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INFORMATION

From: To:	General Secretariat of the Council Working Party on Intellectual Property (Designs)
N° prev. doc.:	15400/22
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the legal protection of designs (recast) - Member State comments

Delegations will find attached an updated compilation of drafting suggestions and observations received in response to the requests for comments from the Presidency on the above-mentioned proposal.

Contributions of the following delegations have now been added: Hungary and Luxembourg.

ANNEX

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
Proposal for a	
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	DE (Comments): The German Federal Government is grateful for the opportunity to comment. The Federal Government wishes to emphasise that this is only a preliminary assessment. Thus, the following comments on the Directive proposal are not intended to be exhaustive, and the German Federal Government explicitly reserves the right to submit further comments at any time. The Federal Government also reserves the right to make further proposals for provisions if necessary. It should also be noted that, at this point, the comments are limited to the operative part of the proposal. It has so far not been possible to examine the content of the recitals other than the comment on Recital 12 below. In particular, the recitals will subsequently have to be adapted to the contents of the articles.
on the legal protection of designs (recast)	RO (Drafting): On the legal protection of industrial designs RO (Comments): To be in accordance with terminology of international agreements and conventions in the field.
(Text with EEA relevance)	
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Having regard to the Treaty on the functioning of the European Union, and in particular Article 114(1) thereof,	
Having regard to the proposal from the European Commission,	

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
After transmission of the draft legislative act to the national parliaments,	
Having regard to the opinion of the European Economic and Social Committee[1],	
Acting in accordance with the ordinary legislative procedure,	
Whereas:	
(1) A number of amendments are to be made to Directive 98/71/EC of the European Parliament and of the Council[2]. In the interests of clarity, that Directive should be recast.	
(2) Directive 98/71/EC has harmonised key provisions of substantive design law of the Member States which at the time of its adoption were considered as most directly affecting the functioning of the internal market by impeding the free movement of goods and the freedom to provide services in the Union.	
(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[3]. 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.	NL (Comments): Following the clear preference for maintaining the coexistence of the national and the European design protection system expressed in the public consultations, the choice was made to indeed maintain this coexistence. In this regard, the Dutch delegation would like to stress that making such a choice implies the need to strike a proper balance, when harmonizing the different systems, between the accessibility and the added value for the users

PUBLIC

1 OJ C […], […], p. […].

2 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).

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

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	of the national or regional systems. In other words: this requires that the EU legislation favors, promotes, guarantees and perpetuates coexistence. From this point of view, the proposed reform raises certain questions. By harmonizing both substantive law and procedures (while including international applications under the Hague system), the proposal results in a significant increase in the tasks of the national offices. This is particularly the case for the (mandatory) introduction of an administrative invalidity procedure (see comments under article 31). While certain changes are definitely in the interest of the users, an increased workload inevitably means higher costs. In most Member States (and in the Benelux countries), these increased costs are likely to be reflected in increased fees. However, in the context of national designs which are already under strong competitive pressure from the European system, an increase in fees will, in the short to medium term, mean the asphyxiation of the system: national designs will no longer attract any applicants and this system will simply become unviable. It follows from the foregoing that the principle of coexistence, as highlighted in recital 3, should be taken into account when evaluating the proposed amendments to the system. BE (Comments): Following the clear preference for maintaining the coexistence of the national and the European design protection system expressed in the public consultations, the choice was made to indeed maintain this coexistence. In this regard, the Belgian delegation would like to stress that making such a choice implies the need to strike a proper balance, when harmonizing the different systems, between the accessibility and the added value for the users of the national or regional systems. In other words: this requires that the EU legislation favors, promotes, guarantees and perpetuates coexistence. From this point of view, the proposed reform raises certain questions. By harmonizing both substantive law and procedures (while including international applications under the Hague system), the proposal results in a significant increase in the tasks of the national offices. This is particularly the case for the (mandatory) introduction of an administrative invalidity

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	procedure (see comments under article 31). While certain changes are definitely in the interest of the users, an increased workload inevitably means higher costs. In most Member States (and in the Benelux countries), these increased costs are likely to be reflected in increased fees. However, in the context of national designs which are already under strong competitive pressure from the European system, an increase in fees will, in the short to medium term, mean the asphyxiation of the system: national designs will no longer attract any applicants and this system will simply become unviable. It follows from the foregoing that the principle of coexistence, as highlighted in recital 3, should be taken into account when evaluating the proposed amendments to the system. LU (Comments): Following the clear preference for maintaining the coexistence of the national and the European design protection system expressed in the public consultations, the choice was made to indeed maintain this coexistence. In this regard, the Luxembourg delegation would like to stress that making such a choice implies the need to strike a proper balance, when harmonizing the different systems, between the accessibility and the added value for the users of the national or regional systems. In other words: this requires that the EU legislation favors, promotes, guarantees and perpetuates coexistence. From this point of view, the proposed reform raises certain questions. By harmonizing both substantive law and procedures (while including international applications under the Hague system), the proposal results in a significant increase in the tasks of the national offices. This is particularly the case for the (mandatory) introduction of an administrative invalidity procedure (see comments under article 31). While certain changes are definitely in the interest of the users, an increased workload inevitably means higher costs. In most Member States (and in the Benelux countries), these increased costs are likely to be reflected in increased fees. However, in the context of national designs which are already under strong competitive pressure from the European system, an increase in fees will, in the short to medium term, mean the asphyxiation of the system: national designs will no

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	longer attract any applicants and this system will simply become unviable. It follows from the foregoing that the principle of coexistence, as highlighted in recital 3, should be taken into account when evaluating the proposed amendments to the system.
(4) In line with its Better Regulation agenda[1] to review Union policies regularly, the Commission carried out an extensive evaluation of the design protection systems in the Union, involving a comprehensive economic and legal assessment, supported by a series of studies.	
(5) In its conclusions of 11 November 2020 on intellectual property policy and the revision of the industrial design system in the Union[2], 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.	
(6) Based on the final results of the evaluation, the Commission announced in its communication of 25 November 2020 ‘Making the most	

1 Communication from the Commission: Better regulation for better results – An EU agenda, COM(2015) 215 final.

2 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).

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
of the EU's innovative potential. An intellectual property action plan to support the EU's recovery and resilience'[1] that it will revise the Union legislation on design protection, following the successful reform of the Union trade mark legislation.	
(7) In its report of 10 November 2021 on the intellectual property action plan[2] the European Parliament welcomed the Commission's willingness to modernise the Union legislation on design protection, called on the Commission to further harmonise the application and invalidation procedures in the Member States, and suggested to reflect upon aligning Directive 98/71/EC and Regulation (EC) No 6/2002 with a view to creating greater legal certainty.	
(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.	
(9) In order to ensure a well-functioning internal market, and to facilitate, where appropriate, acquiring, administering and protecting design rights in the Union for the benefit of the growth and the competitiveness of businesses within the Union, in particular small and medium-sized enterprises, while taking due account of the interests of consumers, it is necessary to extend the approximation of laws achieved by Directive 98/71/EC to other aspects of substantive design law governing designs protected through registration pursuant to Regulation (EC) No 6/2002.	

[1] 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.

[2] Report on an intellectual property action plan to support the EU's recovery and resilience (2021/2007(INI)).

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
(10) Furthermore, it is also necessary to approximate procedural rules in order to facilitate acquiring, administering and protecting design rights in the Union. Therefore, certain principal procedural rules in the area of design registration in the Member States and in the EU design system should be aligned. As regards procedures under national law, it is sufficient to lay down general principles, leaving the Member States free to establish more specific rules.	NL (Drafting): *"(...) Therefore, certain principal procedural rules in the area of design registration in the Member States and in the EU design system should be aligned. As regards <u>other/general(?)</u> procedures under national law, it is sufficient to lay down general principles, leaving the Member States free to establish more specific rules.* NL (Comments): The first sentence states: "Certain principal procedural rules in the area of design registration in the national and EU design systems should be aligned". The second sentence states: "as regard procedures under national law, it is sufficient to lay down general principles" In comparing the two sentences the question arises: "As regards – <u>which?</u> – procedures under national law it is sufficient to law down general principles"?
(11) This Directive does not exclude the application to designs of national or Union legislation providing for protection other than that conferred by registration or publication as design, such as legislation relating to unregistered design rights, trade marks, patents and utility models, unfair competition or civil liability.	NL (Drafting): *This Directive does not exclude the application to designs of ~~national or~~ Union legislation providing for protection other than that conferred by registration or publication as design, such as legislation relating to unregistered design rights, <u>or of national or Union legislation relating to</u> trademarks, patents and utility models, unfair competition or civil liability.* NL (Comments): National legislation on unregistered designs is no longer permitted
(12) It is important to establish the principle of cumulation of protection under specific registered design protection law and under copyright law, whereby designs protected by design rights should also be eligible for being protected as copyright works, provided that the requirements of Union copyright law are met.	DE (Drafting): It is important to establish the principle of cumulation of protection under specific registered design protection law and under copyright law, whereby designs protected by design rights should also be eligible for being protected

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	as copyright works, provided that the requirements of ~~Union~~ copyright law are met. DE (Comments): Despite advanced harmonisation in the area of copyright law, there is no generally applicable unified concept of a copyright-protected "work" in EU legislation. The issue of the extent to which the requirements for copyright protection are actually fully harmonised has not yet been conclusively established – this is, however, a matter to be addressed in copyright law and not in design law. Recital (12) should therefore only refer to the principle of cumulation of design and copyright protection without specifying whether the relevant requirements are to be found in Union law or in the law of a Member State. Otherwise, there would also be a contradiction with Article 14 (1) (f) Draft Directive, according to which a registered design shall be declared invalid if it constitutes an unauthorised use of a work protected under the copyright law of the Member State concerned. NL (Comments): Despite advanced harmonisation at EU level, copyright law is not yet fully harmonized at EU level and therefore the reference to "Union" should be changed. BE (Drafting): (12) It is important to establish the principle of cumulation of protection under specific registered design protection law and under copyright law, whereby designs protected by design rights should also be eligible for being protected as copyright works, provided that the requirements of ~~Union~~ copyright law are met. BE (Comments): While there is advanced harmonization in copyright law, there is no "Union" copyright law like there is for trademarks and designs for example. We

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	therefore suggest to delete "Union". LU (Drafting): (12) It is important to establish the principle of cumulation of protection under specific registered design protection law and under copyright law, whereby designs protected by design rights should also be eligible for being protected as copyright works, provided that the requirements of ~~Union~~ copyright law are met. LU (Comments): While there is advanced harmonization in copyright law, there is no "Union" copyright law like there is for trademarks and designs for example. We therefore suggest to delete "Union".
(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.	PL (Comments): Some requirements should remain optional as for example scope of substantive examination.
(14) To this end it is necessary to give unitary definitions of the notions of design and product, which are clear, transparent, and technologically up-to-date considering also the advent of new designs not being embodied in physical products. Without the list of relevant products being an exhaustive one, it is appropriate to distinguish products embodied in a physical object, visualised in a graphic, or that are apparent from the spatial arrangement of items intended to form, in particular, an interior environment. In this context, it should be recognised that the movement, transition or any other sort of animation of features can contribute to the appearance of designs, in particular those not embodied in a physical object.	HU (Comments): In the context of our comments on Article 2, we also propose to adapt the corresponding recital (14) of the proposed Directive in such a way as to refer also to (i) designs that are visible, but do not have a physical form and are not digital either, and also to (ii) the spatial arrangement of objects intended to create indoor or outdoor environments, which may also be the subject matter of a registered design.
(15) Furthermore, there is a need for a unitary definition of the requirements regarding novelty and individual character with which	

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
registered design rights must comply.	
(16) In order to facilitate the free movement of goods, it is necessary to ensure in principle that registered design rights confer upon the right holder equivalent protection in all Member States.	PL (Comments): The principle will be fully met if the unregistered designs are not protected at European level.
(17) Protection is conferred by way of registration upon the right holder for those design features of a product, in whole or in part, which are shown visibly in an application and made available to the public by way of publication or consultation of the relevant file.	
(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.	ES (Comments): In Article 3.4 of the Directive, it is explained that it is not considered normal use the maintenance, servicing, or repair work. However, in order to better understand and apply this clause, it could be useful to have a more detailed explanation on what it is considered to be "normal use of a complex product". NL (Drafting): *"Apart from being shown visibly in an application, 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 rule…* NL (Comments): On the basis of recital 17, design features DO need to be visible at a certain time, in particular, in the application. This seems contradictory. The visibility requirement for component parts of a complex product during normal use deserves more clarification. The latest CJEU case law could be codified to give more clarity.
(19) Although product indications do not affect the scope of protection	

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
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.	
(20) The assessment as to whether a design has individual character should be based on whether the overall impression produced on an informed user viewing the design differs from that produced on him by any other design that forms part of the existing design corpus, taking into consideration the nature of the product to which the design is applied or in which it is incorporated, and in particular the industrial sector to which it belongs and the degree of freedom of the designer in developing the design.	
(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.	
(22) Likewise, the interoperability of products of different makes should not be hindered by extending protection to the design of mechanical fittings.	
(23) The mechanical fittings of modular products may nevertheless constitute an important element of the innovative characteristics of	

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
modular products and present a major marketing asset and therefore should be eligible for protection.	
(24) A design right should not subsist in a design which is contrary to public policy or to accepted principles of morality. This Directive does not constitute a harmonisation of national concepts of public policy or accepted principles of morality.	
(25) It is fundamental for the smooth functioning of the internal market to unify the term of protection afforded by registered design rights.	
(26) The provisions of this Directive are without prejudice to the application of the competition rules under Articles 101 and 102 of the Treaty on the Functioning of the European Union.	
(27) The substantive grounds for non-registrability and the substantive grounds for the invalidation of registered design rights in all the Member States should be exhaustively enumerated.	PL (Comments): Such provision should not exclude optional substantive examination of some of those grounds.
(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.	FI (Comments): The scope of prevention this recital, as well as corresponding article, allows for the right holder is too broad and too vague.
(29) In order to strengthen design protection and combat counterfeiting more effectively, and in line with international obligations of the Member States under the World Trade Organisation (WTO) framework, in particular Article V to the General Agreement on Tariffs and Trade on	

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
freedom of transit, and, as regards generic medicines, the Declaration on the TRIPS Agreement and Public Health, the holder of a registered design right should be entitled to prevent third parties from bringing products from third countries into the Member State where the design is registered without being released for free circulation there, where without authorisation the design is identically incorporated in or applied to these products, or the design cannot be distinguished in its essential aspects of the appearance from such products.	
(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, transhipment, 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[1], 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.	
(31) In order to reconcile the need to ensure the effective enforcement of design rights with the necessity to avoid hampering the free flow of trade in legitimate products, the entitlement of the design right holder should lapse where, during the subsequent proceedings initiated before the judicial or other authority competent to take a substantive decision on whether the registered design right has been infringed, the declarant or the holder of the products is able to prove that the owner of the registered design right is not entitled to prohibit the placing of the products on the market in the country of final destination.	

[1] 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).

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
(32) The exclusive rights conferred by a registered design right should be subject to an appropriate set of limitations. Apart from private and non-commercial use and acts done for experimental purposes, such list of permissible uses should include acts of reproduction for the purpose of making citations or of teaching, referential use in the context of comparative advertising, and use for the purpose of comment or parody, provided that those acts are compatible with fair trade practices and do not unduly prejudice the normal exploitation of the design. Use of a design by third parties for the purpose of artistic expression should be considered as being fair as long as it is at the same time in accordance with honest practices in industrial and commercial matters. Furthermore, this Directive should be applied in a way that ensures full respect of fundamental rights and freedoms, and in particular the freedom of expression.	ES (Drafting): […] Use of a design by third parties for the purpose of artistic expression should be considered as being fair as long as it is at the same time **not degrading nor insulting and** in accordance with honest practices in industrial and commercial matters. […] ES (Comments): We propose to include the following wording "not degrading nor insulting", so as to reinforce the fact that the use of a design should not cover such practice.
(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 parts, such third parties infringe those rights, competition is eliminated and the holder of the design right is de facto given a product monopoly.	
(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	PL (Comments): Please, see our comments on art. 19 (limitation relating to form-dependent parts)

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
uncertainty.	
(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 mislead 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.	IT (Drafting): 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 mislead 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. IT (Comments): We propose to delete the limitation of repair clause to form dependent component parts (must match) of complex product, to introduce a stronger liberalization and competition in line with art. 110 of Regulation (EC) n. 6/2002 and Acacia judgement PL (Comments): Please, see our comments on art. 19 (limitation relating to form-dependent parts). NL

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	(Drafting): *"its original appearance through the insertion of a repair clause similar to that already contained in Regulation (EC) No 6/2002 <u>which is</u> ~~and~~ applicable to EU designs at Union level but <u>with</u> explicit~~ly~~ <u>reference</u> ~~applying~~ to form-dependent component parts of complex products only* NL (Comments): Suggestion to make the sentence more accurate. BE (Drafting): (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 mislead 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. BE (Comments): The Belgian delegation proposes to delete the limitation of the repair clause to form-dependent component parts (must match) of complex product. See our comments in this regard on art. 19.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	LU (Drafting): (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 mislead 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. LU (Comments): See our comments in this regard on art. 19.
(36) In order to avoid that divergent conditions in the Member States regarding prior use cause differences in the legal strength of the same design in different Member States, it is appropriate to ensure that any third person who can establish that before the date of filing of a design application, or, if a priority is claimed, before the date of priority, it has in good faith commenced use within a Member State, or has made serious and effective preparations to that end, of a design included within the scope of protection of a registered design right, which has not been copied from the latter, should be entitled to a limited exploitation of that design.	

