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**Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL REGULATION**

on the Community Design

(presented by the Commission)

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EXPLANATORY MEMORANDUM

PART ONE: GENERAL

1. Introduction

- 1.1 The present Regulation aims to provide for a Community system for the legal protection of industrial design.
- 1.2 Legal protection of designs at the present time comes into existence by way of registration. Apart from the Benelux where a regional design protection system has been in force since 1975 design protection is national. The protection is granted upon application on a State-by-State basis. The legal effect of the protection is limited to the territory of the State in which the protection has been granted.
- 1.3 Conflicts leading to barriers to the free flow of goods are inevitable. A design, which in one Member State may qualify for protection, may in another Member State not fulfil the requirements for protection. If goods lawfully produced by a competitor in the country where no design protection exists are sought to be commercialized in the country where design protection is in force the entry into that State can be prohibited by virtue of the provision of Article 36 EEC. Likewise, due to the strictly national character of a design protection the same design can in different Member States be registered by different right holders. A right holder in one country can by virtue of the provisions of Article 36 EEC prevent the importation into that State of goods that would infringe his rights even if the design embodied in the goods in another Member State is registered by another right holder.
- 1.4 Design rights have in the past decade become increasingly important since design has gained in importance as a marketing tool. Many goods are sought after by consumers not only on the grounds of their function but also or even more so because of their design. The kind of goods in which designs are embodied cannot easily be enumerated. An extremely wide range of goods are design "goods", from artefacts and jewellery to sophisticated machinery, tools, electronics and consumer electronics, motor vehicles, yachts, furniture and office equipment, sport articles, fashion and clothing and domestic appliances, to mention just a few examples of the areas of typical contemporary industrial design activity. Artificial barriers to trade will therefore have repercussions on the trade in most manufactured goods and are therefore incompatible with the functioning of an internal market.
- 1.5 To allow goods embodying designs to flow freely within an internal market a protection system at the level of the Community is necessary. A Community-wide protection system cannot be replaced by the approximation of the laws of the Member States. Even national protection systems of a uniform character would not satisfy the needs of the internal market since the protection would end at the frontiers of the State in which protection had been acquired. Thus, in spite of approximation of laws the risk that conflicting rights could exist in other Member States would still be real.

- 1.6 Action to provide for a Community system for design protection can only take place at the level of the Community and cannot in any respect be replaced by action taken by Member States within their territories. A supranational protection system can be provided for only by way of supranational action. The legal instrument foreseen for achieving this is a Regulation.
- 1.7 Therefore the Regulation is in conformity with the principle of subsidiarity. The Community must legislate because the legislation in question is necessary to achieve the aims of the internal market and the legislation necessary for this aim cannot be adopted at the level of the Member States but only at the level of the Community.

2. The legal basis

- 2.1 The proposed Regulation pursues in respect of industrial designs and the goods embodying industrial designs objectives similar to those which other Community initiatives in the area of intellectual and industrial property law pursue, namely the establishment and functioning of a common market in design products and hence their free movement, undistorted competition in design products and the due protection of this form of industrial and commercial property. (Article 2, Article 3(a), and (f), and Article 36 of the EEC Treaty).
- 2.2 Article 8a of the EEC Treaty provides that the Community shall adopt measures, in accordance with the provisions of the Treaty, i.e. Article 100a, with the aim of establishing the internal market which comprises an area without internal frontiers in which is ensured free movement of goods such as design products.

Article 100a EEC empowers the Community, in order to achieve the objectives of the internal market, to adopt the necessary approximation "measures". Measures is a term for every type of legal instrument. Therefore to "adopt measures" means to enact all appropriate legal provisions. For the purposes of Article 100a, appropriate provisions are provisions which pursue the objectives set out in Article 8a and which therefore have as their object the establishment and functioning of the internal market. The choice of instrument depends on how suitable and necessary it is for the attainment of the objective.

- 2.3 The objective pursued by the measure is the creation of a Community-wide right coming into existence and expiring at the same time for the whole area of the Community and conferring upon its right holder a unitary right. This objective cannot be achieved by way of a Directive. By means of a Directive approximation of the laws of the Member States can be achieved thereby providing for legislation protecting designs on the same conditions, for a uniform period of time and with the same scope of protection and contents of protection in all Community Member States. But a Directive cannot replace the different national protection systems with their exclusively territorial application, imposing on users the burden of multiple registrations, of the payment of different fees in different Member States and monitoring of rights in different Member States by a single right valid throughout the Community. For this purpose a Regulation is necessary. It follows from what has been stated in the introduction that the present situation where design protection is national and limited

to the jurisdiction within which it has been granted creates barriers to interstate trade. Unless a Community-wide right is introduced, the reliance upon Article 36 as a legitimate defence for maintaining restrictions on the importation of goods will be perpetuated and the action suggested is therefore necessary to achieve the objectives as regards the internal market.

- 2.4 Harmonization within the meaning of Article 100a is not restricted to amending national law, but covers also supplementing national provisions or the replacement of national provisions. The creation of a Community design supplements national provisions on the protection of design, and can therefore be considered as an "approximation" of the law of the Member States in this area within the meaning of Article 100a EEC.
- 2.5 The Office to be set up according to Article 2 of the Regulation should, for reasons of economy, have administrative structures in common with the Community Trade Mark Office created within the framework of the Community Trade Mark Regulation, to be adopted prior to final adoption of the present Regulation.

3. The importance of design protection for the Community

- 3.1 Adequate design protection adapted to the economy is of paramount importance to the Community, its Member States and its enterprises, in particular small and medium-sized enterprises.
- 3.2 With the increased standard of living, consumers are becoming increasingly demanding as regards the quality of designs and have thereby set in motion a development having the effect that design is becoming an extremely important marketing tool. In many sectors of industry, enterprises compete primarily on designs. The economic activity within some sectors of industry would come to a standstill if enterprises were not in a position to stimulate the demand for their products by way of new designs. In many cases, it is the design, which decides the commercial success or failure of operations and with the realization of the internal market this development is likely to be reinforced. Enterprises succeeding in attracting consumers by way of designs will, by exploiting the commercial conditions of a single market, frequently be in a position to increase their market share in respect of their products in comparison to their competitors. In the Community economic landscape many monuments can be found which testify to the commercial success of design enterprises. These enterprises are represented and their products more and more often found in a large number of commercial centres of the Community.
- 3.3 Superior design is one of the main assets of Community-based industries in their competition with industries from third countries, which often have lower labour costs. Many design products originating in the Community enjoy an enviable reputation in the market place. To safeguard the basis of this reputation, to enhance even further the value of these design activities, and to promote investment in designs by protecting them against parasitic behaviour is one of the objectives of the Regulation.

3.4 Designs are often easily reproduced. In many cases no know-how is required for the reproduction of design products. Therefore, design counterfeiting is widespread in the Community as well as outside the Community and legislation offering at least a degree of protection against the misappropriations of designs requested by economic operators.

3.5 The Community design protection system will set an example at the international level and will make it easier for the Community to exercise its influence for the purpose of achieving equitable design protection outside the jurisdiction of the Community.

4. Design protection in Member States

4.1 All Member States except Greece have introduced legislation on the legal protection of designs by way of specific protection. The protection under specific design protection law is often used in cumulation with protection under copyright law. The conditions for the application of copyright law and the extent to which this legal instrument is used vary from one Member State to another. In some Member States copyright is widely applied. This has the effect of reducing the reliance upon specific design protection by a number of industrial sectors. Even in those countries the more functional designs are, however, more often than not sought to be protected under the umbrella of specific design protection law. Other legal instruments such as trademark law and unfair competition law may also come into play under the conditions applicable within the different areas of industrial and intellectual property law.

4.2 Eleven Member States have in common a system according to which designs are protected upon registration. Recently the UK has also introduced a protection for unregistered designs with effect from 1 January 1989. Earlier designs benefit exclusively from the legislation in force prior to the entry into force of the new legislation subject to some limitations on copyright protection for existing designs for which transitional arrangements have been made. The effect of the UK unregistered design right on the behaviour of operators in the market place cannot yet be assessed.

4.3 The age of the present design protection laws of Member States differs significantly. Some are of recent date as, for example, the UK legislation. Other laws are very old indeed. The French law on models and designs dates, for example, from 1909 and has only been the subject of technical amendments in 1991. The date of the enactment of the laws presently in force is immaterial, however, from the point of view of the users of the system. The origin of design protection laws is the period of industrialization. During this period the first design protection laws were enacted, clearly inspired by principles of patent law. In spite of later amendments or new legislative initiatives, the characteristics of early patent and design protection law have been maintained. Thus, national legislation has been incapable of fully adjusting to the industrial and economic development to the detriment of users of the system. It is precisely this heritage from the early industrialized society which many industrial sectors today regret.

4.4 The link to early patent law is expressed primarily by the requirements for protection, which in many cases is a novelty concept which is not quite compatible with the characteristics of designs, in some cases an examination prior to registration unduly stressing the importance

of prior registrations within a given geographical area and a design concept which favours the ornamentation of products without sufficiently considering the characteristics of contemporary industrial design: the merger of form and function.

4.5 The Regulation aims at providing a fully modern design protection system adapted to the reality of design activities and to the need of the users of the system.

5. The need for action

5.1 In parallel with the development of the Community and the completion of the internal market, industrial property rights, which come into existence upon registration within a given jurisdiction, need to be replaced or gradually superseded by Community-wide rights. Only by introduction of Community-wide rights can the repercussions of national effect of industrial property protection be overcome. For patents, the Community is endeavouring to set the Agreement of 15 December 1989 relating to Community Patents⁽¹⁾ into force as early as possible. For trademarks, an adoption of the proposal for a Regulation on the Community trademark appears to be within reach. The present proposal adds another piece to the jig-saw puzzle which industrial property rights constitute.

5.2 If industry is to be allowed to benefit from the advantages of an internal market, national rights must gradually be superseded by Community-wide rights. In particular, small and medium-sized enterprises and individual designers are not equipped to secure and monitor protection of their investment in design in twelve different Member States. Even for enterprises being in a position to use the different national design protection systems, it is a most cumbersome and costly affair. The result is that operators frequently limit registrations to what at the moment are their most important markets with a real risk of later repercussions as to their commercial prospects in other countries and with very considerable negative effects on the free flow of goods.

5.3 Therefore, the need for action now has been emphasized by the overwhelming majority of industrial sectors.

6. The effects of the Regulation at international level

6.1 At the international level, design protection suffers from the lack of international conventions providing for a certain degree of harmonization by way of provisions on minimum rights.

Article 5 of the Paris Convention for the Protection of Industrial Property sets out that "Industrial designs shall be protected in all the countries of the Union" but contains no provisions on substantive rights. The Berne Convention on the protection of Literary and Artistic Works leaves the States adhering to the Berne Union the choice of protecting industrial "works of applied art and industrial designs" either by way of copyright law or by way of specific legislation (or both). Due to the lack of binding provisions in

⁽¹⁾ 89/695/EEC, OJ No L 401, 30.12.1989, p. 1.

international conventions, design protection laws are far more different from each other than, for example, copyright laws and patent laws. Securing rights and the monitoring of rights in third countries is therefore not easy for EEC-based industries and is for small and medium-sized enterprises a nearly impossible task.

- 6.2 The Hague Agreement concerning the International Deposit of Industrial Designs has as its objective to make it easier for users to apply for design protection in a number of countries by providing for a centralized international deposit system. By way of one application filed with WIPO it is possible to obtain a protection in one or more or all the States adhering to the Agreement. It needs to be emphasized, however, that the protection is strictly national and subject to the conditions laid down in the laws of the countries designated in the application. The individual countries designated in the application may refuse protection if requirements for protection of national law are not fulfilled. This international registration system could nevertheless be of great value to EEC-based industries even after entry into force of the Community design protection system if it were not for the fact that apart from seven Community Member States (the Benelux countries, France, Germany, Italy and Spain) most industrialized countries do not adhere to the Agreement at the present time. Twenty States participate in the Arrangement but apart from Switzerland, no major industrialized State and in particular not the countries which constitute the most important export markets of the Community. A revision of the Agreement is at the present time being discussed within WIPO aiming at inter alia facilitating the participation in the Agreement of more States and in particular the US and Japan.
- 6.3 When the Community design protection system enters into force it may become necessary to provide for a link between the Community Design and the (revised) Hague Agreement. Such a link permitting nationals and enterprises to acquire a Community Design through a registration via the Hague system and permitting Community enterprises to acquire international registration by way of registration with the Community. A model for such a link can be found in the Protocol relating to the Madrid Agreement concerning the international registration of marks establishing a link between the Community trademark and the Madrid Agreement.
- 6.4 What has been said in paragraph 4.3 on the disadvantages which follow from the fact that design protection laws have been inspired by principles of patent protection law is, however, tenfold valid for some of the countries constituting the Community's most important trading partners some of which directly apply provisions of patent law on designs called "design patents". The contents of legislation in countries outside the Community becomes of concern to the Community if Community enterprises could be disadvantaged by virtue of legislation which, without in any way having a discriminatory character, fails to provide facilities for easy protection of the characteristics of the output of Community enterprises.
- 6.5 By providing the appropriate legislation within the Community's own jurisdiction, the Community greatly enhances its possibility to influence the development in the rest of the world.
- 6.6 The provisions of the Regulation are fully consistent with the provisions on Industrial Designs in the draft TRIPs Agreement at present under negotiation.

7. Preparation and consultation

- 7.1** The Regulation is based on comprehensive preparatory work and thorough consultation with interested circles. In June 1991 Commission services published a consultative document: Green Paper on the legal protection of industrial design (III/F/5131/91).
- 7.2** Following the publication of the Green Paper, Commission services received written submissions from an important number of industry organizations and from practitioners in industrial property rights and from designers. In a number of cases industrial organizations created cross industry working parties with a view to discussing the initial ideas set out in the Green Paper and to submit comments and suggestions to the Commission. Such comments made on behalf of extremely important organizations representing a cross section of industries in all Community Member States deserve, of course, much attention.
- 7.3** The collection of submissions was supplemented by way of a hearing with a large body of interested parties, consumers' organizations, international organizations and representatives of Member States as observers on 25 and 26 February 1992. Detailed minutes of the hearing have been submitted by Commission services (III/F/5252/92) in July 1992. Government industrial property experts of Member States were consulted in their personal capacity during a hearing of 25 March 1992. Finally, a hearing on the most controversial issue, the legal protection of designs relating to car parts, was organized on 16 October 1992. In this hearing only the most interested parties were invited to participate.
- 7.4** The contents of the present Regulation takes into consideration the many observations made.

8. The basic features of the Community design protection system

- 8.1** The Community design protection system is a two-tier system introducing, on the one hand, protection based on registration and, on the other hand, an automatic protection coming into existence by making the design available to the public.
- 8.2** Designs are features of appearance which can be perceived by the human senses. No aesthetic criteria are applied. Aesthetic and functional designs are equally protectable. However, features necessary to achieve a technical function and which leave no freedom as regards arbitrary elements are unprotectable in order not to monopolize technical functions by way of design protection. Such features may be protectable under patent law or utility model law provided the requirements for such protection are fulfilled.

To allow for the interoperability of products, designs of interconnections, even if arbitrary, are not eligible for protection except as regards interconnections of modular products.

- 8.3** The basic requirements for protection are that the design is novel and has an individual character, which means that the design in the eyes of an informed user is different from other designs found in the market place.

- 8.4 The Unregistered Community Design confers upon the right holder protection against reproduction whereas the Registered Community Design confers upon the right holder a genuine exclusive right as regards the use of the design.
- 8.5 The duration of the protection is three years for the Unregistered Community Design and five years for the Registered Community design renewable for a maximum period of twenty five years.
- 8.6 It is important for designers and enterprises to be able to test a design in the market without thereby - as foreseen in many design protection laws in force - jeopardizing the novel character of the design. Therefore, the Regulation sets out that disclosures within a given time period by the designer himself or his successor in title do not prejudice the novel character of his design.
- 8.7 In accordance with the views of the interested circles, the registration system is not based on substantive examination as to the fulfilment of requirements for protection prior to registration. This aspect should contribute to rapid and uncostly registration.
- 8.8 Upon registration designs are published. Some industries need, however, to be given the possibility to keep designs secret for a period. Other industries, in particular textiles producing a large number of designs with short intervals, need to be given the possibility of reducing costs by way of deferment of publication.
- 8.9 The Regulation introduces multiple registration for cost-saving purposes. By one and the same application an indefinite number of interrelated designs can be registered.
- 8.10 By letting the Design Office share administrative structures with the Trade Mark Office operational costs can be reduced. Further, it appears advisable to take over provisions relating to the judicial system, administrative procedures and financial regulation from the trademark Regulation unless specific features of designs as opposed to trademarks require different solutions.

9. Design protection and competition

- 9.1 Intellectual and industrial property rights confer upon the right holder exclusive rights. Given the objectives of intellectual and industrial property rights as regards investment in innovation and creativity, this aspect of intellectual and industrial property does not normally give rise to misgivings from a competition policy point of view provided that the rights are exercised in an equitable manner and provided that competition in the market place is not stultified by the creation of monopolies in generic products.
- 9.2 The Regulation is fully in conformity with these guidelines. Design protection does not monopolize given products, but protects the individual appearance given to a product by its designer. Protection of the design of a watch does not hamper competition in the watch market.

- 9.3 In very rare cases a design protection sweeping in scope as the Community Design may have secondary unwanted side effects as regards exclusion or limitation of competition in the market place. This is true in particular for costly, long lasting complex products such as motor vehicles, where design protection of the design relating to the individual parts of which the complex product is composed could create a truly captive market in spare parts.
- 9.4 For these products a repair clause has been introduced permitting the reproduction of designs for the purpose of producing spare parts three years after the first marketing of the product to which the design has been applied. Thus, the manufacturer is allowed an exclusive right during a three year period without indefinitely tying the consumer to a single manufacturer.
- 9.5 In any event, Articles 85 and 86 of the EEC Treaty remain applicable. Although, as follows from the case law of the Court of Justice⁽²⁾, the mere exercise by the proprietor of a protected design of its exclusive rights does not in itself constitute an abuse of a dominant position, this exercise may constitute such an abuse - and therefore be prohibited by Article 86 EEC - if it involves on the part of the undertaking holding a dominant position certain abusive conduct, such as the arbitrary refusal to supply spare parts to independent repairers, the fixing of prices at an unfair level or a decision no longer to produce spare parts for a particular product even though it is still in circulation, provided that such conduct is liable to affect trade between Member States.

⁽²⁾ Case 53/87, Circa v Renault, [1988] ECR, 6039.
Case 238/87, Volvo v Veng, [1988] ECR, 6211.

PART TWO: PARTICULAR PROVISIONS

TITLE I

GENERAL PROVISIONS

Article 1

Paragraphs (1) and (2)

The provision introduces the term "Community Design" for registered designs and unregistered designs.

Paragraph (3)

The provision sets out the basic principle: the unitary character of the Community Design.

Article 2

The introduction of the Community Design makes the creation of a Community Design Office necessary for the purpose of the registration of designs.

TITLE II

THE LAW RELATING TO DESIGNS

Section 1

Requirements for protection

Article 3

The provision contains two important definitions: "design" and "product".

"Design" means any feature of appearance which can be perceived by the human senses as regards sight and tactility are features of design. It is irrelevant whether the design is of an aesthetic character or functional and whether it is decisive for the end user's choice of product.

Some specific elements of which a design may consist have been enumerated. The enumeration is not exhaustive. Weight and flexibility, for example, may in some cases be design features. It goes without saying that a colour in itself or a material as such are not eligible for protection. But the choice of a colour in combination with other design elements or the combination of colours in a graphic design can add to the individual character of the design and may as such constitute a protectable element when applied to a specific product. A material or a texture can likewise be the expression of a highly original idea and be a decisive element in perceiving the presence of a protectable design.

"Product" means any item to which a design can be applied. The list of items mentioned is by way of example only. It appears to be useful, however, to mention explicitly a number of products such as, for example, typographic typefaces, which in some jurisdictions are not considered "products" for the purpose of design protection.

Designs of parts of products can also be protected. The protection could therefore be sought for a specific element of a product, all the other elements of the appearance being admittedly commonplace. Components or elements intended to be assembled in a larger complex product can each be protected as a product provided they can be marketed separately and their designs comply with the requirements for protection.

Computer programs and semi-conductor products are not considered "products" for the purpose of the application of the design Regulation.

As far as computer programs are concerned, the exclusion may appear to be superfluous since computer programs as defined in the Directive on the legal protection of computer programs⁽³⁾ cannot be designed. It may be useful, however, to state explicitly that the copyright protection provided under the umbrella of the aforementioned Directive cannot be supplemented or reinforced by a protection of the "look and feel" of a computer program by way of design protection. This does not exclude the protection of specific graphic designs as applied, for example, to icons or menus provided the normal requirements for protection are met.

As regards semi-conductor products, the exclusion is not self evident. The design of the topography of semi-conductor products would probably, if not explicitly excluded, be eligible for protection under the terms of the Regulation. It has been considered necessary, however, to exclude semi-conductor products from protection in order not to tilt the balance created by the recently adopted Directive on the legal protection of topographies of semi-conductor products⁽⁴⁾.

Article 4

Paragraph (1)

This Article sets out the requirements for protection.

The requirements are twofold: that the design is new and that it has an individual character.

Paragraph (2)

As far as designs applied to products which are parts of a complex product are concerned, the design of each individual part must fulfil the requirements as regards being new and having its own individual character. It can otherwise not attract protection. When a new car model is marketed design protection is often taken out for the car as such and for a number of parts, in particular body parts. The requirement implies that the novelty and individual character of, for example, a car wing must be assessed on the basis of its own merits. It cannot derive individual

⁽³⁾ Council Directive 91/250/EEC, OJ No L 122, 17.5.1991, p. 42.

⁽⁴⁾ Council Directive 87/54/EEC, OJ No L 24, 27.1.1987, p. 36.

character by virtue of the individual character of the whole car. The principle expressed by the provision has gained general recognition and corresponds to Article 2(2) of the Directive on the legal protection of topographies of semi-conductor products.

Article 5

This provision defines the notion of novelty.

Paragraph (1)

In accordance with the opinion expressed by a majority of industries, the basic requirement for protection is that the design is new. This is an objective criterion. It is immaterial to establish whether the design is the result of an independent creation by the designer or has been copied. Novelty is to be assessed at the world-wide level. If it has been registered or otherwise been made available to the public anywhere in the world, it is not new. It is, however, only identical or near to identical anticipations, which destroy the novelty, whereas "overall impression of similarity" is not enough to have this effect. Non-identical anticipations, however, may need to be considered for the purpose of assessing the individual character of the design.

Paragraph (2)

The notion "made available to the public" is defined. Any disclosure that does not take place on the condition of confidentiality has the effect that the design is to be considered made available to the public.

Article 6

Paragraph (1)

This provision defines the second requirement for protection, namely the individual character. A design has an individual character in so far as it produces an impression of overall dissimilarity compared to previously existing designs. It is immaterial whether it can be established that the second design differs from an earlier design in even an important number of details if the overall impression is one of similarity ("déjà vu"). The person on whom an overall impression of dissimilarity must be made is an "informed user". This may be, but is not necessarily, the end consumer who may be totally unaware of the appearance of the product, for example if it is an internal part of a machine or a mechanical device replaced in the course of a repair. In such cases the "informed user" is the person replacing the part. A certain level of knowledge or design awareness is presupposed depending on the character of the design. But the term "informed user" should indicate also that the similarity is not to be assessed at the level of "design experts".

The provision introduces a high threshold of dissimilarity in comparison to previously existing designs, thereby at the same time providing for a broad scope of protection (Article 11). If a design was not subjected to this test, it would imply that alterations of a previously existing design would qualify for protection as a new design since the novelty criterion of Article 5 only precludes identical designs. In a number of jurisdictions the search for anticipations has, in fact, been limited to the identical or nearly identical designs thereby reducing the scope of protection to nil. European industries need, however, a protection which goes beyond the protection against identical reproductions and which is far more sweeping in scope. The counterpart of such an efficient protection is, however, a high threshold as regards individual character.

As regards the possibility of maintaining and enforcing the high threshold, see Articles 56 and 58.

As a result, fewer designs will be protectable under the Community Design than under the laws of some Member States. Most industries have, however, during consultation, stressed that the requirement appears to be reasonable and in conformity with the true interests of Community industries.

