

Directive 98/71/EC of the European Parliament and of the
Council of 13 October 1998 on the legal protection of designs

Article 1

Definitions

For the purpose of this Directive:

- (a) 'design' means the 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;
- (b) 'product' means any industrial or handicraft item, including *inter alia* parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs;
- (c) 'complex product' means a product which is composed of multiple components which can be replaced permitting disassembly and reassembly of the product.

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, once it has been incorporated into the complex product, remains 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 use by the end user, excluding maintenance, servicing or repair work.

Article 4

Novelty

A design shall be considered new if no identical design has been made available to the public before the date of filing of the application for registration or, if priority is claimed, the date of priority. Designs shall be deemed to be identical if their features differ only in immaterial details.

Article 5

Individual character

1 A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the date of filing of the application for registration or, if priority is claimed, the date of priority.

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

Article 6

Disclosure

1 For the purpose of applying Articles 4 and 5, a design shall be deemed to have been made available to the public if it has been published 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 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 right holder may have the term of protection renewed 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 shall be 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, that the design right shall be 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 6b of the Paris Convention for the Protection of Industrial Property, or of badges, emblems and escutcheons other than those covered by Article 6b of the said Convention 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 the 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 paragraphs 1(d) and 2(c) may also be invoked by the appropriate authority of the Member State in question 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 be exercised in respect of:

- 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 be exercised in respect of:

- 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

Transitional provision

Until such time as amendments to this Directive are adopted on a proposal from the Commission in accordance with the provisions of Article 18, Member States shall maintain in force their existing legal provisions relating to the use of the design of a component part used for the purpose of the repair of a complex product so as to restore its original appearance and shall introduce changes to those provisions only if the purpose is to liberalise the market for such parts.

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, trade marks 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

Three 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, in particular the industrial sectors which are most affected, particularly manufacturers of complex products and component parts, for consumers, for competition and for the functioning of the internal market. At the latest one year later 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 in light of its consultations with the parties most affected.

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 28 October 2001.

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.

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 20th day following its publication in the *Official Journal of the European Communities*.

Article 21

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 13 October 1998.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

C. EINEM