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
(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.	
(38) To this effect, it is necessary to provide common rules regarding the requirements and technical means for the clear and precise representation of designs in any form of visual reproduction at filing stage, taking into account technical advance for the visualisation of designs and the needs of the Union industry in relation to new (digital) designs. In addition, Member States should establish harmonised standards by means of convergence of practices.	
(39) For greater efficiency it is also appropriate to allow design applicants to combine several designs in one multiple application and to do that without being subject to the condition that the products in which the designs are intended to be incorporated or to which they are intended to be applied all belong to the same class of the International Classification for Industrial Designs.	
(40) The normal publication following registration of a design could in some cases destroy or jeopardise the success of a commercial operation involving the design. The facility of a deferment of publication affords a solution in such cases. For the sake of coherence and greater legal certainty, thereby helping businesses reduce costs in managing design portfolios, deferment of publication should be subject to the same rules in the Union.	
(41) In order to ensure a level playing field for businesses, and provide the same level of access to design protection across the Union by keeping to a minimum the registration and other procedural burdens to applicants,	PL (Comments): We should balance the speed of registration with keeping quality of the

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
all central industrial property offices of the Member States should limit, as the European Union Intellectual Property Office (EUIPO) does at Union level, their substantive examination ex officio to the absence of the grounds for non-registrability exhaustively enumerated in this Directive.	process. Applicant will obtain an exclusive right – monopoly which could be executed immediately. Therefore, we should eliminate registration of designs which would bring distortion to the market – for example those which evidently lacks of novelty. Such registration strongly affects market in the negative way – for example disrupting trade on e-commerce platforms. NL (Drafting): *all central industrial property offices of the Member States <u>and the Benelux Office for Intellectual Property</u> should limit, as the European Union Intellectual Property Office (EUIPO) does at Union level,* NL (Comments): Everywhere there is a reference made to "central industrial property offices of the MS", the Benelux Office is also mentioned, so should be included here as well.
(42) For the purpose of offering efficient means of declaring design rights invalid, Member States should provide for an administrative procedure for declaration of invalidity which is aligned to the extent appropriate to that applicable to registered EU designs at Union level.	EL (Comments): EL does not support the introduction of an administrative procedure for the declaration of invalidity of a design. The measure is disproportional to the actual cost implied to Member States' national authorities for introducing invalidation proceedings and does not reflect the forecasted savings of the impact analysis. PL (Comments): There should be clear indication that there is an option for request for invalidity also in court procedure, for example as a counterclaim in enforcement procedure. NL (Comments): The Dutch delegation does not support the mandatory introduction of an administrative procedure for the declaration of invalidity of a design. See our comments in this regard on art. 31.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	BE (Drafting): (42) For the purpose of offering efficient means of declaring design rights invalid, Member States ~~should~~ may provide for an administrative procedure for declaration of invalidity which is aligned to the extent appropriate to that applicable to registered EU designs at Union level. BE (Comments): The Belgian delegation does not support the mandatory introduction of an administrative procedure for the declaration of invalidity of a design. See our comments in this regards on art. 31. LU (Drafting): (42) For the purpose of offering efficient means of declaring design rights invalid, Member States ~~should~~ may provide for an administrative procedure for declaration of invalidity which is aligned to the extent appropriate to that applicable to registered EU designs at Union level. LU (Comments): The Luxembourg delegation does not support the mandatory introduction of an administrative procedure for the declaration of invalidity of a design. See our comments in this regard on art. 31.
(43) It is desirable that Member States' central industrial property offices and the Benelux Office for Intellectual Property cooperate with each other and with the EUIPO in all fields of design registration and administration in order to promote convergence of practices and tools, such as the creation and updating of common or connected databases and portals for consultation and search purposes. The Member States should further ensure that their central industrial property offices and the Benelux Office for Intellectual Property cooperate with each other and with the EUIPO in all other areas of their activities which are relevant for the protection of designs in the Union.	

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
(44) Since the objectives of this Directive, namely to foster and create a well-functioning internal market and to facilitate the registration, administration and protection of design rights in the Union to the benefit of growth and competitiveness where appropriate, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.	
(45) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council[1] and delivered an opinion on ….	
(46) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared with Directive 98/71/EC. The obligation to transpose the provisions which are unchanged arises under that earlier Directive.	
(47) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for the transposition into national law of the Directive set out in Annex I,	
	ES (Comments): Kindly note that the comments are made with respect to the English version of the proposed Directive. When the final text is drafted, an assessment of the translation into Spanish

[1] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	will be made, since on the one hand, there are inaccurate terms and on the other hand, there are divergences in the content of equivalent articles when comparing the Directive and the Regulation.
HAVE ADOPTED THIS DIRECTIVE:	
CHAPTER 1 GENERAL PROVISIONS	
Article 1 **Scope**	
1. This Directive applies to:	
(a) design rights registered with the central industrial property offices of the Member States;	
(b) design rights registered at the Benelux Office for Intellectual Property;	
(c) design rights registered under international arrangements which have effect in a Member State;	
(d) applications for the design rights referred to under points (a), (b) and (c).	
2. For the purpose of this Directive, design registration shall also comprise the publication following filing of the design with the industrial property office of a Member State in which such publication has the effect of bringing a design right into existence.	
Article 2 **Definitions**	

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
For the purposes of this Directive, the following definitions apply:	
(1) 'office' means the central industrial property office entrusted with the registration of designs by one or more Member States;	DE (Drafting): (1) 'office' means the central industrial property office entrusted with the registration of designs ~~by one or more Member States;~~ DE (Comments): The proposed amendment aims to harmonise the definition with that provided in the Trademark Directive (Directive on the legal protection of trade marks of 16 December 2015 – Directive (EU) 2015/2436).
(2) 'register' means the register of designs kept by an office;	
(3) 'design' means the appearance of the whole or a part of a product resulting from the features, in particular, the lines, contours, colours, shape, texture, materials of the product itself and/or its decoration, including the movement, transition or any other sort of animation of those features;	AT (Comments): The term "animation" is too broad and should be specified. PL (Comments): In our opinion the definition of design it too broad regarding to the designs resulting from a movement, transition or any other sort of animation of their features. We appreciate adjustment of the definition to the modern world reality, however proposed definition enables protection as designs also such complex products as full-length movies, what should be excluded. What's more, enabling protection of full-length movies, animations or whole computer's games brings additional burden for the office – how to present such designs in the databases and how to proceed them in inter partes proceedings. Therefore, some limitations should be added to the definition. DE (Drafting): (3) 'design' means the appearance of the whole or a part of a product resulting from the features, in particular, the lines, contours, colours, shape, texture, materials of the product itself and/or its decoration, including the

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	movement, transition or any ~~other~~ sort of animation of those features; DE (Comments): By using the word "other", the terms "movement" and "transition" also refer to animated (=virtual) designs. However, physical objects may also exhibit variable conditions (such as different intensities of illumination in lamps etc.). This is a very frequent case in design practice and should also be covered by the definition in question. By deleting the word "other", the three variable features would be ranked equally alongside each other and would not restrict the scope of application. HU (Comments): We question the purpose of replacing the word "ornamentation" with "decoration" in the definition of design. "Decoration" is a broader concept; therefore, we would like to inquire why it was replaced with "ornamentation" in the proposed Directive.
(4) 'product' means any industrial or handicraft item other than computer programs, regardless of whether it is embodied in a physical object or materialises in a digital form, including:	AT (Comments): The term digital is too vague. It is not clear, if protection in the metaverse is covered. It is proposed to distinguish between physical and non -physical objects. PL (Comments): Regarding to product definition we see that new definition creates imbalance between designs system and trademarks system as design no longer need to be embodied in physical product. For example, the proposal encourages to protect logo as a design. As a result, both system of protection – designs and trademarks - overlap strongly. In the impact assessment document, there is no analyses regarding to the consequences of such convergence of both systems although it is mentioned that stakeholders had expressed such concerns (p. 69) and in their opinion such overlapping creates legal uncertainty. DE

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	(Drafting): 'product' means any industrial or handicraft item other than computer programs, regardless of whether it is embodied in a physical object or materialises in a **non-physical** ~~digital~~ form, including: DE (Comments): In our view, the term "digital" is defined too narrowly. The public consultations on the reform of design law included further non-physical "design types", namely holograms and light designs, for which there is a legitimate need for protection. In addition, it is conceivable that technological progress will result in additional design types being created in the future which will not be covered by the term "digital". Therefore, a technology-neutral formulation should be chosen. We thus propose referring to physical and non-physical objects instead in this context. NL (Drafting): *product' means any ~~industrial or handicraft~~ item other than computer programs,* NL (Comments): Terminology is no longer appropriate given the additional items listed in section a and b, which do not necessary fall under 'industrial/handicraft item'. HU (Drafting): (4) 'product' means any industrial or handicraft item other than computer programs, regardless of whether it is embodied in a physical object or materialises in **another visible non-physical** ~~a digital~~ form, including: HU (Comments): **We do not consider it appropriate to supplement the text in such a way that the product can only be embodied in physical or digital form. This**

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	division is exclusionary. The term "digital" is not necessarily a future-proof term; technological progress may require the protection of designs that are visible, but do not have a physical form and are not digital either (e.g. light design). The distinction, however, is necessary in order to clarify that the product must be visually perceivable, so that e.g. sound designs are not protected by design right.
(a) packaging, sets of articles, get-up, spatial arrangement of items intended to form, in particular, an interior environment, and parts intended to be assembled into a complex product;	DK (Comments): Denmark support the Commission's initiative to update and clarify the definitions of a design and product. However, we think it will be difficult both for the applicants and the IP offices to define what constitute "sets of articles" and consequently can be registered as one design. Most likely the practice will be different in the member states, which in worst case could result in a national application with priority being refused. Another uncertainty is the protection for a design in the form of a "set". Although the Commission at the meeting 21 February 2023 explained, that the stakeholders are against including a definition of "sets of articles", we should still consider clarifying the concept in the directive, or at least try to harmonize the concept in a future Convergence Programme. PT (Drafting): (a) packaging, sets of articles, ~~get-up~~, spatial arrangement of items intended to form, in particular, an interior **or exterior environment**, and parts intended to be assembled into a complex product; PT (Comments): PT considers that "exterior environment" should be mentioned in the text, as "interior environment" is. The term "get-up" should be deleted or replaced, as it was removed from the Locarno Classification. HR (Comments):

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	The deletion of the term "get-up" should be considered (in line with Locarno classification) FI (Drafting): 'packaging, sets of articles, spatial arrangement of items intended to form, in particular, an interior environment and exterior spaces…' FI (Comments): We find that 'get up' –term is unclear and might best be deleted. Also, 'exterior spaces' should be included into the article. RO (Comments): The notion of "get-up" seems to be repeated through "spatial arrangement of items intended to form, in particular, an interior environment". A definition of "sets of articles" would be welcome. PL (Comments): Concept of "set of articles" is unclear and creates confusion. IE (Drafting): i) Delete the term "*get up*" ii) Expand the term "*an interior environment*" to read "*an interior or exterior environment*" IE (Comments): i) COMMENT: The term "get up" has been removed from the 14th Edition of the Locarno Classification. Moreover, it has been replaced, in effect, by "Arrangement of Interiors and Exteriors" in Class 32(2) of the Locarno. ii) COMMENT: Expansion of the term will align with the terminology used in the 14th Edition of the Locarno Classification DE (Drafting): **(a)** packaging**;**~~,~~

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	(b) sets of articles **and arrangements of interiors and exteriors if the individual articles are linked on a functional and/or aesthetic level;** ~~, get-up, spatial arrangement of items intended to form, in particular, an interior environment, and~~ **(c)** parts intended to be assembled into a complex product; DE (Comments): The Locarno Union (CEL15 2022) deleted the term "get-up" from the Locarno Classification because of its imprecise nature. It should thus not be introduced into the Directive. The term is not used consistently in the Member States. The problems this term involves are also pointed out in Annex 10 of the Impact Assessment. There is no need for a separate reference to the term "get-up" since arrangements of objects can be subsumed under the term "sets of articles" and visual appearances under the term "packaging". The term "spatial arrangement of items" seems too imprecise. With LOC 14, the Locarno Classification introduced a new class 32-02 for such objects: "Arrangement of interiors and exteriors". In order to achieve harmony with the Locarno Classification, this terminology should be used. According to European case law (e.g., GC, judgment of 13 June 2017 – T-9/15), in order for a combination of products to constitute a unitary object, the reproduction must show that the depicted objects are linked by aesthetic and functional complementarity. These criteria should also be introduced into the Directive. ES (Drafting): *a) packaging, sets of articles,* ~~*get-up*~~*, spatial arrangement of items intended to form*~~*, in particular,*~~ ~~*an interior*~~ ***indoor and outdoor*** *environments, and parts intended to be assembled into a complex product;* ES (Comments): At the 15th session of the Committee of Experts of the Locarno Union, which took place from 24 to 28 January 2022, it was discussed and proposed:

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	▪ to remove the term "get-up" as it generated confusion for considering it a generic term. ▪ to extend the provisions of elements to outdoor provisions, e.g., for outdoor playground designs. Therefore, we propose to include the wording set forth in the "Drafting suggestions" column. FR (Drafting): (a) packaging, sets of articles, ~~get-up~~, spatial arrangement of items intended to form, in particular, an interior **or an exterior** environment, and parts intended to be assembled into a complex product; FR (Comments): Any risk of limitative interpretation of environment should be avoided for protection of indoor or outdoor environments. Also, France asks itself whether the notion of 'get-up' should be kept. An alignment with the changes made in the Locarno classification could be beneficial ('get up' to 'arrangement'). It might be relevant to delete 'get-up' and only refer to arrangements. HU (Drafting): (a) packaging, sets of articles, ~~get-up~~ spatial arrangement of items intended to form, in particular, an interior **or exterior** environment, and parts intended to be assembled into a complex product; HU (Comments): It is suggested to clarify the definition of product by deleting the word "get-up", because this term has several meanings (layout, trade dress, overall commercial image). At its 15th session, the Committee of Experts of the Locarno Union (the Special Union for the International Classification of Industrial Designs), under the auspices of the World Intellectual Property Organization (WIPO), examined the concept and its use as part of a separate

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	submission, and finally deleted all the terms "get-up" from Class 32 of the Locarno Classification (instead, it puts products under the term "arrangement" in a new subclass under the heading "arrangement of interiors and exteriors"). **Nor is there any reason to focus exclusively on the spatial arrangement of objects intended to create an interior environment when clarifying the definition of product**, protection can also be granted for objects arranged in the external environment. Based on the analysis of the 15th meeting of the Committee of Experts of the Locarno Union, the 14th edition of the Locarno Classification, in force from 1 January 2023, already provides a separate subclass (32-02: "Arrangement of interiors and exteriors") for the spatial arrangement of objects intended to create interior and exterior environments.
(b) graphic works or symbols, logos, surface patterns, typographic typefaces, and graphical user interfaces ;	LV (Drafting): (b) graphic works or symbols, ~~logos~~, surface patterns, typographic typefaces, and graphical user interfaces; LV (Comments): In order to avoid the practice that trademarks refused for registration are registered as designs, Latvia considers that logos should be deleted from Article 2(4)(b) of the proposed Directive. PL (Drafting): Eliminate “logos”: (b) graphic works or symbols, ~~logos~~, surface patterns, typographic typefaces, and graphical user interfaces; DE (Drafting): (**d**~~b~~) graphic works or symbols, logos, surface patterns, typographic typefaces, ~~and~~ graphical user interfaces**, light installations and multimedia works, ~~including~~ as for example projections, holograms and video sequences.**

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	DE (Comments): The proposed passage has been introduced for the purpose of clarification. FR (Comments): NL (Drafting): *"graphic ~~works or~~ symbols, logos, surface (...)"* NL (Comments): It would be better to align with Locarno classification terminology (and it is not clear what would fall under 'works' which would not be covered by other terminology already listed)
(5) 'complex product' means a product that is composed of multiple components which can be replaced permitting disassembly and reassembly of the product.	
CHAPTER 2 SUBSTANTIVE LAW ON DESIGNS	
Article 3 **Protection requirements**	
1. Member States shall protect designs solely through the registration of the designs, and shall confer exclusive rights upon their holders in accordance with the provisions of this Directive.	PL (Comments): We are glad that new rule creates coherent system of protection of designs through registration process. It brings legal certainty and increases fair competition in the market. Entrepreneurs are confident what is protected and through which system. They can always check protected designs in databases and recognize their owners. Therefore, in our opinion there should be no exception regarding to the unregistered designs at EU level. Users of the system used to complain that protection of unregistered designs creates

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	market disturbances. Unregistered designs could be effectively enforced through regulations regarding unfair competition or copyright systems, especially when justification to directive's indicates reinforcement of Union copyright law and possibilities of other forms of protection (preamble 11 and 12; art. 22 and art. 23) FR (Drafting): **1. Protection conferred by Member states to design shall be obtained by and arise from registration. Member States shall confer exclusive rights upon their holders in accordance with the provisions of this Directive.** FR (Comments): In order to simplify the wording of article 10, it could be envisaged to integrate the fact that design protection arise with the registration in Article 3. The proposed wording also ensures the deletion of the discretion for Member States to provide design protection also in an unregistered form.
2. A design shall be protected by a design right if it is new and has individual character.	FI (Comments): Additional protection requirement could be that 'design should not be composed solely of a basic geometric shape or very common and simple shape of a product'. Alternatively, this could be included in recitals, as 'is new and has individual character' could be understood to exclude very common and simple product shapes.
3. 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	

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.	
4. 'Normal use' within the meaning of paragraph (3), point (a), shall mean use by the end user, excluding maintenance, servicing or repair work.	
Article 4 **Novelty**	
A design shall be considered new if no identical design has been made available to the public before the date of filing of the application for registration or, if priority is claimed, the date of priority. Designs shall be deemed to be identical if their features differ only in immaterial details.	
Article 5 **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 before the date of filing of the application for registration or, if 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 6 **Disclosure**	
1. For the purpose of applying Articles 4 and 5, a design shall be deemed to have been made available to the public if it has been published	AT (Comments):

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
following registration or otherwise, or exhibited, used in trade or otherwise disclosed, 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 Union, before the date of filing of the application for registration or, if priority is claimed, the date of priority. 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.	The Directive 98/71/EC uses the term "community" in Art. 6 referring to the European Economic Area" not only to the European Union. Could it be clarified if this is still the case for the new proposal or does the term "Union" only refer to the member states of the "European Union"? ES (Comments): Nowadays, we live in a globalised world, where events, wherever they take place, can be streamed worldwide. In that sense, the expression "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 Union" seems to be too restrictive in terms of full disclosure. We propose the updating of such wording. NL (Drafting): *"(...) circles specialised in the sector concerned, operating within the Union and EEA, before the date of filing of the application for registration or, (...)"* NL (Comments): -Is it limited to the Union or also EEA? - The current design law reform creates the opportunity to finally settle the heavily-debated topic of "(alleged) speciality" following the CJEU Group Nivelles case in legislation. A clarification in this provision (and article 9) or at least in the recitals would be appropriate. BE (Comments): Only a formal change has been made to this paragraph. However, following the CJEU's judgment in the Group Nivelles case (CJEU, 21 September 2017, C-361/15P and C-405/15P), there has been quite some debate on the (absence of a) specialty principle. It is more specifically the part "…to the circles specialised in the sector concerned…" that leaves some room for discussion. It would be preferable to clarify in this provision, or at least in the recitals, whether or not there is some kind of specialty principle applicable (on a sector basis) and thus to make clear once and for all if the EU legislator

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	endorses the interpretation that has been given by the CJEU. Belgian users are divided on which option should be favoured, but they agree that a clarification is needed. Another question is whether reference should be made to the European Economic Area instead of the Union? LU (Comments): Does this article apply to the circles operating within the Union or the EEA?
2. A disclosure shall not be taken into consideration for the purpose of applying Articles 4 and 5 if the disclosed design, which is identical or does not differ in its overall impression from the design for which protection is claimed under a registered design right of a Member State, 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 priority is claimed, the date of priority.	
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 7 **Designs dictated by their technical function and designs of interconnections**	
1. A design right shall not subsist in features of appearance of a product which are solely dictated by its technical function.	

