



**2022/0392(COD)**

13.7.2023

# **AMENDMENTS**

## **16 - 53**

**Draft report**  
**Gilles Lebreton**  
(PE749.961v01-00)

Legal protection of designs (recast)

Proposal for a directive  
(COM(2022)0667 – C9-0395/2022 – 2022/0392(COD))



**Amendment 16**  
**Daniel Buda**

**Proposal for a directive**  
**Recital 1**

*Text proposed by the Commission*

(1) A number of amendments are to be made to Directive 98/71/EC of the European Parliament and of the Council<sup>22</sup>. In the interests of clarity, that Directive should be recast.

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<sup>22</sup> Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs (OJ L 289, 28.10.1998, p. 28).

*Amendment*

(1) A number of amendments are to be made to Directive 98/71/EC of the European Parliament and of the Council<sup>22</sup>. In the interests of clarity, ***legal certainty, streamlining and updating of rules in relation to market developments determined by the development of information technology and artificial intelligence***, that Directive should be recast.

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<sup>22</sup> Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs (OJ L 289, 28.10.1998, p. 28).

Or. ro

**Amendment 17**  
**Daniel Buda**

**Proposal for a directive**  
**Recital 3**

*Text proposed by the Commission*

(3) Design protection in national law of the Member States coexists with protection available at Union level through European Union designs ('EU designs') which are unitary in character and valid throughout the Union as laid down in Council Regulation (EC) No 6/2002<sup>23</sup>. The coexistence and balance of design protection systems at national and Union level constitutes a cornerstone of the Union's approach to intellectual property protection.

*Amendment*

(3) Design protection in national law of the Member States coexists with protection available at Union level through European Union designs ('EU designs') which are unitary in character and valid throughout the Union as laid down in Council Regulation (EC) No 6/2002<sup>23</sup>. The coexistence and balance of design protection systems at national and Union level ***provides an appropriate level of legal certainty and*** constitutes a cornerstone of the Union's approach to intellectual

property protection.

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<sup>23</sup> Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ L 3, 5.1.2002, p. 1).

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<sup>23</sup> Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ L 3, 5.1.2002, p. 1).

Or. ro

## **Amendment 18**

### **Daniel Buda**

#### **Proposal for a directive**

##### **Recital 5**

###### *Text proposed by the Commission*

(5) In its conclusions of 11 November 2020 on intellectual property policy and the revision of the industrial design system in the Union<sup>25</sup>, the Council called on the Commission to present proposals for the revision of Regulation (EC) No 6/2002 and Directive 98/71/EC. The revision was requested due to the need to modernise the industrial design systems and to make design protection more attractive for individual designers and businesses, especially small and medium-sized enterprises. In particular, that revision was requested to address and consider amendments aiming at supporting and strengthening the complementary relationship between the Union, national and regional design protection systems, and involve further efforts to reduce areas of divergence within the design protection system in the Union.<sup>26</sup>

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<sup>25</sup> Council conclusions on intellectual property policy and the revision of the industrial designs system in the Union 2020/C 379 I/01 (OJ C 379I, 10.11.2020, p. 1).

###### *Amendment*

(5) In its conclusions of 11 November 2020 on intellectual property policy and the revision of the industrial design system in the Union<sup>25</sup>, the Council called on the Commission to present proposals for the revision of Regulation (EC) No 6/2002 and Directive 98/71/EC. The revision was requested due to the need to modernise the industrial design systems, ***to update them in line with market developments regarding information technology and artificial intelligence*** and to make design protection more attractive for individual designers and businesses, especially small and medium-sized enterprises. In particular, that revision was requested to address and consider amendments aiming at supporting and strengthening the complementary relationship between the Union, national and regional design protection systems, and involve further efforts to reduce areas of divergence within the design protection system in the Union<sup>26</sup>.

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<sup>25</sup> Council conclusions on intellectual property policy and the revision of the industrial designs system in the Union 2020/C 379 I/01 (OJ C 379I, 10.11.2020, p. 1).

<sup>26</sup> THIS FOOTNOTE IS MISSING.  
THANK YOU FOR USING ANOTHER  
LANGUAGE.

<sup>26</sup> THIS FOOTNOTE IS MISSING.  
THANK YOU FOR USING ANOTHER  
LANGUAGE.