Paragraph (2)

If the individual character were to be assessed in comparison with all prior designs, the threshold might become unduly difficult to pass. Further, it would appear to be objectionable if an alleged infringer during infringement procedures were to be allowed to challenge the validity of the design he allegedly has copied by quoting a possible previous design, which has long ago disappeared from the market and can be found only in a remote museum. Such a risk of abusive search for anticipations has in fact been quoted by industry as an argument against the objective novelty requirement. This risk of abuse needs to be countered. It is also claimed that the revival of ancient designs in many cases can be meritorious and deserve protection. Therefore, the provision defines and limits those prior designs in respect of which the individual character of a Community Design must be assessed. Designs applied to products, which can no longer be found on the market - whether inside or outside the Community - shall not be taken into consideration. This implies that a design, the protection of which has expired prevents a third party from acquiring an exclusive right as regards a similar design as long as the product in respect of which it is applied is still on the market. It is, however, necessary to consider also Registered Community Designs and national registered designs, which have been published and which have not yet expired, irrespective of whether the product to which the design is applied is marketed or not. A limitation to products effectively marketed would be incompatible with the obligations of Member States under the Paris Convention for the Protection of Industrial Property.

Paragraph (3)

The provision intends to give guidance to the courts when deciding whether a design has the necessary individual character. Common features shall be given more weight than differences, because what counts is the overall impression. Further, the freedom of the designer must be considered when assessing the individual character (see also Article 11(2)).

Article 7

Paragraph (a)

The point in time when the criteria must be fulfilled is "the date of reference". This date is different for Registered Community Designs and for Unregistered Community Designs. For Unregistered Community Designs the date is the day on which the Unregistered Design comes into existence, which is the day it is made available to the public. Article 12 defines how this date is established.

Paragraph (b)

For Registered Community Designs the day of reference is the day of the filing of the application for registration or, if a priority is claimed, the day of priority.

Article 8

Paragraph (1)

The provision defines those disclosures which do not have the effect of destroying the novelty and the individual character of a Registered Community Design.

The provision states that where protection is claimed under a Registered Community Design, disclosures which have taken place within twelve months prior to the date of reference (date of the filing of the application or a possibly earlier date of priority) is without consequence for the novelty and the individual character of the Registered Community Design provided that the disclosure has taken place by the designer himself or his successor in title or where the disclosure is the result of an abuse in relation to the designer or his successor in title.

This implies, firstly, that the designer can use the design and test it on the market during twelve months without risk of destroying the novelty and individual character of his design. The provision has the effect of a "grace period" while avoiding use of the term, as this could lead to confusion with the different patent concept of a grace period.

Secondly, the provision expresses the principle that all other disclosures than the ones described have the effect of destroying the novelty of a later design even if the prior design is unknown to and could not have been known to the designer of the later design. A design disclosed, for example, in Sicily and marketed only locally has, in theory, the effect of preventing a designer in Ireland from getting protection for an identical design even where the later design has been developed without inspiration from the prior design. In practice, however, the effects are likely to be less dramatic. An earlier Unregistered Community Design does not guarantee that a later independently developed design is not Registered in good faith and remains valid because it is unchallenged. Further, even in cases where the right holder in respect of the earlier design becomes aware of the later Community Design he may well invalidate the exclusive right by action before the Office (Article 56) or by Legal Action before a Community Design Court (Article 85 (c) or (d)), but he cannot prevent the later designer or his successor in title from commercialising the product to which the design is applied, since the Unregistered Design confers upon the right holder a protection against reproduction only (Article 20). For these reasons the provision appears not to entail rough justice in practice.

Paragraph (2)

If an abusively disclosed design within the meaning of Article 8(1) has led to a Registered Community Design or to a registered design right of a Member State, the abusive nature of the disclosure can no longer be invoked, as the principle of legal certainty has to prevail. The person legitimately entitled to the design may, however, apply the procedure foreseen under Article 16 and ask for a transfer of the registered right taken out as a consequence of the abusive disclosure.

Article 9

Paragraph (1)

No distinction is made in the Regulation between aesthetic and functional designs; they are equally able to attract protection. In extremely rare cases, the form follows the function without any possibility of variation. In such cases, the designer cannot claim that the result is due to personal creativity. The design has, in fact, no individual character and cannot attract protection.

It is unlikely, however, that the whole design will be unprotectable. In most cases, only specific features will, without possibilities of variations, be dictated by function. Therefore, the provision provides for unprotectability to the extent only that there is no freedom as regards arbitrary elements of design.

Paragraph (2)

This provision sets out that the design of interconnections which must necessarily be reproduced in their exact forms and dimensions are not eligible for protection even where the design of the interconnecting element is arbitrary in the sense that shape and dimension is not exclusively dictated by the technical function. The purpose of this provision is to enhance the interoperability of products of different make and to prevent manufacturers of design products from creating captive markets, for example for peripherals, by monopolizing the shape and dimensions of interconnections.

Thus, for example, the dimensions of the fittings of an exhaust pipe, dictated by the necessity of fitting the exhaust pipe to a specific car model cannot constitute a protectable design element since the dimensions are dictated by those of the underside of the car.

Paragraph (3)

An exception from the provision in paragraph 2 needs to be made for the interconnections of modular products provided, of course, that the interconnections comply with the requirements for protection, in particular the requirement as to individual character (Article 6). Thus, for example, fittings which permit a chair of a specific make to be fitted in rows to other chairs of the same make or permit the chairs to be stacked or the interconnecting elements of toys designed with a view to being assembled would, in principle, be eligible for protection. Otherwise, it would be possible for competitors to make a short cut to a special market where the innovative character of the design in question often consists in - albeit not exclusively - the design of interconnecting elements permitting indefinite interconnection within a given system.

Article 10

A similar provision concerning public policy and accepted principles of morality can be found in many national design protection laws and in the Benelux uniform law.

Section 2 Scope and term of protection

Article 11

Paragraph (1)

The Article defines the scope of protection. It lays down two main principles. First, when assessing whether a second design infringes a previous design the overall impression of similarity is decisive and not whether differences as regards details or specific aspects can be established. Reference is made to an "informed user". The notion "informed user" is explained in the comments to Article 6. The overall impression created on an "informed user" may differ from

the overall impression created on an ordinary consumer, in the sense that the "informed user" may find striking differences, which would totally escape the attention of an ordinary consumer. Much depends on the character of the design.

Paragraph (2)

Paragraph (2) is intended to give guidance to the courts in infringement cases. What counts is not the unimportant variations, which a competitor has added to a reproduced design ("intelligent copy") but the common features.

Highly functional designs where the designer must respect given parameters are likely to be more similar than designs in respect of which the designer enjoys total freedom. Therefore, paragraph 2 also establishes the principle that the freedom of the designer must be taken into consideration when the similarity between an earlier and a later design is being assessed.

Article 12

The Article sets out the term of protection for the Unregistered Community Design. The protection comes into existence upon making the design available to the public. The onus of proof as regards the date on which the design was made available to the public is on the design owner. It may be advisable, in cases where the date could be challenged, to keep records on the disclosure of the design. The commercial practices vary from one industry to another and no general rule can be indicated as to what must be considered necessary to establish the date of making the design available to the public.

Article 13

This Article sets out the term of protection for the Registered Community Design. The term of protection is five years renewable for four further periods each of five years computed from the day of application. If the design has enjoyed protection as an Unregistered Community Design for which a registration application has been made at the end of the period of twelve months described in Article 8(1), the maximum protection period for a Community Design can thus be 26 years.

Section 3

Entitlement to the Community Design

Article 14

Paragraph (1)

The provision establishes the important principle that the design right belongs originally to the designer. Nothing prevents, however, the designer from assigning from the outset his right to another person, the "successor in title", usually the manufacturer of the products embodying the design. As the Community Design only confers economic rights, but no moral rights, the transfer of the right from the designer to the successor in title is total, except for the right established by Article 19 to be mentioned as designer before the Office in case of a Registered Community Design.

Paragraph (2)

Where the design is created by an employed designer in the execution of his duties under the work contract, the right belongs to the employer unless otherwise provided by contract. In the corresponding provision in the Directive on the legal protection of computer programs⁽⁵⁾ the right of the employer is limited to the exercise of the economic rights. The difference stems from the fact that the protection provided for by the aforementioned Directive is copyright protection, which according to the laws of some Member States grants the author a protection which cannot be assigned in its entirety. No similar restrictions exist as regards the assignment of design rights. Consequently, the same solution has been foreseen as in Article 3(2)(a) of the Directive on the legal protection of topographies of semi-conductor products⁽⁶⁾. Within the framework of the aforementioned Directive the solution indicated is optional only. Within the framework of the present Regulation it has, however, been considered necessary to provide for a uniform solution.

Article 15

When a design has been developed by two or more designers jointly, the right in the design shall belong to them jointly. If it has not been laid down in contract how the right is exercised, it will need to be exercised jointly.

This last rule has not been expressed explicitly in the Regulation.

For the case where a design has been developed by two designers independently of each other, see comments to Article 8(1).

Article 16

Paragraph (1)

It may occur that a registration is taken out by a person not entitled, for example, if an employed designer takes out a registration for a design in respect of which the employer following the provisions of Article 14(2) is the legitimate right holder. In such a case the right holder may claim a transfer of the registration ("Vindication" action). A similar provision can be found in Article 23 of the Agreement relating to Community Patents of 15 December 1989⁽⁷⁾.

Paragraph (2)

Where a registration fails to mention that the right belongs to several designers jointly, each of the right holders can claim correction in accordance with paragraph (1).

Paragraph (3)

Except for cases where the registration has been taken out in bad faith, it appears necessary to make the access to correction subject to a limitation in time. The limitation has been fixed at two years from publication.

⁽⁵⁾ Council Directive 91/250/EEC, OJ No L 122, 17.5.1991, p. 42.

⁽⁶⁾ Council Directive 87/54/EEC, OJ No L 24, 27.1.1987, p. 36.

⁽⁷⁾ 89/695/EEC, OJ No L 401, 30.12.1989, p. 1.

Paragraph (4)

The fact that legal proceedings regarding correction have been initiated is subject to mentioning in the register. The same applies to a decision on entitlement or any other termination of the legal proceedings.

Article 17

Paragraph (1)

This provision sets out the effects of a judicial decision recognizing the transfer of a Community Design to the legitimate right holder as a consequence of the action referred to in Article 16. Also this provision is closely modelled on the provision of Article 24 of the Community Patent Convention⁽⁸⁾. The effect is that licences and other rights granted by a non-entitled person lapse, when it has been established that they have been granted by a non-entitled person.

Paragraph (2)

In cases where serious and effective preparations have been made to exploit the licence or another right commercially, the effect of a lapse may be disastrous. To mitigate the effect, it is foreseen that a licence inspired by the "right of prior use" (Article 25) can be granted if requested.

Paragraph (3)

In case the licensee or the holder of another right has acted in bad faith when exploitation began, all rights are forfeited.

Article 18

This provision gives the Office the right to presume that the person in whose name the application is filed is the person entitled to the design right. This provision, which follows the similar provision of Article 60(3) of the European Patent Convention, aims at avoiding that, in a procedure before the Office, the question of the entitlement could be raised, bearing in mind that the Office has no jurisdiction to adjudicate on such questions, which belong to the jurisdiction of the national courts.

If the question of entitlement should be raised during the registration procedure, the Office would have to pursue the procedure with the original applicant. The person who pretends to be the legitimate right holder could then claim the transfer of the right under the action mentioned in Article 16. If the question is raised during an invalidity action, the Office could, if it considers appropriate, stay the proceedings and invite the person pretending to be the legitimate right holder to have the matter ascertained before a national court.

Article 19

This provision grants the designer a right of paternity to the design as regards the procedures before the Office and the Community Design Register (see also Article 14(1)).

⁽⁸⁾ 89/695/EEC, OJ No L 401, 30.12.1989, p. 1.

In a number of cases designs are created by design departments of an industry or by teams of designers and it may be very cumbersome, if not sometimes impossible, to indicate the names of all the participants in the development of a design. In such cases it is sufficient to indicate, for example, that the design has been developed by the design department of the enterprise in question. Detailed provisions aiming at ensuring that the right of paternity of the designer is safeguarded under these circumstances are going to be developed in the Implementing Regulation.

It has not been considered feasible to require that the name of the designer (or of the team) be mentioned in other contexts, for instance on the product itself or on the packaging or in the literature accompanying the product.

Section 4 Effects of the Community Design

Article 20

The right conferred by the Unregistered Community Design is a protection against reproduction only and is not a monopoly right. Therefore, the wording is different from Article 21(1) dealing with the rights conferred by the Registered Community Design in the sense that no exclusive rights as regards the use of their design is conferred. In case of unauthorized copying, the right holder can proceed against secondary infringers, such as importers or dealers to prevent the commercial dealing in counterfeit products.

Article 21

Paragraph (1)

The right conferred by the Registered Community Design is a monopoly right. The right holder has an exclusive right as regards the use of the design and he can enforce his right against any similar design even in cases where the infringing design has been developed in good faith.

Paragraph (2)

If, however, a Registered Community Design has not been published because the right holder has made use of the possibility of adjourning the publication, the Community Design confers upon the right holder protection against reproduction only. Upon publication, the full exclusive right is conferred. It goes without saying that this effect is not retroactive.

A party who has independently developed a design falling within the scope of protection of the Registered and now published Community Design is thus not affected by the exclusive right.

Article 22

The provision contains a number of limitations of the rights conferred by a Community Design.

Paragraph (1)

Subparagraphs (a) and (b) correspond to the provision in Article 27 of the Agreement of 15 December 1989 relating to the Community Patent⁽⁹⁾. Subparagraph (c) contains a provision on fair use as regards educational use or quotations, the essential element being that the use does not prejudice the normal exploitation of the design. The source has to be recognized.

Paragraph (2)

Subparagraphs (a) to (c) introduce the same exceptions for design as can be found for patents in Article 5(3) of the Paris Convention on the Protection of Industrial Property.

Article 23

The purpose of this provision is to avoid the creation of captive markets in certain spare parts.

By virtue of the provision in Article 9(2), the design of mechanical interconnections cannot constitute subject matter which can attract design protection. This means, in practice, that all dimensions of parts of a complex product may be reproduced. Moreover, any part of such a product may be considered immaterial to the user if, for example, the replacement part cannot be seen. This will often be the case for internal parts of machinery, a car engine and the like.

If, however, the part in question is external and is meant to be seen, and if, further, in the eyes of the end consumer, it ideally should match the overall appearance of the complex product, then access to reproduction of dimensions and other mechanical interconnection elements would be insufficient in themselves to allow for competition in the parts in question. The consumer, having bought a long lasting and perhaps expensive product (for example a car) would, for external parts, indefinitely be tied to the manufacturer of the complex product. This could eventually create unhealthy conditions in the market place as regards competition in parts, but also, in practice, could provide the manufacturer of the complex product with a monopoly lasting longer than the protection of his design. If, for example, competitors were only allowed to enter the market after the design protection had expired, it is reasonable to believe that no enterprise would find it worthwhile to enter the market at that time. If competition is to be provided for, access to the market must be open at a time when the investment in production realistically can be considered.

The provision makes an inroad into the rights of the right holder and it should therefore be applicable only under strict conditions.

First, a period of three years from the first marketing of the product is foreseen during which the right holder in the design has an exclusive right.

⁽⁹⁾ 89/695/EEC, OJ No L 401, 30.12.1989, p. 1.

Secondly, the design in question must be applied to a product, which is a part of a complex product upon whose appearance it is dependent. The condition is fulfilled, for example, by the design of a car door, which is conceived to match the other doors of the car and the whole car body, but not necessarily all other parts serving an ornamental purpose.

Further, the purpose of the reproduction must be to allow repair in the sense of restoring the original appearance of the complex product. This condition may be difficult to enforce in practice. However, the fact that reproduction only can take place as from three years from the first marketing makes it unlikely that an independent producer of parts could enter the market of subcontractors delivering parts to the first assembling and marketing of the complex product.

The purpose of the provision is to provide for fair competition in the market place. It is therefore a condition that an independent producer of parts makes it clear to the public that his product is of a different origin than the corresponding original part of the complex products. There must be no passing-off whereby the consumer may be misled. Understood in this way it is also clear that the original manufacturer of the complex product carries no responsibility for the quality of the replaced part in question.

Article 24

This provision contains a codification of the case-law of the Court of Justice concerning the exhaustion of the "industrial and commercial property rights" within the meaning of Article 36 EEC. The provision, which is related to the putting on the market in the territory of the Community, follows similar provisions contained in other Community acts, notably the Community Patent Convention and the draft Regulation on the Community Trade Mark.

Article 25

With the filing of an application for a Community Design, the design in question becomes the object of an exclusive right. In rare cases a design falling within the scope of protection of the right holder in respect of the Community Design may have been developed independently by another party who, compared to the right holder in respect of the Registered Community Design is, however, late in making the design available to the public or applying for a registration. As a general rule, it is necessary to foresee that the right following from the Community Design precludes all other rights. In exceptional cases, however, the effect of this rule may appear to be unnecessarily harsh, namely where the second designer has made serious preparations (financial or otherwise) to exploit the design in question. For these presumably rare cases, a right of prior use has, with inspiration from the field of patent law, been foreseen.

The right of prior use is not necessary with respect to Unregistered Community Design as the independent developer of an identical design cannot be considered as an infringer (see Article 20).

Section 5
Invalidity

Article 26

Paragraph (1)

This provision establishes the principle that the invalidity of a Community Design may be only declared by the specialized national courts called Community Design Courts (see Article 84). In the case of a Registered Community Design, however, the jurisdiction of these courts is subject to the condition that the action for invalidity has been raised as a counterclaim in an infringement action (see Article 85(d)), whilst the direct action for invalidity has to be brought before the specific department of the Office (see Article 56 ff).

Paragraph (2)

In some cases there could be an interest in obtaining a declaration of invalidity even after the design has expired or has been surrendered, for example if the design right, prior to its expiry or surrender, has been enforced against a party by a decision which has not yet become final.

Article 27

This important provision contains the exhaustive list of the grounds on which a Community Design can be declared invalid.

Paragraph (1)

The first and most obvious case is when the requirements for protection referred to in Article 4 are not fulfilled (paragraph (1)(a)).

The second ground for invalidity mentioned under paragraph (1)(b) corresponds to the case where the specific features of the design are not eligible for protection because they are entirely dictated by a technical function leaving no freedom for arbitrary design or constitute interconnections (Article 9(1) and (2)). It should be stressed that often this ground of invalidity will only lead to partial invalidity. The provision is most likely to be used in infringement proceedings, where an alleged infringer claims that the design feature he is accused of infringing constitutes an element which is not eligible for protection.

The rules on jurisdiction and procedure including the competence of the Commission to intervene (Articles 56 and 58) concerning the declaration of invalidity are also applicable to the case of partial invalidity.

The third ground for invalidity mentioned under paragraph (1)(c) deals with the cases where a design is contrary to public policy or accepted principles of morality. Although these cases will probably prove to be extremely rare, they raise a difficult question: should the contradiction with public policy or accepted principles of morality be assessed by using a "Community notion" or by reference to a specific national sensitiveness which may vary profoundly from one country to another. Notwithstanding the fact that both in the case of the Community Patent and of the Community Trade Mark the first approach has been followed, it has been felt that this could be

dangerous dealing with design, as it would either imply that the interpretation of these notions would have to take place at the lowest existing level within the 'Community, or that an autonomous interpretation would have to be eventually developed by the Court of Justice which could raise political difficulties. For these reasons, it has been suggested that the invalidity will be declared only in respect of the Member State or States where this ground of invalidity obtains, thereby maintaining the validity of the Community Design in all other Member States (paragraph (3)(a)).

A fourth ground for invalidity (paragraph (1)(d)) concerns the case where the right holder is not the person legitimately entitled, but has, for example, misappropriated the design right. This ground may be operated only by the person legitimately entitled, who has therefore first to act under Article 16 in order to obtain a decision by a court establishing his right to the design. This provision aims at assisting the legitimate right holder in those cases where he prefers to destroy, with *ex-tunc* effect, the misappropriated right rather than to continue the exploitation of the exclusive design right in his own name on the basis of the decision recognizing his entitlement.

Paragraph (2)

A special case of invalidity is dealt with under paragraph (2) and concerns the so-called "earlier rights". This provision deals with the case of those applications for or registered design rights which were already filed with an industrial property office, but not yet made available to the public at the date on which, according to Article 7, the novelty and the individual character of a later Registered Community Design has to be assessed. This is not a theoretical problem, limited to the few months which might run between filing the application and publication of the design right; it also concerns the cases where a registered design right is kept secret by the relevant office under the applicable law. However, in the case of the Registered Community Design in respect of which the publication has been adjourned according to Article 52, the problem will occur only in case of reproduction (see Article 21(2)).

Such anticipations ("earlier rights") are not covered by the provisions of Articles 5 and 6 and cannot be opposed to a later design right, as they are not "disclosures" in a technical sense. It would be, on the other hand, impossible to leave such earlier rights without any defence against later registrations; not only would this be utterly unfair but it would also make completely pointless the mechanism of adjournment of publication known to several national systems and - albeit with protection against reproduction only - also foreseen for the Registered Community Design.

The solution which is suggested consists, therefore, in admitting that the right holders of such earlier rights could invoke them as a ground of invalidity against the later Registered Community Design. The possibility of invoking such a ground would, however, be limited to the right holder of the earlier right and the earlier right could not be invoked by a third alleged infringer.

The favour that the later Registered Community Design deserves with respect to such earlier rights which were not available to the public when the application was first filed justifies a further limitation of this ground for invalidity in the case where the earlier rights are design rights

of one or more Member States and have therefore a territorial validity more restricted than the whole Community. In these cases, the invalidity will be declared only with respect to such State or States, leaving intact the protection offered by the Registered Community Design over the rest of the territory of the Community (paragraph (3)(b)).

Article 28

This provision sets out the principle of the ex-tunc effect of invalidity. Two cases are set out in paragraph (2), where such effect is mitigated: the case of a final court decision on infringement which has been already enforced and a contractual obligation which has already been performed.

TITLE III COMMUNITY DESIGNS AS OBJECTS OF PROPERTY

Articles 29-36

These Articles deal with the Community Design (and the application for a Registered Community Design) as an object of property. The provisions have been closely modelled on the similar provisions already adopted for the Community Patent and the Community Trade Mark. It would seem therefore superfluous to comment on each of them in detail.

TITLE IV THE APPLICATION FOR A REGISTERED COMMUNITY DESIGN

Section 1

Filing of applications and the conditions which govern them

Articles 37-38

These two Articles determine where the application for a Registered Community Design must be filed.

The applicant may choose between filing directly at the Community Design Office or filing at the central industrial property office of a Member State. This option is modelled on the one offered by the Regulation relating to the Community Trade Mark.

Bearing in mind the geographical extension and the linguistic variety of the Community, the possibility to file with a national office represents a facility for those applicants who prefer to establish the first contact with a more familiar authority nearer to their domicile.

The proposal does not, however, oblige each Member State to put at the disposal of their residents the possibility of filing at the national industrial property office but merely allows residents to do this if the law of a Member State so permits. It seems likely that most of the

central offices, in particular their "design departments", will be willing to carry out this task. Belgium, Luxembourg and the Netherlands could entrust this task to the Benelux Design Office at The Hague.

After a running-in period the question of how well the suggested scheme is working will have to be assessed; experience will show whether the applicants' preference goes for a centralized or a decentralized filing. Article 38(3) requires from the Commission a report on the operation of the system after ten years of experience accompanied, if necessary, by proposals for improvement.

If the application is filed with a national office, that office is obliged to forward the application to the Community Office within two weeks from the date of actual filing. The national office can require the payment of a fee to cover the administrative cost of receiving and forwarding the application.

The risk that the application might not reach the Community Office, however minimal, cannot be disregarded (delay or loss of the file during the transfer or as a consequence of a mistake by the national office). To minimize the consequences of such an event it has been foreseen that the Community Office, as soon as an application forwarded by a national office is received, will inform the applicant accordingly. The applicant will therefore be in a position to spot very soon any possible delay or loss of the application if he does not receive from the Community Office a notice of receipt of the application within a reasonable period from the date of filing with the national office. A possible liability of the national office, if from the delay or the loss of the application certain rights of the applicant are lost, would be governed by the national law applicable in the specific case.

Article 39

This Article sets out the conditions with which an application must comply.

An application is made up of a number of elements. Some of them must be present for the application to be valid, others are permissive and depend on the circumstances of the case.

