee dossier	JURI/4/10268

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A4-0136/1998 OJ C 152 18.05.1998, p. 0005	15/04/1998	
Text adopted by Parliament, 1st reading/single reading		T4-0241/1998 OJ C 152 18.05.1998, p. 0018-0064	30/04/1998	Summary
Committee recommendation tabled for plenary, 2nd reading		A4-0325/1998 OJ C 328 26.10.1998, p. 0005	23/09/1998	
		T4-0567/1998		

Text adopted by Parliament, 2nd reading		OJ C 328 26.10.1998, p. 0135-0155	08/10/1998	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	08710/1/1998 OJ C 262 29.08.1998, p. 0034	29/06/1998	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1997)0356 OJ C 314 16.10.1997, p. 0007	09/07/1997	Summary
Modified legislative proposal	COM(1998)0332 OJ C 203 30.06.1998, p. 0012	18/05/1998	Summary
Commission communication on Council's position	SEC(1998)1140	08/07/1998	Summary
Commission opinion on Parliament's position at 2nd reading	COM(1998)0627	13/11/1998	Summary
Follow-up document	COM(2003)0198	24/04/2003	Summary
Follow-up document	COM(2008)0593	30/09/2008	Summary
Follow-up document	SEC(2008)2506	30/09/2008	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0283/1998 OJ C 129 27.04.1998, p. 0016	25/02/1998	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 1998/0084
OJ L 320 28.11.1998, p. 0054 Summary

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

1997/0198(COD) - 09/07/1997 - Legislative proposal

OBJECTIVE: following the Green Paper from the European Commission (COS0395), the proposal for a directive aims to guarantee the legal protection of encrypted services in the internal market. SUBSTANCE: the proposal concerns the legal protection of broadcasting signals and remunerated broadcasting. It aims to: - prohibit and sanction all commercial activities involving unauthorized access to encrypted services (sale of decoders, smart cards or pirate devices); - prevent the Member States from restricting the free movement of services and decoders within the Union. The proposal covers all services supplied on a Conditional Access basis, such as pay-TV and pay-radio, video-on-demand, audio-on-demand, electronic publishing and a wide range of on-line services, all of which are offered to the public on a subscription or usage-related basis. It required the Member States to prohibit: - the manufacture, import, sale, possession, installation, maintenance or replacement for commercial purposes of an illicit device; - the use of commercial communications to promote illicit devices. The proposal demanded that sanctions applied should be effective, deterrent and proportional to the potential impact of the infringement. Service providers would be able to bring an action for damages and to request an injunction and the seizure of illicit devices, when appropriate.

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

1997/0198(COD) - 20/11/1998 - Final act

OBJECTIVE: to ensure an adequate level of legal protection of television or radio broadcasting services and information society services provided in return for remuneration and on the basis of conditional access. COMMUNITY MEASURE: Directive 98/84/EC of the European Parliament and of the Council on the legal protection of services based on, or consisting of, conditional access. SUBSTANCE: the Directive requires Member States to prohibit a wide range of piracy for commercial purposes with regard to illicit decoders, smart cards and software which neutralise conditional access systems and make it possible to receive services free of charge, and to introduce appropriate penalties for these activities. The Directive defines as 'protected services' television or radio broadcasting services, information society services and the provision of conditional access as a service in its own right. Thus it covers all services provided on the basis of conditional access, such as pay TV and radio, video and audio services on demand, electronic publishing or a wide range of on-line services, all of which are offered to the public on subscription or on a pay-per-use basis. It requires Member States to prohibit: - the manufacture, import, sale, possession, installation, maintenance or replacement for commercial purposes of an illicit device; - the use of commercial communications to promote illicit devices. It is up to Member States to take measures against possession or use of illicit devices for private purposes. The Directive requires effective, dissuasive and proportionate penalties to be imposed for infringements. Service-providers will be able to bring proceedings for damages, seek an injunction or other preventive measure and, where appropriate, apply for seizure of illicit devices. ENTRY INTO FORCE: 28/11/1998. DEADLINE FOR TRANSPOSITION: 28/05/2000.

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

1997/0198(COD) - 24/04/2003 - Follow-up document

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.

