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(Information)

COUNCIL

COMMON POSITION (EC) No 28/97
adopted by the Council on 17 June 1997

with a view to adopting Directive 97/.../EC of the European Parliament and of the Council on
the legal protection of designs

(97/C 237/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community and in particular Article 100a thereof,

Having regard to the proposal by the Commission(1),

Having regard to the opinion of the Economic and Social
Committee(2),

Acting in accordance with the procedure laid down in
Article 189b of the Treaty(3),

1. Whereas the objectives of the Community, as laid
down in the Treaty, include laying the foundations
of an ever closer union among the peoples of
Europe, fostering closer relations between Member
States of the Community, and ensuring the
economic and social progress of the Community
countries by common action to eliminate the
barriers which divide Europe; whereas to that end
the Treaty provides for the establishment of an

internal market characterized by the abolition of the
obstacles to the free movement of goods and also
for the institution of a system ensuring that
competition in the internal market is not distorted;
whereas an approximation of the laws of the
Member States on the legal protection of designs
would further those objectives;

2. Whereas the differences in the legal protection of
designs offered by the legislation of the Member
States directly affect the establishment and
functioning of the internal market as regards goods
embodiing designs; whereas such differences can
distort competition within the internal market;

3. Whereas it is therefore necessary for the smooth
functioning of the internal market to approximate
the design protection laws of the Member States;

4. Whereas, in doing so, it is important to take into
consideration the solutions and the advantages with
which the Community design system will provide
undertakings wishing to acquire design rights;

5. Whereas it is unnecessary to undertake a full-scale
approximation of the design laws of the Member
States, and it will be sufficient if approximation is
limited to those national provisions of law which
most directly affect the functioning of the internal
market; whereas provisions on sanctions, remedies
and enforcement should be left to national law;
whereas the objectives of this limited approximation
cannot be sufficiently achieved by the Member
States acting alone;

(3) Opinion of the European Parliament of 12 October 1995
(OJ No C 287, 30. 10. 1995, p. 157), Common position of
the Council of 17 June 1997, Decision of the European
Parliament of ... (not yet published in the Official Journal.
6. Whereas Member States should accordingly remain free to fix the procedural provisions concerning registration, renewal and invalidation of design rights and provisions concerning the effects of such invalidity;

7. Whereas this Directive does not exclude the application to designs of national or Community legislation providing for protection other than that conferred by registration or publication as design, such as legislation relating to unregistered design rights, trademarks, patents and utility models, unfair competition or civil liability;

8. Whereas, in the absence of harmonization of copyright law, it is important to establish the principle of cumulation of protection under specific registered design protection law and under copyright law, whilst leaving Member States free to establish the extent of copyright protection and the conditions under which such protection is conferred;

9. Whereas 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; whereas to that end it is necessary to give a unitary definition of the notion of design and of the requirements as to novelty and individual character with which registered design rights must comply;

10. Whereas it is essential, in order to facilitate the free movement of goods, to ensure in principle that registered design rights confer upon the right holder equivalent protection in all Member States;

11. Whereas 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;

12. Whereas protection should not be extended to those component parts which are not visible during normal use of a 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; whereas features of design 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;

13. Whereas 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 clearly differs from 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;

14. Whereas technological innovation should not be hampered by granting design protection to features dictated solely by a technical function; whereas it is understood that this does not entail that a design must have an aesthetic quality; whereas, likewise, the interoperability of products of different makes should not be hindered by extending protection to the design of mechanical fittings; whereas features of a design 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;

15. Whereas the mechanical fittings of modular products may nevertheless constitute an important element of the innovative characteristics of modular products and present a major marketing asset and therefore should be eligible for protection;

16. Whereas a design right shall not subsist in a design which is contrary to public policy or to accepted principles of morality; whereas this Directive does not constitute a harmonization of national concepts of public policy or accepted principles of morality;

17. Whereas it is fundamental for the smooth functioning of the internal market to unify the term of protection afforded by registered design rights;

