

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 455 final
Brussels, 25.10.1994

94/ 0476(COD)

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

ON THE USE OF STANDARDS FOR THE TRANSMISSION
OF TELEVISION SIGNALS

(INCLUDING REPEAL OF DIRECTIVE 92/38/EEC)

(presented by the Commission pursuant to Article 189 A (2)
of the EC-Treaty)

COMMISSION OF THE EUROPEAN COMMUNITIES

CORRIGENDUM

COM(94) 455 final /2- COD 476
Brussels, 27/10/1994

La cote interinstitutionnelle
du document COM(94) 455 final
du 25.10.1994 doit se lire : COD 476

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of the EC-Treaty)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

1.1 On the 15th of November 1993, the Commission adopted its proposal for a Directive on the use of standards for the transmission of television signals¹. It seeks to establish a regulatory framework of standards for advanced television services. It foresees the repeal of Council Directive 92/38/EEC of 11 May 1992, in order to take into account market evolution and recent technical developments.

1.2 At its first reading on the 20th April 1994, the European Parliament adopted eight amendments to the Directive². The Commission can accept two of them as proposed. The Commission can accept a further four amendments but with modifications to the Parliament's text. Two of the amendments cannot be accepted by the Commission. The rationale for each of these decisions is explained below.

2. ACCEPTED AMENDMENTS

2.1 The Commission agrees that a reference to the "Television without frontiers" Directive is appropriate and therefore accepts amendment 1.

2.2 The Commission agrees that the Union has the responsibility to avoid undesirable fragmentation of effort in this field and therefore accepts amendment 4.

¹ COM (93) 556 FINAL - COD 476, O.J No C 341, 18.12.1993, p. 18

² PE 180.706 adopted 20.04.1994

3. AMENDMENTS ACCEPTED IN PRINCIPLE

3.1 The Commission accepts the substance of amendments 2, 5, 7 and 8 but modifies the text as proposed by the Parliament. The modifications reflect technical and legal details, and, for amendment 7, reflect the outcome of the in-depth industry wide consultation on the conditional access issue.

3.2 Amendment 2

The Commission considers it to be inappropriate to base a public law exclusively on a specific private initiative, the European Digital Video Broadcasting Group (DVB). It is possible, however, to retain the idea behind the Parliament's amendment by modifying the drafting.

3.3 Amendment 5

The Commission can accept the reference to advanced services as proposed, but must insist on the inclusion of 625 line services as well as 1250 line services within the definition of advanced services. This is because there will be other kinds of advanced service besides HDTV.

3.4 Amendment 7

The Commission agrees that the market for digital television services is best served by the availability of agreed standards for transmission before such services are launched. It therefore accepts the substance of the first part of the Parliament's amendment.

In relation to conditional access³, the Commission wished to ascertain the position of the market actors on this subject before incorporating a suitable article on this subject in the Directive. Following a lengthy and wide consultation between the relevant economic parties conducted under the auspices of the European Project for Digital Video Broadcasting, a number of agreements have been reached dealing with Conditional Access to digital television services. The agreements include:

- the definition of a Common Scrambling Algorithm⁴, which will become a European standard for the scrambling and descrambling of digital television signals;

³ Conditional Access is the process of granting access, by suitable authorized customers, to scrambled television signals.

⁴ Scrambling is the process of rendering the broadcast signal unintelligible during broadcasting. This signal is capable of being descrambled subsequently if the proper authorization is given. A scrambling algorithm is the mathematical basis of the scrambling process.

- the acceptance of the need for conditional access systems to have the technical capacity for transcontrol⁵ at cable television network head-ends;
- the acceptance of principles for the licensing of proprietary conditional access technology to receiver manufacturers;
- the acceptance of a technical operational procedure known as "Simulcrypt"⁶ as a useful but not unique or obligatory means of ensuring that the same scrambled television programme can be delivered to viewers via different conditional access systems;
- the agreement to specify and to submit to the European standardization bodies a Common Interface⁷ which would allow consumer equipment possessing it to use multiple conditional access systems where the proprietary elements of such systems could be included in detachable modules. It was agreed that the common interface could become an important, but not obligatory, element in the market;
- the preparation of a voluntary Code of Conduct dealing with commercial relations between relevant market parties in relation to the control of customer access to digital television signals;
- the agreement to recommend to the appropriate authorities that suitable anti-piracy legislation be adopted and enforced in the Member States of the European Union and the Council of Europe.

