

Basic information	
1993/0464(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Industrial property: legal protection of designs Repealed by 2022/0392(COD) Subject 3.50.16 Industrial property, European patent, Community patent, design and pattern	

Key players			
European Parliament	Former committee responsible		Former rapporteur
	JURI Legal Affairs, Citizens' Rights		MEDINA ORTEGA Manuel (PSE)
Council of the European Union	Council configuration		Meetings
	Competitiveness (Internal Market, Industry, Research and Space)		2117
	Competitiveness (Internal Market, Industry, Research and Space)		1970
	Competitiveness (Internal Market, Industry, Research and Space)		1886
	Competitiveness (Internal Market, Industry, Research and Space)		1993
	Transport, Telecommunications and Energy		2016
	Transport, Telecommunications and Energy		1937
	Fisheries		2063
			Date
		1998-09-24	
		1996-11-26	
		1995-11-23	
		1997-03-13	
		1997-06-17	
		1996-06-18	
		1997-12-18	

Key events			
Date	Event	Reference	Summary
03/12/1993	Legislative proposal published	COM(1993)0344 	Summary
17/12/1993	Committee referral announced in Parliament, 1st reading		
28/09/1995	Vote in committee, 1st reading		Summary
28/09/1995	Committee report tabled for plenary, 1st reading	A4-0227/1995	
11/10/1995	Debate in Parliament		
23/11/1995	Debate in Council		
21/02/1996	Modified legislative proposal published	COM(1996)0066 	Summary

18/06/1996	Debate in Council		
26/11/1996	Debate in Council		Summary
17/06/1997	Council position published	06713/1/1997	Summary
26/06/1997	Committee referral announced in Parliament, 2nd reading		
14/10/1997	Vote in committee, 2nd reading		Summary
14/10/1997	Committee recommendation tabled for plenary, 2nd reading	A4-0319/1997	
20/10/1997	Debate in Parliament		Summary
18/12/1997	Parliament's amendments rejected by Council		
02/06/1998	Formal meeting of Conciliation Committee		
24/06/1998	Final decision by Conciliation Committee		Summary
29/07/1998	Joint text approved by Conciliation Committee co-chairs	3621/1998	
10/09/1998	Report tabled for plenary, 3rd reading	A4-0315/1998	
14/09/1998	Debate in Parliament		
24/09/1998	Decision by Council, 3rd reading		
13/10/1998	Final act signed		
13/10/1998	End of procedure in Parliament		
28/10/1998	Final act published in Official Journal		

Technical information	
Procedure reference	1993/0464(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealed by 2022/0392(COD)
Legal basis	EC Treaty (before Amsterdam) E 100A
Stage reached in procedure	Procedure completed
Committee dossier	CODE/4/09627

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A4-0227/1995 OJ C 287 30.10.1995, p. 0005	28/09/1995	
Text adopted by Parliament, 1st reading/single reading		T4-0457/1995 OJ C 287 30.10.1995, p. 0148-0157	12/10/1995	Summary
Committee recommendation tabled for plenary, 2nd reading		A4-0319/1997 OJ C 339 10.11.1997, p. 0007	14/10/1997	

Text adopted by Parliament, 2nd reading		T4-0487/1997 OJ C 339 10.11.1997, p. 0045-0052	22/10/1997	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A4-0315/1998 OJ C 313 12.10.1998, p. 0010	10/09/1998	
Text adopted by Parliament, 3rd reading		T4-0462/1998 OJ C 313 12.10.1998, p. 0022-0029	15/09/1998	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	06713/1/1997 OJ C 237 04.08.1997, p. 0001	17/06/1997	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1993)0344  OJ C 345 23.12.1993, p. 0014	03/12/1993	Summary
Modified legislative proposal	COM(1996)0066  OJ C 142 14.05.1996, p. 0007	21/02/1996	Summary
Commission communication on Council's position	SEC(1997)1107 	19/06/1997	Summary
Commission opinion on Parliament's position at 2nd reading	COM(1997)0622 	21/11/1997	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
CSL/EP	Joint text approved by Conciliation Committee co-chairs	3621/1998	29/07/1998	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Industrial property: legal protection of designs