18. Whereas the provisions of this Directive are without prejudice to the application of the competition rules under Articles 85 and 86 of the Treaty;

19. Whereas the rapid adoption of this Directive has become a matter of urgency for a number of industrial sectors; whereas a full-scale approximation of 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 component part of a complex product upon whose appearance the protected design is dependent, cannot be introduced at the present stage; whereas a first step and a certain degree of approximation in this field will be achieved through the horizontal application of the provisions of this Directive on the requirements for protection for designs; whereas the lack of a
full-scale approximation of the laws of the Member States on the use of protected designs for such repair of a complex product should not constitute an obstacle to the approximation of those other national provisions of design law which most directly affect the functioning of the internal market; whereas for this reason Member States may maintain in force or introduce any provisions affecting the use of a protected design for the purpose of permitting such repair of a complex product; whereas five years after the implementation date, the Commission shall submit an analysis of the consequences of the provisions of this Directive for Community industry, for consumers, for competition and for the functioning of the internal market; whereas, following the submission of its analysis, the Commission shall propose to the European Parliament and the Council any changes to this Directive needed to complete the internal market in respect of component parts of complex products and any other changes which it considers necessary;

20. Whereas the substantive grounds for refusal of registration in those Member States which provide for substantive examination of applications prior to registration, and the substantive grounds for the invalidation of registered design rights in all the Member States, must be exhaustively enumerated,

HAVE ADOPTED THIS DIRECTIVE:

Article 2

Scope of application

1. This Directive shall apply to:

(a) design rights registered with the central industrial property offices of the Member States;

(b) design rights registered at the Benelux Design Office;

(c) design rights registered under international arrangements which have effect in a Member State;

(d) applications for design rights referred to under (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 3

Protection requirements

1. Member States shall protect designs by registration, and shall confer exclusive rights upon their holders in accordance with the provisions of this Directive.

2. A design shall be protected by a design right to the extent that it is new and has individual character.

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, notwithstanding its having been incorporated into the complex product, could reasonably be expected to remain visible during normal use of the latter, and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

4. ‘Normal use’ within the meaning of paragraph 3 (a) shall mean any use other than maintenance, servicing or repair.

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 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 specialized in the sector concerned, operating within the Community, 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.

2. A disclosure shall not be taken into consideration for the purpose of applying Articles 4 and 5 if a 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.

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.

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.

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

Term of protection

Upon registration, a design which meets the requirements of Article 3 (2) shall be protected by a design right for one or more periods of five years from the date of filing of the application. The term of protection may be renewed at the request of the right holder for one or more periods of five years each, up to a total term of 25 years from the date of filing.
Article 11

Invalidity or refusal of registration

1. A design shall be refused registration, or if the design has been registered, the design right declared invalid:

(a) if the design is not a design within the meaning of Article 1(a), or

(b) if it does not fulfil the requirements of Articles 3 to 8, or

(c) if the applicant for or the holder of the design right is not entitled to it under the law of the Member State concerned, or

(d) if the design is in conflict with a prior design which has been made available to the public after the date of filing of the application or, if priority is claimed, the date of priority, and which is protected from a date prior to the said date by a registered Community design or an application for a registered Community design or by a design right of the Member State concerned, or by an application for such a right.

2. Any Member State may provide that a design shall be refused registration, or, if the design has been registered, the design right declared invalid:

(a) if a distinctive sign is used in a subsequent design, and Community 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, or

(b) if the design constitutes an unauthorised use of a work protected under the copyright law of the Member State concerned, or

(c) if the design constitutes an improper use of any of the items listed in Article 6ter of the Paris Convention for the Protection of Industrial Property, or of badges, emblems and escutcheons other than those covered by Article 6ter of the said Convention and which are of particular public interest in the Member State concerned.

3. The ground provided for in paragraph 1 (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 provided for in paragraph 1 (d) and in paragraph 2 (a) and (b) may be invoked solely by the applicant for or holder of the conflicting right.

