



**COUNCIL OF
THE EUROPEAN UNION**

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"I/A" ITEM NOTE

From: General Secretariat of the Council
to: Permanent Representatives Committee (Part 1) / Council

No. Cion prop.: 18124/10 AUDIO 55 MI 560 TELECOM 155

Subject: Draft Council Decision 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 access
- *Adoption*

1. On 17 December 2010, the Commission submitted to the Council a proposal for a Council Decision concerning the signing of the European Convention on the legal protection of services based on, or consisting of, conditional access¹.

¹ 18124/10.

On the same date, the Commission also submitted to the Council the proposal for a Council Decision concerning the conclusion of the European Convention on the legal protection of services based on, or consisting of, conditional access (18126/10).

2. The Council adopted the decision on signing the Convention on 29 November 2011 (decision 2011/853/EU)². The Convention³ was signed on 21 December 2011, subject to its conclusion at a later date. In its decision the Council changed the legal basis proposed by the Commission, i.e. Article 207(4) of the Treaty on the Functioning of the European Union (TFEU), to Article 114 TFEU. Consequently, it also decided that the Convention should be signed by both the Union and its Member States (mixed agreement).
3. On 12 March 2012 the Commission brought an action before the European Court of Justice (ECJ) in order to annul Council Decision 2011/853/EU (case C-137/12). The ECJ delivered its judgement on 22 October 2013 by which it annulled Council Decision 2011/853/EU and ordered the Council to adopt a new decision based on the appropriate legal basis, i.e. Article 207(4) TFEU. The ECJ's judgement also stipulated that the new decision should enter into force within a reasonable period which should not exceed six months.
4. During the Hellenic Presidency, the Audiovisual Working Party has re-examined the original Commission proposal for signing the Convention⁴. The working party reached an agreement on the text of the draft Council decision on 24 February 2014.⁵

² Council Decision of 29 November 2011 on the signing, on behalf of the Union, of the European Convention on the legal protection of services based on, or consisting of, conditional access (OJ L 336, 20.12.2011, p. 1).

³ OJ L 336, 20.12.2011, p. 2.

⁴ In parallel, the working party examined the proposal for a Council decision on concluding the agreement as contained in doc. 18126/10 in order to ensure consistency between the two texts.

⁵ The UK delegation maintains a parliamentary scrutiny reservation.

5. The Permanent Representative Committee is invited to confirm the agreement reached at the working party level and suggest to the Council:

- to adopt the Decision as finalised by the legal/linguists experts and contained in document 7118/14^{6 7} as an "A" item at a forthcoming meeting;
 - to order that the statements in the addendum to this note be entered in the minutes of that meeting.
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⁶ It should be noted that, in conformity with the ECJ's judgement, the draft Council decision on the signing of the Convention is based on Article 207(4) TFEU. Consequently, the Convention will be signed by the Union only (exclusive agreement).

⁷ After the adoption of the Council decision on signing the Convention and its subsequent signature by a representative of the Presidency, the Council will transmit the draft Council decision on concluding the Convention to the European Parliament with a request for its consent in accordance with Article 218(6)(a)(v) TFEU.