1993/0464(COD) - 06/07/1994 - Economic and Social Committee: opinion, report

Industrial property: legal protection of designs

1993/0464(COD) - 19/06/1997 - Commission communication on Council's position

The European Commission considers that the adoption of this common position constitutes important progress towards the provision of effective legal protection for industrial designs and models throughout the European Union. However, it regrets that the common position does not allow the single market to be fully achieved in respect of spare parts owing to the rejection of the "repairs clause". In this respect the Commission has expressed its regrets in a statement which has been included in the minutes of the Council. On the same subject, it is helpful to recall that the Commission has, without success, proposed alternative solutions to Article 14 of its amended proposal, these mainly concerning transitional periods for the transposition of the repairs clause into national law. However, due to lack of a sufficient majority in the Council, these solutions could not be adopted. Nevertheless, the Commission considers that the Council has partly responded to the concerns of Parliament and the Commission on this precise point by excluding from protection, for example, those component parts which do not remain visible during normal use (such as oil filters, fan belts and other motor parts). Furthermore, the common position sets a relatively high protection threshold for designs and models (criteria on "novelty" and "individual character") such that certain motor vehicle parts which remain visible when the vehicle is in normal use could be excluded from the protection granted to designs and models. As far as the "status quo clause" is concerned, the Commission considers that this does not express fully and correctly the objectives of the Council, namely to maintain the status quo for Member States in respect of the protection and use of spare parts (for vehicle repair purposes). This clause should therefore be improved. The Commission will continue to explore, along with all the institutions concerned, the possibilities of finding a better solution, within the scope of this Directive, to the problems of the protection and use of spare parts.

Industrial property: legal protection of designs

1993/0464(COD) - 22/02/1995 - Economic and Social Committee: opinion, report

This additional opinion covered all of the other questions raised by the Commission. In particular, a number of articles could be worded better to avoid problems of interpretation. The Committee also made 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' on which a design was made available to the public should be more definite and its geographical scope identified; - since it was difficult to determine the reference date indicating the duration of protection, it was suggested that the holder of an unregistered Community design should be required to communicate the date from which protection was effective; - one article empowered the holder of an unregistered design to prevent any third party from using an identical design resulting from 'copying'. This provision was only acceptable if the burden of proof was reversed; - registration of designs with deferred publication was of interest. 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; - provision was made for a

Community Design Court

to enjoin a counterfeiter to provide information on the origin of counterfeit products. A supplementary provision should be inserted, allowing the holder of a registered or unregistered design to initiate an action to seek information, independently of any action concerning the counterfeit, as was possible under German law. This would enable the holder to secure information of value in identifying the source of the copy, in other words the element of intent.

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.'

Industrial property: legal protection of designs

1993/0464(COD) - 26/11/1996

The Council had held an in-depth debate on the proposal for a directive. Significant progress had been made on the basis of a proposal for an overall compromise text put forward by the presidency. However, it had not been possible to find a solution to the most controversial problem, namely the so-called repairs clause. While all the Member States would have been capable of accepting the presidency compromise text as part of an overall package – the content of the agreement being to defer temporarily any relevant harmonisation of national legislation – the Commission was not to be won over, given that this solution was fundamentally out of line with its amended proposal, as based on an amendment tabled by Parliament. In the light of the position adopted by the Commission with respect to this clause, unanimous agreement by the Member States on the overall compromise text would have been necessary in order to adopt a common position. This unanimity had not been possible, given that one Member State had been unable to accept another aspect of the overall compromise, namely the exhaustion of rights. The presidency therefore recorded that no common position could be agreed on at that particular juncture, while at the same time keeping its proposal for an overall compromise on the table.

Industrial property: legal protection of designs

1993/0464(COD) - 15/09/1998 - Text adopted by Parliament, 3rd reading

Adopting the report by Mr Manuel MEDINA ORTEGA (PSE, E), the European Parliament approved the joint proposal agreed between the European Parliament and the Council on 24 June 1998. The compromise approved by plenary primarily concerns article 14 of the directive relating to the 'repairs clause', i.e. the conditions subject to which car garages and workshops may carry out repairs (using spare parts supplied by the manufacturer or manufactured by third parties). The solution which the negotiators worked out was to have a 'stand still', i.e. to freeze the existing legislative situation in each Member State while allowing any State to liberalise the market further. No obstacle will be allowed to the free movement of the parts in question. The Council therefore abandoned its position of seeking a 'free for all', i.e. allowing Member States carte blanche to introduce or change national legal provisions. For its part, Parliament made concessions as regards a totally harmonised system of fair and reasonable remuneration for right holders for any use of the design or model of a component part which is used in the repair of a complex product. The other point at issue was the method to be used by the Commission to assess the consequences of the directive after its entry into force (article 18). Parliament wished to have a provision included in the text requiring the Commission to consult manufacturers of original parts and spare parts with the aim of arriving at a voluntary agreement between the parties on a system of fair and reasonable remuneration. Parliament finally accepted the Council's request that this provision should not be incorporated into the text after receiving assurances from Commissioner Mario MONTI that the Commission would issue a declaration which referred to consultation and which would also be printed in the Official Journal along with the text of the directive. The results of consultation should be presented within 3 years of the deadline for the transposition of the directive into national law and should allow the European Commission to present any changes needed in order to complete the internal market in this area a year later (i.e. within 7 years).

