

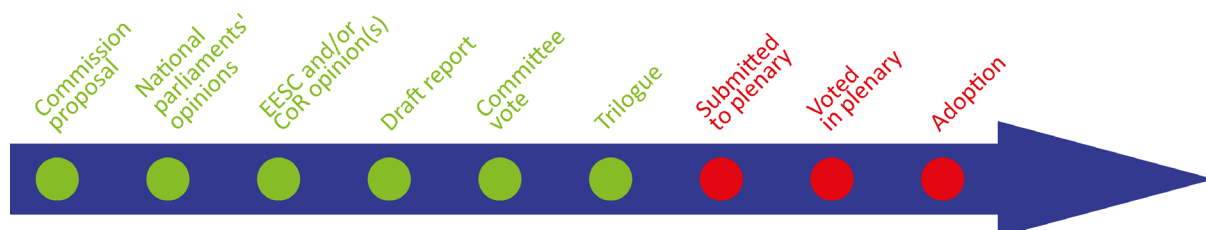
Revision of the EU legislation on design protection

OVERVIEW

The proposals to amend Council Regulation (EC) No 6/2002 (the Community Design Regulation) and in parallel to recast Directive 98/71/EC (the Design Directive) aim to align the design protection system in the EU with the digital age and make it more accessible and efficient for applicants. In terms of digitalisation, the proposed update of the requirements for representing designs would allow applicants to file new digital design types (e.g. by using 3D printing technologies). In terms of efficiency, the proposals aim to make the application procedures cheaper and simpler, the registration procedures faster, while also ensuring greater predictability and legal certainty for individual designers, SMEs and design-intensive industries looking for design protection in the EU.

Within the European Parliament, the files have been assigned to the Committee on Legal Affairs (JURI), with Gilles Lebreton as rapporteur. The committee's decisions to enter into interinstitutional negotiations were confirmed by plenary in November 2023 while the Council agreed on general approaches to the proposals in September 2023. The Parliament and the Council reached a provisional agreement on 5 December 2023, which now needs to be confirmed and formally adopted by both institutions.

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/2002 and Proposal for a Directive of the European Parliament and of the Council on the legal protection of designs (recast)		
<i>Committee responsible:</i>	Legal Affairs (JURI)	COM(2022) 666 and COM (2022) 667 28.11.2022
<i>Rapporteur:</i>	Gilles Lebreton (ID, France)	
<i>Shadow rapporteurs:</i>	Antonius Manders (EPP, the Netherlands) Ibán García del Blanco (S&D, Spain) Pierre Karleskind (Renew, France) Patrick Breyer (Greens/EFA, Germany) Raffaele Stancanelli (ECR, Italy) Emmanuel Maurel (The Left, France)	2022/0391(COD) and 2022/0392(COD)
<i>Next steps expected:</i>	Final first-reading vote in plenary	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')



Introduction

Industrial design – the act of shaping a product's form and features in advance of producing it – is what gives products their visual appeal and influences consumers in choosing one product over another. Well-designed products therefore create an important competitive advantage for producers. **Industrial design rights** on the other hand protect the appearance of a product. To encourage innovation and the creation of **new product design in the digital age**, there is a growing need for accessible, future-proofed, effective and consistent legal protection of design rights. From an economic point of view, **design-intensive industries** substantially contribute to the EU economy. In 2017-2019, they [accounted for](#) almost 16 % of EU GDP and 13 % of all jobs in the EU.

The EU's industrial design protection system is **more than 20 years old**. The EU Member States' laws relating to industrial design protection were partially harmonised by [Directive 98/71/EC](#) (Design Directive). Alongside the national design protection systems, [Council Regulation \(EC\) No 6/2002](#) (Community Design Regulation) established a stand-alone system for the protection of design rights, which has equal effect throughout the EU in the form of registered Community designs (RCDs)¹ and unregistered Community designs (UCDs)².