Or. ro

## **Amendment 19**

**Daniel Buda**

### **Proposal for a directive**

#### **Recital 6**

##### *Text proposed by the Commission*

(6) Based on the final results of the evaluation, the Commission announced in its communication of 25 November 2020 ‘Making the most of the EU’s innovative potential. An intellectual property action plan to support the EU’s recovery and resilience’<sup>27</sup> that it *will* revise *the Union* legislation on design protection, following the successful reform of *the Union* trade mark legislation.

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<sup>27</sup> Communication (COM/2020/760 final) from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Making the most of the EU’s innovative potential. An intellectual property action plan to support the EU’s recovery and resilience.

##### *Amendment*

(6) Based on the final results of the evaluation, the Commission announced in its communication of 25 November 2020 *entitled* ‘Making the most of the EU’s innovative potential. An intellectual property action plan to support the EU’s recovery and resilience’<sup>27</sup> that it *would* revise *EU* legislation on design protection, following the successful reform of *EU* trade mark legislation, *with a view to simplifying the system and making it more accessible and efficient and with a view to updating the regulatory framework in the light of the development of new technologies on the market.*

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<sup>27</sup> Communication (COM/2020/760 final) from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Making the most of the EU’s innovative potential. An intellectual property action plan to support the EU’s recovery and resilience.

Or. ro

## **Amendment 20**

**Daniel Buda**

### **Proposal for a directive**

## Recital 8

*Text proposed by the Commission*

(8) Consultation and evaluation have revealed that, in spite of the previous harmonisation of national laws, there are still areas where further harmonisation could have a positive impact on competitiveness and growth.

*Amendment*

(8) Consultation and evaluation have revealed that, in spite of the previous harmonisation of national laws, there are still areas where further harmonisation could have a positive impact on competitiveness and growth ***and, in particular, in terms of the increased accessibility SMEs would have to the design protection system.***

Or. ro

## Amendment 21

**Daniel Buda**

### Proposal for a directive

#### Recital 13

*Text proposed by the Commission*

(13) The attainment of the objectives of the internal market requires that the conditions for obtaining a registered design right be ***identical*** in all the Member States.

*Amendment*

(13) The attainment of the objectives of the internal market requires that the conditions for obtaining a registered design right be ***harmonised*** in all the Member States.

Or. ro

## Amendment 22

**Pierre Karleskind**

on behalf of the Renew Group

### Proposal for a directive

#### Recital 18

*Text proposed by the Commission*

(18) While design features do not need to be visible at any particular time or in any particular situation in order to benefit from design protection, as an exception to this principle, protection should not be

*Amendment*

(18) While design features do not need to be visible at any particular time or in any particular situation in order to benefit from design protection, as an exception to this principle, protection should not be

extended to those component parts which are not *visible* during normal use of a complex product, or to those features of such part which are not *visible* when the part is mounted, or which would not, in themselves, fulfil the requirements as to novelty and individual character.

Therefore, those features of design of component parts of a complex product which are excluded from protection for these reasons should not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection.

extended to those component parts which are not *perceptible* during normal use of a complex product, or to those features of such part which are not *perceptible* when the part is mounted, or which would not, in themselves, fulfil the requirements as to novelty and individual character.

Therefore, those features of design of component parts of a complex product which are excluded from protection for these reasons should not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection.

Or. en

### *Justification*

*More inclusive language. The "texture" is part of the definition of "design" and is not always visible.*

## **Amendment 23**

**Daniel Buda**

### **Proposal for a directive**

#### **Recital 19**

##### *Text proposed by the Commission*

(19) Although product indications do not affect the scope of protection of the design as such, alongside the representation of the design they may serve to determine the nature of the product in which the design is incorporated or to which it is intended to be applied. Furthermore, product indications improve the searchability of designs in the register of designs kept by an industrial property office. Therefore, accurate product indications facilitating search and increasing the transparency and accessibility of a register should be ensured prior to registration without undue **burden on** applicants.

##### *Amendment*

(19) Although product indications do not affect the scope of protection of the design as such, alongside the representation of the design they may serve to determine the nature of the product in which the design is incorporated or to which it is intended to be applied. Furthermore, product indications improve the searchability of designs in the register of designs kept by an industrial property office. Therefore, accurate product indications facilitating search and increasing the transparency and accessibility of a register should be ensured prior to registration without undue **administrative burdens or additional costs for** applicants.

