

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 9 July 1991

Proposal for a

COUNCIL DIRECTIVE

on the adoption of standards for satellite broadcasting
of television signals

(presented by the Commission)

EXPLANATORY MEMORANDUM

The current situation.

1. Direct broadcasting by satellite of television programmes is currently regulated by Council Directive 86/529/EEC of 3 November 1986.¹ This lays down the obligation to use the MAC/Packet system for broadcasts transmitted from high-power satellites (BSS satellites).
2. The text of that directive is the result of a series of transformations of the original idea as it had been clearly expressed in the Communication from the Commission to the Council of 24 May 1985.² This aimed to have the MAC/Packet system adopted as the exclusive European standard, without any distinction between different satellites and avoiding the use, even for a transitional period, of other standards in the different Member States.
3. By contrast, the legal position resulting from the combined application of the dispositions contained in articles 1 and 2 of the same Directive, has produced a dual regime for satellite broadcasts: one regime regulated by the Directive for high-power satellites and another regime, with no restrictions, for the other satellites which lie outside the field of application of the Directive.

¹ O.J. n° L 311, 6 November 1986, p. 28 ff.

² COM (85) 264, 24 May 1985.

This dual regime has led in turn to a double market. Technological development has created favourable conditions for medium-power satellites, which have started transmitting using the PAL and Secam standards.

Substantial investments have been made in the different systems over the same period. On the one hand, the European industry has invested in the development of MAC with HDTV as the aim; on the other hand, a good number of broadcasters and operators have invested in satellite broadcasting using PAL/Secam.

The strategy

4. Given the situation described above, it has become very difficult for the Community to achieve the objective it has set itself - the development of HDTV using the European HD-MAC standard, passing through the intermediate step of the D2-MAC standard, following the approach of the EUREKA-95 project. This allows a transition to HDTV following the principle of compatibility with existing systems, a clear advantage for consumers.

This objective was considered as being of strategic interest for Europe in two decisions adopted unanimously by the Council, on 27 April 1989 (89/337/EEC) and 7 December 1989 (89/630/EEC).³

5. The concrete problem posed now is that of working out how to pass from the divergent evolution resulting from the 1986 Directive to a convergent evolution.

³ O.J. n° L 142, 25 May 1989, p. 1 ff.; O.J. L 363, 13 December 1989, p. 30 ff.

In the present situation, characterized by a double market with seriously differing interests, it is not sufficient to draft and to adopt a legislative decision which seeks on its own to replace the Directive which expires on 31 December 1991. That is certainly a necessary condition, but not a sufficient condition.

It is necessary in parallel to work out and make a reality of a credible scenario for this decade, by means of a firm commitment by all the economic players concerned.

6. This overall strategy can end a period of uncertainty which has had its effect on the path towards European HDTV. Furthermore, it will allow the Community to carry out its regulatory duty in the area of norms and standards more effectively in market terms.

As stressed in the Communication from the Commission to the Council of 16 November 1990 on industrial policy in an open and competitive environment,⁴ standards promote competitiveness by:

- lowering costs for producers;
- shaping customer preferences for products by their familiarity;
- enabling the emergence of new markets, particularly for developing technologies, where they are becoming a pre-condition for industrial production or marketing.

⁴ COM (90) 556, 16 November 1990.

7. The specific characteristics of the television sector display very strong interdependence between the various players.

On the one hand, the market for TV receivers cannot develop without an adequate supply, in both quantitative and qualitative terms, of programmes using the new standards, as well as enough hours of transmissions, while on the other hand it would not make sense to start up transmissions without the existence of enough receivers. Moreover, neither of these two operations can take place unless one can count on sufficient satellite capacity.

8. All the considerations expressed above led the Commission to take the initiative of bringing together around a table the different categories of actor, to solicit their active participation in the development of an overall strategy. This strategy includes both the legal and standards aspects (clear definition of the new regime from 1 January 1992, with a guarantee to preserve the rights legitimately acquired during the current situation of a dual regime), as well as the aspects more directly relating to the area of activity of enterprises (essentially a programme setting out dates and figures with the aim of progressively developing a market for television in D2-MAC and HD-MAC).

