

Brussels, 18th May 2004

Patents: Commission welcomes Council agreement on Directive on computer-implemented inventions

The European Commission has welcomed the Competitiveness Council's political agreement on a 'common position' on the proposed Directive on computer-implemented inventions. The proposed Directive aims to boost innovation by ensuring that those who invest in developing genuinely new products that depend on computer implemented technology can, like those who develop other products, get a fair reward. It would achieve this without sealing off the software market to new initiatives and new inventions. The Commission supports the text adopted by Council, which it believes restores the overall balance between the interests of the rights holders and other parties (competitors and consumers) struck by the original Commission proposal presented in February 2002 (see [IP/02/277](#), [MEMO/02/32](#)). However, there are still differences between the positions of the Council and European Parliament and, under the procedure known as 'co-decision', both institutions must agree before the measure can become EU law. Once the Council has formally adopted the 'common position' without discussion at a forthcoming meeting, the text will be transmitted to the Parliament to begin its second reading after it has reconvened in September following the June 2004 elections.

Internal Market Commissioner Frits Bolkestein said: "The Council's agreement is a big step towards getting this Directive adopted in a form which will provide a major contribution to European competitiveness and assist the proper functioning of the Internal Market. We must reward investment in innovation if a real knowledge-based economy is to flourish in Europe. It is nothing more than basic common sense to make sure that inventions are not excluded from patent protection simply because they use computer software. But the Commission has always been committed to making sure that patents in this field, as in any other, cannot be used to squeeze out legitimate competition or to prevent others getting fair access to technology and ideas. This text achieves that balance and I very much hope the new European Parliament will be able to adopt it swiftly."

The proposed Directive seeks to harmonise the way in which national patent laws deal with computer-implemented inventions. Such inventions can already be patented by applying to either the European Patent Office (EPO) or the national patent offices of the Member States. However enforcement of patents is dealt with by national courts and, as the law may differ between Member States, the level of protection may, in practice, vary. This can represent a significant barrier to trade in patented products within the Internal Market.

The balance of the Commission's original proposal is maintained in the text adopted by the Council. This is to provide legal clarity while avoiding any drift towards patents for business methods or computer programs which do not provide any technical contribution to the state of the art.

The text adopted by Council includes twenty one amendments proposed by the European Parliament at its first reading but there remain some important differences between the two institutions' positions. These differences mainly relate to exceptions from patentability for computer-implemented inventions. The Parliament wanted wide exclusions covering the use of patented technology for interoperability and data handling. However, the Commission and Council felt that these went beyond what was required to set the right balance between rewarding inventors for their efforts and allowing competitors to build on these inventions, and could ultimately harm EU competitiveness.

The European Parliament will now have to consider the 'common position' text in its second reading.

For further information, see:

http://www.europa.eu.int/comm/internal_market/en/indprop/comp/index.htm