COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.07.1999
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CORRIGENDUM
Le présent texte annule et
remplace intégralement celui du
COM (1999) 309 final du 25.06.1999.
Le présent corrigendum ne
concerne que la version anglaise.

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

approximating the legal arrangements for the protection of inventions by utility model

(presented by the Commission in accordance with Article 250(2)
of the EC Treaty)

EXPLANATORY MEMORANDUM

GENERAL

On 12 December 1997, the Commission submitted to the European Parliament and the Council a proposal for a Directive approximating the legal arrangements for the protection of inventions by utility model.[1]

The Economic and Social Committee adopted its opinion on 27 May 1998[2].

In its Opinion, adopted at first reading during the part-session from 8 to 12 March 1999, the European Parliament approved the Commission's proposal subject to 34 amendments[3]. Parliament did not question the Commission's approach and the main features of the utility model as described in the original proposal were retained, i.e. the level of inventiveness required is not as great as it is in the case of patents, the substantive conditions for protectability are not subject to a preliminary examination and the protection period is limited to 10 years.

Parliament proposes that the Directive should define utility models with reference to structures, mechanisms or configurations, thereby excluding processes and substances from the scope of the Directive. On the other hand, it proposes including inventions involving computer programs. Another important proposal in the Parliament Opinion concerns the inventive step, which need not be as great as that required for a patent, by analogy with the European Patent Convention. Parliament's opinion also contains proposals aimed at increasing the legal certainty of utility models by extending the right to request a search report on the state of the art to third parties and making such reports obligatory in some cases. Parliament also proposes introducing a "one-stop shopping procedure", whereby applicants would need to lodge an application in only one Member State, which would then be responsible for forwarding the application to the other Member States in which protection is required. It also proposes an opposition procedure so that disputes can be settled more quickly than if they were referred to the courts. Finally, Parliament proposes reducing the fees payable by small and medium-sized firms, individual inventors and universities by 50% and extending the grounds for revocation to cases in which the proprietor of the utility model was not entitled to it.

The aim of this amended proposal is to take account as far as possible of the amendments proposed by the European Parliament, most of which contribute towards clarifying the text of the original proposal.

The Commission was able to accept 25 amendments proposed by the European Parliament, 20 in their entirety (Nos 3, 4, 5, 7, 9, 11, 13, 14, 19, 20, 21, 22, 25, 27, 28, 29, 31, 32, 33, and 34) possibly with a few minor modifications of a technical nature, and five in part (Nos 2, 6, 8, 10, and 26). It was unable to accept nine of the proposed amendments (Nos 1, 12, 15, 16, 17, 18, 23, 24 and 30).

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1 OJ C 36 of 3.2.98, p. 13.
2 OJ C 235 of 27.7.98, p. 26.
3 Not yet published.

The amendments proposing the introduction of a "one-stop shopping procedure" (Nos 1, 6 (in part) and 17) were rejected on the grounds that this would go beyond the scope of the Directive, which was aimed at aligning the national provisions on utility models that most directly affected the operation of the Single Market, since a procedure of this kind does not correspond to a need expressed by the economic operators concerned in connection with the consultation initiated with the Green Paper of 1995. Furthermore, the introduction of a procedure of this kind would give rise to legal and practical difficulties and would not solve the problem of translations, for example. The workload of the national offices resulting from the administration of such a procedure should also be borne in mind. The Commission could, however, as part of the monitoring of the Directive and in the light of experience, look into the possibility of introducing a procedure of this kind should the need become apparent.

Amendment 18 - for an opposition procedure - was rejected on the grounds that it too goes beyond the scope of the harmonisation that is the aim of this Directive. This is a procedural question that should be left to the Member States in accordance with the principle of proportionality. As in the case of "one-stop shopping", the possibility of a procedure of this kind could be examined in connection with the monitoring of the Directive.

Several other amendments were also rejected, including those directly or indirectly concerning the field of application of the Directive (Nos 2 (in part), 6 (in part), 8, 23, and 24). These amendments propose excluding substances or processes from the scope of the Directive. This is an outmoded approach, however. It emerged from the consultation in connection with the Green Paper of 1995 that the vast majority of the parties concerned were in favour of substances and processes being included in the scope of utility models. Moreover, the "three-dimensional" requirement underlying the exclusion of substances and processes was becoming a thing of the past in the legislation of the various Member States, only four of which nowadays apply it as a condition for the granting of protection by means of a utility model.

