

| Basic information | |
|---|---------------------|
| 1993/0463(CNS) CNS - Consultation procedure Regulation | Procedure completed |
| Industrial property: protection of Community design Amended by 2005/0274(CNS) Amended by 2022/0391(COD) Subject 3.50.16 Industrial property, European patent, Community patent, design and pattern | |

| Key players | | | | |
|-------------------------------|---|--|---|------------------|
| European Parliament | Committee responsible | | Rapporteur | Appointed |
| | JURI | Legal Affairs and Internal Market | FERRI Enrico (PPE-DE) | 23/09/1999 |
| | Committee for opinion | | Rapporteur for opinion | Appointed |
| | ECON | Economic and Monetary Affairs | GASÒLIBA I BÖHM Carles-Alfred (LDR) | 26/01/1994 |
| | ITRE | Industry, External Trade, Research, Energy | The committee decided not to give an opinion. | |
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| Council of the European Union | Council configuration | | Meetings | Date |
| | Competitiveness (Internal Market, Industry, Research and Space) | | 2163 | 1999-02-25 |
| | Competitiveness (Internal Market, Industry, Research and Space) | | 2248 | 2000-03-16 |
| | Competitiveness (Internal Market, Industry, Research and Space) | | 2265 | 2000-05-25 |
| | Competitiveness (Internal Market, Industry, Research and Space) | | 1851 | 1995-06-06 |
| | Competitiveness (Internal Market, Industry, Research and Space) | | 2371 | 2001-09-27 |
| | Competitiveness (Internal Market, Industry, Research and Space) | | 1886 | 1995-11-23 |
| | Transport, Telecommunications and Energy | | 1937 | 1996-06-18 |
| | Environment | | 2399 | 2001-12-12 |

| Key events | | | |
|------------|-------|-----------|---------|
| Date | Event | Reference | Summary |
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|------------|---|--|-------------------------|
| 03/12/1993 | Initial legislative proposal published | COM(1993)0342  | Summary |
| 06/06/1995 | Debate in Council | | |
| 23/11/1995 | Debate in Council | | |
| 18/06/1996 | Debate in Council | | |
| 25/02/1999 | Debate in Council | | |
| 21/06/1999 | Legislative proposal published | COM(1999)0310  | Summary |
| 13/09/1999 | Committee referral announced in Parliament | | |
| 16/03/2000 | Debate in Council | | |
| 25/05/2000 | Debate in Council | | |
| 25/05/2000 | Vote in committee | | Summary |
| 25/05/2000 | Committee report tabled for plenary, 1st reading/single reading | A5-0150/2000 | |
| 16/06/2000 | Decision by Parliament | T5-0288/2000 | Summary |
| 16/06/2000 | Debate in Parliament |  | |
| 20/10/2000 | Modified legislative proposal published | COM(2000)0660  | Summary |
| 30/11/2000 | Debate in Council | | |
| 12/12/2001 | Act adopted by Council after consultation of Parliament | | |
| 12/12/2001 | End of procedure in Parliament | | |
| 05/01/2002 | Final act published in Official Journal | | |

| Technical information | |
|-----------------------------------|--|
| Procedure reference | 1993/0463(CNS) |
| Procedure type | CNS - Consultation procedure |
| Procedure subtype | Legislation |
| Legislative instrument | Regulation |
| Amendments and repeals | Amended by 2005/0274(CNS) Amended by 2022/0391(COD) |
| Legal basis | EC Treaty (after Amsterdam) EC 308 |
| Stage reached in procedure | Procedure completed |
| Committee dossier | JURI/3/05133 |

| Documentation gateway | | | | |
|---|-----------|--|------------|---------|
| European Parliament | | | | |
| Document type | Committee | Reference | Date | Summary |
| Committee report tabled for plenary, 1st reading/single reading | | A5-0150/2000 OJ C 067 01.03.2001, p. 0010 | 25/05/2000 | |

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| Text adopted by Parliament, 1st reading/single reading | T5-0288/2000 OJ C 067 01.03.2001, p. 0318-0338 | 16/06/2000 | Summary |
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European Commission

| Document type | Reference | Date | Summary |
|-------------------------------|--|------------|---------|
| Initial legislative proposal | COM(1993)0342  OJ C 029 31.01.1994, p. 0020 | 03/12/1993 | Summary |
| Legislative proposal | COM(1999)0310  OJ C 248 29.08.2000, p. 0003 E | 21/06/1999 | Summary |
| Modified legislative proposal | COM(2000)0660  OJ C 062 27.02.2001, p. 0173 E | 20/10/2000 | Summary |