**Amendment 24**  
**Ibán García Del Blanco**

**Proposal for a directive**  
**Recital 21**

*Text proposed by the Commission*

(21) Technological innovation should not be hampered by granting design protection to designs consisting exclusively of features or the arrangement of features dictated solely by a technical function. It is understood that this does not entail that a design must have an aesthetic quality. A registered design right may be declared invalid where no considerations other than the need for that product to fulfil a technical function, in particular those related to the visual aspect, have played a role in the choice of the features of appearance.

*Amendment*

(21) Technological innovation should not be hampered by granting design protection to designs consisting exclusively of features or the arrangement of features dictated solely by a technical function. It is understood that this does not entail that a design must have an aesthetic quality, **and that designs with a technical function are not excluded from the design protection.** A registered design right may be declared invalid where no considerations other than the need for that product to fulfil a technical function, in particular those related to the visual aspect, have played a role in the choice of the features of appearance.

Or. en

*Justification*

*Often, designs are not mere design objects but are industrial products having a function. Design protection presents a major asset also for functional and technical products and should therefore enjoy protection.*

**Amendment 25**  
**Daniel Buda**

**Proposal for a directive**  
**Recital 27 a (new)**

*Text proposed by the Commission*

*Amendment*

**(27a) Since the establishment of the Community design system, the development of information technology and artificial intelligence has entailed the**



*advent of new designs which are not embodied in physical products. In this respect, there is a need to further harness the potential of new technologies such as artificial intelligence and blockchain so as to improve the efficiency of our intellectual property systems;*

Or. ro

**Amendment 26**  
**Antonius Manders**

**Proposal for a directive**  
**Recital 28**

*Text proposed by the Commission*

(28) 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.

*Amendment*

(28) In view of the growing deployment of *artificial intelligence and* 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.

Or. en

**Amendment 27**  
**Antonius Manders**

**Proposal for a directive**  
**Recital 30**

*Text proposed by the Commission*

(30) To this effect, it should be permissible for registered design right holders to prevent the entry of infringing

*Amendment*

(30) To this effect, it should be permissible for registered design right holders to prevent the entry of infringing

products and their placement in all customs situations, including, in particular transit, transshipment, warehousing, free zones, temporary storage, inward processing or temporary admission, ***also when such products are not intended to be placed on the market of the Member State concerned***. In performing customs controls, the customs authorities should make use of the powers and procedures laid down in Regulation (EU) No 608/2013 of the European Parliament and of the Council<sup>29</sup>, also at the request of the right holders. In particular, the customs authorities should carry out the relevant controls on the basis of risk analysis criteria.

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<sup>29</sup> Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ L 181, 29.6.2013, p. 15).

products and their placement in all customs situations, including, in particular transit, transshipment, warehousing, free zones, temporary storage, inward processing or temporary admission. In performing customs controls, the customs authorities should make use of the powers and procedures laid down in Regulation (EU) No 608/2013 of the European Parliament and of the Council<sup>29</sup>, also at the request of the right holders. In particular, the customs authorities should carry out the relevant controls on the basis of risk analysis criteria.

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<sup>29</sup> Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ L 181, 29.6.2013, p. 15).

Or. en

## **Amendment 28**

**Axel Voss**

### **Proposal for a directive**

**Recital 33**

*Text proposed by the Commission*

***(33) The purpose of design protection is to grant exclusive rights to the appearance of a product, but not a monopoly over the product as such. Protecting designs for which there is no practical alternative would lead in fact to a product monopoly. Such protection would come close to an abuse of the design protection regime. If third parties are allowed to produce and distribute spare parts, competition is maintained. If design protection is extended to spare***

*Amendment*

***deleted***

*parts, such third parties infringe those rights, competition is eliminated and the holder of the design right is de facto given a product monopoly.*

Or. en

**Amendment 29**  
**Patrick Breyer**

**Proposal for a directive**  
**Recital 34**

*Text proposed by the Commission*

(34) The differences in the laws of the Member States on the use of protected designs for the purpose of permitting the repair of a complex product so as to restore its original appearance, *where the product incorporating the design or to which the design is applied constitutes a form-dependent component part of a complex product*, directly affect the establishment and functioning of the internal market. Such differences distort competition and trade within the internal market and create legal uncertainty.

*Amendment*

(34) ***The repairability of products is at the core of a sustainable economy, as highlighted in the European Green Deal and in the resolution of the European Parliament of 12 July 2023 on the proposal for a regulation of the European Parliament and of the Council establishing a framework for setting eco-design requirements for sustainable products and repealing Directive 2009/125/EC.*** The differences in the laws of the Member States on the use of protected designs for the purpose of permitting the repair of a complex product so as to restore its original appearance directly affect the establishment and functioning of the internal market. Such differences distort competition and trade within the internal market and create legal uncertainty.