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
2. A design right 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 design right shall, under the conditions set out in Articles 4 and 5, subsist in a design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.	
Article 8 **Designs contrary to public policy or morality**	
A design right shall not subsist in a design which is contrary to public policy or to accepted principles of morality.	PL (Comments): It should be added a provision that application for design which exploits cultural heritage shall be treated as contrary to the public policy and accepted principles of morality (analogy to the E-5/16 case)
Article 9 **Scope of protection**	
1. The scope of the protection conferred by a design right shall include any design which does not produce on the informed user a different overall impression.	NL (Comments): The current design law reform creates the opportunity to finally settle the heavily-debated topic of "(alleged) speciality" following the CJEU Group Nivelles case in legislation. A clarification in this provision (and article 6) or at least in the recitals would be appropriate. BE (Comments): See the comments under article 6 §1. The scope of protection is also

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	determined by the application (or not) of a specialty principle.
2. In assessing the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration.	
Article 10 **Commencement and term of protection**	FR (Comments): Retained wording seems to lead to confusion on the acquisition, the beginning and the duration of protection (in particular in the French version). However, France supports the principle that registration confers the protection and that the design is protected from the date of filing.
1. Protection by a registered design right of a design which meets the requirements of Article 3(2) shall arise with registration by the office.	PT (Drafting): 1. **Protection by registration of a design which** meets the requirements of Article 3(2) shall arise with registration by the office. PT (Comments) : Wording clarification DE (Drafting): 1. Protection by a registered design right of a design ~~which meets the requirements of Article 3(2)~~ shall arise with registration by the office**.** DE (Comments): The restriction in Art. 10(1) of the draft Directive ("which meets the requirements of Article 3(2)") contradicts both the new approach of limited substantive examination (Art. 13 of the draft Directive) and the presumption of legal validity under Art. 17. It is thus misleading. There is also no need for such a restriction since Art. 14(1)(b) of the draft Directive clearly stipulates that, pursuant to Art. 3(2) of the draft Directive, a lack of novelty/individual character constitutes a ground for invalidity and can thus be considered in design invalidity proceedings. This passage should therefore be deleted.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	We would also like to point out that the German translation of Art. 10 is incorrect and deviates from the English version. FR (Drafting): ~~1. Protection by a registered design right of a design which meets the requirements of Article 3(2) shall arise with registration by the office.~~ FR (Comments): See also above on article 3 'Protection of requirement'. An option could be to delete this para 1 and insert it in article 3.
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.	EL (Drafting): A registered design shall be <u>protected</u> 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. EL (Comments): It is proposed to substitute the phrase "shall be registered" with "shall be protected" to align with the title of the article which refers to the term of protection. FR (Drafting): 2. A registered design shall be registered for a period of five years ~~calculated~~ **[starting]** from the date of filing of the application ~~for registration~~. **<u>Registration may be renewed in accordance with Article 28 for further</u>** ~~The right holder may have the term of protection renewed for one or more periods of 5~~ **<u>periods of</u>** **<u>five</u>** years ~~each,~~ up to a total term of 25 years from the date of filing of the application ~~for registration~~. FR (Comments):

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	Lighter wording inspired from the EUTMR
Article 11 **Right to the registered design**	ES (Comments): The Spanish delegation agrees that the designer's right should be recognised. However, the proposed wording does not seem to cover all possible scenarios. The harmonisation may be deemed difficult in this case as there are national legislations which already regulate contracting stipulations.
1. The right to the registered design shall vest in the designer or his successor in title.	EL (Comments): A separate paragraph should be added to determine the right to a registered design, in case of independent creation of the same design. PL (Comments): There is a question regarding to designs created with the significant participation of Artificial Intelligence. Who is entitled and on what conditions?
2. If two or more persons have jointly developed the design, the right to the registered design shall vest in them jointly.	EL (Drafting): If two or more persons have jointly developed the design, the right to the registered design shall vest in them jointly, <u>unless otherwise agreed</u>. EL (Comments): It is proposed to add the possibility of the parties to determine otherwise the percentage of their contribution to the development of a design by means of an agreement.
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 registered design shall vest in the employer, unless otherwise agreed or laid down in national law.	AT (Comments): It is requested to clarify that Art. 11 para 3 only refers to the employer-employee relationship.

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	Would the Austrian provision which refers also to a client/ contractor relationship be in line with the proposal? FR (Comments): Scrutiny reservation. NL (Comments): Would the Benelux Convention on Intellectual Property which currently includes a provision on commission/contractor relationship be in line with the proposal? BE (Comments): The Benelux Convention on Intellectual Property also refers to designs that have been created on commission. Can this be maintained? HU (Comments): It is necessary to clarify what is meant by "employer's instructions" in particular whether such an instruction may exceed the scope of the employee's duties and whether it refers only to written instructions.
Article 12 **Presumption in favour of the registered holder of the design**	EL (Drafting): **Presumption in favour of the ~~registered~~ holder of the design** EL (Comments): It is proposed to delete reference to a "registered" holder, to reflect that the presumption is also applicable to applicants, prior to registration.
The person in whose name the design right is registered, or prior to registration the person in whose name the application is filed, shall be deemed to be the person entitled to act in any proceedings before the office in the territory of which protection is claimed as well as in any other proceedings.	DE (Drafting): The person in whose name the design right is registered, or prior to registration the person in whose name the application is filed, shall be deemed to be the person entitled to act **and obliged** in any proceedings

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	before the office in the territory of which protection is claimed as well as in any other proceedings. DE (Comments): The provision should regulate not only the entitlement to act, but also the obligation to act.
Article 13 **Grounds for non-registrability**	CZ (Comments): CZ comment (in conjunction with Art. 29): We are still concerned about the proposed lack of substantive examination and legal certainty and value of the registered national designs. We support the discussion about alternative options and therefore propose a new second paragraph to Article 13 as a result of compromise examination. AT (Comments): AT supports the new Art. 13 and rejects any (also optional) examination of novelty and individual character in the registration procedure. RO (Drafting): Article 13 **Grounds for non-registrability and for refusal** RO (Comments): It would be appropriate that at least some of the grounds for invalidity to constitute grounds as well for refusal. DE (Drafting): **Substantive g~~G~~rounds for non-registrability** DE (Comments): It should be clarified that the provision concerns only the substantive grounds for non-registrability (cf. Recitals 27 and 41 of the draft Directive) and that it

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	is only exhaustive with regard to these grounds. Refusal of applications for formal reasons, i.e., for failure to comply with formal requirements (cf. Art. 26 of the draft Directive), must remain possible (see section 16(3) of the German Act on the Legal Protection of Designs [*Designgesetz*])
1. A design shall be refused registration where:	DK (Comments): Denmark acknowledges the purpose with this article, namely to insure that the applicants are able to obtain protection much faster and at lower costs. DKPTO do not make ex-officio examination of prior art. However, as we informed the Commission in our Non-paper from June 2020, we are not sure that it will be the best solution to completely remove the option of an ex-officio examination of prior art. Within few years, the development of image recognition fit for design search tools is likely to make it possible for registration offices to make high-quality examinations of design applications. This could be valuable for especially small companies, giving them greater certainty of their existing rights. Additionally, it would reduce the number of invalid designs in the registers. On that ground we are in favor of keeping the possibility for ex-officio examination of prior art. HR (Comments): Further consultation required with the national authorities regarding the scope of absolute grounds examination as according to the HR Industrial Designs law unauthorised use of items listed in Article 6ter of the Paris Convention or other than those covered by the said Article, being of particular interest to HR, constitutes an absolute ground for refusal. RO (Drafting): 1. A design shall be refused registration where: IE (Drafting):

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	Expand the Article to mirror the wording of Article 14(1)(g) by inserting the wording contained therein into an expanded Article 13 in the form of a "(c)" provision IE (Comments): COMMENT: Member States must retain the right to refuse registration of a design *ex officio* in accordance with existing national law and obligations under Article 6ter of the Paris Convention. The reliance of National Offices on the generality of the wording in Article 8 (Designs contrary to public policy or morality) of this Proposal for a Directive in terms of public policy is too vague and does not provide legal certainty for National Offices nor users of the design system. DE (Drafting): ~~1.~~ A design shall be refused registration where: HU (Comments): We agree with the regulatory objective of ensuring that applicants complying with the relevant formal and substantive requirements should obtain protection for their design applications as quickly and easily as possible. This is the purpose of the ex officio examination of only a limited number of substantive requirements in the registration procedure. We do not agree, however, that the ex officio examination of a design application under Article 13 should be limited to the examination of the two requirements mentioned therein. In our view, the Directive should provide for the possibility of optionally extending the criteria for ex officio examination of design applications, at least in cases where this is required by a Member State on the grounds of *ordrepublic*. The Hungarian Intellectual Property Office (hereinafter " HIPO") carries out a more extensive ex-officio examination of national design applications. We can support abolishing the ex officio examination of novelty and individual character and the technical function of the product. However, in addition to the above-mentioned conditions, the HIPO also examines ex officio whether

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	the design makes unauthorised use of any of the indications listed in Article 6ter (1) of the Paris Convention for the Protection of Industrial Property, or contains any other indications not listed in point (a), the use of which however is of the public interest.
(a) the design is not a design within the meaning of Article 2, point (3);	RO (Drafting): (a) the design is not a design within the meaning of Article 2, point (3);
(b) the design does not fulfil the requirements of Article 8.	FI (Comments): The content of Art. 6*ter* of the Paris Convention should be included here – signs that are covered by that provision should not constitute design right. RO (Drafting): (b) the design does not fulfil the requirements of Article 8. DE (Drafting): (b) the design does not fulfil the requirements of Article 8**;** ~~.~~
	CZ (Drafting): *We suggest adding the following new paragraph:* 2. Any Member State may provide that a design shall be refused registration where: a) the design obviously lacks novelty; b) the design is in conflict with a prior design which has been made available to the public and which is protected from a date prior to the date of filing of the application, or if priority is claimed, the date of priority of the design by a registered design right of the Member State concerned, or by an application for such a right subject to its registration; c) the design constitutes an improper use of any of the items listed in Article 6ter of the Paris Convention for the Protection of

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	Industrial Property, or of badges, emblems and escutcheons other than those covered by Article 6ter of the said Convention which are of particular public interest in the Member State concerned. PT (Drafting): (c) the design is constituted by any of the items listed in Article 6ter of the Paris Convention for the Protection of Industrial Property or constituted exclusively of the national flag or of some of its elements, badges, emblems, escutcheons and any other elements of particular public interest in the Member State concerned. PT (Comments): Despite the fact that the Portuguese law no longer requires for the ex officio examination of novelty and individual character of designs, it still requires the ex officio examination and refusal of designs that incorporate: - any signs covered by Article 6ter of the Paris Convention; - any symbols, coats of arms, emblems or distinctions of the State, the municipalities or of other public or private entities, either national or foreign; - the emblem and name of the Red Cross or similar bodies, Registration will also be denied if the design consists solely of the National Flag of the Portuguese Republic or of some of its elements or in case the design contains any expressions or representations contrary to the law, public order or principles of morality. In addition to the aforementioned, PT also believes that the appropriation of elements belonging to the country's cultural heritage such as traditional costumes and monuments amongst other assets that are publicly known by the general public should also constitute a ground for refusal. That being said, after considering the proposed amended text provided for in article 13, which references article 8, we find that the adoption of this rule will limit the ex officio examination of designs only to those contrary to public policy or accepted principles of morality. Such limitation will allow for the registration of designs that contain elements such as those mentioned above, which, in our view, harms public interest.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	In this context, PT asks for a more depth reflection on this matter and asks the introducing ex officio grounds for refusal of designs that could prevent the establishment of private monopolies over realities that should remain in the public domain. PT has had some problems with abusive registrations of designs containing elements that are part of the country's cultural heritage or are of public interest. Situations like these lead to the filing of unnecessary invalidity actions by those who feel aggrieved and somehow threatened by these registrations. We believe that we are in a domain where the celerity and lower costs associated with obtaining registrations like these do not matter, since the delays and costs will necessarily arise later along with unnecessary moral distress by those who intend to use or have always used such elements and became deprived of using them after registration. If it is not agreed to keep these grounds for refusal ex officio in the Directive, another solution would be to allow Member States to establish their own grounds for refusal. IT (Drafting): **new** c) **the design has not been authorised by the competent authority and is to be refused pursuant to article 6 ter of the Paris Convention for the Protection of industrial Property (Paris Convention);** **new** **d) the design includes badges, emblems or escutcheons other than those covered by article 6 ter of the Paris Convention and which is of particular public interest, unless the consent of the competent authority to their registration has been given.** IT (Comments): Points c) and d) are necessary to align design regulation to trade marks regulation, avoiding the registration as design of symbols or emblems which cannot be registered as trademarks.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	In this way, the list of grounds for non-registrability is complete. LT (Drafting): *Amend with* *Option 1* c) 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, or of badges, emblems and escutcheons other than those covered by Article 6ter of the said Convention which are of particular public interest in the Member State concerned. *Option 2* c) the design which has not been authorised by the competent authorities and is to be refused or invalidated pursuant to Article 6ter of the Paris Convention or consists of or contains a [sign], badge, emblem and escutcheon other than those covered by Article 6ter of the said Convention which are of particular public interest in the Member State concerned *Option 3* c) the design which has not been authorised by the competent authorities and is to be refused or invalidated pursuant to Article 6ter of the Paris Convention; d) consists of or contains a [sign], badge, emblem and escutcheon other than those covered by Article 6ter of the said Convention which are of particular public interest in the Member State concerned LT (Comments): In general, the principal of not-registrability of heraldic and similarly public interest symbols is laid down in the Art. 6 ter of Paris convention, implemented in the Art. 4 (1)(h) of Trademarks Directive 2015/2436 as absolute ground for refusal or invalidity. Having such ground in the Art. 13 of the Design directive, consistency of implementation of this principal in both trademarks and designs systems will be guaranteed. This ground, as ground of non-registrability, should be firstly examined by the IP office (IP offices already have competence and knowledge how to

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	evaluate that in the trademark field). If heraldic or other national public interest symbol used in the design is seen, the IP office could ask the applicant to present relevant permission of the competent authority for registration of such design. If permission of the competent authority was not granted, the registration should be refused. Furthermore, having such ground as ground of invalidity in Art. 14, the situation when the competent authority, especially a national one, could question registrability of a particular design registration and ask for invalidation of the registered design through the administrative procedure before the national IP offices will appear illogic. The EU flag symbols in the design could be use as hypothetical example of such situation. Having this ground in the Art. 13, IP office during the examination should ask an applicant to present the permission of the Commission to use EU flag in particular design. If the permission is not granted, design registration shall be refused by the IP office. If this ground stays in Art. 14, IP office would register a design without any actions even after seeing that the EU flag has been used. And if afterwards the Commission finds such design infringing EU interests, the Commission should ask for invalidation of particular design registration via administrative procedure at the IP office (involvement in the dispute procedure, time consuming process, additional costs for the Commission, and etc.). 3 options proposed are just 3 drafting technique options (option 2 and option 3 (c) follows wording of Art. 4 (1)(h) of Trademarks Directive 2015/2436) RO (Drafting): 2. A design shall be refused registration where: (a) the design does not fulfil the requirements laid down in Articles 3 to 7; (b) 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, or of badges, emblems and escutcheons other than those covered by Article 6ter of the said Convention which are of particular public interest in the Member State concerned. (c) the design containing signs that has a historical value, a special

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	significance and/or signs of highly symbolic value in the Member State; d) the design reproduces known geometric shapes or non-stylized elements of the nature; PL (Drafting): 2. Any Member State may provide that a design shall be refused registration where: a) the design obviously lacks novelty; b) 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, or of badges, emblems and escutcheons other than those covered by Article 6ter of the said Convention which are of particular public interest in the Member State concerned. PL (Comments): There should be eliminated registration of the designs, which prima facie lacks novelty. According to the Impact Assessment document 38% stakeholders consider that Member states should remain free to examine novelty of a design, because ex officio examination increases the legal certainty over the validity of the designs and provides first filter for manifestly invalid design rights. Only 28% stakeholders has the opposite position. According to our proposal a design is refused only in obvious situations: the examiner immediately recognizes design as not having features of novelty. Such designs could be simple objects as geometrical figures or known shapes as needles, matches, nails. Appropriate provision is even more needed when the new proposal in directive defining graphic symbols as products, what means that product is indiscernible from its appearance. We see risk of receiving application for commonly known pictures or symbols, especially those in public domain. Furthermore, examination of the cases where designs evidently lack novelty let refuse registration of traditional products as traditional dresses or ornamentations which should not be monopolized. (see Decision of EUIPO's Invalidity Division of 03/10/2012 ICD 8697

