

**QUESTIONS & ANSWERS**  
**CONCERNING THE**  
**JOINT MOTION AGAINST SOFTWARE PATENTS**  
**BY ALL GROUPS IN THE GERMAN PARLIAMENT**

*Quotes from this document are permitted and may be attributed to:*

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**Q: What is already known and what is particularly new about this?**

A: In a debate on 21 October, all groups in the German parliament spoke out against software patents and criticized the EU Council's proposal for a draft directive on the "patentability of computer-implemented inventions" (= software patent directive).

The important new development is that all four groups in the German parliament (SPD, CDU/CSU, Greens, FDP) reached an agreement on a joint motion that can be adopted by all groups together, with near-unanimity. Before this agreement, three separate motions (FDP, CDU/CSU, SPD/Greens) had been introduced. They were all good, but different. The parliamentarians have now managed to converge on a joint motion that reflects the will of them all.

Such a consensus across the democratic spectrum is the exception and not the rule, and particularly astonishing in comparison to the heated debate in Brussels.

**Q: Is this agreement on a joint motion more significant now than the original independent motions of the parties were in October?**

A: Very much indeed. As previously stated, such a consensus across the entire democratic spectrum is rather exceptional on an issue that is controversial in the EU.

Even more importantly, the state of the software patent debate in Europe has changed dramatically. When the German parliament had its debate on 21 October, the general assumption was that the EU Council was a mere formality away from referring its 18 May position to the European Parliament. Therefore, the German Parliament at the time primarily intended to send a message to German MEPs, and to the German government with respect to future readings in the Council and a possible conciliation proceeding between the Council and the European Parliament.

However, the clarification by the Polish government last week that it "cannot support the current legislative proposal by the Council" has, due to new voting weights that took effect in the EU on the first of this month, created a situation in which the EU Council may very well be required to renegotiate the legislative proposal. This joint motion by all groups in the parliament of the largest EU member state further delegitimizes the political agreement of the EU Council on 18 May. It also indicates the requirements for a new political agreement.

**Q: Would it be accurate to say that the entire German parliament strongly supports the decision by the Polish government?**

A: The German parliament was working on this joint motion independently, but yes, if you look at the content of the joint motion, it has striking similarities with the position taken by the Polish government last week.

The Polish government cited the existence of "*numerous ambiguities and contradictions*" in the Council's draft directive, and the potential patentability of software that is not part of a physical invention, as the key reasons for being unable to support the proposal. The joint motion of the German parliamentary groups now raises the very same issues, particularly by demanding that "*the draft directive be changed to the effect that the definition of the technical contribution in article 2b be stated more concretely, and that a definition of the term 'technical', which is oriented towards the definition of 'technical' by the [German] Federal Supreme Court, be included*". In a press release today, six MPs of the governing coalition of Social Democrats and Greens state that "*the common position of the Council on the draft directive does not sufficiently meet unambiguity requirements*", and demand "*an unambiguous and clear-cut term of technicity*" as well as the exclusion of "*so-called program claims*".

**Q: Does this joint motion by the German parliament influence the situation in the Council and the position of the German government in particular?**

A: Formally, the German government is not required to listen to its national parliament in EU matters. However, there is no question that this consensus in the German parliament bears enormous political weight with the German government, with other country governments in the EU Council, and with the European Parliament.

**Q: Are there any members of the German parliament that are not involved?**

A: The PDS (Party of Democratic Socialism) only has two members of parliament, and thus does not enjoy group status. The MEPs of the PDS voted more clearly against software patents on 24 September 2003 than those of any other German party.

**Q: What will be the next procedural steps with this joint motion?**

A: The committees of the parliament will be given the opportunity to form an opinion. It will be the legal committee that has the lead role on this. Given the fact that this is a joint motion of all parliamentary groups, surprises are again unlikely. They even agreed to skip a further debate in the plenary although there usually is another plenary debate prior to the referral of such a motion to the committee in charge.

The formal vote in the German parliament is expected to occur in January, after the parliament returns from the Holiday Season.

**Q: What impact will this have on future consultations in the European Parliament?**

A: The MEPs of the German political parties are independent. However, the position taken by the groups in the German parliament definitely strengthens those MEPs who seriously and honestly work against the legalization of software patents. Also, take into consideration the fact that the leaders of the parliamentary groups of the two largest German political parties (CDU and SPD) are at the same time the party chairmen, and their names will appear as official signatories of this motion.

**Q: Who welcomes this joint motion?**

A: I know from my personal communication with them that the leading German association of small and medium-sized enterprises, the BVMW (Bundesverband mittelständische Wirtschaft), is very pleased with the positions taken by the groups in the German parliament. The president of the BVMW recently sent letters to Chancellor Schröder and other senior politicians that explicitly said so.

The leading organization that opposes the patentability of software, the FFII (Foundation for a Free Information Infrastructure), has already welcomed this joint motion as "helpful". The FFII made some suggestions for further edits that they believed would add more clarity, but philosophically they appreciate this motion.

Speaking for myself in my role as a campaigner against software patents, I am extremely happy to see that the groups in the German parliament put aside any partisan considerations and assigned the highest priority to the issue itself. I agree with all of them that this is such a critical issue to our economy and our future in general that the democratic spectrum has to unite against a small group of undemocratic elements.

**Q: Who lobbied against this joint motion?**

A: From various sources in the parliament I know that there have been intense "counter-lobbying" efforts in recent weeks by certain special interest groups. Those groups have the right to defend their interests, however, those interests are definitely not those of our economy and society at large.

We have received reports of lobbying activities against this motion on the part of Siemens, Microsoft, BDI (big industry association), ZVEI (electrical and electronics industry association), BITKOM (German chapter of EICTA), and VDI (engineering association). With the agreement of all groups on a joint motion, those lobbyists have suffered another major defeat. It is despicable that most of them claimed to also speak on behalf of small and medium-sized enterprises, without any mandate.

The U.S. Embassy, apparently in an effort to assist IBM and Microsoft, supported those lobbying activities as well.