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To: Voorzitter vaste Kamercommissie Europese Zaken,
COSAC Presidency,
Mrs Sharon Dijksma

From: Vrijsschrift/FFII

Subject: The EU Presidency denies the new members the rights the Protocol on the Role of National Parliaments in the European Union grants them, the CII Directive Common Position will be illegal.

Amsterdam, December 16 2004,

Dear Mrs Dijksma,

September 5th we wrote to inform you of our concerns regarding the way the Dutch EU Presidency is conducting itself with respect to European procedures and the Protocol on the Role of National Parliaments in the European Union [1].

In our letter we pointed out:

- Wrong information provided by the Dutch Presidency.
- The Protocol on the Role of National Parliaments in the European Union assures Parliaments early access to legislative proposals. The Parliaments of the 10 new members of the Union did not have early access, since the translations of the EU Council's political agreement have only very recently become available.
- Every Parliament in the European Union has the right to debate the "Directive on Computer-Implemented Inventions", and to render their opinions. Any Council member may unilaterally act to transfer an A-item decision indicating a mere formality to the list of B-item agenda points [2]. Every member of the Council has the right to change their present vote [3]. All of the national members of the European Union have the freedom and the right to engage in any decision that determines their future.
- How detrimental the software patents Directive would be for SMEs and innovation.
- The Directive's text is overcomplicated, with double negations, duplicitous qualifications ("exceptions" that are always true) and undefined exclusions.
- Eastern Europe will never own its software industry under the Council's text.
- Our believe that the Directive must be discussed as a B-item in the Council, not allowed to pass as a mere formality under the A-item agenda points.

Since then, it became clear that the Dutch EU Presidency puts pressure on Poland to vote yes to the Directive [4]. Poland is denied the rights the Protocol grants.

The Protocol on the role of national parliaments in the European Union demands that the Commission's legislative proposals are translated. The European Union has 10 new members. After reaching the political agreement this agreement was translated, it was the first translation the new members received. This implies that the new members' parliaments are completely free to express their view, and their governments are completely free to act accordingly. The pressure the presidency puts on these governments denies the new members

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the rights the protocol grants.

The Protocol on the role of national parliaments in the European Union demands that the Commission's legislative proposals are translated. In the case of the "Directive on Computer Implemented Inventions" no translations have been made in the new member states' languages. The obligation to inform the parliaments is not met. It may seem overly formalistic, on the dogmatic side, since there are translations available of the May 18th political agreement. It is not. The Commission's proposal has an explanatory part the later document is missing, 12 pages of background information needed to understand the directive. The new members received less information. Without the translations, and a 6 weeks review period, a common position will violate the Protocol.

According to the Council's rules of procedure, the Council may unanimously derogate from the six-week period where the entry of an item is subject to the exception on grounds of urgency provided for in point 3 of that Protocol. In our opinion there are no grounds of urgency, and they are not mentioned in the political agreement's text either. We do not see an unanimous decision to derogate from the six-week period.

The common position will be illegal.

We hope COSAC will protest against this violation of the letter and spirit of the Protocol.

On behalf of Vrijschrift/FFII,
Sincerely,

Ante Wessels
Arend Lammertink, Ir
Harmen van der Wal, Mr.

[1] http://www.vrijschrift.nl/Members/awessels/vrijschrift.nl_cosac040905.pdf

[2] See for this the Council Political Agreement Reversal HowTo:
http://www.vrijschrift.nl/Members/awessels/vrijschrift.nl_change-the-vote-howto.pdf

[3] Lopez report
http://fajardolopez.com/informes/Fajardolopez.com_18th-May-EU-Council-voting.pdf

This opinion was confirmed by the Council itself: "PUBLIC INFORMATION"
<public.info@consilium.eu.int>

[4] <http://kwiki.ffii.org/Nlpl0411En>

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