

**AMENDMENT 55**

tabled by Armando Cossutta and Pernille Frahm, on behalf of the GUE/NGL Group, Daniel Marc Cohn-Bendit, Raina A. Mercedes Echerer, Neil MacCormick and Danielle Auroi, on behalf of the Verts/ALE Group, Marco Cappato, Anne E.M. Van Lancker and Kathleen Van Brempt

**REPORT by Arlene McCarthy**  
Patentability of computer-implemented inventions

A5-0238/2003

Proposal for a directive  
(COM(2002) 92 – C5-0082/2002 – 2002/0047(COD))

Commission proposal

Amendments by Parliament

Amendment 55  
Article 2, point (ba) (new)

***(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". The use of forces of nature to control physical effects beyond the numerical representation of information belongs to a technical domain. The production, handling, processing, distribution and presentation of information do not belong to a technical field, even when technical devices are employed for such purposes.***

*Justification*

*The term "technical field", although referred to in several places of the Directive, was not defined.*

*The fact that a programmable apparatus, such as a generic computer, makes use of physical effects in order to process information should not be used to allow patent protection to the program running on such an apparatus.*

*This amendment synthesises Am. 16 Cult, Am. 19 Cult, Am. 23 Itre, Am. 24 Itre. and Am. 25 Itre.*

Or. en

**AMENDMENT 56**

tabled by Pernille Frahm and Armando Cossutta, on behalf of the GUE/NGL Group, Daniel Marc Cohn-Bendit, Raina A. Mercedes Echerer, Neil MacCormick and Danielle Auroi, on behalf of the Verts/ALE Group, Marco Cappato, Anne E.M. Van Lancker and Kathleen Van Brempt

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Commission proposal

Amendments by Parliament

Amendment 56  
Article 4, paragraph 1

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.*

1. Member States shall ensure that *patents are granted only for technical inventions which are new, non-obvious and susceptible of industrial application.*

*Justification*

*Article 4(1) should be coherent with the amended version of Article 2. There must not be distinctions between patentable and non-patentable inventions.*

*This amendment synthesises Am. 11 Cult, Am. 20 Cult, Am. 28 Itre, and Am. 29 Itre.*

Or. en

**AMENDMENT 57**

tabled by Pernille Frahm and Armando Cossutta, on behalf of the GUE/NGL Group, Daniel Marc Cohn-Bendit, Raina A. Mercedes Echerer, Neil MacCormick and Danielle Auroi, on behalf of the Verts/ALE Group, Marco Cappato, Anne E.M. Van Lancker and Kathleen Van Brempt

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Commission proposal

Amendments by Parliament

Amendment 57  
Article 4, paragraph 3

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.

3. The technical contribution shall be assessed by consideration of the difference between *all of the technical features* of the patent claim and the state of the art.

*Justification*

*The wording of this article is self-contradictory, as it seems to state that a technical contribution may consist of non-technical features. One should ensure that the conditions of novelty and inventive step regard the technical contribution, otherwise any novel software running on a non-novel technical device could be patentable.*

*This amendment synthesises Am. 32 Itr and Am. 33 Itr.*

Or. en

**AMENDMENT 58**

tabled by Pernille Frahm and Armando Cossutta, on behalf of the GUE/NGL Group, Daniel Marc Cohn-Bendit, Raina A. Mercedes Echerer, Neil MacCormick and Danielle Auroi, on behalf of the Verts/ALE Group, Marco Cappato, Anne E.M. Van Lancker and Kathleen Van Brempt

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(COM(2002) 92 – C5-0082/2002 – 2002/0047(COD))

Commission proposal

Amendments by Parliament

Amendment 58  
Article 5

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.

Member States shall ensure that a computer-implemented invention may be claimed ***only*** as a product, that is a ***set of equipment comprising both programmable apparatus and devices which use forces of nature in an inventive way***, or as a ***technical production*** process ***operated*** by such a computer, computer network or apparatus through the execution of software

*Justification*

*The original wording of this article is confusing, since allowing to patent programmed generic computers would be equivalent to allowing to patent their software as such. Also, one must make sure that the production of information cannot be considered as an industrial production process.*

*This amendment synthesises Am. 24 Cult, Am. 25 Cult, Am. 37 Itre and Am. 38 Itre.*

Or. en