



Revision of EU legislation on design protection

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Context and evolution

- Directive 98/71 and Regulation 6/2002 date back to 1998/2001
- Only CD Regulation amended in 2006 for accession to Hague System
- Spare parts proposal to amend Directive (COM(2004)582) withdrawn in 2014
- Comprehensive trade mark reform finalised in 2017
- **Evaluation concluded by Report of 6/11/2020 (SWD(2020) 264 final)**
- **Council (2020/C 379 I/01) called on 10/11/20 for proposals to revise legislation**
- **COM announced revision in IP Action Plan of 25/11/20 (COM(2020) 760 final)**
- **Inception Impact Assessment published for feedback (Ares(2020)7065286).**

Evaluation Report of 6.11.20 - SWD(2020) 264

- published on Better Regulation Portal:
- <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1846-Evaluation-of-EU-legislation-on-design-protection>
- **General trends observed:**
 - Users of the protection systems are satisfied, praising the EU design system for making it simple and affordable to register Community designs
 - Overall increase in design registrations (RCDs and national design rights)
 - Demand for RCDs steadily rising since the launch of the Community design registration system - successful uptake of the Community design protection system
 - Growing importance of digital designs (Locarno sub-class 14.04).

Conclusions of Evaluation Report I

- **Overall: legislation still broadly fit for purpose but various shortcomings identified**
- **Lack of clarity and robustness of certain key elements of design protection**
 - design/product notion uncertain on animated GUIs, sets of articles or interior design
 - scope of rights raises doubts in context of 3D printing and does not cover goods in transit
 - limited set of permissible uses within list of limitations seems inadequate
 - interaction between design law and copyright law is unclear.

Conclusions of Evaluation Report II

- **Outdated or overly complicated procedures**
 - requirements for the representation of a design (e.g. no dynamic 3D or video filings)
 - regime for filing multiple design applications (unity of class requirement)
- **Lack of coherence of the procedural rules**
 - inconsistencies both between Member States' design laws and in relation to CD Regulation
 - recent trade mark reform significantly increased level of incoherence
- **Incomplete single market for spare parts**
 - spare parts market continues to be strongly fragmented, causing considerable legal uncertainty and severely distorting competition, harming both companies and consumers.

Council conclusions of 10.11.20 (2020/C379 I/01)

Revision should address and consider:

- measures aimed at supporting/strengthening complementarity of design protection systems
- improvements to their accessibility by clarifying/evolving subject matter
- efforts to reduce divergence (e.g. unifying right of prior use or relevance of product indication)
- adaptation to requirements for representation of designs to make them future-proof
- strengthening protection by extending scope of rights to counterfeit design goods in transit
- Options of harmonising rules on spare parts, incl. alignment to CD regime
- measures to make legislation coherent with 2017 trade mark reform.

IP Action Plan of 25.11.20 (COM(2020) 760)

- published on the Better Regulation Portal:
- <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12510-Intellectual-Property-Action-Plan>
- involves official mandate for revising legislation on design protection (see p. 5)
- makes reference to shortcomings identified in the evaluation
- declares aim of revision being to improve accessibility and affordability of design protection in the EU and to ensure that the design protection regime better supports the transition to the digital and green economy
- timeline for delivery: Q4 2021.

Inception Impact Assessment – Ares(2020) 7065286

- published on Better Regulation Portal (one single document concerning the review of both the Design Directive and the Community Design Regulation):
 - <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12609-Review-of-the-Designs-Directive>
 - <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12610-Review-of-the-Community-Designs-Regulation>
- **Open for feedback until 22 December 2020!**

Inception Impact Assessment – Ares(2020) 7065286

- **Sets out initial specific objectives and options for revising the legislation:**
 - To modernise, clarify and strengthen design protection (e.g. by clarifying subject matter, broadening scope of rights and list of limitations, clearing up interlink with copyright)
 - To improve accessibility of design protection in the EU (e.g. by streamlining and simplifying procedures, including alignment of RCD procedures with those for EUTM)
 - To ensure enhanced interoperability of design protection systems in the EU through greater harmonisation between national laws and between national laws and CD Regulation
 - To complete single market for spare parts through harmonisation of rules, and in particular full liberalisation through introduction of a repair clause into Directive.

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Industrial design protection

https://ec.europa.eu/growth/industry/intellectual-property/industrial-design/protection_en



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<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12609-Review-of-the-Designs-Directive>

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Thank you



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