

Patent law: patentability of computer-implemented inventions

2002/0047(COD) - 09/03/2005 - Commission communication on Council's position

The Commission has indicated that it accepts the common position, even though this differs from the Commission's original proposal in certain respects. In general, the Commission believes that the common position strikes an acceptable balance between the interests of right holders and those of competitors and consumers (including in the open source community). This balance is further safeguarded by the new requirements for the Commission to monitor the impact of computer-implemented inventions in particular on small and medium-sized enterprises and on the open source community.

As far as the Commission is concerned, the directive continues to address the key objective stated in the explanatory memorandum of the Commission's proposal, namely the harmonisation of patent law between the Member States and the resolution of legal uncertainty in this field. It is crucial to note that there is to date no Community legislative instrument which affects general patent law either in a horizontal manner or specifically relating to computer-implemented inventions. The adoption of this directive would therefore have the effect of bringing patent law in this field, for the very first time, explicitly within Community jurisdiction.

A failure to adopt a directive would prevent Community institutions from exercising control in this strategic area of the European economy, which would thus remain within the remit only of national patent offices and courts and the European Patent Office in Munich.

The following statement is entered in the minutes of the Council adopting the common position : 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.