

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 574 final  
Brussels, 07.12.1994

Proposal for a

COUNCIL DECISION

on the extension of the legal protection of topographies  
of semiconductor products to persons from certain territories

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(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

### **Community and international legal context**

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

Under the terms of the Agreement on the European Economic Area, the Directive has also applied since 1 January 1994 in the EFTA countries where that Agreement is in force, as a binding act forming part of those countries' domestic legal regimes.<sup>2</sup>

A series of Council decisions, also taken over in the Agreement on the European Economic Area as binding acts, have extended the legal protection of topographies of semiconductor products introduced by Directive 87/54/EEC to persons from certain countries and territories outside the Community. In some cases permanent and in others interim protection has been accorded on a reciprocal basis to natural and legal persons.<sup>3</sup>

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<sup>1</sup> Directive of 16 December 1986 (OJ No L 24, 27.1.1987, p. 36).

<sup>2</sup> Article 65(2) and point 1 of Annex XVII to the Agreement on the European Economic Area.

<sup>3</sup> Currently in force:

- Council Decision 90/510/EEC of 9 October 1990 (OJ No L 285, 17.10.1990, p. 29), as amended by Decision 93/17/EEC of 21 December 1992 (OJ No L 11, 19.1.1993, p. 22), which introduces a system of permanent and unconditional protection in respect of certain countries and territories that have granted like protection to the Community Member States;
- Council Decision 93/16/EEC of 21 December 1992 (OJ No L 11, 19.1.1993, p. 20), as amended by Decision 93/520/EEC of 27 September 1993 (OJ No L 246, 2.10.1993, p. 31), which grants interim protection to persons from the United States of America (until 31.12.1993) and from certain territories (until 31.12.1994), and Council Decision 94/373/EEC of 27 June 1994 (OJ No L 170, 5.7.1994, p. 34), which extends until 1 July 1995 the protection in respect of the United States of America (this latest Decision has not yet been taken over in the Agreement on the European Economic Area);
- Council Decision 94/700/EC of 24 October (OJ n° L 284, 1.11.1994, p.61), on the extension of the legal protection of topographies of semiconductor products to persons from Canada.

As provided for in Article 4(1) and (2) of Protocol 28 to the Agreement on the European Economic Area, the contracting parties to the Agreement have the right to take decisions on the extension of the legal protection of topographies of semiconductor products to persons from any third country or territory which is not a contracting party to the Agreement where such persons do not benefit from the right to protection under the Agreement. They may also conclude agreements to this effect.

The contracting party concerned is to endeavour, where the right to protection for topographies of semiconductor products is extended to a non-contracting party, to ensure that the non-contracting party concerned will grant the right to protection to the other contracting parties to the Agreement under equivalent conditions to those granted to the contracting party concerned.

In addition, the Agreement on trade-related aspects of intellectual property rights, which forms part of the results of the Uruguay Round of multilateral trade negotiations embodied in the Marrakesh Final Act of 15 April 1994, requires Member States to grant protection to topographies of integrated circuits in accordance with the provisions of that Agreement and those of the Treaty on intellectual property as regards integrated circuits to which it refers.

The Agreement, together with that establishing the World Trade Organization (to which it is annexed), will enter into force on 1 January 1995 or as soon as possible after that date.<sup>4</sup> The developed countries which are Members of the Agreement establishing the World Trade Organization will have one year following the entry into force of that Agreement in which to implement the Agreement on trade-related aspects of intellectual property rights; the developing-country Members will be entitled to defer for a further period of four years the date of application of the provisions of the Agreement other than Articles 3, 4 and 5.<sup>5</sup>

#### *Relations between the Community and the territories concerned*

Since 7 November 1987 the Community has, on the basis of a series of interim decisions,<sup>6</sup> granted legal protection consistent with the principles contained in Directive 87/54/EEC to persons from territories which have a special link with the United Kingdom. In accordance with the Council Decision currently in force (93/16/EEC), that protection lasts until 31 December 1994.

<sup>4</sup> Article XIV of the Agreement establishing the World Trade Organization and point 3 of the Final Act embodying the results of the Uruguay Round of multilateral trade negotiations.

<sup>5</sup> Article 65 of the Agreement on trade-related aspects of intellectual property rights.