Or. en

*Justification*

*As per our amendment on Article 19(1) on the Repair Clause.*

**Amendment 30**  
**Ibán García Del Blanco**

**Proposal for a directive**

## Recital 34

*Text proposed by the Commission*

(34) The differences in the laws of the Member States on the use of protected designs for the purpose of permitting the repair of a complex product so as to restore its original appearance, where the product incorporating the design or to which the design is applied constitutes a **form-dependent** component part of a complex product, directly affect the establishment and functioning of the internal market. Such differences distort competition and trade within the internal market and create legal uncertainty.

*Amendment*

(34) The differences in the laws of the Member States on the use of protected designs for the purpose of permitting the repair of a complex product so as to restore its original appearance, where the product incorporating the design or to which the design is applied constitutes a component part of a complex product, directly affect the establishment and functioning of the internal market. Such differences distort competition and trade within the internal market and create legal uncertainty.

Or. en

*Justification*

*Narrowing the scope of the repair clause to form-dependent spare parts would limit liberalisation of the market.*

## Amendment 31 Patrick Breyer

### Proposal for a directive Recital 35

*Text proposed by the Commission*

(35) It is therefore necessary for the smooth functioning of the internal market and in order to ensure fair competition therein to approximate the design protection laws of the Member States as concerns the use of protected designs for the purpose of repair of a complex product so as to restore its original appearance through the insertion of a repair clause similar to that already contained in Regulation (EC) No 6/2002 and applicable to EU designs at Union level **but explicitly applying to form-dependent component parts of complex products only**. As the intended effect of such repair clause is to

*Amendment*

(35) It is therefore necessary for the smooth functioning of the internal market and in order to ensure fair competition therein to approximate the design protection laws of the Member States as concerns the use of protected designs for the purpose of repair of a complex product so as to restore its original appearance through the insertion of a repair clause similar to that already contained in Regulation (EC) No 6/2002 and applicable to EU designs at Union level. As the intended effect of such repair clause is to make design rights unenforceable where the design of the component part of a

make design rights unenforceable where the design of the component part of a complex product is used for the purpose of the repair of a complex product so as to restore its original appearance, the repair clause should be placed among the available defences to design right infringement under this Directive. In addition, in order to ensure that consumers are not misled but are able to make an informed decision between competing products that can be used for the repair, it should also be made explicit in the law that the repair clause cannot be invoked by the manufacturer or seller of a component part who have failed to duly inform consumers about the *origin* of the product to be used for the purpose of the repair of the complex product.

complex product is used for the purpose of the repair of a complex product so as to restore its original appearance, the repair clause should be placed among the available defences to design right infringement under this Directive. In addition, in order to ensure that consumers are not misled but are able to make an informed decision between competing products that can be used for the repair, it should also be made explicit in the law that the repair clause cannot be invoked by the manufacturer or seller of a component part who have failed to duly inform consumers about the *identity of the manufacturer* of the product to be used for the purpose of the repair of the complex product.

Or. en

#### *Justification*

*As per our amendment on Article 19(1) on the Repair Clause.*

### **Amendment 32** **Ibán García Del Blanco**

#### **Proposal for a directive** **Recital 35**

##### *Text proposed by the Commission*

(35) It is therefore necessary for the smooth functioning of the internal market and in order to ensure fair competition therein to approximate the design protection laws of the Member States as concerns the use of protected designs for the purpose of repair of a complex product so as to restore its original appearance through the insertion of a repair clause similar to that already contained in Regulation (EC) No 6/2002 and applicable to EU designs at Union level but explicitly applying to *form-dependent* component parts of complex products only. As the

##### *Amendment*

(35) It is therefore necessary for the smooth functioning of the internal market and in order to ensure fair competition therein to approximate the design protection laws of the Member States as concerns the use of protected designs for the purpose of repair of a complex product so as to restore its original appearance through the insertion of a repair clause similar to that already contained in Regulation (EC) No 6/2002 and applicable to EU designs at Union level but explicitly applying to component parts of complex products only. As the intended effect of

intended effect of such repair clause is to make design rights unenforceable where the design of the component part of a complex product is used for the purpose of the repair of a complex product so as to restore its original appearance, the repair clause should be placed among the available defences to design right infringement under this Directive. In addition, in order to ensure that consumers are not misled but are able to make an informed decision between competing products that can be used for the repair, it should also be made explicit in the law that the repair clause cannot be invoked by the manufacturer or seller of a component part who have failed to duly inform consumers about the *origin* of the product to be used for the purpose of the repair of the complex product.