The amendment proposing that the fees payable by small and medium-sized firms, individual inventors and universities should be reduced by 50% (No 12) was also rejected on the grounds that, although it reflects concerns that are laudable, it has no place in a Directive on harmonisation since the financial implications for the Member States would go beyond the scope of the Directive. The underlying principle has, however, been expressed in one of the recitals.

Other amendments rejected by the Commission include No 15, which calls for additional preliminary checks, since this calls into question the principle of not examining the substantive conditions for protectability. The amendments specifying "a practical or technical advantage" as a new condition for the granting of protection were also rejected (Nos 6 (in part), 10 and 16). This would constitute a new requirement for obtaining protection, whereas the technical or practical advantage should rather be regarded as explaining the reasons for the inventive step.

Finally, Amendment 30, according to which the subject-matter of the utility model is not protectable if the proprietor of the utility model is not entitled to obtain it, was also rejected, since in this case the genuine inventor would definitively lose his right to the utility model as the invention could no longer be regarded as new. Revocation

is therefore not desirable; instead, transfer to the genuine inventor should be permissible.

EXAMINATION OF THE RECITALS

General

In order to facilitate reading of the modified proposal, each recital has been numbered. Three recitals have been modified in the light of Parliament's Opinion and a new one has been added (see table below).

Recitals	Amendments
6	12
13	2 (in part)
14	3
19 (new)	4

Specific

Recital 6 has been expanded to take account of Amendment 12 concerning the reduction of the fees payable by small and medium-sized firms, individual inventors and universities.

The change to Recital 13 corresponds to Amendment 2 (in part), taking account of the deletion of the phrase excluding inventions involving computer programs.

The change to Recital 14 corresponds to Amendment 3 concerning the extension to third parties of the right to request a search report.

The new Recital 19 corresponds to Amendment 4 concerning the monitoring of this Directive by the Commission three years after its implementation in the Member States.

EXAMINATION OF THE PROVISIONS

General

On the basis of the European Parliament's Opinion, 20 Articles or paragraphs have been modified and three new Articles inserted into the amended proposal. These concern other forms of protection (Article 22), subsidiary application (Article 26) and monitoring of the Directive (Article 28). Modifications of a technical nature have also been made to Articles 18(1) and 27(1). In order to facilitate reading of the amendments in conjunction with the Articles to which they refer, the following correspondence table has been drawn up:

Articles	Amendments
1	6 (in part)
3(1) (ex (2))	34
3(2) (new)	7
4	8 (in part)
5(3)	9
6	6 (in part) and 10
8(1)	11
13(2) (deleted)	14
16(1)	19
16(3)	20
16(4)	21
18(1)	-
19(2)	22
20(1)	26
20(2)	26
20(4)	25
20(7) (new)	26
22 (new)	5
23 (ex 22)(2)	27
23 (ex 22)(3)	28
25 (ex 24)(1(a))	29
25 (ex 24)(2)	31
26 (new)	32
27(1)	-
28	33

Specific

Article 1

The title "Definitions" has been replaced by "Definition" in order to take account of the changes made to the contents of the article.

Article 1(1)

This paragraph has been modified to take account (in part) of Parliament's Amendment 6. It incorporates the principle set out in Article 3(1) of the original proposal concerning protectable inventions, specifying that the inventions covered may relate to substances or processes. The Commission rejects the reference to "a configuration, structure or mechanism" on the grounds that this would exclude substances and processes. Similarly, the reference to a practical or technical advantage, or another benefit to the user, for example in the field of education or entertainment, has not been incorporated here but transferred to Article 6, as an explanation of the concept of "inventive step".

Article 1(2)

Article 1(2) partly corresponds to Article 1 of the original proposal, but, in accordance with Parliament's proposed Amendment 6, the list of national names has been included to help interpretation.

Article 3

The title has been changed, since the contents of the original first paragraph of this article have been transferred to Article 1(1), so that the new Article 3 refers only to exceptions.