Industrial property: legal protection of designs

1993/0464(COD) - 22/10/1997 - Text adopted by Parliament, 2nd reading

OBJECTIVE. Adopting the recommendation for second reading by Mr Manuel MEDINA ORTEGA (Soc, E) the European Parliament reintroduced the 'repair clause' regarding automobile components in the directive on the legal protection of designs. This clause seeks to facilitate repair of a complex product (automobile or motorcycle) using a component manufactured by the repairer or a third party on the model of the original component while informing the public and the holder of the design right who should receive fair remuneration. It should be remembered that, in calculating the

remuneration, account must be taken principally of the investment necessary to produce the design in question. In addition, a third party should not be entitled to use the design if the right holder produces evidence to sustain a claim that the party on whom the obligations are incumbent is unable or unwilling to comply with them or to pay the remuneration offered by him.

Industrial property: legal protection of designs

1993/0464(COD) - 13/03/1997

The Council recorded its unanimous political agreement on a Presidency overall compromise text on the proposal for a Directive on the legal protection of designs. The Council was not able to reach agreement at this stage on the "repair clause", which concerns the use of protected designs for the purpose of permitting the repair of complex product so as to restore its original appearance (in particular spare parts for repairing motor vehicles). Anxious that this issue, which concerns a specific sector of industry should not delay approximation of other provisions on which agreement has been reached, the Council has agreed a solution which postpones for a five-year transitional period the approximation of provisions concerning the use of such parts of complex products. At the end of this transitional period, the Commission is to submit an analysis of the consequences of the provisions of the Directive and propose any changes needed to complete the internal market in respect of use of such parts. The Council also endorsed a statement by the Council and the Commission on the relationship between the Directive and the proposal for a Regulation on the Community design, with a view to its being entered in the minutes of the Council session at which the common position will be formally adopted : "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 the proposals for a Directive and the 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 adoption of the two instruments".

Industrial property: legal protection of designs

1993/0464(COD) - 13/10/1998 - Final act

PURPOSE : provide effective legal protection of industrial designs and models in the Member States of the Community, reduce legal obstacles to the free movement of goods embodying designs, and ensure that any differences in the legal protection of designs between Member States that can distort competition within the internal market disappear. COMMUNITY MEASURE : Directive 98/71/EC of the European Parliament and of the Council on the legal protection of designs. CONTENT : The Directive approximates national provisions of design law which most directly affect the functioning of the internal market : these provisions concern, in particular, the definition of a design, protection requirements, scope of protection, term of protection, grounds for invalidity or refusal of protection, and rights conferred by the design right. It applies to a broad range of products including jewellery, machinery, tools, electronic equipment, consumer electronics, cars and their components, yachts, furniture and sports equipment. Member States will be allowed to maintain in force or to introduce any provisions affecting the use of a protected part for those purposes. The revision of the Directive consists of two elements : 1) A consultation exercise - Upon the adoption of the Directive, the Commission is to launch a consultation exercise involving manufacturers both of complex products and of component parts in the motor vehicle sector. The aim of this consultation is to arrive at a voluntary agreement, which can take effect between the parties involved, on the protection of designs in cases where the product incorporating the design or to which the design is applied constitutes a component part of a complex product upon whose appearance the protected design is dependent. - The Commission is to co-ordinate the consultation exercise and shall report regularly to the Parliament and the Council on its progress. The consulted parties shall be invited by the Commission to consider a range of possible options on which to base a voluntary agreement, including a remuneration system and a system based on a limited period of design protection. 2) An analysis of the consequences of the provisions of this Directive, eventually followed by proposals. - Three years after the implementation date (28/10/2001), the Commission shall submit an analysis of the consequences of the provisions of the Directive for Community industry, in particular, the industrial sectors which are most affected, particularly the manufacturers of complex products and component parts, for consumers, for competition and for the functioning of the single market. At the latest one year later, the Commission shall propose to the European Parliament and the Council any changes to this Directive needed to complete the internal market in respect of component parts of complex products and any other changes which it considers necessary, including appropriate changes to take account of any voluntary agreements concluded. ENTRY INTO FORCE : 17/11/1998. DEADLINE FOR TRANSPOSITION : 28/10/2001.