The ongoing review of the Design Directive and the Community Design Regulation, which together constitute the EU legislation on design protection, seeks to address two key challenges:

- the disruption of the internal market for repair spare parts (e.g. bumpers, radiator grills, doors in cars); and
- the continuing discouragement of businesses from seeking design protection at EU or national level because of high costs, burdens and delays in obtaining protection.

Existing situation

There are two types of intellectual property rights (IPRs):

- **industrial property**, which includes patents, trademarks, industrial designs and models and designations of origin; and
- **copyright**, which [includes](#) an author's or a creator's original work (e.g. book, film, software).

The Design Directive and the Community Design Regulation (hereinafter **EU design legislation** when both texts are addressed simultaneously) are the backbone of design protection in the EU. They are complemented by two implementing acts: [Regulation \(EC\) No 2245/2002](#) implementing the Community Design Regulation (the Implementing Regulation) and [Regulation \(EC\) No 2246/2002](#) on fees payable to the [European Union Intellectual Property Office](#) (the Fees Regulation).

There are three types of design protection in the EU: i) registered Community designs (RCDs); ii) national registered designs; and iii) unregistered Community designs (UCDs), which are protected without being registered if made available to the public. The national and Community design systems coexist and complement each other. Indeed, once the Design Directive established the principles harmonising the national legal frameworks, the conditions for obtaining protection of registered designs became **uniform in all Member States**. Shortly afterwards, the Community Design Regulation was adopted to complement national systems by establishing an EU autonomous unitary system for designs (e.g. with **equal effect throughout the EU**).

National designs are registered at the Member States' intellectual property offices (IPOs); RCDs are registered at and administered by the EU Intellectual Property Office ([EUIPO](#)). Depending on the territorial scale of their economic activity, firms and designers can opt for a national or a Community-wide registered design right, or apply for and maintain parallel protection within the same territory through both the national and the Community systems. 'Community' in this sense means 'EU'.

The EU design legislation has proven its [effectiveness](#) in design protection by helping to foster innovation and competition. However, significant shortcomings include:

- a patchwork of diverging national regimes partly providing design protection for spare parts and partly not (right holders are granted a genuine monopoly on the spare parts aftermarket in the Member States concerned)³;
- lack of alignment of design protection to the digital transition and to technological progress;
- outdated or overly complicated procedural rules with a registration procedure for EU design that involves a [sub-optimal](#) RCD fee system;
- different national-level proceedings for design registration and design invalidity.

The EU design legislation contains **interim provisions on spare parts**, since design rights are assigned with regard to complex products encompassing all visible parts⁴. The question arose about how to deal with those parts when they have to be replaced for **repair purposes** (by spare parts). Contradictory interests were at stake: on one side, manufacturers (the car industry in particular) were unwilling to allow sales of replica parts (e.g. spare parts that are replicas of the original parts) so as not to lose their market, while on the other, consumers and other industries were willing to enable sales of such replicas to guarantee true competition and lower prices. In addition, EU consumers are currently spending €415-664 million annually on the purchase of visible automotive spare parts. To resolve the issue, an interim compromise solution – **a freeze plus clause** – was adopted. Under this clause, which is still in force today, Member States are obliged to retain their existing laws on whether spare parts should benefit from protection until amendments to the Directive are adopted on a proposal from the Commission. They can only change these laws if their aim is to liberalise the market. The Community Design Regulation temporarily introduced a sort of repair clause in its Article 110, which excluded spare parts from the requirement to obtain design protection. The Court of Justice of the European Union (CJEU) clarified the regulation's scope in the 2017 joined [Acacia case](#), confirming that the clause covered all spare parts without limitations, regardless of shape, provided the repair served to restore the original appearance. Competition in spare parts is currently allowed in 12 Member States.