The Commission notes the progress made by the industry in addressing these issues. While it considers this progress to be significant, it is nevertheless aware that these voluntary agreements do not definitively guarantee that there will be no difficulties in the future development of the new market for digital pay television. It will be essential therefore that these market developments be monitored carefully particularly in the start-up phase of this new industry.

⁵ Transcontrol, in this context, is the technical process of transferring control of a conditional access system from a conditional access service provider to a cable television network operator.

⁶ Simulcrypt is a set of technical arrangements, defined by the European Project for Digital Video Broadcasting, which will allow a Broadcaster of scrambled signals simultaneously to access bases of consumer decoders which use different conditional access systems.

⁷ A Common Interface is a connection between a unit of digital equipment which provides reception of unscrambled services and a module which performs descrambling and conditional access functions. The interface is designed so that different conditional access systems may be incorporated into modules and continue to work effectively with the equipment.

The Commission therefore proposes to monitor market developments with a view to ensuring that the interests of consumers and of fair competition are in practice protected. It is also stressed that nothing in the Directive limits the rights of any party under Articles 85 and 86 of the Treaty to seek redress if they feel that their entitlements to fair competition are being adversely affected by any actions of other market parties.

In relation to the text of the Directive itself, the Commission proposes that it requires all consumer equipment used for descrambling digital television signals to use the Common Scrambling Algorithm, in order to ensure that all pay television service providers can, in principle, provide all digital pay television consumers in the European Union with their programmes.

It is further proposed to make provision in the Directive for the transfer of control of conditional access at cable television network head-ends and for the licensing of proprietary conditional access technology.

The Commission has thus modified the Directive in three ways to deal with the conditional access issue :

- i) by adding four new Recitals dealing with the subject;
- ii) by incorporating a new Article 3 bis;
- ii) by adding a phrase in Article 6 concerning the review of developments in the market on conditional access to digital television services.

3.5

Amendment 8

Technology in this field is rapidly evolving. Market developments are also likely to evolve rapidly, but it is difficult to predict their precise scope and timing. Regulation may be required to ensure harmonious market development in this field but it is premature to define now its scope and timing. The text proposed by the Parliament has been modified by the Commission to reflect these realities.

4.

REJECTED AMENDMENTS

4.1

Amendment 3

The Commission believes that reference to the evolution of technology and the market provides necessary motivation for the Directive and therefore cannot accept the Parliament's amendment deleting this reference.

4.2

Amendment 6

According to technical experts, it is not feasible to develop a wide-screen analogue transmission system which is simultaneously compatible with PAL and SECAM. Furthermore, there is no incentive among the market actors to develop such a system. The digital era provides an opportunity to replace both PAL and SECAM with a single new digital standard.

5.

CONCLUSION

5.1

In accordance with article 189a, paragraph 2 of the EC Treaty the Commission hereby amends its initial proposal.

ANNEX 1**REJECTED AMENDMENT****(Amendment 3)**
Tenth Recital**Initial Proposal**

Whereas it is appropriate to repeal Council Directive 92/38/EEC and to issue a new Directive in the light of these developments in the market and technology;

Amendment of European Parliament

Whereas it is appropriate to repeal Council Directive 92/38/EEC and to issue a new Directive;

(Amendment 6)
Article 2(ii)**Initial Proposal**

(ii) if they are in wide-screen format and 625 lines, and are not fully digital, use the D2-MAC transmission system, or a transmission system which is fully compatible with PAL or SECAM

Amendment of European Parliament

(ii) if they are in wide-screen format and 625 lines, and are not fully digital, use the D2-MAC transmission system, or a transmission system which is fully compatible with PAL or SECAM, preference being also given to the establishment of a transmission system guaranteeing compatibility with PAL and SECAM;

ANNEX 2Initial Proposal

Proposal for a Directive of the European Parliament and of the Council on the use of standards for the transmission of television signals