Industrial property: legal protection of designs

1993/0464(COD) - 21/11/1997 - Commission opinion on Parliament's position at 2nd reading

The Commission's opinion accepted Parliament's amendments which sought to : - specify that the individual character of a design or model should be based on whether there is an overall different impression (and not a clear overall different impression) between it and a previous design or model; - limit the protection of component parts of complex products to those parts which remain visible during normal use of the latter; - interpret the concept of 'normal use' restrictively: it should cover use by the final user, except for maintenance, service or repair; - clarify that the total term of protection for designs is 25 years from the date of filing; - re-introduce the repair clause; - provide for the free movement of component parts which are commercialised pursuant to the repair clause.

Industrial property: legal protection of designs

1993/0464(COD) - 12/10/1995 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the report by Mr Manuel MEDINA ORTEGA (PSE, E), with amendments relating mainly to technical aspects of the proposal for a directive. These concerned, in particular, the conditions under which a product that is a component part of a complex product may enjoy legal protection as a design or model, the rights and obligations relating to information, and an analysis by the Commission, after the entry into force of the legislation, of the consequences of these provisions on those sections of industry that are most affected.

Industrial property: legal protection of designs

1993/0464(COD) - 03/12/1993 - Legislative proposal

The proposal for a directive aims to provide effective legal protection for designs or industrial models in the Community Member States. It seeks to reduce the legal obstacles to freedom of movement for design goods and to establish a system of undistorted competition in the internal market. The directive complements the proposal for a regulation to establish a Community protection system and is applicable to registered designs or models or to registration applications. It should make it possible to harmonise the characteristics needed for specific national protection and Community protection of designs and models to coexist. These lie in the definition of 'design or model', the requirement for obtaining protection including the grounds for exclusion, non-prejudicial disclosures as to the individual character and novelty of the design or model, the scope and term of protection, the grounds for refusal or invalidity, the definition of the rights conferred by the design or model including their limitations and exhaustion of rights.

Industrial property: legal protection of designs

1993/0464(COD) - 21/02/1996 - Modified legislative proposal

The amended Commission proposal incorporates all the European Parliament amendments except the one concerning the insertion of the concept of a legal presumption of novelty in infringement proceedings brought before national courts. The main changes made by the Commission in the light of the amendments tabled by the European Parliament serve to: - state that the design or model for which protection is sought must mean the 'outwardly visible appearance'; in addition, the word 'texture' adds a dimension to the design or model; - clarify that the scope of the Directive also includes designs and models in Member States which have no system of official registration but grant protection after the design or model concerned has been filed and officially published; - add a further condition to protect the components of complex products: the visible features of the components of a complex product can only as such be afforded protection if the component part remains visible during normal use of the complex product; - define the concept of 'normal use'; - define the individual character of a design or model, lowering the 'threshold' of protection; - limit the guiding principles intended to assist national courts in judging the individual character of a design or model to that which relates to the freedom of the designer; - add a 'safeguard clause' with a view to protecting the designs and models sector from any applications for revocation which might be filed on the grounds that an earlier design or model exists which is used in another part of the world, although the European sectors involved could not have been aware of this; - give more details of the case where disclosure of the design is the result of abusive conduct; - clarify the provisions regarding designs and models dictated by their technical function and designs of interconnections: protection should not be granted where the form is dictated by function; clearer definition of the 'must fit' clause; - state that it is the design or model per se which may be contrary to public order or morality, and not its use or publication; - state that protection extends to cover any design or model which does not produce on the informed user a different overall impression (instead of a significantly similar overall visual impression); - add several reasons for invalidity in order to enable infringing registrations to be removed from the registers of designs and models; - as regards the provisions of the 'repair clause': abolition of the three-year period for freedom of reproduction and introduction of a remuneration system taking effect on the date of registration of the design or model; addition of an obligation whereby the third party concerned must offer to supply the right-holder with the information needed to determine the level of remuneration in a fair and reasonable manner; when component parts falling within the scope of the 'repair clause' are produced outside the EC and then imported, remuneration is paid by the importer; addition of guiding principles to ensure that the system of remuneration works in the same way throughout the EC; details regarding the bases on which to calculate the level of remuneration; possibility for a right-holder to bring infringement actions provided for under national law; analysis of application of the 'repair clause' five years after the directive enters into force; - add a new article concerning the right to information: when interim or interim protective measures are ordered information can be requested before a final decision has been reached in infringement proceedings. No-one can be forced to give information which could subsequently be used against them; - put back the date for transposition of the directive to 1 January 1998.