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from: General Secretariat
to: Permanent Representatives Committee/Council

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Subject: Proposal for a Directive of the European Parliament and of the Council on the patentability of computer-implemented inventions

- Common position
- Statement of the Council's reasons

The Permanent Representatives Committee/Council will find in Annex the statements for entry in the minutes of the Council meeting at which the above-mentioned common position will be adopted.

Statements for entry in the Council Minutes

1. Statement by the Commission

The Commission considers that Article 6, read in conjunction with Recital 22, permits any acts as described by Articles 5 and 6 of Directive 91/250/EEC on the legal protection of computer programs by copyright, including any acts necessary to ensure interoperability, without the need for authorisation from the patent's right holder.

2. Statement by Hungary

(Translation in English provided by the Hungarian delegation)

Concerning the proposal for a Directive on the patentability of computer-implemented inventions, the Hungarian government agrees to the goals laid down therein, in particular to the following:

- strengthening legal certainty and hereby ensuring predictability necessary for taking economic decisions;
- securing the smooth functioning of the internal market by eliminating the differences in the case law of the Member States;
- strengthening the competitiveness of the European information technology industry on the global market;
- stimulating innovation and creative activities in this important field of technology.

Hungary supports the adoption of Community legislation on the patentability of computer-implemented inventions in order to establish clear conditions for patentability and to harmonise the different practices of Member States.

At the Competitiveness Council's meeting of May 17-18 2004, where amendments to the proposed Directive were adopted, Hungary underlined, in addition to the above-mentioned goals, that the Directive also has to take account of the interests of small and medium-sized enterprises. As the amendments adopted at that meeting followed this goal, Hungary supported the proposal with its vote in the debate.

However, Hungary pays particular attention to the interests of the market players, with special regard to small and medium-sized enterprises, to ensure that their interest should properly be reflected in the forthcoming stages of the co-decision procedure and in the course of the implementation of the Directive.

3. **Statement by the Netherlands**

(Translation in English provided by the Netherlands delegation)

The Kingdom of the Netherlands states that it considers the harmonisation directive on the patentability of computer-implemented inventions to be of high importance. On 18 May, the Netherlands, part of a qualified majority of member states, politically agreed with the text of a common position in first reading. The Dutch Parliament stated as its position that the political agreement offers insufficient guarantees to prevent proliferation regarding software patenting. This concern will be taken into account by the Netherlands in the further consideration of the directive in second reading.

The directive aims to harmonise the rules within the European Union on the patenting of computer-implemented inventions and to offer clarity on which inventions are patentable and which are not.

In this light, the Netherlands wishes to confirm explicitly that the directive text now under consideration aims to exclude non-technical, non-inventive inventions, business methods and pure software from patentability. This is because patenting of this nature will not make a positive contribution to the ability to innovate.

Recently, a lot of public and political debate has arisen on the proposed directive and the patenting of computer-implemented inventions in general. On further consideration of this directive in second reading, the Netherlands will confirm as it premises that the rules on and the implementation practice of the patentability for computer-implemented inventions are sufficiently clear and that the aforementioned undesirable forms of patenting are prevented.

Therefore, the Netherlands will in second reading only be able to agree with a directive text that does not disturb the balance between patentability and non-patentability.
