II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/38/EEC

of 11 May 1992

on the adoption of standards for satellite broadcasting of television signals

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Article 3 of Council Directive 86/529/EEC of 3 November 1986 on the adoption of common technical specifications of the MAC/packet family of standards for direct satellite television broadcasting (4) made provision for the adoption of measures to replace that Directive ;

Whereas the Community, through Decision 89/337/EEC (5) and Decision 89/630/EEC (6), recognized the strategic importance of high-definition television (HDTV) for the European consumer electronics industry and for the European television and film industries, and established the strategy framework for the introduction of HDTV services in Europe ;

Whereas Directive 86/529/EEC, in particular in Article 2, established a dual regime by limiting the application of the Directive to one type of satellite, and, as a result, a dual market appeared with the use of MAC standards in broadcasting satellite service (BSS) and mainly PAL and Secam in fixed satellite service (FSS) ; whereas this should be avoided in the future in order to prevent a split in the satellite market ;

Whereas, in order to reach Community goals as set out in the abovementioned Decisions and to contribute to the achievement of an internal market, as provided for in Article 8 (a) of the Treaty, in satellite broadcasting of television signals, it is necessary to take steps to create a convergence of standards, using in parallel a regulatory instrument and an agreement between major actors in the market ;

Whereas it is in the best interests of European consumers to follow a path towards HDTV based on the criteria of compatibility and evolution, in order to avoid discontinuities and duplication of investments ;

Whereas HD-MAC has been developed as the European transmission standard for HDTV services based on those criteria of compatibility and evolution and D2-MAC offers the best available path towards the development of HDTV with wide-screen 16 : 9 D2-MAC as the main step in that direction ;

Whereas there is a need to establish common standards for satellite transmission as an enabling element for effective free-market competition, taking into account the fact that standards promote competitiveness by lowering costs for producers, shaping customer preferences for products by their familiarity and giving rise to the emergence of new markets, particularly for developing technologies, where they are becoming a pre-condition for industrial production or marketing ;

Whereas services for satellite television broadcasting using 4 : 3 aspect ratio format should not be forced to a compulsory stop or change so as not to jeopardize the present market or inconvenience users ; whereas, however, incentives may be provided, through a parallel legal instrument, in order to support, in addition, the use of the D2-MAC standard, in particular in 16 : 9 format, *inter alia* through simultaneous transmissions ('simulcast') ;

Whereas it is important that, from a certain date on, new services, that is to say services that are not extensions of existing services, will transmit in the D2-MAC norm ;

(1) OJ No C 194, 25. 7. 1991, p. 20 and OJ No C 332, 21. 12. 1991, p. 13.
(2) OJ No C 326, 16. 12. 1991, p. 71 and OJ No C 94, 13. 4. 1992.
(3) OJ No C 40, 17. 2. 1992, p. 101.
(4) OJ No L 311, 6. 11. 1986, p. 28.
(5) OJ No L 142, 25. 5. 1989, p. 1.
(6) OJ No L 363, 13. 12. 1989, p. 30.

Whereas it is vital to ensure that audiovisual programmes adapted to the new 16 : 9 format are available in sufficient quantity and quality and provide therefore, where appropriate, through a parallel legal instrument, for Community financial incentives;

Whereas, in the medium term, the capacity of satellite systems is limited and, as a result, the scope for the simulcast transmissions of programmes in different standards is also limited; it will be necessary to make a selection of programmes for such transmissions;

Whereas satellite television transmissions not receivable within the Community by domestic satellite receiving equipment and occasional transmissions are not covered by the obligations of this Directive;

Whereas, in the interests of the consumer, it is necessary to establish a common conditional access system compatible with D2-MAC and HD-MAC, without hampering the technological development of these systems; whereas, therefore, the best solution is a system consisting of a common-access unit to which one or more smart cards can be added;

Whereas the Commission has expressed its intention to issue a mandate to a European standardization organization for the development of a European standard for conditional access to encrypted satellite broadcasts;

Whereas the said standard shall in principle allow for the use of more than one conditional-access encryption system, subject to the following objectives:

— that the standard shall incorporate, or refer to, a standard for a consumer conditional-access unit,

— that any conditional-access encryption system conforming to the standard shall be fully compatible with the abovementioned consumer access unit,

— that the standard shall be backwards compatible with equipment placed on the market prior to the adoption of this Directive for use with any system fully compatible with D2-MAC,

— that the standards shall allow for the updating of encryption methods from time to time without replacement or modification of the consumer conditional-access unit;

Whereas cable TV networks and their technical capabilities as defined by the Member States are a relevant feature in the television infrastructure of many Member States and will be of crucial importance to the future of HDTV services;

Whereas master antenna systems as defined by Member States are not affected by this Directive;

Whereas Decision 89/337/EEC called for an action plan for the introduction of HDTV to be prepared in close coordination at Community level between the Commission, the Member States and the European industry;

Whereas it is essential that there should be complete agreement between broadcasters, satellite operators, manufacturers and cable operators on the introduction, as soon as possible, of 16 : 9 D2-MAC services in conformity with the objectives set out in Decision 89/337/EEC; whereas such agreement might be reached by means of a Memorandum of Understanding;

