

Industrial property: legal protection of designs.

Recast

2022/0392(COD) - 14/03/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 455 votes to 7, with 68 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on the legal protection of designs (recast).

The proposal to recast Directive 98/71/EC of the European Parliament and of the Council aims to ensure that the design protection system is adapted to the digital age (in particular the advent of 3D printers) and becomes significantly more accessible and effective for independent designers, SMEs and industries where designs play a major role, by lowering costs, simplifying procedures, making them faster and more predictable, and increasing legal certainty.

The proposal meets the following objectives:

- modernise and improve the existing provisions of the Directive, by amending obsolete provisions, increasing legal certainty and clarifying the rights associated with designs as regards their scope and limits;
- further align national laws in order to enhance their interoperability and complementarity with the Community design system through new substantive rules and the introduction of basic procedural rules in the Directive in line with those in the Regulation;
- complete the single market in repair spare parts by introducing a repair clause into the directive, similar to that already provided for in the Regulation..

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the proposal as follows:

Right to the registered design

The right to the registered design should vest in the designer or the designer's successor in title. It is stated that the right to the registered design should vest in the employer where a design is developed by an employee in the execution of their duties or following the instructions given by their employer, unless otherwise agreed between the parties concerned or laid down in national law.

Grounds for invalidity

Member States may provide that a design is to be refused registration where the design constitutes an improper use of badges, emblems and escutcheons other than those covered by Article 6ter of the Paris Convention and which are of a particular public interest in the Member State concerned, unless the consent of the competent authority to its registration has been given in conformity with the law of the Member State.

Member States may provide that a design is to be refused registration where it contains a total or partial reproduction of elements belonging to cultural heritage that are of national interest.

Repair clause

An amendment stipulated that the manufacturer or seller of a component part of a complex product should not be required to guarantee that the component parts they make or sell are ultimately used by end users for the sole purpose of repair so as to restore the original appearance of the complex product.

Where on the date of entry into force of this Directive, the national law of a Member State provides protection for designs, the Member State should continue until eight years after the date of entry into force of this Directive to provide that protection for designs for which registration has been applied before the date of entry into force of this Directive.

Application requirements

An application for registration of a design should contain at least all of the following: (a) a request for registration; (b) information identifying the applicant; (c) a sufficiently clear representation of the design which permits the subject matter for which protection is sought to be determined; (d) an indication of the products in which the design is intended to be incorporated or to which it is intended to be applied.

The date of filing of a design application may be accorded where one or more of the elements required by the Directive are missing, provided that the representation of the design as a whole is sufficiently clear.

The request for renewal must be submitted, and the renewal fees paid, within a period of at least six months immediately preceding the expiry of the registration.

The Directive will have to be transposed 36 months after its date of entry into force.