Article 3(1)

The original first paragraph has been deleted in view of the new definition incorporated into Article 1. The new Article 3(1) therefore corresponds to the old Article 3(2). Parliament's Amendment 34, to the effect that games should be eligible for utility model protection if they meet the requirements, has been incorporated into point (c).

Article 3(2)

This new paragraph, which corresponds to Parliament's Amendment 7, is based on the corresponding provisions of the European Patent Convention (Article 52(3)). Its purpose is to exclude from utility model protection only those items referred to as such in the previous paragraph.

Article 4

The title of Article 4 has been amended to distinguish it from that of Article 3 and to make it more appropriate to the contents of this Article, which deals with inventions that may not be protected by utility models. The deletion of point (d) - inventions involving computer programs - corresponds to Parliament's Amendment 8 (part).

Inventions involving computer programs may therefore be protected by utility models provided they meet the requirements set out in the Directive.

Article 5

Article 5(3)

The purpose of this modification is to make it clear that the contents of patent applications, in accordance with Parliament's Amendment 9, are considered as comprised in the state of the art, and that previous applications must cover the same territory as the application for a utility model if they are to be considered as comprised in the state of the art.

Article 6

This Article is the result of a combination of Parliament's Amendments 6 and 10.

Article 6(1)

This paragraph incorporates the idea behind Parliament's Amendment 10 - that an invention involves an inventive step if, having regard to the state of the art, it is not very obvious to a person skilled in the art. This wording, based on the definition of an inventive step set out in Article 56 of the European Patent Convention, makes it possible to establish that an inventive step is an essential requirement for utility model protection. However, the use of the word "very" indicates that the inventive step is not as great as that required for a patent. Similar wording can be found in national legislation on utility models. This article also incorporates the idea embodied in Parliament's Amendment 6 to the effect that the invention must exhibit an advantage.

Article 6(2)

The second paragraph of Article 6 goes into the concept of "advantage" referred to in the previous paragraph in terms of the aspects mentioned in Parliament's Amendment 6, i.e. a practical or technical advantage for use or manufacture of the product or process in question, or another benefit to the user, for example in the field of education or entertainment. The "other benefit" mentioned here makes it possible for the directive to cover, in particular, games and toys.

Article 8

Article 8(1)

The addition of the word "only", which corresponds to Parliament’s Amendment 11, makes it possible to strictly limit the items that an application for a utility model must contain.

Article 13

Article 13(2) (deleted)

The purpose of Article 13(2) in the original proposal was to limit the number of claims to what was strictly necessary in view of the nature of the invention.

According to the Parliament (Amendment 14), this wording was too subjective and would probably have given rise to discrepancies between national legislation on this matter. It thought that claims should preferably be covered by Article 25 (revocation).

Article 16

Article 16(1)

The purpose of the modification, which corresponds to Parliament's Amendment 19, is to extend the right to request a search report to any interested party at their own cost. This modification increases legal certainty.

Article 16(3)

The addition, which corresponds to Parliament's Amendment 20, stipulates that the report must be added to the file - in other words, be made available to the public as an integral part of the documentation accompanying the granting of the utility model. This increases transparency and legal certainty.

Article 16(4)

The changes correspond to Parliament's Amendment 21 and stipulate that the Member States are obliged, and no longer merely entitled, to make a search report compulsory in the event of legal proceedings, unless the utility model has already been the subject of a search report. These changes are also in line with the wishes of the Economic and Social Committee.

Article 18

The title has been changed to take account of the rewording of the first paragraph of this article.

Article 18(1)

The purpose of the modification is to specify that this provision concerns the right of priority within a Member State. It also expands the original proposals by introducing the possibility for the applicant to change his application for a patent into an application for a utility model.

Article 19

Article 19(2)

The addition, which corresponds to Parliament's Amendment 22, stipulates that renewal of a utility model, on expiry of the first period of six months, shall not be granted unless a request for a search report has been made in respect of the invention concerned. The idea is to increase legal certainty by preventing unexamined utility models from remaining in force for too long.

Article 20

Article 20(1)

The deletion of the word "registered", in line with Parliament's Amendment 26, must be considered in the light of the new Article 20(7), according to which the utility model shall take full effect at the time when the grant is published.

Article 20(2)

As in the previous paragraph, the deletion of the word "registered", in line with Parliament's Amendment 26, must be considered in the light of the new Article 20(7), according to which the utility model shall take full effect at the time when the grant is published.

