

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 660 final

Brussels, 10 December 1993

Proposal for a

COUNCIL DECISION

on the extension of the legal protection of topographies of semiconductor products to persons from the United States of America

(presented by the Commission)

## EXPLANATORY MEMORANDUM

Council Directive 87/54/EEC on the legal protection of topographies of semiconductor products<sup>1</sup> lays down the standards for protection of intellectual property in the topographies of integrated circuit designs which must be respected in all Member States of the Community. The Directive provides that protection should be available to natural persons who are nationals of, or have their habitual residence or domicile in a Member State, as well as companies or other legal persons which have a real and effective industrial or commercial establishment in the territory of a Member State.

The directive has been implemented in the legislations of all Member States.

This protection can be extended to natural and legal persons from other countries by decision of the Council either on a permanent basis or for a fixed period of time<sup>2</sup>.

The Decision (93/16/EEC), which it is proposed to extend, was adopted in relation to the United States and certain British overseas territories and possessions which, at the time, had not granted full and/or indefinite protection to the Member States. Accordingly, it is subject to a time limit and expires on 31 December 1993 with respect to the United States of America.

It also incorporates an element of reciprocity, in that protection, for companies and other legal persons of the countries and territories concerned, is subject to the Commission making a positive determination that Community companies and other legal persons enjoy equivalent protection in those countries and territories.

Such positive determination has so far been made by the Commission, pursuant to Decision 93/217/EEC of 19 March 1993<sup>3</sup> in respect of the United States of America. Protection for natural persons is not subject to any reciprocity requirement.

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<sup>1</sup> OJ n° L 24, 27/1/1987, p36

<sup>2</sup> At present, two such decisions are in force: 90/510/EEC (OJ n° L 285, 17.10.1990, p29) of 9 October 1990 (modified by Council Decision 93/17/EEC (OJ n° L 11, 19.1.1993, p22) of 21 December 1992); and 93/16/EEC (OJ n° L 11, 19.1.1993, p20) of 21 December 1992 (completed by Council Decision 93/520/EEC of 27 September 1993 (OJ n° L 246, 2.10.1993, p31)).

The first of these two Decisions is permanent and unconditional in its effect and covers certain countries which have granted like protection to the Member States.

<sup>3</sup> OJ n° L 94, 29.4.93, p30.

The reciprocity features of Decision (93/16/EEC) described above were incorporated in previous extension decisions because at the time these were made, the protection on a worldwide scale of integrated circuit topographies was still at an early stage of development.

There were few third countries with appropriate legislation, at that time.

The situation has evolved in a positive way and presently Community topographies are protectable in several third countries.

It is also probable, if the GATT talks are successful, that a multilateral system for the protection of topographies will come into force.

Concerning the United States of America, the contacts made by the Commission with the US Government have not yet enabled the Community to obtain permanent protection in the US.

Taking into account the protection existing currently in the United States both for physical and moral persons from the Member States until 1 July 1994, and the expectation of achieving a status of reciprocal permanent protection in the near future or a similar result from the eventual establishment of a multilateral system under GATT, a decision to extend the protection under the Directive to the United States until 1 July 1994 can be justified.

A new interim decision should be made with provisions similar to those of the expiring decision.

It is urgent to extend the protection already granted to the United States of America before it expires, but it is appropriate to do so only for the period of time necessary for the procedure for granting mutual unlimited protection to be completed.

Current legal protection existing in the United States of America

In the United States of America, based on interim orders issued under Section 914 of the Semiconductor Chip Protection Act of 1984 (SCPA), legal protection is available until 1 July 1994 to owners of mask works, who are nationals, domiciliaries or sovereign authorities of Community Member States.

The faculty of the US Secretary of Commerce to issue orders extending interim protection pursuant to Section 914 SCPA expires on 1 July 1995 (Law no 102-64).

Protection can be extended to the Member States on a permanent basis on condition of reciprocity by a presidential proclamation (Section 902 SCPA) after a procedure to evaluate the protection granted by Member States.

Discussion with the US administration has not, to date, enabled the Community to obtain such a proclamation.

PROPOSAL for a  
COUNCIL DECISION

on the extension of the legal protection of topographies of semiconductor products to persons from the United States of America

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products<sup>(1)</sup>, and in particular Article 3 (7) thereof,

Having regard to the proposal from the Commission,

Whereas the right to legal protection of topographies of semiconductor products in the Community applies to persons qualifying for protection under Article 3 (1) to (5) of Directive 87/54/EEC;

Whereas the right to protection can be extended, by a Council Decision, to persons who do not benefit from protection under the said provisions;

Whereas the extension of protection should, as far as possible, be decided for the Community as a whole;

Whereas such protection has previously been extended in respect of certain countries and territories on an interim basis only, in accordance with Council Decision 93/16/EEC<sup>(2)</sup> which expires on 31 December 1993 with respect to the United States of America;

Whereas protection has been extended to companies and other legal persons in respect of the United States of America, as Commission Decision 93/217/EEC<sup>(3)</sup> determined that the United States fulfils until 31 December 1993 the condition of reciprocity laid down in Article 1 (2) of Council Decision 93/16/EEC;

(1) OJ No L 24, 27.1.1987, p. 36

(2) OJ No L 11, 19.1.1993, p. 20.

(3) OJ No L 94, 20.4.1993, p. 30.

Whereas the United States have an appropriate legislation and are expected to continue to protect topographies of semiconductor products under their national law and make this protection available to those persons from the Member States of the Community who benefit from the right to protection under Directive 87/54/EEC;

Whereas presently all Member States of the European Communities have national legal measures implementing Directive 87/54/EEC;

Whereas it is appropriate to continue to extend protection to the United States of America until 1 July 1994 to allow time for the procedure for granting mutual unlimited protection to be completed;

HAS ADOPTED THIS DECISION:

Article 1

1. Member States shall extend the right to protection under Directive 87/54/EEC as follows:
  - (a) natural persons who are nationals of the United States of America or who have their habitual residence in the territory of the United States of America shall be treated as if they were nationals of a Member State;

- (b) companies or other legal persons of the United States of America which have a real and effective industrial or commercial establishment in the United States of America shall be treated as if they have a real and effective industrial or commercial establishment on the territory of a Member State.
2. The application of subparagraph 1 (b), shall be subject to the condition that companies or other legal persons of a Member State which have a right to protection under Directive 87/54/EEC benefit from protection in the United States.
  3. The fulfilment by the United States of the conditions laid down in paragraph 2, shall be determined by the Commission and communicated to the Member States.

#### Article 2

This Decision shall apply from 1 January 1994.

Member States shall extend the right to protection under this Decision to the persons referred to in Article 1 until 1 July 1994.

Any exclusive rights acquired under Decision 90/511/EEC, Decision 93/16/EEC or this Decision shall continue to produce their effect for the period laid down under Directive 87/54/EEC.

#### Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the Council

The President

IMPACT ON SMALL AND MEDIUM SIZED ENTERPRISES

The proposal would extend protection in respect of topographies of semiconductor products to persons who are nationals, residents or legal entities of the United States of America.

The proposal has no foreseeable impact on small or medium sized enterprises within the EEC.



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