



Council of the
European Union

Brussels, 29 November 2022
(OR. en)

Interinstitutional File:
2022/0392(COD)

15400/22
ADD 4

PI 170
COMPET 968
MI 884
IND 520
IA 208
CODEC 1864

COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 28 November 2022

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: SWD(2022) 369 final

Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the documents Proposal for REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending COUNCIL REGULATION (EC) No 6/2002 on Community Designs and repealing Commission Regulation (EC) No 2246/2002 and the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the legal protection of designs (recast)

Delegations will find attached document SWD(2022) 369 final.

Encl.: SWD(2022) 369 final



Brussels, 28.11.2022
SWD(2022) 369 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the documents

Proposal for
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending COUNCIL REGULATION (EC) No 6/2002 on Community Designs and
repealing Commission Regulation (EC) No 2246/2002

and the

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the legal protection of designs (recast)

{COM(2022) 666 final} - {COM(2022) 667 final} - {SEC(2022) 422 final} -
{SWD(2022) 367 final} - {SWD(2022) 368 final}

Executive Summary Sheet

Impact assessment on a Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/2002 and a Proposal for a Directive of the European Parliament and of the Council on the legal protection of designs (recast).

A. Need for action

Why? What is the problem being addressed?

The laws of Member States providing for design protection at domestic level were partially aligned by [the Design Directive 98/71/EC](#). As a complement alongside national systems, the Community Design Regulation (EC) 6/2002 established unitary protection (i.e. with equal effect throughout the EU) for designs in 2003. While national designs are registered by the national intellectual property (IP) offices of Member States, Community designs (RCDs) are registered and administered by the European Union Intellectual Property Office (EUIPO). Depending on the territorial scale of economic activity, firms and designers can therefore either opt for a national or Community-wide registered design right, or apply for and maintain parallel protection within the same territory through both the national and Community systems. 'Community' in this sense means 'EU'.

The main unsolved issue remains protecting the aftermarket for visible spare parts. 12 Member States allow free competition in this sector, while the rest retain the manufacturers' monopoly, despite the encouragement to open the market that is embedded in the Design Directive.

EU legislation on design protection has remained practically unchanged since it was adopted. An evaluation of that legislation ([SWD \(2020\) 264 final](#)) concluded that the design protection system in the EU works well overall but that there are certain shortcomings that need to be addressed to make it fit for purpose in the digital age and more accessible and efficient for businesses, SMEs (small and medium-sized enterprises) and individual designers.

The Commission therefore announced (in a [2020 communication](#)) that it will revise the EU legislation on design protection. Both the European Parliament and Council supported this revision.

This revision aims to address two main problems in particular:

1. Most importantly, the disruption in intra-EU trade and barriers to competition in some Member States with respect to repair spare parts.
2. The discouragement of businesses, in particular, SMEs and individual designers, from seeking for registered design protection at EU or national level due to the partly outdated, complex procedures and sub-optimal fees to be paid for the RCD, as well as divergent rules at national level which are not yet aligned with those of the RCD system.

What is this initiative expected to achieve?

The general aim of this initiative is to promote contribution to design excellence, innovation and competitiveness in the EU by ensuring that the design protection system is fit for purpose in the digital age and becomes more accessible and efficient for individual designers, SMEs and design-intensive industries. Furthermore, it aims to complete the single market for repair spare parts.

These general objectives translate into the following 3 specific objectives:

- i. open up the spare parts aftermarket for competition;
- ii. improve the accessibility, efficiency and affordability of registered Community design protection;
- iii. increase complementarity and interoperability between the Community and national design systems, in particular by aligning procedural rules.

What is the value added of action at the EU level?

Design-intensive industries substantially contribute to the EU's economy: in 2014-2016 they represented almost 16% of EU GDP and of 14 % of all jobs. Pursuing the objectives of this initiative therefore promises to have a positive impact on such design-intensive industries, including their contribution to employment.

The Community design system was created by and thus can only be changed via the EU Regulation. Measures aiming at extending the current level of approximation of national design rules should continue through the Design Directive and consequently can only be taken at EU level, also given the need to ensure consistency with the RCD system.

