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Committee on Legal Affairs and the Internal Market

PROVISIONAL
2002/0047(COD)

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*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council
on the patentability of computer-implemented inventions
(COM(2002) 92 – C5-0082/2002 – 2002/0047(COD))

Committee on Legal Affairs and the Internal Market

Rapporteur: Arlene McCarthy

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 20 February 2002 the Commission submitted to Parliament, pursuant to Article 95 of the EC Treaty, the proposal for a Directive of the European Parliament and of the Council on the patentability of computer-implemented inventions (COM(2002) 92 – 2002/0047 (COD)).

At the sitting of 27 February 2002 the President of Parliament announced that she had referred this proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on Industry, External Trade, Research and Energy and the Committee on Culture, Youth, Education, the Media and Sport for their opinions (C5-0082/2002).

The Committee on Legal Affairs and the Internal Market appointed Arlene McCarthy rapporteur at its meeting of 27 March 2002.

The committee considered the Commission proposal and draft report at its meeting(s) of ...

At the latter/last meeting it adopted the draft legislative resolution by ... votes to ..., with ... abstention(s)/unanimously.

The following were present for the vote: ..., chairman/acting chairman; ... (and ...), vice-chairman/vice-chairmen; ..., rapporteur; ..., ... (for ...), ... (for ... , pursuant to Rule 153(2)), ... and

The opinions of the Committee on Industry, External Trade, Research and Energy and the Committee on Culture, Youth, Education, the Media and Sport are attached.

The report was tabled on

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a directive of the European Parliament and of the Council on the patentability of computer-implemented inventions (COM(2002) 92 – C5-0082/2002 – 2002/0047(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2002) 92¹),
 - having regard to Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0082/2002),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinions of the Committee on Industry, External Trade, Research and Energy and the Committee on Culture, Youth, Education, the Media and Sport (A5-0000/2002),
 - having regard to the opinion of the European Economic and Social Committee,
1. Approves the Commission proposal as amended;
 2. Asks for the matter to be referred to it again, should the Commission intend to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 5

(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 enterprises to derive the maximum advantage from patents for computer-implemented inventions and provide an

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

¹ OJ C 151, 25.6.2002, p 129.

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.

Justification

It is important to underscore that the underlying aim of the Directive is to secure legal certainty and uniform interpretation and application of the law by national courts. The possibility of attaching a specialised judicial panel to the Court of First Instance under Article 220 of the EC Treaty, as amended by the Treaty of Nice, is also of interest in this connection.

Amendment 2

Recital 11

(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.***

(11) ***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, computer-implemented inventions should make a technical contribution to the state of the art.***

Justification

This recital restates the law, as enshrined in Article 52(1) of the European Patent Convention.

Amendment 3

Recital 12

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

(12) Accordingly, ***even though a computer-implemented invention belongs by virtue of its very nature to a field of technology, it is important to make it clear that*** 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 technical character, the invention will lack an inventive step and thus will not be

patentable.

When assessing whether an inventive step is involved, it is usual to apply the problem and solution approach in order to establish that there is a technical problem to be solved. If no technical problem is present, then the invention cannot be considered to make a technical contribution to the state of the art.

Justification

It is important to clarify that not all computer-implemented inventions are necessarily patentable. However, computer-implemented inventions should not be excluded from patentability on the sole ground that they specify the use of a computer program. By stressing the fact that a patentable computer-implemented invention, albeit belonging to a field of technology, must make a technical contribution to the state of the art and by drawing attention to the problem and solution approach used by the patent examiners at the European Patent Office in assessing inventive step, it is intended to avoid allowing inventive but non-technical methods (including business methods) to be regarded as making a technical contribution and hence as patentable merely because they are implemented on a computer.

Amendment 4 Recital 13a (new)

(13a) 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 or other method in which the only contribution to the state of the art is non-technical cannot constitute a patentable invention.

