



16 December 2020

## **BUSINESSEUROPE COMMENTS TO THE INCEPTION IMPACT ASSESSMENT ON THE REVIEW OF THE EU DESIGN PROTECTION LEGISLATION**

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 Inception Impact Assessment on Review of the Design Directive<sup>1</sup> and Community Design Regulation<sup>2</sup> (“EU legislation on design protection”) prepared by the European Commission (DG GROW) to review the legal framework on EU design protection.

BUSINESSEUROPE is happy to contribute to this debate which will have an impact on the EU legislation on design protection over the coming years.

BUSINESSEUROPE adopted its own IP Strategy for the next political cycle in September 2019, including our priorities in the field of design rights.<sup>3</sup> We refer to this comprehensive IP Strategy paper and the proposals therein. In this paper, we will limit ourselves to a number of targeted comments.

- **Modernisation of the EU design framework**

BUSINESSEUROPE fully supports the proposal to modernise, clarify and strengthen the EU legislation on design protection. Efficiency, suitability for the digital transformation should be the way forward. The EU legislation on design protection should be suitable to also cover new forms of designs such as digital graphical user interfaces or icons. The rise of 3D printing technologies deserves further consideration to ensure that design rights are not impacted by these technologies.

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<sup>1</sup> Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs.

<sup>2</sup> Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

<sup>3</sup> See BUSINESSEUROPE’s position paper “Intellectual Property - Priorities for the next political cycle” of September 2019, Section 3.C., available at <https://www.businessseurope.eu/publications/intellectual-property-priorities-next-institutional-cycle>.



Some procedural aspects of the EU design registration procedure should also be modernised. For instance, the limitation to only seven representations of the design applied for protection is seen as too restrictive and no longer in line with the digitalised context.

- **Further harmonisation**

BUSINESSEUROPE has always supported the harmonisation of national rules and the creation of the Community design protection system. Businesses benefit from harmonisation in this area insofar as, among other things, it provides the same protection of designs everywhere in the EU, allows a simple registration procedure for Community designs, and contributes to preventing counterfeiting and copying of protected Community designs.

In this context, BUSINESSEUROPE strongly supports any further harmonisation of the national legislations on design protection across the EU. A better alignment with the recent EU trademark legislation, e.g., in relation to examination and granting procedures and fee levels of Community designs rights, would increase legal certainty and would be beneficial for businesses.

Further harmonisation is also required with respect to the national legislations on enforcement of protected designs.

- **Spare parts**

Different rules on spare parts protection in the Member States is seen as a problem for BUSINESSEUROPE members. Consequently, BUSINESSEUROPE welcomes the initiative of harmonising the rules of spare parts protection in the Member States. This would ensure legal certainty, uniformity across the EU and could facilitate business and innovation.

Harmonised rules in this field are also expected to contribute to meeting circular economy objectives. In this regard, consistency between the rules on design protection and the initiatives announced in the European Green Deal and the Circular Economy Action Plan should be ensured to avoid conflicting incentives for businesses and consumers.

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