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

1997/0198(COD) - 30/09/2008 - Follow-up document

Ten years after Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access, the Commission is presenting a second report on its implementation. The question now is whether the Directive as it currently stands is still useful and appropriate. The present context is characterised by market potential for new content distribution platforms: Web TV, IP-TV, mobile TV, video-on-demand. Do these markets need to be protected in the same way as pay-TV? Is the protection afforded by the Directive useful to them, or even necessary? Such questions only arise, of course, if the response to the opening question is that the Directive is indeed effective. One is forced to acknowledge that the piracy which the Directive seeks to combat adapts extremely well to technological progress and even thrives on the new possibilities available.

This report has addressed various aspects of the implementation of the Directive which pose problems or raise questions. The main elements are as follows:

1) the Directive has been transposed by the Member States in general and this has made it possible to curb piracy in the European Union and, thanks to the entry into the EU of certain countries previously affected by piracy, to change its geographical pattern, pushing the centres of piracy outside the Directive's sphere of influence.

2) the efficiency of its implementation occasionally seems questionable, thus reducing the legal security of audiovisual service providers. In particular, implementation at national level suffers, depending on the circumstances, either from sanctions which are too light or from a lack of command of the technical nature of the field on the part of the national authorities. On this latter point, it should be pointed out that the ongoing technological evolution continually increases the complexity of this subject area, with the emergence of new types of piracy, new distribution platforms or new conditional access systems such as certain digital rights management systems.

3) with regard to free movement, despite the deployment of a Community framework intended to promote the development of the single market in these services, there has been only limited development of completely legal cross-border services. The grey market is the cross-border mechanism which seems the most developed, but this is only tolerated by the operators, while the availability of audiovisual services of the State of origin is an important factor in the welfare of European citizens exercising their right to free movement within the European Union.

4) lastly, certain restrictions upon the implementation of the protection afforded by the Directive require more in-depth analysis. This may concern, firstly, the possibility of imposing sanctions for the private possession of illicit systems, a proposal from the operators but one which is not easy to implement, and secondly, the situation of the operators who do not benefit from adequate protection, such as holders of rights in respect of sports events.

The following **actions can be taken to improve its application and address convergence**:

- Establishment of a group of experts: the Commission proposes to set up an expert group on conditional access made up of experts from the Member States. The group will operate following the model of the e-commerce expert group and with a similar mandate. The conditional access group will have to take action to bolster and facilitate administrative cooperation between Member States as well as between the Member States and the Commission, discuss problems related to the application of the "Conditional Access" Directive 98/84/EC and discuss topical problems associated with the use of conditional access systems.

The **subjects to be tackled** as priorities are those outlined in this report, chiefly: new forms of piracy, assessment of the deterrent nature of the sanctions in place, scope for a sanction on private possession within the protection of conditional access systems, links with legislative provisions on copyright protection, the inclusion of DRM (digital rights management) as a conditional access system, and the protection of the use of conditional access systems for purposes other than protecting remuneration. The group will also take into account all aspects which can contribute to personal data and privacy protection. By adopting this report, the Commission is taking the decision to establish such a group by the end of the year 2008.

- Working group on the grey market: the Commission will also propose that the expert group mandate a specific working party to tackle the subject of the grey market. In the first instance, this working party should strive to compile as much information as possible on the intra-Community movements of European citizens and on their audiovisual service consumption habits. It could go on to explore various avenues that might offer solutions enabling interested citizens to access services provided from their Member State of origin.

- Gathering information*:* the report highlights a certain lack of information, in particular concerning the exercise by European citizens of the right to free movement and the supply and demand situation for audiovisual services abroad. Such information should help to establish the potential of the cross-border markets and contribute to deliberations on copyright and rights to sports events. The Commission proposes to launch a survey on the subject at the beginning of 2009.

In another field, information on the sale of rights to **sports events** will be gathered as part of the study on sports financing announced by the Commission in its White Paper on sport. This information should constitute the first phase in gathering information on the situation of holders of rights to sports events when faced with piracy involving the retransmission of events.

- Ratification of the European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access: this Convention has considerable potential to extend the protection of conditional access services internationally, beyond the territory of the European Union. The European Community's ratification of the Convention would enable new impetus to be given to international action among the 47 members of the Council of Europe. The Commission will therefore shortly propose to the Council that it ratify the Convention on behalf of the European Community.