There also seems to be a need to **adapt the existing EU design protection legislation with a view to clarifying how it applies to technological advances** such as 3D printing, digital design and graphical user interfaces (GUIs). At present, there are [divergent interpretations](#) regarding some products, such as designs consisting of more than one item, and regarding visibility requirements. The definition of the subject matter of protection and the means of design representation should be adjusted to take into account the increasing role of digital design industries. Similarly, they should provide sufficient clarity as regards GUIs, in order to protect them. The scope of design rights and private-use limitations should be analysed in the light of developments linked to 3D printing. Moreover, some registration requirements are reportedly [irrelevant](#). Finally, the current scope of EU design legislation does not contribute to fighting counterfeiting effectively in the context of goods in transit, and lacks coherence with trademark rules.

An **adjustment of RCD fees** will [make](#) basic access to registration for firms and natural persons applying for design protection less costly. In addition, [certain procedural aspects of the registration and application processes](#), such as administrative proceedings, fees and delays, need further standardisation to achieve harmonisation of national rules on design.

In November 2020, the Commission adopted an [action plan on intellectual property](#), in which it proposed to upgrade a series of existing IP tools and make them fit for the digital age, including **modernising EU design protection**.

'Spare parts': *Acacia SA v AUDI and Porsche*

When working on case C-397/16, the CJEU introduced a number of clarifications to the repair clause, namely that: i) it covers all spare parts (i.e. that it applies to both fixed (e.g. wing mirrors) and non-fixed (e.g. wheel rims) spare parts); ii) it only covers spare parts that are necessary for the normal use of the complex product, such as wheel rims; iii) it only covers parts used to repair the complex product so as to restore its original appearance; iv) spare parts manufacturers must inform the downstream user that the part is intended exclusively to be used for repairing the complex product to restore its original appearance. Furthermore, they must ensure that downstream users comply with this requirement.

Parliament's starting position

In its [resolution](#) of 11 November 2021 on an intellectual property action plan to support the EU's recovery and resilience, the Parliament stressed that the current design protection system at EU level was established 20 years ago and should be revised. While welcoming the Commission's willingness to modernise the EU legislation on design protection in order to better support the transition to the digital, sustainable and green economy, Parliament called on it: 'to update the registration procedure to allow for new forms of design, such as graphical user interfaces, virtual and animated designs, fonts and icons'; and 'to further harmonise the application and invalidation procedures in the Member States'.

The Parliament noted that design protection for parts used for the repair of complex products (spare parts) is only partially harmonised and underlined how this creates fragmentation in the internal market as well as legal uncertainty. Therefore, Parliament called on the Commission to include a repair clause in its future proposal, which would support the transition towards a more sustainable and greener economy and avoid distortions of competition.

Last but not least, Parliament suggested that the EU design protection system should be aligned with the EU trademark system in order to allow for design holders to prevent design-infringing goods from entering the EU's customs territory. In this line of thinking, Parliament pointed out that 'rights attached to trademarks are enforceable against infringing goods transiting through the EU, while those attached to design are not'. Therefore, Parliament called 'on the Commission to close this gap in the revision of the design legislation and make it possible for brand owners to put a stop to design counterfeits transiting through the EU'.

Council starting position

In its 2018 [conclusions](#) on the enforcement of intellectual property rights, the Council recognised that the EU legal framework for IPR enforcement could benefit from further clarification. Although the conclusions did not specifically mention the EU design legislation, it does fall under the scope of IP legislation. The Council invited the Member States to adjust, if necessary, their national civil enforcement systems in line with the provisions of the Intellectual Property Rights Enforcement Directive (IPRED), as interpreted by the CJEU and, where appropriate, to 'fortify the common interpretation of the provisions of IPRED'.

In its 2020 [conclusions](#) on intellectual property policy and the revision of the industrial designs system in the Union, the Council adopted a set of recommendations on key elements of a future EU IP policy, contributing to the Commission's work on the EU intellectual property action plan mentioned earlier in this briefing. The Council called for specific measures on design legislation with a view to strengthening the complementary relationship between Community, national and regional design protection systems, and reinforcing legal certainty. The Council called for:

- adopting amendments and measures to clarify key aspects of the EU design legislation (key definitions, protection and presentation requirements);
- updating the legislation to adjust it to new technologies and new design (3D printing, development of special tools to conduct image searches to examine [prior art](#)); and
- further harmonising national legislation and practices, as promoted by the EUIPO.