COM(93) 556 Final - COD 476

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 57(2), 66 and 100a thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Modified Proposal

Modified Proposal for a Directive of the European Parliament and of the Council on the use of standards for the transmission of television signals.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57(2), 66 and 100a thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

¹ COM (93) 556 FINAL - COD 476, O.J No C 341, 18.12.1993, p. 18

² CES 378/94, 23.03.1994

Initial Proposal

Whereas the Community, through Council Decisions 89/337/EEC³ and 89/630/EEC⁴, recognised 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 European HDTV;

Whereas the objectives of the strategy for the introduction of HDTV in Europe are an integral part of the Community audio-visual policy, and whereas they must take into account other objectives of this policy within the perspective of the development of Europe's audio-visual capacity, which comprise structural objectives such as the development of production in countries or regions with more limited audio-visual capacity;

Modified Proposal

Whereas the Community, through Council Decisions 89/337/EEC³ and 89/630/EEC⁴, recognised 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 European HDTV;

Whereas the objectives of the strategy for the introduction of HDTV in Europe are an integral part of the Community audio-visual policy, and whereas they must take into account other objectives of this policy within the perspective of the development of Europe's audio-visual capacity, which comprise structural objectives such as the development of production in countries or regions with more limited audio-visual capacity, in respect of which the importance of Directive 89/552/EEC on "Television without frontiers" should be reaffirmed;

³ O.J. No L 142, 25.05.1989, p. 1

⁴ O.J. No L 363, 13.12.1989, p. 30

Initial Proposal

Whereas Council Directive 92/38/EEC on the adoption of standards for the transmission of television signals⁵ set a regulatory framework of standards for advanced television broadcasting services for television programmes based on HD-MAC⁶ as the European satellite and cable transmission standard for non-fully digital HDTV and the D2-MAC⁷ standard for other not completely digital satellite and cable transmission in the wide-screen 16:9 aspect ratio format;

Whereas Council Decision 93/424/EEC on an Action Plan for the introduction of advanced television services in Europe⁸ aims at promoting the wide-screen 16:9 format (625 or 1250 lines), irrespective of the European television standard used and irrespective of the broadcasting mode (terrestrial, satellite or cable);

Whereas Article 7 of Council Directive 92/38/EEC on the adoption of standards for the transmission of television signals calls on the Commission to report on the effects of the application of that Directive, on the evolution of the market, in particular on market penetration measured by objective criteria, the use of the Community funding, and make proposals to the Council to adapt that Directive to these developments if necessary;

Modified Proposal

Whereas Council Directive 92/38/EEC on the adoption of standards for the transmission of television signals⁵ sets a regulatory framework of standards for advanced television broadcasting services for television programmes based on HD-MAC⁶ as the European satellite and cable transmission standard for non-fully digital HDTV and the D2-MAC⁷ standard for other not completely digital satellite and cable transmission in the wide-screen 16:9 aspect ratio format;

Whereas Council Decision 93/424/EEC on an Action Plan for the introduction of advanced television services in Europe⁸ aims at promoting the wide-screen 16:9 format (625 or 1250 lines), irrespective of the European television standard used and irrespective of the broadcasting mode (terrestrial, satellite or cable);

Whereas Article 7 of Council Directive 92/38/EEC on the adoption of standards for the transmission of television signals calls on the Commission to report on the effects of the application of that Directive, on the evolution of the market, in particular on market penetration measured by objective criteria, the use of the Community funding, and make proposals to the Council to adapt that Directive to these developments if necessary;

⁵ O.J. No L 137, 20.05.1992, p. 17

⁶ ETSI standard reference : prETS 300 352

⁷ ETSI standard reference ; prETS 300 250

⁸ O.J. No L 196, 5.08.1993, p.48

Initial Proposal

Whereas, in order to reach Community goals as set out in the above-mentioned Decisions and to contribute to the achievement of an internal market, as provided for in Article 8(a) of the Treaty, in the broadcasting of television signals, it is necessary to take steps to adopt a common format for wide-screen transmissions;