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/decisions_invalidity/ICD%20000008697%20decision%20(EN).pdf) . Such examination is not time consuming as concerns only obvious cases. It guarantees market certainty because competition is not blocked by the registration of commonly known designs. Such situations could occur especially regarding e-commerce where sold of some products could be immediately banned by presenting certificate of registration obtained for designs but which obviously lacks of novelty. The additional benefit is avoidance of the initiating invalidity procedure – it is more convenient to eliminates such registrations in ex officio proceeding. It is faster, cheaper and easier to stop registration of such designs in examination phase, than burden entrepreneurs with invalidity proceedings regarding to such obvious cases. In our opinion office shall also have possibility to refuse symbols protected under 6ter of Paris Convention. DE (Drafting): **(c) 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, or of badges, emblems and escutcheons other than those covered by Article 6ter of the said Convention which are of particular public interest in the Member State concerned** DE (Comments): The only express regulation of a violation of Art. 6ter of the Paris Convention for the Protection of Industrial Property made by the draft Directive is in the form of a ground for invalidity under Art. 14(1)(g) of the draft Directive, with a very limited entitlement to institute validity proceedings (“solely by the person or entity concerned by the improper use”). However, such violation does not constitute merely a ground for invalidity, but also a substantive ground for refusal; whether such a substantive ground for refusal exists will continue to be examined *ex officio* as part of design registration proceedings despite the fact that the relevant offices have limited

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	examination competence. HU (Drafting): (c) the design constitutes an improper use of a state or a sign reserved for state or international authorities and organizations defined in the Paris Convention for the Protection of Industrial Property; (d) the design contains any decoration, badge or escutcheon, or any official warranty or authentication sign which is not regulated under the terms of Paragraph c) and whose use is of public interest.
Article 14 **Grounds for invalidity**	HU (Comments): It should be clarified whether, in the case of a design right granted for multiple designs, a limitation can still be invoked in proceedings for a declaration of invalidity of a national design.
1. If the design has been registered, the design right shall be declared invalid in the following situations:	FR (Comments): General comment on non-registered EU design: Does point a) include EU non registered designs? It seems it is not the case as it only refers to registered design or an application for registration. Should non-registered design only be invoked in the context of point b) as the disclosed non registered design may take down the novelty criteria of the registered design? It therefore raises the question on whether it is an “absolute” or a “relative” ground of invalidity, and the person that has the right to invoke it. For instance, point f) specifically point a work protected under the copyright law, which can only be invoked by the copyright owner or an authorized person.
(a) the design is not a design within the meaning of Article 2, point (3);	
(b) the design does not fulfil the requirements laid down in Articles 3	IT

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
to 8;	(Drafting): the design does not fulfil the requirements laid down in Articles 3 to 8~~;~~ **and article 13 par.1 points c) and d);** IT (Comments): It's in relation to the proposed changes in art. 13 ES (Comments): We would like to raise the question whether the wording of letter b) covers specifically the lack of novelty or individual character in relation to unregistered designs.
(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;	SK (Comments): we suppose that MS are (because of the partial harmonisation) free to introduce also the possibility of "change of ownership" in case the holder of the design right is not entitled to it (by virtue of a decision of the competent court or authority). SK national law offers the possibility of change of ownership; see also Article 15 para 4 draft design EU regulation. AT (Comments): Scrutiny reservation Does the wording in Art. 14 para 1 (c) "by virtue of a decision of the competent court or authority" mean that two separate procedures (of two authorities) are necessary? According to Austrian national law the deprivation and transfer of a design can be requested within one procedure. This possibility should be maintained for Austrian users. EL (Drafting): ~~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;

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	EL (Comments): It is proposed to delete reference to the means of declaring invalidity i.e. a court decision or administrative decision and refer only to the invalidity ground.
(d) the design is in conflict with a prior design which has been made available to the public, and which is protected from a date prior to the date of filing of the application, or if priority is claimed, the date of priority of the design:	DE (Drafting): (d) the design is in conflict with a prior design which has been made available to the public **after the date of filing the application or, if priority is claimed, the date of priority**, and which is protected from a date prior to the **said** date of filing of the application, or if priority is claimed, the date of priority of the design DE (Comments): We oppose the proposed amendment. The passage deleted from the current version of the Directive should be retained. This would ensure clearer delimitation from the absolute ground for invalidity provided for under Art. 14(1)(b) of the draft Directive. The case constellation in which action is taken against a registered design by invoking a pre-published design is already covered by Art. 14(1)(b) of the draft Directive, which means that there is no need to regulate this scenario under Art. 14(1)(d) of the draft Directive. In particular, the amendment should not result in it no longer being possible for the absolute ground for invalidity pursuant to Art. 14(1)(d) to be based on registered designs. ES (Comments): In the current version of the Directive, this section referred to conflicts with designs applied for prior to the filing date but published later. Having asked the Commission in the past IP WG if this possibility has disappeared from the proposed Directive, the Commission replied that the scope has been extended and that it is implied from the current wording of the proposed Directive.

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	However, we propose the following amendments: a) Clarify the wording of letter d) so there is no doubt that the conflicts with designs applied for prior to the filing date, but published later, are still contemplated under this Article. b) Change the word "protected". Our opinion is that is that the term "protected" might cause confusion as it could refer to applied for, published or registered. It is not necessary for a design to be protected in order to be part of the prior art; it is sufficient for it to be disclosed. c) In any case, we raise the question whether this letter (d) is already foreseen under letter b) concerning lack of novelty or individual character.
(i) by a registered EU design or an application for a registered EU design subject to its registration;	NL (Drafting): *(i) by a registered <u>or unregistered</u> EU design or an application for a registered EU design subject to its registration;* NL (Comments): Article 14(1)(d) should reflect that earlier unregistered EU designs can invalidate a later national/Benelux design.
(ii) by a registered design right of the Member State concerned, or by an application for such a right subject to its registration;	
(iii) by a design right registered under international arrangements which have effect in the Member State concerned, or by an application for such a right subject to its registration;	
(e) a distinctive sign is used in a subsequent design, and Union law or the law of the Member State concerned governing that sign confers on the right holder of the sign the right to prohibit such use;	SK (Comments): Question of genuine use of prior trademark? See Article 53 para 3 draft EU design regulation. PL (Comments) :

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	The scope of the provision is improper. Such ground of invalidity should be limited to the registered rights. Unregistered trademarks could be enforced in the unfair competition system or under proposed provision art. 1 (1) c with a decision of the competent court or authority. Protection of unregistered rights under this provision creates legal uncertainty and high risk of involving design holder in many unjustified invalidity cases.
(f) the design constitutes an unauthorised use of a work protected under the copyright law of the Member State concerned;	
(g) 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, or of badges, emblems and escutcheons other than those covered by Article 6ter of the said Convention which are of particular public interest in the Member State concerned.	PT (Drafting): (g) the design is constituted by any of the items listed in Article 6ter of the Paris Convention for the Protection of Industrial Property, or constituted exclusively of the national flag or of some of its elements, badges, emblems, escutcheons and any other elements of particular public interest in the Member State concerned. PT (Comments): In addition to the aforementioned, PT also believes that the appropriation of elements belonging to the country's cultural heritage such as traditional costumes and monuments amongst other assets that are publicly known by the general public should constitute **a ground for refusal** and for invalidity. LT (Drafting): (g) ~~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, or of badges, emblems and escutcheons other than those covered by Article 6ter of the said Convention which are of particular public interest in the Member State concerned.~~ **the design does not fulfil the requirements laid down in Articles 13, point (c) [d].** LT

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	(Comments): Suggestion to move this ground to Art. 13, because this ground should be checked by the national IP office (justification in the comments at Art. 13). Formulation of point (g) would depend on the chosen option IE (Drafting): Delete existing wording and amend in line with new proposed Article 13(c) above to read: *"the design is considered to have been registered contrary to Article 13(c)"* IE (Comments): COMMENT: Notwithstanding the above suggested amendment to Article 13 by way of the proposed addition of a (c) provision allowing for *ex officio* grounds for non-registrability of designs contrary to Article 6ter of the Paris Convention, the proposed amended form of wording must be retained in Article 14(1)(g) to allow the subsequent wording contained in Article 14(5) to apply which, in effect, empowers "persons" or an "entity" concerned by improper use of matter covered by Article 6ter of the Paris Convention to invoke the appropriate ground to address said concern by way of an invalidation action. DE (Comments):
	PT (Drafting): (h) if the application for registration of the design was made in bad faith by the applicant. PT (Comments): In PT's view, the purpose of introducing "bad faith" as a ground for invalidity in the Design Directive is the same as in the Trademark Directive. Following the transposition of the Trademark Directive into the Portuguese Legislation, PT also introduced bad faith as a ground for invalidity of designs. Since there is no basis for invalidity on the grounds of unfair

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	competition, the issue of bad faith has been raised several times in requests for invalidity before the Portuguese Office.
2. The grounds for invalidity provided for in paragraph (1), points (a) and (b), may be invoked by the following:	
(a) any natural or legal person;	DE (Comments): It is important that eligible parties are not excluded based on their classification under national law. Such a limitation of eligible parties would not be in line with the aim of making proceedings more efficient and more easily accessible.
(b) any group or body set up for the purpose of representing the interests of manufacturers, producers, suppliers of services, traders or consumers, if that group or body, has the capacity to sue and be sued in its own name under the terms of the law governing it.	SK (Comments): We suppose this group of subjects is fully covered by para 2 (a) *any natural or legal person*.
3. The ground for invalidity provided for in paragraph 1, point (c), may be invoked solely by the person who is entitled to the design right under the law of the Member State concerned.	
4. The grounds for invalidity provided for in paragraph 1, points (d),(e) and (f), may be invoked solely by the following:	
(a) the applicant for or the holder of the conflicting right;	ES (Drafting): (a) the applicant for or the holder of the ~~conflicting~~ **earlier** right. ES (Comments): We propose the wording in the "Drafting suggestions" column, for consistency reasons with the wording set forth at Article 25 of the Proposed Regulation.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
(b) the persons who are entitled under Union legislation or the law of the Member State concerned to exercise the rights in question;	
(c) a licensee authorised by the proprietor of a trade mark or a holder of a design right.	SK (Comments): This is a new element for SK national legislation, new right for a licensee; even not the TM directive 2015/2436 does not foresee in Article 45 this possibility. Is there any difference between licence and exclusive licence? NL (Drafting): *a licensee authorised by the proprietor of right as referred to in paragraph 1 points (d), (e) and (f).* NL (Comments): **To be as complete as possible, it's better to refer not only to trademarks, but also to other distinctive signs as mentioned in (e) and copyright.** BE (Comments): As reference is made to §1, point f), the copyright holder should also be mentioned here. LU (Comments): **As reference is made to §1, point f), the copyright holder should also be mentioned here.**
5. The ground for invalidity provided for in paragraph 1, point (g), may be invoked solely by the person or entity concerned by the improper use.	EL (Drafting): The ground for invalidity provided for in paragraph 1, point (g), may be invoked solely by the person or entity or authority of a Member State concerned by the improper use. EL (Comments): It is proposed to add that a national authority has the right to raise the

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	respective invalidity ground, since it is not clear whether the term "entity" includes a national authority.
6. A design right may not be declared invalid where the applicant for or a holder of a right referred to in paragraph 1, points (d) to (g), consents expressly to the registration of the design before submission of the application for a declaration of invalidity or the counterclaim.	EL (Drafting): A design right may not be declared invalid where the applicant for or a holder of a right referred to in paragraph 1, points (d) to (g), consents expressly to the registration of the design before submission of the application for a declaration of invalidity or the counterclaim, <u>except in the case of State emblems and official signs and hallmarks of a Member State.</u> EL (Comments): It is proposed to add an exception to exclude State emblems and official signs and hallmarks of Member States from being subject to an agreement by an applicant or holder. HU (Comments): It should be clarified whether, in the case of a design right granted for multiple designs, a limitation can still be invoked in proceedings for a declaration of invalidity of a national design.
7. A design right may be declared invalid even after it has lapsed or has been surrendered.	HU (Drafting): 7. A design right may be declared invalid even after it has lapsed or has been surrendered, **<u>unless it has been surrendered with retroactive effect to the date of filing of the application.</u>** HU (Comments): Article 14(7) should be clarified, since if the design right is surrendered with retroactive effect to the date of filing of the application, there is no need to conduct invalidity proceedings. This exception should be referred to in the text of the provision.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
Article 15 **Object of protection**	
Protection shall be conferred for those features of appearance of a registered design which are shown visibly in the application for registration.	NL (Drafting): *Protection shall be conferred for those features of appearance of a registered design which are perceivable ~~shown visibly~~ in the application for registration.* NL (Comments): **- 'Visible' might not be the appropriate term here, as texture might be difficult to see. "Perceivable/perceptible" would be more appropriate.** HU (Drafting): Protection shall be conferred for those features of appearance of a registered design which are shown visibly in the **representation of the design.** ~~application for registration~~ HU (Comments): It is proposed to clarify the provision in the sense that the external features should not be visibly indicated in the application, but on the representation of the design.
Article 16 **Rights conferred by the design right**	
1. The registration of a design shall confer on its holder the exclusive right to use it and to prevent any third party not having the consent of the holder from using it.	
2. The following , in particular, may be prohibited under paragraph 1:	

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
(a) making, offering, putting on the market or using of a product in which the design is incorporated or to which it is applied;	
(b) importing or exporting a product referred to in point (a);	
(c) stocking a product referred to in point (a) for the purposes mentioned in points (a) and (b);	
(d) creating, downloading, copying and sharing or distributing to others any medium or software recording the design for the purpose of enabling a product referred to in point (a) to be made.	FI (Comments): The scope of this article should be clarified – as it stands, the article can enable interpretation according to which design right holder can claim rights very broadly against producers, downloaders, copiers and distributors of different mediums and software even though those actions would not have direct link with an infringement of a design right via 3D printing.
3. 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.	BE (Comments): “By way of derogation from Article 9(1)”: this provision does not seem to derogate from article 9(1), so it might be better to delete this part.
The right referred to in the first subparagraph shall lapse, if, during the proceedings to determine whether the registered design right has been infringed, initiated in accordance with Regulation (EU) No 608/2013, evidence is provided by the declarant or the holder of the products that the holder of the registered design right is not entitled to prohibit the placing of the products on the market in the country of final destination.	
Article 17	

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
Presumption of validity	
1. In infringement proceedings it shall be presumed, in the favour of the holder of the registered design right, that the requirements set for the legal validity of a registered design right referred to in Articles 3 to 8 are met.	PT (Comments): Following the inclusion of new grounds for refusal in Article 13(c), we consider that the presumption of validity should also include those grounds for refusal.
2. The presumption of validity referred to in paragraph 1 shall be rebuttable by any procedural means available in the jurisdiction of the Member State concerned, including counterclaims.	
Article 18 **Limitation of the rights conferred by the design right**	
1. The rights conferred by a design right upon registration shall not be exercised in respect of:	
(a) acts carried out privately and for non-commercial purposes;	
(b) acts carried out for experimental purposes;	
(c) acts of reproduction for the purposes of making citations or of teaching;	
(d) acts carried out for the purpose of identifying or referring to a product as that of the design right holder;	
(e) acts carried out for the purposes of comment, critique, or parody;	ES (Drafting): e) acts carried out for the purposes of comment, ~~critique~~ **critical judgment**, or parody; ES

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	(Comments): In Spain the term "critique" has a negative connotation. It is suggested to change this term to "critical judgement".
(f) the equipment on ships and aircraft registered in another country when these temporarily enter the territory of the Member State concerned;	
(g) the importation in the Member State concerned of spare parts and accessories for the purpose of repairing such craft;	NL (Drafting): *(g) the importation in the Member State concerned of spare parts and accessories for the purpose of repairing such craft as referred to in point (f)* NL (Comments): **Point (g) and (h) are not understandable without (f)**
(h) the execution of repairs on such craft.	NL (Drafting): *(h) the execution of repairs on such craft as referred to in point (f)*
2. Paragraph 1, points (c), (d) and (e) shall only apply where the acts are compatible with fair trade practices and do not unduly prejudice the normal exploitation of the design, and in the case of point (c), where mention is made of the source of the product in which the design is incorporated or to which the design is applied.	ES (Drafting): "Paragraph 1, points (c), (d) and (e) shall only apply where the acts are ~~compatible with~~ **not contrary to** fair trade practices (…)". ES (Comments): We suggest changing the wording from "the acts that are compatible with" to "the acts are no contrary to", which is the expression used under Spanish law and where the scope of such limitation is clearer.
Article 19 **Repair clause**	CZ (Comments): CZ comment: Spare parts are still protected in our country, so we keep scrutiny reservation regarding this entire Article for analysis and

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	consultations at national level on the possible impacts of the provision. Our scrutiny reservation also applies to the related Art. 20a of the revised text of the Regulation on Community designs. PT (Comments): PT has a scrutiny reservation concerning the entirety of article 19 and awaits instructions by the Portuguese Government. AT (Comments): Scrutiny reservation Full liberalization can be supported, but with due regard for existing property rights. A transitional period is conceivable, even less than 10 years. A 25-year transitional period would not be acceptable. HR (Comments): Further consultation required with stakeholders and national authorities FR (Comments): Scrutiny reservation. France is still conducting internal consultations.
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.	SK (Comments): SK scrutiny reservation IT (Drafting): 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. IT (Comments): We propose to delete “upon whose appearance the design of the component

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	part is dependent" in line with Regulation (EC) n. 6/2002 to ensure a stronger competition and liberalisation. FI (Comments): We are in favour of the suggested repair clause. We can lift our parliamentary reservation as we already received the opinion of the Parliament: the Finnish Parliament is in favour of the design proposals in general and of the repair clause, which is likely to foster competition and benefit consumers. RO (Comments): Due the fact that Romania is one of the important producers of motor vehicles and spare parts in Europe, in order to keep the production at the same level, a more thorough analysis is needed at the national level and the consultation of the business sector and the institutions with attributions in the field, regarding the regulatory modality, including the scope of protection, regarding the "repair clause", based on the options presented in the preamble of the draft directive. We need more time to formulate a position; this will be outlined upon receiving the feedback from our stakeholders, following the consultation that our Office will launch shortly. We would like to raise a scrutiny reservation for the moment. PL (Drafting): 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. PL (Comments): On the basis of pro-competitive interpretation of design protection our proposal is to remove limitation relating to form-dependent parts. First of all, this limitation is not coherent with the Acacia judgement. The Court held directly that the scope of Article 110(1) of Regulation

