

Commission, 20 February 2002

Parliament, 24 September 2003

Council, 18 May 2004

### **Directive on the patentability of computer-implemented inventions**

Comparison of

- Commission of the European Communities: Proposal, 20 February 2002

[http://europa.eu.int/comm/internal\\_market/en/indprop/comp/com02-92en.pdf](http://europa.eu.int/comm/internal_market/en/indprop/comp/com02-92en.pdf)

- European Parliament: Legislative resolution on the proposal, 24 September 2003

<http://www3.europarl.eu.int/omk/omnsapir.so/pv2?LISTING=AfficheTout&PRG=CALDOC&FILE=20030924&LANGUE=EN&TPV=DEF>

- Council of the European Union: Common Position, 18 May 2004

<http://register.consilium.eu.int/pdf/en/04/st09/st09713.en04.pdf>

Comparison made by ESR Pollmeier GmbH, 1 June 2004, Stefan Pollmeier

Differences are marked in ***bold and italics***, see below.

**Commission of the European  
Communities**

**20 February 2002**

Differences to the European Parliaments' legislative resolution (middle column) are marked in ***bold and italics***

**European Parliament**

**24 September 2003**

Differences to the Commissions' proposal (left column) are marked in ***bold and italics***

**Council of the European Union**

**18 May 2004**

Differences to the European Parliaments' legislative resolution (middle column) are marked in ***bold and italics***

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**DIRECTIVE OF THE EUROPEAN  
PARLIAMENT AND OF THE  
COUNCIL  
on the patentability of computer-  
implemented inventions**

see Commission

see Commission

THE EUROPEAN PARLIAMENT AND  
THE COUNCIL OF THE EUROPEAN  
UNION,

Having regard to the Treaty establishing the  
European Community, and in particular  
Article 95 thereof,

Having regard to the proposal from the  
Commission,

Having regard to the opinion of the  
Economic and Social Committee,

Acting in accordance with the procedure  
laid down in Article 251 of the Treaty

Whereas:

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### **Recital 1**

The realisation of the internal market implies the elimination of restrictions to free circulation and of distortions in competition, while creating an environment which is favourable to innovation and investment. In this context the protection of inventions by means of patents is an essential element for the success of the internal market. effective and harmonised protection of computer-implemented inventions throughout the Member States is essential in order to maintain and encourage investment in this field.

The realisation of the internal market implies the elimination of restrictions to free circulation and of distortions in competition, while creating an environment which is favourable to innovation and investment. In this context the protection of inventions by means of patents is an essential element for the success of the internal market. *Effective, transparent* and harmonised protection of computer-implemented inventions throughout the Member States is essential in order to maintain and encourage investment in this field.

see Parliament

### **Recital 2**

Differences exist in the protection of computer-implemented inventions offered by the administrative practices and the case law of the different Member States. Such differences could create barriers to trade and hence impede the proper functioning of the internal market.

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### Recital 3

Such differences have developed and could become greater as Member States adopt new and different administrative practices, or where national case law interpreting the current legislation evolves differently.

see Commission

see Commission

### Recital 4

The steady increase in the distribution and use of computer programs in all fields of technology and in their world-wide distribution via the Internet is a critical factor in technological innovation. It is therefore necessary to ensure that an optimum environment exists for developers and users of computer programs in the Community.

see Commission

see Commission

### Recital 5

Therefore, the legal rules as interpreted by Member States' courts should be harmonised and the law governing the patentability of computer-implemented inventions should be made transparent. The resulting legal certainty should enable

Therefore, the legal rules *governing the patentability of computer-implemented inventions* should be harmonised *so as to ensure that* the resulting legal certainty *and the level of requirements demanded for patentability* enable innovative enterprises

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enterprises to derive the maximum advantage from patents for computer-implemented inventions and provide an incentive for investment and innovation.

to derive the maximum advantage from *their inventive process* and provide an incentive for investment and innovation. *Legal certainty will also be secured by the fact that, in case of doubt as to the interpretation of this Directive, national courts may and national courts of last instance must seek a ruling from the Court of Justice of the European Communities.*

to derive the maximum advantage from their inventive process and provide an incentive for investment and innovation. Legal certainty will also be secured by the fact that, in case of doubt as to the interpretation of this Directive, national courts may and national courts of last instance must seek a ruling from the Court of Justice ~~of the European Communities.~~

#### **Recital 5a (New from Parliament)**

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*The rules pursuant to Article 52 of the Convention on the Grant of European Patents concerning the limits to patentability should be confirmed and clarified. The consequent legal certainty should help to foster a climate conducive to investment and innovation in the field of software.*

*Deleted. Similar text see recital 7b.*

#### **Recital 6**

The Community and its Member States are bound by the Agreement on trade-related aspects of intellectual property rights (TRIPS), approved by Council Decision 94/800/EC of 22 December 1994

*Deleted*

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concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994). Article 27(1) of TRIPS provides that patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Moreover, according to TRIPS, patent rights should be available and patent rights enjoyable without discrimination as to the field of technology. These principles should accordingly apply to computer-implemented inventions.

