



“ Conditional Access” Directive

Directive 98/84/CE of 20 November 1998

- Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access
- **Objective:** provide a minimum level of legal protection within the EU of electronic pay services against piracy
- Article 1 - Scope : *“The objective of this Directive is to approximate provisions in the Member States concerning measures against illicit devices which give unauthorised access to protected services”*



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- **Internal Market Directive:**

Article 3: Member States may not:

- restrict the provision of protected services, or associated services, which originate in another Member State; nor

- restrict the free movement of conditional access devices;

for reasons falling within the field coordinated by this Directive.



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- **Protected Services (article 2a):** services provided against remuneration on the basis of conditional access:
 - television broadcasting
 - radio broadcasting,
 - information society services,
 - or the provision of conditional access to the above services;
- Services in the meaning of Article 50 of the Treaty
- Ancillary Services covered (bonus track)



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- **Conditional Access (Article 2b):**
any technical measure and/or arrangement whereby access to the protected service in an intelligible form is made conditional upon prior individual authorisation
- Technology-neutral, future proof
- Limit: purpose of obtaining remuneration



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- **Illicit devices (Article 2e):**
any equipment or software designed or adapted to give access to a protected service in an intelligible form without the authorisation of the service provider
- In practice:
 - Hardware devices (decoder)
 - Software programmes to bypass protection
 - Functional smart cards



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- **Infringing Activities (Article 4):**
 - the manufacture, import, distribution, sale, rental or possession for commercial purposes of illicit devices;
 - the installation, maintenance or replacement for commercial purposes of an illicit device;
 - the use of commercial communications to promote illicit devices.
- Commercial Activities
- Private activities (Recital 21): possible



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- **Sanctions and Remedies (Article 5):**
 - Sanctions: effective, dissuasive and proportionate
 - Remedies for providers of protected services: bringing an action for damages, obtaining an injunction or other preventive measure, applying for disposal outside commercial channels of illicit devices.
- Notification of remedies



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General information:

- Directive is based on Recommendation R(91)14 of the Council of Europe on the legal protection of encrypted television services
- First report on the implementation of the Directive in 2003



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