such repair clause is to make design rights unenforceable where the design of the component part of a complex product is used for the purpose of the repair of a complex product so as to restore its original appearance, the repair clause should be placed among the available defences to design right infringement under this Directive. In addition, in order to ensure that consumers are not misled but are able to make an informed decision between competing products that can be used for the repair, it should also be made explicit in the law that the repair clause cannot be invoked by the manufacturer or seller of a component part who have failed to duly inform consumers *with detailed information* about the *producer* of the product to be used for the purpose of the repair of the complex product.

Or. en

### *Justification*

*Narrowing the scope of the repair clause to form-dependent spare parts would limit liberalisation of the market.*

### **Amendment 33**

**Pierre Karleskind**

on behalf of the Renew Group

### **Proposal for a directive**

#### **Recital 35**

#### *Text proposed by the Commission*

(35) It is therefore necessary for the smooth functioning of the internal market and in order to ensure fair competition therein to approximate the design protection laws of the Member States as concerns the use of protected designs for the purpose of repair of a complex product so as to restore its original appearance through the insertion of a repair clause similar to that already contained in Regulation (EC) No 6/2002 and applicable

#### *Amendment*

(35) It is therefore necessary for the smooth functioning of the internal market and in order to ensure fair competition therein to approximate the design protection laws of the Member States as concerns the use of protected designs for the purpose of repair of a complex product so as to restore its original appearance through the insertion of a repair clause similar to that already contained in Regulation (EC) No 6/2002 and applicable

to EU designs at Union level but explicitly applying to form-dependent component parts of complex products only. As the intended effect of such repair clause is to make design rights unenforceable where the design of the component part of a complex product is used for the purpose of the repair of a complex product so as to restore its original appearance, the repair clause should be placed among the available defences to design right infringement under this Directive. In addition, in order to ensure that consumers are not misled but are able to make an informed decision between competing products that can be used for the repair, it should also be made explicit in the law that the repair clause cannot be invoked by the manufacturer or seller of a component part who have failed to duly inform consumers about the *origin* of the product to be used for the purpose of the repair of the complex product.

to EU designs at Union level but explicitly applying to form-dependent component parts of complex products only. As the intended effect of such repair clause is to make design rights unenforceable where the design of the component part of a complex product is used for the purpose of the repair of a complex product so as to restore its original appearance, the repair clause should be placed among the available defences to design right infringement under this Directive. In addition, in order to ensure that consumers are not misled but are able to make an informed decision between competing products that can be used for the repair, it should also be made explicit in the law that the repair clause cannot be invoked by the manufacturer or seller of a component part who have failed to duly inform consumers about the *producer* of the product to be used for the purpose of the repair of the complex product.

Or. en

#### *Justification*

*The proposed wording on the “origin” of spare parts is too simplistic and ambiguous, and it does not address the case of spare parts containing components of multiple origins. By referring to “producer”, an already defined word used in many different EU legislation, we bring clarity to the text and keep the adequate level of information for the consumer.*

#### **Amendment 34** **Daniel Buda**

#### **Proposal for a directive** **Recital 37**

##### *Text proposed by the Commission*

(37) In order to improve and facilitate access to design protection and to increase legal certainty and predictability, the procedure for the registration of designs in the Member States should be efficient and transparent and should follow rules *similar to* those applicable to EU designs.

##### *Amendment*

(37) In order to improve and facilitate access to design protection and to increase legal certainty and predictability, the procedure for the registration of designs in the Member States should be efficient and transparent and should follow rules *that are harmonised with* those applicable to

EU designs.

Or. ro

**Amendment 35**

**Pierre Karleskind**

on behalf of the Renew Group

**Proposal for a directive**

**Article 3 – paragraph 3 – point a**

*Text proposed by the Commission*

(a) if the component part, once it has been incorporated into the complex product, remains **visible** during normal use of the latter; and

*Amendment*

(a) if the component part, once it has been incorporated into the complex product, remains **perceptible** during normal use of the latter; and

Or. en

*Justification*

*More inclusive language. The "texture" is part of the definition of "design" and is not always visible.*

**Amendment 36**

**Pierre Karleskind**

on behalf of the Renew Group

**Proposal for a directive**

**Article 3 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) to the extent that those **visible** features of the component part fulfil in themselves the requirements as to novelty and individual character.