### **Recital 7**

Under the Convention on the Grant of European Patents signed in Munich on 5 October 1973 and the patent laws of the Member States, programs for computers together with discoveries, scientific theories, mathematical methods, aesthetic creations, schemes, rules and methods for performing mental acts, playing games or doing business, and presentations of

Under the Convention on the Grant of European Patents signed in Munich on 5 October 1973 and the patent laws of the Member States, programs for computers together with discoveries, scientific theories, mathematical methods, aesthetic creations, schemes, rules and methods for performing mental acts, playing games or doing business, and presentations of information

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information are expressly not regarded as inventions and are therefore excluded from patentability. This exception, *however*, applies *and is justified only to the extent that a patent application or patent relates to such subject-matter or activities as such*, because the said subject-matter and activities *as such* do not belong to a field of technology.

are expressly not regarded as inventions and are therefore excluded from patentability. This exception applies because the said subject-matter and activities do not belong to a field of technology.

#### **Recital 7a (New from Parliament)**

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*The aim of this Directive is not to amend the aforementioned Convention, but to prevent different interpretations of its provisions.*

*Deleted. Similar text see recital 7b.*

#### **Recital 7b (New from Parliament)**

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*The European Parliament has repeatedly asked the European Patent Office to review its operating rules and for the Office to be publicly accountable in the exercise of its functions. In this connection it would be particularly desirable to reconsider the practice whereby the Office sees fit to obtain payment for the patents that it grants, as this practice harms the*

*The aim of this Directive is to prevent different interpretations of the provisions of the European Patent Convention concerning the limits to patentability. The consequent legal certainty should help to foster a climate conducive to investment and innovation in the field of software.*

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*public nature of the institution. In its Resolution of 30 March 2000 on the decision by the European Patent Office with regard to patent No EP 695 351 granted on 8 December 1999, Parliament requested a review of the Office's operating rules to ensure that it was publicly accountable in the exercise of its functions.*

### **Recital 8**

Patent protection allows innovators to benefit from their creativity. Whereas patent rights protect innovation in the interests of society as a whole; they should not be used in a manner which is anti-competitive.

see Commission

see Commission

### **Recital 9**

In accordance with Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, the expression in any form of an original computer program is protected by copyright as a literary work. However, ideas and principles which underlie any element of a computer program are not protected by

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copyright.

### Recital 10

In order for any invention to be considered as patentable it should have a technical character, and thus belong to a field of technology.

see Commission

see Commission

### Recital 11

*Although computer-implemented inventions are considered to belong to a field of technology, in order to involve an inventive step, in common with inventions in general, they should make a technical contribution to the state of the art.*

*In order to be patentable, inventions in general and computer-implemented inventions in particular must be susceptible of industrial application, new and involve an inventive step. In order to involve an inventive step, computerimplemented inventions must in addition make a new technical contribution to the state of the art, in order to distinguish them from pure software.*

*It is a condition for inventions in general that, in order to involve an inventive step, they should make a technical contribution to the state of the art.*

### Recital 12

Accordingly, *where an invention does not make a technical contribution to the state of the art, as would be the case, for example, where its specific contribution lacks a*

Accordingly, an *innovation that does not make a technical contribution to the state of the art is not an invention within the meaning of patent law.*

*Accordingly, although a computer-implemented invention belongs to a field of technology, where it does not make a technical contribution to the state of the*

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*technical character, the invention will lack an inventive step and thus will not be patentable.*

*art, as would be the case, for example, where its specific contribution lacks a technical character, it will lack an inventive step and thus will not be patentable.*

### Recital 13

*A defined procedure or sequence of actions when performed in the context of an apparatus such as a computer may make a technical contribution to the state of the art and thereby constitute a patentable invention. However, an algorithm which is defined without reference to a physical environment is inherently non-technical and cannot therefore constitute a patentable invention.*

