



2022/0391(COD)

15.6.2023

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DRAFT REPORT

on the 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 (COM(2022)0666 – C9-0394/2022 – 2022/0391(COD))

Committee on Legal Affairs

Rapporteur: Gilles Lebreton

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▯ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT.....	20

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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 (COM(2022)0666 – C9-0394/2022 – 2022/0391(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0666),
 - having regard to Article 294(2) and Article 118(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0394/2022),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A9-0000/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) In its conclusions of 11 November 2020 on intellectual property policy and the revision of the industrial design system in the Union, the Council called on the Commission to present proposals for the revision of Regulation (EC) No 6/2002 and Directive 98/71/EC. The purpose of that revision should be to modernise the protection systems relating to industrial

Amendment

(3) In its conclusions of 11 November 2020 on intellectual property policy and the revision of the industrial design system in the Union, the Council called on the Commission to present proposals for the revision of Regulation (EC) No 6/2002 and Directive 98/71/EC, ***an invitation which was echoed by the European Parliament in its resolution of 11 November 2021 on***

designs in the Union and to make design protection more attractive for individual designers and businesses, especially small and medium-sized enterprises (SMEs).

an action plan for intellectual property^{29a}. The purpose of that revision should be to modernise the protection systems relating to industrial designs in the Union and to make design protection more attractive for individual designers and businesses, especially small and medium-sized enterprises (SMEs).

²⁹ 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).

²⁹ 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).

^{29a} ***European Parliament resolution of 11 November 2021 on an intellectual property action plan to support the EU's recovery and resilience (2021/2007(INI)) (OJ C 205, 20.5.2022, p. 26).***

Or. fr

Justification

It is worth recalling the role of the European Parliament.

Amendment 2

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) In order to ensure legal certainty, it is appropriate to clarify that protection is conferred upon the right holder for those design features of a product, in whole or in part, which are shown visibly in an application for a registered EU design and made available to the public by way of publication or consultation of the relevant file. While ***otherwise design features of a given product do not need to be visible at any particular time or in any particular situation of use in order to attract*** design protection, an exception should apply to the design protection of component parts of a complex product that need to remain

Amendment

(10) In order to ensure legal certainty, it is appropriate to clarify that protection is conferred upon the right holder for those design features of a product, in whole or in part, which are shown visibly in an application for a registered EU design and made available to the public by way of publication or consultation of the relevant file. While design features need to be visible ***to benefit from*** design protection, ***it is not necessary for these characteristics to be visible at all times or in a particular situation in order to benefit from this protection. However,*** an exception should apply to the design protection of

visible during normal use of that product.

component parts of a complex product that need to remain visible during normal use of that product.

Or. fr

Justification

Linguistic clarification (linked to Article 18a)

Amendment 3

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) Directive (EU) [xxx] harmonises the laws of the Member States with regard to 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 design is applied to or incorporated in a product which constitutes a component part of a complex product upon whose appearance the protected design is dependent. Accordingly, the current transitional repair clause contained in Regulation (EC) No 6/2002 should be converted into a permanent provision. As the intended effect of that provision is to make registered and unregistered Community 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 EU design right infringement under Regulation (EC) No 6/2002. Furthermore, for the sake of coherence with the repair clause inserted into Directive (EU) [XXX], and in order to ensure that the scope of design protection is only restricted to prevent design right holders from actually being granted product monopolies, it is necessary to explicitly limit the application of the repair

Amendment

(16) Directive (EU) [xxx] harmonises the laws of the Member States with regard to 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 design is applied to or incorporated in a product which constitutes a component part of a complex product upon whose appearance the protected design is dependent. Accordingly, the current transitional repair clause contained in Regulation (EC) No 6/2002 should be converted into a permanent provision. As the intended effect of that provision is to make registered and unregistered Community 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 EU design right infringement under Regulation (EC) No 6/2002. Furthermore, for the sake of coherence with the repair clause inserted into Directive (EU) [XXX], and in order to ensure that the scope of design protection is only restricted to prevent design right holders from actually being granted product monopolies, it is necessary to explicitly limit the application of the repair

clause set out in Regulation (EC) No 6/2002 to component parts of a complex product upon whose appearance the protected design is dependent. 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 the 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 repair of the complex product.

clause set out in Regulation (EC) No 6/2002 to component parts of a complex product upon whose appearance the protected design is dependent. 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 the 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 repair of the complex product.

