

MR/15/00

Orig.: English

Munich, 20.11.2000

SUBJECT: Proposed amendments to Articles 52(2)(c) and 105(a) to (c)

DRAWN UP BY: Danish Delegation

ADDRESSEES: Revision Conference (for consideration)

Article 52(2)(c) EPC

Proposal:

The Basic proposal is amended as follows: Art. 52(2)(c) remains unchanged compared to the current text of the EPC.

Reasons:

The patentability of software is a highly controversial issue which has considerable economical impact. It must therefore be studied very carefully before any decision is taken to change the EPC. This has not yet been possible in our country, and we believe that this is also the case in several other countries. We are not convinced that the deletion of the words "computer programs" from Art. 52(2)(c) EPC is more or less a formality which will have no impact on Board of Appeal decisions.

Furthermore, the European Community Commission has recently launched a consultation within the member states with the purpose of having a thorough discussion of the issue and possibly establishing proper means for harmonisation on this issue within the Community.

We find it imperative to await the outcome of the Community initiative before any further action on this matter is taken in relation to the EPC. This issue is considered by our Government to be of crucial importance for our assessment of the Basic proposal as a whole.

Article 105(a) to 105(c) EPC

Proposal:

The Basic proposal is amended as follows: Delete Art. 105(a), 105(b) and 105(c) EPC from Basic proposal.

Reasons:

Central limitation has, in our opinion, many favorable aspects.

The proposed limitation procedure, however, leaves a number of questions open. In particular the question of interaction with revocation or limitation procedures at national level and in the proposed regulation for a Community patent.

Furthermore, our legal experts have so far come to the conclusion that the introduction of a limitation procedure at the EPO with immediate effect for the member states will constitute a transfer of sovereignty. It therefore requires a majority of 5/6 in order to be passed by the Parliament.

We would like to see the proposal discussed in further detail before any decision is taken. Furthermore, we need some time to solve the legal and constitutional problems

For these reasons we suggest that the decision on limitation be deferred to a later stage (possibly the so called "second basket").