*Deleted.*

*Deleted.*

### Recital 13a (New from Parliament)

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*However, the mere implementation of an otherwise unpatentable method on an apparatus such as a computer is not in itself sufficient to warrant a finding that a technical contribution is present. Accordingly, a computer-implemented business method, data processing method*

~~*However,*~~ The mere implementation of an otherwise unpatentable method on an apparatus such as a computer is not in itself sufficient to warrant a finding that a technical contribution is present. Accordingly, a computer-implemented business method, data processing method or

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*or other method in which the only contribution to the state of the art is nontechnical cannot constitute a patentable invention.*

other method in which the only contribution to the state of the art is non-technical cannot constitute a patentable invention.

### **Recital 13b (New from Parliament)**

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*If the contribution to the state of the art relates solely to unpatentable matter, there can be no patentable invention irrespective of how the matter is presented in the claims. For example, the requirement for technical contribution cannot be circumvented merely by specifying technical means in the patent claims.*

see Parliament

### **Recital 13c (New from Parliament)**

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*Furthermore, an algorithm is inherently non-technical and therefore cannot constitute a technical invention. Nonetheless, a method involving the use of an algorithm might be patentable provided that the method is used to solve a technical problem. However, any patent granted for such a method should not monopolise the algorithm itself or its use in contexts not foreseen in the patent.*

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### Recital 13d (New from Parliament)

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*The scope of the exclusive rights conferred by any patent are defined by the claims. Computer-implemented inventions must be claimed with reference to either a product such as a programmed apparatus, or to a process carried out in such an apparatus. Accordingly, 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.*

The scope of the exclusive rights conferred by any patent *is* defined by the claims, *as interpreted with reference to the description and any drawings*. Computer-implemented inventions *should* be claimed at least with reference to either a product such as a programmed apparatus, or to a process carried out in such an apparatus. Accordingly, 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.

### Recital 14

The legal protection of computer-implemented inventions *should* not necessitate the creation of a separate body of law in place of the rules of national patent law. The rules of national patent law *should* remain the essential basis for the legal protection of computer-implemented inventions *as adapted or added to in certain specific respects as set out in this Directive*.

The legal protection of computer-implemented inventions *does* not necessitate the creation of a separate body of law in place of the rules of national patent law. The rules of national patent law remain the essential basis for the legal protection of computer-implemented inventions. *This Directive simply clarifies the present legal position with a view to securing legal certainty, transparency, and clarity of the*

The legal protection of computer-implemented inventions does not necessitate the creation of a separate body of law in place of the rules of national patent law. The rules of national patent law remain the essential basis for the legal protection of computer-implemented inventions. This Directive simply clarifies the present legal position with a view to securing legal certainty, transparency, and clarity of the

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*law and avoiding any drift towards the patentability of unpatentable methods such as trivial procedures and business methods.*

law and avoiding any drift towards the patentability of unpatentable methods such as *obvious or non-technical* procedures and business methods.

### Recital 15

This Directive should be limited to laying down certain principles as they apply to the patentability of such inventions, such principles being intended in particular to ensure that inventions which belong to a field of technology and make a technical contribution are susceptible of protection, and conversely to ensure that those inventions which do not make a technical contribution are not so susceptible.

see Commission

see Commission

### Recital 16

The competitive position of European industry in relation to its major trading partners *would* be improved if the current differences in the legal protection of computer-implemented inventions *were* eliminated and the legal situation *was* transparent.

The competitive position of European industry in relation to its major trading partners *will* be improved if the current differences in the legal protection of computer-implemented inventions *are* eliminated and the legal situation *is* transparent. *With the present trend for*

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*traditional manufacturing industry to shift their operations to low-cost economies outside the European Union, the importance of intellectual property protection and in particular patent protection is self-evident.*

### Recital 17

This Directive *shall* be without prejudice to the application of the competition rules, in particular Articles 81 and 82 of the Treaty.

This Directive *should* be without prejudice to the application of the competition rules, in particular Articles 81 and 82 of the Treaty.