5. The ground provided for in paragraph 2 (c) may be invoked solely by the person or entity concerned by the use.

6. Paragraphs 4 and 5 shall be without prejudice to the freedom of Member States to provide that the grounds provided for in paragraph 1 (d) and in paragraph 2 (c) may also be invoked by the appropriate authority of that Member State on its own initiative.

7. When a design has been refused registration or a design right has been declared invalid pursuant to paragraph 1 (b) or to paragraph 2, the design may be registered or the design right maintained in an amended form, if in that form it complies with the requirements for protection and the identity of the design is retained. Registration or maintenance in an amended form may include registration accompanied by a partial disclaimer by the holder of the design right, or entry in the design Register of a court decision declaring the partial invalidity of the design right.

8. Any Member State may provide that, by way of derogation from paragraphs 1 to 7, the grounds for refusal of registration or for invalidation in force in that State prior to the date on which the provisions necessary to comply with this Directive enter into force, shall apply to design applications which have been made prior to that date, and to resulting registrations.

9. A design right may be declared invalid even after it has lapsed or has been surrendered.

Article 12

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 his consent from using it. The aforementioned use shall cover, in particular, the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

2. Where, under the law of a Member State, acts referred to in paragraph 1 could not be prevented before the date on which the provisions necessary to comply with this Directive entered into force, the rights conferred by the design right may not be invoked to prevent continuation of such acts by any person who had begun such acts prior to that date.
Article 13

Limitation of the rights conferred by the design right

1. The rights conferred by a design right upon registration shall not extend to:

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

(b) acts done for experimental purposes;

(c) acts of reproduction for the purposes of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.

2. In addition, the rights conferred by a design right upon registration shall not extend to:

(a) equipment on ships and aircraft registered in another country when these temporarily enter the territory of the Member State concerned;

(b) importation into the Member State concerned of spare parts and accessories for the purpose of repairing such craft;

(c) execution of repairs on such craft.

Article 14

Transitional provision

Until such time as amendments to this Directive are adopted upon proposal by the Commission in accordance with the provisions of Article 18, Member States may maintain in force or introduce any provisions affecting the use of a protected design 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 component part of a complex product upon whose appearance the protected design is dependent.

Article 15

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, when the product has been put on the market in the Community by the holder of the design right or with his consent.

Article 16

Relationship to other forms of protection

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

Article 17

Relationship to copyright

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 under the law of copyright of that State 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.

Article 18

Revision

Five years after the implementation date specified in Article 19, the Commission shall submit an analysis of the consequences of the provisions of this Directive for Community industry, for consumers, for competition and for the functioning of the internal market. It shall propose to the European Parliament and the Council any changes to this Directive needed to complete the internal market in respect of component parts of complex products and any other changes which it considers necessary.

Article 19

Implementation

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive not later than . . . (*).

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

(*) Three years from the date of its publication in the Official Journal of the European Communities.
2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field governed by this Directive.

Article 20

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 Communities.

Article 21

Addressees

This Directive is addressed to the Member States.

Done at ...

For the European Parliament
The President

For the Council
The President
STATEMENT OF THE COUNCIL’S REASONS

I. INTRODUCTION

1. On 3 December 1993 the Commission submitted a proposal, based on Article 100a of the EC Treaty, for a Directive of the European Parliament and of the Council on the legal protection of designs.\(^{1}\)

2. The European Parliament delivered its Opinion at first reading on 12 October 1995\(^{2}\). Further to that Opinion the Commission forwarded an amended proposal for a Directive on 14 March 1996\(^{3}\). The Economic and Social Committee delivered an initial Opinion on 6 July 1994\(^{4}\), followed by an additional Opinion on 22 February 1995\(^{5}\).

3. The Council adopted its common position in accordance with Article 189b of the Treaty on 17 June 1997.

II. OBJECTIVE

4. The purpose of the Commission proposal is to provide effective legal protection for designs in the Member States of the Community, to reduce the legal obstacles to freedom of movement for design goods and to establish a system of undistorted competition within the common market.

