COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 244 final

Brussels, 08.06.1994

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)

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of semiconductor products to persons from the United States of America

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Explanatory memorandum

Community and international legal context

Council Directive 87/54/EEC on the legal protection of topographies of semiconductor products[1] lays down the basic principles which the Members States must respect for the protection of intellectual property in these topographies . The Directive 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 in 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 also applies, since 1 January 1994, in the EFTA countries which are Contracting Parties to that Agreement, as a binding act forming part of the internal legal system of those countries.[2]

A series of Council Decisions, also taken over as binding acts in the Agreement on the European Economic Area already mentioned, 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. This protection has been granted on the basis of reciprocity to natural and legal persons, in some cases on a permanent, and in others on a temporary basis[3].

As provided 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, who do not benefit from the protection afforded by the Agreement. They may also conclude agreements to this effect.

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

2 Article 65(2) and Annex XVII point 1 of the Agreement on the European Economic Area.

3 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 which 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 94/4/EC of 20 December 1993 (OJ No L 6, 8.1.1994, p. 23), which extends until 1.7.1994 the protection in respect of the United States of America.

Where the right to protection for topographies of semiconductor products is extended to a non-Contracting Party, the Contracting Party concerned must endeavour 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 in Respect of Integrated Circuits to which it refers. This Agreement, together with that establishing the World Trade Organization, will enter into force on 1 January 1995 or as soon as possible after that date;[4] the industrialized world will have one year following the entry into force of the Agreement establishing the World Trade Organization in which to apply the provisions of the Agreement on trade-related aspects of intellectual property rights.[5]

Relations between the Community and the United States of America

Council Decision 94/4/EC was adopted on 20 December 1993 in order to extend the interim protection already granted by the Community to persons from the United States of America by the successive Decisions which had been adopted from 26 October 1987 to that date. It thus granted, for the period 1 January to 1 July 1994, the protection accorded by Directive 87/54/EEC to natural persons who are nationals of the United States of America or who have their habitual residence there and applies the principle of such protection being granted, subject to reciprocity, to companies or other legal persons from the United States which have a real and effective industrial or commercial establishment there. The recognition that companies and other legal persons from the Member States, entitled to protection under Directive 87/54/EEC, do enjoy protection in the United States was provided by Commission Decision 94/142/EC of 25 February 1994[6].

In the United States America, by virtue of a temporary order promulgated on 5 November 1992 in accordance with Section 914 of the 1984 Semiconductor Chip Protection Act, legal protection has been granted until 1 July 1994 to owners of topographies of semiconductor products who are nationals, residents or sovereign authorities of Community Member States.

By virtue of points (c) and (e) of Section 914 of the Semiconductor Chip Protection Act already mentioned, the mechanism for provisional protection - applied by means of temporary orders - will come to an end on 1 July 1995 and no orders can take effect beyond that date unless, as has already been done in that regard, the Semiconductor Chip Protection Act is amended.[7]

Given the likely application by that date, or soon thereafter, of the Agreement on trade-related aspects of intellectual property rights already mentioned, the US authorities have announced that they plan to continue to use the mechanism of temporary orders until 1 July 1995 and to forego applying - for such a short period - the system of permanent protection foreseen in Section 902 of the Semiconductor Chip Protection Act in relation to third countries, which requires a Presidential Proclamation.

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4 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.

5 Article 65 of the Agreement on trade-related aspects of intellectual property rights.

6 Commission Decision of 25 February 1994 in accordance with Council Decision 94/4/EC determining the United States of America as a country to the companies or other legal persons of which legal protection of topographies of semiconductor products is extended (OJ No L 61, 4.3.1994, p. 30).

7 Amendment effected by the Semiconductor International Protection Extension Act of 1991 (Public Law 102-64), dated 28 June 1991.

Proposal

Taking account of the intention indicated by the US authorities to extend, until 1 July 1995 the protection currently accorded to owners of topographies of semiconductor products who are nationals, residents or sovereign authorities of Community Member States by means of a temporary order based on Section 914 of the 1984 Semiconductor Chip Protection Act, it is proposed that the Council continues to grant protection under Directive 87/54/EEC to persons from the United States until 1 July 1995, pending implementation of the Agreement on trade-related aspects of intellectual property rights.