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

1997/0198(COD) - 29/06/1998 - Council position

The Council common position incorporates the substance of 11 amendments adopted by Parliament. The Council has, however, not incorporated some amendments accepted by the Commission in its amended proposal. Several of these amendments concern the interests of television viewers or the use of conditional access for reasons other than protecting remuneration. The Council has however noted the Commission's intention to carry out a study on the use of conditional access systems for reasons other than protecting remuneration, their impact on the operation of the internal market and the need for appropriate additional legal protection. The Council has made other changes which do not affect the objectives or substance of the proposal. These changes mainly aim to: - explicitly refer to 'commercial communications'; - clarify the concept of 'distribution'; - add a reference to the 'rental' and 'distribution' of illicit devices to the list of illicit activities; - state that national rules may provide that infringements must be intentional, i.e. carried out by people who were aware or should normally have been aware of them; - indicate that the Member States are not obliged to adopt penal sanctions but that they must ensure that the measures they adopt are in conformity with their national judicial systems and that they may provide for preventive measures.

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

1997/0198(COD) - 30/04/1998 - Text adopted by Parliament, 1st reading/single reading

In adopting, by 403 votes to 11, with 8 abstentions, the report by Mr ANASTASSOPOULOS (PPE, Gr) on legal protection for encrypted transmission and retransmission, Parliament expressed the view that the Commission proposal was inadequate. Harmonization was needed 'at the highest possible level', which would remain effective in the context of very rapid technological development. Parliament thus strengthened the text proposed by the Commission. An 'unauthorized device' is deemed to be any equipment or software designed, altered or assembled with the sole purpose of permitting unauthorized access to a protected service (e.g. a pirated decoder making it possible to watch an encrypted TV channel). Member States must prohibit within their territory: - the manufacture, importation, sale or possession for commercial purposes of unauthorized devices, and the marketing of these devices for direct or indirect profit; - the installation, maintenance or replacement for commercial purposes or with a view to direct or indirect economic profit, of an unauthorized device; - use of commercial communications to promote unauthorized devices: advertising, direct marketing, sponsorship, commercial promotion, public relations, etc.; - publicity about the manufacture, importation, sale and marketing of unauthorized devices; - publicity about activities and actions facilitating unauthorized access. Member States should take the necessary measures, in accordance with their legislation, to ensure that service-providers damaged by unauthorized activity can bring legal proceedings for damages and, if appropriate, apply for seizure of unauthorized devices.

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

1997/0198(COD) - 08/10/1998 - Text adopted by Parliament, 2nd reading

In adopting the recommendation for second reading by Mr Georgios ANASTASSOPOULOS (PPE, GR), the European Parliament approved the common position of the Council with the proviso that it noted the Commission's undertaking to have a study carried out to determine whether or not it would be appropriate to extend legal protection to services using conditional access for reasons other than to ensure remuneration for them, and that Parliament awaited any proposals the Commission might make after the study. However, Parliament called on the Commission to submit a report on the application of the Directive no later than three (rather than five) years after the entry into force of the Directive, and thereafter every two (rather than three) years.

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

1997/0198(COD) - 08/07/1998 - Commission communication on Council's position

The Commission welcomes the Council common position.

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

1997/0198(COD) - 13/11/1998 - Commission opinion on Parliament's position at 2nd reading

The Commission has modified its proposal in the light of two amendments adopted by Parliament at second reading. The first amendment seeks to point to the need for Member States to provide adequate legal protection against the placing on the market for direct or indirect financial gain of an illicit device which enables the circumvention of any technological measure designed to protect the remuneration of a legally provided service. The second amendment calls on the Commission to review the Directive and in particular Article 2 (definitions) in the light of market and technological developments and the outcome of the consultations therefore carried out. The first report on the implementation of the Directive should be presented after three instead of five years.

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

1997/0198(COD) - 18/05/1998 - Modified legislative proposal

The Commission's amended proposal took over almost all of Parliament's amendments and in particular those stressing: - that the conditional access systems should not be used for the sole purpose of refusing access for consumers in some Member States to services which are freely available in other Member States; - that the Directive must grant protection against illicit (pirated) devices; - that the encryption of broadcasting services must not inconsiderately deprive the average viewer of these services if they were originally available without charge; - that the Directive is without prejudice of the cultural aspects of any further Community action concerning new services; - that it is necessary to ensure that Member States provide adequate legal protection against any individual or group using a device for commercial purposes; - that the Directive is without prejudice to the ability of the viewer to have access to free-to-air channels within a conditional access service platform without being required to pay an additional fee beyond the normal charge for accessing the platform; - that a balance must be secured between the interest of the service providers and copyright holders to be remunerated for their services on the one hand and the interest of the general public not to be excluded more and more from information and cultural events.