European Commission: Draft Proposal for Directive on Legal Protection of Conditional Access Services

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On 9 July 1997, the Commission presented a proposal for a Directive on the legal protection of services based on, or consisting of, conditional access. Once adopted by the Council of the European Union and the European parliament (co-decision procedure), the proposal will require Member States to implement its provisions within one year.

The proposal for a Directive has been conceived in the light of the results of the Commission's 1996 Green Paper on the Legal Protection of Encrypted Services in the Internal Market (see IRIS 1996-3: 5) and of the Resolution of the European Parliament on the Commission Green Paper on legal protection for encrypted services in the internal market (consultation on the need for Community action - see IRIS 1997-6: 3). The type of services covered in the proposal include all forms of television broadcasting, broadcasting of radio programmes intended for reception by the public and all forms of on-line Information Society services, insofar as they are provided on a conditional access basis. As regards the scope of activities Member States would be required to prohibit the manufacture, import, sale or possession for commercial purposes of illicit devices; the installation, maintenance or replacement for commercial purposes, of an illicit device; and the use of commercial communications to promote illicit devices. A similar list can be found in Recommendation No R (91) 14 of the Committee of Ministers of the Council of Europe to the member States on the legal protection of encrypted television services.

The Commission's proposal aims at sanctioning commercial activities (as opposed to activities developed for private purposes) that favour unauthorised reception, thereby exempting the unauthorised reception as such. The scope of activities covered by the proposal thus includes the manufacturing, import, sale and possession as well as the installation, maintenance or replacement for commercial purposes, of illicit devices - e.g. equipment or software designed to enable the unauthorised access to protected services such as pirate decoders and smart cards. The use of commercial communications to promote such devices would likewise be considered illegal. Member States would furthermore have to provide for "effective, deterrent and proportional" sanctions for people infringing upon the regulations prohibiting the activities mentioned above as well as for measures necessary to ensure that service providers, whose interests are affected by an

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infringing activity, can bring an action for damages or apply for either an injunction or for the seizure of illicit devices.

In application of Internal Market principles, once harmonisation through the adoption and implementation of the Directive has been reached, Member States would no longer be allowed to restrict the free movement of goods and services which are covered by the Directive for reasons which relate to their protection against the list of activities enumerated above.

Communication from the Commission to the European Parliament, the Council and the Economic and Social Committee, Proposal for a European Parliament and Council Directive on the Legal Protection of Services based on, or consisting of, Conditional Access, 9 July 1997, provisional version

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