



## **CONCRETE WORDING SUGGESTIONS OF ECTA, INTA AND MARQUES ON THE EU'S PROPOSED NEW DESIGN LAW**

**European Commission's proposal of a Directive of the European Parliament and of the Council on the legal protection of designs (recast), and Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/2002, as well as the Commission Regulation amending Regulation (EC) No 2245/2002 implementing Council Regulation (EC) No 6/2002 on Community designs (Implementing Regulation).**

**June 2023**

ECTA, INTA and MARQUES are pleased to provide the following comments and suggestions to the European Commission's proposal of a Directive of the European Parliament and of the Council on the legal protection of designs (recast), and Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/2002, as well as the Commission Regulation amending Regulation (EC) No 2245/2002 implementing Council Regulation (EC) No 6/2002 on Community designs (Implementing Regulation), hereafter.

Our input builds upon the joint comments provided to the European Commission in January 2023, during the Public Consultation on the above documents. In that occasion, we welcomed the efforts of the European Commission in attempting to achieve greater harmonisation in the area of industrial designs and, in particular, the efforts aimed at:

- Introducing significantly greater harmonisation in the Directive and aligning national procedures with those at the EUIPO, including the introduction of administrative design invalidity actions, avoiding costs and delays of court proceedings;
- Broadening definitions of designs and products to encompass new technological developments and allowing users to represent designs dynamically;
- Removing the 'unity of class' requirement for multiple applications, which will reduce costs;
- Simplifying the fee structure and reducing fees for the first ten years of registration;
- Making it an infringement to create, to copy or to distribute anything recording the design (e.g. a computer-aided design (CAD) file) for the purpose of enabling a product incorporating the design to be made.

However, some areas of concern remain for the members of our respective Associations. In this regard, we would like to propose the below suggestions for amendments for your consideration.

The Associations have no specific position on the wording of the repair clause and, for this reason, Article 20(a) has not been covered in the present document. However, we emphasize the need for a permanent harmonization and to clarify if there is an intention to deliberately deviate from the principles discussed by the CJEU in *Acacia*.

[Proposal for a Regulation amending Council Regulation \(EC\) No 6/2002 of 12 December 2001 on Community designs](#)

European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<p><b>Deletion of Recital 10 of Regulation 6/2002 (no Recital regarding designs having a technical function)</b></p>	<p>We recommend adding the following as a Recital:</p> <p>“Technological innovation should not be hampered by granting design protection to designs consisting exclusively of features or the arrangement of features dictated solely by a technical function. It is understood that this does not entail that a design must have an aesthetic quality and that designs having a technical function are not excluded per se from design protection. A registered design right may be declared invalid where no considerations other than the need for that product to fulfil a technical function, in particular those related to the visual aspect, have played a role in the choice of the features of appearance. Likewise, the interoperability of products of different makes should not be hindered by extending protection to the design of mechanical fittings. Features of a design which are excluded from protection for these reasons should not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection.”</p>
<p><b>Justification:</b></p> <p>We note that Recital 10 of Regulation 6/2002 (regarding designs having a technical function) will be entirely deleted and will not be replaced, in the proposed Regulation, by a similar provision. In order to align the proposed Regulation with the recast Directive (see Recitals 21 and 22 of the recast Directive) and to emphasize that functional and/or technical products are not excluded per se from design protection, we suggest adding the above Recital to the proposed Regulation.</p>	

European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<p><b>Article 7 (3)</b></p> <p>3. Paragraph 2 shall also apply if the design has been made available to the public as a consequence of an abuse in relation to the designer or his successor in title.</p>	<p>We recommend amending this paragraph as follows:</p> <p><b>Article 7 (3)</b></p> <p>3. Paragraph 2 shall also apply if the design has been made available to the public as a consequence of an abuse in relation to the designer or his successor in title <u>or copying of the protected design.</u></p>
<p><b>Justification:</b></p> <p>Article 7(3) of the Regulation has not been expressly amended to address the scenario where an illegal copy of an (unregistered) design is then used as a disclosure against a later registered EU design. This scenario significantly harms the rights of users of the design system, and it is unclear whether or not it constitutes "an abuse in relation to the designer". Therefore, a change is absolutely necessary to ensure that this scenario is encompassed. The above amendment addresses this issue.</p>	