Whereas the wide-screen 16:9 aspect ratio has been adopted at world level by the International Telecommunication Union (ITU)⁹ for HDTV and it is desirable and possible to develop the market for advanced television services and products having the same wide-screen 16:9 aspect ratio;

Whereas television services are currently delivered to the home by terrestrial systems, by satellite systems and by cable systems and it is essential that advanced wide-screen services should be made available to the largest possible number of viewers;

Whereas there is a need to establish common digital standards for the transmission of television signals whether by cable, or by satellite, or by terrestrial means as an enabling element for effective free-market competition and this is best achieved through the activities of a recognised European standardisation body;

Modified Proposal

Whereas, in order to reach Community goals as set out in the above-mentioned Decisions and to contribute to the achievement of an internal market, as provided for in Article 8(a) of the Treaty, in the broadcasting of television signals, it is necessary to take steps to adopt a common format for wide-screen transmissions;

Whereas the wide-screen 16:9 aspect ratio has been adopted at world level by the International Telecommunication Union (ITU)⁹ for HDTV and it is desirable and possible to develop the market for advanced television services and products having the same wide-screen 16:9 aspect ratio;

Whereas television services are currently delivered to the home by terrestrial systems, by satellite systems and by cable systems and it is essential that advanced wide-screen services should be made available to the largest possible number of viewers;

Whereas it is essential to establish common standards for the digital transmission of television signals whether by cable, or by satellite, or by terrestrial means as an enabling element for effective free-market competition and this is best achieved by mandating a recognised European standardisation body taking account, as appropriate, of the outcome of consensus processes underway among market parties;

⁹ CCIR Recommendation 709 defines "picture characteristics" including the wide-screen 16:9 aspect ratio

Initial Proposal**Modified Proposal**

Whereas conditional access is an important matter for the consumers and providers of pay television services and for the rights holders of programmes;

Whereas a widely based consultation process involving the relevant economic actors in the European market has resulted in agreements on a number of issues concerning conditional access to digital pay television services;

Whereas it is necessary to mandate the use of a Common European Scrambling System in consumer equipment in the European Union in order to ensure that all pay television service providers can, in principle, provide all digital pay television consumers in the European Union with their programmes;

Whereas it is appropriate, furthermore, to make provision for transcontrol of conditional access at cable television network head-ends and for the licensing of conditional access technology in order to ensure market clarity on these issues;

Initial Proposal

Whereas it is appropriate to repeal Council Directive 92/38/EEC and to issue a new Directive in the light of these developments in the market and technology;

Whereas technologies for advanced television services are developing rapidly and a common approach to their development is necessary; whereas separate and multiple actions by the Member States could lead to undesirable fragmentation of the market for products and services and to duplication of efforts; and whereas consequently such actions could be better achieved at Community level;

Modified Proposal

Whereas it is appropriate to repeal Council Directive 92/38/EEC and to issue a new Directive in the light of these developments in the market and technology;

Whereas technologies for advanced television services are developing rapidly and a common approach to their development is necessary; whereas separate and multiple actions by the Member States could lead to undesirable fragmentation of the market for products and services and to duplication of efforts; and whereas consequently such actions should be carried out at Community level;

Initial Proposal

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Member States shall take all appropriate measures to promote and support the accelerated development of television services in the wide-screen 16:9 format and using 625 or 1250 lines;

Article 2

All television services transmitted to viewers in the Community whether by cable, satellite or terrestrial means shall:

- i) if they are in wide-screen format, only use a transmission system having the 16:9 aspect ratio;
- ii) if they are in wide-screen format and 625 lines, and are not fully digital, use the D2MAC transmission system, or a transmission system which is fully compatible with PAL or SECAM;
- iii) if they are in high definition, and are not fully digital, use the HDMAC transmission system.

Article 3

Completely digital television systems must use a transmission system which has been standardised by a European standardisation body but are otherwise not covered by this Directive.

Modified Proposal

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Member States shall take all appropriate measures to promote and support the accelerated development of advanced television services in the wide-screen 16:9 format and using 625 or 1250 lines.