*Amendment*

(b) to the extent that those **perceptible** features of the component part fulfil in themselves the requirements as to novelty and individual character.

Or. en

*Justification*

*More inclusive language. The "texture" is part of the definition of "design" and is not always visible.*



### **Amendment 37**

**Pierre Karleskind**

on behalf of the Renew Group

#### **Proposal for a directive**

##### **Article 10 – paragraph 2**

*Text proposed by the Commission*

2. A registered design shall be registered **for a period of five years calculated** from the date of filing of the application for registration. 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 of the application for** registration.

*Amendment*

2. A registered design shall be registered from the date of filing of the application for registration **and until five years after the date of registration by the Office**. 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 registration.

Or. en

*Justification*

*It is more coherent to calculate the duration of the protection of a design from the date of its actual registration, rather than the date of the filing.*

### **Amendment 38**

**Daniel Buda**

#### **Proposal for a directive**

##### **Article 14 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) by virtue of a decision of the competent court or authority, the holder of the design right is not entitled to it under the law of the Member State concerned;

*Amendment*

(c) by virtue of a **final** decision of the competent court or authority, the holder of the design right is not entitled to it under the law of the Member State concerned;

Or. ro

### **Amendment 39**

**Daniel Buda**

#### **Proposal for a directive**

## Article 14 – paragraph 2 – point a

*Text proposed by the Commission*

(a) any natural or legal person;

*Amendment*

(a) any natural or legal person ***who can prove a legitimate interest;***

Or. ro

## Amendment 40 Antonius Manders

### Proposal for a directive Article 16 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

By way of derogation from Article 9(1), the holder of a registered design right shall be entitled to prevent all third parties from bringing products, in the course of trade, from third countries into the Member State where the design is registered, ***that are not released for free circulation in that Member State,*** where the design is identically incorporated in or applied to those products, or the design cannot be distinguished in its essential aspects from such products, and an authorisation has not been given.

*Amendment*

By way of derogation from Article 9(1), the holder of a registered design right shall be entitled to prevent all third parties from bringing products, in the course of trade, from third countries into the Member State where the design is registered, where the design is identically incorporated in or applied to those products, or the design cannot be distinguished in its essential aspects from such products, and an authorisation has not been given.

Or. en

## Amendment 41 Ibán García Del Blanco

### Proposal for a directive Article 19 – paragraph 1

*Text proposed by the Commission*

1. Protection shall not be conferred on a registered design which constitutes a component part of a complex product, ***upon whose appearance the design of the component part is dependent, and*** which

*Amendment*

1. Protection shall not be conferred on a registered design which constitutes a component part of a complex product, which is used within the meaning of Article 16(1) for the sole purpose of the

is used within the meaning of Article 16(1) for the sole purpose of the repair of that complex product so as to restore its original appearance.

repair of that complex product so as to restore its original appearance.

Or. en

#### *Justification*

*Spare parts are used for the purpose of restoring the product back to its original appearance. Additional elements to the text would trigger the risk of legal uncertainty.*

### **Amendment 42** **Patrick Breyer**

#### **Proposal for a directive** **Article 19 – paragraph 1** Directive

##### *Text proposed by the Commission*

1. Protection shall not be conferred on a registered design which constitutes a component part of a complex product, ***upon whose appearance the design of the component part is dependent***, and which is used within the meaning of Article 16(1) for the sole purpose of the repair of that complex product so as to restore its original appearance.

##### *Amendment*

1. Protection shall not be conferred on a registered design which constitutes a component part of a complex product and which is used within the meaning of Article 16(1) for the sole purpose of the repair of that complex product so as to restore its original appearance.

Or. en

### **Amendment 43** **Patrick Breyer**

#### **Proposal for a directive** **Article 19 – paragraph 2**

##### *Text proposed by the Commission*

2. Paragraph 1 cannot be invoked by the manufacturer or the seller of a component part of a complex product who failed to duly inform consumers, through a clear and visible indication on the product

##### *Amendment*

2. Paragraph 1 cannot be invoked by the manufacturer or the seller of a component part of a complex product who failed to duly inform consumers, through a clear and visible indication on the product

or in another appropriate form, about the **origin** of the product to be used for the purpose of the repair of the complex product, so that they can make an informed choice between competing products that can be used for the repair.

or in another appropriate form, about the **identity of the manufacturer** of the product to be used for the purpose of the repair of the complex product, so that they can make an informed choice between competing products that can be used for the repair.