Other institutions and bodies

| Institution/body | Document type | Reference | Date | Summary |
|------------------|--|---|------------|---------|
| EESC | Economic and Social Committee: opinion, report | CES0849/1994 OJ C 388 31.12.1994, p. 0009 | 06/07/1994 | Summary |
| EESC | Economic and Social Committee: opinion, report | CES0187/1995 OJ C 110 02.05.1995, p. 0012 | 22/02/1995 | Summary |
| EESC | Economic and Social Committee: opinion, report | CES0092/2000 OJ C 075 15.03.2000, p. 0035 | 27/01/2000 | |
| EU | Implementing legislative act | 32002R2245 OJ L 341 17.12.2002, p. 0028-0053 | 21/10/2002 | Summary |

Additional information

| Source | Document | Date |
|---------------------|----------|------|
| European Commission | EUR-Lex | |

Final act

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| Regulation 2002/0006 OJ L 003 05.01.2002, p. 0001-0024 | Summary |
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Industrial property: protection of Community design

1993/0463(CNS) - 06/07/1994

Industrial property: protection of Community design

1993/0463(CNS) - 12/12/2001 - Final act

PURPOSE : to protect Community designs in the European Union. **COMMUNITY MEASURE :** Council Regulation 6/2002/EC on Community designs. **CONTENT :** a unified system for obtaining a Community design to which uniform protection is given with uniform effect throughout the entire territory of the Community would further the objectives of the Community as laid down in the Treaty. Only the Benelux countries have introduced a uniform design protection law. In all other Member States the protection of designs is a matter for the relevant national law and is confined to the territory of the Member State concerned. Identical designs may be therefore protected differently in different Member States and for the benefit of different owners. This inevitably leads to conflicts in the course of trade between Member States. The substantial differences between Member States' design laws prevent and distort Community-wide competition. This Regulation introducing legal protection for designs, basically aligned on the substantive provisions of Directive 98/71/EC, is intended to display uniform effect throughout the entire territory of the Community. It provides for both registered and unregistered designs. Registered designs will be managed by the Office for Harmonisation in the Internal Market (Trademarks and Designs) in Alicante. With regard to the requirements for protection, a design shall be protected by a Community design to the extent that 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 shall only be considered to be new and to have individual character: - if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and - to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character. As regards the commencement and the term of protection of the registered Community design, upon registration by the Office, a design which meets the requirements under Section 1 (requirements for protection) shall be protected by a registered Community design for a period of 5 years as from the date of the filing of the application. The right holder may have the term of protection renewed for one or more periods of 5 years each, up to a total term of 25 years from the date of filing. **ENTRY INTO FORCE :** this Regulation shall enter into force on 06.03.2002. Applications for registered Community designs may be filed at the Office from the date fixed by the Administrative Board on the recommendation of the President of the Office.

Industrial property: protection of Community design

1993/0463(CNS) - 21/10/2002 - Implementing legislative act

COMMUNITY MEASURE : Commission Regulation 2245/2002/EC implementing Council Regulation 6/2002/EC on Community designs. **CONTENT :** Regulation 6/2002/EC creates a system enabling a design having effect throughout the Community to be obtained on the basis of an application to the Office for Harmonisation in the Internal Market (trade marks and designs). It contains the necessary provisions for a procedure leading to the registration of a Community design, as well as for the administration of registered Community designs, for appeals against decision of the Office and for proceedings for the invalidation of a Community design. This Regulation lays down the necessary measures for implementing the provisions of Regulation 6/2002/EC. It should ensure the smooth and efficient operation of design proceedings before the Office. **ENTRY INTO FORCE :** 24/12/2002.

