Protection of inventions by the utility model: approximating legal arrangements

1997/0356(COD) - 25/06/1999 - Modified legislative proposal

The Commission's amended proposal retains the characteristics of the utility model envisaged in the initial proposal: the level of inventiveness required is not as great as it is in the case of patents, the formal conditions for protectability are not subject to a preliminary examination and the protection period is limited to ten years. The Commission has introduced amendments to its proposal that take into account, whether partially or in their entirety, the amendments adopted by the European Parliament at first reading. These mainly relate to: - including in the scope of the protection afforded by the utility model inventions involving computer programmes; - specifying that protectable inventions can cover both products and processes; - enabling games to be protected by the utility model, insofar as they fulfil the conditions of the protection; - clarifying that the contents of patent applications are considered as comprised in the state of the art, and that previous applications must cover the same territory as the application for a utility model if they are to be considered as comprised in the state of the art; - defining the idea of inventive activity: an invention involves an inventive step if, compared with the state of the art, it is not very obvious to an expert in the field. The invention also has to present an advantage: a practical or technical advantage for use or manufacture of the product or process in question, or another benefit to the user in the field of education or entertainment, for example. The amended proposal also strengthens the legal certainty of the utility model in extending to interested parties the possibility of requesting a search report and making it compulsory in certain circumstances. It stipulates that renewal of a utility model, on expiry of the first period of six months, shall not be granted unless an application for a search report has been made in respect of the invention concerned. Other amendments arising from the EP's amendments include: - specifying that the applicant has the possibility to change his application for a patent into an application for a utility model; - providing that the utility model shall take full effect at the time when the protection is granted; - stipulating that a utility model which has been granted is deemed to be ineffective where a patent relating to the same invention has been granted and published; - making it possible for national legislation on patents to be applied in the absence of specific national provisions applicable to utility models; - providing for the monitoring of the Directive by the Commission three years after its entry into force. It should be noted that the Commission could not accept the amendments relating to: - a 'one-stop shopping procedure' with a view to facilitating requests for utility models; - the introduction of an opposition procedure so that disputes can be settled more quickly than if they were referred to the courts; - the reduction in the fees payable by SMEs, individual inventors and universities by 50%; - preliminary checks, in addition to subsequent checks, of exceptions; - specifying 'a practical or technical advantage' as an additional condition for the granting of protection; - the non-protectability of the utility model if the proprietor is not entitled to obtain it.