NOTE

from: Presidency

to: the Working Party on Intellectual Property (Designs)

No. prev. doc.: 6936/96 PI 26 CODEC 262
No. Clon prop.: 5505/96 PI 11 CODEC 127

Subject: Amended proposal for a Directive of the European Parliament and of the Council on the legal protection of designs
- Draft consolidated text

Delegations will find enclosed a draft consolidated text of the above proposal. The Commission’s amended proposal\(^1\) has been used as a basis in preparing this document. The following codes are used to denote any modifications to the amended proposal:

**bold** provisions or wordings which are still subject to substantive discussions;

*italics* provisions which have been added or reworded completely;

_underlined_ wording which has been added within a provision;

[square brackets] wording which has been deleted within a provision; and

{brackets} wording which has not yet been examined.

Reservations by Member State delegations are only mentioned when they have been entered or maintained following the presentation of the Commission’s amended proposal.

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\(^1\) 5505/96 PI 11 CODEC 127.
DRAFT CONSOLIDATED TEXT
May 1996

DIRECTIVE / /EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON THE LEGAL PROTECTION OF DESIGNS

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,²

Having regard to the opinion of the Economic and Social Committee,³

Acting in accordance with the procedure referred to in Article 189b of the Treaty,⁴

Common Position of the Council of ... 1996 (not yet published in the Official Journal),
Decision of the European Parliament of ... (not yet published in the Official Journal).
1. Whereas the objectives of the Community, as laid down in the Treaty, include establishing an ever closer union among the peoples of Europe, fostering closer relations between the States belonging to 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 and includes the abolition of obstacles to the free movement of goods and the institution of a system ensuring that competition in the common 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 designs are not at present protected in all Member States by specific legislation and such protection, where it exists, has different attributes;

3. Whereas such differences in the legal protection of designs offered by the legislation of the Member States have direct and negative effects on the establishment and functioning of the internal market as regards goods embodying designs; whereas such differences will distort competition within the internal market;

4. Whereas it is therefore necessary for the proper functioning of the internal market to provide for specific design protection law in all Member States and to approximate the design protection laws of the Member States;

5. 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 The Working Party will discuss the recitals once the text of the provisions has been finalised.
6. 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 the objectives of this limited approximation cannot be sufficiently achieved by the Member States acting alone;

7. Whereas Member States should accordingly remain free to fix the procedural provisions concerning registration and invalidation of design rights and provisions concerning the effects of such invalidity;

8. 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 the legislation relating to unregistered design rights, trademarks, patents and utility models, unfair competition or civil liability;

9. Whereas the attainment of the objectives of the internal market in the field of designs may only be fully realised following further harmonisation of the relevant provisions of the copyright laws of Member States, in particular those relating to the criterion of originality; whereas, pending such further harmonisation, 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; whereas it is contrary to Community law to apply, in the relationship between Member States, Article 2(7) of the Berne Convention for the Protection of Literary and Artistic Works, which provides that protection under copyright law shall be afforded only subject to reciprocity in the country of origin of the design, as such a requirement is incompatible with the principle of non-discrimination;
10. Whereas the attainment of the objectives of the internal market requires that the conditions for obtaining a registered design right be not only identical in all the Member States but also identical to those required for obtaining a registered Community design; 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;

11. Whereas semiconductor products should not be excluded as products whose appearance could form the subject of a design right, since Member States may choose design legislation to implement the provisions of Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products.  