III. THE COMMON POSITION

Recitals

5. The Council has inserted, deleted or amended a number of recitals, in particular to reflect amendments to Articles.

Articles of the proposal

Article 1

6. The European Parliament proposed adding the qualification ‘outwardly visible’ in the definition of ‘design’ in subparagraph (a) (Amendment No 2); the Commission took over this amendment in its amended proposal. The Council considered that, unlike the corresponding amendment in Article 3 (3) (see point 10 below), this amendment to the definition of ‘design’ was unnecessary and was likely to cause confusion, particularly with regard to the possibility of protecting the inside of a container by a design right. It therefore preferred to replace this amendment by a new recital (recital 11 of the common position) which indicates the need for features for which design protection is sought to be shown visibly in the application for protection.

7. The Council has followed the Commission’s amended proposal in adding ‘in particular’ in subparagraph (a) to make clear that the list of features is not meant to be exhaustive, and also in adding ‘texture’ to this list.

\(^{3}\) OJ No C 142, 14. 5. 1996, p. 7.
\(^{5}\) OJ No C 110, 2. 5. 1995, p. 12.
8. In the interests of clarity, the Council has added a definition of 'complex product' (subparagraph (c)).

Article 2

9. The Council has accepted the proposal made by the Commission in its amended proposal to add a paragraph 2 to this Article to make it clear that the Directive also covers designs in Member States which do not have a formal registration system, but where publication has the effect of bringing a design right into existence. The Council has clarified the wording of this provision.

Article 3

10. The Council has accepted, with drafting changes, the proposal of the European Parliament (Amendment No 3), reproduced by the Commission in its amended proposal, excluding from protection those component parts of a complex product which do not remain visible during normal use. With regard to the definition of 'normal use', the Council has deleted the limitation to use by the end user as unnecessarily restrictive, considering that the main thrust of this definition is to cover any use other than maintenance, servicing or repair.

Article 4

11. The Council has accepted this Article as proposed by the Commission in its amended proposal (see also points 14 and 15 below).

Article 5

12. The Council has accepted the proposal of the European Parliament (Amendment No 5), reproduced by the Commission in its amended proposal, to lower the threshold for protection by deleting the word 'significantly' from the Commission's original proposal. The Council has also accepted the Commission's argument that paragraph 2 of the Commission's original proposal is made redundant by the deletion of 'significantly', as the original paragraph 2 was intended to alleviate the effect of the original high threshold. In this context, the Council has also added a new recital (recital 13 of the common position), whereby the assessment of the individual character of a design is to take into account the nature of the product concerned and the industrial sector to which it belongs, as well as the degree of freedom of the designer when developing the design.

13. The European Parliament proposed that, instead of giving more weight to common features than to differences when assessing individual character (Article 5 (3) of the Commission's original proposal), the same weight should be given to both (Amendment No 6). The Commission, while accepting the principle of this amendment in its amended proposal (Article 5 (2)), considered it unnecessary to state this. The Council has followed the Commission on this point.

Article 6

14. The Council has accepted the Commission's approach in its amended proposal of moving Article 4 (2) of its original proposal to a new paragraph 1 of Article 6, which is now applicable not only to Article 4 but also to Article 5 as amended.

15. The Council has also accepted in this new paragraph 1 the amendment proposed by the European Parliament to the former Article 4 (2) (Amendment No 4) and reproduced in substance by the Commission in its amended proposal.
16. The Council has accepted the clarification made in the Commission’s amended proposal to the wording of paragraphs 2 and 3 of this Article (paragraphs 1 and 2 of the Commission’s original proposal), making a clearer distinction between the case of a disclosure resulting from abusive conduct by a third party (new paragraph 3) and other cases of non-prejudicial disclosure (new paragraph 2).

17. The Council has deleted from the new paragraph 3 the provision whereby the abusive disclosure would nevertheless have been prejudicial if it had led to a registered Community design or to a registered design right of the Member State concerned. It considers that the person legitimately entitled to the design right should not be put in a worse situation where the third party responsible for the abusive disclosure has registered the design concerned than where he has not done so.

