EUSurvey

Consultation on Design Protection in the EU

Fields marked with * are mandatory.

Introduction

The main substantive aspects of national laws on the protection of designs are harmonized at EU level by the Design Directive[1] from 1998, which also aimed at maintaining a system for registering designs for businesses that only operate within an EU Member State. Alongside those national protection systems, the Community Design Regulation[2] from 2002 created an autonomous system for the protection of Community designs having equal effect throughout the European Union.
Designs are defined as appearance of the whole or a part of a product resulting from its features such as e.g. lines, contours, colours, shape, texture, materials used or ornamentation. Designs can be part of handcrafted or industrial goods, including among others also packaging, graphic symbols or even fonts.
Designers can benefit from different forms of protection of their work in the EU. Their creations are protected without any registration or formalities for a period of three years as unregistered Community designs (governed by the Community Design Regulation) if they are made publicly available ('disclosed') within the EU. When longer protection of up to 25 years is wanted, designers have a choice of registering their designs separately in some or all of the EU Member States following the harmonized national rules (as specified by the Design Directive). Alternatively, they can register them once for the whole EU using the registered Community design (governed as well by the Community Design Regulation) managed by the European Union Intellectual Property Office (EUIPO). As yet another option, designers can protect their creations within or outside the EU through the Hague System for the International Registration of Industrial Designs, administered by the World Intellectual Property Organization (WIPO). While procedures are not harmonized, the principal substantive conditions for registering a design are identical in all EU Member States as are the principal rights of design owners. Design is a property right and its owner decides who can use it, how and for what price. Protection covers unauthorized use or copying. In 2017, 94,000 registered Community designs were registered (6% more than in 2016, and 12% more than in 2015). The registration involves fees, which for the registered Community design amount to €350 including publication.

This public consultation aims at gathering views of all those affected by design protection in Europe in order to evaluate the performance of the Community and national systems and identify areas where changes may be necessary. The consultation builds on and follows previous research, analysis and targeted surveys carried out as part of two studies on economic (http://ec.europa.eu/growth/content/economic-review-industrial-design-europe-0_en) (2015) and legal (https://ec.europa.eu/growth/content/legal-review-industrial-design-protection-europe-0_en) (2016) review of the design protection systems in Europe.

The questionnaire of the consultation is divided into several different sections. In principle respondents can choose to reply to a selection of these sections (one, several or all) according to their profile/type of activity. However, different levels of knowledge and experience will be needed to be able to answer the individual questions. While the reply to general questions will require at least certain knowledge on design protection in the European Union, it will not be possible to answer a larger number of specific questions without having profound legal expertise and experience in the relevant field.

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

designs

[2] Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs

About you

*Language of my contribution

English

*I am giving my contribution as

Public authority

*First name

Saskia

*Surname

Jurna

*Email (this won't be published)

s.j.jurna@minez.nl

*Scope

National

*Organisation name

255 character(s) maximum

Ministry of Economic Affairs and Climate Policy

*Organisation size

Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en). It's a voluntary database for organisations seeking to influence EU decision-making.

*Country of origin

Please add your country of origin, or that of your organisation.

Netherlands

*What are the main areas of your activity?

at least 1 choice(s)

- ☐ Manufacturing
- ☐ Wholesale and retail trade; Repair of motor vehicles
- ☐ Information and communication
- ☐ Professional, scientific and technical activities
- ☑ Public administration
- ☐ Creative, arts and entertainment activities
- ☐ Other activities

*Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- ○ **Anonymous**
  Only your type, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- ◉ **Public**
  Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

☑ *I agree with the personal data protection provisions (https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)

General questions to all

***1. Please indicate whether your knowledge of the design protection systems in the EU comes from the fact that you or members of your organization**

at least 1 choice(s)

- ☐ Create/own designs
- ☐ Use designs of others
- ☐ Give (legal) advice
- ☑ Work in intellectual property office, ministry, court or other authority
- ☐ Lecture/research the topic
- ☐ Other
- ☐ I don't have any knowledge of the design protection systems

***2. What do you generally think about the overall functioning of the design protection system in the EU (taking national design systems and the Community design regime altogether as a complementary whole and considering all relevant aspects of design protection)?**

- ◉ It works very well
- ○ It works rather well
- ○ It works rather bad
- ○ It works very bad
- ○ No opinion

*Please explain your answer:

5000 character(s) maximum

n.a.