Paragraphs (1), (4)

The necessary elements are the following:

- the request for registration, which will in fact consist in a multilingual form put at the disposal of the applicants by the Community Office and by each national office (paragraph (1)(a));
- information identifying the applicant (paragraph (1)(b));
- a graphic or photographic representation of the design suitable for reproduction (the representation will be used for the publication of the design in the Community Design Bulletin, as it is quite likely that representations of Registered Community Designs will be stored by the Office on optical disks, the Implementing Regulation could establish technical standards to define what is suitable for reproduction) (paragraph (1)(c));
- the mention of the name of the designer or the indication of the team of designers (paragraph (4) - see also Article 16).

Paragraph (3)

The permissive elements are the following:

- a description explaining the graphic or photographic representation (such texts may be helpful in order to identify the specific features of the appearance of the product which constitute the essence of the design and which might not show up very well in a picture or drawing) (paragraph (3)(a));
- an indication of the products in which the design is intended to be embodied and the classification of the products according to the Locarno Agreement (the indication and classification would only be for classification and search purposes, and they would have no impact on the scope of protection of the design right) (paragraph (3)(b) and (c));
- a specimen or sample of the product in which the design is embodied: the specimens or samples could concern two-dimensional (mainly textiles) as well as three-dimensional products. Specific rules will have to be issued in the Implementing Regulation concerning the standards and the maximum sizes such specimens can reach, bearing in mind that they will have to be kept and classified by the Office (paragraph (3)(d));
- a request for adjournment of the publication of the design (paragraph (3)(e) - see Article 52).

Paragraph (2)

The representation of the design suitable for reproduction can be replaced by a specimen or a sample of the design under the following circumstances:

- if the application is for a two-dimensional design; and
- if a request for adjournment of publication of the design is filed.

This provision is intended to meet a specific need of the textile industry, which could use the instrument of the adjournment of publication in order to file a number of applications much higher than the number of designs for which eventually it will need protection. It would be unnecessarily harsh to require this industry to deposit costly photographic or graphic representations for all their applications at this very early stage, whilst filing a specimen or a sample would be easier and cheaper. At the expiry of the period of adjournment, however, for those designs for which protection is going to be maintained, publication in the Design Bulletin will have to take place and, for this purpose, the graphic or photographic representation will have to be filed (see Article 52(4)(b)).

Paragraph (5)

Concerning the fees, it is proposed that the application be subject to the payment of two fees:

- a registration fee;
- a publication fee.

If adjournment of publication is required, the publication fee should be replaced at this stage by a lighter fee for adjournment of publication which should basically cover the cost of the publication of the mention of adjournment (see Article 52(3)).

The amount of these and any other fees provided by the Regulation will be established in accordance with the procedure under Article 127 in a Fees Regulation.

Article 40

Paragraph (1)

The instrument of the "multiple application" is known in several national systems and in the Hague Agreement concerning the international deposit of designs. The aim is to facilitate the filing of applications for those sectors of industry which produce a large number of designs and where the cost and the administrative burden of taking out single design rights for each of them would be too high. The Community Design system, which should be a very modern one and which should be capable of inter-operating with the Hague international deposit system, could not avoid providing for such a possibility.

The provision allows for the combination in one multiple application of a number of Registered Community Designs. No ceiling is set for such a number, contrary to what had been suggested in the Green Paper. The condition is, however, that the products in which the designs are intended to be embodied belong all to the same sub-class according to the Locarno Agreement or to the same set or composition of items. These limitations seem necessary in order to avoid the instrument being used as a way of paying cheaper registration and publication fees by presenting together designs intended for all sort of products. A multiple application must be characterized by a unitary element, which is normally found in the fact that the products all belong to the same sub-class. (The classes under the Locarno Agreement are too broad to comply with this need of unity within a single application). The reference to a sub-class could, however, in certain cases lead to unfair results: a same design could be applied to products which, because of their physical nature, belong to different sub-classes or even classes. One could think of an ornamentation which a manufacturer intends to apply on a set of different household articles (china, glasses, forks, spoons and knives, kitchen furniture, etc.). It would seem appropriate to allow such a manufacturer to file a multiple application for all these different uses of the design. The provision intends also to cover the various possibilities of "interior decoration" resulting from a unitary design idea: this should be covered by the reference to "the same composition of items".

Paragraph (2)

The treatment of a multiple application from the point of view of fees is inspired by the suggestions WIPO has presented for the current revision of the Hague Agreement. Further to the payment of the basic registration and publication fee, the applicant has to pay an additional registration and publication fee which should correspond to a percentage of the basic fees for each additional design. By using such a formula, it is possible to avoid the introduction of a ceiling in the number of designs combined in a multiple application. The amount and a possible variation of such a percentage according to the number of designs will have to be decided in accordance with the fee policy followed by the authority which will adopt the Fees Regulation (see Article 127).

Article 41

This provision defines the date of filing an application (including a multiple application) for a Registered Community Design as being the date on which documents containing the information which must be necessarily present in an application (see Article 39(1) and (2)) are filed either at the Office or at a national central industrial property office (including the Benelux Office). How this date is accorded results from Articles 48 and 49.

Article 42

This provision sets out the general obligation for the purpose of the Regulation to follow the classification provided by the Locarno Agreement of 1968. It should be emphasized again that the use of such a classification, which is based on products, has no impact on the scope of protection of a Community Design.

Section 2 Priority

Articles 43-47

These Articles deal with the question of the right of priority. Designs enjoy, according to the Paris Convention on the protection of Industrial Property, a right of priority of six months. The Registered Community Design, which results from a regional agreement among the EEC Member States which are all parties to the Paris Convention, must therefore benefit from the possibility that a priority is invoked resulting from a prior application for the same design in or for any State party to the Paris Convention.

The possibility of invoking the priority of a Community application for the purpose of obtaining protection in or for a State party to the Paris Convention will have to be negotiated later on within WIPO and will result from the recognition of the Registered Community Design as a valid protection instrument under the Paris Convention. Article 46 already establishes this principle with regard to the EEC Member States, as an application for a Registered Community Design which has been accorded a date of filing is said to be equivalent to a regular national filing in each Member State.

Articles 43 to 47 have been modelled on the almost identical provisions contained in the Community Patent Convention and the Draft Regulation on the Community Trade Mark. It would therefore seem hardly necessary to comment on them in detail.

TITLE V REGISTRATION PROCEDURE

Article 48

As has been stressed in the introductory part above, the registration procedure before the Office must be simple, cheap and rapid. No substantial examination of the compliance of a design with the requirements of protection, nor opposition procedures, are foreseen prior to registration. The Office has only to carry out an examination as to formal requirements, leaving the control of the intrinsic validity of a design to inter partes proceedings before the national courts or the Office after the registration.

Paragraph (1)

This general principle means that the Office will not consider whether an application complies with the requirements for protection, nor whether it raises problems like the possible technical non-arbitrary nature of the features for which protection is sought and which is excluded under Article 9. Nor will it consider non-compliance of the design with requirements of public policy or of accepted principles of morality under Article 10.

Although the Office will not look into the substantial requirements for protection, it should not be required to register a formally correct application for something which is obviously not covered by the definition of design. Should a design right be requested for a musical theme (not the graphic representation of a couple of bars) or for a name or a slogan (not their graphic representation), the Office must be empowered to refuse the application from the outset. Against such a decision the applicant will be in a position to appeal in accordance with Article 59 ff.

Paragraph (2)

This provision indicates the elements that the examination as to formal requirements by the Office will take into consideration. It must first of all be established that the application contains the necessary elements which permit a date of filing to be accorded (elements mentioned in Article 39(1) and (2)). Secondly, the Office has to check the compliance with all the other conditions laid down in Article 39 (mention of the designer or of the team of designers, optional elements, payment of the fees, compliance with the presentation requirements laid down in the Implementing Regulation) and, in the case of a multiple application, with the conditions laid down in Article 40 (optional elements, payment of the additional fees, compliance with the presentation requirements laid down in the Implementing Regulation). Finally, the Office will have to check the requirements concerning any claim to priority resulting from Article 44.

Article 49

This Article indicates the consequences of there being some formal deficiencies in the application. In this case the Office requests the applicant to remedy the deficiencies within a given time limit.

If the deficiencies are remedied in due time, the Office accords a date of filing, but such date will be fixed differently according to the gravity of the deficiencies ascertained. If the deficiencies concerned the existence of a request for registration, the information identifying the applicant,

the representation of the design or, where admissible, the alternative deposit of a specimen or a sample, the date of filing will be the date on which such deficiencies have been remedied. If the deficiencies concern other conditions which the application (or the multiple application) has to meet, the date of filing will remain the date on which the application was presented to the Office or the national office.

If the deficiencies are not remedied in due time, including payment of the fees which are due, the application will be refused. The applicant will have a right of appeal against such a decision by the Office (Article 59 ff).

As to the requirements concerning the right of priority, failure to correct the deficiencies will only result in the loss of the right of priority for the application, which will continue to be processed, but which will be then subject to assessment of compliance with the substantive requirements at the date of filing and not at the earlier date of priority.

Article 50

As soon as an application has been accorded a date of filing, it shall be registered as a Registered Community Design. The date to be mentioned in the Register will be the date of filing. Bearing in mind the simplicity of the examination as to formal requirements and the short time limits which have been foreseen for forwarding the application from a national office to the Office or for remedying existing deficiencies, the date of registration should in principle lie within the six months following the date of actual filing.

Article 51

The registration will be followed as soon as possible by the publication of the Registered Community Design in the Community Design Bulletin. The interval between the registration and the publication will depend, on the one hand, on the time needed for the technical preparation of the publication and, on the other hand, on the frequency of issue by the Office of the Bulletin (e.g. monthly or fortnightly). The provision indicates what must be contained in the publication, leaving to the Implementing Regulation the possibility of prescribing further details.

The provision is based on the idea that the Community Design Bulletin will be issued in the form of a traditional printed magazine, as is now the case in the national system of several Member States and in the Hague international deposit system; it might, however, appear more useful in future, in the light of technological innovation, to allow the Office to choose a more efficient and contemporary way of "making the design right known to the public".

From the point of view of the legal effect, it should be stressed that, technically speaking, the design will be available to the public as from the date on which it has been actually registered and not as from the date on which it is published in the Bulletin. Access to the Register by the public is indeed guaranteed as from this earlier date.

Article 52

This Article introduces the possibility of keeping a Registered Community Design secret for a period not exceeding 30 months. This corresponds to a need of several sectors of industry which feel they cannot afford to publish their designs before the corresponding products reach the market. Particularly in the field of fashion (but the problem is not uncommon also in the domain of cars), letting competitors know in advance the general line of the design of a future collection could jeopardize the success of a commercial operation based on the exclusive character of such a line, as the know-how protection would not be sufficient in such cases to prevent competitors from putting similar (possibly "intelligently similar") designs on the market at the same time or even before the right holder. Secrecy is, in these cases, the necessary answer, but if secrecy were only left to measures inside the undertaking, the risk of losing the protection by a belated application would be too great. Adjournment of publication is therefore the right answer to this need.

Paragraph (1)

The request for adjournment must be filed at the moment of filing the application. The registration procedure is too short to permit that the request be filed at a later date. The period during which the Registered Community Design can be kept secret cannot exceed 30 months from the date of filing or the date of priority. This period should constitute a balance between the need for secrecy set out above and the need for legal certainty and transparency that the existence of unpublished and yet valid designs will certainly hamper.

Paragraphs (2), (3)

If the application accompanied by a request for adjournment of publication is granted a date of filing, the corresponding design is registered within the same time limit and with the same procedure as a normal Registered Community Design. The entry of the representation of the design and the file concerning the application will, however, not be made available to the public.

The public will be informed via the Register and the Bulletin of the identity of the applicant, the duration of the adjournment of the publication of the representation of the design and the date of filing the application.

Paragraphs (4), (5), (7)

At the expiry of the period, or earlier at the request of the right holder, the elements which have been kept secret will be made available to the public by the Office via the Register and the Bulletin, and the date when this occurs will constitute the date of publication. A condition has, however, to be fulfilled: the right holder has to pay the publication fee, which he was spared when filing the application by paying the cheaper fee for adjournment of publication. If, moreover, the right holder has submitted a sample instead of a representation of the design in the cases under Article 39(2), he must supply at this stage the representation suitable for reproduction to permit the publication in the Bulletin. Failure to comply with either of these conditions will lead to the design right losing its effects from the outset.

The right holder in the design may, however, choose to surrender the design right. In that case no publication takes place and the right holder avoids that the design right loses its effects - protection against reproduction (see Article 21(2)) - from the outset.

Paragraph (6)

From what has been set out above it should be clear that the right holder of a Registered Community Design subject to the measure of adjournment of publication enjoys a right, which can be enforced against infringers. In view of the fact, however, that infringers cannot be considered to be aware of the design in view of its secret nature, the right conferred is, as long as no publication has taken place, against reproduction only and the action for enforcement of the rights is subject to a prior communication to the alleged infringer of the whole file, including the representation of the design. This does not imply that the information should also be brought to the knowledge of the public at large.

TITLE VI
TERM OF PROTECTION OF THE REGISTERED COMMUNITY DESIGN

Article 53

This provision, introduced for systematic reasons, confirms what has been stated under Article 13, i.e. that the term of protection of the Registered Community Design is five years as from the date of filing, renewable for periods of five years each, up to a maximum of 25 years.

Article 54

This Article, modelled on the parallel Article in the Draft Regulation concerning the Community Trade Mark, sets out the procedure to follow to renew the protection at the expiry of each period of five years.

The renewal is subject to a request by the right holder or by a person expressly authorized by him: it is felt that the renewal is a sufficiently important act to require such a personal involvement of the right holder and could not be left, for instance, to the sole initiative of a licensee. The renewal is further subject to the payment of a renewal fee which, in the long run, is going to be the basic source of revenues for the Office.

The Office will organize the information of the right holder in good time before the expiry of the design right. The request for renewal and the payment of the fee have to take place during the six months preceding the expiry. A further period of six months after the expiry is, however, accorded for submitting the request and paying the renewal fee provided an additional fee is paid.

TITLE VII
SURRENDER AND INVALIDITY OF THE REGISTERED COMMUNITY DESIGN

Article 55

This provision deals with the surrender of the Registered Community Design at the initiative or with the consent of the right holder. The provision has been modelled on the similar provision concerning the Community Trade Mark.

Articles 56-58

Articles 56 and 57 follow the corresponding provisions introducing the actions for revocation or for invalidity of the Community Trade Mark, and set up a centralized procedure before the Office which should constitute the basic instrument for carrying out the control of the validity of a Registered Community Design after its registration. This procedure can be initiated as soon as the Community Design has been registered or at any point in time during its life or even after it has expired. It answers two kinds of demands: the demand for an immediate reaction after registration by competitors against the claim for protection (this demand is in some Member States covered by the opposition procedure) and the demand for a single attack on the design right for the whole Community at any later time.

In the first case, a quick reaction against a registration by an interested party would prevent enforcement of the design right against him by a national court before the final decision on the validity issue is taken, bearing in mind the provision of Article 95(1). Even if the right holder acts more quickly than the third party and tries to enforce his rights before invalidity proceedings are instituted with the Office, Article 95(2) still gives the possibility to the third party (who has become technically an alleged infringer) to institute such proceedings and to request the national court to stay the infringement proceedings until the Office has decided on the validity issue (this provision leaves a discretion to the national court in order to avoid vexatious proceedings). It should also be stressed that the length of proceedings before the Office may be monitored generally by the way the President manages the Office's operations. This should avoid proceedings being unnecessarily prolonged.

In the second case, the declaration of invalidity would have effect only for the past, but could still be useful for obtaining, for instance, damages for an invalid enforcement of the right. The international composition of the departments of the Office and the skill of their members will be strong guarantees for the value and the impartiality of the decisions of the Office in this field.

The procedure can be initiated by any natural or legal person, including the Commission and Member States, who considers there is good cause to see a Registered Community Design declared invalid. In two cases, however, the entitlement to the action is subject to the proof of a specific interest: if the ground of invalidity invoked is the non-entitlement of the right holder (Article 27(1)(d)) or if the ground invoked is the existence of an "earlier right" within the meaning of Article 27(2).

The procedure is an inter partes procedure which takes place before an Invalidity Division of the Office. It would seem superfluous to describe in detail the provisions concerning the way of instituting such procedure and the examination of the application for invalidity by the department of the Office, as these provisions follow strictly the similar provisions already adopted for such inter partes administrative proceedings for the European Patent (opposition procedure), the Community Patent (revocation procedure) and the Community Trade Mark (revocation and invalidity procedures).

An appeal can be lodged by the losing party against the decision of the Office (Article 59 ff).

Article 58 facilitates access to invalidity proceedings, as long as an invalidity procedure is pending before the Office, by any alleged infringer against whom the right holder is trying to enforce his rights. He has a right to intervene in the proceedings and to develop his own case before the Office.

In addition, the Commission and the Member States are given the right to join the proceedings. This would cover, for example, the situation where the parties might settle out of court without a final decision on invalidity being taken. If the public interest would be best served by continuing to a final decision, the Commission and the Member States are thus given a way of achieving this.

The Commission intends to create a consultative committee to assist the Commission in monitoring registrations at the Office. It is within the powers of the Commission to do so.

The committee, which is to be chaired by a representative of the Commission, will be composed of representatives of Member States and on an ad hoc basis of representatives of industries.

In this way it is intended to ensure that registration practice corresponds to the intentions of the Regulation.

TITLE VIII APPEALS FROM DECISIONS OF THE OFFICE

Articles 59-65

These Articles deal with the appeal procedure which is open to any party to proceedings before the Office adversely affected by a decision of the Office. The right of appeal will therefore exist against decisions taken during the registration procedure (ex-parte procedure) or during the invalidity procedure (inter partes procedure), and also against other types of decisions that the Office might be called to take under the Regulation (e.g. decisions concerning the professional representatives, decisions on the restitutio in integrum, etc.).

This set of provisions is closely modelled on the similar provisions which have been worked out for the Community Trade Mark. As the discussions within the Council on those provisions were not yet concluded when the present proposal was prepared, it is important to note that the content of the present proposal will need to be adapted to take account of any amendment introduced in the Community Trade Mark Regulation which proves acceptable to the Commission in that instance. It is almost superfluous to stress how important it is for the users of the Community Trade Mark and Design systems to be presented with an absolutely unitary appeal mechanism.

Bearing in mind what has been said above it would seem superfluous to comment in detail on each provision about appeals. It should be sufficient to recall that the appeal takes place before one of the Boards of Appeal instituted within the Office and having quasi-jurisdictional character (see also Articles 117 to 120). Against the decisions of the Board of Appeal, a further appeal can be lodged before the Court of Justice. It is to be expected, however, that the Court of Justice will require the Council, in accordance with Article 168a EEC, to assign these cases to the Court of

First Instance, with a possibility of control of the decisions of the latter over questions of law ("contrôle de cassation"). If a decision by a Board of Appeal were considered not to comply with Community law but had not been appealed against by the interested party and thus had become final, the Commission or a Member State could introduce an "appeal in the interest of the law" before the Court of Justice. The ruling of the Court on such an appeal would not affect the decision at issue but should establish the imperative rule to be applied in future in similar cases.

TITLE IX PROCEDURE BEFORE THE OFFICE

Section 1 General provisions

Section 2 Costs

Section 3 Information of the public and of the official authorities of the Member States

Articles 66-80

These Articles contain a number of provisions establishing general rules to be followed during any procedure before the Office. Subject to a few exceptions which will be set out below, these rules have been literally taken over from the similar rules established by the Regulation on the Community Trade Mark. For most of them, an easier way of introducing them in relation to the Community Design Office would have been to refer to the corresponding provisions in the Trade Mark Regulation and to declare them applicable mutatis mutandis in the framework of this Regulation. On reflection, however, it has been considered that it would help the users of the Community Design system to have the entire set of rules applicable set out in one instrument, without being obliged to resort to a different Regulation. This explanatory memorandum will confine itself to considering those provisions where specific rules have been provided, namely Articles 76, 77, 78.

Article 76 establishes the Community Design Register. It makes clear that any entry in the Register must be open to public inspection, except those entries which are subject to the measure of adjournment of publication in accordance with Article 52(2).

Article 77 provides for two periodical publications of the Office: the Community Design Bulletin where the publication of the Registered Community Designs will take place, and the Official Journal of the Community Design Office containing notices and information of general character for the users of the system. It should not be excluded that in future the Official Journal of the Community Design Office be merged with the Official Journal of the Community Trade Mark Office in view of the similarity of contents and of audience.

Article 78 deals with inspection of files and contains a few features dictated by the specificity of the design procedures.

The general principle (Article 78(1)) is that the files relating to applications for Registered Community Designs are not open for public inspection without the consent of the applicant as long as the Registered Community Designs in question have not been published. This provision is supplemented by the exclusion from inspection of the files without the right holder's consent of the files relating to a Registered Community Design which is subject to a measure of adjournment of publication. This exclusion remains valid until the expiry of the adjournment. Should the Registered Community Design be surrendered before or at the expiry of the adjournment, in any event before publication takes place, the file would continue to remain secret indefinitely. There is indeed no reason to open to public inspection a file relating to a design in respect of which the right holder has given up any claim to protection from the outset. No rights can be enforced on the basis of such a Registered Community Design and it seems therefore fair that the person having surrendered the right should recover the right of keeping out of the reach of the public the designs and ideas which were contained in the Registered Community Design which has been abandoned. Except for these cases the files should, as a matter of principle, be open to public inspection.

Article 78(2) establishes an exception to the rule preventing access to a file relating to an application or a design right which has not yet been published or to a design right which has been surrendered before the publication took place. Inspection without the consent of the applicant or the right holder may take place on the basis of a decision of the Office if the person wishing to inspect the file can establish a legitimate interest. This will, in particular, apply if steps have been undertaken by the applicant or the right holder with a view to invoking against the person in question the right under the Registered Community Design. It would only be fair under these circumstances that the person threatened with legal action should have access to documentary evidence which is going to be crucial if the action is eventually initiated.

Section 4 Representation

Articles 81-82

These Articles deal with the question of representation before the Office. The general principles contained in Article 81 are modelled on the rule in the Community Trade Mark Regulation (and, also, like the Regulation, on the rule in the European and Community Patent Conventions). Similarly, Article 82 sets out the principle also contained in that Regulation and the Conventions that the professional representation before the Office may only be undertaken by persons whose names appear on a list of professional representatives maintained by the Office. Alternatively, representation may be undertaken by legal practitioners qualified in a Member State to the extent that they are entitled in that State to act as professional representatives in design matters.

The conditions to be fulfilled in order to be entered on the list have been worked out bearing in mind the specific requirements which can be set for a person wishing to operate before an Office dealing with design law. Further to the requirement of having a place of business or employment within the Community, the candidate for entry on the list must be entitled to represent in industrial property matters before the central property office of the State where he has the place of business or of employment. This very broad requisite covers ability to represent in patent and/or in trademark matters. A logical extension of this broad approach has been to include also persons appearing on the list of professional representatives entitled to represent before the European Patent Office as well as persons whose names appear on the list of professional representatives maintained by the Community Trade Mark Office.

In the Member States where the entitlement to the activity before the central property office is not conditional upon the requirement of a specific professional qualification, which is often the case for representation in trademark matters, such a requirement is replaced by a professional experience of at least five years, unless the law of the Member State concerned recognizes officially such entitlement to the person in question.

TITLE X
JURISDICTION AND PROCEDURE IN LEGAL ACTIONS
RELATING TO COMMUNITY DESIGNS

Section 1
Jurisdiction and Enforcement

Section 2
Disputes concerning the infringement and validity of Community Designs

Section 3
Other disputes concerning Community Designs

Articles 83-98

Articles 83 to 98 deal with the litigation system concerning Community Designs. They have been largely modelled on the corresponding provisions of the draft Regulation on the Community Trade Mark as, in this field as in the field of the procedures before the Office, it is extremely important for the users to be presented with rules which are as unitary as possible. This set of provisions also takes into account, as far as possible, the very similar litigation system established by the Protocol on Litigation annexed to the Agreement relating to Community Patents, except, for obvious reasons, the provisions concerning the role of COPAC.

This explanatory memorandum will therefore be restricted to comments relating to the specific features of the litigation system concerning design rights, without going into details relating to provisions which have already been accepted by the Community or by the Member States in a different context. For this reason, no comment appears on Articles 90, 91, 92, 95, 96 and 97.

