

EU Council Plans to Scrap Parliamentary Vote without Discussion

<http://swpat.ffii.org/lisri/04/cons0507/index.en.html>

Workgroup

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The EU Council of Ministers is demonstrating that the concept of democracy is alien to the EU. This Wednesday, the Irish Presidency and the European Commission managed to secure support for a counter-proposal on the software patents directive, with only a few delegations - including Belgium and Germany - showing resistance. The new text proposes to discard all the amendments from the European Parliament which limit patentability. Instead the lax language of the original Commission proposal is to be reinstated in its entirety, with direct patentability of computer programs, data structures and process descriptions added as icing on the cake. The proposal is now scheduled to be confirmed without discussion at a meeting of ministers on 17-18 May, unless one of the Member States changes its vote. In a remarkable sign of unity in times of imminent elections, members of the European Parliament from all groups across the political spectrum are condemning this blatant disrespect for democracy in Europe.

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

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1 Proposals slammed by MEPs from all sides

1.1 Anne Van Lancker (MEP, BE, PES): Parliament Overruled by Patent Office Administrators

Anne Van Lancker, a Belgian MEP of the Socialist group, notes that the civil servants who are supposed to abide by this directive are now the ones who can write their own laws:

The Council not only ignores the European Parliament in this matter, but adds to the insult by going even further than the Commission: in addition to making the usage of patented algorithms and business methods in computer programs an infringement, they also propose to forbid their publication, by allowing direct claims to information entities (also known as “program claims”).

Given that the current Council proposal was written behind closed doors by patent office administrators, this unworldly outcome should not surprise anyone, unfortunately.

1.2 Piia-Noora Kauppi (MEP, FI, EPP-DE): Council Ignores Elected Representatives

Piia-Noora Kauppi¹, Finnish MEP of the European People's Party, expresses dismay at the Council Working Party's contempt for parliamentary democracy:

As the Council is trying to look for a compromise with the European Parliament on the proposal for patenting of computer-implemented innovations (software patents), it should base its work on the final decision taken by the plenary session of the Parliament, not on that of the Commission or of the Legal Affairs Committee. Judging from the papers produced so far by the Council's working party, it seems that the Council is not taking the will of Europe's elected legislators into account.

1.3 Pernille Frahm (MEP, DK, GUE): Council and Commission Failed to do their Homework

Pernille Frahm, Danish member and Vice-Chairwoman of the GUE/NGL group, finds that the European Commission and Council are abusing their functions and failing to play their role in EU legislation:

The patent administrators in the Commission and Council are abusing the legislative process of the EU.

Their convoluted and misleading Patent Newspeak, negotiated in intransparent backroom dealings, is an insult to the European Parliament, the European Economic and Social Committee, the Committee of Regions and the innumerable experts and stakeholders who have engaged in serious investigations on this directive project with us. Not only did the Commission and Council fail to do their own homework, they are now also attempting to throw away all the hard work that the elected legislators did for them, without even trying to respond to the concerns which have been raised.

1.4 Daniel Cohn-Bendit (MEP, FR, VERD): Patent Administrators Not Interested in "Harmonisation and Clarification"

Daniel Cohn-Bendit², chairman of the Greens/EFA Group adds:

The Council working party has so far completely failed to address the problems which the European Parliament's Cultural and Industrial Affairs committees tried to solve. They behave in the same way as the Legal Affairs Committee behaved last year, and we can expect that they will fail in the same way.

¹<http://www.pkauppi.net>

²<http://www.cohn-bendit.com/>

It is clear that the national patent officials in the Council do not want “harmonisation” or “clarification”. They merely want to secure the interests of the patent establishment. If they don’t get what they want, they simply bury the directive project and try to find other ways to get around the existing law, whose clarity is so painful to them.

1.5 Bent Hindrup Andersen (MEP, DK, EDD): Council Moves Highlight Lack of Democracy in the EU

Bent Hindrup Andersen³ MEP of the Danish June Movement⁴ and the EDD Group⁵ draws attention to the lack of democracy in the EU which is exemplified by the Commission’s and Council’s behaviour:

The approach of the Commission and Council in this directive is shocking. They are making full use of all the possibilities of evading democracy that the current Community Law provides. First they ignored 94% of the participants of their own consultation, without given any justification apart from the claim that the remaining 6% represented the “economic majority”. Now they are completely disregarding the vote of the European Parliament, and by the way also of the Economic and Social Council and of the Council of Regions. They are doing this because they are used to succede by doing this. The EU is constructed this way. It makes unaccountable bureaucrats the masters of legislation. The problem is compounded by the complete lack of democratic checks and balances in the European patent system. EU and Patents combine into a particularly toxic mixture. Europe’s citizens urgently need to take up this issue and learn the lessons before it is too late. They should in particular not allow this kind of structure to be perpetuated by a European Constitution this year.

