Commission proposal	Amendments by Parliament

Draft legislative resolution

§1. Approves the Commission proposal ***as amended*** ;	***§1. Rejects*** the Commission proposal ;

Justification

By proposing the patentability of computer-impemented inventions, the Commissions opens the road to patentability of human thinking. Moreover, this directive does not respond to economical, scientifical and cultural stakes in the software industry nor to the need for promoting innovation. For all these reasons and to answer the strong opposition of scientists and software creators, the proposed directive must be rejected.

Commission proposal	Amendments by Parliament
Title	
Proposal for a directive of the European Parliament and of the Council on the patentability ***of computer-implemented inventions***	Proposal for a directive of the European Parliament and of the Council on the ***limits of*** patentability ***with respect to automated data processing and its fields of application***
	Justification
	The term "computer-implemented invention" is not used by computer professionals. It is in fact not in wide use at all. It was introduced by EPO in May 2000 to legitimate business method patents, so as to bring EPO practise in line with the USA and Japan. The term "computer-implemented invention" is a programmatic statement. It implies that calculation rules framed in the terms of the general-purpose computer are patentable inventions. This implication is in contradiction with Art 52 EPC, according to which algorithms, business methods and programs for computers are not inventions in the sense of patent law. It can not be the aim of the current directive to declare all kinds of "computer-implemented" ideas to be patentable inventions. Rather the aim is to clarify the limits of patentability with regard to automatic data processing and its various (technical and non-technical) fields of application, and this must be expressed in the title in plain and unambiguous wording.

Commission proposal	Amendments by Parliament

Article 2, point (ba) (new)

	(ba) "technical field" means an industrial application domain requiring the use of controllable forces of nature to achieve predictable results. "Technical" means "belonging to a technical field". The use of forces of nature to control physical effects beyond the digital representation of information belongs to a technical domain. The production, handling, processing, distribution and presentation of information do not belong to a technical field, even when technical devices are employed for such purposes.

Justification

The fact that a programmable apparatus, such as a generic computer, makes use of physical effects in order to process information should not be used to allow patent protection to the program running on such an apparatus.

This amendment synthesises Am. 16 Cult, Am. 19 Cult, Am. 23 Itre, Am. 24 Itre. and Am. 25 Itre (was: JURI 45)

Commission proposal	Amendments by Parliament

Article 2, point (bb) (new)

	(bb) "industry" in the sense of patent law means "automated production of material goods";

Justification

The word "industry" is nowadays often used in extended meanings which are not appropriate in the context of patent law.

Commission proposal	Amendments by Parliament
Article 3 (a) (new)	***Member States shall ensure that an innovation is not considered to belong to a field of technology merely because its implementation involves the use of a computer.***

Justification

The European Commission text says that all ideas, including "computer-implemented business methods" etc, are patentable inventions. This is a too broad definition.

Commission proposal	Amendments by Parliament

Article 4, paragraph 1

1. Member States shall ensure that ***a computer-implemented invention is patentable on the condition that it is susceptible of industrial application, is new and involves an inventive step.***	1. Member States shall ensure that ***patents are granted only for technical inventions which are new, non-obvious and susceptible of industrial application***

Justification

Article 4(1) should be coherent with the amended version of Article 2. There must not be distinctions between patentable and non-patentable inventions. This amendment synthesises Am. 11 Cult, Am. 20 Cult, Am. 28 Itre, and Am. 29 Itre.. (was: JURI 48)

Commission proposal	Amendments by Parliament

Article 4, paragraph 2 (a) (new)

	2a. Member States shall ensure that patents on computerised innovations are upheld and enforced only if they were granted according to the rules of Art 52 of the European Patent Convention of 1973, as explained in the European Patent Office's Examination Guidelines of 1978.

Justification

This amendment avoids deviation from the European Patent Convention and therefore provides increased coherence and clarity.

Commission proposal	Amendments by Parliament

Article 4, paragraph 3

3. The technical contribution shall be assessed by consideration of the difference between ***the scope of the patent claim considered as a whole, elements of which may comprise both technical and non-technical features,*** and the state of the art.	3. The technical contribution shall be assessed by consideration of the difference between ***all of the technical features of the patent claim*** and the state of the art.

Justification

The wording of this article is self-contradictory, as it seems to state that a technical contribution may consist of non-technical features. One should ensure that the conditions of novelty and inventive step regard the technical contribution, otherwise any novel software running on a non-novel technical device could be patentable

This amendment synthesises Am. 32 Itre and Am. 33 Itre. (was: JURI 52)

Commission proposal	Amendments by Parliament

Article 5

Member States shall ensure that a computer-implemented invention may be claimed as a product, that is as a ***programmed computer, a programmed computer network or other programmed apparatus,*** or as a process ***carried out*** by such a computer, computer network or apparatus through the execution of software.	Member States shall ensure that a computer-implemented invention may be claimed ***only*** as a product, that is a ***set of equipment comprising both programmable apparatus and devices which use forces of nature in an inventive way,*** or as a ***technical production*** process ***operated*** by such a computer, computer network or apparatus through the execution of software

Justification

The original wording of this article is confusing, since allowing to patent programmed generic computers would be equivalent to allowing to patent their software as such. Also, one must make sure that the production of information cannot be considered as an industrial production process.

This amendment synthesises Am. 24 Cult, Am. 25 Cult, Am. 37 Itre and Am. 38 Itre. (was: JURI 59)