9. In order to implement the strategy described above, the Commission has undertaken consultations of the parties concerned: industry, private and public broadcasters, satellite and cable operators, programme producers. Two plenary meetings were held on 28 February and 27 March 1991, prepared and followed up by many bilateral and multilateral contacts and meetings.

The instruments

10. On the basis of the above considerations, which have from the start enjoyed a wide consensus among the operators consulted, the Commission has identified a double instrument to reach these objectives.

This double instrument consists of the combination of the new Directive with a "Memorandum of Understanding" (MOU). Under this MOU, the operators concerned take on reciprocal commitments in the framework of a coordinated action aimed at the development and promotion on the market of equipment and services in the D2-MAC standard and with the 16:9 format.

11. The inseparable link between the Directive and the MOU will be established by the insertion into the recitals of the Directive of an explicit reference to the existence of the MOU and to its content.

Additionally, the participation of the Commission in the MOU and the projection of incentives from the Community budget will make it possible to ensure consistency between the standards-setting dimension, which lies within the competence of the Community institutions, and the operational dimension, which pertains to the enterprises concerned.

12. In the course of the many contacts between the parties concerned, major elements of consensus have emerged. There is a common desire concerning the basic content of the MOU. The specific points which are still open can be resolved taking into account the common interest in achieving agreement on such an important matter.
13. The Commission presented the main lines of its strategy to the Telecommunications Council on the occasion of its meeting in Luxembourg on 3

June 1991. Though in the presence of views which were still divergent, the Commission was unanimously encouraged to carry on with its approach; stress was laid in particular on the great importance of and the intimate association between the two instruments - the Directive and the MOU.

The conditions therefore exist to start the procedure which should lead to the adoption of the new Directive by Council before the end of the year 1991, in parallel with the formal completion of the MOU.

The Directive

14. The draft Directive proposed for examination by the Commission is based on five key points:

- a. HD-MAC is defined as the sole European standard for HDTV. This objective will be reached by means of an intermediate standard, D2-MAC, especially in 16:9 format.
- b. All new services and all new satellites, which become operational after the date of implementation of this Directive, must use the D2-MAC standard exclusively.
- c. Services in PAL/Secam which are in operation by 31 December 1991 may continue, without any date being set directly or indirectly for the end of their transmission, and notwithstanding the points set out in item b. above. The MOU, at the same time, will provide for incentives for the simultaneous transmission in D2-MAC of the services in question ('simulcast').

- d. Equipment (satellite receivers and TV sets above 52 cm) put on sale in the EC from 1 January 1993 onwards, will have the obligation to contain the mechanisms necessary to give them the capability of receiving D2-MAC.
- e. The duration of the Directive will be ten years. The Commission will provide an evaluation report every two years, to be sent to the Council and the European Parliament.

The Memorandum of Understanding (MOU)

- 15. The MOU forms the indispensable second pillar of the Commission's present strategy. It originates from the Council Decision of 27 April 1989 (89/337/EEC)⁵ which provides for an action plan in the area of HDTV.
- 16. Signature of the MOU is open to all interested parties (industrialists, private and public broadcasters, satellite and cable operators) as well as the Commission. The MOU will constitute a legally binding agreement for all the parties involved, including to this end an arbitration clause to allow its interpretation and a choice of jurisdiction in case of disputes.
- 17. The MOU is based on five key points:
 - a. A coordinated action to promote the D2-MAC standard in 16:9 format with a view to the introduction of HDTV.
 - b. Reciprocal, quantified and legally binding commitments of the signatories laying down, for example, the minimum number of TV sets of each type to be produced, the number of hours of programmes to be broadcast, the availability of satellites. (This agreement will not in any way include

⁵ O.J. n° L 142, 25 May 1989, p. 1 ff.

agreements concerning selling prices or market shares and, in any case, it is obliged to respect the competition rules laid down in the Treaty.)