In general terms, it should be sufficient to recall that the litigation system sets out the rules relating to jurisdiction and procedure in legal actions concerning a design right which extends its effects to the whole of the Community and the enforcement of which is entrusted basically to the courts of the Member States. This system is articulated in three sections:

- Section 1 enshrining the principle of the application of the Brussels Convention on Jurisdiction and Enforcement;
- Section 2 containing a set of rules replacing or completing the corresponding rules of the Brussels Convention, applicable to disputes concerning the infringement and the validity of a Community Design;
- Section 3 containing some specific rules supplementing the general rules of the Brussels Convention and applicable to other disputes concerning a Community Design.

Article 83, setting out the principle of the application of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, does entirely correspond to the parallel provisions relating to the Community Trade Mark and Community Patent.

The derogations (often more formal than substantial) from the Brussels Convention set out in paragraph (2) are needed to introduce a completely unitary set of rules concerning jurisdiction and enforcement, covering also those cases which, under the Brussels Convention, would be left to the various non-harmonized rules of international private law of the Member States (e.g. when the defendant is not domiciled within the Community). In the absence of a complete and unitary regime, the risk would be great that conflicts of jurisdiction (positive or negative) would arise between courts of different Member States, that contradicting decisions could be pronounced on the same case and finally that "forum shopping" could be used to an extent incompatible with the functioning of an integrated market.

The Regulation does not provide for a transitional provision covering the case where, for some Member States, the Brussels Convention may not yet be in force when the Regulation is applied. This prospect seems so improbable, bearing in mind the rapid progress in the ratification of the San Sebastian Convention of 1989 concerning the accession of Spain and Portugal to the Brussels Convention (which is in force already amongst the other ten Member States), that it would seem politically awkward to envisage such a hypothesis in the Regulation. Any problems which could arise with respect to future members of the Community or within the framework of an extension of the Regulation to the European Economic Space, could be dealt with in the negotiations to be carried out in those contexts.

Article 84 requires the Member States to designate a limited number of national courts of first and second instance which will act as "Community Design Courts", i.e. which will have the exclusive jurisdiction for infringement and validity cases relating to Community Designs. The provision follows entirely the corresponding provisions for setting up the Community Patent Courts and the Community Trade Mark Courts. The wish is expressed that the Member States, in designating such courts, will restrict themselves to the courts mentioned in the Annex to the Protocol on Litigation relating to Community Patents (subject to the necessary completion relating to Spain, Portugal and the new Länder of the Federal Republic of Germany).

The Community Design Courts (Article 85) will have exclusive jurisdiction in infringement actions relating to Community Designs, but also, to the extent that such actions are permitted under the law of the State where the court is situated, in actions relating to threatened infringement and in actions for declaration of non-infringement. As far as validity is concerned, a difference must be drawn between Unregistered and Registered Community Designs.

For Registered Community Designs, a direct action for declaration of invalidity is open before the Office under Article 56 ff of the Regulation. In order to favour this central action, no direct action requiring a declaration of invalidity of a Registered Community Design should be allowed before the Community Design Courts: the defendant in an infringement action should, however, be allowed to raise such a question before the Community Design Courts, provided this is achieved by way of a counterclaim. One might wonder why this limitation, which has been accepted for the Community Patent and Trade Mark, should be maintained dealing with a title of protection which, as in the case of the Registered Community Design, has been accorded without any prior substantial examination or possibility of opposition by interested parties. The Commission feels that, although undoubtedly the Registered Community Design is not as strong a title as a Community Patent or a Community Trade Mark, it would not be excessive to require a person who is attacked on the basis of such a right to react by a counterclaim, and not simply by raising the question of the validity as a defence as to the merits, without simultaneously requiring the judge to decide with effect *erga omnes* on the validity of the design right. The advantage of keeping the Community Design Register "clean" of any rights which have been found invalid by a competent jurisdiction should prevail over the limited procedural onus which is put on the defendant by requiring from him that a counterclaim be formulated.

For the Unregistered Community Designs, no action before central instances has been foreseen; it is therefore necessary to establish rules on jurisdiction for the cases where an action for a declaration of invalidity will have to be brought. Article 85(c) recognizes an exclusive jurisdiction for such a direct action to the Community Design Courts, which would obviously be also exclusively competent if the question of invalidity were to be raised under a counterclaim by the defendant during an infringement action. Although in this case the exclusion of a defence as to the merits submitted otherwise than by counterclaim could not be justified by a reference to a "clean" Register, it would seem, in the interest of the public at large, that an Unregistered Community Design which has been found invalid by a competent judge should, if invoked against third parties in different circumstances, no longer require a second consideration of its validity.

Articles 86 and 87, setting out the rules of international jurisdiction, follow entirely the corresponding provisions relating to the Community Patent and Trade Mark. It should only be recalled that Article 86 will require, like the two corresponding provisions for the Community Patent and Trade Mark, negotiations with the EFTA countries parties to the Lugano Convention on Jurisdiction and Enforcement of 1988, as it contains rules which conflict with the obligations of the Member States resulting from that Convention when the defendant is domiciled in such an EFTA country. The hope is expressed that it will be possible to find a solution to these difficulties within the framework of the European Economic Space.

It should also be stressed that application of Article 86 to direct actions for declaration of invalidity of Unregistered Community Designs (a situation unknown with the Community Patent or Trade Mark) will result in providing one single "forum" within the Community, as the alternative forum of the place where the illegal act has been committed, typical of infringement, would simply not be applicable. The action for a declaration of invalidity will, therefore, have to be brought exclusively in the Member State where the defendant (the right holder) has his domicile. If this criterion fails, the jurisdiction would lie in the Member State where the right holder has an establishment or, successively, where the plaintiff (the person attacking the validity) has his domicile or an establishment, or finally in the Member State where the Office is situated.

Article 89 basically excludes the possibility of invalidity being raised as a defence in an infringement action other than by a way of a counterclaim. This has already been commented upon under Article 85. Paragraph (3) provides, however, an exception to this exclusion, when the defence is based on a claim of invalidity resulting from the existence of an "earlier national right" within the meaning of Article 27(2). As such rights cannot be invoked against a Community Design by persons other than their right holders, it goes without saying that such a defence could only be raised by the right holder of the earlier right. The reason for permitting invalidity to be raised without counterclaim in such a case is that the result of a possible finding that the Community Design is invalid would only be a partial invalidity, because it would be limited to the territory of the Member State or States where the ground for invalidity obtains.

The provision of Article 89(1) is intended to limit abusive claims as to the invalidity of the Community Design. It needs, however, to be supplemented by a provision reversing the onus of proof in cases where the right holder shows that his design has an individual character in the sense that it differs significantly from other designs on the market. If this is the case, it is highly likely that the design in question has been created by the designer himself and not copied. It is, therefore, also likely that it is novel. It appears in this case appropriate that the alleged infringer who challenges the validity of the Community Design by contesting that it is not novel, should be required to produce evidence to show that it is not novel.

A corresponding provision does not appear to be necessary in invalidity proceedings before the Office. Where a third party before the Office makes an application regarding invalidity it goes without saying that the Office will request that he provides further information to sustain his claim.

Article 93 deals with the question of the sanctions in actions for infringement. This is a particularly sensitive question. Interested circles have repeatedly indicated that an efficient enforcement of the rights conferred by the Community Designs and a greater uniformity in the way national courts react against infringement would be fundamental for the success of the Community Design project.

It has to be recognized that, in the present stage of European integration, it is difficult to intervene on matters where the traditions and the substantive and procedural rules of civil law applied by the courts of the Member States differ profoundly. The basic rule should, therefore, remain that each national court will apply the sanctions provided by the law of the Member State where it is situated in order to enforce the rights violated by an infringement. This will in particular apply to "damages", where the differences of approach in the various jurisdictions are

so great that it would be pointless to try to find some common denominator in the limited specific field of design protection. The whole problem of more uniform sanctions in respect of non-contractual liability should be solved at Community level in more general terms in the perspective of the functioning of the internal market.

Pending future initiatives in this respect, the obligations of Member States under existing international treaties and treaties presently under discussion as regards enforcement of intellectual property rights are recalled.

Notwithstanding the difficulties, some progress can be achieved in this field by providing some common instruments and by requiring the judge to have recourse to such instruments if the conditions set out in the provision are met. The provision mentions three common sanctions:

- the court order prohibiting the infringer from proceeding with the infringing acts;
- the seizure of the infringing products;
- the order addressed to the infringer to provide information concerning the origin and the commercial channels of the infringing products.

The prohibition against continuing with the infringing acts has already been accepted as a common sanction for the Community Patent and Trade Mark. If the court finds that the defendant has infringed or threatened to infringe a Community Design, it must pronounce such an order of prohibition, unless there are special reasons for not doing so. The legal means to ensure that such an order will be complied with shall be determined by the lex fori.

The seizure of the infringing goods and the order to supply information have also, unless there are special reasons for not doing so, to be pronounced by the judge if he finds that a Community Design has been infringed (threatened infringement does not play a role in such a case). Such special reasons might arise, for example, if under the given circumstances a seizure of the goods would be pointless, or unduly harsh. Similarly, in certain cases the order to provide information could be void of any meaning, if for instance the infringer is the manufacturer of the infringing goods. The judge has, however, to justify in each decision the reasons why he has felt that, under the given circumstances, it would not have been appropriate to apply one or both of these sanctions, thus permitting a legal control of the application of this provision by the further instances.

Article 94 deals with provisional, including protective, measures. Paragraphs (1) and (3) correspond literally to the similar provisions adopted for the Community Patent and Trade Mark except that the right to request information concerning the origin of an allegedly infringing product (Article 93(2)(a)) has been made explicitly applicable. Some commentary is needed for paragraph (2) which is new.

The prohibition against invoking the invalidity of a Community Design as a defence otherwise that by way of counterclaim (see Article 89) is intended to apply in the course of the main action for infringement. Normally, however, actions for infringement are preceded or accompanied by requests for provisional measures which play an extraordinarily important role in procedural tactics. Obliging a defendant to raise the defence of invalidity by counterclaim in the framework of a procedure for a provisional measure would be simply unfair. Moreover, many legal systems

do not allow a counterclaim during a procedure which by definition must be speedy and based on prima facie considerations. It would, on the other hand, be unjustified to prohibit the defendant from raising the invalidity of the Community Design as a defence, as the arguments he could develop could be extremely useful for the judge in taking his decision. For these reasons, it has been specifically indicated that the defence of invalidity may be raised by the defendant in those proceedings otherwise than by way of counterclaim. The provision of Article 89(2) on the onus of proof is, however, equally applicable in this case.

Article 98, which concerns actions relating to Community Designs other than infringement or invalidity actions, extends to such actions the prohibition of invoking invalidity of the Community Design as a defence otherwise than by way of counterclaim, as well as the two exceptions provided for in the cases of "national earlier rights" and of "provisional, including protective, measures".

TITLE XI EFFECTS ON THE LAWS OF THE MEMBER STATES

Article 99

The creation of the Community Design raises the question of the relationship of this new title of protection with the existing national registered design rights which are the object of the parallel proposal for a Directive for harmonization of the basic provisions of substantive law applicable to them. Although the Commission hopes that the Community Design system, thanks to its modern conception and to its low-cost and user-friendly procedural mechanisms, will rapidly occupy a prevalent position, it would be illusory to think that the existing and experienced national legal instruments could be immediately abandoned. National registered design rights and Community Designs are therefore going to co-exist in the next years and the question of their relationship has to be clarified.

Contrary to what had been suggested in the Green Paper, the Commission has been convinced by the remarks of the interested circles that, if the two forms of protection are going to co-exist, there is no valid reason to provide that, if the same design is protected by both a Community Design and a national design right, the latter should become ineffective. It might well be pointless for a right holder to keep for the same design parallel protections valid on the same territory and, after the harmonization, subject to identical rules of substantial law and conferring an identical scope of protection. The decision to abandon superfluous national protections, however, should be left with the right holders and not be imposed by the law-maker. The conclusion is that it will be perfectly feasible for a right holder to maintain for the same design parallel protections consisting of a Community Design and one or several national registered design rights. This "cumulation" of protection of the same design by different titles having the same nature has a precedent in the draft Regulation on the Community Trade Mark which also permits the co-existence of identical national and Community Trade Marks in the hands of the same right holder.

Having established this line of policy, the Commission has, however, felt that, just as in the case of the Community Trade Mark, it could be avoided that the right holder should bring abusive legal actions involving the same cause of action between the same parties, by invoking one of the co-existing rights after a competent court has already decided the issue on the basis of the parallel right. Article 99, modelled on a similar Article in the draft Regulation on the Community Trade Mark, empowers the courts to prevent the consequences of such vexatious actions.

Article 100

This is a fundamental provision, setting out the rule governing the relationship between the protection resulting from the Community Design system and the protection that a design can obtain under other legal instruments offered by Community or national legislations.

The general principle on which this provision is based is "cumulation": if a design protected by a Community Design can also be protected under Community or national law by a different legal instrument, the existence of the protection under the Community Design system should constitute no hindrance for the right holder to invoke such further protection. Whilst paragraph (1) establishes this principle for a number of specific forms of protection, paragraphs (2) and (3) deal with the most important and common form of concurrent protection, the protection under copyright law.

Paragraph (1)

Paragraph (1) mentions as typical forms of protection which could, under specific circumstances, co-exist with the protection under Community Design, trademarks or other protected distinctive signs, patents and utility models, typefaces, civil liability and unfair competition.

Trademarks means, first of all, national trademarks of the Member States, including those resulting from an international filing under the Madrid Agreement. Cumulation of protection of a Community Design is also possible with a Community Trade Mark, the creation of which is close-at-hand. The reference to other distinctive signs should cover a number of rights which are acknowledged under the national legal systems, for instance to commercial names or "enseignes".

The reference to patents covers both national and European Patents designating Member States and will also cover Community Patents. The reference to utility models concerns those Member States which provide such an instrument (actually only Germany, Italy, Greece, Spain and Portugal and, more recently, Denmark), but it should also cover the "unregistered design right" introduced in the United Kingdom by the 1988 Act on Copyright, Designs and Patents and which constitutes a different answer to the need for protection of technical innovation not reaching the level required for patent protection.

Typefaces have been mentioned to make sure that the specific protection afforded to these designs in some Member States, particularly those which have ratified the 1973 Vienna Convention, is covered.

Finally, civil liability and unfair competition have been mentioned, which can be very useful instruments supplementing the specific protection of design.

Cumulation with the protection of topographies of semi-conductor products has not been mentioned for the reasons stated in the comments to Article 3.

Paragraph (2)

Paragraph (2) contains the basic rule of the cumulation of the protection under the Community Design system and the protection under copyright law.

The attitude of the legislations of the Member States toward copyright protection of design varies enormously, as it has been shown in the Green Paper and confirmed by all the comparative studies which have been conducted on this subject.

The Commission wishes to stress that it remains attached to the policy set out in the Green Paper in this respect. The smooth functioning of the internal market for products embodying design is going to be fully achieved only if the Community Design system is supplemented by harmonized national rules of copyright law relating to the protection of design. This is, however, a formidable task which needs intense preparation, further comparative studies and contacts with national authorities and interested or academic circles. If the introduction of the Community Design should be subordinated to the achievement of such an harmonization, the urgent need of giving to design industry an efficient tool for the internal market could not be satisfied within a reasonably short period. It is, however, important that the Member States be aware of the Commission's intention to proceed in the direction indicated: acceptance of the principle of "cumulation" of protection, as defined in this paragraph would constitute their first contribution in this direction. It should also be stressed that it would be difficult to require Member States which traditionally attach the utmost importance to protection of design by copyright, like France or the Benelux States, to accept the "market oriented approach" of this Regulation, if they were not sufficiently satisfied that harmonized rules of copyright law will be laid down at Community level in order to protect the creativity aspect of the activity of design.

Accepting the principle of "cumulation" should not, however, prevent the Member States who already apply such a principle under restrictive conditions (Germany, Spain, Portugal, Denmark, Ireland) from continuing to do so. For the time being, the extent and the conditions of protection, including the level of originality required, would continue to be autonomously determined by each Member State. The introduction in the Regulation of the principle of "cumulation" would, on the contrary, have an immediate impact for Italy, where the principle of "cumulation" is excluded by the existing legislation.

Further to acceptance of the principle of "cumulation", this paragraph requires the abolition by the Member States concerned of a few provisions of copyright law which, because of their outdated character, would jeopardize the application of cumulation.

The Common Law countries apply a rule (the legal instruments differ in Ireland and in the United Kingdom, but the result is the same) under which the possibility of protecting a design by copyright is linked to the number of products in which the design is intended to be embodied. Should such a number exceed 50, the protection under copyright law could no longer be

afforded (Ireland) or the term of protection would be dramatically reduced (United Kingdom). Such an arbitrary figure, which finds a historical explanation in the practice of the national industrial property offices in the first years of this century, should no longer have a place in contemporary protection of works of applied arts.

In Italy, the copyright law subordinates protection to the condition of "scindibilità" (possibility of separating the work of applied art from the product in which the work is embodied). The interpretation given by the case-law to this notion has led to the impossibility for modern industrial design to benefit in Italy from copyright protection, even for the most prestigious and authoritative creations by contemporary artists, whilst protection can be recognized to two-dimensional ornamental designs even with a very low originality level. The Commission considers appropriate, and its feeling is indeed supported by the very strong request in this sense expressed by all the interested circles, that such a provision should be abolished without awaiting the future harmonization.

Paragraph (3)

Paragraph (3) deals with another urgent problem linked with the application of the principle of cumulation of design protection with copyright protection. The Green Paper has set out the problem raised by a provision of the Berne Convention which permits States party to this Convention to accord protection under copyright law to designs having their origin in another State party to the Convention only under the requirement of "reciprocity". If in the country of origin of the design, protection can be accorded only in the specific form of a registered design right, it is only in this form that protection can be invoked in the other States parties to the Berne Convention, but not under copyright law.

This provision, legitimate in an international context where, in the absence of elaborated rules as in the field of patents or trademarks, it is difficult to entirely rely on the principle of "national treatment", raises a difficulty if applied in an intra-Community context. It is obvious that this provision leads to a discrimination in the treatment of the persons seeking protection according to the country where the design has its origin. An Italian undertaking - but often a German undertaking as well - will be denied in France or in the Benelux countries protection under copyright law for its designs on the ground that such designs cannot be protected under present Italian legislation (or can only in very rare case be protected under German legislation) by Italian (or German) copyright law. The same designs, however, would benefit from full copyright protection in France or in the Benelux if their origin had been in those countries.

The introduction of the principle of "cumulation" in paragraph (2) and the elimination of the most blatant limitation of copyright protection in Italy by the abolition of the condition of "scindibilità" should lead the countries which accord a very generous protection to design under their copyright legislation to accept to give up this practice of discrimination in intra-Community relationship.

**TITLE XII
THE COMMUNITY DESIGN OFFICE**

**Section 1
General provisions**

**Section 2
Management of the Office**

**Section 3
Administrative Board**

Articles 101-112

These Articles deal with the general nature and the management of the Community Design Office, the Community body which will have the task of monitoring the procedures relating to the Registered Community Design under this Regulation.

The provisions reflect the relevant provisions of the Regulation on the Community Trade Mark. For example, the status of its staff, its privileges and immunities, its languages of procedure will be the same as those adopted for the Trade Mark Office. The seat of the Community Design Office will be located at the seat of the Community Trade Mark Office.

**Section 4
Implementation of procedures**

Articles 113-119

These provisions enumerate the departments of the Community Design Office which will be competent for dealing with the procedures under this Regulation.

Four departments have been foreseen:

- the Formalities Examining Divisions, in charge of the examination as to formal requirements of an application for a Registered Community Design, up to the decision of registration;
- the Design Administration and Legal Division, competent for any decision required by the Regulation which does not fall within the competence of a Formalities Examining Division or of an Invalidity Division. It will, in particular, deal with decisions concerning entries in the Register and keeping the list of professional representatives;
- the Invalidity Divisions, in charge of the procedures for a declaration of invalidity;
- the Boards of Appeal, responsible for deciding on appeal against decisions of any other department of the Office.

In view of the quasi-jurisdictional character of the Boards of Appeal, Article 118 sets out guarantees of independence of their members which are modelled on those contained in the Trade Mark Regulation for the members of the Boards of Appeal set up under that instrument.

Article 120

During the running-in period of the Community Design Office, the number of cases to be dealt with by the Invalidity Divisions and by the Boards of Appeal will be necessarily modest and will then progressively increase, possibly at a different pace for the two departments, until it justifies a complement of permanent staff of the Office to man these departments.

Before this stage is reached, it has been considered appropriate to give the President of the Office the possibility to appoint for the tasks to be carried out by these two departments persons having experience in matters of design law on a short-term basis. The requirements to be fulfilled by such persons differ for the two departments and are obviously higher for the function of members of a Board of Appeal. In the latter case also, in order to safeguard the principle of independence of the members, the short-term contract may not be for less than one year.

The competence for deciding when the transitional period will expire for each of these two departments so that they also will have to be staffed by full-time members will lie with the Commission on a proposal by the President of the Office.

Section 5 Financial provisions

Articles 121-122

These Articles deal with the budgetary and financial rules applicable to the Community Design Office.

TITLE XIII FINAL PROVISIONS

Article 123

The official languages and languages of procedure of the Office are to be the same as those of the Community Trade Mark Office. The rules governing how a language may be chosen in any of the procedures before the Office will be somewhat simpler for the Community Designs Office, because there will be no opposition procedure. The rules will be determined in the implementing regulations, once the Community Trade Mark Regulation is finalized.

Article 124

This provision deals with the Implementing Regulation. An Implementing Regulation is indispensable to permit the various procedures before the Office to be operated in an efficient and clear manner. A number of procedural details (the length of certain time limits, the details of presentation of the applications, etc.) will have to be established so that the users of the system would know how to act in practice, within the framework of the fundamental rules established by the main Regulation. The practice of adopting an Implementing Regulation under a less

rigorous procedure than the main legal instrument, in order to facilitate the adoption of amendments to adapt the rules to future needs, is a common practice in the field of industrial property and has been already applied in the case of the European Patent, Community Patent and Community Trade Mark.

It is proposed that the competence and the procedure for adoption of the Implementing Regulation should be the same as for the Fees Regulation, for the reasons set out below under Articles 126 and 127.

Article 125

A system of exchange of information on the decisions taken by various Community Design Courts and the departments of the Office concerning interpretation of the requirements for protection should contribute significantly to the unifying effect of future case law of the Court of Justice in this area. It would cover both Community Design and design rights of Member States. The information resulting from this system will be the subject of exchanges of views at regular intervals within the Administrative Board (Article 109). In this manner, the Commission could assess in full knowledge of the opinion of the Board whether and when a new initiative would be useful in order to adapt the rules relating to the requirements of protection.

Articles 126-127

Article 127 concerns the Fees Regulation. It enshrines the fundamental principle that the amounts of the fees will have to be set at such a level as to ensure that the revenue of the Community Design Office will be, in principle, sufficient for the Office's revenue and expenditure to be balanced. The self-supporting character of the Community Design Office must therefore be guaranteed by an appropriate level of fees. As has been already stressed, particular importance will attach in this context to the renewal fee, whose possibly progressive structure will have to be determined by the authority adopting the Fees Regulation.

It is in conformity with the Community institutional system as it results from the so-called "comitology" Decision that the adoption of the Fees Regulation, in view of its character of secondary legislation with respect to the present main Regulation, should be the task of the Commission (Article 126).

Article 128

This final provision introduces a distinction between the moment when the Regulation will enter into force, i.e. will become law having legal force within the Community, and the moment when the actual application of its rules will start, in particular when the Community Design Office will open its doors to the public.

The formal entry into force can be fixed on the sixtieth day following the publication of the Regulation in the Official Journal of the European Communities. A longer period is necessary to prepare the opening of the Office. An important preparation effort has to be performed to this effect: working out and adoption of the Implementing Regulation, choice of the main members of the staff which will start the operation of the Office, first of all the President, choice and

arrangement of the building where the Community Design Office will be located. These are only some of the many tasks which need to be achieved before the Office can be opened to the public. The burden of preparing the opening will fall on the services of the Commission, which will need support from the specialists from the various Member States.

The Commission hopes that it should be possible to open the Community Design Office to the public three years after the date of final adoption of this Regulation.

**Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL REGULATION**

on the Community Design

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

- (1) Whereas the objectives of the Community as laid down in the Treaty include establishing an ever closer union among the peoples of Europe, fostering closer relations between the States belonging to the Community, and ensuring the economic and social progress of the Community countries by common action to eliminate the barriers which divide Europe; whereas to that end the Treaty provides for the establishment of an internal market and includes the abolition of obstacles to the free movement of goods and the institution of a system ensuring that competition in the common market is not distorted; whereas a unified system for obtaining a Community Design to which uniform protection is given with uniform effect throughout the entire territory of the Community would further those objectives;
- (2) whereas only the Benelux countries have introduced a uniform design protection law; whereas the only other design protection that exists in the Community is a matter for the relevant national law and is confined to the territory of the Member State concerned; whereas there is no such relevant law in any one Member State at the present time; whereas identical designs may be protected differently in different Member States and for the benefit of different owners; and whereas this inevitably leads to conflicts in the course of trade between Member States;
- (3) whereas the substantial differences between Member States' design laws prevent and distort Community-wide competition between the producers of protected goods, because in comparison with domestic trade in, and competition between, products incorporating a design, trade and competition within the Community are prevented and distorted by the large number of applications, offices, procedures, laws, nationally circumscribed exclusive rights and the combined administrative expense with correspondingly high costs and fees for the applicant;

⁽¹⁾ OJ No

⁽²⁾ OJ No

- (4) whereas the effect of design protection being limited to the territory of the individual Member States, whether or not their laws are approximated, leads to a possible division of the internal market with respect to products incorporating a particular design in areas with different right owners, and hence constitutes an obstacle to the free movement of goods;
- (5) whereas this calls for the creation of a Community design right which is directly applicable in each Member State, and of a Community design authority with Community-wide powers, because only in this way will it be possible to obtain, through one application made to one common design office in accordance with a single procedure under one law, one design right for one area encompassing all Member States;
- (6) whereas it is thus for the Community to adopt measures to achieve those objectives, which cannot be achieved by the Member States acting individually and which by reason of the scale and the effects of the creation of a Community design right and a Community design authority can only be achieved by the Community;
- (7) whereas superior design is an important attribute of Community industries in competition with industries from other countries, and is in many cases decisive in the commercial success of the associated product; whereas enhanced protection for industrial design not only promotes the contribution of individual designers to the sum of Community excellence in the field, but also encourages innovation and development of new products and investment in their production; whereas a more accessible design-protection system adapted to the needs of the internal market is therefore essential for Community industries;
- (8) whereas such a design-protection system would constitute the prerequisite for seeking corresponding design protection in the most important export markets of the Community;
- (9) whereas designs produced to meet a functional requirement and providing no opportunity for inclusion of further and arbitrary design features should, however, be excluded from such protection;
- (10) whereas interoperability of products of different makes should not be hindered by extending the protection to the design of mechanical fittings;
- (11) whereas mechanical fittings may nevertheless constitute an important element of the innovative characteristics of modular products especially designed to enable any number of such products, which may be identical or different but interchangeable, to be connected simultaneously in a modular system, and therefore should be eligible for protection; but whereas this derogation should not prevent the replacement of one part of a non-modular system by a part of different make solely because the replacement part must possess a particular shape and configuration in order for the parts to work together in performing the intended function of the system;

- (12) whereas the legal protection of design might in certain circumstances allow the creation of monopolies in generic products and captive markets by improperly binding consumers to a specific make of product and thus the introduction of a provision is necessary in order to make the reproduction of designs applied to parts of complex products possible for repair purposes under very specific conditions;
- (13) whereas the provisions of this Regulation are without prejudice to the application of the competition rules under Articles 85 and 86 of the Treaty;
- (14) whereas a Community design right should serve the needs of all sectors of industry in the Community; whereas those sectors are many and varied;
- (15) whereas some of the sectors produce large numbers of designs for products frequently having a short market life where protection without the burden of registration formalities is an advantage and the duration of protection is of lesser significance; whereas, on the other hand, there are sectors of industry which value the advantages of registration for the greater legal certainty it provides and which require the possibility of a longer term of protection corresponding to the foreseeable market life of their products;
- (16) whereas this calls for two forms of protection, one being a short-term unregistered design right and the other being a longer term registered design right;
- (17) whereas a registered Community design right requires the creation and maintenance of a register in which will be registered all those applications which comply with formal conditions and which have been accorded a date of filing; whereas the performance of those functions requires a Community Design Office; whereas the registration system should not be based upon substantive examination as to compliance with requirements for protection prior to registration, thereby keeping to a minimum the registration and other procedural burdens on applicants;
- (18) whereas a Community Design right shall not be upheld unless the design is new in the sense that it is not identical to any other design previously made available to the public, and unless it also possesses an individual character in comparison with other designs which are currently exploited in the market, or which have previously been published following registration as being still valid Community Designs or still valid design rights of a Member State;
- (19) whereas it is also necessary to allow the designer or his successor in title to test the products embodying the design in the market place before deciding whether the protection resulting from a Registered Community Design is desirable; whereas it is therefore necessary to provide that disclosures of the design by the designer or his successor in title, or abusive disclosures, during a period of 12 months prior to the date of the filing of the application for a Registered Community Design should not be prejudicial in assessing the novelty or the individual character of the design in question;

- (20) whereas the exclusive nature of the right conferred by the Registered Community Design is consistent with its greater legal certainty; whereas it is appropriate that the Unregistered Community Design should, however, constitute a right only to prevent copying and whereas this right should also extend to trade in products embodying infringing designs;
- (21) whereas the enforcement of these rights is to be left to national laws and it is necessary therefore to provide for some basic uniform sanctions in all Member States; whereas these should make it possible, irrespective of the jurisdiction under which enforcement is sought, to stop the infringing acts, to obtain information about the infringer's source and distribution channels, and to seize infringing products;
- (22) whereas a procedure for hearing actions concerning validity of a Registered Community Design in a single place would bring savings in costs and time compared with procedures involving different national courts; whereas, if the single place were to be a court in the country where the design right holder is domiciled, undue costs and difficulties could still be encountered by a challenger to validity from another country; whereas it is appropriate in these circumstances that the Community Design Office itself should hear direct actions raised by the Commission, Member States and third parties against validity;
- (23) whereas in particular the intervention of the Commission and Member States would contribute significantly to maintaining consistency of practice as regards the requirements for protection;
- (24) whereas it is necessary to provide safeguards including a right of appeal to a Board of Appeal, and ultimately to the Court of Justice of the European Communities; whereas such a procedure would assist the development of uniform interpretation of the requirements governing the validity of Community Designs;
- (25) whereas it is a fundamental objective that the procedure for obtaining a Registered Community Design should present the minimum cost and difficulty to applicants, so as to make it readily available to small and medium-sized enterprises as well as to individual designers;
- (26) whereas sectors of industry producing large numbers of possibly short-lived designs over short periods of time of which only some may be eventually commercialized will find advantage in the Unregistered Community Design; whereas there is also a need for these sectors to have easier recourse to the Registered Community Design; whereas the option of combining a number of designs in one multiple application would satisfy that need;
- (27) whereas the normal publication following registration of a Community Design could in some cases destroy or jeopardize the success of a commercial operation involving the design; whereas the facility of an adjournment of publication for a reasonable time affords a solution in such cases;

- (28) whereas it is essential that the rights conferred by the Community Designs be enforced in an efficient manner throughout the territory of the Community; whereas specific rules concerning litigation based on Community Designs must be provided in order to guarantee such a result; whereas for infringement actions and for actions for a declaration of invalidity a limitation in the number of national courts having jurisdiction may promote the specialization of the judges; whereas to that end Member States should designate Community Design Courts;
- (29) whereas the litigation system should avoid as far as possible "forum shopping"; whereas it is therefore necessary to establish clear rules of international jurisdiction;
- (30) whereas this Regulation does not preclude the application to designs protected by Community Designs of other relevant laws of the Member States, such as those relating to design protection acquired by registration or those relating to unregistered design rights, trademarks, patents and utility models, unfair competition or civil liability;
- (31) whereas, pending harmonization of copyright law, it is important to establish the principle of cumulation of protection under the Community Design and under copyright law, whilst leaving Member States free to establish the extent of copyright protection and the conditions under which such protection is conferred; whereas in the relationship between Member States, Community law already prohibits Member States from requiring that protection under copyright law be afforded only subject to reciprocity; whereas it appears necessary that national legal provisions and practice incompatible herewith be abolished,

HAVE ADOPTED THIS REGULATION:

TITLE I GENERAL PROVISIONS

Article 1 Community Design

- (1) Designs which comply with the conditions contained in this Regulation, hereinafter referred to as "Community Designs", shall be protected by a Community system of rights.
- (2) A design shall be protected under the terms of this Regulation:
- (a) by an "Unregistered Community Design", without any formalities;
 - (b) by a "Registered Community Design", if registered in the manner provided for in this Regulation.
- (3) A Community Design shall have a unitary character. It shall have equal effect throughout the Community; it shall not be registered, transferred or surrendered or be the subject of a decision declaring it invalid, save in respect of the whole Community. This principle and its implications shall apply unless otherwise provided in this Regulation.

Article 2
Community Design Office

A Community Design Office, hereinafter referred to as "the Office", is hereby established.

TITLE II
THE LAW RELATING TO DESIGNS

Section 1
Requirements for protection

Article 3
Definitions

For the purposes of this Regulation:

- (a) "design" means the appearance of the whole or a part of a product resulting from the specific features of the lines, contours, colours, shape and/or materials of the product itself and/or its ornamentation;
- (b) "product" means any industrial or handicraft item, including parts intended to be assembled into a complex item, sets or compositions of items, packaging, get-ups, graphic symbols and typographic typefaces, but excluding a computer program or a semi-conductor product.

Article 4
General requirements

- (1) A design shall be protected by a Community Design to the extent that it is new and has an individual character.
- (2) A design of a product which constitutes a part of a complex item shall only be considered to be new and to have an individual character in so far as the design applied to the part as such fulfils the requirement as to novelty and individual character.

Article 5
Novelty

- (1) A design shall be considered to be new if no identical design has been made available to the public before the date of reference. Designs shall be deemed to be identical if their specific features differ only in immaterial details.
- (2) A design shall be deemed to have been made available to the public if it has been published following registration or otherwise, exhibited, used in trade or otherwise disclosed. It 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.

Article 6
Individual character

- (1) A design shall be considered to have an individual character if the overall impression it produces on the informed user differs significantly from the overall impression produced on such a user by any design referred to in paragraph (2).**
- (2) To be considered for the purpose of application of paragraph (1), a design must be:**
 - (a) commercialized in the market place at the date of reference whether in the Community or elsewhere; or**
 - (b) published following registration as a Registered Community Design or as a design right of a Member State, provided that protection has not expired at the date of reference.**
- (3) In order to assess individual character, common features shall as a matter of principle be given more weight than differences and the degree of freedom of the designer in developing design shall be taken into consideration.**

Article 7
Date of reference

The date of reference within the meaning of the first sentence of Articles 5(1) and Article 6(2) shall be:

- (a) in the case of an Unregistered Community Design, the date on which the design for which protection is claimed was first made available to the public by the designer or his successor in title or by a third person as a result of information provided or action taken by the designer or his successor in title;**
- (b) in the case of a Registered Community Design, the date of filing the application for registration or, if a priority is claimed, the date of priority.**

Article 8
Non-prejudicial disclosures

- (1) If a design for which protection is claimed under a Registered Community Design has been made available to the public by the designer or his successor in title or by a third person as a result of information provided or action taken by the designer or his successor in title or as a consequence of an abuse in relation to the designer or his successor in title during the twelve-month period preceding the date of the filing of the application or, if a priority is claimed, the date of priority, such disclosure shall not be taken into consideration for the purpose of applying Articles 5 and 6.**
- (2) The provisions of paragraph (1) shall not apply if the subject of the abusive disclosure is a design which has resulted in a Registered Community Design or a design right of a Member State.**

Article 9
Non-arbitrary technical designs, and designs of interconnections

- (1) A Community Design right shall not subsist in a design to the extent that the realization of a technical function leaves no freedom as regards arbitrary features of appearance.
- (2) A Community Design right shall not subsist in a design to the extent that it must necessarily be reproduced in its 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 assembled or connected with another product.
- (3) Notwithstanding paragraph (2) a Community Design right shall under the conditions set out in Articles 5 and 6 subsist in a design serving the purpose of allowing simultaneous and infinite or multiple assembly or connection of identical or mutually interchangeable products within a modular system.

Article 10
Designs contrary to public policy

A Community Design right shall not subsist in a design the exploitation or publication of which is contrary to public policy or to accepted principles of morality.

Section 2
Scope and term of protection

Article 11
Scope of protection

- (1) The scope of the protection conferred by a Community Design shall include any design which produces on the informed user a significantly similar overall impression.
- (2) In order to assess the scope of protection, common features shall as a matter of principle be given more weight than differences and the degree of freedom of the designer in developing his design shall be taken into consideration.

Article 12
Commencement and term of protection of the Unregistered Community Design

A design which meets the requirements under Section 1 shall be protected without any formalities by an Unregistered Community Design for a period of three years as from the date referred to in Article 7(a).

Article 13

Commencement and term of protection of the Registered Community Design

Upon registration by the Office, a design which meets the requirements under Section 1 shall be protected by a Registered Community Design for a period of five years as from the date of the filing of the application. The term of protection may be extended in accordance with Article 53.

Section 3

Entitlement to the Community Design

Article 14

Right to the Community Design

- (1) The right to the Community Design shall vest in the designer or his successor in title.
- (2) Where a design is developed by an employee in the execution of his duties or following the instructions given by his employer, the right to the Community Design shall vest in the employer, unless otherwise provided by contract.

Article 15

Plurality of designers

If two or more persons have jointly developed a design, the right to the Community Design shall vest in them jointly.

Article 16

Claims relating to the entitlement to a Community Design

- (1) If the right to an Unregistered Community Design is claimed by, or a Registered Community Design has been registered in the name of, a person who is not entitled to it under Article 14, the person entitled to it under that provision may, without prejudice to any other remedy which may be open to him, claim to have the Community Design transferred to him.
- (2) Where a person is jointly entitled to a Community Design, that person may, in accordance with paragraph (1), claim to be made a joint holder.
- (3) In the case of a Registered Community Design, legal proceedings to seek the transfer under paragraph (1) may be instituted only within a period of not more than two years after the date of publication of the Registered Community Design. This provision shall not apply if the holder of the Registered Community Design knew that he was not entitled to it at the time when such Design was registered or transferred to him.
- (4) In case of a Registered Community Design, the fact that legal proceedings under paragraph (1) have been instituted shall be entered in the Register. Entry shall also be made of the final decision in, or of any other termination of, the proceedings.

Article 17

Effects of a judgment on entitlement to a Registered Community Design

- (1) Where there is a complete change of ownership of a Registered Community Design as a result of legal proceedings under Article 16(1), licences and other rights shall lapse upon the entering in the Register of the person entitled.
- (2) If, before the institution of the legal proceedings under Article 16(1) has been registered, the holder of the Registered Community Design or a licensee has exploited the design within the Community or made serious and effective preparations to do so, he may continue such exploitation provided that he requests within the period prescribed by the Implementing Regulation a non-exclusive licence from the new holder whose name is entered in the Register. The licence shall be granted for a reasonable period and upon reasonable terms.
- (3) Paragraph (2) shall not apply if the right holder or the licensee was acting in bad faith at the time when he began to exploit the design or to make preparations to do so.

Article 18

Presumption in favour of the registered person

The person in whose name the application for a Registered Community Design was filed shall be deemed to be the person entitled in any proceedings before the Office.

Article 19

Specific rights of the designer

The designer shall have the right, as against the applicant for or the holder of a Registered Community Design, to be cited as such before the Office or in the Register. If the design is the result of team-work, the indication of the team may replace the citation of the individual designers.

Section 4

Effects of the Community Design

Article 20

Rights conferred by the Unregistered Community Design

An Unregistered Community Design shall confer on its holder the right to prevent any third party not having his consent from copying the design or from using a design included within the scope of protection of the Unregistered Community Design and resulting from such copying. The aforementioned use shall, in particular, cover the making, offering, putting on the market or using of a product in which such a design is incorporated or to which it is applied, and the importing, exporting or stocking of such a product for those purposes.

Article 21
Rights conferred by the Registered Community Design

- (1) A Registered Community Design shall confer on its holder the exclusive right to use the design and to prevent any third party not having his consent from using a design included within the scope of protection of the Registered Community Design. The aforementioned use shall, in particular, cover the making, offering, putting on the market or using of a product in which such a design is incorporated or to which it is applied, and the importing, exporting or stocking of such a product for those purposes.**
- (2) Notwithstanding paragraph (1) a Registered Community Design whose publication is deferred in accordance with Article 52 shall confer on its holder the rights referred to in Article 20.**

Article 22
Limitation of the rights conferred by a Community Design

- (1) The rights conferred by a Community Design shall not extend to:
 - (a) acts done privately and for non-commercial purposes;**
 - (b) acts done for experimental purposes;**
 - (c) acts of reproduction for the purpose 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 Community Design shall not extend to:
 - (a) the equipment on ships and aircraft registered in a third country, when these temporarily enter the territory of the Community;**
 - (b) the importation in the Community of spare parts and accessories for the purpose of repairing such craft;**
 - (c) the execution of repairs on such craft.****

Article 23
Use of a Registered Community Design for repair purposes

The rights conferred by a Registered Community Design shall not be exercised against third parties who, after three years from the first putting on the market of a product incorporating the design or to which the design is applied, use the design under Article 21, provided that:

- (a) the product incorporating the design or to which the design is applied is a part of a complex product upon whose appearance the protected design is dependent;**
- (b) the purpose of such a use is to permit the repair of the complex product so as to restore its original appearance; and**
- (c) the public is not misled as to the origin of the product used for the repair.**

Article 24
Exhaustion

The rights conferred by a Community Design shall not extend to acts relating to a product in which a design included within the scope of protection of the Community Design 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 Community Design or with his consent.

Article 25
Rights of prior use in respect of a Registered Community Design

The rights conferred by a Registered Community Design shall not become effective against any third person who can establish that:

- (a) before the date of filing the application; or
- (b) if a priority is claimed, before the date of priority,

he has, in good faith, commenced use within the Community - or has made serious preparations to that end - of a design included within the scope of protection of the Registered Community Design, which has been developed independently of the latter and which at such a date had not yet been made available to the public. Such a person shall be entitled to exploit the design for the needs of the undertaking in which the use was effected or anticipated. That right cannot be transferred separately from the undertaking.

Section 5
Invalidity

Article 26
Declaration of invalidity

- (1) A Community Design may only be declared invalid by a Community Design Court.

A Registered Community Design may also be declared invalid by the Office in accordance with the procedure in Title VII.

- (2) An application for a declaration of invalidity may be submitted even after the Community Design has lapsed or has been surrendered.

Article 27
Grounds for invalidity

- (1) A Community Design may be declared invalid only in the following cases:
 - (a) if the design protected does not fulfil the requirements under Article 4; or
 - (b) to the extent that its specific technical and/or interconnecting features are not eligible for protection under Article 9(1) or (2); or

- (c) to the extent that its exploitation or publication is contrary to public policy or to accepted principles of morality; or
 - (d) if the right holder in the Community Design is, by virtue of a court decision, not entitled under Articles 14 and 15.
- (2) A Community Design may also be declared invalid if a conflicting design which has been made available to the public after the date of reference within the meaning of Article 7(a) or (b), as the case may be, is protected from a date prior to the said date of reference by a Registered Community Design or a registered design right of one or more Member States, or an application for such a right.
- (3) By derogation from Article 1(3):
- (a) in the case specified in paragraph (1)(c), invalidity shall be declared only in respect of the Member State or States where the ground for invalidation obtains;
 - (b) in the case specified in paragraph (2), to the extent that the rights in question, or applications for such rights, have effect only in respect of a Member State or States, invalidity shall be declared only in respect of such a Member State or States.

Article 28
Effects of invalidity

- (1) A Community Design which has been declared invalid shall be deemed not to have had, from the outset, the effects specified in this Regulation.
- (2) Subject to the national provisions relating either to claims for compensation for damage caused by negligence or lack of good faith on the part of the holder of the Community Design, or to unjust enrichment, the retroactive effect of invalidity of the Community Design shall not affect:
- (a) any decision on infringement which has acquired the authority of a final decision and been enforced prior to the invalidity decision;
 - (b) any contract concluded prior to the invalidity decision, in so far as it has been performed before the decision; however, repayment, to an extent justified by the circumstances, of sums paid under the relevant contract, may be claimed on grounds of equity.

TITLE III
COMMUNITY DESIGNS AS OBJECTS OF PROPERTY

Article 29
Dealing with Community Designs as national design rights

- (1) Save where Articles 30 to 34 provide otherwise, a Community Design as an object of property shall be dealt with in its entirety, and for the whole area of the Community, as a national design right of the Member State in which:

- (a) the holder has his seat or his domicile on the relevant date; or
 - (b) where subparagraph (a) does not apply, the holder has an establishment on the relevant date.
- (2) In the case of a Registered Community Design, paragraph (1) shall apply according to the entries in the Register.
- (3) In the case of joint holders, if two or more of them fulfil the condition under paragraph (1)(a) or, where that provision does not apply, the condition under paragraph (1)(b), the Member State referred to in paragraph (1) shall be determined:
- (a) in the case of an Unregistered Community Design, by reference to the relevant joint holder designated by them by common agreement;
 - (b) in the case of a Registered Community Design, by reference to the first of the relevant joint holders in the order in which they are mentioned in the Register.
- (4) Where paragraphs (1), (2) and (3) do not apply, the Member State referred to in paragraph (1) shall be the Member State in which the Office is situated.

Article 30 Transfer

- (1) A Community Design may be transferred.
- (2) The transfer of a Registered Community Design shall be subject to the following provisions:
- (a) At the request of one of the parties, a transfer shall be entered in the Register and published.
 - (b) Until such time as the transfer has been entered in the Register, the successor in title may not invoke the rights arising from the Registered Community Design.
 - (c) Where there are time limits to be observed in dealings with the Office, the successor in title may make the corresponding statements to the Office once the request for registration of the transfer has been received by the Office.
 - (d) All documents which require notification to the holder of the Registered Community Design shall be addressed to the person registered as holder or his representative, if one has been appointed.

Article 31 Rights in rem on a Registered Community Design

- (1) A Registered Community Design may be given as security or be the subject of rights in rem.
- (2) At the request of one of the parties, rights mentioned in paragraph (1) shall be entered in the Register and published.

Article 32
Levy of execution on a Registered Community Design

- (1) A Registered Community Design may be levied in execution.**
- (2) As regards the procedure for levy of execution in respect of a Registered Community Design, the courts and authorities of the Member State determined in accordance with Article 29 shall have exclusive jurisdiction.**
- (3) On request of one of the parties, levy of execution shall be entered in the Register and published.**

Article 33
Bankruptcy or like proceedings

- (1) Until such time as common rules for the Member States in this field enter into force, the only Member State in which a Community Design may be involved in bankruptcy or like proceedings shall be that in which such proceedings are first brought under national law or conventions applicable in this field.**
- (2) Where a Registered Community Design is involved in bankruptcy or like proceedings, an entry to that effect shall be made in the Register at the request of the competent national authority and shall be published.**

Article 34
Licensing

- (1) A Community Design may be licensed for the whole or part of the Community. A licence may be exclusive or non-exclusive.**
- (2) Without prejudice to the provisions of the licensing contract, the licensee may bring proceedings for infringement of a Community Design only if the right holder consents thereto. However, the holder of an exclusive licence may bring such proceedings if the right holder in the Community Design, having been given notice to do so, does not himself bring infringement proceedings within an appropriate period.**
- (3) A licensee shall, for the purpose of obtaining compensation for damage suffered by him, be entitled to intervene in an infringement action brought by the right holder in a Community Design.**
- (4) In the case of a Registered Community Design, the grant or transfer of a licence in respect of such right shall, at the request of one of the parties, be entered in the Register and published.**

Article 35
Effects vis-à-vis third parties

- (1) The effects vis-à-vis third parties of the legal acts referred to in Articles 30, 31, 32 and 34 shall be governed by the law of the Member State determined in accordance with Article 29.
- (2) However, as regards Registered Community Designs, legal acts referred to in Articles 30, 31 and 34 shall have effect only vis-à-vis third parties in all the Member States after entry in the Register. Nevertheless, such an act, before it is so entered, shall have effect vis-à-vis third parties who have acquired rights in the Registered Community Design after the date of that act but who knew of the act at the date on which the rights were acquired.
- (3) Paragraph (2) shall not apply to a person who acquires the Registered Community Design or a right relating to it by way of transfer of the whole of the undertaking or by any other universal succession.
- (4) Until such time as common rules for the Member States in the field of bankruptcy enter into force, the effects vis-à-vis third parties of bankruptcy or like proceedings shall be governed by the law of the Member State in which such proceedings are first brought under national law or the conventions applicable in this field.