Article 20(4)

The purpose of these changes is to expand the concept of transfer, in accordance with Parliament's Amendment 25, and similarly to permit the transfer of utility model applications.

Article 20(7) (new)

This new paragraph, which corresponds to Parliament's Amendment 26, specifies the time at which utility models shall take full effect. This new provision is important, since the original proposal contained no provisions on this question.

Article 22 (new)

The purpose of this new article, which incorporates Parliament's Amendment 5 - expanding it by means of a minor technical modification to cover the topography of semi-conductor products - is to specify the relationship between utility models and other forms of protection.

Article 23

Article 23(2)

The change, which corresponds to Parliament's Amendment 27, withdraws the option left open to the Member States in the original proposal. With the new wording, a utility model which has been granted is deemed to be ineffective where a patent relating to the same invention has been granted and published. This change is also in line with the wishes of the Economic and Social Committee.

Article 23(3)

The change, which corresponds to Parliament's Amendment 28, takes account of the changes to the previous paragraph.

Article 25

Article 25(1)(a)

The change, which corresponds to Parliament's Amendment 29, takes account of the new version of Article 1.

Article 25(2)

The change, which corresponds to Parliament's Amendment 31, stipulates that limitation of a utility model in the form of an amendment to the claims, the description or the drawings is possible only if the national law so allows.

Article 26 (new)

This new article, which incorporates Parliament's Amendment 32 by means of a few minor technical modifications, makes it possible for national legislation on patents to be applied in the absence of specific national provisions applicable to utility models. This allows for reference to be made to patent law for procedural aspects so as to avoid the need to create specific procedures.

Article 27

Article 27(1)

The change regarding transposal is based on existing provisions in other Directives.

Article 28 (new)

This new article, which incorporates Parliament's Amendment 32 by means of a few minor technical modifications, provides for monitoring of the Directive by the Commission, as provided for in other Directives in force in the field of industrial property rights.

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

approximating the legal arrangements for the protection of inventions by utility model

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 95 thereof,

Having regard to the proposal from the Commission,[4]

Having regard to the opinion of the Economic and Social Committee[5],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[6],

(1) Whereas the Treaty commits the Community and Member States to creating the conditions for Community industry to be competitive and to promoting a better exploitation of the industrial potential of innovation, research and technological development policies;

(2) Whereas technical inventions play an important role in that they make available improved, better quality products which are particularly effective in terms of, for example, ease of application or use, or which confer a practical or industrial advantage compared with the state of the art;

(3) Whereas, because of differences between Member States' utility model laws, an invention may not be protected throughout the Community, at least not in the same way or for the same length of time, a state of affairs which is incompatible with a transparent, obstacle-free single market; whereas it is therefore necessary, with a view to the establishment and proper functioning of the single market, to approximate Member States' laws in this area;

(4) Whereas it is important in this context to employ every possible means of increasing the competitiveness of Community industry in the field of research and development;

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4 OJ C 36 of 3.2.98, p. 13.
5 OJ C 235 of 27.7.98, p. 26.
6 European Parliament Opinion of 12 March 1999.

(5) Whereas small and medium-sized firms play a strategic role in relation to innovation and rapid response to market requirements;

(6) Whereas there is a need for placing at the disposal of firms, and in particular small and medium-sized firms and researchers, an instrument which is cheap, rapid and easy to evaluate and apply; *whereas the fees should therefore be as reasonable as possible for small firms, individual inventors and universities;*

(7) Whereas utility model protection is better suited than patent protection to technical inventions involving a specific level of inventiveness;

(8) Whereas technical inventions should be suitably protected throughout the Community;

(9) Whereas, in accordance with the principle of proportionality, the approximation may be limited to those national provisions which have the most direct impact on the functioning of the single market;

(10) Whereas, if the objectives of the approximation are to be attained, the conditions for obtaining and retaining the rights conferred by a registered utility model should in principle be the same in all Member States; whereas to that end an exhaustive list of the requirements which a technical invention must satisfy if it is to be protected by a utility model must be drawn up;

(11) Whereas these requirements are for the most part the same as those for patent protection; whereas the level of inventiveness required must nevertheless be different to allow for the specific nature of technical inventions protectable by utility model;