Justification

This recital makes it clear that it is not enough to specify the use of a computer (i.e. of technical means) to make a computer-implemented invention patentable. The invention as a whole must make a technical contribution. Ordinary data processing is not enough.

Amendment 5
Recital 13b (new)

(13b) 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.

Justification

This recital is designed to ensure that the requirement for inventive step and hence for a technical contribution cannot be circumvented through ingenious drafting of the patent claims.

Amendment 6
Recital 13c (new)

(13c) 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 would not monopolise the algorithm itself or its use in contexts not foreseen in the patent.

Justification

Article 52(2)(a) and (c) of the European Patent Convention precludes the patentability of "mathematical methods" and "schemes, rules and methods for performing mental acts, playing games and doing business, and programs for computers". Since an algorithm could be a computer program or an element of such a program in isolation from its execution environment or a mathematical formula or method, it is, as such, precluded from patentability. However, the mere use of an algorithm does not preclude patentability.

Amendment 7
Recital 14

(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**.

(14) 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 having regard to the practices of the European Patent Office with a view to securing legal certainty, transparency, and clarity in the law and avoiding any drift towards the patentability of unpatentable methods, such as business methods.***

Justification

It is essential to make it clear that this Directive is not revolutionary and will not change the status quo as regards the patentability of computer-implemented inventions. It will, however, make for legal certainty and set clear limits as to what is patentable in this area.

Amendment 8
Recital 16

(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.

(16) 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 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.***

Justification

The economic importance of this Directive should not be underestimated. Moreover, studies have shown a link between R&D spending, patent applications and productivity. Intellectual property protection creates and secures jobs in Europe and brings in revenue.

Amendment 9
Recital 17

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

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

Justification

It is bad draftsmanship to couch recitals as normative provisions.

Amendment 10
Recital 18

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

(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, **should** not be affected through the protection granted by patents for inventions within the scope of this Directive.

Justification

The words deleted seem not to be relevant to this Directive.

Amendment 11
Article 2, point -a (new)

(-a) "invention" encompasses both patentable inventions and matter whose patentability has not been established or is in question;

Justification

It should be clarified that the term "invention" is used in both senses in the Directive.

Amendment 12
Article 2, point (a)

(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 the performance of which involves the use of a computer, computer network or other programmable apparatus and having one or more features which are realised wholly or partly by means of a computer program or computer programs;

Justification

The expression "prima facie novel" is unclear and could add an initial additional requirement to assess novelty at the commencement of the examination procedure.

Amendment 13
Article 3

Article 3

(deleted)

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.

Justification

This article is unnecessary and unclear in scope. It would be difficult to put into effect, and might lead to unpredictable results. It might be construed as extending the scope of patent protection.

Amendment 14
Article 4

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.

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 it is a condition of involving an inventive step that a computer-implemented invention must make a technical contribution.

The technical contribution shall be assessed by considering the state of the art and the scope of the patent claim considered as a whole, which must comprise technical features, irrespective whether or not such features are accompanied by non-technical features.

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.

Justification

Produces greater clarity.

Amendment 15
Article 4a (new)

Article 4a

Exclusions from patentability:

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.

Justification

This, in conjunction with the corresponding recital, provides clarification that simply specifying technical means is not enough for patentability. There must be a technical contribution. It also makes it clear that the computer implementation of a business method simpliciter is not a patentable invention.

Amendment 16
Article 6

6. 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.

6. Acts permitted ***as exceptions*** under ***Articles 5 and 6 of*** Directive 91/250/EEC on the legal protection of computer programs by copyright, in particular provisions thereof relating to decompilation and interoperability, shall not be affected through the protection granted by patents for inventions within the scope of this Directive.

Justification

Clearly specifies what is meant by "acts permitted".

Amendment 17

Article 7

7. 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.

7. 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 electronic commerce.

Justification

It is essential to monitor the impact of the patentability of computer-implemented inventions on small and medium-sized undertakings.

