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THE EUROPEAN UNION**

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NOTE

from: General Secretariat
to: Permanent Representatives Committee (Part 1)

No. prev. doc. : 11503/03 CODEC 995 PI 70
No. Cion prop. : 6580/02 PI 10 CODEC 242

Subject : Proposal for a Directive of the European Parliament and of the Council on the patentability of computer-implemented inventions
- Examination of the amendments proposed by the European Parliament at first reading: procedure

INTRODUCTION

1. The Commission presented its proposal for a Directive on 20 February 2002 (6580/02 PI 10 CODEC 242 - COM(2002) 92).

The proposal is based on Article 95 of the EC Treaty and is subject to the codecision procedure.

2. The Economic and Social Committee gave its opinion on 19 September 2002 (OJ C 61, 14.3.2003, p. 154).

3. On 14 November 2002 the Council (Competitiveness) reached broad agreement on a common approach as set out in the Annex to 14017/02 PI 69 CODEC 1401, pending adoption of the European Parliament's opinion at first reading, noting a reservation by the Commission, a general scrutiny reservation by the French delegation and a Parliamentary scrutiny reservation by the Spanish delegation.
4. The European Parliament adopted its opinion at first reading on 24 September 2003 (11503/03 CODEC 995 PI 70).
5. The Working Party on Intellectual Property (Patents) held a first exchange of views on 23 October 2003 on the amendments proposed by the European Parliament and decided to seek guidance from the Permanent Representatives Committee (Part 1) on the procedure for examining these amendments.

AMENDMENTS PROPOSED BY THE EUROPEAN PARLIAMENT

6. On the basis of a preliminary analysis undertaken by the Commission services, and taking into account the Council's common approach in the Annex to 14017/02, it appears that the 64 amendments proposed by the European Parliament may be divided into four categories:
 - (a) amendments which could be accepted unconditionally (Amendments 1, 2, 3, 85, 7, 8, 9, 11, 12, 13, 15, 16, 17, 19, 71, 23, 26, 27 and 28);
 - (b) amendments which could be accepted subject to reformulation (Amendments 92, 25 and 89);
 - (c) amendments which might be susceptible to compromise (Amendments 88, 31, 34 (= 115), 86, 55rev (= 97, 108), 104 (= 120), 24, 81 and 93);

- (d) amendments which would be unacceptable (Amendments 32 (= 112), 84, 114 (= 125), 36 (= 42, 117), 107 (= 69), 38 (= 44, 118), 45, 100 modified by 57 (= 99, 110), 70, 60, 102 (= 111), 72, 103 (= 119), 76 and 94).

Delegations have not yet taken a final position on this breakdown of amendments into categories.

PROCEDURE

7. The Working Party held a first exchange of views on the rapidity with which the amendments proposed by the European Parliament at first reading should be examined with a view to the adoption of the Council's common position, taking into account the elections to the European Parliament to be held in 2004.
8. A first option could be to organise work with a view to transmitting the Council's common position to the European Parliament in time for the latter to conduct a second reading before dissolution. This would imply transmission before the Parliamentary session beginning on 12 January 2004. Bearing in mind the time required for finalisation of a common position by the legal/linguistic experts, this in turn would imply a political agreement by the Council (Competitiveness) at its meeting on 27 November 2003. Adoption of this option would require the necessary resources to be made available, in particular in terms of meeting time, to allow the Working Party and the Permanent Representatives Committee to give due consideration to the amendments proposed by the European Parliament with a view to preparing the political agreement and the common position.
9. A second option could be to consider that there would not be sufficient time to enable a common position to be adopted and transmitted to the European Parliament in time for the latter to conduct a second reading before dissolution. In this case, work would proceed with less urgency but with a view to transmitting the Council's common position at a time which

would allow the European Parliament to begin a second reading as soon as possible after the elections. However, the newly-elected European Parliament would have the option of confirming its opinion at first reading and proceeding to a second reading, or of recommencing the codecision procedure.

10. The Commission representatives were in favour of adopting the first option. All delegations reserved their positions on these options at this stage, with some delegations indicating an initial preference for the second option.

CONCLUSION

11. The Permanent Representatives Committee is invited to decide which of the procedural options set out under points 8 and 9 above should be adopted.