The Council stressed that the revised EU design legislation would be more effective in combating counterfeiting while also offering a solution on spare parts after 'the options and possibilities for harmonising the rules' have been agreed upon. The Council called for alignment with the trademark reform, 'in particular to simplify and streamline procedures managed by the EUIPO'.

In its 2021 [conclusions](#) on intellectual property policy, the Council reiterated the urgent need to amend and modernise the EU design legislation to make it more accessible, especially for SMEs. It welcomed the launch and implementation of the SME Support Fund by the Commission and the EUIPO, which provides funding for advice on the role of IP as part of SMEs' business strategies, and for registration of trademarks and industrial designs.

Preparation of the proposals

The Commission published an [impact assessment](#) (IA) accompanying the proposals for a revision of the EU design legislation. The IA substantiates its findings with references to several sources, among them an [evaluation](#) of the current EU legislation on design protection.⁵ EPRS issued an [initial appraisal](#) of the Commission impact assessment in May 2023.

The changes the proposals would bring

On 28 November 2022, the Commission published [two proposals](#): to revise the Design Directive (Directive 98/71/EC) and the Community Design Regulation (Council Regulation (EC) No 6/2002) as steps towards creating a coherent package for the implementation of the intellectual property action plan published in November 2020.

Thierry Breton, Commissioner for the Internal Market, [stated](#): 'Twenty years on, the current framework for industrial designs continues to provide robust protection to this type of intellectual property. Today's well-targeted modernisation will help make it easier to protect products' industrial designs. At the same time, it will help to complete the single market when it comes to using spare parts for repair, by limiting excessive protections still granted in some Member States.'

Principle and objectives

The proposal for the review of the Design Directive (recast) is based on Article [114\(1\)](#) of the Treaty on the Functioning of the European Union (TFEU), while that amending the Community Design Regulation is based on Article [118\(1\)](#) TFEU. Both proposals aim to promote design excellence, innovation and competitiveness in the EU. The main objectives of these REFIT initiatives are to make the legal framework i) fit for purpose in the digital age; and ii) more accessible and efficient for individual designers, SMEs and design-intensive industries through lower costs and lesser complexity, higher speed, more predictability and greater legal certainty.

Scope

Both proposals introduce **broader definitions for the terms 'product' and 'design'**, to ensure modernisation and greater legal certainty. The definition of product includes a technology update of the design framework by taking into account the advent of **new designs that are not embodied in physical products and objects that materialise in digital form**. In addition, the proposals clarify the **'visibility requirement'**, by conferring design protection only on those features of appearance that are shown visibly in the application for registration. Last but not least, the proposals provide a wider scope of rights to fight design infringement and counterfeiting in the context of the deployment of 3D printing technologies facilitating copying of protected designs;⁶ and the placement of counterfeit products in [customs procedures](#) (in line with the EU legislation on trademarks).⁷

Main provisions

Repair clause for spare parts

Article 19 of the proposed directive and Article 20a of the proposed regulation address the '**repair clause**', making it clear that the holder of a design relating to a spare part cannot exercise a monopoly and cannot prevent a third party from placing on the market spare parts destined for repairing a product or restoring it to its original appearance. The repair clause also provides that designs already granted protection would remain covered for a **transitional period of 10 years**.

Simplified and streamlined design registration procedure

The proposals aim to make it easier to submit design registration applications by using **electronic means** (e.g. by submitting [video files](#)). In addition, Article 27 of the Design Directive and Article 37 of the Design Regulation **abolish the 'unity of class requirement'**, by providing for the possibility to combine several designs in one application (e.g. multiple design applications with a maximum cap of 50 designs). This would change the current procedure requiring that the combined designs concern products of the same class from the [Locarno Classification](#).⁸

Adjustment of EU design fees

The amended Community Design Regulation repeals the existing Fees Regulation (Council Regulation (EC) No 2246/2002). In addition, it adjusts and optimises the level and structure of fees payable for RCDs. More specifically, it proposes to reduce the level of the application fee and to simplify the schedule of fees to make design protection more affordable (e.g. merging the registration and publication fees as well as introducing a flat bulk discount for multiple applications).