- c. A system of incentives, financed notably by the Community, and aiming in particular to facilitate 'simulcast' and to support the start of broadcasts in D2-MAC.
- d. The creation of a consortium between the signatories, with the participation of the Commission realized in the most appropriate way.

The role of the consortium will be to coordinate the promotional action, to administer the Community incentives and to supervise the respect of the commitments undertaken by the parties involved.

- e. The duration of the MOU will be five years, renewable.

Implementation

- 18. The Commission aims to achieve, before the end of this year, the adoption of the Directive and, in the same context, the signature of the MOU, the text of which will be communicated to the European Parliament and the Council.
- 19. This will make it possible to achieve a double result: on the one hand, it will definitively confirm the Community strategy aimed at the introduction of the HD-MAC standard as a common European standard; on the other hand, it will provide the equipment makers, the broadcasters, the satellite and cable operators, the programme producers as well as consumers with a reliable basis to guide their decisions on the market.
- 20. Subsequently, the aspect concerning the financing of the system of incentives will be addressed. The Commission envisages the commitment to this purpose of a

sum of the order of about 100 MECU per year over a five-year period. The informal discussions around the MOU have taken this direction. As far as 1992 is concerned, the PDB already foresees a sum of this order of magnitude under several lines.

21. In parallel with the reinforcement of the 'broadcasting standards' side of the European HDTV strategy, implemented through the joint effect of the MOU and the Directive, the development of the programmes side is also a priority both for promotion of the 16:9 format and for the effective introduction of HDTV services from 1995 onwards.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Council Directive 86/529/EEC¹ made provision for review;

Whereas the Community, through Council Decision 89/337/EEC² and Council Decision 89/630/EEC³, recognized the strategic importance of High Definition Television (HDTV) for the European consumer electronics industry and for the European television and film industries, and established the strategy framework for the introduction of European HDTV;

Whereas Council Directive 86/529/EEC, in particular in Article 2, established a dual regime by a limitation of the application of the Directive to only one type of satellite, and as a consequence a dual market appeared with the use of MAC standards in Broadcasting Satellite Service (BSS) and mainly PAL and SECAM in Fixed Satellite Service (FSS);

1 OJ No L 311, 6.11.1986, p. 28.

2 OJ No L 142, 25.5.1989, p. 1.

3 OJ No L 363, 13.12.1989, p. 30.

Whereas in order to reach Community goals as set out in the Decisions mentioned above and in order to contribute to the achievement of a single market in satellite broadcasting of television signals as provided for in Article 8(a) of the Treaty, it is necessary to undertake steps to create a convergence of standards, using in parallel a regulatory instrument, and an agreement between major actors in the market;

Whereas it is in the best interest of European consumers to follow a path towards HDTV based on the criteria of compatibility and evolution, in order to avoid discontinuities and duplication of investments;

Whereas HD-MAC has been developed as the European transmission standard for HDTV services based on those criteria of compatibility and evolution and D2-MAC offers the best available path towards the development of HDTV with wide-screen 16 : 9 D2-MAC as the main step in that direction;

Whereas there is a need to establish common standards for satellite transmission as an enabling element for effective free market competition taking into account that standards promote competitiveness by lowering costs for producers, shaping customer preferences for products by their familiarity, and enabling the emergence of new markets, particularly for developing technologies, where they are becoming a pre-condition for industrial production or marketing;

Whereas services established during the period of application of Directive 86/529/EEC according to its provisions should not be forced to a compulsory stop or change; however, incentives may be provided in order to support, in addition, the use of MAC standards, in particular through simultaneous transmissions ('simulcast');

Whereas in the interests of the consumer it is necessary to establish a common standard for conditional access systems for D2-MAC and HDTV services;

Whereas cable-TV and Small-Master Antenna-TV (SMATV) networks are a relevant feature in the television infrastructure of many Member States and will be very important to the future of HDTV services;