12. Whereas it is essential, in order to facilitate the free movement of goods, to ensure that registered design rights confer upon the right holder the same protection in all Member States and that this protection is identical to the protection afforded by the registered Community design;

12a 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 b 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 invisible 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;

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6 OJ No. L 24, 27.1.1987, p. 36
7 New recital added to accommodate deletion of "outwardly visible" in Article 1. The Swedish delegation disapproves of the inclusion of the word "visibly".
12c Whereas the assessment as to whether a design has individual character should be based on whether the overall impression conferred upon an informed user viewing the design differs from the existing design corpus,\(^8\) taking into account the nature of the product to which the design is applied, and in particular the industrial sector to which it belongs and the freedom of the designer when developing the design; whereas this assessment should not be qualified by additional requirements aiming at raising or lowering this threshold.\(^9\)

13. 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 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;

14. 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;

15. Whereas it is fundamental for the functioning of the internal market to unify the term of protection afforded by registered design rights in conformity with the solution adopted for the registered Community design;

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\(^8\) Translation: - German text could refer to the expression "vorbestehender Formenschatz";
- languages which differentiate between two- and three-dimensional designs should reflect this in the expression "design corpus".

\(^9\) New recital added to clarify the threshold of protection;
Wording "nature of the product" suggested by the UK delegation on 18/19 April 1996;
Reference to the "industrial sector" suggested by the French delegation on 18/19 April 1996.
16. Whereas the legal protection of design might in certain circumstances allow the creation of monopolies in generic products and captive markets by improperly binding consumers to a specific make of product, and thus the introduction of a provision is necessary in order to make the reproduction of designs applied to component parts of complex products possible for repair purposes under very specific conditions;

16 a Whereas the limitation in the exercise of the rights provided for in the context of the use of designs for repair purposes should be compensated by a fair and reasonable remuneration, to be calculated primarily on the basis of the [relevant design] development costs of the relevant design;¹⁰

16 b Whereas the exercise of the rights of a third party to reproduce component parts for repair purposes should not be made conditional upon agreement as to the level of remuneration;

16 c Whereas the use of a design under the "repair clause" should not create a legal link between the right holder and the third party using the design; whereas the remuneration to be paid should not entail an obligation on the right holder to transfer know-how and should not imply that the right holder is considered to be the manufacturer of a reproduced part as regards, for example, rules or agreements regarding product liability, warranty obligations or product safety requirements;

¹⁰ Formal amendment to clarify what is meant by the word "part" in this context.
¹¹ Formal amendment to clarify that "relevant" refers to "design" and not to "costs".
16 c.a. Whereas developments in particular in the automotive sector should be closely monitored; whereas the Commission five years after implementation of the provisions of this Directive should present a report to the European Parliament and to the Council on the impact of the provisions of this Directive on the industrial sectors most concerned and in particular on the automotive sector; whereas the Commission should also present to the European Parliament and to the Council any necessary amendments of this Directive; whereas until such amendments have been adopted Member States should be given the option not to introduce the access to reproduction of certain designs for repair purposes against remuneration, but to retain national legislation in force on 1 May 1996; whereas the subsequent mandatory introduction of the right to reproduce certain designs for repair purposes against remuneration should not be compromised by the introduction of other limitations in the exercise of the rights in designs applied to component parts of complex products;

16 d Whereas, in order to prevent a partitioning of the Community market, as regards Community exhaustion of rights, use of the design right by a third party against remuneration to the right holder should have the same effect as the marketing of a product with the consent of the right holder;

16 e Whereas, in order to reinforce effective action against the infringement of design rights, it is important that judicial authorities be entitled to issue orders permitting the right holder to obtain relevant information concerning the production and distribution of infringing products; whereas any effective fight against product counterfeiting makes it necessary to provide that this remedy is to be available by court order, where appropriate, even before final judgement in an infringement case.

17. Whereas the provisions of this Directive are without prejudice to the application of the competition rules under Articles 85 and 86 of the Treaty;
18. Whereas the grounds for refusal of registration in those Member States which provide for substantive examination of applications prior to registration, and the grounds for the invalidation of registered design rights in all the Member States, must be exhaustively enumerated,¹²

HAVE ADOPTED THIS DIRECTIVE:¹³

¹² See footnote 45.
¹³ Transitional provisions will have to be drawn up for various provisions once agreement has been reached on the rest of the text.
Article 1
Definitions

For the purpose of this Directive:

(a) "design" means the [outwardly visible] appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation;\(^\text{14}\)

(b) "product" means any industrial or handicraft item, including parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs.\(^\text{15}\)

Article 2
Scope of application

1. This Directive shall apply to:\(^\text{17}\)

(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) to (c).