Article 36
The application for a Registered Community Design
as an object of property

- (1) An application for a Registered Community Design as an object of property shall be dealt with in its entirety, and for the whole area of the Community, as a national design right of the Member State determined in accordance with Article 29.
- (2) Articles 30 to 35 shall apply mutatis mutandis to applications for Registered Community Designs. Where the effect of one of these provisions is conditional upon an entry in the Register, that formality shall have to be performed upon registration of the resulting Registered Community Design.

TITLE IV
THE APPLICATION FOR A REGISTERED COMMUNITY DESIGN

Section 1
Filing of applications and the conditions which govern them

Article 37
Filing of applications

- (1) An application for a Registered Community Design shall be filed, at the option of the applicant:
 - (a) at the Office; or
 - (b) if the law of the Member State so permits, at the central industrial property office of a Member State or at the Benelux Design Office.
- (2) An application filed at the central industrial property office of a Member State or at the Benelux Design Office shall have the same effect as if it had been filed on the same date at the Community Design Office.

Article 38
Forwarding of the application

- (1) Where the application is filed at the central industrial property office of a Member State or at the Benelux Design Office, that office shall take all steps to forward the application to the Office within two weeks after filing. It may charge the applicant a fee which shall not exceed the administrative costs of receiving and forwarding the application.
- (2) As soon as the Office has received an application which has been forwarded by a central industrial property office or by the Benelux Design Office, it shall inform the applicant accordingly, indicating the date of its receipt at the Office.
- (3) No less than ten years after the entry into force of this Regulation, the Commission shall draw up a report on the operation of the system of filing applications for Registered Community Designs, accompanied by any proposals for revision that it may deem appropriate.

Article 39
Conditions with which applications must comply

- (1) An application for a Registered Community Design shall contain:
 - (a) a request for registration;
 - (b) information identifying the applicant;
 - (c) a representation of the design suitable for reproduction.

- (2) If the object of the application is a two-dimensional design and the application contains a request for deferment of publication in accordance with Article 52, the representation of the design may be replaced by a specimen or a sample of the product in which the design is incorporated or to which it is applied.
- (3) In addition, the application may contain:
 - (a) a description explaining the representation;
 - (b) an indication of the products in which the design is intended to be incorporated or to which it is intended to be applied;
 - (c) the classification of the products in which the design is intended to be incorporated or to which it is intended to be applied according to class and sub-class;
 - (d) a specimen or a sample of the product in which the design reproduced in the representation is incorporated or to which it is applied;
 - (e) a request for deferment of publication of the application in accordance with Article 52.
- (4) The application shall cite the designer or indicate the team of designers. If the applicant is not the designer, or not the sole designer, the entry shall contain a statement indicating the origin of the right to the Community Design.
- (5) The application shall be subject to the payment of the registration fee and the publication fee. Where a request for deferment under paragraph (3)(e) is filed, the publication fee shall be replaced by the fee for deferment of publication.
- (6) The application shall comply with the conditions laid down in the Implementing Regulation.

Article 40 Multiple applications

- (1) Several designs may be combined in one multiple application for Registered Community Designs. Except in cases of ornamentation, this possibility is subject to the condition that the products in which the designs are intended to be incorporated or to which they are intended to be applied all belong to the same sub-class, or to the same set or composition of items.
- (2) Besides the fees referred to in Article 39(5), the multiple application shall be subject to payment of an additional registration fee and an additional publication fee. Where the multiple application contains a request for deferment of publication, the additional publication fee shall be replaced by the additional fee for deferment of publication. The additional fees shall correspond to a percentage of the basic fees for each additional design.
- (3) The multiple application shall comply with the conditions of presentation laid down in the Implementing Regulation.

Article 41
Date of filing

The date of filing of an application for a Registered Community Design shall be the date on which documents containing the information specified in Article 39(1) or (2) are filed with the Office by the applicant, or, if the application has been filed with the central industrial property office of a Member State or with the Benelux Design Office, with that office subject to payment of the fees referred to in Article 39(5) and, where appropriate, Article 40(2) within a period of two months of the filing of the abovementioned documents.

Article 42
Classification

For the purpose of this Regulation, use shall be made of the classification for designs provided for in the Annex to the Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on 8 October 1968.

Section 2
Priority

Article 43
Right of priority

- (1) A person who has duly filed an application for a design in or for any State party to the Paris Convention for the Protection of Industrial Property, hereinafter referred to as "the Paris Convention", or his successors in title, shall enjoy, for the purpose of filing an application for a Registered Community Design in respect of the same design, a right of priority of six months from the date of filing of the first application.
- (2) Every filing that is equivalent to a lawful national filing under the national law of the State where it took place or under bilateral or multilateral agreements shall be recognized as giving rise to a right of priority.
- (3) Lawful national filing means any filing that is sufficient to establish the date on which the application was filed, whatever may be the outcome of the application.
- (4) A subsequent application for a design which was the subject of a previous first application, and which is filed in or in respect of the same State, shall be considered as the first application for the purpose of determining priority, provided that, at the date of the filing of the subsequent application, the previous application has been withdrawn, abandoned or refused without being open to public inspection and without leaving any right outstanding, and has not served as a basis for claiming priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

- (5) If the first filing has been made in a State which is not a party to the Paris Convention, paragraphs (1) to (4) shall apply only in so far as that State, according to published findings, grants, on the basis of a filing made at the Office and subject to conditions equivalent to those laid down in this Regulation, a right of priority having equivalent effect.

Article 44
Claiming priority

An applicant for a Registered Community Design desiring to take advantage of the priority of a previous application shall file a declaration of priority and a copy of the previous application. If the language of the latter is not one of the languages of procedure of the Office, the latter may require a translation of the previous application in one of the languages of procedure of the Office. The procedure to be followed in carrying out this provision is laid down in the Implementing Regulation.

Article 45
Effect of priority right

The effect of the right of priority shall be that the date of priority shall count as the date of the filing of the application for a Registered Community Design for the purpose of Articles 5, 6, 8, 25 and 27(2).

Article 46
Equivalence of Community filing with national filing

An application for a Registered Community Design which has been accorded a date of filing shall, in the Member States, be equivalent to a lawful national filing, including where appropriate the priority claimed for the said application.

Article 47
Exhibition priority

- (1) If an applicant for a Registered Community Design has displayed products in which the design is incorporated, or to which it is applied, at an official or officially recognized international exhibition falling within the terms of the Convention on International Exhibitions signed in Paris on 22 November 1928 and last revised on 30 November 1972, he may, if he files the application within a period of six months from the date of the first display of such products, claim a right of priority from that date within the meaning of Article 45.
- (2) An applicant who wishes to claim priority pursuant to paragraph (1) must file evidence of the display of the products in which the design is incorporated or to which it is applied under the conditions laid down in the Implementing Regulation.
- (3) An exhibition priority granted in a Member State or in a third country does not extend the period of priority laid down in Article 43.

TITLE V
REGISTRATION PROCEDURE

Article 48
Examination as to formal requirements

- (1) The Office shall refuse any application for a Registered Community Design the subject of which is obviously not covered by the definition in Article 3.
- (2) The Office shall examine whether:
 - (a) the application complies with the conditions laid down in Article 39(1) and (2) for the accordance of a date of filing;
 - (b) the application complies with the other conditions laid down in Article 39 and, in the case of a multiple application, Article 40;
 - (c) the requirements concerning the claim to priority are satisfied, if a priority is claimed.

Article 49
Remediable deficiencies

- (1) Where the application does not satisfy the requirements referred to in Article 48(2)(a) and (b), the Office shall request the applicant to remedy the deficiencies or the default on payment of the fees within the prescribed period.
- (2) If the applicant complies with the Office's request in due time, the Office shall allow as the date of filing the date on which the deficient application was originally filed. If, however, compliance with the Office's request concerns deficiencies relating to the conditions referred to in Article 39(1) or (2), the Office shall allow as date of filing the date on which the deficiencies are remedied.
- (3) If the deficiencies or the default in payment established pursuant to paragraph (1) are not remedied within the prescribed period, the Office shall refuse the application.
- (4) Failure to satisfy the requirements concerning the claim to priority shall result in the loss of the right of priority for the application.

Article 50
Registration

An application which has been accorded a date of filing shall forthwith be registered as a Registered Community Design. The registration shall bear the date on which the date of filing was accorded.

**Article 51
Publication**

Upon registration, the Office shall publish the Registered Community Design in the Community Design Bulletin as mentioned in Article 77(a). The publication shall contain:

- (a) information identifying the right holder in the Registered Community Design;
- (b) the number and the date of filing and, if a priority has been claimed, the priority date;
- (c) the citation of the designer or the indication of the team;
- (d) the reproduction of the representation of the design;
- (e) where a specimen or a sample has been filed, a reference to such filing;
- (f) any other particulars prescribed by the Implementing Regulation.

**Article 52
Deferment of publication**

- (1) The applicant for a Registered Community Design may request, when filing the application, that the publication of the Registered Community Design be deferred for a period not exceeding 30 months from the date of filing the application or, if a priority is claimed, from the date of priority.
- (2) Upon such request, where the application has been accorded a date of filing, the Registered Community Design shall be registered, but neither the representation of the design nor any file relating to the application shall, subject to Article 78(2), be open to public inspection.
- (3) The Office shall publish in the Community Design Bulletin a mention of the deferment of the publication of the Registered Community Design. The mention shall be accompanied by information identifying at least the right holder in the Registered Community Design, the date of filing the application, the length of the period for which deferment has been requested and any other particulars prescribed by the Implementing Regulation.
- (4) At the expiry of the period of deferment, or at any earlier date on request by the right holder, the Office shall open to public inspection all the entries in the Register and the file relating to the application and shall publish the Registered Community Design in the Community Design Bulletin, provided that, within the time limit laid down in the Implementing Regulation:
 - (a) the publication fee and, in the event of a multiple application, the additional publication fee are paid;
 - (b) where use has been made of the option under Article 39(2), the right holder has filed with the Office a representation of the design suitable for reproduction.

If the right holder fails to comply with these requirements, the Registered Community Design shall, unless surrendered in accordance with the provisions of Article 55, be deemed from the outset not to have had the effects specified in this Regulation.

- (5) In the case of a multiple application, the provisions of this Article may be applied to only some of the designs included therein.
- (6) The institution of legal proceedings on the basis of a Registered Community Design during the period of deferment of publication shall be subject to the condition that the information contained in the register and in the file relating to the application has been communicated to the person against whom the action is brought.
- (7) References in this Regulation to the date of publication of the Registered Community Design shall be understood, in the case of a Registered Community Design subject to deferment of publication, to mean the date on which the Office performs the act referred to in paragraph (4).

TITLE VI TERM OF PROTECTION OF THE REGISTERED COMMUNITY DESIGN

Article 53 Term of protection

The term of protection of the Registered Community Design shall be five years as from the date of filing of the application. It may be renewed pursuant to Article 54 for periods of five years each up to a total term of 25 years as from the date of filing of the application.

Article 54 Renewal

- (1) Registration of the Registered Community Design shall be renewed at the request of the right holder or of any person expressly authorized by him, provided that the renewal fee has been paid.
- (2) The Office shall inform the right holder in the Registered Community Design, and any person having a registered right in respect of the Registered Community Design, of the expiry of the registration in good time before the said expiry. Failure to give such information shall not involve the responsibility of the Office.
- (3) The request for renewal shall be submitted and the renewal fee paid within a period of six months before the last day of the month in which protection ends. Failing this, the request may be submitted and the fee paid within a further period of six months from the day referred to in the first sentence, provided that an additional fee is paid within this further period.
- (4) Renewal shall take effect from the day following the date on which the existing registration expires. The renewal shall be registered.

TITLE VII
SURRENDER AND INVALIDITY OF THE REGISTERED COMMUNITY DESIGN

Article 55
Surrender

- (1) The surrender of a Registered Community Design shall be declared to the Office in writing by the right holder. It shall not have effect until it has been registered.
- (2) Surrender shall be registered only with the agreement of the holder of a right entered in the Register. If a licence has been registered, surrender shall be entered in the Register only if the right holder in the Registered Community Design proves that he has informed the licensee of his intention to surrender; this entry shall be made on expiry of the period prescribed by the Implementing Regulation.

Article 56
Application for a declaration of invalidity

- (1) The Commission, Member States and any other natural or legal person may submit to the Office an application for a declaration of invalidity of a Registered Community Design; however, in the case envisaged in Article 27(1)(d), the application may be filed only by the person or persons entitled and, in the case envisaged in Article 27(2), only by the right holder of the earlier right.
- (2) The application shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the fee has been paid.
- (3) The application for a declaration of invalidity shall not be admissible if an application relating to the same subject matter and cause of action, and involving the same parties, has been adjudicated on by a Community Design Court and has acquired the authority of a final decision.

Article 57
Examination of the application

- (1) If the application for a declaration of invalidity is admissible, the Office shall examine whether the grounds for invalidity referred to in Article 27 prejudice the maintenance of the Registered Community Design.
- (2) In the examination of the application, which shall be conducted in accordance with the Implementing Regulation, the Office shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Office, on communications by the other parties or those issued by itself.
- (3) The decision declaring the Registered Community Design invalid shall be entered in the Register upon becoming final.

Article 58
**Participation in the proceedings of the alleged infringer, the Commission
and the Member States**

- (1) If an application for a declaration of invalidity of a Registered Community Design is filed, and as long as no final decision has been taken by an Invalidity Division, any third party who proves that proceedings for infringement of the same design have been instituted against him may intervene in the invalidity proceedings, if he gives notice of intervention within three months of the date on which the infringement proceedings were instituted. The same shall apply in respect of any third party who proves both that the right holder of the Design has requested that he cease an alleged infringement of the Design and that he has instituted proceedings for a court ruling that he is not infringing the Design.
- (2) The Commission and Member States shall have the right to be joined as parties to the proceedings in accordance with the provisions hereon set out in the Implementing Regulation.
- (3) Notice of intervention or the request to be joined as a party shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the fee referred to in Article 56(2) has been paid. Thereafter the intervention or the request shall, subject to any exceptions laid down in the Implementing Regulation, be treated as an application for a declaration of invalidity.

TITLE VIII
APPEALS FROM DECISIONS OF THE OFFICE

Article 59
Decisions subject to appeal

- (1) An appeal shall lie from decisions of the Formalities Examination Divisions, Design Administration and Legal Division and Invalidity Divisions. It shall have suspensive effect.
- (2) A decision which does not terminate proceedings as regards one of the parties can only be appealed against if joined with the final decision, unless the decision allows separate appeal.

Article 60
Persons entitled to appeal and to be parties to appeal proceedings

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

Article 61
Time limit and form of appeal

Notice of appeal must be filed in writing at the Office within two months after the date of notification of the decision appealed from. The notice shall not be deemed to have been filed until after the appeal fee has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed.

Article 62
Interlocutory revision

- (1) If the department whose decision is contested considers the appeal to be admissible and well founded, it shall amend its decision. This shall not apply where the appellant is opposed by another party to the proceedings.
- (2) If the decision is not amended within one month after receipt of the statement of grounds, the appeal shall be remitted to the Board of Appeal without delay and without comment as to its merits.

Article 63
Examination of appeals

- (1) If the appeal is admissible, the Board of Appeal shall examine whether the appeal is to be allowed.
- (2) In the examination of the appeal, the Board of Appeal shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Board of Appeal, on communications from the other parties or those issued by itself.

Article 64
Decisions in respect of appeals

- (1) Following the examination as to the merits of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed against or remit the case to that department for further action.
- (2) If the Board of Appeal remits the case for further action to the department whose decision was appealed against, that department shall be bound by the ratio decidendi of the Board of Appeal, in so far as the facts are the same.
- (3) The decisions of the Boards of Appeal shall take effect only as from the date of expiration of the period referred to in Article 65(5) or, if an action has been brought before the Court of Justice within that period, as from the date of dismissal of such action.

Article 65
Actions before the Court of Justice

- (1) Actions may be brought before the Court of Justice against decisions of the Office taken by the Boards of Appeal on appeals.
- (2) The action may be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty, of this Regulation or of any rule of law relating to their application or misuse of power.
- (3) The Court of Justice has jurisdiction to annul or alter the contested decision.
- (4) The action shall be open to any party to proceedings before the Board of Appeal adversely affected by its decision.
- (5) The action shall be brought before the Court of Justice within two months of the date of notification of the decision of the Board of Appeal.
- (6) The Office shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

TITLE IX
PROCEDURE BEFORE THE OFFICE

Section 1
General provisions

Article 66
Statement of reasons on which decisions are based

Decisions of the Office shall state the reasons on which they are based. They shall be based only on reasons or evidence on which the parties concerned have had an opportunity to present their comments.

Article 67
Examination of the facts by the Office of its own motion

- (1) In proceedings before it the Office shall examine the facts of its own motion; however, in proceedings relating to a declaration of invalidity, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.
- (2) The Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

Article 68
Oral proceedings

- (1) If the Office considers that oral proceedings would be expedient, they shall be held either at the instance of the Office or at the request of any party to the proceedings.
- (2) Oral proceedings, including delivery of the decision, shall be public, unless the Office decides otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

Article 69
Taking of evidence

- (1) In any proceedings before the Office the means of giving or obtaining evidence shall include the following:
 - (a) hearing the parties;
 - (b) requests for information;
 - (c) the production of documents and items of information;
 - (d) hearing the witnesses;
 - (e) opinions by experts;
 - (f) statements in writing, sworn or affirmed or having a similar effect under the law of the State in which the statement is drawn up.
- (2) The relevant department of the Office may commission one of its members to examine the evidence adduced.
- (3) If the Office considers it necessary for a party, witness or expert to give evidence orally, it shall issue a summons to the person concerned to appear before it.
- (4) The parties shall be informed of the hearing of a witness or expert before the Office. They shall have the right to be present and to put questions to the witness or expert.

Article 70
Notification

The Office shall, as a matter of course, notify those concerned of decisions and summonses and of any notice or other communication from which a time limit is reckoned, or of which those concerned must be notified under other provisions of this Regulation or of the Implementing Regulation, or of which notification has been ordered by the President.

Article 71
Restitutio in integrum

- (1) The applicant for or right holder of a Registered Community Design or any other party to proceedings before the Office who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit in dealings with the Office shall, upon application, have his rights re-established if the non-observance in question has the direct consequence, by virtue of the provisions of this Regulation, of causing the loss of any rights or means of redress.
- (2) The application must be filed in writing within two months of the removal of the cause of non-compliance with the time limit. The omitted act must be completed within this period. The application shall only be admissible within the year immediately following the expiry of the infringed time limit. In the case of non-submission of the request for renewal of registration or of non-payment of a renewal fee, the further period of six months provided for in the second sentence of Article 54(3) shall be deducted from the period of one year.
- (3) The application must state the grounds on which it is based and must set out the facts on which it relies. It shall not be deemed to be filed until the fee for the re-establishment of rights has been paid.
- (4) The department of the Office empowered to decide on the omitted act shall decide upon the application.
- (5) The provisions of this Article shall not be applicable to the time limits referred to in paragraph (2) and in Article 43(1).
- (6) Where the applicant for or right holder in a Registered Community Design has his rights re-established, he may not invoke his rights vis-à-vis a third party who, in good faith, during the period between the loss of rights in the application or in the Registered Community Design and publication of the mention of re-establishment of those rights, has put products on the market in which a design is incorporated or to which it is applied, which is comprised within the scope of protection of the Registered Community Design.
- (7) A third party who may avail himself of the provisions of paragraph (6) may bring third party proceedings against the decision re-establishing the rights of the applicant for or right holder in the Registered Community Design within a period of two months as from the date of publication of the mention of re-establishment of those rights.
- (8) Nothing in this Article shall limit the right of a Member State to grant restitutio in integrum in respect of time limits provided for in this Regulation and to be complied with vis-à-vis the authorities of such State.

Article 72
Reference to general principles

In the absence of procedural provisions in this Regulation, the Implementing Regulation, the Fees Regulations or the Rules of Procedure of the Boards of Appeal, the Office shall take into account the principles of procedural law generally recognized in the Member States.

Article 73
Termination of financial obligations

- (1) Rights of the Office to payment of a fee shall be extinguished after four years from the end of the calendar year in which the fee fell due.
- (2) Rights against the Office for the refunding of fees or sums of money paid in excess of a fee shall be extinguished after four years from the end of the calendar year in which the right arose.
- (3) The periods laid down in paragraphs (1) and (2) shall be interrupted, in the case covered by paragraph (1), by a request for payment of the fee and, in the case covered by paragraph (2), by a reasoned claim in writing. On interruption it shall begin again immediately and shall end at the latest six years after the end of the year in which it originally began, unless in the meantime judicial proceedings to enforce the right have begun; in such case the period shall end no earlier than one year after the judgment has acquired the authority of a final decision.

Section 2
Costs

Article 74
Allocation of costs

- (1) The losing party in proceedings for a declaration of invalidity of a Registered Community Design or appeal proceedings shall bear the fees incurred by the other party as well as all costs incurred by him essential to the proceedings, including travel and subsistence and the remuneration of an agent, adviser or advocate, within the limits of scales set for each category of costs under the conditions laid down in the Implementing Regulation.
- (2) However, where each party succeeds on some and fails on other heads, or if reasons of equity so dictate, the Invalidity Division or Board of Appeal shall decide a different apportionment of costs.
- (3) The party who terminates the proceedings by surrendering the Registered Community Design or by not renewing its registration or by withdrawing the application for a declaration of invalidity or the appeal, shall bear the fees and the costs incurred by the other party as stipulated in paragraphs (1) and (2).
- (4) Where a case does not proceed to judgment, the costs shall be in the discretion of the Invalidity Division or Board of Appeal.

- (5) Where the parties conclude before the Invalidity Division or Board of Appeal a settlement of costs differing from that provided for in paragraphs (1) to (4), the body concerned shall take note of that agreement.
- (6) On request, the registry of the Invalidity Division or Board of Appeal shall fix the amount of the costs to be paid pursuant to the preceding paragraphs. The amount so determined may be reviewed by a decision of the Invalidity Division or Board of Appeal on a request filed within the period prescribed by the Implementing Regulation.

Article 75
Enforcement of decisions fixing the amount of costs

- (1) Any final decision of the Office fixing the amount of costs shall be enforceable.
- (2) Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without any other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Office and to the Court of Justice.
- (3) When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.
- (4) Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the Member State concerned shall have jurisdiction over complaints that enforcement is being carried out improperly.

Section 3
Information of the public and of the official authorities
of the Member States

Article 76
Register

The Office shall keep a register to be known as the Community Design Register, which shall contain those particulars of which the registration is provided for by this Regulation or by the Implementing Regulation. The Register shall be open to public inspection, except to the extent that Article 52(2) provides otherwise in relation to entries relating to Registered Community Designs subject to deferment of publication.

Article 77
Periodical publications

The Office shall periodically publish:

- (a) a "Community Design Bulletin" containing entries open to public inspection in the Register as well as other particulars the publication of which is prescribed by this Regulation or by the Implementing Regulation;
- (b) an "Official Journal of the Community Design Office", containing notices and information of a general character issued by the President of the Office, as well as any other information relevant to this Regulation or its implementation.

Article 78
Inspection of files

- (1) The files relating to applications for Registered Community Designs which have not yet been published or the files relating to Registered Community Designs which are subject to deferment of publication in accordance with Article 52 or which, being subject to such deferment, have been surrendered before or on the expiry of that period, shall not be made available for inspection without the consent of the applicant for or the right holder in the Registered Community Design.
- (2) Any person who can establish a legitimate interest may inspect a file without the consent of the applicant for or right holder in the Registered Community Design prior to the publication or after the surrender of the latter in the case provided for under paragraph (1). This shall in particular apply if the interested person proves that the applicant for, or the right holder, in a Registered Community Design has taken steps with a view to invoking against him the right under the Registered Community Design.
- (3) Subsequent to the publication of the Registered Community Design, the file may be inspected on request.
- (4) However, where a file is inspected pursuant to paragraph (2) or (3), certain documents in the file may be withheld from inspection in accordance with the provisions of the Implementing Regulation.

