

Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs

TITLE II

THE LAW RELATING TO DESIGNS

Section 1

Requirements for protection

Article 3

Definitions

For the purposes of this Regulation:

- (a) ‘design’ means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation;
- (b) ‘product’ means any industrial or handicraft item, including *inter alia* parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs;
- (c) ‘complex product’ means a product which is composed of multiple components which can be replaced permitting disassembly and re-assembly of the product.

Article 4

Requirements for protection

- 1 A design shall be protected by a Community design to the extent that it is new and has individual character.
- 2 A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:
 - a if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and
 - b to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.
- 3 ‘Normal use’ within the meaning of paragraph (2)(a) shall mean use by the end user, excluding maintenance, servicing or repair work.

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Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 6/2002, TITLE II. (See end of Document for details)

Article 5

Novelty

1 A design shall be considered to be new if no identical design has been made available to the public:

- a in the case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public;
- b in the case of a registered Community design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

2 Designs shall be deemed to be identical if their features differ only in immaterial details.

Article 6

Individual character

1 A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public:

- a in the case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public;
- b in the case of a registered Community design, before the date of filing the application for registration or, if a priority is claimed, the date of priority.

2 In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

Article 7

Disclosure

1 For the purpose of applying Articles 5 and 6, a design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, before the date referred to in Articles 5(1)(a) and 6(1)(a) or in Articles 5(1)(b) and 6(1)(b), as the case may be, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community. The 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.

2 A disclosure shall not be taken into consideration for the purpose of applying Articles 5 and 6 and if a design for which protection is claimed under a registered Community design has been made available to the public:

- a by the designer, his successor in title, or a third person as a result of information provided or action taken by the designer or his successor in title; and
- b during the 12-month period preceding the date of filing of the application or, if a priority is claimed, the date of priority.

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3 Paragraph 2 shall also apply if the design has been made available to the public as a consequence of an abuse in relation to the designer or his successor in title.

Article 8

Designs dictated by their technical function and designs of interconnections

1 A Community design shall not subsist in features of appearance of a product which are solely dictated by its technical function.

2 A Community design shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

3 Notwithstanding paragraph 2, a Community design shall under the conditions set out in Articles 5 and 6 subsist in a design serving the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

Article 9

Designs contrary to public policy or morality

A Community design shall not subsist in a design which is contrary to public policy or to accepted principles of morality.

Section 2

Scope and term of protection

Article 10

Scope of protection

1 The scope of the protection conferred by a Community design shall include any design which does not produce on the informed user a different overall impression.

2 In assessing the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration.

Article 11

Commencement and term of protection of the unregistered Community design

1 A design which meets the requirements under Section 1 shall be protected by an unregistered Community design for a period of three years as from the date on which the design was first made available to the public within the Community.

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

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have become known to the circles specialised in the sector concerned, operating within the Community. The 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.

Article 12

Commencement and term of protection of the registered Community design

Upon registration by the Office, a design which meets the requirements under Section 1 shall be protected by a registered Community design for a period of five years as from the date of the filing of the application. The right holder may have the term of protection renewed for one or more periods of five years each, up to a total term of 25 years from the date of filing.

Article 13

Renewal

1 Registration of the registered Community design shall be renewed at the request of the right holder or of any person expressly authorised by him, provided that the renewal fee has been paid.

2 The Office shall inform the right holder of the registered Community design and any person having a right entered in the register of Community designs, referred to in Article 72, hereafter referred to as the 'register' in respect of the registered Community design, of the expiry of the registration in good time before the said expiry. Failure to give such information shall not involve the responsibility of the Office.

3 The request for renewal shall be submitted and the renewal fee paid within a period of six months ending on the last day of the month in which protection ends. Failing this, the request may be submitted and the fee paid within a further period of six months from the day referred to in the first sentence, provided that an additional fee is paid within this further period.

4 Renewal shall take effect from the day following the date on which the existing registration expires. The renewal shall be entered in the register.

Section 3

Right to the Community design

Article 14

Right to the Community design

1 The right to the Community design shall vest in the designer or his successor in title.

2 If two or more persons have jointly developed a design, the right to the Community design shall vest in them jointly.

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3 However, where a design is developed by an employee in the execution of his duties or following the instructions given by his employer, the right to the Community design shall vest in the employer, unless otherwise agreed or specified under national law.