European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<p><b>Article 47a</b></p> <p>Withdrawal and amendment</p> <p>1. The applicant may at any time withdraw an EU design application or, in the case of a multiple application, withdraw some of the designs contained in the application.</p>	<p>We recommend amending paragraph (2) as follows:</p> <p><b>Article 47a (2)</b></p> <p>2. The applicant may at any time amend the representation of the EU design applied for in immaterial details, <u>which merely remedy a lack of precision, certainty or clarity regarding the matter to be protected by the EU design for which registration</u></p>

2. The applicant may at any time amend the representation of the EU design applied for in immaterial details.	<u>is sought and which do not alter the scope of protection of the EU design applied for.<sup>1</sup></u>
<p><b>Justification:</b></p> <p>We generally support this new option as useful to resolve human drafting errors when presenting different views of a design. Under the current regime, if there is discrepancy between views of the design, an applicant is left with an option either to delete conflicting views or split the application into two or more applications as necessary. This new option should offer a solution to resolve such errors in a more efficient way. That being said, we believe that the term “immaterial details” should be further explained within the Regulation, since the scope of what “immaterial details” are is unclear. Are they the same “immaterial details” as described under Novelty in Article 5(2) of Regulation 6/2002? Without further clarification as to what is to be considered “immaterial details” we have a concern that this new option might be abused to introduce new matter into designs. A non-exhaustive list of examples of what is to be considered as “immaterial details” or further explanation of the circumstances in which this Article would apply would be advisable (perhaps in the Recitals). Additionally, we recommend clarifying that amendments under this paragraph would not impact the filing date.</p>	

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<sup>1</sup> For example: withdrawing a single view which is inconsistent with the remaining views because it relates to another design; replacing views with views of a better quality, showing the design against a neutral background or removing elements external to the design.

European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<p><b>Article 50e</b></p> <p>Alteration</p> <p>1. The representation of the registered EU design shall not be altered in the Register during the period of registration or on renewal thereof except in immaterial details.</p> <p>2. A request by the holder for alteration shall include the representation of the registered EU design in its altered version.</p> <p>3. A request for alteration shall be deemed not to have been filed until the required fee has been paid. If the fee has not been paid or has not been paid in full, the Office shall inform the holder accordingly. A single request may be made for the alteration of the same element in two or more registrations, provided that the holder is the same for all designs. The required alteration fee shall be paid in respect of each registration to be altered. If the requirements governing the alteration of the registration set out in this Article and the implementing acts adopted pursuant to Article 50f are not fulfilled, the Office shall communicate the deficiency to the holder. If the deficiency is not remedied within a period to be specified by the Office, the Office shall reject the request for alteration.</p>	<p>We recommend amending paragraph (1) as follows:</p> <p><b>Article 50e (1)</b></p> <p>1. The representation of the registered EU design shall not be altered in the Register during the period of registration or on renewal thereof except in immaterial details, <u>which merely remedy a lack of precision, certainty or clarity regarding the matter to be protected by the EU design for which registration is sought and which do not alter the scope of protection of the registered EU design.</u><sup>2</sup></p>

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<sup>2</sup> For example: deleting a single view which is inconsistent with the remaining views because it relates to another design; replacing views with views of a better quality, showing the design against a neutral background or removing elements external to the design.