Or. fr

Justification

'The identity of the manufacturer' is a clearer concept than the concept of 'origin', which is too vague.

Amendment 4

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) In order to allow for an effective, efficient and complete review of decisions of the Office by the Boards of Appeal by means of a transparent, thorough, fair and equitable procedure, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying *the* details of appeal proceedings where proceedings relating to EU designs require derogations from the provisions set out in delegated acts adopted pursuant to Article 73 of Regulation (EU) 2017/1001.

Amendment

(28) In order to allow for an effective, efficient and complete review of decisions of the Office by the Boards of Appeal by means of a transparent, thorough, fair and equitable procedure, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying *certain* details of appeal proceedings where proceedings relating to EU designs require derogations from the provisions set out in delegated acts adopted pursuant to Article 73 of Regulation (EU) 2017/1001.

Or. fr

Justification

Delegated acts in this area need to be better defined.

Amendment 5

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) In order to ensure a smooth, effective and efficient operation of the EU design system, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying the requirements as to the details on oral proceedings and the detailed arrangements for taking of evidence, the ***detailed arrangements for notification, the*** means of communication and the forms to be used by the parties to proceedings, the rules governing the calculation and duration of time limits, the procedures for the revocation of a decision or for cancellation of an entry in the Register of EU designs, the detailed arrangements for the resumption of proceedings, and the details on representation before the Office.

Amendment

(29) In order to ensure a smooth, effective and efficient operation of the EU design system, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying the requirements as to the details on oral proceedings and the detailed arrangements for taking of evidence, the means of communication and the forms to be used by the parties to proceedings, the rules governing the calculation and duration of time limits, the procedures for the revocation of a decision or for cancellation of an entry in the Register of EU designs, the detailed arrangements for the resumption of proceedings, and the details on representation before the Office.

Or. fr

Justification

The delegated act duplicates the powers conferred on the Executive Director in this area.

Amendment 6

Proposal for a regulation

Article 1 – paragraph 1 – point 10a (new)

Regulation (EC) No 6/2002

Article 11 – paragraph 2

Present text

2. For the purpose of paragraph 1, a design shall be deemed to have been made available to the public within the

Amendment

10a. Article 11(2) is replaced by the following:

‘2. For the purpose of paragraph 1, a design shall be deemed to have been made available to the public within the ***Union*** if

Community if it has been published, exhibited, used in trade or otherwise disclosed in such a way that, in the normal course of business, these events could reasonably have become known to the circles specialised in the sector concerned, operating within the **Community**. A design shall not, however, be deemed to have been made available to the public **for the sole reason that it** has been disclosed to a third person under explicit or implicit conditions of confidentiality.

it has been published, exhibited, used in trade or otherwise disclosed in such a way that, in the normal course of business, these events could reasonably have become known to the circles specialised in the sector concerned, operating within the **Union**. A design shall not, however, be deemed to have been made available to the public **if it** has been disclosed to a third person **only** under explicit or implicit conditions of confidentiality.

Or. fr

Justification

Linguistic clarification.

Amendment 7

Proposal for a regulation

Article 1 – paragraph 1 – point 16

Regulation (EC) No 6/2002

Article 20a(1)

Text proposed by the Commission

1. Protection shall not be conferred on an EU 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 19(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 an EU design which constitutes a component part of a complex product which is used within the meaning of Article 19(1) for the sole purpose of the repair of that complex product so as to restore its original appearance.

