



26 March 2019

BusinessEurope Comments on evaluation of EU legislation on design protection consultation

BUSINESSEUROPE is the leading advocate for growth and competitiveness at European level, standing up for companies across the continent and actively campaigning on the issues that most influence their performance. We speak for all-sized enterprises in 35 European countries whose national business federations are our direct members.

BUSINESSEUROPE has taken notice of the consultation on the evaluation of EU legislation on design protection.

The EU design system has been in place already for some time and the evaluation of this system following the Legal Review on Industrial Design Protection in Europe under the contract with DG GROW (MARKT2014/083/D)¹ is certainly welcome. Design protection would become even more important in the context of, for instance, rising use and availability of 3D printing and 3D printing tools. BUSINESSEUROPE is therefore happy to contribute - with its comments below - to this debate that will have an impact on the design system over the coming years.

General comments on EU legislation on design protection

BUSINESSEUROPE takes positive note of the evaluation of the EU legislation on design protection launched by the European Commission since 2018 in order to analyse to what extent the current EU legislation on design protection has achieved its objectives in terms of efficiency, effectiveness, relevance, coherence and EU added value. In this context, BUSINESSEUROPE would like to put forward the following comments and suggestions.

- ***Harmonisation***

BUSINESSEUROPE has always supported the harmonisation of national rules and the creation of the Community design protection system. Before harmonisation, Member States had very different design protection rules. The harmonisation has been a major change from which businesses have certainly benefited insofar as, among other things, it has provided the same protection of designs everywhere in the EU, has contributed to preventing counterfeiting and copying of Community designs, and has introduced a simple registration procedure for Community designs.

Different rules on spare parts protection in the Member States is seen as a problem for BUSINESSEUROPE members. Consequently, such rules should be harmonised to ensure legal certainty across the EU and, ultimately, to facilitate business and innovation.

¹ In this regard, please see https://ec.europa.eu/growth/content/legal-review-industrial-design-protection-europe-0_en.



Any discussion on a possible reform of the design protection system should also cover new technologies. For instance, 3D printing is an established technology that may allow consumers to print themselves a three-dimensional solid object of virtually any shape, including a shape whose original is design protected. The impact of 3D printing on protected IP rights should thus be investigated. We need to check whether the current rules are able to deal with the rise of 3D printing, and other disruptive technologies, with the perspective of ensuring strong and enforceable IP rights and legal certainty.

Lastly, BUSINESSEUROPE has consistently called for the harmonisation of rules and practices among IP Offices at both EU and national level to ensure legal certainty for companies. This is essential to assist companies that seek to expand their business outside their national markets in the Single Market.

- ***Duality of design protection***

BUSINESSEUROPE supports the duality of design protection system. The possibility for companies to choose between a registered and a non-registered Community design is advantageous, especially for those acting on fast moving markets.

BUSINESSEUROPE members also consider that the overall functioning of the design protection system in the EU, consisting of national design systems and the Community design regime, has proven to work rather well. Companies can decide to register their designs under national laws, and in this case lower fees apply. But they can also prefer an EU-wide protection which is cost-efficient and provides legal certainty across the EU. Both options should therefore remain available.

Some BUSINESSEUROPE members consider, however, that the current design protection procedure still poses challenges for Small and Medium-Sized Enterprises (“SMEs”), especially in terms of costs and amount of procedure. In this regard, the possibility to introduce some simplification should be explored.

- ***Terms of protection***

BUSINESSEUROPE members consider that the terms of protection set out in the current design protection regime (i.e. up to 25 years from the date of filing for registered Community designs and national designs, and 3 years after the first making available to the public for unregistered Community designs) are adequate and well-balanced and should not be modified.

- ***Subject-matter and scope of protection***

BUSINESSEUROPE considers that any amendments to definitions of essential concepts, such as “design”, and to the wording of what can be protected as well relating to the scope of protection should be minimal. Amendments should only be introduced when a clarification is necessary. In any other circumstances, introducing amendments might risk creating legal uncertainty on the correct interpretation to be applied by the relevant courts.

- ***Awareness***

Unfortunately, there is not sufficient awareness among designers and entrepreneurs (including SMEs) of the availability, benefits and ways for protecting designs in the EU.



Such insufficient awareness concerns in particular: the scope of protection, the subject-matter that can be protected, and how design protection can contribute to businesses' growth and innovation.

Companies are also not sufficiently familiar with differences between the protection provided by trademark law, copyright law and rules on unfair competition.

Increasing companies' awareness is a joint exercise of the Commission, the EUIPO, national offices and stakeholders. Informative campaigns and specific trainings on the design protection system could be the first step to be undertaken.

- ***Protection offered to Community designs***

BUSINESSEUROPE members are rather satisfied with their experience with design registration at the EUIPO.

BUSINESSEUROPE members consider that unregistered Community designs provide a useful legal protection against unauthorised copying of these design by a third party. Unregistered Community designs are a particularly useful alternative for designs with a short commercial life.

- ***Enforcement***

Enforcement is crucial to ensure an efficient IP protection. The possibility to enforce should be part of any discussion on the evaluation of the current design protection system. A specific issue emphasised by some BUSINESSEUROPE members concerns the possibility to obtain damages in case of infringements. Currently national legislations differ significantly. This situation is unfortunate and should be addressed in the context of the present evaluation.

The new challenges brought by new technologies, such as 3D printing, also need to be addressed in the context of any discussion on effective IP right enforcement.

- ***Terminology***

BUSINESSEUROPE takes the view that any reform of the design protection system should align the terminology with EU trademark terminology and thereby adopting the terms "EU Registered Design" and "EU Unregistered Design" by means of amendments to Regulation (EC) No 6/2002.² Any reference to the "Office for Harmonisation in the Internal Market (Trade Marks and Designs)" ("OHIM") should also be replaced with the term "European Union Intellectual Property Office".

Final remarks

BUSINESSEUROPE would welcome a comprehensive and accurate study to fully inform future proposals of the likely effects of a revised designs system on design creators, rightsholders and third parties across a wide range of sectors in Europe. The results of such study should then be used as basis for any proposals that may be put forward in the future.

² Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, OJ L 003, 5.1.2002, p.1.



BUSINESSEUROPE looks forward to collaborating with the European Commission, the Council and the European Parliament on identifying the needs and impacts for companies and will come back with more comments when appropriate.