4. The publication of the registration of the alteration shall contain a representation of the registered EU design as altered	
<p><b>Justification:</b></p> <p>We generally support this new option as useful to resolve human drafting errors when presenting different views of a design. Under the current regime, a registered design is considered invalid if there is an inconsistency between views of the design, which was not objected by the Office during the examination. This new option should offer a solution to this highly dissatisfactory situation for the right holder. That being said, we believe that the term “immaterial details” should be further explained within the Regulation, since the scope of what “immaterial details” are is unclear. Are they the same “immaterial details” as described under Novelty in Article 5(2) of Regulation No 6/2002? Without further clarification as to what is to be considered “immaterial details” we have a concern that this new option might be abused to introduce new matter into designs after registration. A non-exhaustive list of examples of what is to be considered as “immaterial details” or further explanation of the circumstances in which this Article would apply would be advisable (perhaps in the Recitals). Additionally, we recommend clarifying that alterations under this paragraph would not impact the filing date, and we further recommend that the retroactive impact of this Article be fully considered.</p>	

European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<p><b>Paragraph 100/Article 88 (2)</b></p> <p>(100) in Article 88, paragraph 2 is replaced by the following:</p> <p>'2. On all matters not covered by this Regulation, an EU design court shall apply the applicable national law.';</p>	<p>We recommend amending this paragraph (2) as follows:</p> <p>(100) in Article 88, paragraph 2 is replaced by the following:</p> <p>'2. On all <u>design</u> matters not covered by this Regulation, an EU design court shall apply the applicable national law.';</p>

**Justification:**

We note that the Commission has taken a similar approach here to the EU Trade Mark Regulation (Regulation (EU) 2017/1001 on the European Union trade mark (codification)) with respect to when national laws are applicable. In the proposed Regulation, however, there is no subject matter limitation, and the provision reads “On all matters not covered by this Regulation...”. We question whether this was intended, rather than stating “On all design matters not covered by this Regulation...”, similarly to the EU Trade Mark Regulation’s provision (Article 129 (2)) “On all trade mark matters not covered by this Regulation, the relevant EU trade mark court shall apply the applicable national law”.

European Commission’s Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<b>Renewal Fees (Annex I)</b>  <b>6. Renewal Fee referred to in Article 50d (1), (3) and (9)</b>  (a) for the first period of a Renewal: EURO 70,00 per design  (b) for the second period of a Renewal: EURO 140,00 Euro per design  (c) for the third period of a Renewal: EURO 280,00 Euro per design  (d) for the fourth period of a Renewal: EURO 560,00 Euro per design	<b>Renewal Fees (Annex I)</b>  We recommend reinstating the existing renewal fees for the third and fourth periods:  <b>6. Renewal Fee referred to in Article 50d (1), (3) and (9)</b>  (a) for the first period of a Renewal: EURO 70,00 per design  (b) for the second period of a Renewal: EURO 140,00 Euro per design  (c) for the third period of a Renewal: EURO <u>150,00</u> Euro per design  (d) for the fourth period of a Renewal: EURO <u>180,00</u> Euro per design



**Justification:**

The renewal fees are increased substantially for the third and (especially) fourth periods. We are not clear as to the justification for this, when the cost to the EUIPO of renewing a design does not depend on whether it is a first, second, third or fourth renewal. The increase in fees serves only to discourage further renewal of design rights, a notion unaligned with an innovation economy, and seems at odds with recital 6 of the Regulation that the review was “with a view to improving the accessibility and affordability of design protection in the Union”. We have previously called for a reduction in renewal fees, and would reiterate that call, or at the very least that those fees not be increased. As previously mentioned, going forward we support the idea of a Fee Review Study to recommend new fee levels and structures. We ask that the Fee Review Study examine the absence of a “bulk discount” for renewals. In the above recommendation, we have reinstated the existing fees for renewals of the third and fourth periods, as set out in Commission Regulation No 2246/2002 (as amended).