Whereas Decision 89/337/EEC called for an action plan for the introduction of HDTV to be prepared in close coordination at Community level between the Commission, the Member States and the European Industry;

Whereas broadcasters, satellite operators, equipment manufacturers, and cable operators are fully committed to the earliest possible introduction of 16 : 9 D2-MAC services, in conformity with the objectives set out in Decision 89/337/EEC and, accordingly, have declared their intention to enter into a Memorandum of Understanding to which the Commission will also be a party;

Whereas the Memorandum of Understanding will set out the obligations of the respective parties for the development and promotion of 16 : 9 D2-MAC services in Europe in accordance with the terms and provisions of this Directive and will constitute an integral part of the overall strategy for the introduction of HDTV;

Whereas European research efforts must stay in the forefront of all new significant developments such as a trend towards digital television broadcasting emissions and Europe has to consolidate its research efforts through collaboration;

Whereas in view of the foreseeable technical progress in this sector, account should now be taken of any subsequent developments of the existing systems and provision made for an eventual review of this Directive;

Whereas it is in the general interest as well as in the interest of the major actors in the market that this Directive should be implemented at the earliest possible date,

HAS ADOPTED THIS DIRECTIVE:

ARTICLE 1

Member States shall take all measures to promote and support the introduction and development of advanced satellite broadcasting services for television programmes, using the HD-MAC standard for High Definition Television transmission and the D2-MAC standard for other transmission in the 16 : 9 aspect ratio format.

ARTICLE 2

1. For any transmission of a television service in the High Definition Television format only the HD-MAC standard may be used.
2. For any transmission of a 625 line satellite television service receivable by viewers using domestic satellite receiving equipment, even if such transmissions are intended to be redistributed by cable networks, only the D2-MAC standard may be used:
 - in respect of any service in 16 : 9 aspect ratio format;
 - in respect of any service carried by a satellite using the BSS frequency band (11.7 to 12.5 GHz);
 - in respect of any satellite transmission of a service, starting after the date of implementation of this Directive, or using a satellite brought into operation after the date of implementation of this Directive.

ARTICLE 3

Satellite services in operation on 31 December 1991 and using D-MAC, PAL or SECAM standards, may continue to use the same standard for 625 lines 4:3 format transmissions after the date of implementation of this Directive, notwithstanding the provisions set out in the third indent of Article 2(2).

ARTICLE 4

Member States shall take all measures to ensure that as from 1 January 1993, all new television sets with a screen size greater than 52cm and all new satellite receivers, for sale within the Community have included within them the necessary means to receive D2-MAC signals.

ARTICLE 5

Member States shall take all measures to ensure that

any new terrestrial redistribution system, or any existing terrestrial redistribution system having the necessary technical capability, shall be configured in such a way that HD-MAC signals can be transmitted through the network from head-end to individual homes: in the case of cable TV and SMATV systems channels in the hyperband (300-450 MHz) each having 12 MHz bandwidth shall be allocated for this purpose; existing terrestrial redistribution systems not having the necessary technical capability, shall be configured as indicated above when their operators decide on a technical upgrading of the network;

if cable operators decide the redistribution by cable of programmes received by them in the 16 : 9 aspect ratio format and the D2-MAC or HD-MAC standard, operators shall redistribute these programmes also in the 16 : 9 aspect ratio format and the D2-MAC or HD-MAC standard.

ARTICLE 6

In the case of all services using the D2-MAC standard, which are encrypted and employ a conditional access system, Member States shall take all the necessary measures to ensure that only a conditional access system fully compatible with D2-MAC and standardized as such by a European standardization organization by the date of implementation of this Directive, is used.

ARTICLE 7

This Directive shall apply until 31 December 2001. Every two years, the Commission shall submit to the European Parliament, to the Council and to the Economic and Social Committee a report on the application of this Directive and, if necessary, make further proposals to adapt it to developments in the field of satellite television broadcasting.

ARTICLE 8

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than three months after the date of its notification. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

ARTICLE 9

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

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DOCUMENTS

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