1.6 Johanna Boogerd-Quaak (MEP, NL, ELDR): Irish Presidency Protecting US Companies from EU Competition

Johanna Boogerd-Quaak, a Dutch member of the European Liberal, Democrat and Reform Party, indicates that Ireland seems to be playing lapdog for the US:

I’m under the impression that the Irish Presidency has buckled under the interests of American Companies. A handful of big American Companies may actually profit from software patents, but it is a very bad deal for innovation in European SMEs. Additionally, the Council is showing contempt for parliamentary democracy. We must make sure that after the elections there will again be a majority in the European Parliament that is willing to show its teeth.

³<http://www.hindrup.dk>

⁴<http://www.j.dk/>

⁵<http://www.europarl.eu.int/edd/>

1.7 Aufrufe zum Handeln

More than 20 parliamentarians have signed a Call for Action⁶ which points out that “patent professionals in various governments and organisations are now trying to use the EU Council of Ministers in order to sidestep parliamentary democracy in the European Union” and urges the Council to “refrain from any counter-proposals to the European Parliament’s version of the draft, unless such counter-proposals have been explicitly endorsed by a majority decision of the member’s national parliament”.

2 Details

The powerful COREPER committee of EU member states’ Permanent Representatives in Brussels has provisionally agreed on a new draft for the controversial Software Patent directive, overruling opposition from Germany, Belgium, Denmark and Slovakia.

The new draft rejects all of the European Parliament’s limiting amendments, and is described by FFII as “the most uncompromisingly pro-patent text yet”.

Technically, the decision by COREPER on Wednesday is only a “forecast” of the final decision, to be confirmed at the Competitiveness Council of Ministers on 17-18 May. Until that date, Member states can still change their minds (and their votes).

Support for the text at a political level in some states is still said to be quite soft; and decisions brokered in Coreper do fall apart (last year’s discussions on the Community Patent, for example).

The Coreper text goes further than the text of the European Commission of 2002 in legalising software patents. In 2002 the Commission had agreed, in difficult negotiations between DG Internal Market (Bolkestein) and DG Informations Society (Liikanen) not to allow program claims. Now it seems that DG Information Society has rolled over to the united pressure of Bolkestein and the Council’s patent administrators.

A leaked document from Bolkestein’s DG Internal Market⁷ suggests that DG Information Society no longer objects to program claims. This concession by Liikanen is needed in order to rush the Council working group proposal through the ministers’ session as an “A item”, i.e. a consensus point which does not need any discussion by the ministers.

For next week, the FFII is calling for another net strike and a wave of local events and demonstrations⁸. Even these days people are demonstrating with banners near the offices of the Commission.

3 More Background Information

- The Council proposal documents 8253/04 and 8253/04 ADD from April 6 are not accessible “due to the sensitive nature of the negotiations and the absence of an overriding public interest” according to the Council’s General Secretariat.

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⁸<http://kwiki.ffii.org/SwpDemo0405En>

- Letter⁹ written to the Consilium’s General Secretariat, appealing the refusal to publish the 6 April documents.
- We have provided a thorough analysis¹⁰ of the latest Council “compromise”. The latest version was leaked to us and is accessible through the “Annotated Links” section.
- A leaked document from the Austrian Ministry of Technology¹¹ exemplifies the decisionmaking behind the Council’s proposal. Austrian MEPs of all parties had mostly voted in favor of the Parliament’s amendments. Othmar Karas, head of the Austrian People’s Party in the EP, had written to the Minister of Technology asking him not to support the Council position, but did not receive any reply. Instead the ministry left all decisions to its patent office, which has always been a 100% follower of the European Patent Office.
- The Irish Presidency explains on its website that it is sponsored by Microsoft¹². Ireland¹³ is “the largest software-exporting country in Europe”, thanks to a fiscal policy which makes it a tax haven for large US companies: it has a tax rate on patent revenues of 0%.
- More recent news¹⁴

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5 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

⁹<http://www.elis.ugent.be/~jmaebe/swpat/council20040423.html#letter>

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¹²<http://www.eu2004.ie/sitetools/sponsorship.asp>

¹³<http://localhost/swpat/gasnu/ie/index.en.html>

¹⁴<http://kwiki.ffii.org/SwpatcninoEn>

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.

6 Permanent URL of this Press Release

<http://localhost/swpat/lisri/04/cons0507/index.en.html>