***The ‘manufacturer’ is to be understood as defined in Article 3, point (8), of Regulation (EU) 2023/988 on general product safety.***

Or. en

#### **Amendment 44**

**Pierre Karleskind**

on behalf of the Renew Group

#### **Proposal for a directive**

#### **Article 19 – paragraph 2**

*Text proposed by the Commission*

2. Paragraph 1 cannot be invoked by the manufacturer or the seller of a component part of a complex product who failed to duly inform consumers, through a clear and visible indication on the product or in another appropriate form, about the **origin** of the product to be used for the purpose of the repair of the complex product, so that they can make an informed choice between competing products that can be used for the repair.

*Amendment*

2. Paragraph 1 cannot be invoked by the manufacturer or the seller of a component part of a complex product who failed to duly inform consumers, through a clear and visible indication on the product or in another appropriate form, about the **producer (as defined in Art. 2 (e) of Directive 2001/95/EC)** of the product to be used for the purpose of the repair of the complex product, so that they can make an informed choice between competing products that can be used for the repair.

Or. en

#### *Justification*

*The proposed wording on the “origin” of spare parts is too simplistic and ambiguous, and it does not address the case of spare parts containing components of multiple origins. By referring to “producer”, an already defined word used in many different EU legislation, we bring clarity to the text and keep the adequate level of information for the consumer.*

#### **Amendment 45**

**Ibán García Del Blanco**

**Proposal for a directive  
Article 19 – paragraph 2**

*Text proposed by the Commission*

2. Paragraph 1 cannot be invoked by the manufacturer or the seller of a component part of a complex product who failed to duly inform consumers, through a clear and visible indication on the product or in another appropriate form, about the **origin** of the product to be used for the purpose of the repair of the complex product, so that they can make an informed choice between competing products that can be used for the repair.

*Amendment*

2. Paragraph 1 cannot be invoked by the manufacturer or the seller of a component part of a complex product who failed to duly inform consumers, through a clear and visible indication on the product or in another appropriate form, **with detailed information** about the **producer** of the product to be used for the **exclusive** purpose of the repair of the complex product, so that they can make an informed choice between competing products that can be used for the repair.

Or. en

*Justification*

*For clarity*

**Amendment 46  
Patrick Breyer**

**Proposal for a directive  
Article 19 – paragraph 3**

*Text proposed by the Commission*

3. ***Where at the time of adoption of this Directive the national law of a Member State provides protection for designs within the meaning of paragraph 1, the Member State shall, by way of derogation from paragraph 1, continue until ...[OP please insert the date = ten years from the date of entry into force of this Directive] to provide that protection for designs for which registration has been applied before the entry into force of this Directive.***

*Amendment*

***deleted***

Or. en

## Justification

According to existing studies, a repair clause is also compatible with the EU's obligations under TRIPS. Article 26(2) of TRIPS allows for limited exceptions to the protection of industrial designs "provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking into account of the legitimate interest of third parties" (three step test).

### Amendment 47

Axel Voss

#### Proposal for a directive

##### Article 19 – paragraph 3

*Text proposed by the Commission*

3. *Where* at the time of adoption of this Directive the national law of a Member State provides protection *for designs within the meaning of paragraph 1, the Member State shall, by way of derogation from paragraph 1, continue until ...[OP please insert the date = ten years from the date of entry into force of this Directive] to provide that protection for designs for which registration has been applied before the entry into force of this Directive.*

*Amendment*

3. *Paragraph 1 does not apply to a design registered before the date of entry into force of this Directive, for which, at the time of the adoption of this Directive, the national law of a Member State provides protection.*

Or. en

### Amendment 48

Pierre Karleskind

on behalf of the Renew Group

#### Proposal for a directive

##### Article 19 – paragraph 3

*Text proposed by the Commission*

3. Where at the time of adoption of this Directive the national law of a Member State provides protection for designs within the meaning of paragraph 1, *the Member State shall, by way of derogation from paragraph 1, continue until ...[OP please*

*Amendment*

3. Where at the time of adoption of this Directive the national law of a Member State provides protection for designs within the meaning of paragraph 1, *this protection shall end* from the date of entry into force

*insert the date = ten years from the date of entry into force of this Directive] to provide that protection for designs for which registration has been applied before the entry into force of this Directive.*

of this Directive.