Article 15

Claims relating to the entitlement to a Community design

1 If an unregistered Community design is disclosed or claimed by, or a registered Community design has been applied for or registered in the name of, a person who is not entitled to it under Article 14, the person entitled to it under that provision may, without prejudice to any other remedy which may be open to him, claim to become recognised as the legitimate holder of the Community design.

2 Where a person is jointly entitled to a Community design, that person may, in accordance with paragraph 1, claim to become recognised as joint holder.

3 Legal proceedings under paragraphs 1 or 2 shall be barred three years after the date of publication of a registered Community design or the date of disclosure of an unregistered Community design. This provision shall not apply if the person who is not entitled to the Community design was acting in bad faith at the time when such design was applied for or disclosed or was assigned to him.

4 In the case of a registered Community design, the following shall be entered in the register:

- a the mention that legal proceedings under paragraph 1 have been instituted;
- b the final decision or any other termination of the proceedings;
- c any change in the ownership of the registered Community design resulting from the final decision.

Article 16

Effects of a judgement on entitlement to a registered Community design

1 Where there is a complete change of ownership of a registered Community design as a result of legal proceedings under Article 15(1), licences and other rights shall lapse upon the entering in the register of the person entitled.

2 If, before the institution of the legal proceedings under Article 15(1) has been registered, the holder of the registered Community design or a licensee has exploited the design within the Community or made serious and effective preparations to do so, he may continue such exploitation provided that he requests within the period prescribed by the implementing regulation a non-exclusive licence from the new holder whose name is entered in the register. The licence shall be granted for a reasonable period and upon reasonable terms.

3 Paragraph 2 shall not apply if the holder of the registered Community design or the licensee was acting in bad faith at the time when he began to exploit the design or to make preparations to do so.

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Article 17

Presumption in favour of the registered holder of the design

The person in whose name the registered Community design is registered or, prior to registration, the person in whose name the application is filed, shall be deemed to be the person entitled in any proceedings before the Office as well as in any other proceedings.

Article 18

Right of the designer to be cited

The designer shall have the right, in the same way as the applicant for or the holder of a registered Community design, to be cited as such before the Office and in the register. If the design is the result of teamwork, the citation of the team may replace the citation of the individual designers.

Section 4

Effects of the Community design

Article 19

Rights conferred by the Community design

1 A registered Community design shall confer on its holder the exclusive right to use it and to prevent any third party not having his consent from using it. The aforementioned use shall cover, in particular, the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

2 An unregistered Community design shall, however, confer on its holder the right to prevent the acts referred to in paragraph 1 only if the contested use results from copying the protected design.

The contested use shall not be deemed to result from copying the protected design if it results from an independent work of creation by a designer who may be reasonably thought not to be familiar with the design made available to the public by the holder.

3 Paragraph 2 shall also apply to a registered Community design subject to deferment of publication as long as the relevant entries in the register and the file have not been made available to the public in accordance with Article 50(4).

Article 20

Limitation of the rights conferred by a Community design

1 The rights conferred by a Community design shall not be exercised in respect of:

- a acts done privately and for non-commercial purposes;

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- b acts done for experimental purposes;
 - c acts of reproduction for the purpose of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.
- 2 In addition, the rights conferred by a Community design shall not be exercised in respect of:
- a the equipment on ships and aircraft registered in a third country when these temporarily enter the territory of the Community;
 - b the importation in the Community of spare parts and accessories for the purpose of repairing such craft;
 - c the execution of repairs on such craft.

Article 21

Exhaustion of rights

The rights conferred by a Community design shall not extend to acts relating to a product in which a design included within the scope of protection of the Community design is incorporated or to which it is applied, when the product has been put on the market in the Community by the holder of the Community design or with his consent.

Article 22

Rights of prior use in respect of a registered Community design

1 A right of prior use shall exist for any third person who can establish that before the date of filing of the application, or, if a priority is claimed, before the date of priority, he has in good faith commenced use within the Community, or has made serious and effective preparations to that end, of a design included within the scope of protection of a registered Community design, which has not been copied from the latter.