\(^{14}\) The wording "outwardly visible" is to be replaced by a new recital 12a.

\(^{15}\) Reservation of the French delegation: why is the protectibility of a design conditional on the existence of a product?

\(^{16}\) Reservation by the French delegation on illustrative list.

\(^{17}\) Request of the German delegation to look at transitional provisions when the rest of the text is finalised.
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.\textsuperscript{18}

Article 3
Protection requirements

1. Member States shall protect [the] designs upon registration, by conferring exclusive rights (upon their holders)\textsuperscript{19} in accordance with the provisions of this Directive.\textsuperscript{20}

2. A design shall be protected by a design right to the extent that it is new and has individual character.\textsuperscript{21}

3. A design of a product which constitutes a component part\textsuperscript{22} of a complex product shall only be considered to be new and to have individual character:

a) if the component part, when incorporated into the complex product, remains visible during normal use of the latter, and\textsuperscript{23}

b) to the extent that the visible features of the component part fulfil in themselves the requirements as to novelty and individual character.\textsuperscript{24}

\textsuperscript{18} New wording discussed and agreed upon on 18/19 April 1996.
\textsuperscript{19} Wordings requested by the French delegation to clarify that rights are not conferred upon the designs.
\textsuperscript{20} Reservation of the Irish delegation: shall all Member States be forced to keep registration procedures in operation?
\textsuperscript{21} Scrutiny reservation by the Italian delegation as to the use of "individual character" rather than originality as a requirement.
Scrutiny reservations of the Belgian and Netherlands delegations on the dual requirement.
\textsuperscript{22} Translation: French for "component part" should be "pièce".
\textsuperscript{23} Reservation of the Danish, Spanish, Finnish, Portuguese and Swedish delegations on the visibility criterion.
\textsuperscript{24} Reservation by the French delegation as to the fulfilment of criteria by parts (doc. 6679/96).
4. "Normal use" within the meaning of paragraph (3) (a) shall mean use by the end user and shall not include maintenance, servicing or repair.\textsuperscript{25}

Article 4  
Novelty\textsuperscript{26}

A design shall be considered new if no identical design has been made available to the public before the date of filing 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.\textsuperscript{27}

Article 5  
Individual character

1. A design shall be considered to have an 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.\textsuperscript{28,29}

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

\textsuperscript{25} Reservation by the French delegation linked to the reservation on the previous paragraph. 
Reservations by the Danish, Spanish, Portuguese, Finnish and Swedish delegations: fear of uncertainty on "normal use" and on "end user".
Scrutiny reservation by the UK delegation on "and shall not include maintenance, servicing or repair".

\textsuperscript{26} Acceptance by the French delegation conditional upon compromise on disclosure (Article 6).

\textsuperscript{27} Reservation by the Danish delegation, especially with regard to the last sentence.

\textsuperscript{28} Reservations by the Danish, Spanish, Finnish, Portuguese and Swedish delegations on the lowering of the threshold.
Reservation by the Irish delegation on the wording "informed user".
Insertion of a new recital 12c clarifying the height of the threshold.

\textsuperscript{29} Scrutiny reservations by the Danish and Italian delegations on the deletion of paragraph 2 of the original Commission proposal.
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 specialised in the sector concerned, operating within the Community, before the date of filing the application for registration or, if priority is claimed, the date of priority.\textsuperscript{30}

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 the filing of the application or, if priority is claimed, the date of priority.