As regards the spare parts issue specifically, the single market can only be completed at EU level. The more than 20 years of experience with the current Design Directive has shown no strong trend towards alignment among Member States on a voluntary basis or through self-regulation by industry.

Action at EU level would thus ensure that the design protection system in Europe as a whole gets substantially more accessible and efficient for businesses, in particular SMEs and individual designers. Completing the single market for repair spare parts would increase competition and substantially benefit consumers, who would be able to choose between competing parts at lower prices.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

- **Baseline – no change:** Current rules and procedures continue.

As to spare parts protection, there are 3 policy options as follows:

- **Option 1.1 – Full liberalisation for all designs:** The market of 'must-match' spare parts should be opened for competition in the entire EU, extending it to both existing and new designs.
- **Option 1.2 – Instant full liberalisation for new designs followed by full liberalisation for old designs after a transitional 10-year period:** As option 1.1 but designs already granted before the entry into force of the new act would continue to be protected for a transitional period of 10 years.
- **Option 1.3 – Full liberalisation for new designs only:** Designs already granted before entry into force would not be affected and allowed to be protected for maximum term of 25 years.

As for the complex RCD procedures, there is one (unanimously supported) option:

- **Option 2 - Simplification and streamlining of RCD procedures,** such as by modernising the requirements for design representation and facilitating the filing of multiple applications by abolishing the 'unity-of-class' requirement.

As for the sub-optimal RCD fees, there is 1 option with 2 sub-options:

- **Option 3 - Lower RCD registration fee and easier multiple applications:** This model allows easier access to RCD protection, in particular for SMEs (cheaper acquisition of the right and first renewal), while discouraging companies from maintaining non-utilised designs in the register by increasing the fees for subsequent renewals.

Sub-option 3.1: the registration fee for a single RCD is reduced from EUR 350 to EUR 250. For each additional design forming part of a multiple application, the fee is reduced to EUR 125. The fee for first renewal is EUR 70; for second renewal EUR 140; for third renewal EUR 280; for fourth renewal EUR 560.

Sub-option 3.2: the registration fee is also EUR 250 but each additional design of a multiple application is further discounted to EUR 100. All renewal fees are higher than under the current system. The fee for first renewal is EUR 80; for second renewal EUR 160; for third renewal EUR 320; for fourth renewal EUR 640.

As for the divergent rules at national level, there are 2 options:

- **Option 4.1:** Partial further alignment of national laws, bringing increased consistency with the RCD system. This option involves adding provisions to the Design Directive on selected design law aspects that it does not yet address and which have been identified by stakeholders as being in greatest need of alignment (in particular concerning procedures) with the Community Design Regulation.
- **Option 4.2:** Full alignment of national design laws and procedures. This approach would be based on Option 4.1, encompassing its above components, but include all remaining aspects of substantive design law and procedures which are part of the Community Design Regulation but not the Design Directive.

A combination of options including **option 1.2, option 2, option 3.1** and **option 4.1** are preferred.

Option 1.2 is considered to be the most proportional one to achieve complete alignment in the single market on the principle of liberalisation. It is in line with the spirit of the transitory spare parts regime in the Design Directive, aiming at complete liberalisation of the spare parts market in the EU.

This option also is in line with the Commission's intention in the previous proposal in 2004 as well as consistent with and complementary to Regulation (EU) 461/2010 (the Motor Vehicle Block Exemption Regulation or MVBBER) in the antitrust field. Liberalisation of the spare parts market would help that antitrust regime to achieve its full benefits for enterprises and consumers in the automotive aftermarket.

Finally, option 1.2 is consistent with and complements efforts put forward in the Sustainable Product Initiative that aims at promoting repairs and the circular economy, and is in line with the international Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Option 2 together with option 3.1 would make RCD protection more accessible and affordable for businesses (keeping pace with technological progress) and promises to involve significant positive impacts and clear benefits for businesses, in particular SMEs and individual designers.

Option 4.1, in particular by adding principal procedural rules to the Design Directive, in alignment with the Community Design Regulation, would make it easier and less costly for firms and designers to obtain design protection across Member States, including through combined use of national and RCD systems.

This option would also positively influence cooperation between the EUIPO and national IP offices in terms of facilitating increasing convergence of practices and developing common tools for new areas where alignment is desirable (e.g. invalidation of designs). This promises to generate further net benefits for users of the design protection systems while improving their complementarity and interoperability.

