

Committee of Ministers: European Convention on Conditional Access

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The Committee of Ministers of the Council of Europe adopted on 6 October 2000 the European Convention on the legal protection of services based on, or consisting of, conditional access. The aim of this instrument, which complements a parallel European Community Directive (Directive 98/84/EC of 20 November 1998), is to offer operators/providers of pay television and radio as well as remunerated on-line services protection against the illicit reception of their services at the wider European level.

The preamble of the Convention underlines that providers of radio, television and Information Society services based on conditional access against remuneration are threatened by the existence of a parallel "industry" which manufactures, markets and distributes devices which enable unauthorised access to their services, and therefore highlights the need to pursue a common policy in Europe aimed at the protection of these services.

Article 4 of the Convention establishes that it shall be unlawful to carry out a number of activities on the territory of a ratifying State. In countries where international treaties do not require an act of "reception" or "incorporation", this Article will be a sufficient legal basis to make the listed activities automatically illegal in that country. In many other countries, direct applicability of this Article will not be the case, and Parties to the Convention will therefore have to take "necessary measures" to prohibit and make unlawful on their territory the activities listed in Article 4. This will normally mean the adoption of legislation. Parties are not obliged to take measures to criminalise or prosecute unlawful acts which are committed outside their territory.

The activities which ratifying States must establish as criminal or administrative offences are the whole range of commercial operations associated with illicit access to conditional access services, for example the manufacturing of illicit decoders or smart cards for pay-tv services or the distribution or commercialisation of the latter.

On 20 September, the French Minister of Foreign Affairs notified the Secretary General of the Council of Europe of the objection of the French Government to the automatic entry into force of the Protocol amending the European Convention on

Transfrontier Television.

The Protocol in Article 35, paragraph 2, foresees its entry into force following the expiry of a period of two years. The personal use of an illicit decoder, smart card or other device is not made an offence under the Convention, but Parties may go beyond the Convention on this point and notify the Secretary General that they criminalise such an activity.

All operators/providers of a remunerated conditional access service, regardless of their nationality or place of establishment, will be offered protection under the Convention against the unlawful activities listed in Article 4, and irrespective of whether reciprocal treatment is offered in the country where that operator is established (principle of "universal protection").

By the adoption of this Convention, the Council of Europe will be supporting European broadcasters and online service providers against the financial losses that they suffer as a result of illegal decoding devices and hacking activities in general.

The European Convention on the legal protection of services based on, or consisting of, conditional access will be opened for signature on 24 January 2001, and will enter into force after three States have expressed their consent after the date on which it has been opened for acceptance (i.e., 1 October 2000; for more information on the Protocol see IRIS 1998-9: 4). However, those States or the European Community which expressed their consent to be bound by the Convention prior to the expiry of a period of three months after the opening for acceptance of this Protocol have the right to object to it.

In a letter to the Secretary General of the Council of Europe, the French Minister of Foreign Affairs states that, because the French Parliament has not yet approved the ratification of the Protocol, France cannot accept its automatic entry into force. Therefore, and according to Article 35, paragraph 3, the Protocol shall enter into force on the first day of the month following the date on which France has deposited its instrument of acceptance.

A week later, on 27 September, Lithuania joined the list of countries that have ratified the European Convention on Transfrontier Television and its amending Protocol. The Convention will enter into force for Lithuania on 1 January 2001.

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