\textsuperscript{30} Apposition of the Spanish, French and Portuguese delegations, who wish to retain absolute novelty.
Scrutiny reservation by the Danish delegation.
The Swedish delegation has reserved its position.
3. The provisions of 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, unless, as a result of the abusive conduct, a Registered Community Design or a registered design right of the Member State concerned has come into existence.\(^\text{31}\)

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.\(^\text{32}\)

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 [simultaneous and infinite or]\(^\text{33}\) multiple assembly or connection of [identical or]\(^\text{34}\) mutually interchangeable products within a modular system.\(^\text{35}\)

\(^{31}\) Scrutiny reservation by the French delegation on paragraphs 2 and 3 in connection with its reservation on paragraph 1.

\(^{32}\) Reservations by the French and Netherlands delegation.

\(^{33}\) Acceptance of the French delegation conditional upon compromise on Article 11 paragraph 4.

\(^{34}\) Deletion suggested by the UK delegation to simplify the provision.

\(^{35}\) Deletion suggested by the Commission to simplify the provision.

Reservations by the French and Netherlands delegation (see footnote 32).
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 the accepted principles of morality.\textsuperscript{36}

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.\textsuperscript{37}

2. In order to assess 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 under Article 3 (2) shall be protected by a design right for one or more periods of five years from the date of filing the application. The term of protection may be renewed at the request of the right holder\textsuperscript{38} for one or more periods of five years each, up to a total term of 25 years from the date of filing.\textsuperscript{39}

\textsuperscript{36} Reservation by the UK delegation: it should be clear that the directive is without prejudice to national ability to fix standards. Suggestion to consult the Council Legal Service.

\textsuperscript{37} Reservations by the French and Netherlands delegations: would prefer a positive formulation.

\textsuperscript{38} Reservation by the Swedish delegation: suppression of the word "significantly".

\textsuperscript{39} Addition suggested by the Commission to clarify that the total duration of protection must be 25 years: no more, no less.

\textsuperscript{39} Wording suggested by the French delegation to make the registration more flexible.

Scrutiny reservation by the Swedish delegation: should it be possible to block a design for more than five years at a time?
Article 10

Term of protection

Upon registration a design which meets the requirements under Article 3 (2) shall be protected by a design right for a period of five years from the filing the application, followed, at the request of the right holder, by successive periods of five years each, up to a total term of 25 years from the date of filing. In the rules implementing this Article Member States may provide that, within this total term, the right holder may, at the time of registration, obtain protection - or, at the expiry of a 5-year period, obtain renewal of the term of protection - for the number of 5-year periods indicated by him.}

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 [it] is not a design within the meaning of Article 1, or

(aa) if it does not fulfil the requirements under Article 3, or

[b] if its technical and/or interconnecting features are not eligible for protection under Article 7(1) or (2), or

(c) if the design [it] is contrary to public policy or to accepted principles of morality, or

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40 Additions to clarify that it is the design right, and not the design itself, which can be invalidated.
41 Deletion suggested on 18/19 April 1996 because this letter is superfluous and presents problems as far as paragraph 4 is concerned. Scrutiny retention by the UK delegation on this deletion.
(d) 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

(e) if the design is in conflict with a prior [conflicting] design (which has been registered with deferment of publication and ) [which] has been made available to the public after the date of the filing of the application or, if priority is claimed, the date of priority, and which is therefore 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.43

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:44

(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 6th of the Paris Convention for the Protection of Industrial Property, or of badges, emblems and escutcheons other than those covered by Article 6th of the said Convention and which are of particular public interest in the Member State concerned.

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42 The words in brackets follow from an amendment introduced by the German delegation. The Commission suggests that this wording unduly limits the scope of application of the provision.
43 Request for clearer wording by the German delegation.
44 New wording making some of the invalidity grounds optional; agreement on 28 March 1996.
3. **A design may not be refused registration, or, if the design has been registered, the design right declared invalid in other cases.**

4. **When a design has been refused registration or a design right has been declared invalid pursuant to paragraph 1(c) 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.**

5. Any Member State may provide that, by way of derogation from the preceding paragraphs, 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.

