

Procédures de Décisions dans les Institutions UE

<http://swpat.ffii.org/papiers/eubsa-swpat0202/decid/index.fr.html>

Groupes de travail

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The directive will be decided jointly by the European Parliament and the European Council. The legal details are found in various EC treaties and. We are trying to find out and document the intricacies of this Process.

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1 The Legislation Procedure

Under codecision, Parliament can only accept, reject or amend the Commission's proposal. If it is rejected, Parliament could still call on the Commission to produce a new proposal. It is always open to the Commission itself to withdraw its proposal and submit a new one.

Ms McCarthy's report is expected for January. She has not made up her mind yet, it seems. Many MEPs say that amendment is preferable to rejection. It is likely that Ms McCarthy will involve the shadow rapporteurs and perhaps rapporteurs of the other commissions in order to avoid surprises later.

Once the draft report has been submitted to the Legal Affairs Committee, a deadline will be open for members to submit amendments. Those amendments, together with the ones contained in the draft report and those contained in the opinions of the Industry and Cultural Committees will be put to the vote.

If there are a very large number of amendments tabled, it is possible that the committee will ask the rapporteur to try to reach a compromise on the amendments. The report as adopted will then go to the plenary session, where there will be a further opportunity to submit amendments (although there are rules which mean in practice that only political groups, the lead committee or groups of members may submit amendments). That will conclude the first reading.

Parliament will then await the Council's common position and any amended proposal from the Commission (the Commission usually limits itself to saying which amendments submitted by Parliament it is prepared to endorse) Once the common position has been announced in the plenary session, Parliament will have three (possibly four) months. In that period Ms McCarthy will produce a draft recommendation for second reading for adoption by the Legal Affairs Committee. There will be no further opinions from the other committees. At second reading, Parliament's Rules of Procedure limit the scope of amendments broadly to reinstating what it sought at first reading and/or amending parts of the common position which are new as compared with the original Commission proposal.

2 Schedule

| | |
|------------|---|
| 2002-05-15 | EuroParl 2002-05-15 ¹ |
| 2002-05-21 | Internal Market Council session |
| 2002-06-04 | EuroParl meeting on Swpat Directive 2002-06-04 ² |
| 2002-06-19 | MPEur Arlene McCarthy 2002-06-19: Rapport sur le Propos de Directive CCE/BSA ³ |
| 2002-11-08 | Council Working Party position paper published ⁴ |
| 2002-11-07 | JURI Hearing ⁵ |
| 2002-11-26 | Green Party Hearing ⁶ |
| 2003-01-?? | position papers of parliamentary commissions (JURI, ITRE, CULT) |
| 2003-02-?? | plenary vote in the europarl, possibly leading to further negotiations with CEU and CEC, return to CEC (in case of rejection) or ratification |

On the software patentability directive, COM(2002)92 2002/0047, at http://wwwdb.europarl.eu.int/oeil/oeil_ViewD they used to say

Forthcoming adoption by parliamentary committee 10/9/2002 Probable part-session by the DGI(I) 23/9/2002

. Now they say

Forthcoming adoption by parliamentary committee 3/12/2002 Probable part-session by the DGI(I) 4/12/2002

3 concerned europarl commissions

| | | | |
|---------------|-------------|---------------------------|------|
| Legal affairs | responsible | McCARTHY Arlene | PSE |
| Industry | opinion | PLOOIJ-VAN GORSEL Elly | ELDR |
| Culture | opinion | ROCARD Michel | PSE |

4 Parties

few clear opinions so far

Green Party and Conservative youth organisations seem to be against

Patent lobby within large parties seem to be well organised and particularly influential in the two concerned committees. They may try to keep silence and then suddenly come up with a conclusion that looks like a compromise but is pro swpat and push this through the europarl very quickly in september.

5 Setting up Inquiry Commissions

Treaty of the EU, art. 193:

In the course of its duties, the European Parliament may, at the request of a quarter of its Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by this Treaty on other institutions or bodies, alleged contraventions or maladministration in the implementation of Community law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

The temporary Committee of Inquiry shall cease to exist on the submission of its report. The detailed provisions governing the exercise of the right of inquiry shall be determined by common accord of the European Parliament, the Council and the Commission.

It could inquire the Commission game or investigate certain EPO abuses but hardly monitor the patent system permanently.

6 Influence de Parlements Nationaux

Two paths must be distinguished

1. The National Parliament (Bundestag) treats a subject as part of a legislative process
2. The National Parliament treats a subject in a general political way

The legislative role of the National Parliament is reduced to implementing the directive after it has been decided. If it does something else than required by the directive, the nation will be accused by the commission for treaty violation in front of the European Court of Justice (ECJ)

A general political discussion is possible. It could take a discussion in a committee as its starting point. There is an established procedure for informing the German Federal Parliament about EU plans so as to be able to influence them in their phase of nascence.

