

Procedure file

Basic information		
CNS - Consultation procedure Regulation	1993/0463(CNS)	Procedure completed
Industrial property: protection of Community design		
Amended by 2005/0274(CNS)		
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		23/09/1999
		PPE-DE FERRI Enrico	
European Parliament	Committee for opinion	Rapporteur for opinion	Appointed
	ECON Economic and Monetary Affairs		26/01/1994
		LDR GASÒLIBA I BÖHM Carles-Alfred	
	ITRE Industry, External Trade, Research, Energy	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	Environment	2399	12/12/2001
	Competitiveness (Internal Market, Industry, Research and Space)	2371	27/09/2001
	Competitiveness (Internal Market, Industry, Research and Space)	2265	25/05/2000
	Competitiveness (Internal Market, Industry, Research and Space)	2248	16/03/2000
	Competitiveness (Internal Market, Industry, Research and Space)	2163	25/02/1999
	Transport, Telecommunications and Energy	1937	18/06/1996
	Competitiveness (Internal Market, Industry, Research and Space)	1886	23/11/1995
	Competitiveness (Internal Market, Industry, Research and Space)	1851	06/06/1995

Key events			
03/12/1993	Initial legislative proposal published	COM(1993)0342	Summary
06/06/1995	Debate in Council	1851	

23/11/1995	Debate in Council	1886	Summary
18/06/1996	Debate in Council	1937	
25/02/1999	Debate in Council	2163	
21/06/1999	Legislative proposal published	COM(1999)0310	Summary
13/09/1999	Committee referral announced in Parliament		
16/03/2000	Debate in Council	2248	
25/05/2000	Debate in Council	2265	Summary
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	Debate in Parliament		
16/06/2000	Decision by Parliament	T5-0288/2000	Summary
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
	Amended by 2005/0274(CNS)
Legal basis	EC Treaty (after Amsterdam) EC 308
Stage reached in procedure	Procedure completed
Committee dossier	JURI/3/05133

Documentation gateway

Initial legislative proposal		COM(1993)0342 OJ C 029 31.01.1994, p. 0020	03/12/1993	EC	Summary
Economic and Social Committee: opinion, report		CES0849/1994 OJ C 388 31.12.1994, p. 0009	06/07/1994	ESC	Summary
Economic and Social Committee: opinion, report		CES0187/1995 OJ C 110 02.05.1995, p. 0012	22/02/1995	ESC	Summary
Legislative proposal		COM(1999)0310 OJ C 248 29.08.2000, p. 0003 E	21/06/1999	EC	Summary
Economic and Social Committee: opinion, report		CES0092/2000	27/01/2000	ESC	

		OJ C 075 15.03.2000, p. 0035			
Committee report tabled for plenary, 1st reading/single reading		A5-0150/2000 OJ C 067 01.03.2001, p. 0010	25/05/2000	EP	
Text adopted by Parliament, 1st reading/single reading		T5-0288/2000 OJ C 067 01.03.2001, p. 0318-0338	16/06/2000	EP	Summary
Modified legislative proposal		COM(2000)0660 OJ C 062 27.02.2001, p. 0173 E	20/10/2000	EC	Summary
Implementing legislative act		32002R2245 OJ L 341 17.12.2002, p. 0028-0053	21/10/2002	EU	Summary

Additional information

European Commission

[EUR-Lex](#)

Final act

[Regulation 2002/6](#)
[OJ L 003 05.01.2002, p. 0001-0024](#) Summary

Industrial property: protection of Community design

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

On the basis of a new report from the Presidency, the Council noted the progress of work on the proposal for a regulation on the Community design and the proposal for a directive of the European Parliament and of the Council on the legal protection of designs. It also took note of the fact that the Commission intended to submit an amended proposal for a directive and asked it to do so as quickly as possible. The Council instructed the Permanent Representatives Committee to expedite proceedings on the basis of the amended proposal so that the Council's common position on the proposal for a directive could be adopted at the next meeting and discussion of the proposal for a regulation in the light of the opinion to be delivered by the European Parliament.

Industrial property: protection of Community design

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

While awaiting the Opinion of the European Parliament which is expected on 16 June, the Council took note of a progress report on the amended proposal for a Regulation on Community designs. The original proposal, together with a proposal for a Directive on the legal protection of designs, was presented to the Council by the Commission in December 1993. The purpose of the proposal for a Regulation is to create a Community legal protection system for designs. In accordance with the decision of the European Council of 29 October 1993, the Community design will be administered by the Office for Harmonisation in the Internal Market (trademarks and designs). The purpose of the directive, adopted on 13 October 1998, is to approximate the laws of the Member States on the legal protection of designs in order to reduce the legal obstacles to the free movement of goods to which designs are applied. Following the adoption of the Directive, the Commission submitted and amended proposal for a Regulation on 21 June 1999, which takes into account the final version of the Directive and amends the legal basis (Article 308 - consultation procedure, instead of Article 95 - codecision procedure). The Commission has announced its intention of submitting a further amended proposal to take account of the Opinion of the European Parliament.?

Industrial property: protection of Community design

The committee adopted the report (consultation procedure) by Enrico FERRI (EPP/ED, I) approving, with a number of amendments, the proposal for a regulation on Community design. The amendments were aimed inter alia at making drafting improvements and ensuring consistency between the regulation and Directive 98/71/EC on the legal protection of designs. The committee proposed adding a couple of new provisions, 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.?

Industrial property: protection of Community design

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 improvements 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.?

Industrial property: protection of Community design

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

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.?