Advisory committees

The European Economic and Social Committee (EESC) adopted its [opinion](#) on the Revision of the Design Directive and Regulation on 22 March 2023. Among its conclusions and recommendations, the EESC welcomes the new definitions of 'design' and 'product' set out in the proposals, arguably because they reflect technological advances by covering designs that are not embodied in physical objects. However, the EESC does not believe that merging the publication and registration fees will reduce the total costs for protection of designs. It thus calls for lower fees for SMEs and individual designers, perhaps in proportion to their turnover. Finally, even though the EESC considers the abolition of the 'unity of class' requirement necessary, it recommends further action to improve the usability of the design filing systems available on the websites of the national IPOs and the EUIPO.

National parliaments

The deadline for the [subsidiarity check](#) by national parliaments of the revised [Community Design Regulation](#) and [Design Directive](#) expired on 15 February 2023. No reasoned opinions were submitted by the deadline.

Stakeholder views⁹

Repair clause and spare parts

AB Volvo, parent company of the Volvo Group involved in the automotive industry, [warns](#) against excluding spare parts designs from legal protection. According to AB Volvo, the Commission proposals would i) deprive an innovative industry of fair returns on investment; ii) threaten EU competitiveness and jobs because copies of automotive parts would be made, for instance, in Asia and South America; and iii) undermine vehicle safety, given that the EU has no safety requirements in place for aftermarket parts. If the EU legislator were nonetheless to decide to lower the protection of spare parts, AB Volvo suggests applying the repair clause only to future legislation and leaving all existing rights unaffected. According to AB Volvo, existing design rights for spare parts should

remain valid until the end of the period for which they were granted (15-25 years), whereas the proposal limits their validity to 10 years.

Against this view, [Right to Repair Europe](#) (representing environmental NGOs and repair players) [believes](#) that the 10-year transition period envisaged by the Design Directive proposal is too long and will lead to further barriers to repair. It should therefore be reduced to 2 years. Right to Repair Europe also recommends extending the repair clause to both existing and new designs. The European Association of Automotive Suppliers (CLEPA) also [supports](#) the view of shortening the transition period to 2 years, in line with the aim of the proposed design directive (recital 33), to avoid granting monopoly over the spare parts market. A [joint call](#) from several stakeholders states that there is no broad economic justification for maintaining design protection on visible spare parts, and that a compulsory 10-year transition period for Member States to implement a 'repair clause' is not justified and should be limited to a maximum of three years. In addition, they stress that the proposed wording on the 'origin' of spare parts is ambiguous and does not address the case of spare parts containing components of multiple origins.

Renewal fees for registered EU designs

In their joint comments, [ECTA](#), the International Trademark Association ([INTA](#)) and [Marques](#) welcome the lowering of the application fees for design protection. However, the associations [stress](#) that the reason behind the increase in renewal fees for design protection for the third and fourth renewal periods remains unclear. They say that 'the cost to the EUIPO of renewing a design does not depend on whether it is a first, second, third or fourth renewal'.

The challenge of counterfeit goods in transit

The design proposals introduce provisions enabling design holders to challenge counterfeit goods in transit (even if the goods may not be intended to be placed on the EU market) in a Member State where the design is registered and where the goods are not released for free circulation.

The Chartered Institute of Trade Mark Attorneys (CITMA) [expresses](#) concerns regarding the proposed Article 16(3) of the Design Directive and Article 19(3) of the Community Design Regulation for goods in transit. According to CITMA, these amendments 'will impede international trade and will interfere with the freedom of transit', meaning that EU design rights can also be enforced against goods that originate from, and are destined to, non-EU countries, even in circumstances where such goods do not infringe any rights in the countries of origin or destination.