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	No 6/2002 is not limited only to form-dependent parts (par.54) This outcome was based not only on literal meaning of art. 110 but also on the purpose of repair clause. Since the repair clause aims to liberalize the market of replacement parts to a certain extent, it is inadmissible to limit the repair clause to form-dependent parts. You may notice from the opinion of the Advocate General in the Acacia case that the aim of preventing the creation of monopolies on the replacement parts market justified the removal of that requirement (par. 71). Secondly, differentiation of types of spare parts can raise significant interpretation difficulties and in such case, we should rather take care of ensuring that the new provisions provide legal certainty instead of more confusion. Thirdly, scope of the repair clause without 'form-dependent components parts' requirement is sufficient to fulfil its purpose having in mind that there are limited circumstances when we can apply repair clause – namely: 1. component part must to be used for the sole purpose of the repair of that complex product; 2. replacement part must have an identical appearance to the part which was originally incorporated into the complex product. And also, there are information obligations – which are set in the art. 20 par.2. *These obligations can balance the scope of repair clause* without 'form dependent components parts' requirement. FR (Drafting): 1. Protection shall not be ~~conferred on~~ **enforceable for** 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. FR (Comments): This wording proposal meant to dispel any ambiguity on whether offices should scrutinize or not if the component part is eligible to protection. This provision is only related to the use of the rights. In French, the word

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	"accordée" makes it even more ambiguous. Under scrutiny reservation, France still brings thoughts about the repair clause. Contrary to the provisions of Regulation (EC) No. 6/2002 and the Acacia case law of December 20, 2017 (cases C-397/16 and C-435/16), the Commission's proposal aims to restrict the scope of application of the repair clause to component parts whose appearance is dependent on the appearance of the complex product concerned. France would like the Commission to further explain its decision to reintroduce this condition, whereas it had been rejected by the Member States when the 2001 Regulation was adopted. Does the Commission also believe that this wording will exclude certain parts from the repair clause, such as car wheels rims? The Acacia case law of the Court of Justice showed that the presence of this criteria in the Commission's initial proposal, in 1993 and in similar terms, made it a restricted repair clause. France wonders if it is also the Commission's view and if so, would like more explanation on how the relationship between the objective pursued by the perpetuation of the so-called "repair clause", and the advantages that it will bring in particular for the internal market and free competition (as described in the impact study), and its desire to strictly limit this exception. NL (Comments): The Dutch delegation gives into consideration to delete the phrase "upon whose appearance the design of the component part is dependent" in line with the Acacia judgment to ensure stronger competition and liberalisation. BE (Drafting): 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.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	BE (Comments): While the Belgian delegation welcomes a harmonization of the repair clause in the EU, it should be drafted in a way that is the most beneficial to the consumers and thus in a way that ensures stronger competition and liberalization. The current text proposal limits the application of the repair clause to form-dependent component parts only. This restriction of the repair clause would not only restrain the benefits of the clause to consumers but it would also create legal uncertainty for suppliers in Member States where the repair clause is not limited to form-dependent component parts. We therefore propose to delete this restriction, which, in addition, deviates from the recent CJEU jurisprudence (the joint C-397/16 and C- 435/16 Acacia cases). Moreover, a maximally liberalized spare parts market is also beneficial for the circular economy, which is an important cornerstone of the Commission's policy. The text should at least foresee in the possibility for Member States to go further than the proposed regime and liberalize their market of spare parts <u>for all must match parts, not limited to form-dependent parts</u>. This way, Member States – such as the Benelux Member States, who have already liberalized their market in this way (or wish to do so in the future) can offer/keep offering their consumers a more competitive spare parts market. It is indeed important that Member States who have made this policy choice in the past, are not forced to take a step back and dial down the advantages that are being offered to their consumers. LU (Comments): The Luxembourg delegation gives into consideration to delete the phrase "upon whose appearance the design of the component part is dependent" in line with the recent CJEU jurisprudence (the joint C-397/16 and C- 435/16 Acacia cases) to ensure stronger competition and liberalisation.
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	SK (Comments):

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
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.	SK scrutiny reservation IT (Drafting): ~~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.~~ IT (Comments): We propose to delete par. 2 because it isn't clear and complete. This generic request (through a clear and visible indication on the product or in another appropriate form) may be the way for enemy of repair clause do not apply it. Usually in the spare markets there's a clear information about the origin of the product used for the purpose of the repair of complex product PL (Comments): We would like to express our concerns regarding meaning of an expression "*in another appropriate form"*. In our view concept is too broad and it can raise interpretation difficulties. For example, if an appropriate clause in the contract is enough, or if information on the manufacturer's/dealer's website fulfils this requirement. We would like to draw attention to a situation of reproducing a trademark on a spare part. It seems that significant interpretation conclusions may result from the preliminary ruling in the pending case C-334/22. IE (Drafting): Amend current wording to read: 2. Paragraph 1 cannot be involved 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~~ through an indication which is clear and visible on the product at the time of purchase ~~or in another~~

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	~~equally clear and~~ visible ~~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. IE (Comments): COMMENT: The wording currently appearing in Article 19 needs to be strengthened to ensure adequate consumer protection at time of possible purchase and increase the legal certainty for manufactures of spare parts as regards the modalities of presenting the information relating to commercial origin of the products to the relevant consumer. NL (Drafting): *"(...) through a clear and visible indication on the product or <u>when this is not reasonably available,</u> 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, <u>in line with fair trade practices.</u>* NL (Comments): -The threshold for placing the indication not on the product but in "another appropriate form" should be high and only available when the first option is not reasonably available. -To align with trademarks, we propose to add "in line with fair trade practices" BE (Comments): The drafting of this paragraph is not clear: what does the origin of the product means (geographical or otherwise)? What is "in another appropriate form"? The Belgian delegation believes that an indication on the product or its packaging should be sufficient and that this should be clarified in the text, so as to avoid a more far-reaching interpretation, imposing additional burdens on the manufacturer. In this regard, the threshold for placing the indication

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	not on the product but in "another appropriate form" should be high and only available when the first option is not reasonably available. The text should also clarify how "origin" is to be understood. The current wording of the proposal leaves too much room for interpretation. In our opinion, "origin" should be understood as the producer, as defined in Art. 2 (e) of Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety. The Belgian delegation also wonders whether the proposed information requirement is not redundant since other existing pieces of legislation at EU level already impose certain information requirements, in particular in the areas of trade practices, advertisement, and product safety. Would it be possible to receive some clarification in this regard? LU (Comments): -The threshold for placing the indication not on the product but in "another appropriate form" should be high and only available when the first option is not reasonably available. -To align with trademarks, we propose to add "in line with fair trade practices" HU (Comments): The chosen solution can be supported by Hungary; however, it is necessary to clarify what exactly the information requirement displayed in the proposed Directive consists of and what it specifically covers.
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.	SK (Comments) : SK scrutiny reservation EE (Drafting): *[OP please insert the date = [a figure less than] ten years from the date of entry into force of this Directive]* EE

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	(Comments): In case of existing designs Estonia would prefer for the market to be freed in the course of a shorter transition period than the initially proposed 10 years. The respectable representatives of COM have also noted that the 10 year period is, as per academic proposals, a possible *maximum* period and that a shorter transition period of, for example, 8 years could also be conceivable. Said shorter period would ensure more balance between the rights of owners of designs and as target and interest groups (incl. EU consumers). A shorter transition period would, as such, enable to reap benefits of a liberated spare parts market sooner. IT (Drafting): 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~~ **three** 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. IT (Comments): We propose to reduce the transitional period to promote rapidly the competition and liberalization PL (Drafting): 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 at …[*OP please insert the date = three 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.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	PL (Comments): We would like to recommend a much shorter and more flexible transition period. Ten years does not meet the economic and social expectations and needs of the consumer and the spare parts market, also taking into account the dynamically developing market of the automotive industry where 10 years is an exceptionally long period. DE (Drafting): 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. DE (Comments): For reasons of legal certainty alone, the repair clause should refer to new designs only. This option is outlined under item 1.3 of the Impact Assessment. Under this option, existing design rights which were granted before the entry into force would not be affected and could be protected for up to 25 years. The protection of property afforded by the German Basic Law also covers the protection of design rights. A transitional period of ten years would interfere with a design right holder's legal position, protected and secured by fundamental rights, the continued existence of which the right holder relied on when registering the right. Against this backdrop, we consider option 1.3 to be the option providing the greatest legal certainty. FR (Drafting): BE (Drafting): Where at the time of adoption of this Directive the national law of a Member

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	State provides protection for designs within the meaning of paragraph 1, the Member State <u>may</u>~~shall~~, by way of derogation from paragraph 1, continue <u>at the latest</u> until …[OP please insert the date = ~~ten~~<u>three</u> 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. BE (Comments): The Belgian delegation is in favor of a much shorter and more flexible transition period. 10 years seems to be excessively long and does not meet the needs of the consumers and other stakeholders of spare parts market. If the proposed transition period is maintained, independent spare part providers will still be kept out of this captive market for spare parts for the currently existing vehicles and products for ten more years and consumers/owners of these vehicles having to repair their goods will continue to pay higher prices than others for ten more years. Without a true harmonisation of the internal market ensuring fair competition and freedom of choice for consumers, the spare parts market remains dysfunctional. At least, Member States should be able, if they wish to do so, to apply the repair clause to all designs from day 1 of the entry into force of the recast directive. HU (Comments): The chosen solution can be supported by Hungary, and the establishment of a transitional period of less than 10 years is also acceptable, flexibility may be appropriate, as long as the completion of liberalisation is ensured during this shorter period.
Article 20 **Exhaustion of rights**	
The rights conferred by a design right upon registration shall not extend to acts relating to a product in which a design included within the scope of protection of the design right is incorporated or to which it is applied,	NL (Drafting): *when the product has been put on the market in the Union <u>or the EEA</u> by the*

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
when the product has been put on the market in the Union by the holder of the design right or with his consent.	*holder of the design right or with his consent.* NL (Comments): -Union or EEA? The Regulation refers to EEA. BE (Drafting): The rights conferred by a design right upon registration shall not extend to acts relating to a product in which a design included within the scope of protection of the design right is incorporated or to which it is applied, when the product has been put on the market in the ~~Union~~ European Economic Area (EEA) by the holder of the design right or with his consent. BE (Comments): In art. 21 of the Design Regulation, reference is made to the European Economic Area and not to the Union. It seems appropriate to refer to the EEA in the directive as well. LU (Comments): In art. 21 of the Design Regulation, reference is made to the European Economic Area and not to the Union. It seems appropriate to refer to the EEA in the directive as well.
Article 21 **Rights of prior use in respect of a registered design right**	ES (Comments): In the Spanish version, there is an addition as can be note below which we underline: Article 21. Rights based on prior use in respect of an **EU** registered design. This inconsistency has substantive implications, not just translation implications. It is also inconsistent with Recital 36.
	ES (Comments): When referring to the term “registered design”, it seems that the scope refers, both, to national designs of Member States and EU designs. We understand it

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	would be preferable to clarify this issue.
1. A right of prior use shall exist for any third party who can establish that before the date of filing of the application, or, if a priority is claimed, before the date of priority, the third party has in good faith commenced use within the Member State concerned, or has made serious and effective preparations to that end, of a design included within the scope of protection of a registered design right, which has not been copied from the latter.	EL (Drafting): A right of prior use shall exist for any third party who can establish that before the date of filing of the application, or, if a priority is claimed, before the date of priority, the third party has in good faith commenced use within the Member State concerned, or has made serious and effective preparations to that end, of a design included within the scope of protection of a registered design right, ~~which has not been copied from the latter~~. EL (Comments): It is proposed to delete the phrase "which has not been copied from the latter". Since the provision already presupposes the "good faith" use of a design by a third party, it is redundant to mention that the design should not have been copied. PL (Comments): In our opinion such rule should remain optional as at national level provision is convergent to other IP rights provisions. ES (Drafting): 1. A right of prior use shall exist for any third party who can establish that before the date of filing of the application, or, if a priority is claimed, before the date of priority, the third party has in good faith commenced use within the Member State concerned, or has made serious and effective preparations to that end, of a design included within the scope of protection of a registered design right. ES (Comments): The term "copied" at the end of paragraph 1, may be confusing as it seems that it may be equivalent to the concept of "bad faith". We propose the clarification of this paragraph and therefore, the elimination of this term as it may collide with the concepts of novelty and individual character.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
2. The right of prior use shall entitle the third person to exploit the design for the purposes for which its use has been effected, or for which serious and effective preparations had been made, before the filing or priority date of the registered design right.	
Article 22 **Relationship to other forms of protection**	
The provisions of this Directive shall be without prejudice to any provisions of Union law or of the law of the Member State concerned relating to unregistered design rights, trade marks or other distinctive signs, patents and utility models, typefaces, civil liability or unfair competition.	ES (Comments): " In regard to the term "typefaces", we do not consider this figure as a protection figure in itself. We also propose to introduce a reference to "data protection" or "images protection". NL (Drafting): *The provisions of this Directive shall be without prejudice to any provisions of Union law relating to unregistered design rights or to any provisions of Union law or of the law of the Member State concerned relating to unregistered design rights, trade marks or other distinctive signs, patents and utility models, typefaces, civil liability or unfair competition.* NL (Comments): Following art. 3, unregistered national designs will no longer exist and therefore the reference to unregistered design right should only be in relation to Union law.
Article 23 **Relationship to copyright**	
A design protected by a design right registered in or in respect of a	AT

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
Member State in accordance with this Directive shall also be eligible for protection by copyright as from the date on which the design was created or fixed in any form provided that the requirements of Union copyright law are met.	(Comments): The parallelism of both property rights can be problematic with regard to the repair clause. Shouldn't a comparable clause also be included in the copyright? PL (Comments): We supportt the Commission's initiative of clarifying the intersection between design and copyright protection. Cumulative protection of a design through design law and copyright law is in general a good approach. However, we would like to express our concerns in relation to how this cumulative protection could have an effect on repair clause – will protection under copyrights unjustified limit the use of the repair clause? DE (Drafting): A design protected by a design right registered in or in respect of a Member State in accordance with this Directive shall also be eligible for protection by copyright as from the date on which the design was created or fixed in any form provided that the requirements of ~~Union~~ copyright law are met. DE (Comments): Despite advanced harmonisation in the area of copyright law, there is no generally applicable unified concept of a copyright-protected "work" in EU legislation. The issue of the extent to which the requirements for copyright protection are actually fully harmonised has not yet been conclusively established – this is, however, a matter to be addressed in copyright law and not in design law. Article 23 should therefore only regulate the principle of cumulation of design and copyright protection without specifying whether the relevant requirements are to be found in Union law or in the law of a Member State. Otherwise, there would also be a contradiction with Article 14 (1) (f) Draft Directive, according to which a registered design shall be declared invalid if it constitutes an unauthorised use of a work protected under the copyright law of the Member State concerned.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	NL (Comments): -Despite harmonisation at EU level, copyright law is not yet fully harmonized at EU level and therefore the reference to "Union copyright law" should be changed. - How would the parallel protection under copyright law interfere with the application of the repair clause? BE (Drafting): A design protected by a design right registered in or in respect of a Member State in accordance with this Directive shall also be eligible for protection by copyright as from the date on which the design was created or fixed in any form provided that the requirements of ~~Union~~ copyright law are met. BE (Comments): While there is advanced harmonization in copyright law, there is no "Union" copyright law like there is for trademarks and designs for example. We therefore suggest deleting "Union". How would the parallel protection under copyright law interfere with the application of the repair clause? LU (Comments): While there is advanced harmonization in copyright law, there is no "Union" copyright law like there is for trademarks and designs for example. We therefore suggest to delete "Union". How would the parallel protection under copyright law interfere with the application of the repair clause?
Article 24 **Registration symbol**	
The holder of a registered design right may inform the public that the	LV

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
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.	(Drafting): 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~~ **public database of the design.** LV (Comments): We propose a hyperlink to the "public design database", as it is not actually possible for us to create a hyperlink to a design entry of the design in the register. The data available in the public database corresponds to the data of the Register of Designs. EL (Drafting): The article could be moved to another Chapter. EL (Comments): This article should not be in Chapter 2 which is titled “SUBSTANTIVE LAW ON DESIGNS”, as it does not introduce a substantive law provision. FI (Comments): We support this addition; it increases legal certainty. PL (Comments): The proposal should be subject to further consultation regarding to the symbol. HU (Drafting): 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 **registration symbol** ~~design notice~~ may be accompanied by the registration

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	number of the design or hyperlinked to the entry of the design in the register. HU (Comments): (i) We welcome Article 24 of the proposed Directive, which introduces the possibility to use a registration symbol on products in which the design, protected by a registered design right, is incorporated or to which it is applied. This could facilitate the marketing of designs, in particular by SMEs and individual designers, and raise awareness of EU and national registration schemes. At the same time, we consider it important that the preamble to the proposed Directive, like recital 17 of the proposed Regulation, should contain an explanation of the reasons for the introduction of a registration symbol and that this explanation should include a reference to the fact that the use or non-use of the registration symbol does not entail any legal consequence. (ii) We included a drafting suggestion because the word "notice" can be misleading when referring to the use of the symbol
CHAPTER 3 PROCEDURES	
Article 25 **Application requirements**	FR (Comments): As explained in Article 30 regarding the Deferment, France would like to keep the possibility to provide a "simplified procedure". In this procedure, at the time of the filing, the reproduction of the designs does not have to fulfil the suitable representation requirement. The applicant also only pays a unique and lower fee. It is only when the applicant chooses to have all, or part of these designs published that it will have to present reproductions in due form and pay the reproduction (publication) fees. In that order, this procedure would not be on compliance with Article 25 on Application requirements. In this purpose, please see below drafting suggestions on Article 30.
1. An application for a registered design shall contain at least all of	IE