(12) Whereas utility model protection must be available both to products and to processes;

(13) Whereas it is necessary to exclude from utility model protection not only those inventions which are normally excluded from patentability but also, in order to meet the needs of the industries concerned, inventions relating to chemical or pharmaceutical substances or processes;

(14) Whereas a utility model application must satisfy requirements similar to those for patents; whereas, however, a utility model application gives rise only to a check to ensure that the formal conditions for protectability are satisfied without any preliminary examination to establish novelty or inventive step; whereas it may form the subject-matter of a search report on the state of the art only at the request of the applicant or any other interested party;

(15) Whereas it is essential, in order to safeguard the proper functioning of the single market and ensure that competition is not distorted, that registered utility models should henceforth confer upon their proprietor the same protection in all Member States and that the period of protection should be identical; whereas this period may not exceed 10 years;

(16) Whereas the nature and scope of the rights conferred by a utility model must be spelled out; whereas the principle of Community exhaustion of rights must

apply in accordance with the case-law of the Court of Justice of the European Communities, but the principle of international exhaustion must be expressly excluded;

(17) Whereas rules must also be laid down on dual protection by patent and by utility model, and on the lapse and revocation of utility models;

(18) Whereas all Member States of the Community are bound by the Paris Convention for the Protection of Industrial Property; whereas the Community and all Member States are bound by the Agreement on Trade-related Aspects of Intellectual Property Rights concluded under the auspices of the World Trade Organisation; whereas the provisions of this Directive must be in complete harmony with those of the Paris Convention and of the above-mentioned Agreement; whereas Member States' other obligations stemming from the Convention and the Agreement are not affected by this Directive,

(19) Whereas the application of this Directive should be monitored and it should be kept up to date in order to safeguard, in the context of utility models, the proper functioning of the internal market and innovation by Community enterprises; whereas the Commission should propose the measures necessary for this purpose, which should include specific steps to facilitate and reduce the cost of registering utility models in more than one Member State,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER ONE

GENERAL PROVISIONS

Article 1

Definition

1. In accordance with the provisions of this Directive, utility model protection shall be available for new inventions involving products or processes that involve an inventive step and are susceptible of industrial application.

2. The following names are used in the Member States:

Belgium: Brevet de courte durée/Octrooi van korte duur

Denmark: Brugsmodel

Germany: Gebrauchsmuster

Greece: Πιστοποιητικο υποδειγματοζ χρησιμοτηταζ

Spain: Modelo de utilidad

France: Certificat d'utilité

Ireland: Short-term patent

Italy: Brevetto per modelli di utilità

Netherlands: Zesjarig octrooi

Austria: Gebrauchsmuster

Portugal: Modelo de utilidade

Finland: Nyttighetsmodellagen

Article 2

Subject

This Directive seeks to approximate Member States' laws, regulations and administrative provisions on the protection of inventions by utility model.

CHAPTER II

SCOPE OF THE UTILITY MODEL

Article 3

Exceptions to protection

1. The following in particular shall not be regarded as inventions that are eligible for utility model protection:

(a) discoveries, scientific theories and mathematical methods;

(b) aesthetic creations;

(c) schemes, rules and methods for performing mental acts or doing business;

(d) presentations of information.

2. The items referred to in paragraph 1, shall be excluded from utility model protection only to the extent that the application for utility model protection relates to those items as such.

Article 4

Non-protectable inventions

Utility models shall not be granted in respect of:

(a) inventions the exploitation of which would be contrary to public policy or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all Member States;

(b) inventions relating to biological material;

(c) inventions relating to chemical or pharmaceutical substances or processes;

Article 5

Novelty

1. An invention shall be considered to be new if it does not form part of the state of the art.

2. The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the utility model application.

3. Additionally, the content of utility model and patent applications as filed in the Member State concerned or which designate that Member State, of which the dates of filing are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as comprised in the state of the art.

Article 6

Inventive step

1. For the purposes of this Directive, an invention shall be considered as involving an inventive step if it exhibits an advantage and, having regard to the state of the art, is not very obvious to a person skilled in the art.

2. The advantage referred to in the previous paragraph must be a practical or technical advantage for the use or manufacture of the product or process in question, or another benefit to the user, for example in the field of education or entertainment.