Amendment 18

Article 8, point (d) (new)

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

Justification

Concerns have been expressed about the impact of the Directive on copyright protection for software and the exceptions for interoperability provided for in Directive 91/205/EC. This provision would also allow the Commission to monitor any abuse of the patent system in this area.

Amendment 19

Article 8, point (e) (new)

(e) 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.

Justification

It has been strongly argued that a grace period is necessary to avoid an inventor being deprived of his or her invention when it has been made public before applying for a patent, for instance in order to test its attractiveness to the market. It is maintained that this would be particularly useful for innovative SMEs and cooperation between universities and industry. However, such an innovation could not be introduced solely for patents for computer-implemented inventions without a prior study of its impact and its compatibility with the Community's international obligations under, for instance, TRIPs.

Amendment 20

Article 9, paragraph 1, first subparagraph

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 Commission thereof.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than **eighteen months after its entry into force**. They shall forthwith inform the Commission thereof.

Justification

It is necessary to specify the date by which the Directive should enter into force.

EXPLANATORY STATEMENT

1. The need for a directive

The proposal under consideration is not revolutionary. The patenting of computer-implemented inventions is not new. Indeed, patents involving use of software have been applied for and granted since the earliest days of the European patent system and it is now estimated that 15% of all applications for patents received by the EPO relate to computer-implemented inventions¹. This means that of the over 110,000 applications received at the EPO in 2001, more than 16,000 will have dealt with innovation in computer-related technologies. Moreover, activity has increased significantly in recent years: applications in the specific area of "computing" rose 25% from 5,057 in 2000 to 6,816 in 2002 (provisional EPO data), which compares with only 2220 in 1995. Similar rises are also seen in telecommunications and other areas which are heavily dependent on computer programs. A similar picture is provided by the national patent offices. In France, telecommunications and informatics accounted for around 12% of total patent applications and, in the UK, 810 out of a total of 12,517 published applications related to calculating, counting, checking, signalling and data-handling, a significant proportion of which probably relate to computer-implemented inventions.

What the proposal for a directive sets out to do is to provide a restrictive restatement of the law as it has been applied by the Boards of Appeal of the European Patent Office, in order to ensure that patents for computer-related inventions are granted on the same basis everywhere in the European Union and that the national courts deal with contested patents on the basis of uniform principles. Furthermore, once there is a Community directive, the Court of Justice will have jurisdiction to give preliminary rulings. What the proposal for a directive is concerned with above all is a concern which is consistently taken up by this committee, that of legal certainty. What it seeks to avoid in particular is small software houses being confronted with poorly granted patents for obscure or obvious patents.

In drawing up her report, the rapporteur has taken over ideas put forward by the committees consulted in such a way as to ensure that the resulting text is compatible with the Community's obligations under international law. The rapporteur has also carefully weighed the arguments put forward by industry and the open source community, some members of which have expressly stated their support for this plan to provide clarity and a clear explanation of when patents will be granted in this field.

The rapporteur considers that her amendments constitute a balanced view, which reflect the status quo and draw a line between what can and cannot be patentable. In her opinion, they represent a moderate, coherent approach, consistent with the Community's international obligations.

2. The need for patent protection

It should first be pointed out that computer-implemented inventions cover such devices as

¹ 17,030 out of the 110,025 patent applications received by the EPO in 2001 were classified to the two areas most closely reliant on software, namely 10,719 for electric communications and 6,311 for computing. Most of these applications, as well as many classified to other areas, will be for computer-implemented inventions.

mobile phones, intelligent household appliances, engine control devices, machine tools and computer program-related inventions.