Or. fr

Justification

Clarification of the concept of ‘complex product’.

Amendment 8

Proposal for a regulation

Article 1 – paragraph 1 – point 16

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 have 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 have failed to duly inform consumers, through a clear and visible indication on the product or in another appropriate form, about the **identity of the manufacturer** of the product to be used for the **sole** 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. fr

Justification

Substitution of the concept of 'identity of the manufacturer' for the concept of 'origin of the product', which is too vague.

Amendment 9

Proposal for a regulation

Article 1 – paragraph 1 – point 31

Regulation (EC) No 6/2002

Article 42 – paragraph 2

Text proposed by the Commission

2. ***The Executive Director may determine that the documentation to be provided by the applicant in support of the priority claim may consist of less than the documentation required under the implementing acts adopted pursuant to Article 42a, provided that the information required is available to the Office from other sources.***

Amendment

deleted

Or. fr

Justification

Individual derogations from implementing acts are unjustifiable.

Amendment 10

Proposal for a regulation

Article 1 – paragraph 1 – point 59

Regulation (EC) No 6/2002

Article 55a – subparagraph 1

Text proposed by the Commission

The Commission is empowered to adopt delegated acts in accordance with Article 109a to supplement this Regulation by specifying the *details of* appeal proceedings *under this Regulation*.

Amendment

The Commission is empowered to adopt delegated acts in accordance with Article 109a to supplement this Regulation by specifying the *formal content of the notice of appeal and the proceedings for lodging and examining an appeal*.

Or. fr

Justification

This is a reference to the terms used in Article 73 of Regulation No 2017/2001.

Amendment 11

Proposal for a regulation

Article 1 – paragraph 1 – point 65 – point b

Regulation (EC) No 6/2002

Article 65 – paragraph 5

Text proposed by the Commission

(b) the following paragraph 5 is added:

‘5. The Executive Director shall determine the amounts of expenses to be paid, including advances, as regards the costs of taking of evidence as referred to in this Article.’;

Amendment

deleted

Or. fr

Justification

It is not acceptable for the Executive Director alone to determine the amounts of expenses to be paid.

Amendment 12

Proposal for a regulation

Article 1 – paragraph 1 – point 68

Regulation (EC) No 6/2002

Article 66a

Text proposed by the Commission

Amendment

(68) The following Article 66a is inserted: **deleted**

‘Article 66a

The Commission is empowered to adopt delegated acts in accordance with Article 109a supplementing this Regulation by setting out the detailed arrangements for notification referred to in Article 66.’

Or. fr

Justification

Delegation seems unnecessary as Article 66 entrusts the Executive Director with the task of establishing the detailed arrangements for notification.

Amendment 13

Proposal for a regulation

Article 1 – paragraph 1 – point 84

Regulation (EC) No 6/2002

Article 72a – paragraph 3

Text proposed by the Commission

Amendment

3. The Executive Director shall determine the conditions of access to the database and the manner in which the contents, other than the personal data referred to in paragraph 2 of this Article but including the data listed in Article 72, may be made available in machine-readable form, ***including the charges for such access.***

3. The Executive Director shall determine the conditions of access to the database and the manner in which the contents, other than the personal data referred to in paragraph 2 of this Article but including the data listed in Article 72, may be made available in machine-readable form.

Or. fr

Justification

Access to the electronic database must not be on a payment basis, by analogy with access to

the register.

Amendment 14

Proposal for a regulation

Article 1 – paragraph 1 – point 93 – point a

Regulation (EC) No 6/2002

Article 78 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Where the entitlement referred to in the first subparagraph, point (c), is not conditional upon the requirement of special professional qualifications, the person applying to be entered on the list who acts in design matters before the Benelux Office for Intellectual Property or a central industrial property office shall have habitually *so acted* for at least five years. However, persons whose professional qualification to represent natural or legal persons in design matters before the Benelux Office for Intellectual Property or a central industrial property office is officially recognised in accordance with the regulations laid down by the State concerned shall not be required to have exercised the profession.