The Max Planck Institute for Innovation and Competition seems to oppose CITMA's position, by stating that 'the right to prevent transit lapses if in subsequent infringement proceedings the declarant or holder of the products establishes that the holder of the design right in the EU or the relevant Member State is not entitled to prohibit the placing of the product on the market in the country of final destination'. The institute further clarifies how the aim of such a reservation is to ensure that freedom of transit, as safeguarded by Article V of the General Agreement on Tariffs and Trade, is duly respected.¹⁰

Joint comments on the Parliament's proposed amendments on the EU design legislation

In October 2023, ECTA, INTA and Marques [published](#) their joint comments on the JURI committee's amendments related to the Commission proposal on EU design legislation. Among the list of comments:

- They do not support changing the calculation of the starting of protection of a registered EU design from the 'date of application' to the 'date of registration', both for consistency reasons (for example, for other IP rights, renewal is calculated from the 'date of application') and for not making it dependent on the speed of the individual offices that register designs.

- They note the number of amendments relating to registration and renewal of design rights. Therefore, they suggest a simplified and reduced fee structure for filings and renewals and support the idea that a 'fee review study' may be needed in the future.
- They support the proposal to add a symbol for design (like, for example, the one that exists for copyright or registered trademarks). However, they advise that it should be separate from existing symbols for other IP rights and entirely voluntary in nature.

Legislative process

In **Parliament**, the files have been assigned to the Committee on Legal Affairs (JURI), with Gilles Lebreton (ID, France) as rapporteur for both proposals related to the revision of the EU design protection legislation.

JURI [adopted](#) its reports and decided to enter into interinstitutional negotiations for the Design Directive (17 votes in favour, two against and six abstentions) and for the Community Design Regulation (15 votes in favour, two against and six abstentions) on 24 October 2023. The decisions were announced to plenary on 8 November and confirmed by plenary on 9 November 2023, including the following main changes compared to the Commission's proposal:

Design Directive

- The replacement of the concept of 'origin' of the product, which is too vague, with the concept of 'identity of the manufacturer' of the product.
- The possibility for Member States to shorten the transitional period for the application of the new repair clause to designs for which registration was sought before the entry into force of the new Directive from 10 years to at least three years, if they wish to do so.

Community Design Regulation

- Adjusting respective registration fees to motivate individual designers and small and medium-sized enterprises (SMEs) to protect their designs. The headline fee would be €350. Adjusted fees for subsequent renewals would start at €250 for the first two renewals and rise to €700 and €1 400 for the third and fourth renewals respectively.
- Restricting certain powers of the executive director of the European Union Intellectual Property Office (EUIPO) to bolster legal certainty (e.g. Articles 42, 65, 72a, 78, 100 and 102).

The **Council** [agreed](#) on general approaches to the [Design Directive](#) and [Community Design Regulation](#) proposals on 25 September 2023. The Council supported the main objectives of the package (i.e. it keeps the concept of the 'repair clause' as proposed by the Commission), but introduced several amendments including:

- An update of the definition of 'design' and 'product' to make them fit for the digital age and for future technological developments. For instance, 'digital' is replaced by 'non-physical'.
- Simplification of the requirements to represent the design, so that even if, on the date of the request, some documents are missing, the design can still be registered on that date, provided that the representation of the design is clear enough.
- The introduction of flexibility for designers to be able to defer the time of publication of their design to a maximum of 30 months, with the possibility for Member States to give the option to the holders of the design rights to stop the deferment at their request (and not at the end of the deferment period).
- Clarification of the rules to declare design rights invalid, with the possibility for Member States to provide for an administrative procedure of appeal, so that parties do not need to go to court.

- Assurance that the fees for national-only protection should continue to be cheaper than European ones.
- The possibility to cumulate the protection of designs and copyright, including national copyright laws.
- A transposition period of 36 months (instead of 24 months) to give more time to Member States to take the necessary measures to apply the new legislation.

The co-legislators reached a [provisional agreement](#) on the design package on 5 December 2023. A summary of the main elements of the agreement follows.