European Commission’s Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<b>Deletion of Art. 110a (5), sentence 2 (“Pursuant to Article 11, a design which has not been made public within the territory of the Community shall not enjoy protection as an unregistered Community design”)</b>	<p>We note that the Commission has removed a controversial sentence that has given rise to much legal debate. We assume that the intention behind this deletion is to remove any requirement that, to enjoy protection as an unregistered EU design, a design does not first need to have been made public within the territory of the Union.</p> <p>If this is the case, we strongly recommend adding a Recital to the proposed Regulation to the effect that “A design may enjoy protection as an unregistered EU design whether or not it was first made public within the territory of the Union.”</p> <p>Additionally, we would recommend deleting the following wording from Article 11, since the different wording between</p>

	<p>Articles 7 and Article 11 fuelled the debate behind the meaning of Article 110a (5), sentence 2.</p> <p>Article 11</p> <p>1. A design which meets the requirements under Section 1 shall be protected by an unregistered EU design for a period of three years as from the date on which the design was first made available to the public <del>within the Community</del>.</p> <p>2. For the purpose of paragraph 1, a design shall be deemed to have been made available to the public <del>within the Community</del> if it has been published, exhibited, used in trade or otherwise disclosed in such a way that, in the normal course of business, these events could reasonably have become known to the circles specialised in the sector concerned, operating within the <del>Community</del><u>Union</u>. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.</p>
<p><b>Justification:</b></p> <p>We note that Article 110a (5) CDR sentence 2 was deleted without any further comments. We would like to point out that the mere deletion of this sentence, rather than a clear statement behind it, would likely give rise to legal uncertainty and not put an end to the discussion whether it could be sufficient for an unregistered design to come into effect according to Article 11 Regulation where the first disclosure was done outside the EU, but could still be known to the relevant circles of experts within the EU. The German Federal Court of Justice addressed this discussion in its judgment of 9 October 2008 - I ZR 126/06 (OLG Hamburg) Gebäckpresse. The Court held that the wording of Article 11 CDR was not entirely clear in this respect, but that it was clarified by the later introduced Article 110a (5) sentence 2, that protection for an unregistered Community design could only arise if the design was made available to the public for the first time within the territory of the EU. If Article 110a (5),</p>	

sentence 2 is now deleted without any further comments, it must be anticipated that cases will be brought to analyse the impact of this deletion. We recommend the clarifications set out above.

European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
German version of proposed Regulation	We recommend replacing the term "Geschmacksmuster" with "Design".
<p><b>Justification:</b></p> <p>The German term "Geschmacksmuster" is outdated and German law has already been using the term "Design" instead of "Geschmacksmuster" since 2014 (see: DesignG - Gesetz über den rechtlichen Schutz von Design (gesetze-im-internet.de). A more contemporary translation would be "EU design", just as German national laws speaks of "design" and no longer of "Geschmacksmuster". Also, the proposed recast Directive no longer speaks of "Muster" in its German translation, but of "Design" (for national design rights). For consistency, the same translation should be used.</p>	

European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<p><b>Article 96(2)</b></p> <p>"A design protected as an EU design shall also be eligible for protection by copyright as from the date on which the design was created or fixed in any form, provided that the requirements of Union copyright law are met."</p>	<p>We recommend <b>Article 96 (2) CDR</b> to be amended as follows:</p> <p>"A design protected as an EU design shall also be eligible for protection by copyright as from the date on which the design was created or fixed in any form, provided that the requirements of <del>Union</del> copyright law are met."</p>
<p><b>Justification:</b></p> <p>In the explanation (page 9) reference is made to "<i>The principle of cumulation of design and copyright protection is maintained, while taking account of the fact that, since the original legislation was adopted, harmonisation has progressed in the copyright area.</i>" It is not clear which 'original legislation' is being referred to, and what is meant by 'harmonisation has progressed'. It could be that the national copyright laws of the Member States are being referred to, so we recommend clarifying this. Further, it seems contradictory that the proposed text ("<i>A design protected as an EU design shall also be eligible for protection by copyright as from the date on which the design was created or fixed in any form, provided that the requirements of Union copyright law are met.</i>") considers Union copyright as harmonised, whereas the preamble (page 9) states only that "harmonisation has progressed".</p> <p>We generally take it as a positive sign that the Commission considers the copyrightability as harmonised. However, in order to prevent any misunderstandings and in the absence of a Union copyright law, we recommend deleting the word „Union“</p>	

