

1. The Committee welcomes the Commission's proposal for a Directive concerning the MAC/packet family of standards for direct satellite television broadcasting.

2. In the Committee's view, the MAC systems will make a major contribution to European cooperation and enable the countries of Europe to become better acquainted with each other's culture and social and political systems. In addition, it is important for the economic development of Europe that the manufacturing industry should be stimulated by the new technical developments and that its sales prospects should be considerably enhanced as a result.

3. The MAC systems use new methods of electronic signal transmission and are much cheaper to operate than the systems employed previously. A greater volume of information can be transmitted than by the traditional methods. The MAC systems have been specially developed for direct broadcasting by satellite (DBS) and are well suited to its DBS transmission characteristics. The great advantage of these systems lies in the improvement of the picture quality and — thanks to the digital technique applied — in the improvement of the sound. The luminance and the colour signals are no longer superimposed in the picture. It will also be possible to use a larger screen in the not-too-distant future. In addition, the number of sound channels will be increased and stereo reception quality will be assured. This means also that multiple sound channels will be available for the transmission of television programmes in different languages — something that will

be extremely important for European cooperation and the better mutual understanding of the peoples of Europe. This is particularly significant for direct broadcasting by satellite, where the reception areas do not coincide with national frontiers.

4. In the Committee's view, it is of great importance for European cooperation that a uniform system should now be laid down for satellite reception technology, after we have had to contend with two different systems (PAL and SECAM) for conventional television transmission.

5. It is also an advantage that smaller and therefore cheaper satellite aerials can be used. It will be possible to progressively reduce the gap between the price of these aerials and the price of conventional television aerials. This means that the potential audience for satellite programmes will be considerably increased. The Member States with high cable network densities must be able to benefit from the advantages of this solution, too.

6. The Committee expects that viewers in the Member States will be able, with time, to adapt to the common technical specifications, they must, however, be offered reasonable interim solutions in the transitional phase.

7. The Committee also expects that due account will be taken of the expertise of broadcasters and the manufacturing industry, in the committee to be set up under Article 3 of the Directive.

Done at Brussels, 23 April 1986.

The Chairman
of the Economic and Social Committee
Gerd MUHR

Opinion on the legal protection of original topographies of semiconductor products

(86/C 189/04)

On 20 January 1986 the Council decided to consult the Economic and Social Committee, under Article 100 of the Treaty establishing the European Community, on the legal protection of original topographies of semiconductor products.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 2 April 1986 in the light of the draft opinion by Mr Noordwal (rapporteur).

At its 236th plenary session of 23-24 April 1986 (meeting of 23 April 1986), the Committee adopted unanimously the following opinion.

The Committee fully supports the Commission's initiative to introduce a Directive on the legal protection of original topographies of semiconductor products. The Committee agrees largely with the proposed contents of the Directive but expects the Council and the Commission to take serious note of the comments below.

1. General comments

1.1. The functions of semiconductors depend largely on the topographies of such products, whose development requires investments in human, technical and financial terms. The Committee recognizes too the importance of the semiconductor industry.

1.2. The imitation of such topography must be prevented. A small minority of Member States have legal protection measures, while a large majority have no means of protection in law. The implementation of legal protection measures is therefore necessary.

1.3. The completion of the internal market requires this to be done within a Community framework. The Committee therefore underlines the need for as harmonized an approach as possible in all the Member States. Once the Directive is adopted, Member States will have to pass implementing laws in this field; they should continue to consult each other on the drafting of their legislation under the aegis of the Commission, so as to avoid diverging solutions.

1.4. The proposal restricts itself to certain basic principles (who and what will be protected, exclusive rights of protected persons, duration of exclusivity), leaving to national legislation the more detailed provision, necessary to implement these principles. The Committee agrees to this approach.

1.5. The Commission proposal is also aimed at obtaining protection of Community topographies in the United States. The Committee can admit that differences between United States and Community terminology and implementation may subsist, provided however that reciprocity between the United States and the European Community is secured. Under the provisions of the United States legislation, protection of Community semiconductor products on the United States market will be jeopardized unless the EEC decides to act soon. The Committee therefore urges early adoption of the Directive by the Council at any rate before June 1986. It also calls on the Commission to undertake all the necessary steps to ensure maximum prolongation of interim protection in the United States. Member States should nonetheless complete the

necessary legislative steps to comply with the Directive as soon as possible and at the latest by 1 October 1987.