Article 7

18. The Council has accepted the clarification proposed by the Commission in its amended proposal to the wording of Article 7 (1).

19. The Council has accepted the Commission’s amended proposal for Article 7 (2), which takes over, with some drafting changes, the amendment proposed by the European Parliament (Amendment No 7).

20. The Council has simplified the wording of Article 7 (3).

Article 8

21. The Council has accepted the modification of the wording of this Article proposed by the Commission in its amended proposal.

Article 9

22. The Council has accepted the proposal of the European Parliament (Amendment No 8), reproduced by the Commission in its amended proposal, to delete the word ‘significantly’ from Article 9 (1) of the Commission’s original proposal; this is in line with the amendment of Article 5 (1) (point 12 above).

23. The Council has also accepted the Commission’s amended proposal in replacing ‘similar’ by ‘not . . . different’ in Article 9 (1). The purpose of this replacement is to avoid the situation where different interpretations of the wording ‘similar’ and ‘not different’ would create a grey area where a design would be eligible for protection in its own right under the wording of Article 5 (1) and, at the same time, would constitute an infringement of a prior design under the wording of Article 9 (1). This has been averted by using ‘differs’ in Article 5 (1) and ‘not . . . different’ in Article 9 (1).

24. The Council has followed the Commission's amended proposal in respect of the amendment proposed by the European Parliament in respect of Article 9 (2) (Amendment No 9); the reasons are the same as those given in respect of the corresponding provision of Article 5 (point 13 above).

Article 10

25. The Council has clarified the text of this Article to the effect that it is left for each Member State to determine whether the right holder has to request renewal of protection after each five-year term, or whether he may seek protection for multiples of five years from the outset.

Article 11

26. In its amended proposal, the Commission proposed adding to the list of grounds for refusal of registration or for invalidity three grounds which exist in certain Member
States (paragraph 1 (e), (f) and (g) of the amended proposal). While agreeing that the Member States concerned should be allowed to maintain these grounds under the Directive, the Council did not consider it necessary to oblige all the Member States to make provision for these grounds in their national laws. It has therefore included these grounds as optional grounds in a separate paragraph (paragraph 2 of the common position).

27. The Commission has also transferred the provision of paragraph 2 of its original proposal to paragraph 1 (h) of its amended proposal. The Council has accepted this provision among the compulsory grounds for refusal of registration or for invalidity (paragraph 1 (d) of its common position) and has clarified its wording.

28. The Council has also rearranged the other compulsory grounds for refusal of registration or for invalidity (paragraph 1 (a) to (c) of its common position).

29. The Council has added provisions specifying who may invoke the various grounds for refusal of registration or for invalidity of a design (paragraphs 3 to 6 of its common position). It considers that where the ground arises from the existence of a conflicting right, it should be possible for the holder of that conflicting right, but not for a third party, to invoke this ground, without prejudice to the prerogatives of the appropriate authority in the Member State in which the conflicting right exists.

30. In its amended proposal, the Commission added a provision concerning the possibility of registering or maintaining a design in amended form (paragraph 2 of its amended proposal). The Council has accepted this provision, while clarifying the circumstances in which it can be applied (paragraph 7 of its common position).

31. The Commission transferred Article 16 of its original proposal to Article 11 (4) of its amended proposal. The Council agrees that the logical place of this provision is in Article 11 (paragraph 9 of its common position).

**Article 12**

32. The Council has accepted this Article with drafting changes.

**Article 13**

33. The Council has accepted this Article as proposed by the Commission.

**Article 14**

34. Whereas the Commission's original proposal provided for free reproduction of certain component parts of complex products after a phase-in period of three years, the European Parliament proposed eliminating this phase-in period and introducing a remuneration system which would operate as from the date of registration of the design (Amendments Nos 15 and 10). The Commission took over and further developed the European Parliament's amendments in its amended proposal. The Council was not able to reach agreement on a provision of this nature. Anxious that this issue, which concerns a specific sector of industry, should not delay approximation of other provisions on which agreement has been reached, the Council has agreed a solution which authorises Member States to maintain in force or introduce any provisions affecting the use of a protected design 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 component part of a complex product upon whose appearance the protected design is dependent. Five years after the implementation date of the Directive, the Commission is to submit
an analysis of the consequences of the provisions of the Directive and propose any
changes needed to complete the internal market in respect of component parts of
complex products and any other changes which it considers necessary (Articles 14 and
18 and recital 19 of its common position).