[Proposal for a Directive on the legal protection of designs \(recast\)](#)

European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<p><b>Recitals</b></p> <p>There is no mention in the recast Directive of the benefits of Member States joining the Hague System.</p>	<p><b>Recitals</b></p> <p>Include a new Recital in the recast Directive as follows:</p> <p>In order to provide a level playing field for businesses and to maximise options for registering designs across the Union, the Member States, which are not already members of the Hague System for the International Registration of Industrial Designs, should take the necessary steps to accede to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999 (Hague Agreement). The Member States acceding to the Hague Agreement should further enact implementing legislation on the registration and enforcement of design rights.</p>
<p><b>Justification:</b></p> <p>The Hague System offers an efficient and cost-effective process for international design applications. By standardising formality requirements and centralising the administration of international registered design applications, it reduces transaction costs and facilitates access to design rights.</p> <p>The European Union is a member but there are still 8 EU Member States that are not (Austria, Cyprus, Czech Republic, Ireland, Malta, Portugal, Slovakia and Sweden).</p>	

There would be greater flexibility for designers to register designs within the EU if every Member State adhered to the Hague System and domesticated its requirements. This would also provide a level playing field in the interests of the single market. For example, a designer in Slovakia would be in the same position as a fellow designer across the border in Hungary.

European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<p><b>Article 21</b></p> <p>1. A right of prior use shall exist for any third party who can establish that before the date of filing of the application, or, if a priority is claimed, before the date of priority, the third party has in good faith commenced use within the Member State concerned, or has made serious and effective preparations to that end, of a design included within the scope of protection of a registered design right, which has not been copied from the latter.</p> <p>2. The right of prior use shall entitle the third person to exploit the design for the purposes for which its use has been effected, or for which serious and effective preparations had been made, before the filing or priority date of the registered design right.</p>	<p>We recommend amending this article as follows:</p> <p><b>Article 21</b></p> <p>1. A right of prior use shall exist for any third party who can establish that before the date of filing of the application, or, if a priority is claimed, before the date of priority, the third party has in good faith commenced use within the Member State concerned, or has made serious and effective preparations to that end, of a design included within the scope of protection of a registered design right, which has not been copied from the latter.</p> <p>2. The right of prior use shall entitle the third person to exploit the design for the purposes for which its use has been effected, or for which serious and effective preparations had been made, before the filing or priority date of the registered design right.</p> <p>3. <u>The right of prior use shall not extend to granting a licence to another person to exploit the design.</u></p>

	4. <u>The right of prior use cannot be transferred except, where the third person is a business, along with that part of the business in the course of which the act was done or the preparations were made.</u>
<p><b>Justification:</b></p> <p>The introduction of the Prior Use Defence in the recast Directive only partially reproduces Article 22 Regulation 6/2002, specifically the equivalent provisions to paragraphs 3 and 4 regarding the right of prior use not extending to the grant of a licence and assignment being impermissible other than in certain circumstances have not been brought across into the recast Directive. We anticipate that the lack of these provisions in the recast Directive, only partially harmonizing these points, will give rise to legal uncertainty and litigation. It is in the interests of users that the proposed Regulation and recast Directive should be harmonized as much as possible, and that any discrepancies due to policy or other reasons should be clearly explained.</p>	

European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<p><b>Recitals 21 and 22 (revised Recital 14 of 98/71/EC)</b></p> <p>(21) Technological innovation should not be hampered by granting design protection to ⇨ designs consisting exclusively of ⇐ features ⇨ or the arrangement of features ⇐ dictated solely by a technical function. It is understood that this does not entail that a design must have an aesthetic quality. ⇨ A registered design right may be declared invalid where no considerations other than the need for that product to fulfil a technical function, in particular those related to the</p>	<p>We suggest amending sentence 2 of Recital 21 as follows:</p> <p>“It is understood that this does not entail that a design must have an aesthetic quality <u>and that designs having a technical function are not excluded per se from design protection.</u>”</p> <p>We recommend keeping the last part of sentence 2 of Recital 22 (“[whereas f]Features of a design which are excluded from protection for these reasons should not be taken into</p>

