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European Union Software Patent Proposal

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EUROPEAN UNION SOFTWARE PATENT PROPOSAL

On July 6, 2005, the European Parliament voted 648 to 14 to reject the Computer-Implemented Inventions Directive, a proposal which would have harmonized treatment of software patents throughout the European Union. The rejection ends the legislative initiative that began in late 2000, when the European Commission first called for consultations to address the question of how software patents should be handled across the European Union.

Both the European Patent Office ("EPO") and most European nations already allow for varying degrees of patent protection for software. Currently, whether or not software patents get approval from the EPO depends on whether they make a "technical contribution" under the European Patent Convention ("EPC"). This language leaves the granting of software patents largely to the discretion of patent examiners. Furthermore, though the EPC lays the basic ground rules for patentability, the national legislatures of individual member states may adopt their own patent policies, and national courts make the final decisions regarding the validity of patents.

Fearing that the uncertainty of patent rules would harm businesses and deter innovation, the European Commission submitted a proposal to harmonize the treatment of software patents by the EPO and the member states. The proposal allowed for software patents provided they have a "technical character," but explicitly excluded business methods. Opponents criticized the language of the proposal for being overly broad and vague, and expressed concern that it would allow all software to be patentable, regardless of its actual innovative contribution.

In response, the European Parliament passed a series of amendments to the bill aimed at narrowing the scope of the term "technical" to exclude abstract information processing. The Council of Ministers, however, overturned most of these amendments, and, in March 2005, approved a compromise text that allowed for software patents provided the inventions have a "technical character." The Commission refused the Parliament's request to restart the entire legislative process. Left with the option of voting on the compromise text, or proposing yet more amendments, the Parliament voted to reject the entire text.