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Services: Commission sets out right to use a satellite dish in the Internal Market

The European Commission has adopted a Communication in which it states that private individuals should be free to use satellite dishes without undue technical, administrative, urban planning or tax obstacles. The right to do so flows from the free movement of goods and services, which are both fundamental Internal Market freedoms. The Commission's intention is that the Communication will respond to the numerous requests for information and clarification which it has received on the subject in recent months from private individuals and the European Parliament. This Communication is the first initiative under the new Strategy for Services, launched in January 2001 (see IP/01/31).

Internal Market Commissioner Frits Bolkestein said: "This Communication explains the right to use a satellite dish - one of the many concrete benefits for European consumers of the free movement of goods and services within the Internal Market. Satellite dishes are an increasingly popular tool for receiving multiple services via satellite: they facilitate mutual exchanges between our various cultures by overcoming national borders, and familiarise the general public with the new remote communications technologies. Their use must therefore be free from any unjustified obstacle."

Satellite dishes have become an increasingly powerful, inexpensive and popular tool for receiving a growing range of services which are carried by satellite, namely, television and radio broadcasts and information society services (for example, on the Internet).

Given the cross-border nature of these services, the Commission attaches considerable importance to this issue in terms of economic and cultural exchanges and the dissemination of the new technologies in the context of the Internal Market, notably in view of the prospects for an enormous expansion of satellite reception in Europe.

Satellite dishes are the last link in an economic chain which supplies various satellite services involving a number of economic operators, starting with the suppliers of the content through the satellite companies and assemblers to the end user. Obstacles to the use of satellite dishes therefore impact at several levels of the economy.

The Communication stresses that private individuals, as the final users of these cross-border services, can cite the free movement of goods and services, fundamental principles which must be directly applied in national law. In addition, the right to receive information via satellite dish is related to the fundamental right to freedom of expression, which is established by the European Convention on Human Rights.

The right to a satellite dish

The Communication should make it possible to eliminate a number of existing restrictions (and prevent potential ones) on the use of satellite dishes, thus avoiding new infringement procedures. By stating users' rights to own a satellite dish, the Communication provides an illustration of how the principles of freedom of movement in the internal market are of direct, tangible benefit to consumers. The authorities in the Member States, whether at national, regional, provincial, communal or other level, must therefore ensure the primacy of Community law and full respect for the freedoms which it lays down.

In particular, the Communication gives a series of clarifications and specific information regarding the various types of restriction which have, on numerous occasions, been drawn to the Commission's attention by private individuals and by written questions and petitions from the European Parliament. It stresses that the following national restrictions are incompatible with the free movement of goods and services:

Technical barriers

Regulations on the characteristics of satellite dishes can hinder not only the movement of goods but also the movement of the services which they carry.

Administrative obstacles

It is not acceptable to make the installation of a satellite dish subject to systematic prior authorisation or completion of a complex and expensive administrative procedure.

Architectural and town-planning obstacles

Concerns of an architectural and town-planning nature, which are often cited in this context, can be met by solutions which make it possible, where necessary and technically feasible, to minimise the visual and aesthetic impact of satellite dishes without impairing quality of reception, under reasonable conditions and at reasonable cost; such solutions can, for example, involve the location of the dish (indoors rather than outdoors) or the type of dish (e.g. a collective dish rather than numerous individual dishes).

Tax obstacles

The Commission reiterates its opposition to taxes which are specifically targeted at satellite dishes. It has already expressed its opposition as part of infringement procedures for violation of Article 49 of the Treaty (free movement of services); it recalls the case law of the Court of Justice, which has upheld private individuals' right to obtain reimbursement of such taxes from their national courts, subject to the formal and substantive requirements of national law. Moreover, independent of the right to lodge a complaint or obtain a refund, a tax collected in violation of a fundamental freedom under Community law may cause the Member State in question to become liable.

Obstacles to freedom of user choice

The choice of technology, like the choice of services, rests entirely with the user. It is therefore unacceptable to influence such choices, for example, by penalising or otherwise discouraging the use of satellite dishes, or requiring satellite dish users to receive particular services or channels.

The Communication concerns exclusively satellite dishes designed to receive simple services. These dishes are becoming increasingly widespread, thanks to what are now very moderate prices and increasingly powerful technology. According to estimates for mid-2000, nearly 30 million EU households¹ had direct satellite broadcasting reception systems: either individual dishes serving one dwelling (DTH: Direct To Home) or collective dishes, shared by several dwellings (SMATV: Satellite Master Antenna Television). The range of services carried by satellite dishes is increasing constantly.

The text of the Communication is available on the Europa site: http://europa.eu.int/comm/internal_market

¹ Figures provided by Astra. More precisely, there were 25.2 million households with direct satellite reception systems in the EU in mid-1998, 27.7 million in mid-1999 and 29.4 million in mid-2000. The number could reach 52 million in 2010. Other statistics, obtained from a survey carried out for Eutelsat by Crédome (Centre de Recherche Innovation/Médias du Groupe Publicis) indicate that more than 26 million households owned a satellite dish in 1999.