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#### COVER NOTE

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| From:            | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 6 November 2020   |
| To:              | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |

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| No. Cion doc.: | SWD(2020) 265 final  |
| Subject:       | COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE EVALUATION of EU legislation on design protection |

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Delegations will find attached document SWD(2020) 265 final.

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Brussels, 6.11.2020  
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**COMMISSION STAFF WORKING DOCUMENT  
EXECUTIVE SUMMARY OF THE EVALUATION**

**of EU legislation on design protection**

{SWD(2020) 264 final}

## Background

The EU legislation on design protection aims at promoting a single market and an undistorted competition regime for products embodying designs. By providing effective protection for designs, it also aims to foster innovation. Directive 98/71/EC<sup>1</sup> ('the Directive') harmonises key provisions of design law, ensuring that the conditions for obtaining registered design rights are identical and that those rights confer equivalent protection in all Member States. Regulation (EC) No 6/2002<sup>2</sup> ('the Regulation') creates an autonomous system for the unitary protection of designs at EU level, for both unregistered and registered designs, with the European Union Intellectual Property Office ('EUIPO') acting as competent administration for the registered design.

The purpose of this evaluation is to analyse to what extent the EU legislation on design protection has achieved its objectives in terms of efficiency, effectiveness, relevance, coherence and EU added value. It aims to assess to what extent the legislation is still fit for purpose, in particular in view of the digital transformation underway.

## Findings

The evaluation showed that the objectives pursued by the EU's design legislation continue to be highly **relevant**. This was shown in the substantial contribution made by design-intensive industries to the EU's economy and in the growing value of new technological designs for EU innovation. The steady increase in the number of design applications filed with the EUIPO proves both the success of the Community design system and the rising importance companies give to protecting their designs.

However, the evaluation indicated that the design protection system may be underused, in part due to a lack of awareness. It also revealed that the legislation is not fully adapted to the digital age (e.g. uncertainties regarding the possibility to protect graphical user interfaces or icons as designs, the possibility to file not only static, but also dynamic views of designs, the scope of design rights and the scope of private use limitation in the context of 3D printing).

In terms of **effectiveness**, the EU's design legislation has been broadly successful in promoting a single market for products embodying designs, with the exception of provisions on design protection for component parts used for the repair of complex products. Due to only partial harmonisation, the economically important spare parts market continues to be fragmented, causing considerable legal uncertainty and distorting competition.

The legislation also proved to be effective in providing reliable protection tools, serving the needs of multiple design industries. Regarding enforcement, the evaluation revealed that, although judicial recourse is widely used, there is room for improvement. This should be explored in the context of the recent evaluation of the Enforcement Directive<sup>3</sup>. The Regulation has also clearly been effective in providing access to simple and affordable design protection by making it significantly easier and less costly to obtain a registered design right that is valid across the whole EU. However, the evaluation also revealed certain shortcomings, such as unclear definitions of the coverage of protection and an outdated procedural regime for design representation.

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<sup>1</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).

<sup>2</sup> Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ L 3, 5.1.2002, p. 1).

<sup>3</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 195, 2.6.2004, p. 16).

As regards **efficiency**, the evaluation showed that the costs involved in implementing the legislation are outweighed by its benefits. The unitary registration system has led to lower registration costs, less complexity and fewer delays in design registration, while increasing transparency and predictability. Nonetheless, the evaluation highlighted certain aspects of the registration system (representation requirements, conditions for filing multiple applications, fee structure) that appear to create unnecessary administrative burden and costs for its users, reducing the system's efficiency.

The evaluation also revealed that the procedural rules of the Member States differ from each other and from the Regulation. These differences have a negative impact on the **coherence** of design protection systems in the EU and lead to uneven levels of access (in terms of delays, complexity, and costs) for applicants. The recent trade mark reform<sup>4</sup> significantly increased the level of incoherence with the legislation on design protection, due to further substantive and procedural harmonisation in the trade mark sector (e.g. to cover counterfeit goods in transit or administrative invalidity procedures). The interaction with copyright law is considered unclear, as it does not properly account for the latest case law issued by the Court of Justice of the European Union.

Regarding **added value**, it is likely that without EU legislation on design protection, big differences between national laws would have remained, with the result that the internal market for goods embodying designs would remain fragmented and distorted. Both acquiring and enforcing design protection across the EU would have involved much higher costs and administrative burdens for companies, discouraging innovation and new product development.

### **Conclusions**

The EU legislation on designs can be considered still broadly fit for purpose. This is especially valid for the basic premises and principles underlying the legislation, which have stood the test of time.

However, the evaluation revealed a number of relevant shortcomings that need to be addressed to make the legal framework fit to support the twin digital and green transitions underway, and to become substantially more accessible and efficient for industries, SMEs and individual designers. These shortcomings include in particular lack of clarity and robustness on the certain key elements of design protection (subject matter, scope of rights and limitations), outdated or overly complicated procedures, inappropriate fee levels and fee structure, lack of coherence of the procedural rules and incomplete single market for spare parts.

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<sup>4</sup> [https://ec.europa.eu/growth/industry/policy/intellectual-property/trade-mark-protection\\_en](https://ec.europa.eu/growth/industry/policy/intellectual-property/trade-mark-protection_en)