3. Please evaluate the importance of the following objectives of the harmonization of national rules and of the creation of the Community design system.

between 9 and 9 answered rows

	Very important	Important	Rather not important	Not important at all	No opinion
*Promoting innovation, creativity and development of new products in the EU	◉	○	○	○	○
*Allowing products to circulate freely in the internal market	◉	○	○	○	○
*Providing the same protection of designs everywhere in the EU	◉	○	○	○	○
*Serving the needs of all industry sectors	◉	○	○	○	○
*Preventing counterfeiting and copying of Community designs	◉	○	○	○	○
*Allowing for simple registration of Community designs	◉	○	○	○	○
*Allowing for affordable registration of Community designs	◉	○	○	○	○

*Making Community design registration readily accessible to small and medium-sized enterprises as well as to individual designers	◉	O	O	O	O
*Allowing for a simplified enforcement of Community designs	◉	O	O	O	O

If there are other objectives that should be pursued, please let us know:

5000 character(s) maximum

4. Based on your knowledge of the design protection systems in the EU, how have the harmonization of national rules and the creation of the Community design system contributed to the achievement of those objectives since 2003?

between 9 and 9 answered rows

	Helped a lot	Helped a little	Hindered a little	Hindered a lot	No opinion
*Promoting innovation, creativity and development of new products in the EU	◉	O	O	O	O
*Allowing products to circulate freely in the internal market	◉	O	O	O	O
*Providing the same protection of designs everywhere in the EU	◉	O	O	O	O
*Serving the needs of all industry sectors	◉	O	O	O	O
*Preventing counterfeiting and copying of Community designs	◉	O	O	O	O
*Allowing for simple registration of Community designs	◉	O	O	O	O
*Allowing for affordable registration of Community designs	◉	O	O	O	O
*Making Community design registration readily accessible to small and medium-sized enterprises as well as to individual designers	◉	O	O	O	O
*Allowing for a simplified enforcement of unregistered Community designs	◉	O	O	O	O

If you want to add any remark, please do so here:

5000 character(s) maximum

Specific question to national authorities

***5. Do you agree that the respective costs involved in implementing the Design Directive and the Community Design Regulation are justified given the benefits that have already been achieved by harmonizing essential aspects of design protection and providing for a unitary system of EU-wide protection?**

- ◉ Yes
- O No
- O No opinion

General questions to all

***6. In this context, to what extent do you agree that the harmonization of national rules and the creation of the Community design system is of added value compared to a situation where Member States would have (entirely) different rules on design protection and such protection would be available at national level only?**

- ◉ Strongly agree
- ○ Agree
- ○ Disagree
- ○ Strongly disagree
- ○ No opinion

If you want to add any remark, please do so here:

5000 character(s) maximum

***7. Are you aware of any unintended consequences or shortcomings of the Design Directive or the Community Design Regulation?**

- ○ Yes
- ◉ No
- ○ No opinion

***8. In general, do you think that there is sufficient awareness among designers and entrepreneurs (including small and medium-sized enterprises) of the availability, benefits and ways for protecting designs in the EU?**

- ○ Yes
- ◉ No
- ○ No opinion

***If no, please specify where and in what respect you see deficiencies in the awareness:**

5000 character(s) maximum

Especially among SMEs more awareness would be desirable

***9. Do you consider that the unregistered Community design provides a useful legal protection against unauthorized copying of that design by a third party?**

- ◉ Yes
- ○ No
- ○ No opinion

***Please explain your answer:**

5000 character(s) maximum

n.a.

More specific questions to all

We would now like to ask you questions that are more specific. These are best answered by those with greater knowledge or experience with the design protection systems in the EU.

Terms of protection

***14. An unregistered Community design is protected for 3 years after its first making available to the public. Do you think this term of protection is adequate?**

- ◉ Yes
- ○ No, it is too long
- ○ No, it is too short
- ○ I have no opinion

***15. A registered Community or national design can be protected up to 25 years from the date of filing. Do you think this term of protection is adequate?**

- ◉ Yes
- ○ No, it is too long
- ○ No, it is too short
- ○ I have no opinion

Spare parts protection

At the time of adoption of the Design Directive it was not possible to harmonize design protection for spare parts. The latter concern visible component parts used for the purpose of the repair of a complex product (such as a motorcar) so as to restore its original appearance (covering, in particular, body panels, integrated lighting and automotive glass).
While the majority of Member States extend design protection to such spare parts the other part does not do so.