Article 7

Industrial application

1. An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

2. Surgical or therapeutic treatment procedures applicable to the human body or to the bodies of animals and diagnostic procedures which are carried out on the human body or the bodies of animals shall not be considered to be

inventions susceptible of industrial application within the meaning of paragraph 1.

CHAPTER III

UTILITY MODEL APPLICATIONS

Article 8

Requirements of the application

1. A utility model application shall contain only:

(a) a request for the grant of a utility model;

(b) a description of the invention;

(c) one or more claims;

(d) any drawings referred to in the description or the claims;

(e) an abstract.

2. A utility model application shall be subject to the payment of a filing fee and, where appropriate, a search fee.

Article 9

Date of filing

The date of filing of a utility model application shall be the date on which documents filed by the applicant contain:

(a) an indication that a utility model is sought;

(b) information identifying the applicant;

(c) a description and one or more claims.

Article 10

Designation of the inventor

The utility model application shall designate the inventor. If the applicant is not the inventor or is not the sole inventor, the designation shall contain a statement indicating the origin of the right to the utility model.

Article 11

Unity of invention

The utility model application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Article 12

Disclosure of the invention

The utility model application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

Article 13

The claims

The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.

Article 14

The abstract

The abstract shall merely serve for use as technical information. It may not be taken into account for any other purpose, in particular not for the purpose of interpreting the scope of the protection sought nor for the purpose of applying Article 5(3).

Article 15

Examination as to formal requirements

1. The competent authority with which a utility model application has been lodged shall examine whether the application satisfies the formal requirements of Articles 8 and 10 and shall check whether it contains a description and an abstract.

2. If a date of filing cannot be accorded, the competent authority shall give the applicant an opportunity to correct the deficiencies in accordance with such conditions and within such period as it may fix. If the deficiencies are not remedied in due time, the application shall not be dealt with as a utility model application.

3. The competent authority referred to in paragraph 1 shall not carry out any examination to establish whether the requirements of Articles 5, 6 and 7 have been met.

Article 16

Search report

1. If a utility model application has been accorded a date of filing and is not deemed to have been withdrawn, the competent authority with which the application has been lodged shall, at the request of the applicant or any other interested party and at their own cost, draw up on the basis of the claims a

search report covering the relevant state of the art, with due regard to the description and any drawings.

2. The competent authority with which the application has been lodged may entrust the task of drawing up the search report to any authority which it considers competent to do so.

3. Immediately after it has been drawn up, the search report shall be transmitted to the applicant together with copies of any cited documents. *The search report shall be made available to the public as part of the documentation accompanying the granting of the utility model.*

4. In the provisions which they adopt in order to comply with this Directive, Member States shall provide that a search report is compulsory in the event of legal proceedings being brought to enforce the rights conferred by the utility model, unless it has already been the subject of a previous search report.

Article 17

Priority right

1. Any person who has duly filed an application for a utility model or a patent in or for one of the Member States, such State being a party to the Paris Convention for the Protection of Industrial Property, or his successors in title, shall enjoy, for the purpose of filing a utility model application in respect of the same invention in one or more other Member States a right of priority during a period of twelve months from the date of filing of the first application.

2. Any filing that is equivalent to a regular national filing under the domestic law of the Member State where it was made or under bilateral or multilateral agreements shall be recognised as giving rise to a right of priority.

3. By a regular national filing is meant any filing that is sufficient to establish the date on which the application was filed in the Member State concerned, whatever may be the outcome of the application.

Article 18

Internal priority and transformation

1. Any person who has duly filed a patent application in a Member State shall enjoy a right of priority during a period of twelve months for the purpose of filing a utility model application or changing his patent application into an application for a utility model in the same Member State in respect of the same invention, unless priority has already been claimed for the patent application.

2. The provisions of Article 17(2) and (3) shall apply *mutatis mutandis.*

CHAPTER IV

EFFECTS OF THE UTILITY MODEL

Article 19

Duration of protection

1. The duration of the utility model shall be six years from the date of filing of the application.

2. Six months before the period indicated in paragraph 1 elapses, the right-holder may submit to the competent authority an application for renewal of the utility model for a period of two years. *This renewal shall not be granted unless a request for a search report has been made in respect of the invention concerned.*

3. Six months before the period indicated in paragraph 2 elapses, the right-holder may submit a second and last application for renewal for a maximum period of two years.

