Amended proposal for a Directive on the protection of inventions by utility model

The European Commission has presented an amended proposal for a Directive approximating the legal arrangements for the protection of inventions by utility model. This Directive is aimed at harmonising the main provisions of national laws regulating the protection of inventions by utility model, including the introduction of this protection in Member States where it does not exist. This form of protection, which is more flexible and less burdensome than the patent, appears to be more suitable for inventions which have a limited degree of inventiveness and a relatively short life span. The amended proposal incorporates most of the amendments proposed by the European Parliament in its opinion of March 1999 on the Commission’s initial proposal (see IP/97/1127). The amended proposal does not call into question the main features of the utility model as provided for in the initial proposal, i.e. a lower level of inventiveness than that required for a patent, the absence of a prior examination of the protection conditions, and a limited protection period of no more than ten years. It aims to reinforce legal certainty and transparency and strike a better balance between the rights of utility model proprietors and those of third parties.

The proposed Directive is aimed at approximating the legislation of Member States regarding the protection of inventions by the utility model, so as to assist enterprises and independent inventors in the business of exploiting their inventions in several Member States. Those Member States which at present do not have a system of protection by utility model (the United Kingdom, Luxembourg, Sweden) will be asked to introduce this form of protection into their national legislation.

Utility models are registered industrial property rights which confer on proprietors exclusive protection of their technical inventions, particularly those with a limited degree of inventiveness or a relatively short period of exploitation. They offer more flexible and less burdensome protection than that offered by patents. Utility models are therefore an effective tool well-suited to enterprises - particularly SMEs - which are active in certain fields of innovation.

The planned system would have the following features: the field of application would cover products as well as processes, but would exclude biological material and chemical or pharmaceutical products and processes, owing to the special features of these sectors. As in the case of patents, inventions which could be protected by utility model would have to be new, involve an inventive activity and be capable of industrial application.
However, the level of inventiveness required would be lower than that for patents. Inventions would be considered as involving inventive activity if they represented an advantage and, from the point of view of those in the particular fields, were not derived in a very obvious way from the state of the art. The definition of inventive activity is a key element in the proposed Directive, as it enables the utility model to be distinguished from the patent. This definition was amended in the light of the opinion of the European Parliament.

Moreover, an application for a utility model would not require a formal verification, and the utility model would be granted without prior examination of the basic conditions relating to novelty and inventive activity, so that it could be provided rapidly and at lower cost. The period of protection would be limited to a maximum of ten years, comprising an initial period of six years followed, where appropriate, by two periods of two years.

In order to reinforce legal certainty, transparency and the rights of third parties, several improvements have been made to the initial proposal on the basis of the opinion of the European Parliament. There has been a better definition of inventive activity; third parties - not only the applicant - could request a search report on the state of the art; the search report would be attached to the file and would be mandatory in the event of legal proceedings or extension of the protection after the initial six-year period.

In accordance with the wishes of the European Parliament, the Commission will ensure that the Directive was followed up and will propose, at the end of a three-year period after transposition of the Directive into national law in the Member States, any improvements to be made to the system.

The full text of the amended proposal can be downloaded from the Europa website: http://europa.eu.int/comm/dg15.