Article 79
Administrative and legal cooperation

Unless otherwise provided in this Regulation or in national laws, the Office and the courts or authorities of the Member States shall on request give assistance to each other by communicating information or opening files for inspection. Where the Office opens files to inspection by courts, Public Prosecutors' Offices or central industrial property offices, the inspection shall not be subject to the restrictions laid down in Article 78.

Article 80
Exchange of publications

- (1) The Office and the central industrial offices of the Member States shall despatch to each other on request and for their own use one or more copies of their respective publications free of charge.
- (2) The Office may conclude agreements relating to the exchange or supply of publications.

Section 4
Representation

Article 81
General principles of representation

- (1) Subject to the provisions of paragraph (2), no person shall be compelled to be represented before the Office.
- (2) Without prejudice to the second sentence of paragraph (3), natural or legal persons not having either their domicile or their principal place of business or a real and effective industrial or commercial establishment in the Community must be represented before the Office in accordance with Article 82(1) in all proceedings before the Office established by this Regulation, other than in filing an application for a Registered Community Design.
- (3) Natural or legal persons having their domicile or principal place of business or a real and effective industrial or commercial establishment in the Community may be represented before the Office by one of their employees, who must file with it a signed authorization for inclusion in the files, the details of which are set out in the Implementing Regulation. An employee of a legal person to which this paragraph applies may also represent other legal persons which have economic connections with the first legal person, even if those other legal persons have neither their domicile nor their principal place of business nor a real and effective industrial or commercial establishment within the Community.

Article 82
Professional representatives

- (1) Representation of natural or legal persons before the Office may only be undertaken by:
 - (a) any legal practitioner qualified in one of the Member States and having his place of business within the Community, to the extent that he is entitled, within the said State, to act as a representative in industrial property matters; or
 - (b) professional representatives whose names appear on the list maintained for this purpose by the Office.

Representatives acting before the Office must file with it a signed authorization for inclusion on the files, the details of which are set out in the Implementing Regulation.

- (2) Any natural person who fulfils the following conditions may be entered on the list of professional representatives:
- (a) he must have his place of business or employment in the Community;
 - (b) he must be entitled to represent natural or legal persons:
 - in patent matters before the European Patent Office, or
 - in trademark matters before the Community Trade Mark Office, or
 - in industrial property matters, including design matters, before the central industrial property office of the Member State in which he has his place of business or employment. Where, in that State, the entitlement is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list who act in industrial property matters, including design matters, before the central industrial property office of the said State must have habitually so acted for at least five years. However, persons whose professional qualification to represent natural or legal persons in industrial property matters, including design matters, before the central industrial property office of one of the Member States is officially recognized in accordance with the regulations laid down by such State, shall not be subject to the condition of having exercised the profession.
- (3) Entry shall be effected upon request, accompanied by a certificate furnished by the central industrial property office of the Member State concerned, or by the European Patent Office or by the Community Trade Mark Office, which must indicate that the conditions laid down in paragraph (2) are fulfilled.
- (4) The President of the Office may grant exemption from the requirement of the second sentence of paragraph (2)(b), third indent, if the applicant furnishes proof that he has acquired the requisite qualification in some other way.
- (5) The conditions under which a person may be removed from the list of professional representatives shall be laid down in the Implementing Regulation.

TITLE X
JURISDICTION AND PROCEDURE IN LEGAL ACTIONS RELATING TO COMMUNITY DESIGNS

Section 1
Jurisdiction and Enforcement

Article 83
Application of the Convention on Jurisdiction and Enforcement

- (1) Unless otherwise specified in this Regulation, the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed in Brussels on 27 September 1968, as amended by the Conventions on the Accession to that Convention of the States acceding to the European Communities, the whole of which Convention and of which Conventions of Accession are hereinafter referred to as the "Convention on Jurisdiction

and Enforcement", shall apply to proceedings relating to Community Designs and applications for Registered Community Designs, as well as to proceedings relating to actions on the basis of Community Designs and national design rights enjoying simultaneous protection.

- (2) In the event of proceedings in respect of the actions and claims referred to in Article 85:
- (a) Article 2, Article 4, Article 5 No 1, 3, 4 and 5 and Article 24 of the Convention on Jurisdiction and Enforcement shall not apply;
 - (b) Articles 17 and 18 of that Convention shall apply subject to the limitations in Article 86(4) of this Regulation;
 - (c) the provisions of Title II of that Convention which are applicable to persons domiciled in a Member State shall also be applicable to persons who do not have a domicile in any Member State but have an establishment therein.
- (3) Article 16 No 3 of the Convention on Jurisdiction and Enforcement shall be complied with by bringing proceedings in respect of an action or claim referred to in Article 85(c) and (d) before any Community Design Court having jurisdiction under Article 86.

Section 2

Disputes concerning the infringement and validity of Community Designs

Article 84

Community Design Courts

- (1) The Member States shall designate in their territories as limited a number as possible of national courts and tribunals of first and second instance (Community Design Courts), which shall perform the functions assigned to them by this Regulation.
- (2) Each Member State shall communicate to the Commission within three years of the entry into force of this Regulation a list of Community Design Courts, indicating their names and their territorial jurisdiction.
- (3) Any change made after communication of the list referred to in paragraph (2) in the number, the names or territorial jurisdiction of the Community Design Courts shall be notified without delay by the Member State concerned to the Commission.
- (4) The information referred to in paragraphs (2) and (3) shall be notified by the Commission to the Member States and published in the Official Journal of the European Communities.
- (5) As long as a Member State has not communicated the list as stipulated in paragraph (2), jurisdiction for any proceedings resulting from an action covered by Article 85 for which the courts of that State have jurisdiction under Article 86, shall lie with that court of the State in question which would have jurisdiction ratione loci and ratione materiae in the case of proceedings relating to a national design right of that State.

Article 85
Jurisdiction over infringement and validity

The Community Design Courts shall have exclusive jurisdiction:

- (a) for infringement actions and - if they are permitted under national law - actions in respect of threatened infringement of Community Designs;
- (b) for actions for declaration of non-infringement of Community Designs, if they are permitted under national law;
- (c) for actions for a declaration of invalidity of an Unregistered Community Design;
- (d) for counterclaims for a declaration of invalidity of a Community Design raised in connection with actions under (a).

Article 86
International jurisdiction

- (1) Subject to the provisions of this Regulation and to any provisions of the Convention on Jurisdiction and Enforcement applicable by virtue of Article 83, proceedings in respect of the actions and claims referred to in Article 85 shall be brought in the courts of the Member State in which the defendant is domiciled or, if he is not domiciled in any of the Member States, in which he has an establishment.
- (2) If the defendant is neither domiciled nor has an establishment in any of the Member States, such proceedings shall be brought in the courts of the Member State in which the plaintiff is domiciled or, if he is not domiciled in any of the Member States, in which he has an establishment.
- (3) If neither the defendant nor the plaintiff is so domiciled or has such an establishment, such proceedings shall be brought in the courts of the Member State where the Office is situated.
- (4) Notwithstanding the provisions of paragraphs (1), (2) and (3) above:
 - (a) Article 17 of the Convention on Jurisdiction and Enforcement shall apply if the parties agree that a different Community Design Court shall have jurisdiction;
 - (b) Article 18 of that Convention shall apply if the defendant enters an appearance before a different Community Design Court.
- (5) Proceedings in respect of the actions and claims referred to in Article 85(a) and (d) may also be brought in the courts of the Member State in which the act of infringement has been committed or threatened.

Article 87
Extent of jurisdiction on infringement

- (1) A Community Design Court whose jurisdiction is based on Article 86(1), (2), (3) or (4) shall have jurisdiction in respect of acts of infringement committed or threatened within the territory of any of the Member States.

- (2) A Community Design Court whose jurisdiction is based on Article 86(5) shall have jurisdiction only in respect of acts of infringement committed or threatened within the territory of the Member State in which that court is situated.

Article 88

Action or counterclaim for a declaration of invalidity of a Community Design

- (1) An action or a counterclaim for a declaration of invalidity of a Community Design may only be based on the grounds for invalidity mentioned in Article 27.
- (2) In the case specified in Article 27(1)(d), the action or the counterclaim may be brought only by the person or persons entitled to the Community Design and, in the case specified in Article 27(2), only by the right holder of the earlier right.
- (3) If the counterclaim is brought in a legal action to which the right holder in the Community Design is not already a party, he shall be informed thereof and may be joined as a party to the action in accordance with the conditions set out in the law of the Member State where the court is situated.
- (4) The validity of a Community Design may not be put in issue in an action for a declaration of non-infringement.

Article 89

Presumption of validity - defence as to the merits

- (1) In proceedings in respect of an infringement action or an action for threatened infringement, the Community Design Court shall treat the Community Design as valid unless its validity is put in issue by the defendant with a counterclaim for a declaration of invalidity.
- (2) In proceedings in respect of an infringement action or an action for threatened infringement, the Community Design Court shall, when the right holder presents evidence to sustain his claim that the design has an individual character, treat the design as new within the meaning of Article 5 unless in any counterclaim for a declaration of invalidity proof is presented to the contrary by the defendant in the main action.
- (3) In proceedings referred to in paragraph (1), a plea relating to the invalidity of a Community Design submitted otherwise than by way of counterclaim shall be admissible in so far as the defendant claims that the Community Design should be declared invalid on account of a national design right within the meaning of Article 27(2) belonging to him.

Article 90
Judgments on validity

- (1) Where in a proceeding before a Community Design Court the Community Design has been put in issue by way of a counterclaim for a declaration of invalidity:
 - (a) if any of the grounds mentioned in Article 27 are found to prejudice the maintenance of the Community Design, the Court shall declare the Community Design invalid;
 - (b) if none of the grounds mentioned in Article 27 is found to prejudice the maintenance of the Community Design, the Court shall reject the counterclaim.
- (2) The Community Design Court with which a counterclaim for a declaration of invalidity of a Registered Community Design has been filed shall inform the Office of the date on which the counterclaim was filed. The latter shall record this fact in the Register.
- (3) The Community Design Court hearing a counterclaim for a declaration of invalidity of a Registered Community Design may, on application by the right holder in the Registered Community Design and after hearing the other parties, stay the proceedings and request the defendant to submit an application for a declaration of invalidity to the Office within a time limit which it shall determine. If the application is not made within the time limit, the proceedings shall continue; the counterclaim shall be deemed withdrawn. Article 95(3) shall apply.
- (4) Where a Community Design Court has given a judgment which has become final on a counterclaim for a declaration of invalidity of a Registered Community Design, a copy of the judgment shall be sent to the Office. Any party may request information about such transmission. The Office shall mention the judgment in the Register in accordance with the provisions of the Implementing Regulation.
- (5) No counterclaim for a declaration of invalidity of a Registered Community Design may be made if an application relating to the same subject-matter and cause of action, and involving the same parties, has already been determined by the Office in a decision which has become final.

Article 91
Effects of the judgment on validity

When it has become final, a judgment of a Community Design Court declaring a Community Design invalid shall have, subject to Article 27(3), in all the Member States the effects specified in Article 28.

Article 92
Applicable law

- (1) The Community Design Courts shall apply the provisions of this Regulation.
- (2) On all matters not covered by this Regulation, a Community Design Court shall apply its national law, including its private international law.
- (3) Unless otherwise provided in this Regulation, a Community Design Court shall apply the rules of procedure governing the same type of action relating to a national design right in the Member State where it is situated.

Article 93
Sanctions in actions for infringement

- (1) Where in an action for infringement or for threatened infringement a Community Design Court finds that the defendant has infringed or threatened to infringe a Community Design, it shall, unless there are special reasons for not doing so, issue an order prohibiting the defendant from proceeding with the acts which have infringed or would infringe the Community Design.
- (2) Where in an action for infringement a Community Design Court finds that the defendant has infringed a Community Design, the Court shall, unless there are special reasons for not doing so:
 - (a) enjoin the infringer to provide forthwith information concerning the origin of the infringing products and the channels through which they are commercialized;
 - (b) issue an order to seize the infringing products.
- (3) The Community Design Court shall take such measures in accordance with its national law as are aimed at ensuring the orders referred to in paragraphs (1) and (2) are complied with.
- (4) In all other respects the Community Design Court shall apply the law of the Member State in which the acts of infringement or threatened infringement were committed, including its private international law.

Article 94
Provisional measures, including protective measures

- (1) Application may be made to the courts of a Member State, including Community Design Courts, for such provisional measures, including protective measures, in respect of a Community Design as may be available under the law of that State on national design rights, or those which follow from the application of the provision in Article 93(2)(a), even if, under this Regulation, a Community Design Court of another Member State has jurisdiction as to the substance of the matter.

- (2) In proceedings relating to provisional measures, including protective measures, a plea otherwise than by way of counterclaim relating to the invalidity of a Community Design submitted by the defendant shall be admissible. Article 88(2) shall, however, apply mutatis mutandis.
- (3) A Community Design Court whose jurisdiction is based on Article 86(1), (2), (3) or (4) shall have jurisdiction to grant provisional measures, including protective measures, which, subject to any necessary procedure for recognition and enforcement pursuant to Title III of the Convention on Jurisdiction and Enforcement, are applicable in the territory of any Member State. No other court shall have such jurisdiction.

Article 95
Specific rules on related actions

- (1) A Community Design Court hearing an action referred to in Article 85, other than an action for a declaration of non-infringement, shall, unless there are special grounds for continuing the hearing, of its own motion after hearing the parties, or at the request of one of the parties and after hearing the other parties, stay the proceedings where the validity of the Community Design is already in issue before another Community Design Court on account of a counterclaim or, in the case of a Registered Community Design, where an application for a declaration of invalidity has already been filed at the Office.
- (2) The Office, when hearing an application for a declaration of invalidity of a Registered Community Design, shall, unless there are special grounds for continuing the hearing, of its own motion after hearing the parties, or at the request of one of the parties and after hearing the other parties, stay the proceedings where the validity of the Registered Community Design is already in issue on account of a counterclaim before a Community Design Court. However, if one of the parties to the proceedings before the Community Design Court so requests, the court may, after hearing the other parties to these proceedings, stay the proceedings. The Office shall in this instance continue the proceedings pending before it.
- (3) Where the Community Design Court stays the proceedings it may order provisional measures, including protective measures, for the duration of the stay.

Article 96
Jurisdiction of Community Design Courts of second instance - further appeal

- (1) An appeal to the Community Design Courts of second instance shall lie from judgments of the Community Design Courts of first instance in respect of proceedings arising from the actions and claims referred to in Article 85.
- (2) The conditions under which an appeal may be lodged with a Community Design Court of second instance shall be determined by the national law of the Member State in which that court is located.
- (3) The national rules concerning further appeal shall be applicable in respect of judgments of Community Design Courts of second instance.

Section 3
Other disputes concerning Community Designs

Article 97
Supplementary provisions on the jurisdiction of national courts
other than Community Design Courts

- (1) Within the Member State whose courts have jurisdiction under Article 83(1), the courts having jurisdiction for actions relating to Community Designs other than those referred to in Article 85 shall be those which would have jurisdiction ratione loci and ratione materiae in actions relating to a national design right in that State.
- (2) Actions relating to Community Designs other than those referred to in Article 85, for which no court has jurisdiction under Article 83(1) and (1) of this Article may be heard before the courts of the Member State in which the Office is situated.

Article 98
Obligation of the national court

A national court which is dealing with an action relating to a Community Design other than the actions referred to in Article 85 shall treat the design as valid. Article 89(2) and Article 94(2) shall, however, apply mutatis mutandis.

TITLE XI
EFFECTS ON THE LAWS OF THE MEMBER STATES

Article 99
Parallel actions on the basis of Community Designs
and national design rights

- (1) Where actions for infringement or for threatened infringement involving the same cause of action and between the same parties are brought before the courts of different Member States, one being seized on the basis of a Community Design and the other seized on the basis of a design right providing simultaneous protection, the court other than the court first seized shall of its own motion decline jurisdiction in favour of that court. The court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested.
- (2) The Community Design Court hearing an action for infringement or threatened infringement on the basis of a Community Design shall reject the action if a final judgment on the merits has been given on the same cause of action and between the same parties on the basis of a design right providing simultaneous protection.

- (3) The court hearing an action for infringement or for threatened infringement on the basis of a national design right shall reject the action if a final judgement on the merits has been given on the same cause of action and between the same parties on the basis of a Community Design providing simultaneous protection.
- (4) The preceding paragraphs shall not apply in respect of provisional measures, including protective measures.

Article 100

Relationship to other forms of protection under national law

- (1) Nothing in this Regulation shall prevent actions concerning designs protected by Community Designs from being brought under any legal provisions of the Community or of a Member State relating to trademarks or other distinctive signs, patents and utility models, typefaces, civil liability and unfair competition.
- (2) Pending further harmonization of the laws of copyright of the Member States, a design protected by a Community Design shall also be eligible for protection under such laws as from the date the design was created or fixed in any form, irrespective of the number of products to which such design is intended to be incorporated or to be applied and irrespective of whether the design can be dissociated from the products to which it is intended to be incorporated or applied. The extent and the conditions under which such a protection is conferred, including the level of originality required, shall be determined by each Member State.
- (3) Each Member State shall admit to the protection under its law of copyright a design protected by a Community Design which fulfils the conditions required by such law, even if in another Member State which is the country of origin of the design, the latter does not fulfil the conditions for protection under the law of copyright of that State.

TITLE XII

THE COMMUNITY DESIGN OFFICE

Section 1

General provisions

Article 101

Legal status

- (1) The Office shall be a body of the Community. It shall have legal personality.
- (2) The Office shall be located at the seat of the Community Trade Mark Office.

- (3) In each of the Member States, the Office shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. For these purposes, the Office shall be represented by its President.

Article 102
Administrative services

The Community Design Office may have recourse to the administrative services of the Community Trade Mark Office under conditions defined in the implementing regulations established under the Council Regulation (EEC) No. .../... on the Community Trade Mark⁽³⁾ and those established under the present regulation.

Article 103
Staff

- (1) The Staff Regulations of officials of the European Communities, the Conditions of Employment of other servants of the European Communities and the rules adopted by agreement between the Institutions of the European Communities for giving effect to those Staff Regulations and Conditions of Employment shall apply to the staff of the Office, without prejudice to the application of Article 118 to the members of the Boards of Appeal.
- (2) Without prejudice to Article 108, the powers conferred on each Institution by the Staff Regulations and by the Conditions of Employment of other servants shall be exercised by the Office in respect of its staff.

Article 104
Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Office.

Article 105
Liability

- (1) The contractual liability of the Office shall be governed by the law applicable to the contract in question.
- (2) The Court of Justice of the European Communities shall be competent to give judgment pursuant to any arbitration clause contained in a contract concluded by the Office.
- (3) In the case of non-contractual liability, the Office shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.

⁽³⁾ OJ No L

- (4) The Court of Justice shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.
- (5) The personal liability of its servants towards the Office shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.

Article 106
Jurisdiction of the Court of Justice

The Court of Justice shall have jurisdiction in actions brought against the Office under the conditions provided for in Articles 173 and 175 of the Treaty unless the decision in question is subject to appeal to the Board of Appeal under the provisions of this Regulation.

Section 2
Management of the Office

Article 107
Powers of the President

- (1) The Office shall be managed by the President.
- (2) In addition to the powers conferred on the President by the present Regulation:
 - (a) he shall take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Office;
 - (b) he may place before the Commission any proposal to amend this Regulation, to the extent that it applies to Registered Community Designs, the Implementing Regulation, the rules of procedure of the Boards of Appeal, the Fees Regulation and any other rule applying to Registered Community Designs after consulting the Administrative Board;
 - (c) he shall submit a management report to the Commission, the European Parliament and the Administrative Board each year;
 - (d) he shall exercise in respect of the staff the powers referred to in Article 103(1);
 - (e) he may delegate his powers.
- (3) The President shall be assisted by one or more Vice-Presidents. If the President is unable to act, the Vice-President or one of the Vice-presidents shall take his place in accordance with the procedure laid down by the Administrative Board.

Article 108
Appointment of senior officials

- (1) The President of the Office shall be appointed by the Commission from a list of at most three candidates, which shall be prepared by the Administrative Board. Power to dismiss the President shall lie with the Commission, acting on a proposal from the Administrative Board.
- (2) The term of office of the President shall not exceed five years. This term of office shall be renewable.

- (3) The Vice-President or Vice-Presidents of the Office shall be appointed or dismissed as in paragraph 1, after consultation of the President.
- (4) The Commission shall exercise disciplinary authority over the officials referred to in paragraphs 1 and 3 of this Article.

Section 3
Administrative Board

Article 109
Creation and powers

- (1) An Administrative Board is hereby set up, attached to the Office.
- (2) In addition to any powers conferred on it by other provisions of the present Regulation:
 - (a) it shall set the date for the first filing of applications for Registered Community Designs pursuant to Article 128(2);
 - (b) it shall advise the President on matters for which the Office is responsible;
 - (c) it shall be consulted before adoption of the guidelines for examination as to formal requirements and invalidity proceedings in the Office and in the other cases provided for in this Regulation;
 - (d) it shall, at regular intervals, hold an exchange of views on the development of the case-law communicated under the system of exchange of information established by Article 125;
 - (e) it may deliver opinions and requests for information to the President and to the Commission where it considers that this is necessary.

Article 110
Composition

- (1) The Administrative Board shall be composed of one representative of each Member State and one representative of the Commission and their alternates.
- (2) The members of the Administrative Board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.

Article 111
Chairmanship

- (1) The Administrative Board shall elect a Chairman and a Deputy Chairman from among its members. The Deputy Chairman shall ex officio replace the Chairman in the event of his being prevented from attending to his duties.
- (2) The duration of the terms of the Chairman and the Deputy Chairman shall be three years. The terms of office shall be renewable.

Article 112
Meetings

- (1) Meetings of the Administrative Board shall be convened by its Chairman.**
- (2) The President of the Office shall take part in the deliberations, unless the Administrative Board decides otherwise. He shall not have the right to vote.**
- (3) The Administrative Board shall hold an ordinary meeting once a year; in addition, it shall meet on the initiative of its Chairman or at the request of the Commission or of one-third of the Member States.**
- (4) It shall adopt rules of procedure.**
- (5) The Administrative Board shall take its decisions by a simple majority of the representatives of the Member States. However, a majority of three-quarters of the representatives of the Member States shall be required for the decisions which the Administrative Board is empowered to take under Article 108(1) and (3). In both cases each Member State shall have one vote.**
- (6) The Administrative Board may invite observers to attend its meetings.**
- (7) The Secretariat for the Administrative Board shall be provided by the Office.**

Section 4
Implementation of procedures

Article 113
Competence

The following departments of the Office shall be competent for taking decisions in connection with the procedures laid down in this Regulation:

- (a) Formalities Examining Divisions;**
- (b) a Design Administration and Legal Division;**
- (c) Invalidity Divisions;**
- (d) Boards of Appeal.**

Article 114
Formalities Examining Division

A Formalities Examining Division shall be responsible for taking decisions in relation to an application for a Registered Community Design.

