



**COUNCIL OF
THE EUROPEAN UNION**

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WORKING DOCUMENT

from: Presidency

to: Working Party on Intellectual Property (Patents)

No. Cion prop. : 6580/02 PI 10 CODEC 242

Subject : Proposal for a Directive of the European Parliament and of the Council on the patentability of computer-implemented inventions
– Presidency compromise proposal for Articles 2 to 7 and for certain recitals

Following discussions in the Working Party, the Presidency hereby submits a compromise proposal regarding Articles 2 to 7 and recitals 13 to 13c of the proposed Directive for discussion at the next Working Party meeting, scheduled for 3 October 2002. This proposal replaces the Presidency compromise proposal in SN 3229/02 (PI).

Article 2

I. Definitions

For the purposes of this Directive the following definitions shall apply:

- (a) "computer-implemented invention" means any invention the performance of which involves the use of a computer, computer network or other programmable apparatus, the invention having one or more features which are realised wholly or partly by means of a computer program or computer programs;
- (b) "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 or not these are accompanied by non-technical features.

Article 3

II. Computer-implemented inventions as a field of technology

– Deleted – (*substance incorporated in paragraph 4(1)*)

Article 4

III. Conditions for patentability

1. Member States shall ensure that a computer-implemented invention is considered to belong to a field of technology. However, in order to be patentable it must be new, involve an inventive step and be susceptible of industrial application. It is a condition for involving an inventive step that a computer-implemented invention makes a technical contribution.

2. 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, computer programs which implement business, mathematical or other methods having no technical character, and which do not produce any technical effects beyond the normal physical interactions between the program and the computer, network, or other apparatus in which it is run, shall not be patentable.

Article 5

IV. Form of claims

1. 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.¹

2. A claim to a computer program, either on its own or on a carrier, shall not be valid unless that program would, when loaded in a computer, programmed computer network or other programmable apparatus, implement a valid patent claim relating to the same application in accordance with paragraph 1.

Article 6

V. Relationship with Directive 91/250 EC

The rights conferred by patents granted for inventions within the scope of this Directive shall not extend to acts permitted under Directive 91/250/EEC on the legal protection of computer programs by copyright, in particular under the provisions thereof in respect of decompilation and interoperability.

¹ The Italian delegation has suggested adding the following sentence:
"Nevertheless, patent protection for a computer–implemented invention does not extend to the expression of a computer program based on that invention, in source code or object code or in any other form."

VI. Monitoring

The Commission shall monitor the impact of the protection by patents of computer–implemented inventions on innovation and competition, both within Europe and internationally, and on European businesses, including electronic commerce.

A. Recitals 13 to 13c

- (13) A defined procedure or sequence of actions when performed in the context of an apparatus such as a computer may make a technical contribution to the state of the art and thereby constitute a patentable invention.
- (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. Thus, a computer–implemented business or other method in which the only contribution to the state of the art is non–technical cannot constitute a patentable invention.
- (13b) Moreover, if the contribution to the state of the art relates solely to unpatentable matter, then there can be no patentable invention irrespective of how that matter is presented in the claims.
- (13c) Furthermore, an algorithm which is defined without reference to a physical environment is inherently non–technical and cannot therefore constitute a patentable invention.
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