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SOFTWARE PATENT DIRECTIVE: REQUEST TO REOPEN COUNCIL DISCUSSION

– Urgent Appeal to National Governments and Parliaments –

We are concerned that

1. The Competitiveness Council session of 18 May 2004 reached a qualified majority for a version of the software patent directive 2002/0047 COM (COD) that would impose **unlimited patentability and unfettered patent enforcement of "computer-implemented" algorithms and business methods on Europe**. There is a general consensus among economists and software professionals that such a regime, as exists in the USA, is disastrous for innovation, competition and growth of the information-based economy.
2. **The proposed text is designed to mislead ministers about its real effects.** It consists of many sentences of the form or "software is ... [rhetorically bloated emphasis] ... unpatentable, unless ... [condition, which, upon closer scrutiny, turns to be always true]". Fake limits of this type pervade the proposal and especially the central

provisions which were used for persuading the ministers.

3. **The moderators of the Competitiveness Council session pushed the participants toward accepting the proposal by deception, pressure and surprise tactics, thus even making it questionable whether a valid majority was achieved.** It can be said with certainty that only a minority of governments really agrees with what was negotiated, but several governments were misrepresented by their negotiators, who broke intra-ministerial agreements or even violated instructions from their superiors.
4. **The Council's proposal is largely identical in wording and spirit to the texts from the Commission and the JURI Committee, which the European Parliament has already rejected by means of a series of amendments.** The Parliament's amendments reflected the demands of the vast majority of software innovators and innovation policy researchers in the EU, including the authors of studies ordered by the Commission as well as the members of the EU's consultative organs
5. **The Council has ignored and rejected all the work of the Parliament and the consultative organs of the EU without any justification and without democratic legitimation.** The text is not presented as a means of achieving any policy objective, but rather as a "compromise" between governments. It was negotiated under a veil of secrecy between anonymous ministerial officials, most of whom are in charge of running national patent offices and thereby part of a community with a vested interest in unlimited patentability.

For these reasons we urge you to

1. Ask the Council Presidency to withdraw the voting on the software patent directive (2002/0047 COM (COD)) from the agenda of the next Council session where it is awaiting formal approval.
2. Take the dossier out of the hands of the patent bureaucracy, and restore true political scrutiny of the impact of the proposed text. The designation of representatives in the Council working party should be publicly presented and debated (in Parliaments where the institutional framework allows).
3. Urge other governments to do the same and ultimately to reform the EU Council so as to prevent catastrophes such as the present one from happening in the future.

Signatories: CEA-PME, ObjectWeb, FFII, Polski Rynek Oprogramowania (PRO), ASSOFT, Jörg Tauss, Marek Balicki, José Magalhães, Olga Zrihen, Johana Boogerd, Carl Schlyter, Gustav Fridolin, Pernille Frahm, Margrete Auken, Jonas Sjöstedt, Jens Holm, ANSOL, CC.OO., Hispalinux, ATI, UTS, ProInnova, SSLUG, ESR Pollmeier GmbH, MySQL, Mandrakesoft, Opera Software, Oddlabs, etc. *The complete list of signatories can be found on our webpage*¹.

1 <http://swpat.ffii.org/briefe/cons0406/index.en.html>