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
the following:	(Drafting): Replace "*An application for a registered design*" with "*An application for the registration of a design"* IE (Comments): COMMENT: Proposed amended wording provides greater clarity and could be considered more precise in the use of terminology.
(a) a request for registration;	
(b) information identifying the applicant;	
(c) a representation of the design suitable for reproduction, permitting all the details of the subject matter for which protection is sought to be clearly distinguished and permitting publication;	SI (Drafting): (c) a representation of the design; SI (Comments): Very often the first representations of designs, submitted by the applicants, do not comply with quality standards required for applications and are not immediately suitable for reproduction. They may also contain some additional elements, which can not be a part of representation etc. **It is important that the filing date is not the subject to such strict requirements.** DK (Drafting): Perhaps article 25, paragraph 1, point c could be simplified in line with the proposal for the Design Law Treaty which uses the wording: *"a sufficiently clear representation of the industrial design"*. DK (Comments): Denmark supports the Commission's initiative to harmonize the rules regarding requirements for an application. However, as we mentioned at the meeting 23-24 January 2023, we have concerns regarding the content of

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	article 25, paragraph 1, point c, especially when you read it in conjunction with article 26, paragraph 1, regarding representation, and in conjunction with article 28, regarding date of filing. Our concern is that it seems that we can only grant a date of filing if the representations are acceptable for registration and publication of the design. This could mean that a design with an unneutral background only can be granted a date of filing, the day we receive a representation with a neutral background, although there is no doubt about the identity of the design. Worst case the applicant loses his right because the grace period is expired, when he is granted a filing date. It could also result in losing a priority claim. We are aware that the current suggested wording *("clearly distinguished and permitting publication")* is also used in rule 9, paragraph 2 in Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement. However, in the Hague System, this is not a requirement for the grant of a filing date, cf. Common Regulations rule 14, paragraph 2, but only a requirement for registration and publication. It is our view that the Design Directive should follow this approach and not make the requirements for granting a date of filing to strict. FI (Comments): We support the addition proposed by DK and DE: 'sufficiently clear representation of design'. DE (Drafting): (c) a representation of the design suitable for reproduction**;** ~~, permitting all the details of the subject matter for which protection is sought to be clearly distinguished and permitting publication;~~ DE (Comments): In our view, the clarity requirement must not be a precondition for accordance of the date of filing. This would lead to a considerable disadvantage for individual applicants without legal representation as well as for small and medium sized enterprises that do not have any expertise in

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	design law. Experience has shown that, with these types of applicants, clarifications are often necessary after the application has been filed. There is also a risk that, due to this specification, it would not be possible for a date of filing to be accorded for a design registration if the office has to interpret its representation. However, this seems disproportionate, especially in cases where a clarification can be made after the application without changing the representation of the design (e.g., by submitting a description) or through insignificant changes (e.g., small retouches to attachments). As the legal situation currently stands, these cases would not have any consequences for the date of filing. And this should remain that way. Nor does a comparison with trademark law call for a tightening of these rules either. In the trademark system, the precision requirement is a substantive criterion for registration of a sign (Art. 3(b) of the Trademark Directive); it also underlies the absolute grounds for refusal (section 8(1) of the German Trade Mark Act [*Markengesetz*]). The fact that, in the Trademark Directive, clarity is a requirement for accordance of the date of filing (Art. 37(1)(d) and 38(1)) is therefore only logical. However, in the design system, the clarity and precision requirement is not a substantive condition, but a formal requirement for the representation of a design in the registration process. It must, therefore, not lead to a suspension of the date of filing. It is appropriate and sufficient if, in order for the date of filing to be accorded, only a representation suitable for publication is required (Art. 26(1) of the draft Directive). The clarity requirement should be regulated separately as a formal requirement. The proposed deletion is linked to the comments and proposed amendments regarding Art. 26 and 28 of the draft Directive. HU (Drafting): (c) **a representation of the design suitable for reproduction, enabling all the details of the design to be recognised;** ~~suitable for reproduction, permitting all the details of the subject matter for which protection is sought to be clearly distinguished and permitting publication;~~ HU

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	(Comments): In our view, the proposed requirement is too strict, because it is not reasonable to expect from the applicant to file at the outset of the procedure a representation fulfilling these requirements. Representations of this quality are in most cases attained during the formal examination after the issuance of deficiency letters. Therefore, we suggest that the provision should be worded in such a way that the representation must enable all the details of the design to be recognised.
(d) an indication of the products in which the design is intended to be incorporated or to which it is intended to be applied.	IE (Drafting): Expand provision to specifically prescribe the following: "(*e) an address for correspondence for the applicant* *(f) where the applicant has a representative, the name and address of that representative* *(g) where a claim to priority applies, a declaration claiming the priority of the earlier application, and evidence in support of the declaration, the form of which may be determined by the Member State* *(h) where a period of deferment of publication is required, a request to that effect and an indication of the period of that deferment in the cases where Member States provide for specific graduated periods of deferment".* IE (Comments): COMMENT: In the interest of harmonisation and greater legal certainty, the scope of the application requirements should be expanded to ensure that National Office receive the adequate information at application stage in order to enable them to efficiently process the application without further recourse to the applicant / representative which may result in avoidable delays and further administrative burdens on both parties. Furthermore, the expanded provision would be in line with those provisions proposed in Article 3 of the Draft Designs Law Treaty (DLT) Articles, and Rule 2 of the Draft DLT Regulations.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
2. The application for design registration shall be subject to the payment of a fee determined by the Member State concerned.	
3. The indication of the products as referred to in paragraph 1, point (d), shall not affect the scope of protection of the design. That shall also apply to a description explaining the representation of the design if such a description is provided for by a Member State.	
Article 26 **Representation of the design**	SI (Comments): The proposed provision in this Article contains very detailed requirements (rules, accepted in 2016 with Convergence on graphic representations of designs - Common Communication, EUIPO), which could be regulated by lower legislative act. For example, TM Directive 2015/2436 does not contain such detailed provisions regarding the representation of the trade mark. In 37(1)(d) the requirement for the representation of TM is laid down just as "basic" requirement: "a representation of the trade mark, which satisfies the requirements set out in point (b) of Article 3." Detailed provisions regulating the representation of the trade mark are laid down only in Commission Implementing Regulation. FR (Comments): Scrutiny reservation Leave this to cooperation programs?
1. The representation of the design, as referred to in Article 25(1), point (c), shall be clear, precise, consistent and of a quality allowing for all the details of the matter for which protection is sought to be clearly distinguished and published.	SI (Comments): Very often the first representations of designs, submitted by the applicants, do not comply with quality standards required for applications and are not immediately suitable for reproduction. They may also contain some additional elements, which can not be a part of representation etc. **It is important that the filing date is not the subject to such strict**

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	requirements. DE (Drafting): 1. **For registration and publication**, t~~T~~he representation of the design~~, as referred to in Article 25(1), point (c),~~ shall be clear, precise, consistent and of a quality allowing for all the details of the matter for which protection is sought to be clearly distinguished and published. **Failure to meet these requirements does not mean that the application shall not be dealt with as an application for a registered design.** DE (Comments): In principle, we welcome the uniform regulation of the clarity requirement in Art. 26(1) of the draft Directive as a merely formal criterion for the representation of a design (without any relevance for the date of filing). However, the reference to Art. 25(1)(c) in Art. 26(1) of the draft Directive should be deleted so as to make sure that the wording and structure of the provision make it unequivocally clear that the clarity requirement has a purely formal character and bears no relevance for the date of filing. A second sentence could be added to concretise the legal character of these requirements. Alternatively, this clarification could be made in Article 28 of the draft Directive (see the proposed wording for Art. 28).
2. It shall consist in any form of visual reproduction of the design either in black and white or in colour. The reproduction can be static, dynamic or animated and shall be effected by any appropriate means, using generally available technology, including drawings, photographs, videos, or computer imaging/modelling.	AT (Comments): Scrutiny reservation The requirements of paragraph 2-7 are too detailed. There should be more flexibility for MS. DE (Drafting): ~~2. It shall consist in any form of visual reproduction of the design either in black and white or in colour. The reproduction can be static, dynamic or animated and shall be effected by any appropriate means, using generally available technology, including drawings, photographs, videos, or computer~~

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	~~imaging/modelling.~~ DE (Comments): Paragraphs 2 to 7 should be deleted without any replacement. For one thing, the Directive should – along the lines of recital 10 – only provide for the clarity requirement itself and not for any specific forms thereof. The types of representation that are permissible and the specific requirements for the representations of a design are subject to constant developments. It must therefore be possible to adapt and update them quickly and easily. For this reason, detailed provisions on the representations of designs are made at the European level by means of the EUIPO Guidelines. There may also be guidelines at the national level. These detailed regulations also fall under the cooperation obligation set out in Art. 26(8) of the draft Directive, which means that there is no need to concretise these requirements here. ES (Comments): We understand that the scope of the terms “dynamic” and “animated” should be clarified.
3. The reproduction shall show all the aspects of the design for which protection is sought in one or more views. In addition, other types of views may be provided with the purpose of further detailing specific features of the design, and in particular:	PL (Comments): Regarding to the points 2-7 we support position to have those items regulated in national legislation. There is no need to bring such details to the directive. All those requirements we could set under convergence practice programmes as stated in point 8. DE (Drafting): ~~3. The reproduction shall show all the aspects of the design for which protection is sought in one or more views. In addition, other types of views may be provided with the purpose of further detailing specific features of the design, and in particular:~~ DE

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	(Comments): See above ES (Comments): We understand that the reference "in one or more views" refer to static views. Therefore, we raise the following questions: a) Need of clarification whether there can be views in dynamic or animated designs. b) If a video would be considered as a view under this Article. c) If a video may be presented in static layouts. HU (Comments): It does not follow clearly from Article 26(3) that, in the case of three-dimensional products, where the design is embodied in or applied to the whole of the product, a representation of all the sides of the product must be shown in the application in order to clearly identify the design. Practical experience shows that, in the absence of clear rules, applicants often fail to provide an accurate representation containing several views, which leads to national offices having to issue a notice to applicants to clarify the scope of protection, which leads to a lengthy procedure.
(a) magnified views showing part of the product separately in an enlarged scale;	DE (Drafting): ~~(a) magnified views showing part of the product separately in an enlarged scale;~~ DE (Comments): See above
(b) sectional views where a cutaway portion of the product is shown;	DE (Drafting): ~~(b) sectional views where a cutaway portion of the product is shown;~~ DE

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	(Comments): See above
(c) exploded views where dissembled parts of a product are shown separately in one view; or	DE (Drafting): ~~(c) exploded views where dissembled parts of a product are shown separately in one view; or~~ DE (Comments): See above
(d) partial views where parts of a product are shown separately in different views.	DE (Drafting): ~~(d) partial views where parts of a product are shown separately in different views.~~ DE (Comments): See above
4. Where the representation contains different reproductions of the design or includes more than one view, those shall be consistent with each other and the subject matter of the registration shall be determined by all the visual features of those views or reproductions in conjunction.	DE (Drafting): ~~4. Where the representation contains different reproductions of the design or includes more than one view, those shall be consistent with each other and the subject matter of the registration shall be determined by all the visual features of those views or reproductions in conjunction.~~ DE (Comments): See above
5. The design shall be represented alone, to the exclusion of any other matter. No explanatory text, wording or symbols may be displayed thereon.	DK (Drafting): Depending on the aim with this paragraph, we have two suggestions to a new wording of paragraph 5.

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	1) *"The design shall be represented alone, to the exclusion of any other matter, unless the other matter is not a product within the meaning of Article 2, paragraph 4, or the other matter is disclaimed according to paragraph 6 of this Article. Explanatory text, wording or symbols may not be displayed in the representation."* If the substance of paragraph 5 is only explanatory text, wording or symbols, the wording could be more simple: 2) *"The design shall be represented without explanatory text, wording or symbols."* DK (Comments): Denmark have concerns to the choice of wording *"shall be represented alone, to the exclusion of any other matter"*. Both EUIPO and the Danish Office have designs, where the representation includes elements which serves an illustrative purpose. The element could for instance be a human head which cannot be part of a design or it could be a disclaimed element. We suggest that the paragraph is changed so it doesn't exclude the possibility of a representation showing more than just the design applied for. DE (Drafting): ~~5. The design shall be represented alone, to the exclusion of any other matter. No explanatory text, wording or symbols may be displayed thereon~~. DE (Comments): See above HU (Drafting): 5. The design shall be represented alone, to the exclusion of any other matter. No explanatory text, wording or **engineering drawing** symbols may be displayed thereon.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	HU (Comments): It is necessary to clarify what symbols or indications are meant exactly by "symbols" referred to in Article 26(5), with particular regard to whether the term should be understood to exclusively mean engineering drawing symbols.
6. Matter for which no protection is sought shall be indicated by way of visual disclaimers, preferably in the form of dotted or broken lines. If this is not possible for technical reasons or because of the type of design concerned, other visual disclaimers may be used, such as shading, boundaries or blurring. Any such visual disclaimers shall be used consistently.	DE (Drafting): ~~6. Matter for which no protection is sought shall be indicated by way of visual disclaimers, preferably in the form of dotted or broken lines. If this is not possible for technical reasons or because of the type of design concerned, other visual disclaimers may be used, such as shading, boundaries or blurring. Any such visual disclaimers shall be used consistently.~~ DE (Comments) : See above ES (Comments) : HU (Comments) : We consider it necessary to complement the visual limitation rule in Article 26(6) with the provision for a written statement to clearly identify which part of the representation does not belong to the design.
7. Where the representation is accompanied by a description of the design, neither that description nor any verbal disclaimers included therein shall have the effect of limiting or expanding the scope of protection of the design as reproduced in the representation.	DE (Drafting): ~~7. Where the representation is accompanied by a description of the design, neither that description nor any verbal disclaimers included therein shall have the effect of limiting or expanding the scope of protection of the design as reproduced in the representation.~~ DE (Comments):

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	See above ES (Comments): We propose the clarification of this paragraph in order to introduce a reference stating that the description can never replace or extend the content of the representation, and that in case of discrepancies, the representation always prevails over the description.
8. The Member States' central industrial property offices and the Benelux Office for Intellectual Property shall cooperate with each other and with the European Union Intellectual Property Office to establish common standards to be applied to the requirements and means of design representation, in particular as regards the types and number of views to be used, the types of acceptable visual disclaimers, as well as the technical specifications of the means used for the reproduction, storage and filing of designs, such as the formats and size of the relevant electronic files.	AT (Comments): We propose to move this provision to Chapter 4. EL (Comments): Though we agree with the substance of the paragraph, it would be more suitable to relocate it as a separate article to Chapter 4 "ADMINISTRATIVE COOPERATION". IE (Drafting): Amend the term "*shall cooperate with each other*" to read "*shall be free to cooperate with each other*" IE (Comments): COMMENT. The proposed amendment will remove any suggestion that the provision is mandatory in nature and furthermore align the text with that of Articles 34 and 35, respectively DE (Drafting): ~~8.~~ **2.** ~~-~~The Member States' central industrial property offices and the Benelux Office for Intellectual Property shall cooperate with each other and with the European Union Intellectual Property Office to establish common standards to be applied to the requirements and means of design representation, in particular as regards the types and number of views to be used, the types of acceptable visual disclaimers, as well as the technical specifications of the

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	means used for the reproduction, storage and filing of designs, such as the formats and size of the relevant electronic files. ES (Drafting): …" the reproduction, storage and filing of designs, such as the formats and size of the ~~relevant~~ electronic files". ES (Comments): (a) We propose to harmonise or unify the new forms of filing in accordance with the new CP17 that will be drawn up in the EUIPO working group. These new forms will be equivalent to the CP11 for trademarks (Common Practice) that serves as a reference in EUIPO for convergence in the formal filing requirements of the new types of trademarks introduced with the proposed Directive. (b) We propose to eliminate the term "relevant" in regard to electronic files as it may be deemed as confusing as to determine what is considered relevant or not. HU (Drafting): 8. The Member States' central industrial property offices and the Benelux Office for Intellectual Property shall cooperate with each other and with the European Union Intellectual Property Office to establish **common communications and practices** ~~common standards~~ to be applied to the requirements and means of design representation, in particular as regards the types and number of views to be used, the types of acceptable visual disclaimers, as well as the technical specifications of the means used for the reproduction, storage and filing of designs, such as the formats and size of the relevant electronic files. HU (Comments): In Article 26(8), for consistency, it is proposed to replace the term "common standards" by "common communications and practices" as used in the framework of the convergence programme of the European Network of

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	Intellectual Property Offices for Trade Marks and Designs.
Article 27 **Multiple applications**	CZ (Comments): CZ comment: We prefer to retain the one-class condition, we fear that leaving this principle will result in worse orientation and less clarity while searching in the design databases. As a consequence, a less convenient and more demanding output for the users can arise which is not desirable when modernising the legislation. In our experience, there is no deliberate inclusion of applications of different classes into a single class to the extent that it would constitute a significant administrative burden. This position also applies to the related Art. 37 of the revised text of the Regulation on Community designs.
	AT (Comments): Scrutiny reservation MS should have the possibility to determine/limit the (maximum) number of designs contained in a multiple application.
Several designs may be combined in one multiple application for registered designs. This possibility shall not be subject to the condition that the products in which the design are intended to be incorporated or to which they are intended to be applied all belong to the same class of the International Classification for Industrial Designs.	LV (Drafting): Several designs may be combined in one multiple applications for registered designs. This possibility is subject to the condition that the products in which the designs are intended to be incorporated or to which they are intended to be applied all belong to the same class of the International Classification for Industrial Designs. **A multiple application may include several designs, that do not belong to the same class of the International Classification for Industrial Designs, only if they have conceptual unity, manufacture unity or use unity, or if they belong to the same set or group of products.** LV (Comments): We propose to use similar language like in Geneva Act of July 2, 1999, of The Hague agreement concerning the international registration of industrial designs, Article 13.