Article 115
Design Administration and Legal Division

- (1) The Design Administration and Legal Division shall be responsible for those decisions required by this Regulation which do not fall within the competence of a Formalities Examining Division or an Invalidity Division. It shall in particular be responsible for decisions in respect of entries in the Register.**
- (2) It shall also be responsible for keeping the list of professional representatives which is referred to in Article 82.**
- (3) A decision of the Division shall be taken by one member.**

Article 116
Invalidity Divisions

- (1) An Invalidity Division shall be responsible for taking decisions in relation to an application for a declaration of invalidity of a Registered Community Design.**
- (2) An Invalidity Division shall consist of three members. At least two of these members must be legally qualified.**

Article 117
Boards of Appeal

- (1) A Board of Appeal shall be responsible for deciding on appeals from decisions of the Formalities Examining Divisions, Design Administration and Legal Division and Invalidity Divisions.**
- (2) A Board of Appeal shall consist of three members. At least two of these members must be legally qualified.**

Article 118
Independence of the members of the Boards of Appeal

- (1) The members, including the Chairmen, of the Boards of Appeal shall be appointed for a term of five years in accordance with the procedure laid down in Article 108 for the appointment of the President. They may not be removed from office during this term, unless there are serious grounds for such removal and the Court of Justice, on application by the body which appointed them, takes a decision to this effect. Their term of office shall be renewable.**
- (2) The members of the Boards of Appeal shall be independent. In their decisions they shall not be bound by any instructions.**
- (3) The members of the Boards of Appeal may neither be members of any other department of the Office, nor be members of any department of the Community Trade Mark Office, except its Boards of Appeal.**

Article 119
Exclusion and objection

- (1) Members of the Invalidity Divisions and Boards of Appeal may not take part in any proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties. Members of the Boards of Appeal may not take part in appeal proceedings if they participated in the decision under appeal.**
- (2) If, for one of the reasons mentioned in paragraph 1 or for any other reason, a member of an Invalidity Division or Board of Appeal considers that he should not take part in any proceedings, he shall inform the Division or Board accordingly.**
- (3) Members of an Invalidity Division or Board of Appeal may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objection, the party has taken a procedural step. No objection may be based upon the nationality of members.**
- (4) The Invalidity Division or Board of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking this decision, the member who withdraws or has been objected to shall be replaced by his alternate.**

Article 120
Appointment of members of Invalidity Divisions and Boards of Appeal
during a transitional period

- (1) During a transitional period, the expiry of which shall be determined by the Commission on a proposal by the President of the Office, the President may appoint on a short-term contract basis as members of the Invalidity Divisions persons employed in the central industrial property Offices of the Member States or in the Benelux Design Office or in courts or other authorities of the Member States and having an experience in issues relating to the validity of design rights or applications for such rights in the Member States. These persons may continue their existing employment. They may be reappointed.**
- (2) During a transitional period, the expiry of which shall be determined by the Commission on a proposal by the President of the Office, the Commission may appoint as members of the Boards of Appeal members of courts or other authorities of the Community or of the Member States who may continue their activities in the court or the authority of origin. These persons may be appointed for a term of less than five years, though this shall not be less than one year, and may be reappointed.**

Section 5
Financial provisions

Article 121
Budget

- (1) The revenues of the Office shall consist of the fees paid in accordance with the provisions of this Regulation and, to the extent necessary, of a contribution from the Community.
- (2) The expenditure of the Office shall include the costs of staff, administrative, infrastructure and operational expenses.
- (3) By 15 February each year at the latest, the President shall draw up a preliminary draft budget covering expenditure and the program of work anticipated for the following financial year, and shall forward this preliminary draft to the Administrative Board together with an establishment plan.
- (4) Revenue and expenditure shall be in balance.
- (5) By 31 March each year at the latest, the Administrative Board shall establish the draft budget and forward it together with the establishment plan to the Commission which on that basis shall establish the relevant estimates in the preliminary draft general budget of the European Communities.
- (6) The Administrative Board shall adopt the Office's final budget before the beginning of the financial year, adjusting it where necessary to the Community contribution and the Office's other resources.
- (7) The President shall implement the Office's budget.
- (8) Control of the commitment and payment of all the Office's expenditure and control of the existence and recovery of all the Office's revenue shall be exercised by the Commission's financial controller.
- (9) By 31 March each year at the latest, the President shall forward to the Commission, the Administrative Board and the Court of Auditors the accounts for all the Office's revenue and expenditure in respect of the preceding financial year.

The Court of Auditors shall examine them in accordance with Article 206a of the Treaty.

- (10) The Administrative Board shall give a discharge to the President in respect of the implementation of the budget.
- (11) The Administrative Board shall adopt the internal financial provisions of the Office after consultation with the Commission and the Court of Auditors.

Article 122
Fees

The amount of the fees referred to in this Regulation shall be established by the Commission following consultation of the Committee referred to in Article 126.

TITLE XIII
FINAL PROVISIONS

Article 123
Official languages

The official languages and the languages of proceedings of the Office shall be the same as those for the Community Trade Mark Office.

Article 124
Community implementing provisions

The rules implementing this Regulation, in particular the rules concerning the filing of applications, multiple applications, examinations as to formal requirements, registration, publication, and the deferment of the publication, and the rules of procedure of the Boards of Appeal shall be adopted in an Implementing Regulation in accordance with the procedure laid down in Article 126.

Article 125
System of exchange of information

A system of exchange of information is hereby established concerning decisions relating to the compliance with the requirements for protection both as regards Community designs and design rights of Member States. The Implementing Regulation shall set out how and by which authority such a system will be operated.

Article 126
Establishment of a committee and procedure
for the adoption of implementing regulations

The Commission shall be assisted by a committee of an advisory nature on Fees, Implementation Rules, and the procedure of the Boards of Appeal, which shall be composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 127 Fees Regulation

- (1) The Fees Regulation shall determine in particular the amounts of the fees and the ways in which they are to be paid.
- (2) In addition to the fees already provided for in this Regulation, fees shall be charged, in accordance with the detailed rules of application laid down in the Implementing Regulation, in the cases listed below:
 - (a) late payment of the registration fee;
 - (b) late payment of the publication fee;
 - (c) late payment of the fee for deferment of publication;
 - (d) late payment of additional fees for multiple applications;
 - (e) issue of a copy of the certificate of registration;
 - (f) registration of the transfer of a Registered Community Design;
 - (g) registration of a licence or another right in respect of a Registered Community Design;
 - (h) cancellation of the registration of a licence or another right;
 - (i) issue of an extract from the Register;
 - (j) inspection of the files;
 - (k) issue of copies of file documents;
 - (l) communication of information of a file;
 - (m) review of the determination of the procedural costs to be refunded;
 - (n) issue of certified copies of the application.
- (3) The amounts of the fees shall be fixed at such a level as to ensure that the revenue in respect thereof is in principle sufficient for the Office's revenue and expenditure to be balanced.

Article 128 Entry into force

- (1) This Regulation shall enter into force on the 60th day following that of its publication in the Official Journal of the European Communities.
- (2) Applications for Registered Community Designs may be filed at the Office from the date fixed by the Administrative Board on the recommendation by the President.
- (3) Applications for Registered Community Designs filed within three months before the date referred to in paragraph (2) shall be deemed to have been filed on that date.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

**For the European Parliament
The President**

**For the Council
The President**

FINANCIAL STATEMENT

1 **Title**

Proposal for a Council Regulation (EEC) on the Community Design

2. **Budget Heading**

B5-305, to be created

3. **Legal Base**

Article 100a of the Treaty

4. **Description of the measure**

4.1 **Specific objectives**

The proposed Regulation would create a unitary protection system throughout the Community for designers' work and would comprise two kinds of Community Design, one being a registered right and the other an unregistered right. By securing such a right, a designer would be able to protect himself from infringers of his design. A Community system would remove the problem which results from present national design laws, namely that conflicting rights can exist in different Member States with obvious negative impact on the functioning of the internal market.

The registered right requires the setting-up of a Community Designs Office, as a body with the necessary legal, administrative and financial independence for carrying out the tasks associated with registration. It is foreseen that this Office would have a structure based on that of the Community Trade Marks Office proposed in the Communication of the Commission to the Council of 25 November 1980, modified on 9 August 1984 (OJ No C 230 of 31 August 1984) concerning a Regulation on the Community Trade Mark) and would have the status of a Community body having legal personality, and would exercise the powers conferred on it by the proposed Regulation.

As envisaged, the Office would consist of four departments for, respectively, formalities examination, assessing invalidity of registrations, administrative and legal matters, and Boards of Appeal. Many administrative functions would be the same as those encountered in the Community Trade Marks Office itself, and economies of scale would therefore be achievable, for example in the area of administration if the Offices were to share some administrative services.

4.2 Period

Actions to implement the Regulation will continue over several years. It is assumed that up to two years may be needed for the Community Design Office to be set up prior to opening, and it is estimated that it will have become fully operational after a further period of three to five years from establishment. Preferably, this period will be four years (see paragraph 7.4 below). By this time the expenses of the Office should be covered by the receipts from registration and other fees.

It is, however, not yet possible to say when these actions will start, nor therefore when the Community Design Office will open, but nothing is envisaged before 1996 at the earliest.

4.3 Persons affected by the measure

Community Design protection will affect applicants for, and right holders in, Community Designs, and also those who trade in design goods, and any infringers. Many of the industries in the Member States will therefore be affected.

The measure will also affect some Community institutions including, in addition to the new Community Designs Office itself, the Community Trade Marks Office, the Court - to which appeals will be possible under the regulation and the Commission because of its right to participate in certain actions concerning design rights before the Office.

5. Classification of expenditure and receipts

5.1 DNO

5.2 CD

6. Nature of the expenditure and receipts

6.1 Subvention at 100%

For the assumed two years before opening of the Designs Office, expenditure is estimated to be of the order of ECU 1 570 000 for the first year, and ECU 2 254 540 for the second year, this being the amount needed to cover the costs of setting up the Office and of putting it into operation. As no fees will be received during this time, subventions will be needed to cover these amounts. It is assumed that the Community Trade Mark Office will already exist, so that the setting-up costs for the Designs Office may be lower than they would otherwise have been.

6.2 Co-financement

After opening, the Office will begin to receive fees income, and subvention will only be needed to supplement this to cover expenditure for a period of approximately four years. After this estimated period, the Office should be fully operational and self-supporting. Only if this were not the case would the Community need to be asked to grant a sufficient continuing subsidy until balance was achieved. This subsidy would in any case progressively be reduced, the object being to ensure that the Office will recover its costs from the income derived from fees as soon as this can be reasonably achieved. Suitable choice of fees can be used to some extent to control the date when this balance is reached between income and expenditure. This is explained further in paragraph 7.4 below which also warns, however, that the scope for such control is limited, particularly by the fact that renewal fees only become payable from the fifth year and these are to be a major source of income.

6.3 Interest

None

6.3 Other

None

6.5 Reimbursement

No

6.6 Modification of level of receipts

No

7. Financial Effects

7.1 Total cost of the measure

The initial costs of setting up the Office are estimated to be ECU 70 000 and ECU 2 254 540 respectively, in each of the two years before opening, giving a total of ECU 3 824 540. It must be remembered that the actual year of opening is not yet known. The figures are derived by considering direct staff costs, namely salaries, other staff-related costs such as welfare, pension provisions, insurances and so on, provision of services for the Office and the provision of equipment including initial computer installations.

These computer installations will include more than just the computer which has to perform the Office's general administrative functions. A major computer installation will be the essential tool of the Design registration system - itself the "raison d'être" for the Office - and will have to perform with high reliability the many functions associated with registration and with any subsequent actions including legal actions which may flow from it over a possibly extended period. If the Office is to operate efficiently and cost-effectively, the computer will need to be sophisticated, state of the art equipment which is able to record graphic and pictorial images by optical scanning, to associate these with various textual data, and to reproduce this data in various ways according to demand.

The cost will therefore inevitably be high and must arise in the period before the Office opens. It will, however, be a once-only cost.

7.2 Budgetary breakdown - ECUs

Year	-2	-1	1	2
Total staff	10	14	22	45
Staff (1.1)	670 000	966 140	1 564 200	3 294 000
Staff (1.2)	200 000	288 400	466 400	983 250
Equipment (2)	700 000	1 000 000	750 000	250 000
Total	1 570 000	2 254 540	2 780 600	4 527 250

The year "-2" means the first of the two years before the Office opens. This cannot be earlier than 1996, and is quite likely to be later. The figures include an annual inflation factor.

7.3 Echéancier indicatif

ECUs	CE	CP
Year -2 (1996?)	1 570 000	1 570 000
Year -1 (1997?)	2 254 540	2 254 540
Year +1 (1997?)	2 780 600	2 780 600
Year +2 (1998?)	4 527 250	4 527 250

This assumes that year -2 is 1996, but as already explained it could well be later. From year +1 onwards, receipts from fees will begin to offset expenses until they balance .

7.4 Estimated fees income

A large range of different fees is contemplated. The fifth year after opening (year +5) will be the significant year because this is when renewal fees first become payable. These will be set at a relatively higher level and will represent a major source of income. Before this date, however, the most significant fees will be those associated with registration, covering registration itself, publication, possible multiple applications, and so on. For the purposes of this estimate, these are combined notionally into a general registration fee, and the following table summarizes the impact on the Community subsidy of choosing figures for this fee of ECU 200, 300 and 400. It assumes a more or less linear rise in registrations over the first five years. Fees for challenging validity of registrations will also arise but are likely to have less effect, for the purpose of this estimate, than the registration fees.

YEAR	-2	-1	+1	+2	+3	+4	+5
Subsidy ECU 200	1 570 000	2 254 540	1 735 600	3 247 250	2 507 250	1 967 250	-192 750
Subsidy ECU 300	1 570 000	2 254 540	2 040 600	2 747 250	1 707 250	967 250	-1 192 750
Subsidy ECU 400	1 570 000	2 254 540	1 335 600	2 247 250	907 250	-32 750	-2 192 750

If the general registration fee is ECU 300, this would lead to a surplus in year +5 and subsidy would be no longer needed. If, the registration fees were set at ECU 200, then balance would only just be achieved in year +5, with no room for unforeseen effects. The validity-challenge fees cannot be set too high as this could give rise to political difficulties. If, however, registration fees were set at ECU 400, the break-even year would be year +4 instead of year +5, although this would lead to an excessive surplus of income over expenditure in Year +5 when renewal fees become payable. Such a surplus may be difficult to justify to fee payers, but this would nevertheless be the preferred option because balance would then be achieved as soon as possible. If necessary the fees could be reviewed at that stage, and this review could take account of public reaction.

8. Anti-fraud measures

The President of the Office must submit each year to the Commission and to the Court of Auditors accounts of the entire Office's total revenue and expenditure for the preceding financial year. In addition, the financial rules applicable to the general budget of the Communities will apply to the Office. Anti-fraud measures are therefore foreseen as being covered by these procedures.

9. Cost Efficiency

9.1 Objectives

The proposed measure is to meet the desire for a Community scheme under which enterprises may obtain by a single procedure a design right providing protection with uniform effect throughout the Community. After an initial period of five years from opening, the Community Designs Office should be fully operational and self-supporting, and be issuing 8 000 registrations per annum. In addition, it is estimated that it will, on request, consider the validity of 3 600 registrations per annum, and its Boards of Appeal will hear 500 appeals against decisions taken by the Office.

9.2 Justification for the measure

The reasons justifying the financial intervention of the Community are, as mentioned in paragraph 4.1 and explained more fully below, that a unitary system is the only way of removing the internal market barriers caused by the existence of conflicting national design rights in the Member States. Harmonization measures alone would not be sufficient to achieve this result. It is also important to note that financial support from the Community will be needed for only a relatively small number of years, because once the Office is fully functional it is intended to make it self-supporting by appropriate calculation of the fees.

The object of the Regulation is to provide a single procedure by which a unitary right may be acquired having uniform effect throughout all territories of the Community. Present design protection laws differ considerably between Member States and as a result trade and competition in products incorporating a design are hindered and distorted by the large number of applications, offices procedures, laws, and nationally circumscribed exclusive rights, and by the consequently high costs and fees for designers seeking protection.

Although approximation of national design laws is desirable, this is still no substitute for a Community-wide protection system and would not satisfy the needs of the internal market since protection would still end at the frontiers of the States in which it had been acquired. Thus in spite of approximation of laws, there would remain a strong risk that conflicting rights could exist in other Member States, and the only solution to this is a supranational protection system. This calls for a design right which is directly applicable in each Member State and for a Community design authority with Community-wide powers, because only in this way will it be possible for a designer to obtain through one application to a single design office in accordance with a single procedure under one law, a single design right for one area encompassing all Member States.

The present Regulation is the legal instrument for achieving this. It is clearly necessary because there is no way in which national procedures would be able in themselves to provide this supranational solution to the internal market problem of conflicting rights.

9.3 Follow up and evaluation

9.3.1 Indications of performance

These will include:

- . the number of designs registered by the Office;
- . the number of applications for declarations of invalidity examined by the Office;
- . the number of appeals against decisions of the Office made to the Boards of Appeal.

9.3.2 Evaluation

The Office must submit a management report to the Commission and to the Administrative Board of the Office each year.

9.4 Coherence:

9.4.1 Financial programme of DG XV (ex DG III)

The preparatory work on the measure by the officials concerned is foreseen in the financial programme of DG XV (ex DG III).

9.4.2 Corresponding objectives

The Community Designs Office would conveniently share administrative services with the Community Trade Marks Office. Its budgetary procedure and financial control will be regulated in accordance with Section 5 of Title XII of the proposed Regulation. Estimates of revenue and expenditure for the Community Design Office will be prepared each year. They will be entirely separate from the Community Trade Mark Office's budget.

There is therefore a common interest in achieving these two objectives of a Community Trade Marks Office and a Community Designs Office. Nevertheless, the Designs Office is to be made an independent institution, and it is therefore not foreseen that progress on the present proposal need be prejudiced by lack of further progress on the other.

9.4.3 Uncertainties

No specific factors affecting the outcome of the measure may be foreseen at this stage.

10. Administrative expenses

10.1 Commission staff

No increase in staff is necessary. At present, the work already occupies the fulltime services of two A Grades and a certain amount of time at Head of Unit level and B Grade level. This will continue to be required in order to handle the work associated with the progress of this proposal, including representation at Council Working Groups and maintaining continued discussion with public interest groups.

10.2 Administrative expenditure

Additional expenditure may arise from the need for:

Missions - (Budget line A 1300)

A possible 10 missions per year, each involving 1 person for an average of 2 days, and likely to take place in one of the major Community capitals, imply annual costs estimated at ECU 7 000 starting in 1993.

Special meetings, such as experts meetings - (Budget line A 2500)

The cost of 2 meetings per year in Brussels each with 20 participants is estimated at ECU 24 000 per year starting in 1993.

THE IMPACT OF THE PROPOSAL ON BUSINESS
(with special reference to SMEs)

1. Why is Community legislation necessary?

To establish a Community system for the protection of industrial design with the aims of:

- (a) ensuring that designers and design industries may organize better protection through a single action with direct and uniform effect throughout the Community;
- (b) improving the functioning of the Internal Market;
- (c) improving competitiveness for the European designs industry, by supporting the acknowledged superiority of European designers' products over competing products from other parts of the world.

2. Which business will be affected?

- (a) The sector mainly affected will be those manufacturing businesses whose products have an appearance which embodies commercially valuable design features.
- (b) All sizes of business are likely to be affected, from multinationals, where design may be only one aspect of a far more complex product or range of products, to SMEs including enterprises consisting of only very small numbers of people. In the latter cases, the design may constitute the major selling-point of the product.
- (c) There is no reason to suppose that particular geographical areas will predominate.

3. What will businesses have to do to comply with the proposal?

Businesses will need to acquire only a single Community registration for each design. They need no longer make individual national registrations under different national procedures in all those countries where a potential market for the product may exist. Because, in addition, they will enjoy automatic protection for an initial period under the unregistered Community design, life will be made much easier for these businesses.

On the other hand, it has been argued by several organizations representing small and medium-sized producers of automobile spare parts that, in contrast to the Commission's intentions, the interpretation which the Office, and in the last resort the European Court of Justice, may give to the criteria for individual character and novelty could lead to a lower protection threshold than envisaged.

If this happened, it could mean, it is claimed, that a large number of products of largely functional design with little or no aesthetic character and largely predetermined outward shape might fall into the scope of protection of the regulation.

4. What economic effects is the proposal likely to have?

(a) on employment?

Greater ease in securing Community-wide protection should stimulate the activities of designers both to innovate and to market more widely, with a positive impact on employment especially in smaller enterprises.

These rights must be observed by third parties, such as competing manufacturers, and those who trade in the design-protected products of others. However, the proposal contains measures which aim to avoid any unduly onerous effects on SMEs trading in replacement parts of complex products such as motor cars.

(b) on investment and the creation of new businesses?

Community-wide protection of their designs will give businesses much greater confidence in being able to recover their costs and will thereby encourage investment. It is difficult to judge exactly the impact for large manufacturing businesses where design may only represent one aspect of a product but industry has clearly indicated the importance it attaches to Community design protection. On the other hand, there should be positive encouragement for creation of smaller businesses where the emphasis may lie in the design of a product.

As regards enterprises who trade in design-protected products, there are provisions which limit to a certain extent the exercise of design rights against those whose business is in the replacement parts market, such as for example suppliers, repairers and insurers in the motorcar aftermarket. While providing protection to promote creation, therefore, the provisions permit a measure of competition from independent producers.

(c) on the competitive position of businesses?

The confidence given by easily obtained Community-wide protection should encourage more extensive exercise of design skills and more thorough exploitation of the resulting rights. It is in the nature of protectable designs that they do not exhaust the fields of opportunity for other designers in a given product area, and the enhanced competitiveness which results from this freedom should benefit all sizes of enterprises, without posing a severe threat even to very small ones.

5. Does the proposal contain measures to take account of the specific situation of SMEs?

It is intended that fees for the registered Community Design should be as low as possible. Although the measures contained in the proposal are not directed specifically at small and medium-sized enterprises, these may benefit proportionately more than large firms, because the greater simplicity and lower costs of securing Community-wide protection should be of greater significance in SMEs. It is in some of the smaller SMEs that many of today's most innovative and original designers may tend to concentrate.

The proposal will introduce exclusive rights for designers and their successors in title, and these rights must be respected by competitors. As for SMEs trading in the design-protected products of others, it is not appropriate that industrial property law should itself contain exemptions for specific industrial sectors. However, for the reasons given above, traders in and manufacturers of replacement parts are given certain relief from the exercise against them of such rights as may exist in these parts. Since rights come into existence without examination, the Community Design Office is to provide a low cost system for anyone to challenge the validity of design rights exercised or exercisable against them. The proposal clearly foresees an opportunity for active involvement of the Commission in this process, as well as of Member States, with a view to ensuring that the relevant provisions are applied in the manner intended.

Fears about the entering into force of such rights without examination have been voiced by some quarters, who feel it could lead to excessive litigation. However, the experience of Member States such as France and Germany does not appear to substantiate these fears. Litigation cannot be entirely excluded, and where it occurs it may be costly.

6. Consultation

The Commission Services published a Green Paper "The Legal Protection of Industrial Design" (III/F/5131/91). This was widely circulated to thousands of recipients. On the basis of a considerable number of submissions from major industrial organizations received, interested parties were invited to a Hearing in Brussels on 25 and 26 February 1992. Reactions have been generally very favourable, and although many detailed aspects will need discussion there are only a few issues of difficulty to be resolved, mainly concerned with the criteria for protectability and what kinds of design should not be eligible for protection.

Some have expressed concerns that manufacture of certain functional products may be monopolized by the existence of design rights, these allegations being based upon the absence of a distinction between aesthetic and functional design. However, experience shows that this distinction is largely arbitrary and that protection for functional designs needs in any case to be provided for by some means. The Design Regulation makes protection dependent upon distinctive appearance, and in view of this, these concerns should not prove to be justified.

Some industries have expressed the view that the market for replacement parts would benefit if protection were denied for any design constrained wholly by the need for the product embodying it to interconnect mechanically with another product, and the proposal contains appropriate provisions to this end. These concerns have arisen notably in the motor and computer industries, with independent producers of replacement parts arguing against the perceived monopoly position of the original manufacturers. ACEA⁽¹⁾, representing the original motor manufacturers, argue strongly that they deserve and require design protection for certain component parts of motor cars in order to be able to recover their design costs, and they consider therefore that they have made sufficient concession in accepting these provisions on the non-protectability of a product design dictated wholly by the way it has to fit mechanically with another product. On the other hand, EAPA⁽²⁾, CLEDIPA⁽³⁾, AIRC⁽⁴⁾ and CLEPA⁽⁵⁾, representing the component and replacement part manufacturers, continue to argue strongly not only against protection for those designs which must mechanically fit, but also against protection for other designs which must visually match, the remaining parts of a complex product such as a car. They have variously suggested solutions such as a "must-match" exception from protection, or a legal licence provision, declaring that they are not opposed to paying royalties, but objecting to being prohibited from manufacturing and dealing in spare parts.

Representatives of the insurance industry and consumers also argue that design protection of such parts will raise the costs of repair work and of insurance premiums.

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- (1) ACEA: Association des Constructeurs Européens d'Automobiles.
(2) EAPA: European Automotive Panel Association.
(3) CLEDIPA: Comité de Liaison Européen de la Distribution Indépendante de Pièces de rechange et Equipements pour Automobiles.
(4) AIRC: Association Internationale des Réparateurs en Carrosserie.
(5) CLEPA: Comité de Liaison de la Construction d'Equipements et de Pièces d'Automobiles.

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