

What do these amendments do?

We will go through the most amendments in order of importance, and explain which problems in Council and/or JURI text they fix.

Amendment 47=79=100=121=142=165 Article 4 paragraph 2

This article was not amended in JURI. The Council text has two major deficiencies:

- It redefines the exclusion of “subject matter and activities within computer programs as such” from patentability into the exclusion of the source code or object code of a single program. Even the EPO does not interpret said exclusion like that.
- It codifies the EPO’s “further technical effect” doctrine, which as the justification mentions was admitted by the EPO to be only a way to sidestep the exclusion from patentability of computer programs in the European Patent Convention. It was first used in a case to make a computer-implemented business method patentable.

The replacement has two advantages:

- It gives a meaning to the exclusion of a computer programs as such from patentability, by stating that merely using better algorithms in a program is not enough to make a technical contribution. As the justification of amendment 20 notes, this is based on recent German and UK case law
- The second part of this amendment keeps the door open for patentability of electronic circuits. After all, when building such circuits, one has to solve several problems of applied natural science beyond simply the improvement in data processing that is embodied within them.

Amendment 43=75=96=117=138=161 Article 2(ba) (new)

The related amendment approved in JURI expresses “field of technology” in terms of an application domain of controllable forces of nature. This amendment is a simpler version of said amendment, and leaves out the unnecessary reference to the “application domain”. Both the JURI version and this version are acceptable, however.

Amendment 42=74=95=116=137=160 Article 2(b)

The original Council version states that the “technical contribution” can consist entirely out of non-technical features (it says that only the patent claim as a whole must contain technical features, but not necessarily the difference between the state of the art and the claim as a whole).

The JURI version is already quite good, but contains one occurrence of “technical” too much: the second sentence of that version says, similarly to the Council version, that the “technical contribution” is the set of features by which the patent claim is considered to differ from the state of the art.

This amendment corrects that error, by noting that this difference is merely the “contribution”, and that the “technical contribution” is (logically) that part of the contribution which is technical.

Amendment 45=77=98=119=140=163
Article 3

The Council states in its article 2(b) that the technical contribution must be new and non-obvious. Here, they say that in order to involve an inventive step (= be non-obvious), the invention should involve a technical contribution. This circular reasoning leads nowhere.

The JURI version fixes that error, but on the other hand states that the inventive step can be entirely fulfilled by non-technical features.

This amendment simply and very clearly states that the technical contribution must be new and non-obvious, as well as the fact that the invention must make a technical contribution in order to be patentable.

Amendment 48=80=101=122=143=166
Article 5 paragraph 2

The condition after "unless" in the Council version is always true, provided that the patent application was properly drafted. This Council amendment, which did not appear in the original Commission proposal, allows for patents on “computer programs on their own” (also called program claims).

The effect of allowing program claims is to make the publication of a program which can express the underlying invention a direct patent infringement -- regardless of how the program would actually be used. The additional “conditions” approved in JURI do not change this fact, since program claims pertain to distribution and not to use.

This amendment forbids such program claims.

Amendment 40=72=93=114=135=158
Article 1

The expression “computer-implemented” is not suitable, because it implies that an invention can be wholly realised by means of a computer, which would mean that pure software is patentable.