Whereas the said Memorandum of Understanding will set out the obligations of the respective parties for the development and promotion of 16 : 9 D2-MAC services in Europe in accordance with the terms and provisions of this Directive and will constitute an integral part of the overall strategy for the introduction of HDTV;

Whereas European research efforts must remain in the forefront of all new significant developments, such as a trend towards digital television broadcasting emissions; whereas Europe has to consolidate its research efforts through collaboration and in the framework of Community research programmes;

Whereas a strategy for the introduction of HDTV has been laid down at Community level and European undertakings have made significant investments involving many jobs;

Whereas, in view of the foreseeable technical progress in this sector, account should now be taken of any subsequent developments of the existing systems and provision made for an eventual review of this Directive;

Whereas it is in the general interest, as well as in the interest of the major actors in the market, that this Directive should be put into application at the earliest possible date;

Whereas it is necessary to evaluate this Directive at regular intervals; whereas such evaluation should take into account all relevant market factors, including the services at the time of the evaluation,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall take all appropriate measures to promote and support the introduction and development of advanced satellite broadcasting services for television programmes, using the HD-MAC standard for not completely digital high-definition television transmission and the D2-MAC standard for other not completely digital transmission in the 16 : 9 aspect ratio format.

Article 2

1. For any transmission of a television service in the high-definition television format that is not completely digital, only the HD-MAC standard may be used.

Completeley digital transmissions receivable by viewers using domestic satellite receiving equipment, even if such transmissions are intended to be redistributed by cable networks, may use only a system standardized by the European Telecommunications Standards Institute (ETSI) but are otherwise not covered by this Directive.

2. For any not completely digital transmission of a 625 line satellite television service receivable by viewers using domestic satellite receiving equipment, even if such transmissions are intended to be redistributed by cable networks :

— in respect of any service in the 16 : 9 aspect ratio format, only the D2-MAC standard may be used,

— in respect of any other service starting after 1 January 1995, the D2-MAC standard must be used. These services may also be transmitted simultaneously in PAL, SECAM or D-MAC. This provision will take effect only three months after adoption by the Council of a proposal from the Commission, based on the appropriate Article of the Treaty, to provide financial support for the said services.

Article 3

As regards services other than those referred to in Article 2, efforts geared to the widespread introduction up to 1 January 1995 of transmissions using the D2-MAC standard, with an increasing share of 16 : 9, will be made as from 1992 by means of appropriate measures. Without prejudice to Article 7, the Commission will submit proposals as from 30 June 1992, and not later than 31 December 1993, in order to implement all the appropriate measures required for the widest possible broadcasting in D2-MAC.

Article 4

Member States shall take all measures to ensure that, as from 1 January 1994, all new television sets and all new domestic satellite receivers and video-recorders for sale or rent in the Community :

— in respect of all television sets with 16 : 9 format, possess a D2-MAC decoder,

— in respect of all other such equipment except miniature television sets, possess at least a standardized socket as standardized by Cenelec by means of which a D2-MAC decoder may be connected to the equipment permitting an open interface standard.

Article 5

Member States shall take appropriate measures to ensure that :

— any new TV cable redistribution system, or any existing TV cable redistribution system having the necessary technical capability, shall be configured in such a way that HD-MAC signals can be transmitted through the network from head-end to individual homes,

— if cable operators decide the redistribution by cable of programmes received by them using the 16 : 9 aspect ratio format and the D2-MAC standard or the HD-MAC standard, operators shall distribute these programmes using the 16 : 9 aspect ratio format and the D2-MAC or HD-MAC standard.

Article 6

In the case of all services using the D2-MAC standard, which are encrypted and employ a conditional access system, Member States shall take all the necessary measures to ensure that only a conditional access system fully compatible with D2-MAC and standardized as such by a European standardization organization by 1 July 1993 is used.

Article 7

1. This Directive shall apply until 31 December 1998.

2. Before 1 January 1994 and every two years thereafter, the Commission shall submit to the European Parliament, to the Council and to the Economic and Social Committee a report on the effects of the application of this Directive, on the evolution of the market, in particular on market penetration measured by objective criteria, and the use of the Community funding. If necessary, the Commission shall make proposals to the Council to adapt this Directive to these developments.

3. Before 1 January 1995 the Commission shall submit, if necessary, proposals to the Council on a policy of standardization for HDTV, in accordance with the objective of achieving total harmonization of all television broadcasting media, whether analogue or digital, by satellite, cable or terrestrial redistribution. These proposals should take into account the results of European collaboration in research and development and the work of the relevant standardizing organizations in Europe and relevant interest groups.

Article 8

The rules laid down in this Directive shall be accompanied by commercial measures based on the signing, by the parties concerned, of a Memorandum of Understanding coordinating the actions of the various signatories and, where appropriate, by simultaneous measures designed to support the creation of a European market for the D2-MAC, 16 : 9 and HD-MAC standards.

Article 9

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than six months after the date of its notification except for the obligations in the second indent of Article 2 (2). They shall forthwith inform the Commission thereof.

2. When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

3. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

Article 10

This Directive is addressed to the Member States.

Done at Brussels, 11 May 1992.

For the Council

The President

João PINHEIRO