Protection of inventions by the utility model: approximating legal arrangements

1997/0356(COD) - 12/12/1997 - Legislative proposal

OBJECTIVE: to bring about a single market in the protection of inventions by utility model. SUBSTANCE: the primary aim of the proposal for a directive is to harmonize at Community level the provisions of the Member States concerning utility models and to institute such provisions in those Member States where they do not yet exist (e.g. United Kingdom, Sweden and Luxembourg). The main purposes are to: - improve the operation of the internal market in products arising, particularly, from small technical inventions by ensuring their freedom of movement; - prevent distortions of competition, which at present cause difficulties to SMEs which try to innovate; - ensure that all enterprises and independent inventors can enjoy better protection for technical inventions, by approximating national legislation in this field; - improve industrial competitiveness by supporting European research. The proposal, which is largely inspired by the provisions of the European Community Patent Convention, defines the inventions eligible for protection by the utility model: these are inventions which are new and capable of industrial application, and which involve an inventive step. The following are not regarded as inventions: discoveries, scientific theories and mathematical models; aesthetic creations; schemes, rules and methods for performing mental acts, playing games or doing business; presentations of information. Besides the standard exception concerning inventions contrary to public policy or morality, the proposal also lists other exceptions from protection by utility models: inventions relating to biological material, inventions relating to chemical or pharmaceutical substances or processes, and inventions involving computer programs. The proposal also defines the concept of novelty, the concept of the inventive step, what is meant by 'invention susceptible of industrial application' and the requirements which must be met by a utility model application. Unlike in the case of patents, which afford protection for 20 years, utility models are to be valid for 6 years from the date of filing. They may be extended for two further periods of 2 years, but their combined total period of validity must not exceed 10 years. A clause concerning dual protection stipulates that the same invention may form the subject-matter, simultaneously or successively, of a patent application and a utility model application.