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	EL (Comments): We have a scrutiny reservation on this article. The deletion of the requirement that designs must relate to products of the same class of the Locarno Classification will create difficulties to international applicants claiming protection in States whose legislation requires unity of design, resulting, in a potential refusal of an application. Both the Hague system and the EU design system should be compatible to facilitate design protection. RO (Drafting): Several designs may be combined in one multiple application for registered designs. RO (Comments): Romania, as a WIPO member state, must fulfil its obligations arising from this status. Romania is a party to Hague Agreement concerning the international registration of designs. According to art. 5, para. 4 of the Geneva Act, "Subject to the prescribed conditions, an international application may contain several industrial designs." Art. 13, entitled "Special requirements regarding the unity of the design, it is specified that: "Any contracting party whose legislation, at the time it becomes a party to this act, requires that the designs or industrial models that are the subject of the same request satisfy the rule of unity of conception, production unit or by unit of use, times must to belong the same ensemble or compositions of articles ..." In this context, Romania made a statement, based on which it examines this requirement of unity of design. If the application does not comply with this rule, the Office may suggest to the applicant to divide the application into several applications that satisfy this rule. Each divisional application is subject of filing and publication fees. According to national legislation on design, (art. 14, alin. 1) - „A multiple deposit may include several designs intended to incorporation in the same

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	category of products, in compliance with the international classification. 2)The designs which are the subject of a multiple deposit shall meet the condition of unity of design, unity of production and unity of use, or shall belong to the same set or composition of items." Again according to art. 15 of the Regulation on the application of Design Law, "a multiple deposit will include up to 100 designs/models and can be submitted through a single application, according to art. 14 of the law." The fact that the multiple application would include from 1 to 50 designs/models, (as provided in art. 37 of the Draft EC Regulation amending EC Regulation no. 6/2002) does not constitute a problem for our office (only in changing the way requests are stored in the database), but the rule regarding the elimination of class unity is in dissonance with the provisions of domestic law. Therefore, our proposal is to remove the 2nd sentence of Article 27. This issue should be left to the latitude of the Member States. PL (Comments): In general, we agree with the proposal, however in our opinion multiple registration should remain optional. Indeed, filing a multiple application is much easier for applicant, however we don't see benefits of multiple registration. One application could contain very different designs – from logo, interior designs to films and games. Some of them may be unregistrable or need to be treated in IT system in very different way. Therefore, it should be up to office to proceed all designs together or split multiple application in to single ones and registered them one by one. For user it could also be more convenient to have separate certificates, as it could be easier to execute such separate rights on the market. It is also easier to proceed separated designs in the invalidity procedure – you can just use the registration number of single design and don't have to identify regarding to which design from multiple registration invalidity or enforcement procedure is initiated. IE (Drafting): After the term "*Several designs*", insert the wording *"...., the limit of which*

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	may be determined by the Member State……" IE (Comments): COMMENT: The qualification of the term "S*everal*" will allow Member States to more effectively manage any possible administrative burden associated with multiple applications and the maximum number deemed appropriate to allow for effective and efficient examination, registration and renewal practices and procedures. ES (Comments): We propose to include a mention that it is the national office that should determine the degree of relationship or complementarity of the designs, in order to allow them to be included in the same multiple application, even if they belong to different classes. HU (Comments): It needs to be clarified, however, whether the possibility of multiple filing may be subject to other conditions, as the current wording of the provision does not make it clear whether multiple filing may be subject to other conditions ["This possibility shall not be subject to the condition that..."]. This is important to clarify, because according to Section 38 (1) of the Act XLVIII of 2001 on the legal protection of designs (Hungarian Design Act) in force, we have currently two types of multiple applications: in addition to designs in the same class, protection may also be sought in a design application for a group of designs united by the common external ornamental features of the products which influence the overall impression they make on the informed user.
Article 28 **Date of filing**	
1. The date of filing of a design application shall be the date on which the documents containing the information specified in Article	DK (Comments):

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
25(1), points (a) to (c), are filed with the office by the applicant.	This proposal regarding the date of filing is clear. As long as the requirements for the representation in Article 25, paragraph 1, point c, is loosened, cf. above, the reference in article 28 to article 25(1), points (a) to (c) is acceptable. DE (Drafting): 1. The date of filing of a design application shall be the date on which the documents containing the information specified in Article 25(1), points (a) to (c), are filed with the office by the applicant. **The requirements provided for in Article 26(1) shall have no effect on the date of filing.** DE (Comments): For the purpose of clarity. For further comments, please see comments on Article 25.
	FR (Drafting): **1a. Where the design application does not satisfy the requirements of representation referred to in Article 25(1), point (c), the office shall request the applicant to remedy the deficiencies within a reasonable time.** **1b. If the deficiencies established pursuant to paragraph 1a are remedied within the prescribed period, the applicant shall not lose the original date of filing.** FR (Comments): France is concerned that the heavy requirements for the design representation may affect the date of filing (more over France is not convinced that these criteria should be in the Regulation). When the office considers that the representation does not comply with 25(1) point c) and Article 26, the applicant may have to endorse modifications, which may take time. In this case, the applicant should not lose the date of filing if remedy intervenes in a reasonable time.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
2. Member States may, in addition, provide that the accordance of the date of filing is to be subject to the payment of a fee as referred to in Article 25(2).	
Article 29 **Scope of substantive examination**	CZ (Drafting): ~~Article 29~~ ~~**Scope of substantive examination**~~ CZ (Comments): CZ comment: See Art. 13. Based on our proposal this Article becomes obsolete. ES (Drafting): ~~**Scope of substantive**~~ **Registrability examination**
The offices shall limit their examination of whether a design application is eligible for registration to the absence of the substantive grounds for non-registrability referred to in Article 13.	CZ (Drafting): ~~The offices shall limit their examination of whether a design application is eligible for registration to the absence of the substantive grounds for non-registrability referred to in Article 13.~~ DK (Comments): Same comments as under article 13. AT (Drafting): (2) Ungeachtet des Abs. 1 ist die Formalprüfung insbesondere hinsichtlich der Anforderungen der in den Art. 25 und 26 genannten Anforderungen zulässig. (2) Irrespective of paragraph 1, a formal examination is admissible, in particular with regard to the requirements specified in Articles 25 and 26. AT

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	(Comments): Art. 29 can be supported basically, but it should be pointed out in this context that Article 29 only regulates the substantive examination of the application, not a formal examination. We think it is not clear that a formal check, such as payment of fees, provision of the required application data (according to Article 25) or submission of design representations (according to Article 26) is also admissible and should not be excluded. It is therefore proposed to add a new paragraph (2) that refers to the formal examination. EL (Comments): Examination of improper use of State emblems and official signs and hallmarks should be included. RO (Drafting): The offices shall limit their examination of whether a design application is eligible for registration, in accordance with the grounds for non-registrability and for refusal referred to in Article 13. (inserted in drafting suggestions). RO (Comments): Currently, the Romanian IP Office (OSIM) is examining all the grounds contained in the Directive in force. Romania, as a WIPO member state, must also fulfil its obligations arising from this status. In this context, Romania made a statement, based on which it is examining the novelty of design. In our opinion, it is a beneficial for users, because after the examination procedure, a strong title of protection is granted, which is confirmed by the low number of applications for cancellation before the court and by the confirmation of the solution given by the office. Also, within the examination procedure, OSIM examines third-party oppositions submitted within 2 months of the publication of the design/model application in the Official Bulletin of Industrial Property - Designs and Models Section, which is carried out within 5 working days from the date of

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	submission of the application for registration. The opposition can be based on the same grounds as those of rejection from examination or cancellation, constituting a pre-granting procedure. If the substantive examination will be limited only to the two grounds mentioned in the present draft directive, the volume of activity within the Examination Division would decrease, while the entire burden of resolving conflicts with prior rights and the other grounds would be transferred to the courts. This would not be beneficial for the users in Romania, on the contrary, it would increase expenses and the settlement time in court, up to 5 years, taking into consideration the completion of all levels of jurisdiction, compared to maximum 6 months period of the procedure for registering a design/models, including the procedure for resolving oppositions during the substantive examination procedure. PL (Comments): Same comments as regards Article 13. DE (Drafting): The offices shall limit their **substantive** examination of whether a design application is eligible for registration to the absence of the substantive grounds for non-registrability referred to in Article 13 DE (Comments): The addition aims to clarify that this provision only relates to a substantive examination of an application (cf. recitals 27 and 41 of the draft Directive). Formal examinations of an application and refusals for formal reasons, i.e. for failure to comply with formal requirements (cf. Art. 25 and 26 of the draft Directive), must remain possible (see also section 16(3) of the German Act on the Legal Protection of Designs [*Designgesetz*]). ES (Drafting): The offices shall limit their examination of whether a design application is eligible for registration to the absence of the ~~substantive~~ grounds for non-

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	registrability referred to in Article 13. ES (Comments): For consistency with the title of Article 13, we propose the wording in the prior column, as we understand that the term "substantive" refers to the examination of novelty and singular character.
Article 30 **Deferment of publication**	FR (Comments): Besides the "classic" deferment (automatic publication after 36 months – which is longer than the 30 months mentioned in the directive), French law provides for a simplified design registration procedure for industries that regularly renew the shape and decoration of their products. At the time of the filing, the applicant only pays a unique fee. It is only when the applicant chooses to have all or part of these designs published that he must present designs that he will have to present reproductions in due form and pay the reproduction "publication" fees. For the publication: unlike the classical filing, there is no automatic publication of the designs. It is the applicant's choice to publish its designs. It will have to waive the deferment of publication in writing, at the latest 30 months after the filing. If not, the filing is falling. The directive provisions would make this possibility disappear. French stakeholders rely heavily on this simplified procedure and France would like to keep this option open. One solution could be to provide the MS the ability to establish an alternative filing and deferment procedure.
1. The applicant for a registered design may request, when filing the application, that the publication of the registered design be deferred for a period of 30 months from the date of filing the application or, if a priority is claimed, from the date of priority.	LV (Drafting): The applicant for a registered design may request, when filing the application, that the publication of the registered design be deferred for a period ~~of~~ **up to** 30 months from the date of filing the application or, if a priority is claimed, from the date of priority.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	LV (Comments): Accordingly, it should be clarified that the applicant may request that the publication of the design be deferred for a period not exceeding 30 months from the filing date or the date of priority. PT (Drafting): 1. The applicant for a registered design may request, when filing the application, that the publication of the registered design be deferred for a **maximum** period of 30 months from the date of filing the application or, if a priority is claimed, from the date of priority. PT (Comments): PT considers that if the applicant has the possibility to request the design's publication before the ending of the 30 months, he should be allowed to choose for how many months he wants to defer the publication when filling the application. That option would be simpler than having to ask for the publication of the design later. FI (Drafting): The applicant for a registered design may request, when filing the application, that the publication of the registered design be deferred for a period of **up to** 30 months from the date of filing the application or, if a priority is claimed, from the date of priority. FI (Comments): It would be good if the right holder could request for a shorter deferment. 30 months seems like unnecessarily long time in many cases. IE (Drafting): Replace the words "…. *for a period of 30 months*…." with "…*for a maximum period of up to 30 months*…..". IE

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	(Comments): COMMENT: The current wording is unclear and would suggest that each request for a deferment of publication must be for a period of 30 months and would appear not to allow an applicant to request a shorter period upon applying for the registration of a design. The new proposed text would remove any such suggestion. DE (Drafting): 1. The applicant ~~for a registered design~~ may request, when filing the application, that the publication of the registered design **or, in the case of a multiple registration, the registered designs** be deferred for a period of 30 months from the date of filing the application or, if a priority is claimed, from the date of priority. DE (Comments): Where a multiple application is concerned, a deferment of the publication must always apply to all designs included in the application in question. This should be clarified. ES (Comments): We would like to point out in this regard that the deferral can be on an individual basis for designs that are part of a multiple application. BE (Drafting): 1. The applicant for a registered design may request, when filing the application, that the publication of the registered design be deferred for a period of up to 30 months from the date of filing the application or, if a priority is claimed, from the date of priority. BE (Comments): The text seems to imply that the deferment is automatically for a period of 30 months. This seems rather long. It would be better to foresee a period of "up to 30 months", meaning it could be 30 months or shorter.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
2. When registered the design neither the representation of the design nor any file relating to the application shall be open to public inspection subject to provisions of national law safeguarding legitimate interests of third parties.	
3. A mention of the deferment of the publication of the registered design shall be published.	HU (Comments): In order to comply with the requirements of uniformity and legal certainty, it is proposed that the provision should set out in detail the data to be included in the mention of the deferment, as in Article 50(3) of the proposed Regulation.
4. At the expiry of the period of deferment, or at any earlier date on request by the right holder, the office shall open to public inspection all the entries in its register and the file relating to the application and shall publish the registered design.	ES (Comments): We understand that a reference should be included stating that the design will be published as long as the formal requirements for the publication are met. FR (Comments):
	DE (Drafting): 5. Member States may require a publication fee to be paid within the period determined in paragraph 1. If the fee is not paid, the registration shall expire at the end of the period of deferment without publication of the registered design. DE (Comments): Opening clause allowing Member States – with regard to Article 30(4) – to make publication of a design dependent on the right holder expressing his/her wish to have the deferred design published by paying the required fee. Requesting a deferment of publication when filing an application would no longer be financially attractive for individual applicants and small and

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	medium sized enterprises (SMEs) as well as multiple applicants, as the fees for an application of this type would have to be aligned to those for a normal application. FR (Drafting): 5. The right holder may prevent publication of the registered EU design as referred to in paragraph 4, by submitting a request for surrender of the EU design [at the latest 3 months before expiry of the period of deferment]. 6. Member States may, in addition, provide an alternative mechanism in which publication intervenes only on the request of the right holder. Where such mechanism is implemented, Member States may provide that the requirement of representation of the designs specified in Article 25(1), point (c), should be fulfilled only when the right holder requests from the office to open to public inspection all the entries in its register and the file relating to the application and to publish the registered design. FR (Comments): Also, it seems appropriate to offer the holder of a national design the same possibility of preventing publication as the owner of a design of the EU, provided in Article 50 para 4 of the Regulation proposal. See comment above mentioned on French simplified procedure.
Article 31 **Procedure for declaration of invalidity**	AT (Comments): Clarification is requested that the directive proposal does not restrict the national legislation and available procedures according to our current national design law, in particular requests for declaration, requests for deprivation and transfer and proceedings concerning the citation as designer/creator of a design. We already have a cancellation department within the Austrian Patent Office which is well established. Therefore, we would reject any restrictions of proceedings for our users. EL (Comments):

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	We have a reservation for the introduction of a mandatory administrative procedure for the declaration of invalidity of a design. The measure is disproportional to the actual cost implied to Member States' national authorities for introducing invalidation proceedings and does not reflect the forecasted savings of the impact analysis. It implies a rise of the costs for the applicants, as the relevant procedural fees will have to be increased, affecting, therefore, innovation and creativity. A more expensive filing procedure will result to a lower number of applications. ES (Comments): **We propose that the administrative invalidity procedure should be considered as an optional procedure for the MS and not mandatory.** The administrative invalidity procedure makes more sense in the case of trademarks, since the trademark has an indefinite duration and a high volume of applications, whereas in the case of designs the life is limited and more than 80% are renewed for a maximum period of 10 years. The low percentage of design invalidity cases in court does not compensate for the establishment of an administrative invalidity procedure (specific regulations, IT, new staff and training costs), when in Spain there is already an equivalent and effective post-grant procedure.
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.	SI (Drafting): 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. SI (Comments): The Republic of Slovenia has some concerns about the proposed provision in 31(1) regarding the obligatory transfer of design invalidity proceedings to national offices, as this would have a major negative impact on the Republic of Slovenia, since the Slovenian Intellectual Property Office does not carry

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	out a full examination of design applications and does not have the appropriate staff and tools for such examination. The Republic of Slovenia therefore strives to provide flexibility in this proposed provision, which would enable small national offices, such as the Slovenian one is, to maintain their regulation. EE (Comments): Estonia very much supports the decision to hold invalidity procedures in IP offices. The lack of such an option and mainly relying on classical court procedures for design invalidation would go against the design packages aim and would not ensure affordable and fast procedures for SMEs and single authors. One could even say that prolonged and/or costly court procedures would make it simpler to exploit, in bad faith, the current fragmented EU design system and make it easier to retain such design rights that shouldn't have been registered in the first place. So, once again, Estonia very much supports administrative, IP office-based invalidity procedures. RO (Comments): The Romanian IP Office examines third-party oppositions within the substantive examination procedure. If a structure responsible for administrative procedures related to the invalidation of designs/models is created within the national offices, in our opinion, its members should have thorough knowledge in the field. At the same time, if the substantive examination will be limited only to the two grounds mentioned in the draft directive, the workload within the Examination Division would decrease, while the entire burden of resolving conflicts with previous rights and the other reasons would be transferred to the new structure in charge with the invalidation of designs or/and the courts. In our opinion, this represents a disadvantage for users in Romania, in the sense that, the duration of the procedure for solving an invalidation application, will be longer than the current procedure of registration. A balanced proposal is to take over the grounds of refusal inserted in drafting suggestions for art.13.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	ES (Drafting): 1. Without prejudice to the right of the parties to appeal to the courts, Member States ~~shall~~ **may** provide for an efficient and expeditious administrative procedure before their offices for the declaration of invalidity of a registered design right. ES (Comments): We propose the following change in the wording as stated in the prior column. NL (Drafting): *"Without prejudice to the right of the parties to appeal to the courts, Member States <u>may</u> ~~shall~~ provide for an efficient and expeditious administrative procedure (...)"* NL (Comments): The Dutch delegation is not in favour of the mandatory introduction of invalidity proceedings. There a many reasons for this: there is a general lack of interest at national level, but also at EUIPO for these proceedings + the volume of designs currently being invalidated is only marginal + our stakeholders have informed us that the likelihood that these administrative proceedings will be used is extremely low, if not non-existent at all. Especially because invalidity proceedings are always closely related to copyright proceedings and unfair competition proceedings, for which users will need to go to Court + harmonization with the trademark system is not appropriate in this area, because designs (unlike trademarks) have a maximum validity period and half of the cancellation applications for trademarks are based on non-uses while there is no use obligation for designs (and therefore no such ground for invalidity) + these proceedings would have the unwanted effect of making the national system heavier and more expensive + the additional burden of these mandatory proceedings also endangers the coexistence of the European and the national/regional design

