3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;

4. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and Commission, and to the governments and parliaments of the Member States and the Kingdom of Norway.

8. Community design *

A5-0150/2000


The proposal was amended as follows:

<table>
<thead>
<tr>
<th>TEXT PROPOSED BY THE COMMISSION</th>
<th>AMENDMENTS BY PARLIAMENT</th>
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<tbody>
<tr>
<td>(Amendment 2)</td>
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<tr>
<td>Recital 4</td>
<td></td>
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<tr>
<td>(4) Whereas the effect of design protection being limited to the territory of the individual Member States, whether or not their laws are approximated, leads to a possible division of the internal market with respect to products incorporating a particular design in areas with different right owners, and hence constitutes an obstacle to the free movement of goods;</td>
<td>(4) Whereas the effect of design protection being limited to the territory of the individual Member States, whether or not their laws are approximated, leads to a possible division of the internal market with respect to products incorporating a design which is the subject of national rights and hence constitutes an obstacle to the free movement of goods;</td>
</tr>
</tbody>
</table>

(5) Whereas this calls for the creation of a Community design right which is directly applicable in each Member State, and of a Community design authority with Community-wide powers, because only in this way will it be possible to obtain, through one application made to the Office for Harmonisation in the Internal Market (trade marks and design) in accordance with a single procedure under one law, one design right for one area encompassing all Member States;

(5) Whereas this calls for the creation of a Community design right which is directly applicable in each Member State, because only in this way will it be possible to obtain, through one application made to the Office for Harmonisation in the Internal Market (trade marks and design) in accordance with a single procedure under one law, one design right for one area encompassing all Member States;

1. Designs which comply with the conditions contained in this Regulation, hereinafter referred to as 'Community designs', shall be protected by a Community system of rights.

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

3. Individual character implies that the design is the result of independent creation. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

3a. For the purposes of paragraph 1 of this article, ‘informed user’ should be understood to mean a regular user or one who has a knowledge of the sector in which products with a protected design are marketed.

1. Until such time as amendments to this Regulation are adopted on a proposal from the Commission on this subject, a Community design shall not exist in a design applied to or incorporated in a product, which constitutes a component part of a complex product upon whose appearance the design is dependent.

1. Until such time as amendments to this Regulation are adopted on a proposal from the Commission on this subject, protection as a Community design may not be enjoyed by a design applied to or incorporated in a product, which constitutes a component part of a complex product upon whose appearance the design is dependent and which may be used for the purpose of permitting the repair of that complex product so as to restore its original appearance.

2. For the purpose of applying paragraph (1) a design shall be deemed to have been made available to the public within the Community if it has been published following registration or otherwise, exhibited, used in trade or otherwise disclosed therein, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

2. For the purpose of applying paragraph (1) a design shall be deemed to have been made available to the public within the Community if it has been published in any way or been exhibited, used in trade or otherwise disclosed therein, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

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

2. An unregistered Community design shall, however, confer on its holder the right to prevent the acts mentioned in paragraph (1) only if the use contested results from copying the design protected.
Article 20a

1. The holder of a Community design shall have the right to obtain, without delay, all information relating to the origin of counterfeit products and of the networks by means of which such products are marketed from the third parties who use the design and enjoy Community protection. Such information shall include, in particular, data relating to the manufacture, supply, marketing and exploitation of the product into which the design has been incorporated or to which it is applied.

2. In the event of abuse in requesting information, compensation shall be paid for any loss or damages caused.

3. The exercise of this right to information may not contravene rules relating to data protection or the right of an individual not to testify against himself.

Article 27(5)

5. By derogation from Article 1 paragraph (3), where the design is in breach of Article 10 and in the cases specified in paragraph (1) (d), (e), (f) and (g) if the ground for invalidation obtains only in respect of one or some Member States, invalidity shall be declared only in respect of such a Member State or State.

Article 67(1)

1. In proceedings before it the Office shall examine the facts of its own motion; however, in proceedings relating to a declaration of invalidity, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought, except to the extent that the grounds of invalidity specified in Articles 27(1)(a), 10 and 10a are involved.

2. In proceedings in respect of an infringement action or an action for threatened infringement of an unregistered Community design, the Community design Court shall, if the right holder presents evidence to sustain his claim that the design has an individual character, treat the design as valid, unless its validity is put in issue by the defendant with a counter-claim for a declaration of invalidity.

Article 89(2)

2. In proceedings in respect of an infringement action or an action for threatened infringement of an unregistered Community design, the Community design Court shall, if the right holder establishes in detail that the design has an individual character, treat the design as valid, unless its validity is put in issue by the defendant with a counter-claim for a declaration of invalidity.
1. Where in an action for infringement or for threatened infringement a Community design Court finds that the defendant has infringed or threatened to infringe a Community design, it shall, unless there are special reasons for not doing so, issue the following orders:

(a) an order prohibiting the defendant from proceeding with the acts which have infringed or would infringe the Community design,

(b) an order to seize the infringing products,

(c) an order to seize materials and implements predominantly used in order to manufacture the infringing goods, if their owner knew the effect for which such use was intended or if such effect would have been obvious in the circumstances,

(d) any order imposing other sanctions appropriate under the circumstances which are provided by the law of the Member State in which the acts of infringement or threatened infringement are committed, including its private international law.

1. Where in an action for infringement or for threatened infringement a Community design Court finds that the defendant has infringed or threatened to infringe a Community design, it shall, unless there are special reasons for not doing so, issue the following decisions:

(a) a decision prohibiting the defendant from proceeding with the acts which have infringed or would infringe the Community design,

(b) a decision to seize the infringing products,

(ba) a decision assigning ownership of the products in question to the holder of the design,

(c) a decision to seize materials and implements predominantly used in order to manufacture the infringing goods, if their owner knew the effect for which such use was intended or if such effect would have been obvious in the circumstances,

(d) any decision imposing other sanctions appropriate under the circumstances which are provided by the law of the Member State in which the acts of infringement or threatened infringement are committed, including its private international law.

Article 100

1. The provisions of this Regulation shall be without prejudice to any provisions of Community law or of the law of the Member States concerned relating to unregistered design rights, trade marks or other distinctive signs, patents and utility models, typefaces, civil liability and unfair competition.

2. A design protected by a Community design shall also be eligible for protection under the law of copyright of Member States as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Member State.