<p>visual aspect, have played a role in the choice of the features of appearance. ⇐</p> <p>(22) Likewise, the interoperability of products of different makes should not be hindered by extending protection to the design of mechanical fittings. <del>whereas features of a design which are excluded from protection for these reasons should not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection;</del></p>	<p>consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection;”).</p>
<p><b>Justification:</b></p> <p>We understand that the added sentence 3 of Recital 21 intends to implement case law of the CJEU, namely, its decision of 08/03/2018, C-395/16, DOCERAM, EU:C:2018:172, § 31. However, we are concerned that, without further clarification, this may lead to an unreasonable restriction of designs having a function. It is important that also functional and/or technical products can benefit from design protection. In fact, most designs are not mere design objects in the classic sense but are industrial products having a function. Design protection presents a major marketing asset also for functional and/or technical products and should therefore be available and not unreasonably limited. Considering this, we suggest amending sentence 2 of new Recital 21 recast Directive as suggested above.</p> <p>We do not see the reason for the suggested deletion of sentence 2 of Recital 22. The sentence emphasizes that design protection shall be precluded only for designs consisting exclusively of features or the arrangement of features dictated solely by a technical function. Designs having other features that are not exclusively or solely dictated by a technical function shall be eligible for protection if those features fulfill the further criteria for design protection. We are concerned that the deletion of the sentence might be used as an argument to further narrow the protectability of designs with functional and/or technical features. Therefore, we suggest not to delete sentence 2 of Recital 22.</p>	



European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<p><b>Article 36 (1)</b></p> <p>1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with ⇒ Articles 2 and 3, Articles 6, 10 to 19, 21, <b>23 to 33</b> by ...[OP please insert the date = 24 months after the date of entry into force of this Directive] at the latest. ⇐ <del>this Directive not later than 28 October 2004.</del> ☒ They shall forthwith communicate the text of those measures to the Commission. ☒</p>	<p>None. We urge the European Parliament to keep the 24-month transposition period, including for the administrative procedure for declaration of invalidity as envisaged in Article 31.</p>
<p><b>Justification:</b></p> <p>Article 31 of the recast Directive requires Member States to provide for an efficient and expeditious administrative procedure before their Industrial Property Offices for the declaration of invalidity of a registered design right. This is strongly welcomed by users and it is imperative that such actions become available as soon as possible. Article 36(1) requires the Member States to bring into force the relevant provisions for transposition no later than 24 months after the coming into force of the Directive. We urge that there be no further delays to this transposition period, including for the coming into force of Article 31.</p>	

European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
German version of draft	We recommend replacing the term "Geschmacksmuster" with "Design".
<p><b>Justification:</b></p> <p>The German term "Geschmacksmuster" is outdated and German law has already been using the term "Design" instead of "Geschmacksmuster" since 2014 (see: DesignG - Gesetz über den rechtlichen Schutz von Design (gesetze-im-internet.de). A more contemporary translation would be "EU design", just as German national laws speaks of "design" and no longer of "Geschmacksmuster".</p>	

**Ref.Ares(2022)8489921 (Draft) Commission Implementing Regulation amending Regulation (EC) No 2245/2002 implementing Council Regulation (EC) No 6/2002 on Community designs.**

European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<p><b>Article 4 (2) is contemplated being retained – at least for the time being – as originally drafted:</b></p> <p>The representation may contain no more than seven different views of the design. Any one graphic or photographic reproduction may contain only one view. The applicant shall number each view using arabic numerals. The number shall consist of separate numerals separated by a point, the numeral to the left of the point</p>	<p>We recommend amending this Article as follows:</p> <p><b>Article 4 (2)</b></p> <p>The representation <del>may</del> <u>shall</u> contain <u>one or more</u> <del>no more than seven</del> different views of the design. Any one graphic or photographic reproduction may contain only one view. The applicant shall number each view using Arabic numerals. The number shall consist of separate numerals separated by a point, the numeral to the left of</p>

