

# EUROPEAN PARLIAMENT

9 February 1998



## DRAFT REPORT

on the proposal for a European Parliament and Council Directive on the legal protection of services based on, or consisting of, conditional access  
(COM(97)0356 - C4-0475/97)

Committee on Legal Affairs and Citizens' Rights

Rapporteur: Mr Georgios Anastassopoulos

Part A: Amendments

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By letter of 22 September 1997, the Commission submitted to Parliament, pursuant to Article 189b(2) of the EEC Treaty and Articles 57(2), 66 and 100a of the EC Treaty, the proposal for a European Parliament and Council Directive on the legal protection of services based on, or consisting of, conditional access.

At the sitting of 1 October 1997, the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on the Environment, Public Health and Consumer Protection and the Committee on Culture, Youth, Education and the Media for their opinions.

At its meeting of 14 October 1997 the Committee on Legal Affairs and Citizens' Rights appointed Mr Georgios Anastassopoulos rapporteur.

The Committee on Legal Affairs and Citizens' Rights/It considered the Commission proposal(s) and the draft report at its meeting(s) of ....

At the latter/last meeting it adopted the draft legislative resolution by ... votes to ..., with ... abstention(s)/unanimously.

The following took part in the vote/The following were present for the vote: ..., chairman/acting chairman; ... (and ...), vice-chairman/chairmen; ..., rapporteur; ..., ... (for ...), ... (for ... pursuant to Rules 138(2)), ... and ....

The explanatory statement will be presented orally in plenary sitting/will be published separately.

The opinion(s) of the (and the Committee on ...) (and the Commission declaration/position) is (are) attached/will be published separately /; the (and the Committee on ...) decided on ... not to deliver an opinion/opinions.

The report was tabled on ....

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session/is ... noon/a.m./p.m. on ....

A  
**LEGISLATIVE PROPOSAL**

Proposal for a Council Regulation on the proposal for a European Parliament and Council Directive on the legal protection of services based on, or consisting of, conditional access  
(COM(97)0356 - C4-0475/97)

The proposal is approved with the following amendments:

Text proposed by the Commission

Amendments by Parliament

(Amendment 1)  
Recital 3

Whereas the Treaty provides for the free movement of all services provided for remuneration, whereas this right, as applied to broadcasting and Information and Society services, is also a specific manifestation in Community law of more general principle, namely the freedom of expression as enshrined in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

Whereas the Treaty provides for the free movement of services which are, as a rule, provided for payment, whereas this right, as applied to broadcasting and Information and Society services, is also a specific manifestation in Community law of more general principle, namely the freedom of expression as enshrined in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

(Amendment 2)  
Recital a (new)

a Whereas the recent developments in technology and audiovisual media and their impact on the public also justify extending this legal protection to services provided in the context of a more general economic activity, or at least to some of those services;

(Amendment 3)  
Recital 6

Whereas the opportunities offered by digital technologies provide the potential for increasing consumer choice and contributing to cultural pluralism by developing an even wider range of services within the meaning of Articles 59 and 60 of the Treaty; whereas the viability of those services will often depend on the use of Conditional Access in order to obtain the remuneration of the service provided.

Whereas the opportunities offered by digital technologies provide the potential for increasing consumer choice and contributing to cultural pluralism by developing an even wider range of services within the meaning of Articles 59 and 60 of the Treaty; whereas the viability of those services will often depend on the use of Conditional Access in order to obtain the payment for the service provided.

(Amendment 4)  
Recital 10

10. Whereas the application of the Treaty is not sufficient to remove these internal market obstacles; whereas those obstacles should therefore be removed by providing for an equivalent level of protection between Member States; whereas this implies an approximation of the national rules relating to the commercial activities which concern illicit devices

10. Whereas the application of the Treaty is not sufficient to remove these internal market obstacles; whereas those obstacles should therefore be removed by providing for an equivalent level of protection between Member States; whereas this implies an approximation of the national rules relating to the commercial activities and other activities, for the most part of an economic nature, which concern illicit devices.

(Amendment 5)  
Recital 1

11. Whereas those commercial activities are detrimental to consumers who are misled about the origin of illicit devices; whereas a high level of consumer protection is needed in order to fight against this kind of consumer fraud; whereas Article 129a(1) of the Treaty provides that the Community should contribute to the achievement of a high level of consumer protection by the measures it adopts pursuant to Article 100a.

11. Whereas those activities are detrimental to consumers who are misled about the origin of illicit devices; whereas a high level of consumer protection is needed in order to fight against this kind of consumer fraud; whereas Article 129a(1) of the Treaty provides that the Community should contribute to the achievement of a high level of consumer protection by the measures it adopts pursuant to Article 100a.

(Amendment 6)  
Recital 15

15. Whereas this Directive should be without prejudice to the application of national provisions which may prohibit the private possession of illicit devices; whereas this directive is without prejudice to the application of Community competition rules; whereas this directive is without prejudice to the application of Community rules concerning intellectual property rights

15. Whereas this Directive leaves to the Member States' discretion the use of national provisions to prohibit the private possession of illicit devices; whereas this directive is without prejudice to the application of Community competition rules; whereas this directive is without prejudice to the application of Community rules concerning intellectual property rights.