In this connection, it is also proposed that the Council :

- note that the Commission has, since 26 October 1990,[8] repeatedly determined that companies and other legal persons from the Member States, entitled to protection under Directive 87/54/EEC, enjoy protection in the United States, as well as the intention of the US authorities to extend the period of that protection until 1 July 1995;

- extend, accordingly, the right to protection under Directive 87/54/EEC to companies and other legal persons from the United States which have a real and effective industrial or commercial establishment there, without that protection being made conditional on a fresh determination of reciprocity by the Commission.

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

Given that the Decision which it is suggested the Council adopts relates, as stated above, to a matter covered by the Agreement on the European Economic Area and is aimed at extending until 1 July 1995 the mechanism of protection introduced for persons from the United States by a number of Council Decisions already taken over as binding acts in point 3 of Annex XVII to that Agreement, the application of this Decision should be extended to the EFTA countries which are party to the Agreement.

In addition, in accordance with Article 4(2) of Protocol 28 to the Agreement, the Community will endeavour to ensure that the United States 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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8 Commission Decisions 90/541/EEC of 26 October 1990 (OJ No L 307, 7.11.1990, p. 21), 93/217/EEC of 19 March 1993 (OJ No L 94, 20.4.1993, p. 30) and 94/142/EC of 25 February 1994 (OJ No L 61, 4.3.1994, p. 30).

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PROPOSAL for a
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semiconductor products to persons from the United States of America

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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,[1] and in particular Article 3(7) thereof,

Having regard to the proposal from the Commission,

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

Whereas this right can be extended, by a 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 upon for the Community as a whole;

Whereas such protection has been extended to the United States of America since 7 November 1987 by successive Council Decisions taken on an interim basis[2], the last being Decision 94/4/EC of 20 December 1993;

Whereas that Council Decision is applicable until 1 July 1994;

Whereas protection has been extended to companies and other legal persons from the United States since 26 October 1990, the Commission having repeatedly determined since that date that the United States fulfils the condition of reciprocity laid down in Article 1 paragraph (2) of the Council Decisions extending protection to it[3];

Whereas the last Commission Decision making such a determination is Decision 94/142/EC of 25 February 1994, applicable until 1 July 1994;

Whereas the United States has appropriate legislation and is expected to continue to protect topographies of semiconductor products under its national law and make this protection available to natural persons, companies and other legal persons from the Member States of the Community benefitting from the right to protection under Directive 87/54/EEC;

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

2 Council Decisions 87/532/EEC of 26 October 1987 (OJ No L 313, 4.11.1987, p. 22), 90/511/EEC of 9 October 1990 (OJ No L 285, 17.10.1990, p. 31), 93/16/EEC of 21 December 1992 (OJ No L 11, 19.1.1993, p. 20), 94/4/EC of 20 December 1993 (OJ No L 6, 8.1.1994, p. 23).

3 Commission Decisions 90/541/EEC of 26 October 1990 (OJ No L 307, 7.11.1990, p. 21), 93/217/EEC of 19 March 1993 (OJ No L 94, 20.4.1993, p. 30), 94/142/EC of 25 February 1994 (OJ No L 61, 4.3.1994, p. 30).

Whereas all Member States of the European Community have adopted national measures implementing Directive 87/54/EEC;

Whereas it is appropriate to continue to extend the protection in question to the United States of America to 1 July 1995, pending implementation of 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,

HAS ADOPTED THIS DECISION:

Article 1

Member States shall extend the legal protection provided for 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 and other legal persons of the United States of America which have a real and effective industrial or commercial establishment in that country shall be treated as if they had a real and effective industrial or commercial establishment in the territory of a Member State.

Article 2

This Decision shall apply from 2 July 1994.

Member States shall extend protection under this Decision to the persons referred to in Article 1 until 1 July 1995.

Any exclusive rights acquired under Decisions 87/532/EEC, 90/511/EEC, 93/16/EEC, 94/4/EC or this Decision shall continue to produce their effect for the period laid down by Directive 87/54/EEC.

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President

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