

Thin Majority of Ministers Approve Software Patents, Swayed by Bogus Compromise

<http://swpat.ffii.org/log/04/cons0518/index.en.html>

Group

english version 2019/05/04 by Phm*

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The Irish presidency has secured political approval for a new draft of the controversial software patents directive in a meeting of the Council of Ministers on Tuesday, 2004-05-18. The draft and accompanying press releases are full of statements of good intentions to avoid patents on software and business methods as such, whereas the provisions in the text assure that such items are without any doubt to be treated as patentable inventions in Europe. The draft owes its majority to a maneuver by the German delegation, which had collected the opposition under its flag, to settle for a bogus amendment in the last minute and take the Poles and Latvians with it. Representatives of the Netherlands, Hungary, Denmark and France apparently acted in breach of promises given to their parliaments or governments.

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*<http://www.ffii.org/~phm>

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1 details

First indications are that the Irish presidency has secured political approval for a new draft of the controversial software patents directive in a meeting of the Council of Ministers today.

Spain (8) expressly voted against the proposal. Belgium (5), Italy (10) and Austria (4) refused to support the new text. Denmark (3) seemed uneager, but in the end did not stand against the presidency's demand for support.

That made 27 votes refusing to support the text. Had Germany kept its promise to at least abstain, the 37 votes needed to block it would have been achieved, and surpassed by votes from countries like Poland who had apparently been instructed to follow the Germans.

In the initial round of discussions SE, UK, FR, NL, CZ and HU spoke in favour of the Irish proposal.

BE, PL, ES, DK, AT, DE, LV and IT expressed reservations.

However a "compromise" proposed by the Commission was apparently enough to bring round the German, Polish and Latvian delegations.

That left ES voting against the proposal; and BE, IT, and AT refusing to approve it.

On the key issue of what should and should not count as "technical", and therefore patentable, the Germans had originally proposed the additions shown *thus*:

2b. A 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 state of the art and the scope of the patent claim considered as a whole, which must comprise technical features, irrespective of whether these are accompanied by non-technical features, *whereby the technical features must predominate. The use of natural forces to control physical effects beyond the digital representation of information belongs to a technical field. The mere processing, handling, and presentation of information do not belong to a technical field, even where technical devices are employed for such purposes*.

The Commissions "compromise" was to cut this to:

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the difference between the state of the art and the scope of the patent claim considered as a whole, which must comprise technical features, irrespective of whether these are accompanied by non-technical features.

This means that the only effect was to insert the word “new”.

The Commission also proposed changes to Article 4 and Recital 13, but the effect of these is only cosmetic.

But for whatever reason, this was sufficient to win over the German delegation, and the Poles and Latvians followed.

Although apparently enough to convince ministers, the text remains as uncompromisingly pro-patent as the original Irish draft.

The Polish, Latvian and Danish delegation appeared in reality undecided. Most other delegations decided in spite of promises to the contrary given by their governments to the parliament or the public.

The text will be presented to the next Council of Ministers (in early June or perhaps later) for formal adoption. It is not yet certain that the Irish Presidency has secured a real majority.

To re-instate amendments in the European parliament requires absolute majorities. This is achievable: many of the amendments did achieve this level of support in the first reading. But some of the votes are likely to be very close.

FFII therefore urges supporters to make sure MEP candidates at this election truly appreciate the depth of concern about this issue.

2 Annotated Links

- **Provisional minutes of Competitiveness Council¹**

Meeting minutes of the session where the Software Patent directive was discussed. Contains only a short summary, which makes clear that the aim of the Irish proposal is to confirm the practise of the European Patent Office on software patents, but adds the misleading claim that this conforms to the requirement of not allowing computer programs to be patentable subject matter:

PATENTABILITY OF COMPUTER-IMPLEMENTED INVENTIONS - Public deliberation The Council reached political agreement by qualified majority with the Austrian, Italian and Belgian delegations abstaining and Spain voting against, on a common position concerning the proposal for a Directive on the patentability of computer-implemented inventions. Once the text has been formally adopted by the Council, it will be submitted to the European Parliament for second reading.

¹http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/intm/80522.pdf

The agreed text contains provisions, in accordance with the practice developed within the European Patent Organisation, for patentability of computer-implemented inventions stipulating, inter alia, that a computer program as such can not constitute a patentable invention. For a computerimplemented invention to be patentable it must be susceptible of industrial implication and involve an inventive step.

- http://en.wikipedia.org/wiki/Qualified_Majority_Voting

Voting Procedure in the EU Council

- **Transcription²**
- **Transcription³**
- **Germany, the Trojan Horse of Bolkestein in the Council⁴**

Had Germany kept its promise to at least abstain, the 37 votes needed to block it would have been achieved, and surpassed by votes from countries like Poland who had apparently been instructed to follow the Germans.

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4 About the FFII – www.ffii.org

The Foundation for a Free Information Infrastructure (FFII) is a non-profit association registered in Munich, which is dedicated to the spread of data processing literacy. FFII supports the development of public information goods based on copyright, free competition, open standards. More than 500 members, 1000 companies and 70000 supporters have entrusted the FFII to act as their voice in public policy questions in the area of exclusion rights (intellectual property) in data processing.

²<http://wiki.ael.be/index.php/V002.ogg>

³<http://wiki.ael.be/index.php/V003.ogg>

⁴<http://localhost/swpat/log/04/cons0518/de/index.en.html>

5 Permanent URL of this Press Release

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