Analysis and past experience with voluntary approaches has led the Commission to conclude that all the preferred options should be implemented via legislative changes to the Design Directive and the Community Design Regulation.

Who supports which option?

The proposed modernisation, streamlining and further alignment of the design protection systems in the EU in terms of options 2, 3 and 4.1.b is strongly supported by Member State authorities, the European Parliament, design intensive industries, associations of design right holders and intellectual property attorneys and agents.

Opening up the spare parts aftermarket in terms of option 1.2 is strongly supported by independent spare parts manufacturers and distributors, associations representing their interests, academia, and consumer organisations.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

For consumers: Liberalising the spare parts aftermarket through option 1.2 would involve savings of

EUR 340-544 million. These savings would be fully realised after the proposed 10-year transition period. During that period, every year benefits would increase by EUR 4 to 13m.

For firms and individuals applying for design protection: Adjusting RCD fees by option 3.1 would make basic access to registration less costly and bring annual savings of EUR 6m to those protecting designs for 5 to 10 years.

Simplifying and streamlining the RCD system by option 2 would facilitate access to registration while ensuring greater predictability and legal certainty. To the extent that this is quantifiable, it would involve annual savings of EUR 1,6m as a consequence of updating the design representation requirements, and the extended possibility to file multiple applications.

Further alignment of the rules through option 4.1 would make it easier and less costly for firms and designers to obtain design protection across Member States, including through combined use of national and RCD systems. It would bring greater predictability (less need for external expertise), help reduce costs in managing IP portfolios, and facilitate the cancellation of registered designs that do not merit protection.

For the EUIPO: simplifying and streamlining procedures through option 2 would enable EUIPO to run RCD operations more efficiently (less deficient applications to treat; smoother running of workflows and back office IT landscape due to alignment with EU trade mark procedures). It would further facilitate the EUIPO's task of promoting convergence of practices and tools in cooperation with national IP offices (EUIPO serving as benchmark).

For Member States and national IP Offices: Further alignment of the rules through option 4.1 would allow national IP Offices to become more attractive and competitive within the 2-tiered design protection system in the EU. Extended alignment of the rules would also allow these offices to benefit from extended cooperation with the EUIPO, to promote convergence of practices and tools.

What are the costs of the preferred option (if any, otherwise main ones)?

For manufacturers of motor vehicles: No direct cost, but liberalisation of the spare parts aftermarket would cause a loss of income corresponding to the savings expected for consumers.

For firms and individuals applying for design protection: Reformed design protection systems would require some adaptation to new rules, including a learning process.

For the EUIPO: Simplification through option 2 (extension of the option to file multiple applications) and adjusting fees through option 3.1 would bring a loss of revenue corresponding to fee savings for firms and individuals. Options would also involve (minor) implementing costs to adapt workflows and IT processes.

For Member States and national IP Offices: Further harmonisation of rules by Option 4.1, in particular in the area of procedures (e.g. establishment of office-based invalidity proceedings) will involve implementing costs. These costs are however considered both bearable and proportional.

How will businesses, SMEs and micro-enterprises be affected?

Simplifying RCD procedures through option 2 and adjusting RCD fees through option 3.1 would be particularly beneficial for SMEs, facilitating access to and making design registration for the initial 5 or 10-year terms more affordable. Compared to large firms, SMEs not only tend to file fewer designs but also choose shorter protection periods.

Option 4.1 would also facilitate access to design protection across Member States (including through combined use of national and RCD systems due to their increased interoperability), particularly for SME's. This would also be as a result of greater predictability and legal certainty, since smaller companies are more dependent on external legal expertise.

Providing office-based invalidity procedures would further help SMEs in particular to have invalid designs removed from the design registers efficiently.

Will there be significant impacts on national budgets and administrations?

Member States' national IP Offices would face minimum, proportional implementing costs as a consequence of the increased alignment of the rules, in particular for design procedures.

Will there be other significant impacts?

There are no other significant impacts to be expected.

D. Follow-up

When will the policy be reviewed?

Five years after the Regulation becomes fully applicable, the Commission would submit a report on the implementation of the Regulation to the European Parliament and the EU Council.