Industrial property: protection of Community design

1993/0463(CNS) - 21/06/1999 - Legislative proposal

The Commission presented a new modified proposal on 21 June 1999, based on Article 308 of the EC Treaty, in order to give effect to a Court of Justice opinion (opinion 1/94 of 15/11/1994), as well as to a request made by the Committee on Legal Affairs and Citizens' Rights of the European Parliament on 27/11/1997 to change the legal base of its proposal. The Court of Justice's opinion 1/94 ruled that the Community, in creating a new and unitary Community design right through a Regulation, use the same legal basis as for the Regulation on the Community trade mark, i.e. Article 308 of the Treaty. The Commission's initial proposal had been based on Article 95 of the Treaty. Furthermore, the amended proposal includes all the relevant provisions on substantive design law, which are incorporated in the Design Directive. On certain issues, these provisions differ from the provisions on substantive design law, which were included in the Commission's initial proposal for the Regulation on Community Design. The reason is that the provisions in the Commission's initial proposal for the Regulation incorporated the substantive provisions of the Commission's initial proposal for the Directive. Certain relevant provisions of the Directive focused in particular on the free use of spare parts for repair purposes and the protection of their design. In design terms, the problem related in particular to component parts of complex products upon whose appearance the design is dependent. In such cases, the consumer would not have any choice as to the replacement of the spare part to permit the repair of the complex product so as to restore its original appearance. The so-called 'repair' clause should avoid the creation of captive markets in spare parts, in particular in the motor vehicle sector. After lengthy and complex discussions, the Conciliation Committee finally reached an agreement which is often referred to as the 'freeze plus' compromise. The compromise implies that Member States shall maintain in force their existing legal provisions relating to the use of spare parts for the purpose of repair and shall introduce changes to those provisions only if the purpose is to liberalise the market for such parts. The Commission undertook to submit an analysis of the consequences of the Directive 3 years after the implementation date of the Directive and to propose, at latest one year later, any changes to the Directive needed to complete the internal market in respect of spare parts. The Commission also undertook to launch a consultation exercise, immediately after the adoption of the Directive, involving the parties most concerned, and with a view to arriving at a voluntary agreement among these parties on the free use of spare parts for repair purposes and their protection. The consultation exercise has in the meantime been initiated. Given that full harmonisation of the design laws of the Member States on the spare parts issue could not yet be introduced, at the present stage, it does not seem either appropriate or realistic to expect that such harmonisation could be achieved through this Regulation. It would not be appropriate because the Commission has only just started the consultations with the parties most concerned with the spare parts issue, in accordance with the commitment which it undertook vis-à-vis the Council and the Parliament. Under these circumstances, it would be preferable to await the outcome of these consultations and, subsequently, the review of the consequences of the Directive for, in particular, the spare parts sector before presenting any proposals on the free use of spare parts and the protection of their design, within the context of this Regulation. Nor would it be realistic to expect at this stage, and under the circumstances described above, a concrete solution with regard to the use and protection of the design of spare parts can be found within the framework of this Regulation. For these reasons, the amended proposal excludes, for the time being, the registration of the design of a component part of a complex product upon whose appearance the design of a component part is dependent. A proposal with regard to the use and protection of spare parts under this Regulation, shall be submitted by the Commission in parallel with the proposal which the Commission shall make to complete the internal market in respect of spare parts within the framework of the Design Directive. It should be stressed

that the suggested approach does not deprive the designers of spare parts from the filing of applications for the registration of their design in all circumstances. First, spare parts, the design of which is not dependent on the appearance of the complex product can be filed for registration, if they fulfil the conditions set out in Art. 4 of this Regulation. Second, where the design of a given spare part cannot be registered as a Community design, pursuant to Art. 10a, applications for the registration of such design may be filed in those Member States, which continue to provide such possibility, in accordance with Art. 14 of the Directive. To summarise, the proposed Regulation would: - define what constitutes a 'design', - establish criteria for protection (a design would have to be new and have individual character), - fix the duration protection (minimum of 5 years and maximum of 25 years), - fix the scope of protection (the designer would have the exclusive right to use the design and prevent any third party from using it); - establish limits to the design right (e.g. it would not normally cover inter-connections between components), - establish rules on the nullity of the registration of a design, - provide that Community protection of designs would co-exist with existing Member State systems for protecting designs, including under copyright, trade mark or patent law, and with the Community Trade Mark.

Industrial property: protection of Community design

1993/0463(CNS) - 22/02/1995

This additional opinion covered all of the other questions raised by the Commission and put forward the following recommendations: - it was important to check whether the general requirements set out in the regulation were compatible with Article 25 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, including trade in counterfeit goods; - the date and geographical scope of a design made available to the public should be clearly identified; - the holder of an unregistered Community design should be required to provide details of the reference date, from which protection was effective; - the provision empowering the holder of an unregistered design to prevent any third party from using an identical design resulting from 'copying' was only acceptable if the burden of proof was reversed; - consideration should be given to granting all the rights conferred by registered designs even in the case of registration of a design with deferred publication; - one provision established presumption of validity in that a Community design was to be considered new within the meaning of Article 5 provided the holder submitted evidence of its individual character. It was practically impossible to satisfy this requirement as the proposed provisions constituted a reversal of the burden of proof against the defendant counterclaimant, i.e. the possible counterfeiter, rather than the right holder; - a supplementary provision should be inserted, allowing the holder of a design to initiate an action to seek information before the Community Design Court, as was possible under German law, enabling the holder to secure information of value in identifying the source of the copy, in other words the element of intent.

