



CEA - PME

Confédération Européenne des Associations de Petites et Moyennes Entreprises

European Confederation of Associations of Small and Medium-sized Enterprises · ECA-SME • Europäische Vereinigung der Verbände Kleiner und Mittlerer Unternehmen · EV-KMU

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## Statement to the Software-Patent-Directive

CEA-PME (engl. ECA-SME) is an ideologically neutral and non-party Confederation of 22 member associations from 19 European countries representing in total more than 500,000 enterprises. They represent the interests of SMEs in all sectors to the European institutions with the aim of giving them a level of influence commensurate with their importance within the European economy.

Mario Ohoven, President of the Confédération Européenne des Associations de Petites et Moyennes Entreprises (CEA-PME), rejects the proposed Directive on the Patentability of Computer-Implemented Inventions, since this proposal strongly runs contrary to the interests of European Software-Enterprises. Should the European Parliament adapt this proposal without any changes, European economy would be threatened with the loss of thousands of jobs, a dramatic decline in innovation and even the stop of innovation for SME's.

If the Directive is enforced as it is considered, SME's who do not possess legal advisors will be confronted with enormous additional costs, since in the future they will have to carry out wide inquiries in matters of patents for every software-project. This does not only regard developers of software, but also computer retailer and IT-branches of enterprises of application. They will also be confronted with costs for licensing for the utilisation of external patents, additional costs for the development and costs for own patents in case enterprises should try to save themselves from the attacks of others.

Empiric studies (i.e. Fraunhofer-Institut) about the behaviour of SME's in the Software field have shown, that patents are the less effective method to protect investments. In order to protect themselves from potential attacks software-patent-supporters suggest applying for as many patents as possible in order to establish a patent-portfolio. However, especially SME's used to get along perfectly without patents. They are perfectly protected by the copyright law.

Unlike most complex technologies, the opportunity to develop software is open to small companies, and even to individuals. Software patents damage innovation by raising costs and uncertainties in assembling the many components needed for complex computer programs and constraining the speed and effectiveness of innovation. These risks and liabilities are particularly burdensome for SME's, which play a central role in software innovation in Europe as well as North America. Moreover, within the ICT sector,

expansion of patent protection has been found to lead to an increase in the strategic use of patents, but not to a demonstrable increase in innovation.

Copyright and other rules of competition permit SME's to grow despite the overwhelming resource advantages of large companies. The flexible and easy-growing software-industrie could become a clumsy industry, because of the need for access to cross-licensing agreements and the legal protection of large corporations. While some SME's will be able to prosper in this new environment, many will not. In particular, validating loosened standards on patent ability will cloud the prospects of Europe's ascendant free and open source software industry while preserving the dominance of present market leaders.

CEA-PME promotes the harmonisation of the European patent practice. However a way has to be found, that neither constrains SME's nor the free Software/Open-Source-Software. The best solution would be, to abstain from the enlargement of patent-systems on the field of logic and to clearly declare in the directive, that data processing is not technical and thus not patentable.

CEA-PME holds the view that the existing legal legislation – as regulated in the copyright law and the European Patent Agreement, Article 52 is sufficient and should only be confirmed within the EC-directive. The interpretation of the concerning regulation should be left to the jurisprudence.