



EUROPEAN PARLIAMENT

2014 - 2019

Committee on Legal Affairs

2010/0361(NLE)

9.2.2015

DRAFT RECOMMENDATION

on the draft Council decision on the conclusion, on behalf of the European Union, of the European Convention on the legal protection of services based on, or consisting of, conditional access
(07597/1/2014 – C8-0286/2014 – 2010/0361(NLE))

Committee on Legal Affairs

Rapporteur: Pavel Svoboda

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
SHORT JUSTIFICATION	6

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the draft Council decision on the conclusion, on behalf of the European Union, of the European Convention on the legal protection of services based on, or consisting of, conditional access

(07597/1/2014 – C8-0286/2014 – 2010/0361(NLE))

(Consent)

The European Parliament,

- having regard to the draft Council decision (07597/1/2014),
 - having regard to 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 access¹
 - having regard to Council Decision 2014/243/EU on the signing, on behalf of the European Union, of the European Convention on the legal protection of services based on, or consisting of, conditional access²,
 - having regard to the request for consent submitted by the Council in accordance with Article 207(4), first subparagraph, and Article 218(6), second subparagraph, point (a) (v), of the Treaty on the Functioning of the European Union (C8-0286/2014),
 - having regard to the judgment of the Court of Justice of 22 October 2013³,
 - having regard to Rule 99(1), first and third subparagraphs, Rule 99(2), and Rule 108(7) of its Rules of Procedure,
 - having regard to the recommendation of the Committee on Legal Affairs (A8-0000/2015),
1. Gives its consent to conclusion of the Convention;
 2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and the Council of Europe.

¹ OJ L 320, 28.11.1998, p. 54.

² OJ L 128, 30.4.2014, p. 61.

³ Judgment of the Court of Justice of 22 October 2013, *Commission v Council*, C-137/12, ECLI:EU:C:2013:675.

SHORT JUSTIFICATION

This dossier is related to 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 access¹, which created a common legal framework applicable throughout the Union for combating illicit devices which allow for unauthorised access to television services offered against payment and effectively protecting such services. This protection covers both television and radio broadcasting services and transmission by Internet.

In 1999, the Council of Europe started to draft a European convention on the legal protection of services based on, or consisting of, conditional access. Many European states which are not members of the Union may provide havens for the development or distribution of devices for hacking into conditional access services if their legal system does not provide for sanctions against this very specific hacking activity. It was therefore necessary to extend the provisions of the 1998 Directive and to create a common and effective framework at European level for the protection of these services.

The negotiations which were conducted by the Commission on behalf of the Union were successful and the Convention, which was adopted in 2001, is fully compatible with the Directive. The wording of the two texts differs only slightly in places.

However, before the Council could ask Parliament to give its approval to the conclusion of the Convention, the Commission brought a case to the Court of Justice claiming that the Council had used an incorrect legal basis for the decision concerning the signing of the Convention. Instead of using Article 207 TFEU on the Common Commercial Policy, as proposed by the Commission, the Council had used Article 114 TFEU on harmonisation in the Internal Market.

While this court case was pending, it was not possible to sign or approve the conclusion of the convention on behalf of the Union. The judgement of the Court of Justice was presented in October 2013² and it ruled on the side of the Commission. The correct legal basis was therefore Article 207 TFEU on the Common Commercial Policy.

The Council was therefore able to adopt a decision on 14 April 2014 on the signing on behalf of the Union of the convention, but since the new legal basis concerns matters falling under exclusive competences of the Union, the possibility to conclude the convention on behalf of the Union was questioned with reference to certain provisions which made reference to procedures within the Council of Europe taking into account that the Union is not a member of that international organisation.

The matter was discussed in the Council during 2014, and as a consequence thereof the draft Council decision on the conclusion of the convention on behalf of the Union, for which the consent of Parliament has been requested, therefore now includes an annex in which the Union declares that it fully recognises the objectives pursued by the convention, but also

¹ OJ L 320, 28.11.1998, p. 54.

² Judgment of the Court of Justice of 22 October 2013 in Case C-137/12, Commission v Parliament and Council [not yet published in the ECR].

expresses its concern regarding the application of those procedural provisions, on the basis of its exclusive competence.

Taking into account that it is not possible to renegotiate the convention in order to address this problem - which in any event falls within the field of external representation of the Union, for which the Council and the Commission are primarily responsible - and with reference to the fact that the convention would effectively extend the scope of the framework provided by Directive 98/84/EC outside of the Union and thereby combat threats to protected services, this rapporteur therefore recommends that the Parliament should give its consent to the conclusion of the convention.