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

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45 A corresponding provision is not to be found in the trade mark directive (89/104 EEC) of 21 December 1988. The Commission suggests that the provision - and recital 18 - should be reconsidered lest Member States may not refuse the registration on the grounds of refusal of paying the registration fee.

46 This provision has been reworded following remarks made by the Danish, French and Swedish delegations, to clarify that it does not apply when the requirements for protection have not been met with, and that the amended design must itself also be eligible for protection.

47 Reservation by the French delegation: would prefer a disclaimer system.

Wording suggested by the Netherlands delegation and agreed upon on 12 March 1996 (5932/96, point 51).
Article 12
Rights conferred by the design right

1. [Upon] The registration[,] of a design shall confer on its holder the exclusive right to use [the design] and to prevent any third party not having his consent from [copying it, or from] using it [a design included within the scope of protection of the design right].

The aforementioned use shall cover, in particular, the making, offering, putting on the market or using of a product in which such a design is incorporated or to which it is applied, or importing, exporting 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 prohibited 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 relied on to prevent continuation of such acts.

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48 Provision reworded upon a suggestion made by the German delegation.
Translation: "use" should be translated as "benutzen" in German.
49 Reservation by the Danish and Swedish delegations as to the extent of the exclusive right, when "mere use" can already constitute an infringement.
50 Scrutiny reservation by the German delegation on the question of transitional provisions.
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) the equipment on ships and aircraft registered in another country when these
temporarily enter the territory of the Member State concerned;

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

(c) the execution of repairs on such craft.
Article 14
Use of a design for repair purposes

1. By derogation from Article 12, the rights conferred by a design right shall not be exercised against third parties who use the design, provided that:

(a) the product incorporating the design or to which the design is applied is a component part of a complex product upon whose appearance the protected design is dependent; and

(b) the purpose of such a use is to permit the repair of the complex product so as to restore its original appearance; and

(c) the public is informed as to the origin of the product used for the repair by the use of an indelible marking, such as a trademark or a trade name, or in another appropriate form; and

(d) the third party has:

(i) notified the right holder of the intended use of the design;
     and

(ii) offered the right holder a fair and reasonable remuneration for that use; and

(iii) offered to provide the right holder in a regular and reliable manner with information as to the scale of the use made of the design under this provision.

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51 Opposition by the Belgian, Spanish, French, Luxembourg, Netherlands and Portuguese delegations.
2. Save as otherwise agreed, the obligations mentioned in paragraph 1(d) shall be incurred by the manufacturer or, in the case of the import of a component part not manufactured in the Member State where the protection applies, by the importer of the component part into which the design is to be incorporated or to which it is to be applied.

3. In calculating the remuneration mentioned in paragraph 1(d), the investment made in the development of the relevant design shall be the primary basis for consideration.

4. Paragraph 1 shall not apply if the right holder provides evidence to sustain a claim that the party upon whom the obligations under paragraph 1(d) are incumbent is unable or unwilling to comply with them or to pay the remuneration offered by him.

[5. No later than five years after the implementation date specified in Article 19, the Commission shall submit an analysis of the consequences of the provisions of this Article for the Community industrial sectors most affected, and in particular for manufacturers of complex products such as motor vehicles and producers of spare parts. If necessary, it shall propose to the European Parliament and the Council changes to this Article, after consulting the abovementioned sectors.]

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52 It is suggested that this paragraph be replaced by Article 18a.
1. Until such time that amendments to the present Directive are adopted upon proposal by the Commission in accordance with the provisions of Article 18a, Member States may choose not to introduce or not to put into force the provisions of Article 14, and to maintain in force such provisions as were in force on 1 May 1996.

2. Provisions on the use of a design for repair purposes other than those set out in Article 14 may not be introduced.

3. The provisions of paragraph 1 and 2 shall be without prejudice to the issue of whether parts of complex items are to be considered eligible as such for protection under national design protection law.