***16. Are different rules on spare parts protection in the Member States a problem for you?**

- ○ Yes
- ◉ No
- ○ No opinion

*Please explain your answer:

5000 character(s) maximum

n.a.

***17. Should the rules on spare parts protection be the same in the EU?**

- ◉ Yes
- ○ No
- ○ No opinion

***If yes, please explain your answer and tell us what should be the common rules:**

5000 character(s) maximum

full harmonization is desirable

Specific questions to lawyers/legal advisors, authorities and academia

The following questions are very specific and therefore require profound legal expertise and experience in order to be answered.

Subject-matter and scope of protection

39. Based on your knowledge of the design protection systems in the EU, please evaluate the following elements in the legislation and its application by industrial property offices and in courts.

between 3 and 3 answered rows

	Very clear	Clear	Not clear	Very unclear	No opinion
*The definition of a "design", a "product" and a "complex product"	○	○	○	○	◉
*The requirements for protection (e.g. related to the need of being "visible")	○	○	○	○	◉
*The scope of design protection (e.g. as to how to determine the individual character of a design)	○	○	○	○	◉

Rights conferred

***40. Do you consider that the current scope of design rights, including limitations, provides sufficient protection against third parties copying a protected design by means of 3D printing?**

- ◉ Yes
- ○ No
- ○ No opinion

***41. Do you think that the scope of design rights should allow preventing third parties from transiting counterfeit design goods through the Union territory even if the goods are not intended to be placed on the Union market?**

- ○ Yes
- ◉ No
- ○ No opinion

***Please explain your answer:**

5000 character(s) maximum

n.a.

Grounds for invalidity

***42. Do you think that lack of clarity and consistency in the representation should be an explicit ground for invalidity of a design?**

- ○ Yes
- ◉ No
- ○ No opinion

***Please explain your answer:**

2000 character(s) maximum

n.a.

Procedural issues

*** 43. In your view, are the current requirements for the representation of Community designs under the Community Design Regulation and the respective Implementing Regulation (EC) No 2245/2002 (e.g. means of representation and their combination, static views, maximum number of views, neutral background) appropriate to show designs with sufficient clarity and precision, both for tangible products and non-tangible products (e.g. animated designs, graphical user interfaces)?**

- ◉ Yes
- ○ No
- ○ No opinion

***Please explain your answer:**

5000 character(s) maximum

the possibility to file computer animated designs appears very useful and technical cooperation in this respect would be welcomed

***44. Are you aware of any problems in relation to the option to file a description of a design under the Community design regime, national law or the international Hague system?**

- ○ Yes
- ◉ No
- ○ No opinion

***45. The Community Design Regulation allows for the filing of a specimen where the application is for a two-dimensional design (e.g. a piece of textile), and deferment of publication is requested. Do you consider this option still to be relevant and meeting current business needs?**

- ○ Yes
- ◉ No
- ○ No opinion

***Please explain your answer:**

2000 character(s) maximum

none were filed at BOIP, and besides, the scope of protection is determined by what's in the register

***46. In your view, are there any specific provisions or requirements/conditions in the Community Design Regulation or the respective Implementing Regulation (EC) No 2245/2002 in relation to procedures before the EUIPO (e.g. for the application or registration of a registered Community design) which you consider to be inappropriately complex or rigid, or generating unnecessary burdens for users of the system?**

- ○ Yes
- ○ No
- ◉ No opinion

Other potential for improvement

***47. Are you aware of any (other) specific issue in relation to the protection, registration or enforcement of designs in respect of which you feel there is need for improvement or updating of the Community Design Regulation and/or the Design Directive?**

- ○ Yes
- ○ No
- ◉ No opinion

Degree of harmonization

48. Below is a list of design law aspects that are not (fully) harmonized by the Design Directive. For each item please let us know how do you assess the need for harmonization in view of potential obstacles for the internal market and the establishment of a level playing field for the registration of national designs.