<sup>6</sup> Council Decision 87/532/EEC of 26 October 1987 on the extension of legal protection of topographies of semiconductor products in respect of persons from certain countries and territories (OJ No L 313, 4.11.1987, p. 22); Second Council Decision 90/511/EEC of 9 October 1990 on the extension of the legal protection of topographies of semiconductor products to persons from certain countries and territories (OJ No L 285, 17.10.1990, p. 31); Council Decision 93/16/EEC of 21 December 1992 on the extension of the legal protection of topographies of semiconductor products to persons from the United States of America and certain territories (OJ No L 11, 19.1.1993, p. 20). Annexed to these Decisions are lists of the territories concerned.

Council Decision 93/520/EEC of 27 September 1993<sup>7</sup> completed the list of territories protected in accordance with Decision 93/16/EEC by adding to it Aruba and Netherlands Antilles, which are consequently also covered by the system applicable until 31 December 1994 to territories which have a special link with the United Kingdom.

The protection provided by all of these Decisions is granted to natural persons who are nationals of one of the territories concerned or who have their habitual residence there. On the other hand, companies or other legal persons in these territories which have a real and effective industrial or commercial establishment there are eligible for protection only if the Commission establishes that companies or other legal persons of a Member State which have the right to protection under Directive 87/54/EEC benefit from protection there.

At present, in all of the territories which have a special link with the United Kingdom and are mentioned in Decision 93/16/EEC, topographies of semiconductor products are protected generally under copyright law<sup>8</sup>. Persons from the Community therefore qualify for protection in all of these territories.

In Netherlands Antilles protection for topographies of semiconductor products is provided by the Copyright Law of 17 December 1912, as amended. In Aruba the same law is also applicable until such time as it is repealed or amended by the legislature. It provides protection for persons from the Community.

The above-mentioned Decisions, which are of limited duration, were based on the consideration that the territories which did not yet have specific legislation would make such provision and would make it applicable as soon as possible to persons from the Member States of the Community benefiting from the right to protection under Directive 87/54/EEC.

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<sup>7</sup> OJ No L 246, 2.10.1993, p. 31.

<sup>8</sup> It must be noted that the Isle of Man has adopted specific rules to implement the principles contained in Directive 87/54/EEC and the Council's Decisions taken on the basis of that Directive (The Design Right (Semiconductor Topographies) Order of 14 December 1993 and the Design Right (Semiconductor Topographies) Regulations of 18 January 1994). In Hong Kong a regulation dealing specifically with semiconductor products has just been adopted (Layout-Design (Topography) of Integrated Circuits Ordinance of 31 March 1994). According to the information received by the Commission, this regime of protection must be extended to persons from the Community from the beginning of 1995.

As things stand, it is foreseeable that the Agreement on trade-related aspects of intellectual property rights, including Section 6, which deals with topographies of integrated circuits, will be applied in the territories concerned within the prescribed deadlines mentioned above.

It should be stressed that, once the Agreement on trade-related aspects of intellectual property rights enters into force, it will no longer be possible to apply the current system of protection in the Community, which is based on a reciprocity requirement, to other Members of the Agreement.

### **Proposal**

Given that the current legislation in the territories concerned is to remain in force, thereby affording persons from the Community protection for topographies, it is proposed to the Council that, from 1 January 1995, these territories should continue to benefit from protection under Directive 87/54/EEC, under the conditions currently applicable, until 31 December 1995.

The Community reserves the right to reexamine the situation at that time, having regard to any developments in the legislation protecting topographies of semiconductor products in those territories.

### **Measures to be taken in connection with the Agreement on the European Economic Area**

The Decision which the Council is recommended to adopt relates, as stated above, to a matter covered by the Agreement on the European Economic Area and is aimed at extending to persons from the territories mentioned in its Annex the protective machinery already applied to them through the adoption of a number of Council Decisions<sup>9</sup> already taken over as binding acts in point 3 of Annex XVII to that Agreement. Accordingly, the Decision should cover the EFTA countries in which the Agreement is in force.

Moreover, in accordance with Article 4(2) of Protocol 28 to the Agreement, the Community will endeavour to ensure that the territories concerned will grant the right to protection to the other Contracting Parties to the Agreement under equivalent conditions to those granted to it.