4. In no circumstances may utility model protection last for more than ten years from the date of filing of the application.

Article 20

Rights conferred

1. Where the subject-matter of a utility model is a product, the utility model shall confer on its proprietor the right to prevent third parties not having his consent from making, using, offering for sale, selling, or importing for these purposes that product.

2. Where the subject-matter of a utility model is a process, the utility model shall confer on its proprietor the right to prevent third parties not having his consent from using the process and from using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

3. The rights conferred by a utility model in accordance with paragraphs 1 and 2 shall not extend to:

(a) acts done privately and for non-commercial purposes;

(b) acts done for experimental purposes relating to the subject-matter of the protected invention.

4. The proprietor of or applicant for a utility model shall have the right to assign, or transfer, the utility model or application by any legally recognised means and to conclude licensing agreements.

5. Member States may provide limited exceptions to the exclusive rights conferred by a utility model, provided that such exceptions do not unreasonably conflict with a normal exploitation of the utility model and do no unreasonably prejudice the legitimate interests of the proprietor of the utility model, taking account of the interests of third parties.

6. Where the law of a Member State allows for use of the subject-matter of a utility model other than that allowed under paragraph 5 without the authorisation of the right-holder, including use by the government or third parties authorised by the government, the provisions applicable to patents for similar use shall be complied with.

7. The right conferred by the utility model shall take full effect at the time when the grant is published.

Article 21

Community exhaustion of rights

1. The rights conferred by a utility model shall not extend to acts concerning a product covered by that utility model which are done after that product has been put on the market in the Community by the right-holder or with his consent.

2. The rights conferred by a utility model shall, however, extend to acts concerning a product covered by that utility model which are done after that product has been put on the market outside the Community by the right-holder or with his consent.

Article 22

Relationship with other forms of protection

The provisions of this Directive shall be without prejudice to any provisions of Community law or of the law of the Member State concerned relating to design rights, other distinctive signs, copyright, patents, typefaces, topography of semi-conductor products, civil liability or unfair competition.

CHAPTER V

DUAL PROTECTION, LAPSE AND REVOCATION

Article 23

Dual protection

1. The same invention may form the subject-matter, simultaneously or successively, of a patent application and a utility model application.

2. A utility model which has been granted shall be deemed to be ineffective where a patent relating to the same invention has been granted and published.

3. Member States shall take appropriate measures to prevent the proprietor, in the event of his rights being infringed, from instituting successive proceedings under both protection regimes.

Article 24

Lapse

A utility model shall lapse:

(a) at the end of the period laid down in Article 19;

(b) if its proprietor surrenders it;

(c) if the fees referred to in Article 8(2) have not been paid in due time.

Article 25

Revocation

1. An application for revocation of a utility model may be filed only on the grounds that:

(a) the subject-matter of the utility model is not protectable pursuant to Articles 1(1) and 3 to 7 of this Directive;

(b) the utility model does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

(c) the subject-matter of the utility model extends beyond the content of the utility model application as filed;

(d) the protection conferred by the utility model has been extended.

2. If the grounds for revocation affect the utility model only partially, revocation shall be pronounced in the form of a corresponding limitation of the utility model. *If the national law permits, the limitation may be effected in the form of an amendment to the claims, the description or the drawings.*

Article 26

Secondary application

In the absence of specific provisions applicable to utility models, these shall be governed, mutatis mutandis, by the provisions laid down for patents for invention provided they are not incompatible with the specific characteristics of utility models.

CHAPTER VI

FINAL PROVISIONS

Article 27

Transposal

1. *Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than two years after the date of its publication in the Official Journal of the European Communities. They shall immediately inform the Commission thereof.*

   When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.

2. Member States shall inform the Commission of the main provisions of national law which they adopt in the field governed by this Directive.

Article 28

Monitoring of the Directive

Within three years of the deadline for transposal laid down in Article 27, the Commission shall inform the European Parliament and the Council of the results of the application of the Directive and whether it should be adapted in order to safeguard, in the context of utility models, the proper functioning of the internal market and innovation by Community undertakings. It shall also propose any measures it deems necessary to improve it.

Article 29

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 30

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*