Article 15
Exhaustion

1. 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 with his consent, or in accordance with the provisions of Article 14. 54

2. Until such time that amendments to the present Directive are adopted upon proposal by the Commission in accordance with the provisions of Article 18a, the use by a third party of the right to reproduce a design against remuneration to the right holder shall only have the effect mentioned in paragraph 1 within and between those Member States which have chosen to implement Article 14.

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53 Reservation by the Spanish, French and Portuguese delegations on the principle of this Article; scrutiny reservations by the other delegations and the Commission representatives.
54 Reservation by the Spanish and French delegations.
Scrutiny reservation by the Finnish and United Kingdom delegations.
Article 16

- deleted -

Article 16 a
Right to information

1. Member States shall provide that the court having jurisdiction for hearing an action for infringement of a design right or for granting a request as to interlocutory measures [shall] may, at the request of the right holder who is able to sustain an allegation of infringement, [and unless there are special reasons for not doing so,] order a person to supply that right holder with information as to the origin and the route of commercial distribution of goods [allegedly] infringing the design right, if the person in question:

   (a) has been found in possession, for commercial purposes, of such goods, or

   (b) has been identified by a person under a) as being the origin or a link in the route of commercial distribution of such goods.

2. The information referred to under paragraph 1 shall comprise:

   (a) the names and addresses of producers, suppliers and other prior possessors of the product and of commercial recipients or outlets, as well as

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55 Reservations by the Danish, Spanish and French delegations on the legal basis.
56 Scrutiny reservations by the French, Portuguese, Swedish and UK delegations on the compatibility of this provision with the European Human Rights Convention.
57 Wording added to reflect that the obligation contained in this provision is incumbent upon the Member States as addresses of this Directive and not upon the national courts.
58 New wording requested by the French delegation on 18/19 April 1996 to leave room for appreciation by the court.
59 Amendment requested by the Irish delegation on 12 March 1996.
60 To be deleted if "shall" is replaced by "may".
61 This deletion results from the above amendment (footnote 58).
(b) information on the quantity of goods which have been produced, delivered, received or commissioned.

3. **Member States shall provide that**\(^{61}\) paragraphs 1 and 2 shall be without prejudice to other provisions:

(a) granting the right holder more far-reaching rights to information;

(b) governing the use of information provided under this Article in **civil**, **administrative or criminal proceedings**.\(^{62}\)

(c) governing liability for the abuse of a right to information; or

(d) **affording a person the possibility of refusing to provide information which could incriminate him**.\(^{63}\)

**Article 17**

**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.

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\(^{61}\) Wording added to indicate that this obligation is incumbent upon the Member States.

\(^{62}\) Amendment suggested by the French and Italian delegations.

\(^{63}\) Wording amended to clarify the scope of application of the *nemo tenetur* principle.

Scrutiny reservation by the French delegation to see if this provision is practicable.

Scrutiny reservation by the German delegation on whether letters (b) and (d) do not overlap and on whether an alleged infringer can refuse to furnish information during a civil infringement case.
Article 18
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.64

{Article 18 a
Revision65

No later than 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 (Articles 366, 14 and 1867) for the Community industrial sectors most affected, and in particular for manufacturers of complex products such as motor vehicles and producers of spare parts. If necessary, it shall propose to the European Parliament and the Council changes to this Directive, after consulting the above mentioned sectors.}

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64 Reservation of the French delegation because of the deletion of the wording “irrespective of the number of products” from the Commission’s original proposal.
65 This Article would replace Article 14(5).
66 Wish of the Irish (obligation to protect nationally) and Italian (individual character requirement) delegations.
67 Wish of the French delegation.
Article 19
Implementation

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive by 1 January 1998.\(^{68}\) When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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.

\(^{68}\) The implementation date will be set when there is more clarity as to the likely date of adoption of the Directive.