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See footnotes 6 and 7.

**Proposal for a Council Decision**  
of .....

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

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

Whereas the Community has, since 7 November 1987, extended such protection on the basis of a series of interim Council Decisions to persons from certain territories the number of which was increased on 1 November 1993<sup>2</sup>;

Whereas these Decisions were based on the consideration that the territories which did not yet have specific legislation would make such provision and would make it applicable as soon as possible to persons from the Member States of the Community benefiting from the right to protection under Directive 87/54/EEC;

Whereas the last of these Decisions<sup>3</sup> applies until 31 December 1994;

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<sup>1</sup> OJ No L 24, 27.1.1987, p. 36.

<sup>2</sup> Council Decision 87/532/EEC of 26 October 1987 on the extension of the legal protection of topographies of semiconductor products in respect of persons from certain countries and territories (OJ No L 313, 4.11.1987, p. 22); Second Council Decision 90/511/EEC of 9 October 1990 on the extension of the legal protection of topographies of semiconductor products to persons from certain countries and territories (OJ No L 285, 17.10.1990, p. 31); Council Decision 93/16/EEC of 21 December 1992 on the extension of the legal protection of topographies of semiconductor products to persons from the United States of America and certain territories (OJ No L 11, 19.1.1993, p. 20), amended by Council Decision 93/520/EEC of 27 September 1993 (OJ No L 246, 2.10.1993, p. 31).

<sup>3</sup> Council Decision 93/16/EEC of 21 December 1992, as amended by Council Decision 93/520/EEC of 27 September 1993.

Whereas the Agreement on trade-related aspects of intellectual property rights, which forms part of the results of the Uruguay Round of multilateral trade negotiations embodied in the Marrakesh Final Act of 15 April 1994, requires Members to grant protection to integrated-circuit topographies in compliance with its own provisions and with those of the Treaty on Intellectual Property in Respect of Integrated Circuits to which it refers;

Whereas the Agreement, together with that establishing the World Trade Organization (to which it is annexed), will enter into force on 1 January 1995 or as soon as possible after that date; whereas the developed countries which are Members of the Agreement establishing the World Trade Organization will have one year following the entry into force of that Agreement in which to implement the Agreement on trade-related aspects of intellectual property rights; whereas developing-country Members will be entitled to defer for a further period of four years the date of application of the provisions of that Agreement other than Articles 3, 4 and 5;

Whereas it is foreseeable that the Agreement on trade-related aspects of intellectual property rights will be applied in the territories concerned within the prescribed deadlines;

Whereas the provisions guaranteeing protection in the territories concerned for persons from the Community as regards topographies are still in force in those territories;

Whereas, with effect from 1 January 1995 and until 31 December 1995, protection should be extended under Directive 87/54/EEC to the territories concerned,

HAS ADOPTED THIS DECISION:

Article 1

Member States shall extend the right to protection under Directive 87/54/EEC to natural persons who are nationals of a territory listed in the Annex or who have their habitual residence in one of those territories.

This extension shall also apply to companies or other legal persons of a territory listed in the Annex which have a real and effective industrial or commercial establishment in that territory, 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 territory in question.

The territories listed in the Annex which satisfy the conditions laid down in the second subparagraph shall be determined by the Commission and communicated to the Member States.

Article 2

This Decision shall apply from 1 January 1995.

The Member States shall extend the right to protection under this Decision to the persons referred to in Article 1 until 31 December 1995.

Any exclusive rights acquired under Decisions 87/532/EEC, 90/511/EEC, 93/16/EEC, as amended by Decision 93/520/EEC, or under this Decision shall continue to produce their effects for the period laid down under Directive 85/54/EEC.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, .....

For the Council  
The President

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**ANNEX**

**Anguilla**  
**Aruba**  
**Bermuda**  
**British Indian Ocean Territory**  
**British Virgin Islands**  
**Cayman Islands**  
**Channel Islands**  
**Falkland Islands**  
**Hong Kong**  
**Isle of Man**  
**Montserrat**  
**Netherlands Antilles**  
**Pitcairn**  
**St Helena**  
**St Helena Dependencies (Ascension, Tristan da Cunha)**  
**South Georgia and the South Sandwich Islands**  
**Turks and Caicos Islands**

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