Amendment

Where the entitlement referred to in the first subparagraph, point (c), is not conditional upon the requirement of special professional qualifications, the person applying to be entered on the list who acts in design matters before the Benelux Office for Intellectual Property or a central industrial property office shall have habitually *worked in the area of designs* for at least five years. However, persons whose professional qualification to represent natural or legal persons in design matters before the Benelux Office for Intellectual Property or a central industrial property office is officially recognised in accordance with the regulations laid down by the State concerned shall not be required to have exercised the profession.

Or. fr

Justification

The requirement of professional experience makes sense only if the experience is related to designs.

Amendment 15

Proposal for a regulation

Article 1 – paragraph 1 – point 93 – point a

Regulation (EC) No 6/2002

Article 78 – paragraph 6 – introductory part

Text proposed by the Commission

6. The Executive Director may grant

Amendment

6. The Executive Director may grant

an exemption from *any of the following*:

an exemption from:

Or. fr

Justification

It is difficult to understand how exactly these individual derogations from the requirement of five years' professional practice are justified.

Amendment 16

Proposal for a regulation

Article 1 – paragraph 1 – point 93 – point a

Regulation (EC) No 6/2002

Article 78 – paragraph 6 – point b

Text proposed by the Commission

Amendment

(b) the requirement set out in the first sentence of the second subparagraph of paragraph 4, if the person applying to be entered on the list furnishes proof that he has acquired the required qualification in another way;

deleted

Or. fr

Justification

It is difficult to understand how exactly these individual derogations from the requirement of five years' professional practice are justified.

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1 – point 109

Regulation (EC) No 6/2002

Article 100 – paragraph 1

Text proposed by the Commission

Amendment

In addition to the powers conferred upon the Executive Director by Article 157(4), point (o), of Regulation (EU) 2017/1001, the Executive Director shall exercise the powers conferred under Article 36(5), Article 37(1), Article 41(5), **Article 42(2)**, Article 62(2), **Article 65(5)**, Articles 66,

In addition to the powers conferred upon the Executive Director by Article 157(4), point (o), of Regulation (EU) 2017/1001, the Executive Director shall exercise the powers conferred under Article 36(5), Article 37(1), Article 41(4), Article 62(2), Articles 66, 66c, 66e, Article 72(4), Article

66c, 66e, Article 72(4), Article 72a(3), Article 73, Article 74a(1), Articles 74c, 78, Article 98(7), Article -106aa, Article -106ab(1), Articles -106ac and -106ad in accordance with the criteria set out in this Regulation and in the acts adopted pursuant to this Regulation.’;

72a(3), Article 73, Article 74a(1), Articles 74c, 78, Article 98(7), Article -106aa, Article -106ab(1), Articles -106ac and -106ad in accordance with the criteria set out in this Regulation and in the acts adopted pursuant to this Regulation.’;

Or. fr

Justification

To take account of the deletions proposed by the rapporteur and correcting a clerical error.

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point 111

Regulation (EC) No 6/2002

Article 102 – point e

Text proposed by the Commission

Amendment

(e) any other unit or person appointed by the Executive Director to that effect. ***deleted***

Or. fr

Justification

The provision too vague, leading to legal uncertainty.

Amendment 19

Proposal for a regulation

Article 1 – paragraph 1 – point 120

Regulation (EC) No 6/2002

Article 107

Text proposed by the Commission

Amendment

(120) Article 107 is amended as follows: ***deleted***

(a) Paragraph 1 is replaced by the following:

‘1. The Commission shall adopt an implementing act setting out rules for the implementation of this Regulation. That implementing regulation shall be adopted

in accordance with the examination procedure laid down in Article 109(2).’;

(b) paragraphs 2 and 3 are deleted;

Or. fr

Justification

It is clearer to keep the original list.