<p>indicating the number of the design, that to the right indicating the number of the view.</p> <p>In cases where more than seven views are provided, the Office may disregard for registration and publication any of the extra views. The Office shall take the views in the consecutive order in which the views are numbered by the applicant.</p>	<p>the point indicating the number of the design, that to the right indicating the number of the view.</p> <p><del>In cases where more than seven views are provided, the Office may disregard for registration and publication any of the extra views.</del> The Office shall take the views in the consecutive order in which the views are numbered by the applicant.</p>
<p><b><i>Justification:</i></b></p> <p>Frequently, sophisticated products or products with moving parts cannot be fully disclosed by seven views, and this causes severe restrictions for design protection under the EU Design regime compared to other jurisdictions where there are no restrictions to number of views, or where the limit is much higher than seven views. Furthermore, the use of the above wording would be in alignment with proposed Article 26 (3) of the recast Directive and thus harmonise the (number of) views requirements within the EU.</p> <p>Alternatively, if a view limit is deemed to be necessary, it should be (significantly) higher than seven and should be harmonised between the EUIPO and the national IP offices of the Member States.</p> <p><b><i>We understand that this point may be being considered as part of the implementing measures, after the main reform package is itself finalised. This would be acceptable to ECTA, INTA and MARQUES.</i></b></p>	

European Commission's Proposal	INTA/ECTA/MARQUES Suggestion for Amendment
<b>Article 71 CDIR (unchanged)</b>	<p>We recommend adding a second sentence to <b>Article 71 para 3 CDIR</b>:</p> <p>“The Office will publish international registrations designating the European Union in its own database with all views that the Office has accepted.”</p>
<p><b><i>Justification:</i></b></p> <p>We suggest providing for a requirement for the EUIPO to publish IR designs designating the EU in its own database. The first reason is to adapt the EU design system to the EU trademark system. Whereas IR trademarks designating the EU are published in the EUIPO's eSearch database, IR designs designating the EU are not. This means that a search of the EUIPO database in relation to designs is incomplete and not user friendly. The second reason is to clarify the scope of protection of EU parts of IR designs, in particular as regards the number of views. Whereas the EU design system currently allows 7 views of the design only, it is possible to file more views with WIPO when designating the EU. Without a publication of EU parts of IR designs it remains unclear whether the design is protected with all views filed with WIPO or only in relation to the first 7 views. It is also noted that many other offices (e.g. USPTO and JPO) republish national parts of IR design in their national databases which makes a design search user friendly and transparent.</p>	

**ECTA** was founded in 1980 and brings together IPR professionals who practice in the field of trade marks, designs, geographical indications, copyright and related matters. These professionals are lawyers, trade mark and patent attorneys, in-house counsels focusing on IPR matters, and also other specialists in these fields. ECTA has members from all EU Member States and, at the same time, ECTA is proud to have associate members from more than 50 countries globally outside of the EU. The extensive work carried out by the Association, following the above guidelines, combined with the high degree of professionalism and recognized technical capabilities of its members, has established ECTA at the highest level and has allowed the Association to achieve the status of a broadly recognized expert body on all questions related to the protection and use of trade marks, designs, geographical indications, copyright and domain names in and throughout the European Union. For more information, please visit: [www.ecta.eu](http://www.ecta.eu).

The **International Trademark Association (INTA)** is a global association of brand owners and professionals dedicated to supporting trademarks and complementary intellectual property (IP) to foster consumer trust, economic growth, and innovation, and committed to building a better society through brands. Members include nearly 6,500 organizations, representing more than 34,350 individuals (trademark owners, professionals, and academics) from 185 countries, who benefit from the Association's global trademark resources, policy development, education and training, and international network. Founded in 1878, INTA is headquartered in New York City, with offices in Beijing, Brussels, Santiago, Singapore, and the Washington, D.C., Metro Area, and representatives in Amman, Lagos, and New Delhi. For more information, visit [inta.org](http://inta.org).

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