*The provisions of this Directive are* without prejudice to the application of Articles 81 and 82 of the Treaty, *in particular where a dominant supplier refuses to allow the use of a patented technique which is needed for the sole purpose of ensuring conversion of the conventions used in two different computer systems or networks so as to allow communication and exchange of data content between them.*

### Recital 18

*Acts permitted under* Directive 91/250/EEC on the legal protection of computer programs by copyright, in particular provisions thereof *relating to* decompilation and interoperability, *or the provisions concerning semiconductor topographies or*

*The rights conferred by patents granted for inventions within the scope of this Directive should not affect acts permitted under Articles 5 and 6 of* Directive 91/250/EEC on the legal protection of computer programs by copyright, in

The rights conferred by patents granted for inventions within the scope of this Directive *shall* not affect acts permitted under Articles 5 and 6 of Directive 91/250/EEC on the legal protection of computer programs by copyright, in particular under the provisions

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*trade marks, shall not be affected through the protection granted by patents for inventions within the scope of this Directive.*

particular *under the* provisions thereof *in respect of* decompilation and interoperability. *In particular, acts which, under Articles 5 and 6 of that Directive, do not require authorisation of the rightholder with respect to the rightholder's copyrights in or pertaining to a computer program, and which, but for those Articles, would require such authorisation, should not require authorisation of the rightholder with respect to the rightholder's patent rights in or pertaining to the computer program.*

thereof in respect of decompilation and interoperability. In particular, acts which, under Articles 5 and 6 of Directive 91/250/EEC, do not require authorisation of the rightholder with respect to the rightholder's copyrights in or pertaining to a computer program, and which, but for *Articles 5 or 6 of Directive 91/250/EEC*, would require such authorisation, *shall* not require authorisation of the rightholder with respect to the rightholder's patent rights in or pertaining to the computer program.

#### **Recital 18a (New from Parliament)**

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*At all events, the legislation of the Member States must ensure that patents contain innovations and involve an inventive step, so as to prevent inventions already in the public domain from being appropriated simply by being incorporated into a computer program.*

*Deleted.*

#### **Recital 19**

Since the objectives of the proposed action, namely to harmonise national rules on

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computer-implemented inventions, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

HAVE ADOPTED THIS DIRECTIVE:

### **Article 1 Scope**

This Directive lays down rules for the patentability of computer-implemented inventions.

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## Article 2 Definitions

For the purposes of this Directive the following definitions shall apply:

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(a) “computer-implemented invention” means any invention the performance of which involves the use of a computer, computer network or other programmable apparatus and having *one or more prima facie novel* features which are realised wholly or partly by *means of* a computer program or computer programs;

(a) “computer-implemented invention” means any invention *within the meaning of the European Patent Convention* the performance of which involves the use of a computer, computer network or other programmable apparatus and having *in its implementations one or more nontechnical* features which are realised wholly or partly by a computer program or computer programs, *besides the technical features that any invention must possess*;

(a) “computer-implemented invention” means any invention *within the meaning of the European Patent Convention* the performance of which involves the use of a computer, computer network or other programmable apparatus, *the invention having in its implementations one or more nontechnical* features which are realised wholly or partly by means of a computer program or computer programs, ~~*besides the technical features that any invention must possess*~~;

(b) “technical contribution” means a contribution *to the state of the art in a technical field which is not obvious to a person skilled in the art*.

(b) “technical contribution”, *also called “invention”*, means a contribution to the state of the art in a technical field. *The technical character of the contribution is one of the four requirements for patentability. Additionally, to deserve a*

(b) “technical contribution” *means a contribution to the state of the art in a field of technology which is new and not obvious to a person skilled in the art. The technical contribution shall be assessed by consideration of the difference between the*

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*patent, the technical contribution has to be new, non-obvious, and susceptible of industrial application. The use of natural forces to control physical effects beyond the digital representation of information belongs to a technical field. The processing, handling, and presentation of information do not belong to a technical field, even where technical devices are employed for such purposes.*

*state of the art and the scope of the patent claim considered as a whole, which must comprise technical features, irrespective of whether or not these are accompanied by non-technical features.*

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*(ba) "technical field" means an industrial application domain requiring the use of controllable forces of nature to achieve predictable results. "Technical" means "belonging to a technical field".*

*Deleted.*

*(bb) "industry" within the meaning of patent law means the automated production of material goods;*

*Deleted.*

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### Article 3

#### Computer-implemented inventions as a field of technology

*Member States shall ensure that a computer-implemented invention is considered to belong to a field of technology.*

*Deleted.*

*Deleted, indirectly incorporated in recital 12.*

#### Article 3a (New from Parliament)

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*Member States shall ensure that data processing is not considered to be a field of technology within the meaning of patent law, and that innovations in the field of data processing are not considered to be inventions within the meaning of patent law.*

*Deleted.*

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#### **Article 4** **Conditions for patentability**

1. *Member States shall ensure that a computer-implemented invention is patentable on the condition that it is susceptible of industrial application, is new, and involves an inventive step.*

2. Member States shall ensure that *it is a condition of involving an inventive step that* a computer-implemented invention *must make* a technical contribution.