If one or more committees have discussed the subject, a party group could submit a request for a resolution in which it expresses a political will concerning how the directive should be rewritten. However such a resolution would not be binding for anyone, not even the German government whose patent lawyers are deciding the policy in the Council of the European Union. The Parliament would have to use massive pressure, such as threatening to elect a new chancellor, if it wanted to enforce its will. Theoretically the government would have good reasons to follow the parliament, because the parliament is the legislator and a resolution is its only chance of exercising its legislative function within the EU framework.

7 Liens Annotés

- **Codecision Procedure**¹

Infos in Catalanian, collected by Xavi Drudis Ferran

- **EURIM guide to EU institutions**²

includes a guide to the codecision procedure et al in graphical form. EURIM³ is a UK-based lobby group that has MEPs and large companies as members and considers consensus-finding about e-commerce related EU legislation as its mission. It could have a major impact on the processes within the EuroParl. The EURIM newsletters have strange characters in their filenames which makes them inaccessible at least from some browsing platforms.

- **codecision procedure**⁴

It seems the first vote is in the European Parliament by “qualified majority”. But even if they reject it, the Council (ministers of member states) has a say and may have it voted again in Parliament, this time with simple majority (but absolute majority for amending it).

- **<http://europa.eu.int/scadplus/leg/en/cig/g4000q.htm>**

The opinions of the EuroParliament in the co-decision procedure are adopted by simple majority voting, I think. A qualified majority is about voting in the Council (heads of governments). Open debates in the EuroParl and amendments can change everything.

- **European Council**⁵

qualified majority

1. <http://www.tinet.org/xdrudis/codecisio.html>

2. <http://www.eurim.org/EURGUIDE.html>

3. <http://www.eurim.org/>

4. <http://europa.eu.int/prelex/aide.cfm?CL=en&page=procdec#450>

5. <http://europa.eu.int/eur-lex/en/treaties/livre248.html#anArt4>

– **Committee of Juridical Affairs and interior market 2002-02-19: parliamentary report**⁶

This committee will also work on the eubsa directive proposal. It seems they amended the Community Patent to support more languages, give some more play to national PTOs and ... (bc: Moreover, MEPs said that a system of quality control should be put in place under the authority of the European Commission in collaboration with the European Patent Office.) QC is good, but those two institutions do have a terrible record on helping it. Subject matter could be part of quality control. Unfortunately, in PTO doublespeak, “quality control” may also be limited to the meaning of “assuring that prior art search is good enough, so that most granted patents can be upheld in EPO courts and other courts that operate under the same low-quality rules as the EPO”. If anybody has more details please let us know. It sounds very vague.

6. http://wwwdb.europarl.eu.int/oeil/oeil_ViewDNL.ProcedureView?lang=2&procid=4446

- Codecision process⁷ (European Commission + European Parliament)

```
Directive codecision_procedure(EuropeanParliament ep, Commission cec, Council council)
{
    // proposal=cec.writeProposal();
    Directive proposal=cec.call(bsa);
    cec.send(proposal,ep) &
    cec.send(proposal,council);

    View opinion = ep.reading(proposal);
    if ( opinion.ammendments.count == 0 ) {

        // agreed
        if (council.qualified_majority(proposal) {
            proposal.state=PASSED;
            return proposal;
        }
        state = PASSED;
        foreach amendment in (opinion.amendments) {
            if (! council.qualified_majority(amendment)) {
                state=null;
            }
        }
    };

    if ( state == PASSED ) {
        proposal.state = PASSED;
        return proposal;
    };

    // disagreeing
    View common_position = council.discuss();
    while (! council.qualified_majority(common_position)) {
        common_position = council.discuss();
    };
    council.send(common_position,ep);
    cec.send(cec.position(common_position), ep);

    try {
        setTimeout(3*MONTH);
        opinion = ep.reading(common_position);
    } catch (Timeout e) {
        common_position.state = PASSED;
        return common_position;
    }

}
}
```

This algorithm may infringe on existing EPO patents. Please tell us if you know any such patent. Moreover, we may not have fully understood the procedure yet. Please help us improve the code.

- Mail Thread about decision making procedure⁸

7. <http://europa.eu.int/eur-lex/en/treaties/livre252.html#anArt3>

8. <http://aful.org/wws/arc/patents/2002-03/msg00006.html>

8 Questions, Choses à faire, Comment vous pouvez aider

- Comment vous pouvez nous aider a terminer le cauchemare des brevets logiciel¹
- How is the decision procedure affected by the fact that basic freedoms and other constitutional questions are involved here?
- What other Europarl Committees are involved? Who is reporting to them?
- Study the procedure and improve the co-decision algorithm shown above!
- Point us to some useful basic ressources on EC law
- What else should we ask in order to make this procedure as transparent as possible?
- Where do we find a list of MEPs?

Prepare for our supporters (e.g. 100k petition signatories) a set of ressources that will enable them to talk to their representatives in a meaningful way

1. <http://swpat.ffii.org/groupe/gunka/index.de.html>