- **Repair clause** – Designs of components of complex products will not be protected by EU design if they are used for a repair just to restore the original appearance of the product. The agreement lays down a harmonised transitional period for designs already granted protection of 8 years.
- **Design protection fees** – Registered EU designs will be protected for 5 years and this protection can be renewed for 5-year periods for maximum total duration of 25 years. Negotiators agreed on a headline registration fee of €350 and they also adjusted the prices of renewal fees to motivate individual designers and SMEs to protect their designs.
- **EUIPO** – The powers of the institution managing the protection of EU designs would be better framed, for instance allowing the director to require less documentation from applicants.
- **Cultural heritage** – The agreement forbids the protection of cultural heritage elements of national interest (e.g. the traditional costume of a region) as private designs. To frame the limits of this disposition, the co-legislators agreed to use the UNESCO definition of 'cultural heritage'.
- **Transposition period** – The **regulation on EU designs** will be applicable throughout the EU once it comes into force, whereas Member States will have a period of 36 months to take the necessary measures to transpose the **directive for the legal protection of designs**.

The provisional agreement now needs to be endorsed and formally adopted by both institutions.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

[Revising the Community Design Regulation and the Design Directive \(recast\)](#), initial appraisal of Commission impact assessment, EPRS, European Parliament, May 2023.

[Revision of Directive 98/71/EC on the legal protection of designs and of Regulation \(EC\) No 6/2002 on Community Designs](#), implementation appraisal, EPRS, European Parliament, May 2022.

OTHER SOURCES

[Industrial property: Protection of Community design](#), Legislative Observatory (OEIL), European Parliament.

[Industrial property: Legal protection of designs \(recast\)](#), Legislative Observatory (OEIL), European Parliament.

ENDNOTES

- ¹ The EU design legislation grants RCDs protection for an initial period of 5 years, renewable one or more times for 5 years at a time, up to a total of 25 years from the date of filing.
- ² The regime for UCDs grants protection for design rights (valid for 3 years), if the design is made available to the public without being registered. Unlike for RCDs, the regime for UCDs grants their holders exclusive rights to use and prevent third parties from using designs only if the contested use results from copying the protected design. The design is considered available to the public within the EU if it has been published, exhibited, used in trade or otherwise disclosed in such a way that these events could reasonably have become known to circles specialised in the sector concerned and operating within the EU. It is currently accepted that disclosure must take place within EU territory.

- ³ See [Impact Assessment](#), Annex 6, p. 79 on spare parts protection in the Member States.
- ⁴ Article 4(2) of the Community Design Regulation states that to be protected, the part of a complex product must remain visible in normal use and the visible features must fulfil, in themselves, the requirements of novelty and individual character.
- ⁵ M.-A. Huemer, Revision of Directive 98/71/EC on the legal protection of designs and of Regulation (EC) No 6/2002 on Community designs, implementation appraisal, EPRS, European Parliament, May 2022.
- ⁶ See Recital 28 of the Design Directive and Recital 11 of the Community Design Regulation: 'In view of the growing deployment of 3D printing technologies in diverse industries, and the resulting challenges for design right holders to effectively prevent the illegitimate, easy copying of their protected designs, it is appropriate to provide that the creation, downloading, copying and making available of any medium or software recording the design, for the purpose of reproduction of a product that infringes the protected design, amounts to use of the design being subject to the right holder's authorisation.'
- ⁷ See Article 19 of the Design Regulation and Article 16 of the Design Directive permitting right holders to prevent counterfeit products from transiting through EU territory or from being placed in another customs situation without being released for free circulation there.
- ⁸ This international classification is used for the purposes of the registration of industrial designs. It includes a list of classes and subclasses, an alphabetical list of goods which constitute an industrial design, with an indication of the classes and subclasses into which they fall and explanatory notes (IA, p. 118).
- ⁹ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.
- ¹⁰ Max Planck Institute for Innovation and Competition, [Position Statement of the Max Planck Institute for Innovation and Competition of 23 January 2023 on the 'Design Package'](#), January 2023.

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