Or. en

*Justification*

*It would be misleading for the consumer to have a protection for some models but not for others. A transition period would create uncertainty and price discrimination for consumers who own a product put on the market before the entry into force of the Directive.*

**Amendment 49**  
**Ibán García Del Blanco**

**Proposal for a directive**  
**Article 19 – paragraph 3**

*Text proposed by the Commission*

3. Where at the time of adoption of this Directive the national law of a Member State provides protection for designs within the meaning of paragraph 1, the Member State shall, by way of derogation from paragraph 1, continue *until ...[OP please insert the date = ten years from the date of entry into force of this Directive]* to provide that protection for designs for which registration has been applied before the entry into force of this Directive.

*Amendment*

3. Where at the time of adoption of this Directive the national law of a Member State provides protection for designs within the meaning of paragraph 1, the Member State shall, by way of derogation from paragraph 1, continue to provide that protection for designs for which registration has been applied before the entry into force of this Directive, *in observance of Article 26 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.*

Or. en

*Justification*

*To align with international agreements.*

**Amendment 50**  
**Pierre Karleskind**  
on behalf of the Renew Group

**Proposal for a directive**  
**Article 24**

*Text proposed by the Commission*

*Amendment*

**Article 24**

**deleted**

**Registration symbol**

***The holder of a registered design right may inform the public that the design is registered by displaying on the product in which the design is incorporated or to which it is applied the letter **D** enclosed within a circle. Such design notice may be accompanied by the registration number of the design or hyperlinked to the entry of the design in the register.***

Or. en

*Justification*

*Creating a new symbol would only create uncertainty for the consumer as to its meaning. This new symbol is in no way a useful information for consumers.*

**Amendment 51**  
**Antonius Manders**

**Proposal for a directive**  
**Article 24 – paragraph 1**  
Directive 98/71/EC  
Article 24

*Text proposed by the Commission*

*Amendment*

The holder of a registered design right **may** inform the public that the design is registered by displaying on the product in which the design is incorporated or to which it is applied the letter **D** enclosed within a circle. Such design notice may be accompanied by the registration number of the design or hyperlinked to the entry of the design in the register.

The holder of a registered design right **shall** inform the public that the design is registered by displaying on the product in which the design is incorporated or to which it is applied the letter **TM** enclosed within a circle. Such design notice may be accompanied by the registration number of the design or hyperlinked to the entry of the design in the register.

Or. en



### *Justification*

*There should not be a new symbol (D) introduced as we already have the TM symbol, which is an EU trade mark which can consist of any signs, designs, letters, numerals, colours, the shape of goods, or of the packaging of goods or sounds. Therefore, the symbol of designs is already covered by the TM symbol.*

#### **Amendment 52**

**Ibán García Del Blanco**

#### **Proposal for a directive**

#### **Article 31 – paragraph 1**

##### *Text proposed by the Commission*

1. Without prejudice to the right of the parties to appeal to the courts, Member States **shall** provide for an efficient and expeditious administrative procedure before their offices for the declaration of invalidity of a registered design right.

##### *Amendment*

1. Without prejudice to the right of the parties to appeal to the courts, Member States **may** provide for an efficient and expeditious administrative procedure before their offices for the declaration of invalidity of a registered design right.

Or. en

### *Justification*

*A mandatory administrative system for invalidity would lead to an increase in workload and in public expenditure and investments in the National IP Offices, because (1) conflicts in the field of design are less than in the field of trademark, and putting the system into force would be useless and onerous; and (2) if the rightholder pays the renovation timely, the legal life of a trademark could last forever, while, the legal life of a design is restricted to maximum 25 years -yet designs are often protected from 5 to 10 years-.*

#### **Amendment 53**

**Antonius Manders**

#### **Proposal for a directive**

#### **Article 32 – paragraph 2**

##### *Text proposed by the Commission*

2. The office shall inform the holder of the registered design right of the expiry of the registration at least six months before the said expiry. **The office shall not be held liable if it fails** to give such information **and such failure shall not**

##### *Amendment*

2. The office shall inform the holder of the registered design right of the expiry of the registration at least six months before the said expiry. **Failure** to give such information shall **be deemed to constitute a**

*affect the expiry of the registration.*

*request for renewal.*

Or. en