between 16 and 16 answered rows

	Very important	Rather important	Rather not important	Not at all important	No opinion
*Description of design and its legal relevance for the subject-matter of protection	○	○	○	○	◉
*Product indication and the design's scope of protection	○	○	○	○	◉
*Formal requirements to represent a design (e.g. number of views, neutral background)	○	○	○	○	◉
*Deferment of publication	○	○	○	○	◉
*Multiple applications and its conditions	○	◉	○	○	○
*Right to the design	○	○	○	○	◉
*Protection of unregistered designs	○	○	○	○	◉
*Right of prior use	○	○	○	○	◉
*National designs as objects of property (transfer, rights in rem, levy of execution, licensing)	○	◉	○	○	○
*Substantive grounds for refusal of registration	○	○	○	○	◉
*Procedure for refusal of registration	○	○	○	○	◉
*Responsible authority for invalidating a design	○	○	○	○	◉
*Procedure for invalidating a design	○	○	○	○	◉
*Refusal/invalidity based on earlier distinctive sign (optional in the Directive)	○	○	○	○	◉
*Refusal/invalidity based on unauthorized use of a copyright protected work (optional in the Directive)	○	○	○	○	◉
*Refusal/invalidity based on improper use of an item listed in Article 6b of the Paris Convention for the Protection of Industrial Property (optional in the Directive)	○	○	○	○	◉

***Please also explain the problems caused by the lack of harmonization:**

5000 character(s) maximum

n.a.

***Please also explain the problems caused by the lack of harmonization:**

5000 character(s) maximum

n.a.

If you consider other aspects in need of harmonization, please specify them and explain the problems caused by the lack of harmonization:

5000 character(s) maximum

Specific question to national authorities

***49. In some Member States, invalidity proceedings can only be brought before a judicial body. What is your view on making such proceedings available before all national industrial property offices across the EU?**

- ○ Positive
- ◉ Negative
- ○ No opinion

***Please explain your answer:**

2000 character(s) maximum

too little experience with designs at national/regional office, due to low volumes compared to EUIPO

Specific questions to lawyers/legal advisors, authorities and academia

***50. In terms of coherence, are you aware of any problematic inconsistencies or discrepancies in the provisions of the Design Directive and/or the Community Design Regulation, and/or between these two instruments, and/or between one/both of these two instruments with other Union legislation?**

- ○ Yes
- ◉ No
- ○ No opinion

***51. The Community Design Regulation and the respective Implementing Regulation (EC) No 2245/2002 set out rules for procedures before the EUIPO which is also responsible to conduct procedures in European Union trade mark matters. Are you aware of any procedural discrepancies between these regulations which are not justified by the different nature of designs and trade marks?**

- ○ Yes
- ◉ No
- ○ No opinion

***52. In your opinion, to what extent has the accession of the EU (2006) to the international Hague system, which allows EU applicants to obtain design protection in countries which are party to its Geneva Act, proved to be a useful complement to the available venues for obtaining design protection both within and outside the EU?**

- ◉ Very useful
- ○ Useful
- ○ Useless
- ○ Completely useless
- ○ No opinion

***Please explain your answer:**

5000 character(s) maximum

n.a.

***53. In this context, do you consider the accession of Member States to the international Hague system to be necessary to remove major obstacles to the internal market and the establishment of a level playing field?**

- (●) Yes
- ( ) No
- ( ) No opinion

***Please explain your answer:**

5000 character(s) maximum

n.a.

***54. Are you aware of any problems/issues which negatively influence the complementarity and interoperability between the Community design system, the national design systems and/or the international Hague system?**

- ( ) Yes
- (●) No
- ( ) No opinion

***55. If you wish to register the same design in the EU and in other countries outside the EU, what are the main difficulties in achieving it?**

at least 1 choice(s)

- [ ] Different scope of protection
- [ ] Different requirements for the design representation
- [ ] Different requirements for the product indications
- [ ] Different procedural rules
- [ ] Other
- [ ] There are no relevant difficulties
- [x] I have no experience

***56. In your view, is the current general level of fees for Community designs appropriate?**

- (●) Yes
- ( ) No, fees are too high
- ( ) No, fees are too low
- ( ) No opinion

***57. In your view, does the current structure of the various fees present any difficulties to applicants and holders of Community designs?**

- ( ) Yes
- (●) No
- ( ) No opinion

***58. In this context, do you think it is appropriate that all designs of a multiple application must refer to products in the same class of the International Classification for Industrial Designs (Locarno Classification) to be able to benefit from the current bulk discount?**

- ( ) Yes
- (●) No
- ( ) No opinion

Invitation to all

59. If you wish to add any further information or views in relation to the design protection systems in the EU and their potential for improvement, which have not been covered by this questionnaire, please feel free to do so here:

5000 character(s) maximum

60. Please feel also free to upload a concise document, such as a position paper or study. Please note that the uploaded documents will be published alongside your response to the questionnaire.

The maximum file size is 1 MB
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

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