Basic information

1997/0356(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure lapsed or withdrawn
Protection of inventions by the utility model: approximating legal arrangements **Subject** 3.50.16 Industrial property, European patent, Community patent, design and pattern	

Key players

Council of the European Union	**Council configuration**	**Meetings**	**Date**
	Competitiveness (Internal Market, Industry, Research and Space)	2117	1998-09-24
European Commission	**Commission DG**	**Commissioner**	
	Financial Stability, Financial Services and Capital Markets Union		

Key events

Date	Event	Reference	Summary
12/12/1997	Legislative proposal published	COM(1997)0691	Summary
12/01/1998	Committee referral announced in Parliament, 1st reading		
24/09/1998	Debate in Council		
24/02/1999	Vote in committee, 1st reading		Summary
24/02/1999	Committee report tabled for plenary, 1st reading	A4-0096/1999	
11/03/1999	Debate in Parliament		
25/06/1999	Modified legislative proposal published	COM(1999)0309	Summary
27/10/1999	Debate in Parliament		Summary
17/03/2006	Additional information		Summary

Technical information

Procedure reference	1997/0356(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)

Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	JURI/4/09604

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A4-0096/1999 OJ C 175 21.06.1999, p. 0005	24/02/1999	
Text adopted by Parliament, 1st reading/single reading		T4-0198/1999 OJ C 175 21.06.1999, p. 0416-0431	12/03/1999	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1997)0691 OJ C 036 03.02.1998, p. 0013	12/12/1997	Summary
Modified legislative proposal	COM(1999)0309 OJ C 248 29.08.2000, p. 0056 E	25/06/1999	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0792/1998 OJ C 235 27.07.1998, p. 0026	27/05/1998	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Protection of inventions by the utility model: approximating legal arrangements

1997/0356(COD) - 12/03/1999 - Text adopted by Parliament, 1st reading/single reading

In its first reading, the Parliament approved the Commission's proposal to provide an alternative to patents for minor inventions with a number of amendments. The Parliament's rapporteur was Mr. Anoveros Trias de Bes (EPP, Spain). The Parliament in its amendments showed its interest in facilitating applications for utility models and reducing the time taken to grant these models in more than one Member State by means of the

introduction of a 'one-stop shopping' procedure. There were also some clarifications with respect to exceptions from the granting of utility models. The definition of an invention for the purposed of the Directive is also amended. The Parliament also introduces an opposition procedure to enable interested parties to oppose the granting of a utility model. Provision is also made in the Parliament's amendments for secondary application (i.e. 'in the absence of specific provisions applicable to utility models, these shall be governed by the provisions laid down for patents for invention provided they are not incompatible with the specialty of utility models'.) The Parliament also inserted an article whereby within three years of the transposition by the Member States of the provisions of this Directive, the Commission shall inform the Parliament and the Council of the results of its application and whether it should be adapted in order to safeguard, in the context of utility models, the proper functioning of the internal market and innovation by Community undertakings.

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.

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.