Amendment 20

Proposal for a regulation

Article 1 – paragraph 1 – point 121

Regulation (EC) No 6/2002

Article 107

Text proposed by the Commission

Amendment

(121) Article 107 is deleted.

deleted

Or. fr

Justification

It is clearer to keep the original list.

Amendment 21

Proposal for a regulation

Article 1 – paragraph 1 – point 124

Regulation (EC) No 6/2002

Article 109a – paragraph 2

Text proposed by the Commission

Amendment

2. The power to adopt delegated acts referred to in Articles 47b, 53a, 55a, 64a, 65a, **66a**, 66d, 66f, 66i, 67c, 78a and -106a shall be conferred on the Commission for an indeterminate period of time from [OP: please insert the date = the date of entry into force of this Regulation].

2. The power to adopt delegated acts referred to in Articles 47b, 53a, 55a, 64a, 65a, 66d, 66f, 66i, 67c, 78a and -106a shall be conferred on the Commission for an indeterminate period of time from [OP: please insert the date = the date of entry into force of this Regulation]. please insert the date = the date of entry into force of this Regulation].

Or. fr

Justification

Taking into account the rapporteur's amendment (deletion of the reference to Article 66a).

Amendment 22

Proposal for a regulation

Article 1 – paragraph 1 – point 124

Regulation (EC) No 6/2002

Article 109a – paragraph 6

Text proposed by the Commission

6. A delegated act adopted pursuant to Articles 47b, 53a, 55a, 64a, **65a**, 66a, 66d, 66f, 66i, 67c, 78a and -106a shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Amendment

6. A delegated act adopted pursuant to Articles 47b, 53a, 55a, 64a, 66a, 66d, 66f, 66i, 67c, 78a and -106a shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Or. fr

Justification

Taking into account the rapporteur's amendment (deletion of the reference to Article 66a).

Amendment 23

Proposal for a regulation

Article 1 – paragraph 1 – point 127

Regulation (EC) No 6/2002

Article 110 b – paragraph 1

Text proposed by the Commission

1. By [OP please complete: please insert the date = the first day of the month following **84** months after the date of entry into force of this Regulation], and every

Amendment

1. By [OP please complete: please insert the date = the first day of the month following **60** months after the date of entry into force of this Regulation], and every

five years thereafter, the Commission shall evaluate the implementation of this Regulation.

five years thereafter, the Commission shall evaluate the implementation of this Regulation.

Or. fr

Justification

An evaluation after 5 years of implementation seems more reasonable than after 7 years.

Amendment 24

Proposal for a regulation

Annex I

Regulation (EC) No 6/2002

Annex IV – point 6 – subpoint c

Text proposed by the Commission

Amendment

(c) for the third period of renewal:
EUR **280** per design;

(c) for the third period of renewal:
EUR **210** per design;

Or. fr

Justification

This reasonable progressivity is more in line with the interests of companies, in particular SMEs.

Amendment 25

Proposal for a regulation

Annex I

Regulation (EC) No 6/2002

Annex – point 6 – point d

Text proposed by the Commission

Amendment

(d) for the fourth period of renewal:
EUR **560** per design.

(d) for the fourth period of renewal:
EUR **280** per design.

Or. fr

Justification

This reasonable progressivity is more in line with the interests of companies, in particular SMEs.

EXPLANATORY STATEMENT

Council Regulation (EC) No 6/2002 can be credited for establishing a European design protection system. But having been in place for over 20 years, the regulation needed to be modernised, in particular to adapt it to the digital age and also to make it more attractive for independent creators and businesses, in particular SMEs. This is the focus of the Commission proposal.

The rapporteur broadly agrees with the proposed guidelines, but suggests some 20 amendments which seek primarily to bolster legal certainty. The main aims are to clarify the 'repair clause' (recital 16, Article 20a), to remove powers from the Executive Director which are difficult to justify (Articles 42, 65, 72a, 78, 100 and 102), and to reduce the amount of the fees for 3rd and 4th renewals (annex).