Article 15

35. In its amended proposal, the Commission proposed adding a reference to Article 14.
Since the Council has not accepted the Commission’s amended proposal in respect of
Article 14 (point 34 above), it has accepted Article 15 without this reference, i.e. as in
the Commission’s original proposal.

Article 16 of the Commission’s original proposal

36. This provision now appears in Article 11 (9) of its common position (see point 31
above).

Article 16a of the Commission’s amended proposal

37. The European Parliament proposed the addition of an Article concerning the supply of
information in the context of an alleged infringement of a design right, as a means of
combating counterfeiting (Amendment No 11). The Commission took over this
amendment in its amended proposal as Article 16a. The Council considers that a
provision of this nature falls outside the scope of this Directive, which is limited to the
approximation of those national provisions which most directly affect the functioning
of the internal market (recital 5 of the common position) and has therefore not
accepted it.

Article 16 (Article 17 of the amended proposal

38. The Council has accepted this Article as proposed in the Commission’s amended
proposal.

Article 17 (Article 18 of the amended proposal

39. In its amended proposal, the Commission proposed simplifying paragraph 1 of its
original proposal, considering that the Directive on the legal protection of designs was
not the appropriate place for the harmonization of copyright law. The Council has
accepted this paragraph as proposed in the amended proposal.

40. In its amended proposal, the Commission proposed the deletion of paragraph 2 of its
original proposal as superfluous, in particular in the light of the judgment in Case
C-92/92 (Phil Collins v. Imtrar). The Council has accepted this deletion.

Article 18b proposed by the European Parliament

41. The European Parliament proposed the introduction of a new Article 18b, which
concerned a presumption of the novelty of a design in legal action before national
courts (Amendment No 12). The Commission considered such a provision
inappropriate in the context of this Directive, on the grounds that it would impinge
upon the freedom of Member States to determine whether or not novelty should be
established prior to registration (the Directive leaves Member States free to fix the
procedural provisions concerning registration — recital 6 of the common position),
and that it would make unwarranted inroads into Member States’ rules on court
procedure. The Council has not accepted this amendment for the same reasons as the
Commission. Consequently, the Council has also not accepted the European
Parliament’s related proposal for the introduction of a new recital 18a (Amendment
No 1).
Article 18

42. The European Parliament proposed the introduction of a new Article 18c containing a review clause for the Directive as a whole (Amendment No 14). The Commission proposed restricting the scope of this review clause to the Article concerning the use of a design for repair purposes (Article 14 (5) of its amended proposal). The Council has accepted a review clause for the Directive as a whole, while adapting its wording to the solution put forward in respect of Article 14 (Article 18 of the common position — see also point 34 above).

Article 19

43. In its amended proposal, the Commission proposed changing the implementation date of the Directive from 31 October 1996 to 1 January 1998, in the light of the stage reached in the procedure for adopting the Directive. The Council, taking into account the uncertainty as to the date of the final adoption of the Directive, has preferred a solution whereby the deadline for implementation will be three years from the date of publication of the Directive in the Official Journal of the European Communities.

IV. CONCLUSION

44. In its common position, the Council has accepted the substance of the great majority of the European Parliament’s proposals for amendment. The Commission is able to accept the Council’s common position on all points except the use of a design for repair purposes (Article 14). The Council shares the Commission’s regret that it has not been able to agree harmonized provisions on this issue at this stage, but considers that the solution it has found is the best attainable in the present circumstances. It is concerned that this specific issue should not unduly delay the adoption of the Directive as a whole.