Industrial property: legal protection of designs

1993/0464(COD) - 17/06/1997 - Council position

With one important exception, the common position confirmed the approach pursued by the Commission in its proposal, by incorporating, in substance, virtually all the parliamentary amendments accepted by the Commission in its amended proposal. The main changes made by the Council concerned the following points: - Definitions: the common position clarified the definition of 'design', inserting a new recital which states that protection is particularly conferred for those design features of a product which are shown visibly in an application for registration; - Scope: it is stated that the Directive also applies to designs in Member States which do not have a formal registration system but where publication of a design has the effect of protecting it. - Protection requirements: the Council excluded from protection those component parts of a complex product which do not remain visible during normal use; moreover, the reference to the consumer in the definition of 'normal use' is deleted; - Novelty: the common position adopts the principle of relative novelty, so that the European industries to which designs are of concern are protected against legal proceedings seeking a declaration of invalidity of the rights conferred by registration of a design in cases where a previous design exists which is in use in another region of the world but the circles concerned could not reasonably have known of it; - Individual character: the Council accepted Parliament's proposal to lower the threshold for protection by deleting the word 'significantly' after the word 'differs' from the initial proposal. Thus a design is considered to have individual character if the overall impression it produces on the user differs from that produced by any design which has been made available to the public before the date of filing of the application for registration or, if priority is claimed, the date of priority; - Disclosure: the common position also adopts the stance that the disclosure of a registered Community design or a design registered in a Member State as a result of abusive conduct does not prejudice the novelty of the design; - Term of protection: It is stipulated that Member States may opt for a term of protection for designs of 25 years, to be granted on the basis of applications for extensions for one or more periods of five years or a multiple of five years; - Invalidity or refusal of registration: the Council included the grounds for invalidity or refusal which the Commission had inserted in its amended proposal, but in the form of optional rather than compulsory provisions; it rearranged the other grounds for invalidity or refusal and specified who may invoke the various grounds; lastly, it provided for the possibility of registering or maintaining a design in amended form provided that its identity is preserved; - Revision and transposition: five years after the deadline for transposition, the Commission is required to submit an analysis of the consequences of the Directive for Community industry, consumers, competition and the functioning of the internal market, and propose to Parliament and the Council any changes to the Directive which may be needed. The deadline for transposition is three years after the date of publication in the Official Journal. It is important to note that, at the stage which discussions have currently reached, the Council has not been able to reach agreement on the repair clause, which concerns the use of protected designs for the purpose of permitting the repair of a complex product so as to restore its original appearance (particularly components used in repairing motor vehicles). In order to avoid any delay, the Council accepted a solution whereby Member States may retain or introduce provisions regarding the use of a protected design concerning components of complex products. At the end of a period of five years after the date of transposition of the Directive, the Commission is to submit an analysis of the consequences of these provisions and propose any amendments which may be needed to complete the internal market with regard to the use of these components. Lastly, the Council and Commission agreed on the following statement concerning the relationship between the Directive and the proposal for a Regulation on the Community design: 'the Council and the Commission, at the time of the adoption of the Council's common position on the proposal for a Directive on the legal protection of designs, reaffirm the objective that this proposal and the proposal for a Regulation on the Community design should in principle be adopted simultaneously or, if this should prove difficult, to keep as short as possible the time between the final adoption of the two instruments.'