



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 July 2005

10804/05

**Interinstitutional File:
2002/0047 (COD)**

**CODEC 585
PI 16**

NOTE

from: General Secretariat
to: Permanent Representatives' Committee/Council
Subject: Proposal for a Directive of the European Parliament and of the Council on the patentability of computer-implemented inventions
– Outcome of the European Parliament's second reading
(Strasbourg, 4 to 7 July 2005)

I. INTRODUCTION

The rapporteur, Mr ROCARD (PSE - FR), presented a report containing 39 amendments to the common position of the Council, on behalf of the Committee on Legal Affairs. In addition, the political groups tabled 139 further amendments at the plenary sitting.

II. DEBATE

During the debate in plenary, the rapporteur outlined what he considered to be the three main challenges facing the European legislator in the field of the patentability of computer-implemented inventions. The first one was the free circulation of ideas; the second one was the defence of a sound competitive environment and the third one was the protection of individual inventors and of small and medium-sized enterprises. The rapporteur underlined that the Parliament wanted to avoid a situation in which all softwares would be patentable. Referring to the current practice in several Member States, the USA and the European Patent office, Mr ROCARD deplored the recent increase in the number of patents granted for softwares and simple processes, which should be covered only by copyright rules. He stressed that, in the long run, the interests of European industry would be better protected under a free-for-all regime than under a maze of patents covering even the most trivial processes and softwares.

The political groups then expressed their views. The PPE/DE underlined the importance of avoiding the proliferation of patents on computer software granted on loose grounds. The group also stressed the need to maintain a legal framework in which compatible software could be developed and in which open-source alternatives could thrive. The PPE/DE raised the possibility of rejecting the common position altogether to ensure that these fundamental objectives were met. The PSE group raised the issue of the intense lobbying which the Parliament had been subjected to by various actors. The group indicated that the stated aim of these contacts had always been a wish to protect European innovators and inventors, even if the means suggested varied very much. The PSE group regretted the lack of openness and flexibility shown so far by the Commission and the Council and expressed the view that a proper pan-European patent system might be what was needed, rather than a flawed set of rules on the patentability of computer-implemented inventions. The ALDE group underlined the difficulty inherent in trying both to protect innovators and to maintain a competitive environment. The group representative hinted that the alternative texts currently on the table might not have been the right ones to achieve the right balance in this regard. The Greens/ALE and the GUE/NGL groups both underlined the need to provide SMEs with a fair set of rules to work under as well as the need to limit the proliferation of pure software patents.

On behalf of the Commission, Mr ALMUNIA underlined that the proposed Directive clearly excluded patents for pure software and patents for business methods. He stressed that only technical innovations embodied in a computer program and meeting the patentability criteria of novelty, inventiveness and industrial applicability could be patented. The commissioner emphasised that a legal framework ensuring patent protection in this area was of key importance in enabling European industries, including SMEs, to be competitive in a high-tech environment. He indicated that patents could guarantee a return on R&D investments, attract venture capital and provide bargaining power in commercial negotiations. The commissioner also expressed the view that the common position met the requirement of introducing a predictable legal framework that promoted and rewarded innovation. He warned the Parliament that a rejection of the common position would greatly increase legal uncertainty and that the Commission would not submit any new proposal.

III. VOTE

The plenary adopted the three identical amendments calling for the rejection of the common position by 648 votes in favour, 14 votes against and 18 abstentions.

The text of the European Parliament's legislative resolution is annexed to this note.

Patentability of computer-implemented inventions *II**

European Parliament legislative resolution on the Council common position with a view to the adoption of a directive of the European Parliament and of the Council on the patentability of computer-implemented inventions (11979/1/2004 – C6-0058/2005 – 2002/0047(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (11979/1/2004 – C6-0058/2005),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2002)0092)²,
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 61 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Legal Affairs (A6-0207/2005),
1. Rejects the common position;
 2. Instructs its President to declare the legislative procedure closed and to forward its position to the Council and Commission.

¹ OJ C 77 E, 26.3.2004, p. 230.

² OJ C 151 E, 25.6.2002, p. 129.