

Dear constituent,

Thank you again for your message in advance of the plenary vote on the draft computer-implemented inventions (CII) directive.

As you are no doubt aware, the course of the Computer Implemented Inventions Directive has been somewhat chequered. The result of its first reading in the Parliament was fairly encouraging: the plenary adopted a text which clearly maintained the limit of patentability to inventions, as in the European Patent Convention (Munich). However, in March of this year the Council adopted a Common Position which erased the text that had been proposed by the Parliament and which allowed full patentability including program claims. Greens regarded the version adopted by the Council as unacceptable on grounds of both reason and the threat it would pose to innovation, competition and small entrepreneurs. The circumstances under which the Common Position was adopted were also extremely disturbing - an example of the EU at its worst.

Fortunately, however, because this directive was being dealt with under the co-decision procedure the European Parliament had to be consulted again on the Council's Common Position - the so-called "second reading", when it was voted on initially in Committees and then finally in a second plenary vote. This second reading provided an opportunity for those in favour of each side of the debate to try to persuade a majority of MEPs of the merits of their view.

In the case of the pro-patent factions this took the form of incredibly fierce and, in cases, deceptive lobbying campaign. Despite lacking such vast corporate-provided financial resources, however, those on the other side of the debate put up an impressive fight based on clear argument, factual information, good organisation and principled perseverance. MEPs including myself received huge numbers of emails and letters, highlighting especially: -

- the threat to small business and the open source community
- that innovation will be stifled
- the request of the Legal Affairs Committee and indeed the Parliament majority being ignored
- many national governments grave concerns were ignored
- unnatural corporate influence
- wider damage done to faith in the European Institutions as democratic decision makers

In turn the Greens/EFA group in the European Parliament hosted meetings and conferences in the Parliament so as to give SMEs and the open-source community a platform from which to air their concerns - as well as hearing from organisations like the European Patent Office, IBM and Microsoft, in order to fully understand the issues at stake.

In the run-up to the vote in the legal affairs Committee on 20 June, the Greens worked with the Socialist Rapporteur Michel Rocard in his tabling of a series of amendments to the Common Position, which aimed to change the text back to limit software patentability. Unfortunately, most of these did not go through and even

the compromise amendments fell victim to a campaign of attack from the EPP group (Conservatives / Christian Democrats) and EICTA. The result was a text which did not even exclude data-processing from the scope of patentability, as had been the result of the plenary vote in the Parliament's first reading. The Greens therefore voted against the report - as did the rapporteur - but sadly this was not enough and it went through. This was a clear success for aggressive lobbying by big business, e.g. Nokia.

Not to be deterred, the Greens /EFA worked extremely hard on a rescue strategy for the directive during the run-up to the plenary vote, building an alliance of sympathetic colleagues from other political groups. As a "safety guard" this alliance put together a package of 21 amendments proposing a clear distinction between software - which is and should be protected by copyright - and technical inventions, which should indeed be patentable. They included amendments to effectively exclude business methods; to define technology as "applied natural science"; to forbid direct monopolisation of information objects, and to change "computer-implemented" to "computer-aided". As such, they would have made the text much clearer than the Council's position, setting clear limits to patentability whilst still allowing computer-aided inventions in areas such as computer tomography, automobile engine control, household inventions and so on to be patented.

Needless to say, I signed these and various other appropriate amendments being submitted by other concerned MEPs. The Greens contributed energetically to the large task of physically obtaining the signatures of 37 MEPs, as are required to table new amendments in the plenary. The group also leafleted every postbox in the Parliament, urging colleagues to support any amendments which:-

- clearly distinguished between technical inventions and software
- excluded data processing and program claims from the scope of patentability
- guaranteed free use of software to enable interoperability and the protection of consumer rights
- guaranteed the survival of free and open-source software.

- and played host to numerous external campaigners who were helping with this effort. On the morning of the vote, they also held a demonstration in the Parliament - photographs of which can be viewed at [www.carolinelucasmep.org.uk](http://www.carolinelucasmep.org.uk) .

You have undoubtedly already heard the fantastic news that all of our efforts within the Parliament, and the enormous and timely lobbying by citizens, have paid off absolutely. On 6 July the Parliament voted by an overwhelming majority of 648 votes to 14 to reject the draft directive.

This is of course a great victory for all of us who have campaigned to ensure that European innovation and competitiveness is protected from the threat of software and business process patents - at least on the basis that no directive is better than a bad directive. However, it is, in itself, insufficient. The directive's collapse leaves the legal status of computer software in limbo. The Commission must now go back to the drawing board to design a proposal which takes account of the difference between technical innovation, and protects the interests of small and medium-sized enterprises as well as those of big corporations.

There are also lessons to be learned about the aggressive lobbying tactics of big companies, which highlight the great need for a proper system to control lobbying in the EU and - in the meantime - the need to remain attentive.

At least, however, this month's vote has sent a clear message to the Council and Commission that a directive ignoring these crucial points will not be accepted - and that their arrogant disregard for the views of the Parliament, as expressed after the first reading, is equally unacceptable. The rejection also provides breathing space for the development of new initiatives based on all the knowledge gained over the past five years, with the Parliament's work - in particular the 21-amendments package - providing a good basis on which future proposals can build.

Please be assured that I and my Green colleagues will continue to campaign against excessive software patentability - in particular for software under open source, licences in bona fide non-profit contexts, software which is necessary for the implementation of recognised international standards, and for that which is necessary for creating software interoperability for files and network protocols. In so doing we will also be representing and defending the interests of thousands of small and medium-sized companies - which together make up the backbone of Europe's economy.

Yours sincerely,

Caroline Lucas - Green Party MEP for South East England.