EUROPEAN COMMISSION

Brussels, 26.11.2022
SEC(2022) 422 final

REGULATORY SCRUTINY BOARD OPINION

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the legal protection of designs (recast)

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/2002

{SWD(2022) 367 final}
{SWD(2022) 368 final }
{SWD(2022) 369 final }

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Review of the EU design protection legislation

Overall opinion: POSITIVE

(A) Policy context

This initiative aims to revise the EU designs legislation as it was established two decades ago in the Designs Directive and the Community Designs Regulation.

The initiative builds on an evaluation that was finalised in 2020. It concluded that there are two key remaining challenges: 1) the disruption of the internal market for repair spare parts for cars; and 2) the continuing discouragement of businesses from seeking design protection at the EU or national level. This initiative aims to address these problems while ensuring that the design protection system will be fit for purpose in the digital age and becomes more accessible and efficient. It is a building block of the Commission's Intellectual Property Action Plan launched last year.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspect:

(1) The report is not sufficiently clear why the current mixed national and EU design protection system needs to be maintained and protected.

(C) What to improve

(1) The report should make clear why it does not envisage an overall more efficient design protection system, by letting the EU system compete fully with the national systems. This could lead seemingly to lower fees and promote administrative efficiency, which would be to the benefit of companies and increase overall EU competitiveness. In this regard, the report should clarify to what extent the level of national fees should continue to play a limiting role on the reduction of EU fees.

(2) Taking into account the relevant findings in the 2020 evaluation on the lack of

This opinion concerns a draft impact assessment which may differ from the final version.

awareness of the possibilities for companies to use EU design protection, the report should better explain why it does not consider additional actions on awareness-raising in the context of this initiative.

(3) The report should better explain the competitive effects that can be expected from cross-border spare parts internet sales under the baseline scenario. It should also better explain that the liberalisation of the spare parts aftermarket through the removal of design protection of spare parts is a necessary, but not a sufficient, condition for creating a well-functioning internal market in spare parts.

(4) The report should better explain the robustness and the uncertainties with regard to the estimates on the increase of the number of protected designs by changing the level of the fees, in particular with regard to the so-called 'optimistic scenario'.

(5) Given that the direct expenditures of the European Union Intellectual Property Organisation (EUIPO) directly attributable to the Registered Community Design only represent about one third of the relevant fee revenues, the report should clarify why it does not propose to reduce the fees for registered EU designs further. It should also explore the room for further reduction of the fees including through considering potential rationalisations and administrative overhead reductions at the EUIPO.

(6) The report should better reflect the differences in views between key stakeholders on design protection of spare parts and explain how and why it took them into account.

The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG may proceed with the initiative.

The lead DG must take these recommendations into account before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Proposal for a regulation of the European Parliament and the Council amending Council Regulation(EC) No 6/2002 of 12 December 2001 on Community Designs and the proposal of a directive of the European Parliament and of the Council on the legal protection of designs
Reference number	PLAN/2020/8769
Submitted to RSB on	28 October 2021
Date of RSB meeting	24 November 2021

ANNEX – Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Liberalization of the aftermarket for spare parts. Limited to new designs for the first 10 years. (Opt. 1.2)	In the car market for visible spare parts: EUR 340-544m per year from year 11. During the 10 year transition each year benefits will increase by EUR 4 to 13m per year to reach up to EUR40-26m in year 10	Benefits to customers. As regards car market to those from AT, BG, CY, CZ, DE, DK, EE, FI, FR, HR, MT, PT, RO, SE, SI, SK
Reduction of RCD fees for basic protection and 1st renewal (Opt. 3.1)	EUR 6 million*	Basic protection reduction concerns all applicants, renewal only those who decide to renew – around 49% of owners renew after 5 years.
Other simplifications (e.g. means and requirements of design representation) (Opt. 2.)	EUR 1 million*	Concerns around 14% of RCD applicants. Realised at initial application.
Facilitation of multiple applications (Opt 2)	EUR 0.64 million*	Concerns around 20% of RCD applicants. Realised at initial application.
No transfer fee (Opt 3)	EUR 0.64 million*	Simplification for around 3000 designs that annually are transferred to different owners.
Office based invalidity procedure in national IP officies	EUR4,000 – 7,000 per case	Concerns those seeking to cancel invalid design
No of ex-officio examination of prior art in national IP officies	Registration time cut in half	Concerns around 1000 applications a year
Indirect benefits		
N/A		

** estimatefor 2024. Benefits will increase with raise of number of applications/protected designs. In the optimistic scenario number of applications may raise by 15% in 2030 in comparison to the baseline growth.*

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off*	Recurrent	One-off	Recurrent
2nd renewal (15 years protection)	Direct costs	n/a	n/a	EUR 175.33 per owner Total annually*: EUR0.6m	n/a	n/a	n/a

	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
3rd renewal (20 years protection)	Direct costs	n/a	n/a	EUR 1,139.66 per owner Total annually*: EUR1.6m	n/a	n/a	n/a
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
4th renewal (25 years protection)	Direct costs	n/a	n/a	EUR 3,345.93 per owner Total annually*: EUR2.3m	n/a	n/a	n/a
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a
Cap of 50 designs per application	Direct costs	n/a	n/a	EUR 2,539.88 per owner Total annually*: EUR0.18m	n/a	n/a	n/a
	Indirect costs	n/a	n/a	n/a	n/a	n/a	n/a

** Each of the cost below are paid only once per each design or application.*

Electronically signed on 26/11/2021 11:38 (UTC+01) in accordance with article 11 of Commission Decision C(2020) 4482