

# 996IP0216

## **Resolution on the Commission Green Paper on the protection of utility models in the single market (COM(95)0370 - C4- 0353/95)**

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Resolution on the Commission Green Paper on the protection of utility models in the single market (COM(95)0370 - C4-0353/95)

The European Parliament,

- having regard to the Green Paper on the protection of utility models in the single market presented by the Commission (COM(95)0370 -C4-0353/95),

- having regard to the basic Treaties, amended by the TEU and, in particular, Article 6 of the EC Treaty,

- having regard to the Convention for the European Patent for the common market (European Patent Convention EPC) ((OJ L 17, 26.1.1976, p. 1.)),

- having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy (A4-0216/96),

1. Calls on the Commission to take into consideration the general comments made in this report;
2. Welcomes the Commission's Green Paper and considers that the utility model is an appropriate form of protection, especially for SMUs that in many cases cannot afford the long and costly procedure of patenting;
3. Considers that it would be preferable to have a system in which a utility model can be defined by reference to a structure, form or configuration, which would imply excluding procedures and substances from its scope; this would ensure that it was granted quickly and keep down the costs of its issue, which would be of particular benefit to SMUs;
4. Takes the view that since utility models protect inventions which are of less economic importance than those protected by patents, they are less likely to create an obstacle to the free movement of goods;
5. Considers that the protection of utility models must entail a rapid, simple and cheap procedure; this is its essence. The existence of a right similar to and which complements patents could inhibit the activities of SMUs and the marketing of their innovations;
6. Considers that the imperfect legal certainty inherent to the utility model protection should not be considered as an obstacle to its introduction in Community law, given that the advantages of this protection outweigh its inconveniences and given the fact that the definition of a common set of rules throughout the Union would contribute to a decrease in this relative uncertainty;
7. Considers, given the legal regulations governing utility models in the European Union, that the most appropriate approach, at present, is to adopt a regulation laying down rules for a European utility model and points out that:

(a) there may be substantial practical problems involved in harmonizing the various existing legal systems in a directive,

(b) mutual recognition implies that a model registered in a Member State may have extraterritorial validity and extend its effects to the other Member States specified by the applicant in his application for registration. Such a system seems to go beyond the scope of a harmonizing directive and to require the recognition and assent of each state so that the sovereign acts of another state may take effect in their territory,

(c) the Community regulation will, in any event, considerably increase the costs of translation, which will limit access for SMUs. Costs would also increase if a new agency were created for granting the rights. In order to keep costs down, we believe that administration of utility models should be entrusted to the one existing agency, which also deals with the Community design, an intellectual property right which complements the utility model;

8. Considers that the existence of prior examination for the granting of the utility model should not excessively delay the granting of the model, which should not be complementary to a patent;

9. Believes, therefore, that the future regulation governing utility models should:

- allow for a lower level of inventiveness than patents;
- include the three-dimensional form requirement and, therefore, exclude procedures and substances from the scope of utility models;
- include a concept of 'state of the art' compatible with the feasibility of modern communication systems;
- have industrial applicability;
- base the application procedure on Articles 78 - 85 of the EPC, although the possible adverse consequences of limiting claims should be considered;
- include the formal verification of legal capacity;
- allow an optional search outside the context of granting the utility model;
- include rights of exploitation and information; potential applicants should be able to get information about the existence of any utility models in a given field in the Union; this should be achieved through a Europe-wide (possibly including EEA countries) database where a summary or coded description of the model would be obtainable, without there being a need for the owner of the model to provide a full translation of the relevant documents;
- establish a single and non-extendable deadline of 10 years;
- require a plaintiff to submit a report on the state of the art together with his complaint;
- accept the system of dual protection pending the granting of a patent; subsequent application for a patent by the owner of a utility model, in case he deems it to be desirable, should be facilitated by means of an approximation of the administrative requirements for the similar items in both procedures;

10. Instructs its President to forward this resolution to the Commission and, for information, to the Council.