2 The right of prior use shall entitle the third person to exploit the design for the purposes for which its use had been effected, or for which serious and effective preparations had been made, before the filing or priority date of the registered Community design.

3 The right of prior use shall not extend to granting a licence to another person to exploit the design.

4 The right of prior use cannot be transferred except, where the third person is a business, along with that part of the business in the course of which the act was done or the preparations were made.

Article 23

Government use

Any provision in the law of a Member State allowing use of national designs by or for the government may be applied to Community designs, but only to the extent that the use is necessary for essential defence or security needs.

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Section 5

Invalidity

Article 24

Declaration of invalidity

1 A registered Community design shall be declared invalid on application to the Office in accordance with the procedure in Titles VI and VII or by a Community design court on the basis of a counterclaim in infringement proceedings.

2 A Community design may be declared invalid even after the Community design has lapsed or has been surrendered.

3 An unregistered Community design shall be declared invalid by a Community design court on application to such a court or on the basis of a counterclaim in infringement proceedings.

Article 25

Grounds for invalidity

1 A Community design may be declared invalid only in the following cases:

- a if the design does not correspond to the definition under Article 3(a);
- b if it does not fulfil the requirements of Articles 4 to 9;
- c if, by virtue of a court decision, the right holder is not entitled to the Community design under Article 14;

[^{F1}d if the Community design is in conflict with a prior design which has been made available to the public after the date of filing of the application or, if priority is claimed, the date of priority of the Community design, and which is protected from a date prior to the said date

(i) by a registered Community design or an application for such a design,

or

(ii) by a registered design right of a Member State, or by an application for such a right,

or

(iii) by a design right registered under the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999, hereinafter referred to as ‘the Geneva Act’, which was approved by Council Decision 954/2006 and which has effect in the Community, or by an application for such a right;]

e if a distinctive sign is used in a subsequent design, and Community law or the law of the Member State governing that sign confers on the right holder of the sign the right to prohibit such use;

f if the design constitutes an unauthorised use of a work protected under the copyright law of a Member State;

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g if the design constitutes an improper use of any of the items listed in Article 6ter of the ‘Paris Convention’ for the Protection of Industrial Property hereafter referred to as the ‘Paris Convention’, or of badges, emblems and escutcheons other than those covered by the said Article 6ter and which are of particular public interest in a Member State.

2 The ground provided for in paragraph (1)(c) may be invoked solely by the person who is entitled to the Community design under Article 14.

3 The grounds provided for in paragraph (1)(d), (e) and (f) may be invoked solely by the applicant for or holder of the earlier right.

4 The ground provided for in paragraph (1)(g) may be invoked solely by the person or entity concerned by the use.

5 Paragraphs 3 and 4 shall be without prejudice to the freedom of Member States to provide that the grounds provided for in paragraphs 1(d) and (g) may also be invoked by the appropriate authority of the Member State in question on its own initiative.

6 A registered Community design which has been declared invalid pursuant to paragraph (1)(b), (e), (f) or (g) may be maintained in an amended form, if in that form it complies with the requirements for protection and the identity of the design is retained. ‘Maintenance’ in an amended form may include registration accompanied by a partial disclaimer by the holder of the registered Community design or entry in the register of a court decision or a decision by the Office declaring the partial invalidity of the registered Community design.

Textual Amendments

- F1** Substituted by [Council Regulation \(EC\) No 1891/2006 of 18 December 2006 amending Regulations \(EC\) No 6/2002 and \(EC\) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs.](#)

Article 26

Consequences of invalidity

1 A Community design shall be deemed not to have had, as from the outset, the effects specified in this Regulation, to the extent that it has been declared invalid.

2 Subject to the national provisions relating either to claims for compensation for damage caused by negligence or lack of good faith on the part of the holder of the Community design, or to unjust enrichment, the retroactive effect of invalidity of the Community design shall not affect:

- a any decision on infringement which has acquired the authority of a final decision and been enforced prior to the invalidity decision;
- b any contract concluded prior to the invalidity decision, in so far as it has been performed before the decision; however, repayment, to an extent justified by the circumstances, of sums paid under the relevant contract may be claimed on grounds of equity.

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