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PARLEMENT EUROPÉEN   PARLAIMINT NA hEORPA   PARLAMENTO EUROPEO   EIROPAS PARLAMENTS
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Highlights

Software patent wars – Parliament rejects directive outright

In July 2005 Parliament rejected legislation on the patentability of computer-implemented inventions – widely, if perhaps not entirely accurately, known as the software patents directive. This decision, supported by an overwhelming majority, reflected disagreement between MEPs and the Council about how to define what would be covered by the directive – and discontent at the way the Commission and Council had handled the issue. Members had sought a way to avoid the granting of patents on pure software, while protecting inventions using computer programmes.

In February 2002, the European Commission formally proposed a directive to harmonise national laws on patents for computer-implemented inventions. Patents were already being granted for computerised inventions by both national patent offices and the Munich-based European Patent Office, a non-EU body. These different institutions used widely varying criteria in deciding what was eligible for a patent, and the Commission was seeking to create legal certainty to replace confusing situation which may be harmful to the EU software industry.

The proposal led to a passionate debate in the information technology world, with large and small firms differing on whether patents would help or hinder innovation in the software market. As well as – at times intense – lobbying from the different interest groups, there were formal opportunities for MEPs to gauge opinion through debates, public hearings and conferences.

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What was at stake

Almost everyone agreed that pure software should not be patentable, but the definition of what is just software and what is an invention had proved hard to pin down. In its first reading in 2003, Parliament amended a key element, the Commission's definition of a "technical contribution", as MEPs were concerned that the original wording could lead to the patenting of pure software.

Large IT firms were generally favourable to a patent regime which would protect not only individual inventions using computer programmes but also the programmes themselves, arguing that this would encourage research spending and help defend European inventions from US competition. They argued that small and medium-sized enterprises could also benefit from patents, and proposed discounted patent fees for small businesses.

Smaller companies, by and large, wanted to exclude software from the directive altogether, so it would be available to other users. They argued that copyright already gives adequate protection to the authors of software. The 'open source' community, developers and users of programmes such the operating system Linux, was concerned that free software, whose copyright is owned by individual programmers, could be swept up by big companies and protected by a patent.

Of the 110,000 patent applications received by the EPO in 2001, more than 15 per cent related to computerised inventions. National patent applications follow a similar pattern. A well known example of a patent involving software is the one-click purchasing system used by Amazon.com, which the firm has patented. Rival websites are therefore bound to add an extra 'click' to the ordering system to avoid infringing Amazon's patent.

Institutional issues

In February 2005, Parliament formally requested that the Commission resubmit its proposed directive for a new first reading, something which is permitted if European elections have taken place in the meantime, but the Commission refused to do so. Shortly afterwards, the Council adopted a common position which rejected almost all of Parliament's first reading amendments.

In July 2005, when the directive came to second reading, opinion in Parliament was divided between the Socialists, Greens and GUE/NGL group, who wanted stricter limits to the scope of patent protection in the name of open access to software, and the EPP-ED and ALDE groups who backed a wider definition of what could be covered, which they said would benefit the whole industry, small businesses included. At committee stage the latter view prevailed.

No law better than bad law

However, neither side was happy with the way the Council and Commission had largely ignored Parliament's viewpoint, and both wanted changes to the common position. Any vote on the core issues in the plenary session was likely to be very close, and there was no prospect of achieving the absolute majority of 367 votes required to impose changes at second reading. In the circumstances, virtually the entire Parliament could agree that no legislation was better than bad legislation, so MEPs voted to reject the proposal

outright, by 648 votes to 14 with 18 abstentions.