



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.11.1998
COM(1998) 627 final

97/0198 (COD)

OPINION OF THE COMMISSION

pursuant to Article 189 b (2) (d) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
on the Legal Protection of Services based on, or consisting of, Condi
Access

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 189 a (2) of the EC Treaty

EXPLANATORY MEMORANDUM

1. Background

The Commission adopted the proposal for a Directive on 9 July 1997¹.

The proposal was transmitted to the European Parliament, the Council and the Economic and Social Committee on 22 September 1997.

The Economic and Social Committee adopted its opinion on 25 February 1998.

On 30 April 1998, the European Parliament adopted, in first reading and in accordance with the codecision procedure (Article 189b), a legislative resolution approving, subject to amendments contained in this resolution, the Commission's proposal and calling on the Commission to alter its proposal accordingly.

On 18 May 1998, pursuant to Article 189 b(2) of the EC Treaty, the Commission adopted an amended proposal incorporating, in letter or in spirit, most of the amendments voted by the European Parliament in first reading,

On 29 June 1998, the Council acting pursuant to Article 189b (2) of the EC Treaty, adopted a common position on the proposal for a Directive,

On 8 July 1998 the Commission adopted its communication on the Council's common position and forwarded it to Parliament,

On 8 October 1998, the European Parliament adopted, in second reading, two amendments to the Council's common position,

2. Purpose of the Directive

This proposal aims at ensuring an adequate level of legal protection for television and radio broadcasting and information society services that are provided against remuneration and on the basis of conditional access.

The proposed Directive will require Member States to prohibit and provide appropriate sanctions against a wide range of commercial piracy activities that relate to illicit (pirate) decoders, smart cards and software which allow the circumvention of conditional access systems and the reception of a service free of charge.

The proposal concerns commercial piracy activities against protected services.

¹ Com (97) 356 final published in the OJ n° C314 of 16.10.1997

- Protected service is defined under Article 2a) as a television or radio broadcasting or information society service as well as the provision of conditional access as a service in its own right. Consequently, the proposal does not only cover services such as pay-television, or pay-radio but also services such as video-on-demand, music-on-demand, electronic publishing and a wide range of other on-line services. However, in order to be covered by the proposal, these services need to be offered under two conditions:
 - they must be provided on the basis of a conditional access device which is defined as any equipment or software designed or adapted to give access to a protected service in an intelligible form
 - the use of conditional access must aim to ensure the remuneration of the service.
- Infringing activities listed under Article 4 cover solely commercial activities related to illicit devices, the latter being defined as equipment or software designed or adapted to give unauthorised access to a protected service. As a matter of proportionality and subsidiarity, it is left to the Member States to take measures against the private possession and use of illicit devices.

3. Opinion of the Commission on the amendments proposed by Parliament

In its communication on the common position, the Commission welcomed the latter which should allow a rapid adoption and implementation of the proposal but regretted that not all of the amendments of the European Parliament which had been accepted by the Commission, had been incorporated.

At the second reading the European Parliament reintroduced one of those amendments and adopted, another, new one.

The first amendment reproduces the substance of the former amendment 10 adopted in first reading. It has, however, been redrafted in order to meet certain concerns of the Council. Since this amendment aims at clarifying the objective of the Directive, the Commission is of the opinion that this amendment can be accepted.

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 concerning the implementation of the Directive should be presented after three instead of five years and the interval for subsequent reports should be 2 instead of 3 years. The objective of this amendment is mainly to ensure that due account will be taken of a study on the use of conditional access systems for reasons other than to ensure the remuneration of the service. The Commission welcomes this amendment. Indeed, given the rapid technological and market developments and in view of the study the Commission is carrying out, it seems appropriate to foresee a regular review mechanism.

Amended proposal

for a European Parliament and Council Directive on the Legal Protection of Services based on, or consisting of, Conditional Access

Text of the common position

Amendments

(Amendment 1)

Recital 12 a) (new)

Whereas it seems necessary to ensure that Member States provide adequate legal protection against the placing on the market, for direct or indirect financial gain, of an illicit device which enables or facilitates without authority the circumvention of any technological measure designed to protect the remuneration of a legally provided service;

(Amendment 2)

Article 7

Article 7

Reports

Reports

Not later than five years after the entry into force of this Directive, and every three years thereafter, the Commission shall present a report to the European Parliament, the Council and the Economic and Social Committee concerning the implementation of this Directive accompanied, where appropriate, by proposals for adapting it in the light of technical and social developments.

Not later than three years after the entry into force of this Directive, and every two years thereafter, the Commission shall present a report to the European Parliament, the Council and the Economic and Social Committee concerning the implementation of this Directive accompanied, where appropriate, by proposals, in particular as regards the definitions under Article 2, for adapting it in the light of technical and social developments and of the consultations carried out by the Commission.

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