Industrial property: protection of Community design

1993/0463(CNS) - 03/12/1993 - Initial legislative proposal

OBJECTIVE: to establish a Community system for the protection of designs in order to eliminate the present need to carry out national registrations under different national procedures within the Community. CONTENT 1. This regulation made it possible to establish a right in a design which would be valid throughout the Community. As with trade marks, this Community system would co-exist at least temporarily with national protection systems which would themselves be harmonised to a large degree. 2. The regulation provided for two forms of protection: *without any formalities, as an 'unregistered Community design'; * as a 'registered Community design', if it was registered at the Community Design Office. 3. Definition of 'design' within the meaning of the regulation. Definition of cases of exemption from protection, for example designs whose publication is contrary to public policy. 4. In order to be able to enjoy protection, a design had to be new and have an individual character. 5. Statement of the term and scope of protection, drawing a distinction depending on whether or not the design was registered. The former was protected for a minimum term of five years and a maximum term of twenty-five, and the protection conferred on its holder both the right to prevent its use by third parties and the exclusive right to use the design. The latter granted protection against copying for three years and accorded the exclusive right to prevent use by third parties. 6. Limitation et exhaustion of rights conferred by the Community design. These did not extend, for example, to acts done for experimental purposes. 7. Rules on invalidity of designs. Conditions, grounds and effects of invalidity. Rules on surrender of a registered design. 8. Rules on ownership of Community designs: criteria for connection to the Member State of registration comparable to national designs, transfer, rights in rem (security etc) in a design, levy of execution, bankruptcy, licensing and effects vis-à-vis third parties (possibilities of asserting rights vis-à-vis third parties). 9. Rules governing the application for registration: filing of application and forwarding to the Office, conditions with which applications must comply, date of filing and rules governing right of priority. 10. Rules governing the registration procedure: examination of compliance of the application with formal requirements, registration and publication. 11. Appeals from the decisions of the Office: decisions subject to appeal, persons entitled to appeal, time-limit and form of appeal etc. 12. Procedure before the Office: obligation to state reasons and to give notification of decisions, exchange of publications with central industrial property services etc. 13. Jurisdiction and procedure in legal actions relating to Community designs. 14. Community Design Office: organisation, management, distribution of powers within the Office etc. Source : European Commission - Info92 08/95

Industrial property: protection of Community design

1993/0463(CNS) - 16/06/2000 - Text adopted by Parliament, 1st reading/single reading

In adopting the report drafted by Mr. Enrico FERRI (EPP/ED, It), the European Parliament accepts the amended proposal for a Council Regulation on Community design with a number of amendments. The amendments were aimed inter alia at making drafting amendments and ensuring consistency between the regulation and Directive 98/71/EC on the legal protection of designs. Furthermore, new provisions were included, one concerning the right to information on the origin and marketing of counterfeit products, to enable a design holder to trace operators and prevent copying, and the other on establishing recognition of ownership. Furthermore, the word "orders" in amendment 19 shall be replaced by the word "decision".

Industrial property: protection of Community design

This document presents the amended proposal for a Council Regulation on Community Design, in response to the amendments tabled by the European Parliament. Recommendations contained in 13 amendments tabled by the European Parliament were taken on board by the Commission in its amended proposal. Certain other amendments which were not strictly in accordance with what has been agreed in the context of the Design Directive in 1998, have not been adopted by the Commission. The main amendments accepted by the Commission are the following: - deletion of the reference to "bad faith" principle contained in Article 20(2); - clarifications as regards the commencement and term of protection (Article 12), the claims relating to the entitlement to an unregistered Community design (Article 16) and the presumption of validity of an unregistered Community design (Article 89); - deletion of Article 27(5) referring to the unitary nature of the Community design; - deletion of reference to the establishment of a Community authority with Community powers; - deletion of paragraph which constituted an exception to the unitary character of the Community design; - amendment of Article relating to presumption of validity and defence as to its merits.