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	system as set out in the comment on recital 3 + makes the system less accessible for SMEs. For aforementioned reasons we suggest to either delete this provision or make the proceedings optional. BE (Drafting): 1. Without prejudice to the right of the parties to appeal to the courts, Member States ~~shall~~ may provide for an efficient and expeditious administrative procedure before their offices for the declaration of invalidity of a registered design right. BE (Comments): The Belgian delegation cannot support the mandatory introduction of administrative invalidity proceedings. For several (smaller) Member States, setting up and executing an administrative invalidity procedure is a disproportionate burden in relation to the expected very limited level of use and therefore the limited benefits to users. Introducing such a procedure entails a great deal of work indeed: new legislation and regulations, a new procedure with (electronic) submission tools, an internal processing system,. The number of cases, on the other hand, would be marginal. For trademarks, there is currently a ratio of approximately 0.5% of cancellation applications to the number of filings submitted. However, this percentage would be much lower for designs, in particular because designs, unlike trademarks, have a maximum validity period and because for trademarks about half of the cancellation applications are based on non-usus, while for designs there is no obligation of use (and therefore no such ground for invalidity). According to a first estimate, it would concern 2 to 3 cases per year at the most in the Benelux. Moreover, most national agencies, including BOIP, do not have the necessary technical knowledge for, for example, novelty searches. After all, the majority of the national offices do not carry out a substantive assessment of design applications. Moreover, acquiring the necessary knowledge in this regard is likely to be long and difficult for offices in smaller Member States, as there

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	will be a very limited number of cases. Adding this additional burden in a mandatory way endangers the coexistence of the European and the national/regional design system. As mentioned in the comments on recital 3, an increased workload for national offices inevitably means higher costs. In most Member States, these increased costs are likely to be reflected in increased fees. However, in the context of national designs which are already under strong competitive pressure from the European system, an increase in fees will, in the short to medium term, mean the asphyxiation of the system: national designs will no longer attract any applicants and this system will simply become unviable. From the point of view of coexistence of the systems, it is not justified to impose mandatory administrative invalidity proceedings on the national or regional offices. Finally, it has resulted from our consultations that the Benelux users do not see any need for this kind of procedure, also given the fact that that invalidity proceedings are often closely related to copyright and unfair competition proceedings, for which users will still need to go to Court. The Benelux users therefore agree that it should be optional for Member States to implement if they wish so. The Belgian delegation therefore proposes to make this procedure optional and not mandatory. LU (Drafting): "Without prejudice to the right of the parties to appeal to the courts, Member States may ~~shall~~ provide for an efficient and expeditious administrative procedure (…)" LU (Comments): The Luxembourg delegation is not in favour of the mandatory introduction of invalidity proceedings. For several (smaller) Member States, setting up and executing an administrative invalidity procedure is a disproportionate burden in relation to the expected very limited level of use and therefore the limited benefits to users.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	Indeed, it must be noted that invalidity proceedings are most often closely related to copyright proceedings and/or unfair competition proceedings. Only the courts have jurisdiction in this matter. Adding this additional burden in a mandatory way endangers the coexistence of the European and the national/regional design system. As mentioned in the comments on recital 3, an increased workload for national offices inevitably means higher costs. In most Member States, these increased costs are likely to be reflected in increased fees. However, in the context of national designs which are already under strong competitive pressure from the European system, an increase in fees will, in the short to medium term, mean the asphyxiation of the system: national designs will no longer attract any applicants and this system will simply become unviable. From the point of view of coexistence of the systems, it is not justified to impose mandatory administrative invalidity proceedings on the national or regional offices. Given the above, the Luxembourg delegation therefore proposes to make this procedure optional and not mandatory.
2. The administrative procedure for invalidity shall provide that the design right is to be declared invalid at least on the following grounds:	EE (Comments): *Ibid.*
(a) the design should not have been registered because it does not comply with the definition laid down in Article 2, point (3), or with the requirements provided for in Articles 3 to 8;	LT (Comments): Re-check a need to amend after the results of discussions on additional ground (c) in Article 13 (1)
(b) the design should not have been registered because of the existence of a prior design within the meaning of Article 14(1), point (d).	ES (Comments): Kindly refer to our comments in Article 14 (d).
3. The administrative procedure shall provide that at least the following persons are to be entitled to file an application for a declaration of invalidity:	EE (Comments): *Ibid.*

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
(a) in the case of paragraph 2, point (a), the persons, groups or bodies referred to in Article 14(2);	
(b) in the case of paragraph 2, point (b), the person referred to in Article 14(3).	SI (Drafting): (b) in the case of paragraph 2, point (b), the person referred to in Article 14**(4).** SI (Comments): **31(2)(b):** the design should not have been registered because of the existence of a prior design within the meaning of Article **14(1)**, point **(d)**. **14(1)(d)**: the design is in conflict with a prior design which has been made available to the public, and which is protected from a date prior to the date of filing of the application, or if priority is claimed, the date of priority of the design… **14(4)**: The grounds for invalidity provided for in paragraph **1**, points **(d)**, (e) and (f), may be invoked solely by the following... **31(3)(b) => 31(2)(b) => 14(1)(d) => 14(4)** DE (Drafting): (b) in the case of paragraph 2, point (b), the person referred to in Article 14(**4**~~3~~). DE (Comments): Correction of the reference Art. 31(3)(b) refers to the administrative procedure, i.e., to Art. 31(2)(b), which, in turn, refers to Art. 14(1)(d). As regards Art. 14(1)(d), however, the entitled person is governed not by Art. 14(3) but by Art. 14(4).
	PL (Comments): Regarding to the text of directive it is no clear if countries could also have court system of designs invalidation. We recognize such system as alternative

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	if parties prefer to proceed based on civil procedure or counterclaim in enforcement proceeding. Such provision should be added.
Article 32 **Renewal**	
1. Registration of a design shall be renewed at the request of the holder of the design right or any person authorised to do so by law or by contract, provided that the renewal fees have been paid. Member States may provide that receipt of payment of the renewal fees is to be deemed to constitute such a request.	
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 affect the expiry of the registration.	IT (Drafting): 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 affect the expiry of the registration.~~ IT (Comments): We propose to delete the "and such failure shall not affect the expiry of the registration" because it may create confusion. EL (Drafting): The office <u>may</u> 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 affect the expiry of the registration. EL (Comments): We have reservations regarding the mandatory character of the notification to the holder. An optional nature of the notification is proposed instead. DE (Drafting):

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	~~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 affect the expiry of the registration.~~ DE (Comments): We reject this specific regulation of renewal. It should be up to the Member States to decide how they organise the renewal process, whether and when right holders are informed and when and which additional fees for late payment are charged. The proposed new provision in Article 32 of the draft Directive was based on parallel provisions of trademark law which, given the differences between trademarks and designs, is not expedient. By contrast to trademarks, designs have to be renewed every five years and not every ten years. This would lead to a significantly higher frequency of information letters. At the same time, experience has shown that a relatively low number of right holders make use of the possibility to uphold national design protection beyond the first five to ten years, especially when compared to the applications filed with EUIPO. The obligation to send an information letter to every right holder before expiry of the term of protection would lead to enormous implementation efforts which would have to be refinanced and would be completely disproportionate to the benefit this would have for the right holders. ES (Drafting): 2. The office, **for information purposes only** ~~shall~~ **may communicate** 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 affect the expiry of the registration **or the renewal term.** ES (Comments): We understand the wording to be inconsistent. It does not make special sense to state that the office will inform of the expiry, but that if it does not inform

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	of it, it will not affect the expiry of the registration. The wording under the Spanish Design law is the following: "the office may communicate, for information purposes only, the expiry, but the lack of notification does not affect the expiry of the registration and does not extend the time limit for renewal". FR (Comments): France would like to stress that this provision may impose heavy administrative burdens for offices. Even though this provision is aligned with Article 49 of the Trademark Directive, TM and designs may not be compared. First of all, renewal of designs is to be done every five years, where TM renewal is every ten years. Secondly, designs are often not renewed for the last and/or second to last periods. If the office has to reach each holder within the time limit, it is an administrative expense and burden that do not seem to be justified.
3. The request for renewal shall be submitted and the renewal fees shall be paid at least six months before the expiry of the registration. Failing that, the request may be submitted within a further period of six months immediately following the expiry of the registration or of the subsequent renewal thereof. The renewal fees and an additional fee shall be paid within that further period.	LV (Drafting): The request for renewal ~~shall~~ **can** be submitted and the renewal fees ~~shall~~ **can** be paid ~~at least~~ six months before the expiry of the registration. Failing that, the request may be submitted within a further period of six months immediately following the expiry of the registration or of the subsequent renewal thereof. The renewal fees and an additional fee shall be paid within that further period. LV (Comments): Latvia does not support the current wording as the right holder will need to submit a renewal application at least six months before the expiry of the registration, although it also provides for the right to submit a renewal application in the following six months. IE (Drafting): Amend wording "*shall be paid at least six months before the expiry of the*

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	registration" to read "*within a period of a least six months immediately preceding the expiry of the registration*" IE (Comments): COMMENT: The proposed amendment removes any confusion and further clarifies the precise time frame within which a renewal fee may be paid. Furthermore, the proposed amended wording aligns Article 32(3) with that of Article 49(3) of the Trade Marks Directive. DE (Drafting): ~~3. The request for renewal shall be submitted and the renewal fees shall be paid at least six months before the expiry of the registration. Failing that, the request may be submitted within a further period of six months immediately following the expiry of the registration or of the subsequent renewal thereof. The renewal fees and an additional fee shall be paid within that further period.~~ DE (Comments): See comment on paragraph 2. NL (Drafting): *"The request for renewal shall be submitted and the renewal fees shall be paid within a period of at least six months before the expiry (...)"* NL (Comments): There seem to be a few words missing. BE (Drafting): 3. The request for renewal shall be submitted and the renewal fees shall be paid within a period of at least six months before the expiry of the registration. Failing that, the request may be submitted within a further period of six months immediately following the expiry of the registration or of the subsequent renewal thereof. The renewal fees and an additional fee shall be

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	paid within that further period. BE (Comments): We assume that the request for renewal and the payment of the renewal fee should be done within a period of 6 months before the expiry of the registration (and not at least 6 months before the expiry) and have suggested a clarification in this regard.
4. In the case of a multiple registration, where the renewal fees paid are insufficient to cover all the designs for which renewal is requested, registration shall be renewed if it is clear which designs the amount paid is intended to cover.	AT (Comments): The regulation is unclear and associated with high administrative costs and risk for national offices. EL (Drafting): In the case of a multiple registration, where the renewal fees paid are insufficient to cover all the designs for which renewal is requested, registration shall be renewed if it is clear which designs the amount paid is intended to cover. In the absence of other criteria for determining which designs are intended to be covered, the Office shall treat the designs in the numerical order in which they are represented. The application shall not be dealt with as an application for a registered design in respect of those designs for which the additional application fees have not been paid or have not been paid in full. EL (Comments): A rule should be included to determine the way in which an Office can determine which designs are covered by the amount paid and what are the consequences in case of non-payment of all fees. It is proposed to streamline the provision with the respective one of the proposal for a Regulation amending Council Regulation (EC) 6/2002. PL (Comments):

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	Multiple registration should be optional. DE (Drafting): **2.** ~~4.~~ In the case of a multiple registration, where the renewal fees paid are insufficient to cover all the designs for which renewal is requested, registration shall be renewed if it is clear which designs the amount paid is intended to cover. ES (Comments): We propose to include that in case of absence of any express indication by the applicant, the fees shall be applied to the designs in the order in which they appear in the renewal application or, failing that, in the Register of Designs, (similar to Article 22.5 of the Implementing Regulation 2245/2002 of Regulation EC 6/2002). FR (Drafting): ~~4. In the case of a multiple registration, where the renewal fees paid are insufficient to cover all the designs for which renewal is requested, registration shall be renewed if it is clear which designs the amount paid is intended to cover.~~ Or; 4. In the case of a multiple registration, ~~where the renewal fees paid are insufficient to cover all the designs for which renewal is requested, registration shall be renewed if it is clear which designs the amount paid is intended to cover.~~ **the request for renewal referred to in paragraph 1 shall include an indication of the designs for which renewal is requested.** FR (Comments): France considers it should not be the task, neither responsibility, of the office to seek which designs are requested for renewal. The office should not be liable for potentially having renewed the wrong designs in the case it concluded it was clear which designs the amount paid is intended to cover and where the applicant does not agree with it.

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	It should be the applicant's task to clearly indicate which designs are requested to be renewed. Intention to cover contrasts with legal certainty. Preferred option would be to delete this provision and leave it to the MS procedural autonomy, or to replace this provision by the fact that the applicant clearly indicates which designs it intends to renew, inspired by the new Article 50d para 4 of the Regulation proposal.
5. Renewal shall take effect from the day following the date on which the existing registration expires. The renewal shall be recorded in the register.	DE (Drafting): **3.** ~~5.~~ Renewal shall take effect from the day following the date on which the existing registration expires. The renewal shall be recorded in the register.
Article 33 **Communication with the office**	
Parties to the proceedings or, where appropriate, their representatives, shall designate an official address for all official communication with the office. Member States shall have the right to require that such an official address be situated in the European Economic Area.	
CHAPTER 4 ADMINISTRATIVE COOPERATION	
Article 34 **Cooperation in the area of design registration, administration and invalidity**	
The offices shall be free to cooperate effectively with each other and with the European Union Intellectual Property Office in order to promote convergence of practices and tools in relation to the examination, registration and invalidation of designs.	
Article 35	

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
Cooperation in other areas	
The offices shall be free to cooperate effectively with each other and with the European Union Intellectual Property Office in all areas of their activities other than those referred to in Article 34 which are of relevance for the protection of designs in the Union.	ES (Comments): I We propose the following issues: (a) To include a specific Article in regards to the exhibition priority. (b) To extend the list of recognised fairs as there are currently international forums that are taking this into consideration. Thus, for example, there is currently a database in process that is going to be extended to more languages (currently only English and French) on the temporary protection of designs that have been exhibited at fairs and which is being developed at WIPO at the proposal of Spain in the latest international committees on Designs. c) To promote the creation and maintenance of databases of art. 6 ter CUP emblems and of the temporary protection of designs at fairs and exhibitions.
CHAPTER 5 FINAL PROVISIONS	
Article 36 **Transposition**	
1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with Articles 2 and 3, Articles 6, 10 to 19, 21, 23 to 33 by …[*OP please insert the date = 24 months after the date of entry into force of this Directive*] at the latest. They shall forthwith communicate the text of those measures to the Commission.	SK (Comments): Taking into account experience with TM directive and the cooperation between the Member States' central industrial property offices, the Benelux Office for Intellectual Property and the European Union Intellectual Property Office as envisaged in Article 26 para 8 and also taking into account the duration of national legislative procedure we would prefer longer period for transposition (36 months). DE (Drafting): 1. Member States shall bring into force the laws, regulations or

PUBLIC

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	administrative provisions necessary to comply with Articles 2 and 3, Articles 6, 10 to 19, 21, 23 to 33 by … [*OP please insert the date = ~~24~~ 36 months after the date of entry into force of this Directive*] at the latest. They shall forthwith communicate the text of those measures to the Commission. DE (Comments): The period for transposition should be extended to 36 months. FR (Comments): As it was done with the TM directive, the design directive should provide a longer time of transposition for implementing invalidity procedure. France is open to discuss how long. NL (Drafting): *[OP please insert the date = ~~24~~ 36 months after the date of entry into force of this Directive] at the latest. They shall forthwith communicate the text of those measures to the Commission.* NL (Comments): The transposition term seems quite short (especially compared to the trademark reform). We suggest extending it to three years. BE (Comments): A transposition period of 24 months seems too short. In the Benelux, the provisions on design legislation are part of the Benelux Convention on Intellectual Property (BCIP). The implementation of the proposed Directive therefore needs to take place in concertation with the Benelux Member States, and through a protocol modifying the BCIP. Such protocol needs to be ratified by each of the Benelux Member States before the amendments to the BCIP can enter into force. In light of these procedural constraints, and in parallel with the EUTM Directive, the Belgian delegation therefore proposes to set a transposition period of 36 months. Article 54 of the EUTM Directive indeed foresees a 36 months period for transposing the provisions into

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
	national law and even a seven year period for the transposition of the provisions relating to administrative cancellation proceedings. LU (Comments): A transposition period of 24 months seems too short. In the Benelux, the provisions on design legislation are part of the Benelux Convention on Intellectual Property (BCIP). The implementation of the proposed Directive therefore needs to take place in concertation with the Benelux Member States, and through a protocol modifying the BCIP. Such protocol needs to be ratified by each of the Benelux Member States before the amendments to the BCIP can enter into force. In light of these procedural constraints, and in parallel with the EUTM Directive, it is therefore proposed to set a transposition period of 36 months. Article 54 of the EUTM Directive indeed foresees a 36 months period for transposing the provisions into national law and even a seven year period for the transposition of the provisions relating to administrative cancellation proceedings.
When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.	
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	
Article 37 **Repeal**	
Directive 98/71/EC is repealed with effect from … [*OP please insert the*	

Commission proposal 2022/0392 (COD)	AT – BE – CZ – DE – DK – EE – EL – ES – FI – FR – HR - HU – IE – IT – LT – LU - LV – NL – PL – PT – RO – SI – SK Drafting Suggestions Comments
date = the day after the date in the first subparagraph of Article 36(1)], without prejudice to the obligations of the Member States relating to the time-limit for the transposition into national law of the Directive set out in Annex I.	
References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.	
Article 38 **Entry into force**	
This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.	
Articles 4 and 5, Articles 7 to 9, Articles 20 and 22 shall apply from …[*OP please insert the date = the day after the date in the first subparagraph of Article [38](1)*].	
Article 39 **Addressees**	
This Directive is addressed to the Member States.	
Done at Brussels,	
For the European Parliament For the Council	
The President The President	
	End

PUBLIC