Article 2

All television services transmitted to viewers in the Community whether by cable, satellite or terrestrial means shall:

- i) if they are in wide-screen format, only use a transmission system having the 16:9 aspect ratio;
- ii) if they are in wide-screen format and 625 lines, and are not fully digital, use the D2MAC transmission system, or a transmission system which is fully compatible with PAL or SECAM;
- iii) if they are in high definition, and are not fully digital, use the HDMAC transmission system.

Article 3

Completely digital television services must use a transmission system which has been standardised by a recognised European standardisation body prior to the market launch of such services.

Initial Proposal**Modified Proposal****Article 3 bis**

In relation to conditional access to digital Pay-TV services broadcast to viewers in the European Union the following conditions shall apply :

- i) All consumer equipment, for sale or rent or otherwise made available in the European Union, capable of descrambling digital television signals, shall possess capability to allow the descrambling of such signals according to the common European scrambling algorithm as standardised by a recognised European standardisation body;**
- ii) Conditional Access systems operated on the market in the European Union shall have the necessary technical capability for cost effective transcontrol at cable head-ends allowing the possibility for full control by cable television operators at local or regional level, of the services using such conditional access systems;**
- iii) In connection with the inclusion by manufacturers of conditional access systems in consumer equipment, the following conditions shall apply:**
 - a. where conditional access systems are licensed to manufacturers for inclusion in receivers this shall be done on fair, reasonable and non-discriminatory terms;**

Initial Proposal

Modified Proposal

- b. licensing or other provision of conditional access systems to manufacturers for inclusion in receivers shall be done in such a way as not to prevent the inclusion of either another conditional access system or a common interface in the receiver, provided that relevant security conditions relating to the conditional access system are met.

Article 4

Any television set with an integral viewing screen of visible diagonal greater than 42 cms, which is put on the market for sale or rent in the Community shall be fitted with at least one standardised (by a recognised European standardisation body) open interface socket permitting simple connection of additional decoders or peripherals.

Article 4

Any television set with an integral viewing screen of visible diagonal greater than 42 cms, which is put on the market for sale or rent in the Community shall be fitted with at least one standardised (by a recognised European standardisation body) open interface socket permitting simple connection of additional decoders or peripherals.

Article 5

Any wide-screen 16:9 television service which is received by and re-distributed on cable television systems shall be re-distributed on such systems in the wide-screen 16:9 format.

Article 5

Any wide-screen 16:9 television service which is received by and re-distributed on cable television systems shall be re-distributed on such systems in the wide-screen 16:9 format.

Initial Proposal**Article 6**

Before 1 January 1996 and every 2 years thereafter the Commission shall review this Directive and submit a report to the European Parliament, to the Council and to the Economic and Social Committee on market and technological developments, in particular relating to developments in digital technology. If necessary, the Commission shall make proposals to the Council to adapt this Directive to these developments.

Article 7

Directive 92/38/EEC is hereby repealed with effect from the date six months after the date of notification of this new Directive.

Article 8

1. Member States shall bring into force no later than 6 months after the date of its notification the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

Modified Proposal**Article 6**

Before 1 January 1996 and every two years thereafter the Commission shall review this Directive and submit a report to the European Parliament, to the Council and to the Economic and Social Committee on market and technological developments, in particular relating to developments in digital technology and also to market developments on conditional access to digital television services. If necessary, the Commission shall make proposals to the Council to adapt this Directive to these developments. A new regulatory framework for completely digital television systems could thus be drawn up as from the first revision, if necessary.

Article 7

Directive 92/38/EEC is hereby repealed with effect from the date six months after the date of notification of this new Directive.

Article 8

1. Member States shall bring into force no later than 6 months after the date of its notification the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

Initial Proposal

2. When Member States adopt these provisions, these 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 9

This Directive is addressed to the Member States.

Done at Brussels, (date)

For the European Parliament

The President

For the Council

The President

Modified Proposal

2. When Member States adopt these provisions, these 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 9

This Directive is addressed to the Member States.

Done at Brussels, (date)

For the European Parliament

The President

For the Council

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ISSN 0254-1475

COM(94) 455 final

DOCUMENTS

EN

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Catalogue number : CB-CO-94-477-EN-C

ISBN 92-77-81291-5

Office for Official Publications of the European Communities
L-2985 Luxembourg