Industrial property: legal protection of designs. Recast

2022/0392(COD) - 18/11/2024 - Final act

PURPOSE: to improve the protection of EU industrial designs.

LEGISLATIVE ACT: Directive (EU) 2024/2823 of the European Parliament and of the Council on the legal protection of designs (recast).

CONTENT: the revised directive on the legal protection of designs and the amended regulation on community designs - update the current design legislation to improve the protection of industrial designs in the era of digital designs and 3D printing.

Objectives

The directive and regulation will make the procedure to register designs at EU level cheaper and easier and will harmonise procedures between European and national systems.

The revised directive 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 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 main elements of the revised directive are:

Protection requirements

Member States will protect designs solely through the registration of those designs, and will confer exclusive rights upon their holders in accordance with this directive. A design will be protected by a design right if it is new and has individual character.

A design applied to or incorporated in a product which constitutes a component part of a complex product will only be considered to be new and to have individual character: (i) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and (ii) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

Term of protection

A design will be registered for a period of **five years** calculated from the date of filing of the application for registration. The right holder may renew the registration, for one or more periods of five years each, up to a total term of protection of 25 years from the date of filing of the application for registration.

Protection will be conferred for those features of appearance of a registered design which are **shown visibly** in the application for registration.

The registration of a design will confer on its holder the exclusive right to use it and to prevent any third party not having the consent of the holder from using it.

Repair clause

The directive introduces a "repair clause" with new rules to exempt from design protection **spare parts** used for the repair of complex products (such as spare parts used in the automobile repair sector) .

The repair clause will not be invoked by the manufacturer or the seller of a component part of a complex product who failed to duly inform consumers, through a clear and visible indication on the product or in another appropriate form, about the **commercial origin**, and the **identity of the manufacturer**, of the product to be used for the purpose of the repair of the complex product, so that they can make an informed choice between competing products that can be used for the repair.

Where on 8 December 2024, the national law of a Member State provides protection for designs, the Member State will continue until **9 December 2032** to provide that protection for designs for which registration has been applied for before 8 December 2024.

Application requirements

An application for registration of a design will contain at least all of the following:

- a request for registration;

- information identifying the applicant;

- a sufficiently clear representation of the design which permits the subject matter for which protection is sought to be determined;

- an indication of the products in which the design is intended to be incorporated or to which it is intended to be applied.

The design will be represented in any form of visual reproduction, either in black and white or in colour. The reproduction may be static, dynamic or animated and will be effected by any appropriate means, using generally available technology, including drawings, photographs, videos, computer imaging or computer modelling. The reproduction will show all the aspects of the design for which protection is sought.

Cultural heritage

The directive prohibits elements of cultural heritage of national interest (for example, the traditional costume of a region) from being protected as private designs. To define the limits of this provision, the directive plans to use the UNESCO definition of "cultural heritage".

Administrative cooperation

The offices are free to cooperate effectively with each other and with the European Union Intellectual Property Office in order to promote convergence of practices and tools in relation to the examination, registration and invalidation of designs.

ENTRY INTO FORCE: 8.12.2024.

TRANSPOSITION: 9.12.2027 at the latest.