Secondly, there is no disagreement, even in the open-source community, that the law of intellectual property should protect computer programs. The controversy is how software should be protected: only by copyright or also by patent. A workable distinction is that a patent protects the practical application of knowledge, ideas or know-how, whereas copyright is not concerned with practical effects, but rather protects the expression of works (in the case of software, the code, in whatever form) against unauthorised reproduction or commercial exploitation. But there is a feeling that "copyright protects too little and patents ... risk protecting too much"¹. Copyright protection is considered to have limitations as a means of protecting more than the actual coding of a computer program and there are misgivings lest patent protection should lead to patents being granted for inventions which do not satisfy the traditional criteria. The proposal for a directive as amended by the rapporteur resolves this dilemma reasonably and subtly.

It is simply not true that patents are not at present applied for and granted for software-related inventions in Europe, as witness the figures set out in section 1. This fairly widespread misapprehension springs from the express exception for computer programs as such in the European Patent Convention and national statute law. In fact, what the EPC says is that computer programs "as such" are not patentable, which is reasonable and justified because a computer program "as such" is protected by copyright.

What copyright does is protect the expression, the actual lines of code written by programmer. What it offers is the right to prohibit the copying or commercialisation of that code. It is simple to obtain and long lasting and perfect protection against piracy (unauthorised copying and distribution of copies).

But copyright does not protect the ideas underlying software, what the software does within a machine, or how a machine under software control interacts with its environment. If such a process were to involve the solution of a technical problem in an inventive way (that is, in a way which is new and not obvious to a skilled person), then a patentable invention would be present. This is what is meant by a computer-implemented invention. The grant of a patent for such an invention is completely consistent with the normal principles of European patent law. It would be wrong to discriminate against software developers by refusing them the patent protection available to other inventors when all the conditions for patentability are present.

3. The rationale behind the directive and the need for a strict definition of patentability

Practice to date at the EPO has evolved over a succession of decided cases in the direction of what some consider to be a liberalisation of the criteria for patentability, as a result of which they will now grant patents for computer-implemented inventions provided they make a "technical contribution". However, this has resulted in the complaint that too many applications for patents for computer program patents are for trivial inventions or make an insufficient contribution in relation to the state of the art and that examination of these questions tends to take second place to "the rather sterile and philosophical issue of whether or not the alleged invention confers a 'technical effect'"².

¹ Trevor Cook, Partner, Bird & Bird, in BSC, Review 2003, Computing in the 21st Century.

² *Ibid.*

Far from being radical, the Commission's proposal - which the rapporteur endorses whilst seeking to tighten it up further - aims to counter any extension of the scope of patent protection for software while resisting the call to exclude patent protection altogether.

Indeed, the proposal for a directive sets out to avoid irreconcilable conflict with established practice at the EPO, while "subtly changing the nature of the investigation ... from the sterile one of exceptions into one of obviousness" thus answering "one of the major criticisms of most computer-implemented inventions"¹, while retaining the criterion of "technical contribution". Thus it focuses on whether claims are for bona fide inventions. The rapporteur's amendments would also very clearly exclude the grant for patents for non-inventive business methods. As a result, the directive would not lead to patents being granted for otherwise unpatentable business methods simply because use of a computer is specified in the claims.

4. The impact on small and medium-sized software developers

European business does not operate in a vacuum. Computer-implemented inventions are increasingly important, yet many of the 20,000 patents for software-related patents already granted in Europe are in non-European hands. Indeed, we would do small and medium-sized European software developers a disservice if we were either to leave matters as they stand, or if we were to attempt to ban all patents for such inventions, thus potentially putting our software developers at a disadvantage when they seek to compete in the US. Moreover, a study conducted by the Intellectual Property Institute in London has found that "the patentability of computer-related inventions has helped the growth of computer program-related industries in the US, in particular the growth of small and medium enterprises and independent software developers into sizeable indeed major companies"².

Nobody in Europe can have any interest in seeing the destruction of small European software developers. On the contrary, large corporations are often dependent upon the innovativeness of small businesses and patents allow them to turn their creativity to good account, as witness the world-wide non-exclusive licence recently granted to a US multinational by a ten-person company located in an employment blackspot in south-west England in respect of all of their voice-recognition software patents.

