

# Patent law: patentability of computer-implemented inventions

2002/0047(COD) - 20/06/2005

The committee adopted the report by Michel ROCARD (PES, FR) broadly approving the Council's common position under the 2nd reading of the codecision procedure, subject to a number of amendments. The report was adopted by 16 votes to 10 with no abstentions, following a lively debate which mirrored the diverging views on this controversial topic. The main amendments were as follows:

- a clearer definition of "technical contribution" as laid down in **Article 2**: "The technical contribution is the set of features by which the scope of the patent claim as a whole is considered to differ from the state of the art.....The technical contribution must fulfil the conditions for patentability. In particular, it must be novel and not obvious to a person skilled in the art";
- introduction of an improved version of Parliament's 1st reading amendment clarifying the term "field of technology" based on Article 27 of the TRIPS agreement: "an application domain requiring the use of controllable forces of nature to achieve predictable results in the physical world";
- a new definition was introduced into Article 2, namely, "interoperability" and the operations required to achieve it;
- MEPs clarified expressly in **Article 3** that a patent application has to disclose an invention clearly and comprehensively so that it can be implemented by someone working in the field;
- a new clause in **Article 5** specified that, "where individual elements of software are used in contexts which do not involve the realisation of any validly claimed product or process, such use will not constitute patent infringement";
- a new **Article 6a** required Member States to ensure that licences are available to use a patented computer-implemented invention "on reasonable and non-discriminatory terms and conditions" when such use is indispensable for achieving interoperability between computer programs and is in the public interest;
- when monitoring the impact of computer-implemented inventions on small and medium-sized enterprises (SMEs), the Commission should consider the effects not only on innovation and competition but also on employment in such businesses;
- a new **Article 7a** proposed setting up a committee focused on SME-related issues to ensure compliance with the monitoring requirements laid down in the directive. The committee would have a mandate to recommend necessary reforms;
- a new **Article 7b** proposed that the Commission conduct a feasibility study into a Fund to provide financial, technical and administrative support for SMEs dealing with issues related to the patentability of computer-implemented inventions;
- the Commission should report to Parliament and the Council on the effects of the directive within 3 years rather than 5 years as proposed;
- MEPs wanted to see a single patent system across the EU, in the interests of legal certainty, and therefore introduced a new clause into **Article 8** requiring the Commission to submit a proposal within a

year for an effective European Community patent which provides for democratic control by the European Parliament over the European Patent Office (EPO) and the European Patent Convention (EPC). Moreover, in a new **Article 8a**, the Council was required to report to Parliament each year on the activities of Member States that are Contracting States to the EPC in the administrative council of the EPO.