3. The technical contribution shall be assessed by consideration of the difference between the scope of the patent claim considered as a whole, *elements of which may comprise both technical and non-technical features*, and the state of the art.

1. *In order to be patentable, a computer-implemented invention must be susceptible of industrial application and new and involve an inventive step. In order to involve an inventive step, a computer-implemented invention must make a technical contribution.*

2. Member States shall ensure that a computer-implemented invention *making* a technical contribution *constitutes a necessary condition of involving an inventive step.*

3. *The significant extent of* the technical contribution shall be assessed by consideration of the difference between *all of the technical features included in* the scope of the patent claim considered as a whole and the state of the art, *irrespective of whether or not such features are accompanied by non-technical features.*

see Parliament

*Deleted.*

*Deleted.*

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*3a. In determining whether a given computer-implemented invention makes a technical contribution, the following test shall be used: whether it constitutes a new teaching on cause-effect relations in the use of controllable forces of nature and has an industrial application in the strict sense of the expression, in terms of both method and result.*

*Deleted.*

#### **Article 4a (New from Parliament) Exclusions from patentability**

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*A computer-implemented invention shall not be regarded as making a technical contribution merely because it involves the use of a computer, network or other programmable apparatus. Accordingly, inventions involving computer programs which implement business, mathematical or other methods and do not produce any technical effects beyond the normal physical interactions between a program and the computer, network or other programmable apparatus in which it is run shall not be patentable.*

*1. A computer program as such cannot constitute a patentable invention.*

*2. A computer-implemented invention shall not be regarded as making a technical contribution merely because it involves the use of a computer, network or other programmable apparatus. Accordingly, inventions involving computer programs, whether expressed as source code, as object code or in any other form, which implement business, mathematical or other methods and do not produce any technical effects beyond the normal physical interactions between a program and the*

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computer, network or other programmable apparatus in which it is run shall not be patentable.

### Article 4b (New from Parliament)

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*Member States shall ensure that computer-implemented solutions to technical problems are not considered to be patentable inventions merely because they improve efficiency in the use of resources within the data processing system.*

*Deleted.*

### Article 5 Form of claims

Member States shall ensure that a computer-implemented invention may be claimed as a product, that is as a programmed *computer, a programmed computer network or other programmed apparatus*, or as a process carried out by such a computer, computer network or apparatus through the execution of software.

1. Member States shall ensure that a computer-implemented invention may be claimed *only* as a product, that is as a programmed *device*, or as a *technical production* process.

1. Member States shall ensure that a computer-implemented invention may be claimed *only* as a product, that is as a programmed *computer, a programmed computer network or other programmed apparatus, or as a process carried out by such a computer, computer network or apparatus through the execution of software.*

2. *A claim to a computer program, either on its own or on a carrier, shall not be*

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*allowed unless that program would, when loaded and executed in a computer, programmed computer network or other programmable apparatus, put into force a product or process claimed in the same patent application in accordance with paragraph 1.*

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*1a. Member States shall ensure that patent claims granted in respect of computerimplemented inventions include only the technical contribution which justifies the patent claim. A patent claim to a computer program, either on its own or on a carrier, shall not be allowed.*

*Deleted.*

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*1b. Member States shall ensure that the production, handling, processing, distribution and publication of information, in whatever form, can never constitute direct or indirect infringement of a patent, even when a technical apparatus is used for that purpose.*

*Deleted.*

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*1c. Member States shall ensure that the*

*Deleted.*

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*use of a computer program for purposes that do not belong to the scope of the patent cannot constitute a direct or indirect patent infringement.*

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*1d. Member States shall ensure that whenever a patent claim names features that imply the use of a computer program, a well-functioning and well documented reference implementation of such a program shall be published as a part of description without any restricting licensing terms.*

*Deleted.*

## Article 6

### Relationship with Directive 91/250 EC

Acts permitted under Directive 91/250/EEC on the legal protection of computer programs by copyright, in particular provisions thereof *relating to* decompilation and interoperability, *or the provisions concerning semiconductor topographies or trade marks, shall not be affected through the protection granted by patents for inventions within the scope of this Directive.*

*The rights conferred by patents granted for inventions within the scope of this Directive shall not affect* acts permitted under *Articles 5 and 6 of* Directive 91/250/EEC on the legal protection of computer programs by copyright, in particular *under the* provisions thereof *in respect of* decompilation and interoperability.