Apart from allowing such companies to exploit their inventiveness, the directive as amended by this report would impose a requirement on the Commission to keep the sector under review and report to Parliament, in particular as regards the impact on small and medium-sized businesses, any difficulties in respect of the relationship between patent-protection of computer implemented inventions and copyright protection and the desirability and legal feasibility of the introduction of a grace period. Accordingly, the directive would not only improve on the present situation as regards patentability of computer-invented inventions by affording greater legal certainty and uniformity in the law across Europe, it would also mandate the European Commission to keep a watching brief on the sector, while paying special attention to the small and medium-sized business sector.

¹ *Ibid.*

² http://www.europa.eu.int/comm/internal_market/en/indprop/comp/studyintro.htm

In this connection, your rapporteur would urge the Commission to consider creating a support network for small and medium-sized enterprises in order to assist them in benefiting from the protection of intellectual property.

5. The economic importance of patentability of computer-implemented inventions for European industry

Although no consolidated data seem to exist concerning royalties for patents paid in Europe, the important thing about patents as far as companies are concerned is the protection of their R&D investments. Ericsson files more than 1,000 patents every year and almost all of them are computer-implemented inventions. Nokia estimates that 60-95% of their patent applications are for such inventions, whilst Alcatel estimates that 60 % of their inventions are for computer-implemented inventions and that the trend is upwards. In order to value how important patent protection is for a company, it is not unusual for companies with major R&D programmes to measure their patenting (internal) costs as a percentage of their R&D spend. Some companies spend as much as 5-10% of their R&D on patents. This means that companies with substantial software-related R&D can be estimated to be spending as much as perhaps 10% of their overall R&D budgets on patenting. Moreover, academic studies have shown a link between R&D spending, patent applications and productivity.

6. Specific observations and conclusions

As regards some specific amendments put forward in the other committees, the rapporteur considers that she should make two specific observations. First, the test laid down in the *Rote Taube* case antedates the European Patent Convention, but it is significant that the drafters of the Convention chose not to include it as part of the definition of patentable subject-matter. The imposition of a specific interpretation of that test must be rejected, as it would not be relevant to all inventions or appropriate in all situations. Secondly, the proposal to provide for grace periods is a valid one, but such a proposal could not be made solely for computer-implemented inventions and needs to be considered in the light of the European Union's international obligations under TRIPs. She has therefore included an amendment to cater for this concern in her draft report.

In the rapporteur's view, there are only two choices: either to approve the Commission's proposal, possibly with amendments, such as her own, consistent with the European Patent Convention and TRIPs, or to reject it. If the Commission's proposal is rejected, the European Patent Office and its Boards of Appeal would remain the principal arbitrators of the law and there would be nothing to prevent a gradual drift towards the patentability of business methods and the like, as has been witnessed in the United States. There would therefore continue to be uncertainty and a lack of transparency and there would be no Community competence in this area. Also software developers' only recourse would be to bring proceedings in their national courts and all the indications are that national courts, would tend to follow the case law of the Boards of Appeal in Munich. Lastly, software developers could not benefit from the interoperability exceptions provided for in Article 6 of the proposed directive, thus risking infringement proceedings.

Your rapporteur strongly commends the amendments set out in her draft report.

New .eu Domain

Changed Web and E-Mail Addresses

The introduction of the .eu domain also required the web and e-mail addresses of the European institutions to be adapted. Below please find a list of addresses found in the document at hand which have been changed after the document was created. The list shows the old and new address, a reference to the page where the address was found and the type of address: http: and https: for web addresses, mailto: for e-mail addresses etc.

Page: 18 **Old:** http://www.europa.eu.int/comm/internal_market/en/indprop/comp/studyintro.htm
Type: *http:* **New:** http://www.europa.eu/comm/internal_market/en/indprop/comp/studyintro.htm