Article 1  
Definitions  
(Amendment 7)

For the purposes of this Directive:

(a) '*Protected service*' means any of the following services, were provided on the basis of Conditional Access:

- television broadcasting, as defined in point (a) of Article 1 of Directive 89/552/EEC;
- radio broadcasting, meaning any transmission by wire or over the air, including that by satellite, of radio programmes intended for reception by the public;
- Information Society services within the meaning of Article 1.2 of Council Directive 83/189/EEC, as amended by Directive ...

For the purposes of this Directive:

(a) '*Protected service*' means any of the following services, were provided on the basis of Conditional Access:

- television broadcasting, as defined in point (a) of Article 1 of Directive 89/552/EEC, in conjunction with Article 2a of that Directive as amended by Directive 97/36/EC<sup>(1)</sup>;
- radio broadcasting, meaning any transmission by wire or over the air, including that by satellite, of radio programmes intended for reception by the public;
- Information Society services within the meaning of Article 1.2 of Council Directive 83/189/EEC, as amended by Directive...<sup>(2)</sup>

(Amendment 8)

Or conditional access to the above services as a service in its own right.

This term also covers the provision of conditional access to the above services, considered as a service in its own right.

<sup>(1)</sup> OJ L 202, 30.7.1997, p. 60

<sup>(2)</sup> See proposal for a Directive COM(96) 0392 final, OJ C 307, 16.10.1996, p. 11

(Amendment 9)

(b) '*Conditional access*' means any technical measure and/or arrangement whereby access to the service in an intelligible form is made conditional upon a prior individual authorization aiming at ensuring the remuneration of that service

(b) '*Conditional access*' means any technical measure and/or arrangement whereby access to the service in an intelligible form is made conditional upon a prior individual authorization by the service provider.

(Amendment 10)

(c) '*Conditional access device*' means any equipment for software designed or adapted to give access to a protected service in an intelligible form.

(c) '*Conditional access device*' means any equipment for software designed linked or adapted to give access to a protected service in an intelligible form.

(Amendment 11)

(e) '*Illicit device*' means any equipment or software designed or adapted to give unauthorized access to a protected service.



(e) '*Illicit device*' means any equipment or software either designed linked or adapted to give unauthorized access to a protected service or which in any way enables such unauthorized access.

Infringing activities  
(Amendment 12)

Member States shall prohibit on their territory all of the following activities:

(a) the manufacture, import, sale or possession for commercial purposes of illicit devices;

(b) the installation, maintenance or replacement for commercial purposes of an illicit device;

(c) the use of commercial communications to promote illicit devices.

Member States shall prohibit on their territory all of the following activities:

(a) the manufacture, import, sale or possession for commercial purposes of illicit devices;

(a1) making available an illicit device for direct or indirect financial gain;

(b) the installation, maintenance or replacement for commercial purposes or for direct or indirect financial gain of an illicit device;

(c) the use of commercial communications to promote illicit devices.

(c1) the advertising or provision of information concerning the manufacture, import, sale and availability in general of illicit devices;

(c2) the advertising and provision of information concerning activities and measures facilitating unauthorized access;



(c3) any unauthorized access whatsoever in the knowledge that it is unauthorized.

(Amendment 13)



2. Member States may also prohibit, by means of national provisions, the private possession of illicit devices;

Article 4  
Sanctions and remedies  
(Amendment 14)



1. The sanctions referred to in Article 2(1) shall be effective, deterrent and proportional to the potential impact of the infringing activity.

2. Each Member State shall take the measures necessary to ensure that service providers, whose interests are affected by an infringing activity carried out on its territory, can bring an action for damages and seek for an injunction and, where appropriate, apply for the seizure of illicit devices.

1. The sanctions referred to in Article 2(1) shall be effective, deterrent and proportional to the potential impact of the infringing activity.

2 Each Member State shall take the measures necessary pursuant to its legislation to ensure that service providers, whose interests are affected by an infringing activity carried out on its territory, can bring an action for damages and seek for an injunction and, where appropriate, apply for the seizure of illicit devices.

(Amendment 15)

2a The rights set out in paragraph 2 are also recognized for owners of intellectual property under applicable national and Community law.

## DRAFT LEGISLATIVE RESOLUTION

**Legislative resolution embodying Parliament's opinion on the proposal for a Council Directive on the legal protection of services based on, or consisting of, conditional access (COM(97)0356 - C4-0475/97) - )**

**(Consultation procedure: first reading)**

### The European Parliament

- having regard to the Commission proposal to the Council, COM(97)0356 -97/0198(COD) <sup>(1)</sup>,
  - having been consulted by the Council pursuant to Article 189b(2) of the EEC Treaty and Articles 57(2), 66 and 100a of the EC Treaty pursuant to which the Commission submitted the proposal to Parliament (C4-0475/97)),
  - having regard to Rule 58 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on the Environment, Public Health and Consumer Protection and the Committee on Culture, Youth, Education and the Media (A4-0000/00),
1. Approves the Commission proposal, subject to Parliament's amendments,
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
  3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 189b(2) of the EC Treaty;
  4. Should the Council intend to depart from the text approved by Parliament, calls on the Council to notify Parliament and requests that the conciliation procedure be initiated;
  5. Points out that the Commission is required to submit to Parliament any modification it may intend to make to its proposal as amended by Parliament,
  6. Instructs its President to forward this opinion to the Council and Commission.

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<sup>(1)</sup> O J C