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### **Article 6a (New from Parliament) Use of patented techniques**

*Member States shall ensure that, wherever the use of a patented technique is needed for a significant purpose such as ensuring conversion of the conventions used in two different computer systems or networks so as to allow communication and exchange of data content between them, such use is not considered to be a patent infringement.*

*Deleted.*

### **Article 7 Monitoring**

The Commission shall monitor the impact of computer-implemented inventions on innovation and competition, both within Europe and internationally, and on European businesses, *including* electronic commerce.

The Commission shall monitor the impact of computer-implemented inventions on innovation and competition, both within Europe and internationally, and on European businesses, *especially small and medium-sized enterprises and the open source community, and* electronic commerce.

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## Article 8 Report on the effects of the Directive

The Commission shall report to the European Parliament and the Council by [DATE (*three years from the date specified in Article 9(1)*)] at the latest on

see Commission

see Commission

(a) the impact of patents for computer-implemented inventions on the factors referred to in Article 7;

see Commission

see Commission

(b) whether the rules governing the determination of the patentability requirements, and more specifically novelty, inventive step and the proper scope of claims, are adequate; and

(b) whether the rules governing ***the term of the patent and*** the determination of the patentability requirements, and more specifically novelty, inventive step and the proper scope of claims, are adequate; and

(b) whether the rules governing the term of the patent and the determination of the patentability requirements, and more specifically novelty, inventive step and the proper scope of claims, are adequate, and ***whether it would be desirable and legally possible having regard to the Community's international obligations to make modifications to such rules;***

(c) whether difficulties have been experienced in respect of Member States where the requirements of novelty and inventive step are not examined prior to issuance of a patent, and if so, whether any steps are desirable to address such

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difficulties.

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*(ca) whether difficulties have been experienced in respect of the relationship between the protection by patent of computer-implemented inventions and the protection by copyright of computer programs as provided for in Directive 91/250/EEC and whether any abuse of the patent system has occurred in relation to computer-implemented inventions;*

see Parliament

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*(cb) whether it would be desirable and legally possible having regard to the Community's international obligations to introduce a "grace period" in respect of elements of a patent application for any type of invention disclosed prior to the date of the application;*

*Deleted.*

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- *(cc) the aspects in respect of which it may be necessary to prepare for a diplomatic conference to revise the Convention on the Grant of European Patents, also in the light of the advent of the Community patent;* (cc) the aspects in respect of which it may be necessary to prepare for a diplomatic conference to revise the *European Patent Convention, also in the light of the advent of the Community patent;*
- *(cd) how the requirements of this Directive have been taken into account in the practice of the European Patent Office and in its examination guidelines.* (cb) how the requirements of this Directive have been taken into account in the practice of the European Patent Office and in its examination guidelines;
- *(ce) whether the powers delegated to the EPO are compatible with the need to harmonise Community legislation, and with the principles of transparency and accountability.* Deleted.
- *(cf) the impact on the conversion of the conventions used in two different computer systems to allow communication and exchange of data;* Deleted.
- *(cg) whether the option outlined in the Directive concerning the use of a patented invention for the sole purpose of ensuring* (cd) *the impact of patents for computer-implemented inventions on the development and commercialisation of*

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*interoperability between two systems is adequate;*

*interoperable computer programs and systems;*

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*1a In this report the Commission shall justify why it believes an amendment of the Directive in question necessary or not and, if required, will list the points which it intends to propose an amendment to.*

*Deleted.*

### **Article 8a Impact assessment**

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*In the light of the monitoring carried out pursuant to Article 7 and the report to be drawn up pursuant to Article 8, the Commission shall assess the impact of this Directive and, where necessary, submit proposals for amending legislation to the European Parliament and the Council.*

see Parliament

### **Article 9 Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than [DATE (*last day of a month*)]. They shall forthwith inform the

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1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive *by* [DATE (*twenty-four months after the entry into force of the Directive*)].

Commission, 20 February 2002

Parliament, 24 September 2003

Council, 18 May 2004

Commission thereof. When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

see Commission

see Commission

## **Article 10 Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*

see Commission

see Commission

## **Article 11 Addressees**

This Directive is addressed to the Member States.

see Commission

see Commission