Council of the European Union: Recent Developments Concerning the Proposal for a European Directive on the Patentability of Computer-Implemented Inventions

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The adoption process of the EC Directive on the patentability of computer-implemented inventions is unfolding into an extremely controversial exercise, where all parties involved are deploying their strongest arguments either in favour or against it. The strongest opposition has come from the open source community. Initially introduced by the European Commission on 20 February 2002, the text of the directive was sent to the European Parliament for first reading in March 2003. On 24 September 2003, the European Parliament put forward no fewer than sixty-four amendments to the initial proposal, at the close of an examination process by three different committees. Following this, the Council published its own proposal, which incorporated only twenty-one of the amendments proposed by the European Parliament, showing 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. The Commission and Council felt, however, that these would go beyond what is 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 Council's version was informally adopted as a common position in May 2004. At the request of Poland, the Council postponed its formal adoption twice. On 4 February 2005, the European Parliament's committee on Legal Affairs voted for a restart of the legislative process of the directive on computer-implemented inventions. Against all expectations, EU ministers approved on 7 March 2005 the controversial proposal despite objections from a number of national parliaments and a unanimous call from leaders of all political groups in the European Parliament to withdraw the draft. This means that the proposal will at some point be submitted to the Parliament for a second reading.

Through this proposed directive, the Commission intends to clarify the legal rules on patentability for software-related inventions. Computer programmes or other software as such would be excluded from patent protection, and only inventions, which make a technical contribution and which are truly novel, would be patentable. Whether the text of the common position is suited to achieving this objective is a highly debated issue. The biggest concern expressed by some stakeholders is that the proposed directive may be interpreted in such a way as to

open the door to a broadening of the patentability of computer software “as such”, as it is now the case in the United States of America. If this were the case, software developers would be more vulnerable to patent infringement actions or would have to engage in complex licensing strategies. As the American controversy around Amazon.com's “one-click” patent demonstrates (this relates to a method and system for placing an order to purchase an item via the Internet), granting patent protection on computer software may have serious consequences for the programming community, including for the future development of the Internet.

Proposal for a Directive of the European Parliament and of the Council on the patentability of computer-implemented inventions - Political agreement on the Council’s common position, Council of the European Union, 2002/0047 (COD), Brussels 10 May 2004

http://register.consilium.eu.int/pdf/en/04/st09/st09277-ad01.en04.pdf