2. Specific comments

2.1. Article 1 (*definitions*)

2.1.1. The Committee agrees with the definitions proposed by the Commission. It is however to be remarked that in the definition 1.c 'commercial exploitation', the terminology 'a semiconductor product manufactured *by using* the topography' seems not to cover all alternatives. The Committee proposes to use the phrase 'a semiconductor product *being a reproduction* of the topography'.

2.1.2. As regards 'topography', the Committee would like to underline that this word is a more meaningful description of the technical character of the object in question than the United States term 'mask work' and the English word 'circuit layout' used in references to the Japanese legislation.

2.2. Article 2 (*protection of topographies*)

2.2.1. Because it is legally the most practicable approach, the Committee agrees with the Commission's proposal that the only acceptable criterion should be the 'originality', and not the 'novelty'. This is the recommendation made for the Treaty proposed by the World Intellectual Property Organization (WIPO).

The Committee agrees with the Commission's proposal to avoid extending protection to products considered as being 'trivialities' by introducing the term 'commonplace' in Article 2 (3).

2.2.2. The Committee wishes the Directive to make more clear that not only the whole but also the original parts of an original topography deserve protection.

2.3. Article 3 (*beneficiaries of the protection*)

2.3.1. Paragraphs 1 and 2

The Committee is of the opinion that paragraphs 1 and 2 should be seriously reconsidered by the Commission and simplified. It proposes the following draft:

'Protection shall apply in favour of persons — and their successors in title — who are the creators of the original topographies of semiconductor products and who are nationals of or residents in a Member State.'

'However, resident firms or companies (as defined in Article 58 of the EEC Treaty) must have an effective and continuous link with the economy of the Member State.'

2.3.2. Paragraph 3

The Committee approves the Commission's draft and because an international treaty is not expected to be established very soon, requests the Council on proposal from the Commission to make protection available to third country persons only in circumstances where such third countries ensure reciprocity towards Community Member States. The Committee nonetheless hopes that an international solution will be found, that will make 'national treatment' feasible. This requires the Commission to participate actively, in cooperation with the Member States, in the WIPO talks.

2.4. Article 4 (formalities)

2.4.1. Paragraph 1

The Committee is in general against compulsory registration or deposition. However, the Committee agrees that there is no reason why, in particular for trade policy reasons (e.g. *vis-à-vis* the United States and Japan), it should be easier to obtain protection (i.e. without any formality) in the Member States than in other countries. Therefore the Committee agrees that at least some Member States opt for such formalities. It insists however that compulsory registration and deposit be cheap and simple. Rules governing registration and deposition should therefore not be more than is needed for the ordinary recognition of the protected topography. The Committee is concerned in particular that the additional requirement which Member States may insist on for deposition of 'material identifying, describing or exemplifying the topography or any combination thereof' should in no circumstances lead to disclosure to the public of information considered by the depositor as confidential. Any

obligation to provide a 'description' would, furthermore, be totally impossible to respect in practice.

2.4.2. Paragraph 3

Divergences within the Community which, *inter alia* could flow from differences in formalities introduced in one or another Member State should be prohibited. The Committee endorses the draft text and insists that in no circumstances should barriers to trade be permitted to result from additional cumbersome, onerous and time-consuming administrative, technical or legal requirements.

2.5. Articles 5.2 and 5.3 (So-called reverse engineering)

The Committee agrees with the Commission's explanatory memorandum (paragraph 28) and believes that a recital could bring additional clarification to these paragraphs. The Committee agrees with the rule that a result of an act of reverse engineering, being an original topography in itself, is protectable in itself.

2.6. Article 6 (length of protection)

The Committee regards the automatic protection starting from the moment the topography is first fixed or encoded as important and considers a 10-year protection period as an adequate minimum.

2.7. Article 8 (marking)

The Committee agrees that a distinctive marking for a semiconductor product could be provided for on an optional basis by Member States. However it should not be laid down that the only permitted mark is a 'T'. The Committee prefers that room be left for manoeuvre towards an international accepted marking symbol, which preferably should be a 'T'.

Done at Brussels, 23 April 1986.

*The Chairman
of the Economic and Social Committee*

Gerd MUHR

Opinion on the proposal for a Council Directive amending, in view of the accession of the Kingdom of Spain and the Portuguese Republic, Directive 77/93/EEC on protective measures against the introduction into the Member States of harmful organisms of plants or plant products

(86/C 189/05)

On 24 January 1986 the Council decided to consult the Economic and Social Committee, under Article 198 of the Treaty establishing the European Economic Community, on the abovementioned proposal.