COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 300final

Brussels, 28 June 1993

Proposal for a

COUNCIL DECISION

Amending Decision 93/16/EEC on the extension of the legal protection of topographies of semiconductor products to persons from the United States of America and certain territories

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(presented by the Commission)

EXPLANATORY MEMORANDUM

Council Directive 87/54/EEC on the legal protection of topographies of semiconductor products[1] 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 on the territory of a Member State.

This protection can be extended to natural and legal persons from other countries by decision of the Council. At present, two such decisions are in force: 90/510/EEC[2] of 9 October 1990 (as amended by Council Decision 93/17/EEC[3] of 21 December 1992), and 93/16/EEC[4] of 21 December 1992.

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

The second Decision (93/16/EEC) was adopted in relation to the United States and certain British overseas territories and possessions which had not yet granted full and/or indefinite protection to the Member States. Accordingly, it grants only interim protection, expiring on 31 December 1993 for the United States and on 31 December 1994 for these British territories.

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.

Protection for natural persons is not subject to any reciprocity requirement.

Topographies of semiconductor products are protected in Aruba and the Netherlands Antilles through a non-specific legislation.

Therefore, these territories deserve to be included in the list of territories which are given temporary protection, until they enact specific legislation protecting topographies of semiconductor products and they grant it on a permanent basis to EEC Member States.

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(1) OJ No L 24, 27.1.1987, p 36
(2) OJ No L 285, 17.10.1990, p. 29
(3) OJ No L 11, 19.1.1993, p. 22.
(4) OJ No L 11, 19.1.1993, p. 20.

Current legal protection existing in the following territories

Aruba
The same Act as in the Netherlands Antilles applies.

Netherlands Antilles
The Netherlands Antilles' Copyright Act (Auteursverordening) of 17 December 1912 (as amended), contains in Article 10 a broad definition of protected works which may include topographies of semiconductor products:
"(...) and in general all products in the field of literature, science or art, independently of the form or means of reproduction."

PROPOSAL for a

COUNCIL DECISION

of

Amending Decision 93/16/EEC on the extension of the legal protection of topographies of semiconductor products to persons from the United States of America and certain territories

(93/ /EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic 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 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 the United States of America and certain territories on an interim basis only, in accordance with 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[2];

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(1) OJ No L 24, 27.1.1987, p. 36
(2) OJ No L 11, 19.1.1993, p. 20.

Whereas in Aruba and the Netherlands Antilles legal protection for topographies of semiconductor products is available inter alia by Article 10 of the Netherlands Antilles' Copyright Act of 17 December 1912 (as amended);

Whereas it is expected that these territories which do not yet have specific legislation will provide one and will make it accessible as soon as possible to persons from Member States of the Community benefiting from the right to protection under Directive 87/54/EEC;

Whereas it is appropriate to extend such protection on an interim basis to these territories to allow further time for conditions for mutual unlimited protection to be established;

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 93/16/EEC is replaced by the Annex to this Decision.

Article 2

This Decision shall apply from 1 1993.

Article 3

This Decision is addressed to the Member States.

Done at ,

For the Council

The President

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

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 countries and territories listed in the annex.

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

FINANCIAL IMPACT

The proposal has no financial impact on the Community budget.

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DOCUMENTS

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