



Minister Rocco Buttiglione, Competitiveness Council
Commissioners Frederik Bolkestein and Erkki Liikanen, European Commission

November 07, 2003

Dear Minister and Commissioners,

Re: Proposed Directive on the Patentability of Computer-Implemented Inventions (CIIs)

As chief executive officers of five of Europe's leading telecommunications and consumer electronics companies, we write to express our deepest concerns about the amendments recently adopted by the European Parliament to the Commission's proposed Directive on Patentability of Computer-Implemented Inventions (CIIs), commonly known as the Software Patents Directive.

Collectively, our companies invest Euros 15 billion per annum in R&D. In some fields as much as 90% of these investments are in CIIs as defined in the directive proposal.

Having a stable and reliable patent system in place is vital to protect R&D investment and to encourage future innovation in Europe.

The original aim of the directive was (1) to harmonise the law in Europe, and (2) stop the drift towards the US approach of patenting pure business methods and non-technical software, while (3) safeguarding interoperability. We firmly support all these aims.

The directive was also intended to maintain and codify the status quo in Europe based on current best practice, which has enabled open source software business models to flourish alongside patents, while also protecting the interests of small software developers and SMEs generally. We firmly support these aims as well.

However, the vote in Parliament on 24 September 2003 has completely turned the Commission's original proposal around, removing effective patent protection for much – and in the case of telecommunications and consumer electronics, probably most - of our R&D investment. This would have devastating consequences for our companies. It would be open for all-comers to exploit the results of our expensive R&D programmes at no cost, and even without any R&D overheads of their own. This is contrary to what was stated at the Lisbon European Council, namely that “innovation and ideas must be adequately rewarded within the new knowledge-based economy, particularly through patent protection”.

The loss of effective patent protection would put our companies at a competitive disadvantage in the short term, and in the longer term reduce the incentive for further investment in R&D in Europe. Overall there will be less software-related innovation in Europe, and ultimately Europe is unlikely to meet the Lisbon goal of becoming the “most competitive and dynamic, knowledge-based economy in the world”.

Parliament's amendments suggest that Europe is ready to fly in the face of international obligations under the TRIPS Agreement. Furthermore they would change the legal climate in Europe so suddenly, dramatically

and unexpectedly, that they already send a message to the rest of the world that one of the legal cornerstones necessary for attaining a viable European Information Society is unstable, unpredictable, and unreliable. We therefore believe the Council and the Commission need to take appropriate measures affirmatively to redress the current situation by sending a strong counter-signal that the law in Europe will not be changed suddenly and dramatically, and confirming that Europe will not ignore or flout international obligations.

The Directive as amended by Parliament will deal a severe, perhaps fatal, blow to our shared aspirations declared at the Lisbon Summit for Europe to become the most competitive knowledge based economy in the world.

The current legal framework for CIIs in Europe is serving all stakeholders well. We do not want to see any sudden or dramatic reduction in the scope of what is patentable. If a solution cannot be found which codifies the status quo, it would be better to have no directive at all than a directive which does untold damage to European industry.

Sincerely,

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