



## “Design Package”: main changes



Two new texts have reformed the design protection system to adapt it to current challenges and harmonize national legislations.

Regulation (EU) 2024/2822 and Directive (EU) 2024/2823 on the legal protection of designs were published in the Official Journal of the European Union (EU) on November 18, 2024.

These two texts, collectively referred to as the “Design Package”, came into force on December 8, 2024:

- Regulation (EU) 2024/2822 of October 23, 2024, will only be applicable from May 1, 2025, and for certain provisions requiring legislative measures by Member States, from July 1, 2026;
- Directive 2024/2823 of October 23, 2024, must be transposed by Member States into their national legislations by December 9, 2027.

The Design Package introduces numerous changes that will have significant practical implications.

Below, we outline the most important ones.

### ■ Terminology, definitions and symbol ⓘ

#### ▶ Terminology

Regulation: Recital 9; Article 1 – applicable as of May 1, 2025

Any reference to the term “Community” is replaced by the expression “European Union”.

For example:

- the Council Regulation (EC) No 6/2002 of December 12, 2001, on Community designs becomes the “Council Regulation (EC) No 6/2002 of 12 December 2001 on European Union designs”;
- the term “Community designs” becomes “European Union designs” (EUD);
- the term “unregistered Community design” becomes “unregistered European Union design” (UEUD);
- the term “Community design court” is replaced by “European Union design court”.



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### ► Definitions

Regulation: Article 3 – applicable as of May 1, 2025

Directive: Article 2

The Design Package extends the definition of designs to include animation, movement and transitions, while redefining products to notably include non-physical objects.

Directive 98/71/EC of October 13, 1998	Directive (EU) 2024/2823 of October 23, 2024
<i>'design' means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation;</i>	<i>'design' means the appearance of the whole or a part of a product resulting from the features, in particular the lines, contours, colours, shape, texture and/or materials, of the product itself and/or of its <b>decoration, including the movement, transition or any other sort of animation of those features;</b></i>

  

Directive 98/71/EC of October 13, 1998	Directive (EU) 2024/2823 of October 23, 2024
<i>'product' means any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs;</i>	<i>'product' means any industrial or handicraft item other than a computer program, regardless of <b>whether it is embodied in a physical object or materialises in a non-physical form, including:</b></i>  <i><b>(a) packaging, sets of articles, spatial arrangements of items intended to form an interior or exterior environment, and parts intended to be assembled into a complex product;</b></i>  <i><b>(b) graphic works or symbols, logos, surface patterns, typographic typefaces, and graphical user interfaces;</b></i>

Thus, elements such as graphical user interfaces, which were previously excluded from protection, can now be protected.

### ► Symbol ©

Regulation: Article 26a – applicable as of May 1, 2025

Directive: Recital 37; Article 24

Holders of a registered EU design (REUD) now have the option to affix a "©" symbol to their products or components.



## ■ Registration and renewal procedure

### ► Representation of the design

Regulation: Recital 12; Article 18a; Article 24; Article 36 – applicable as of May 1, 2025

Directive : Recital 15; Article 16; Article 25; Article 26

The Design Package clarifies the conditions for registering designs, particularly by specifying how designs must be represented in applications.

From now on, the application for a design registration must include “*a sufficiently clear representation of the design which permits the subject matter for which protection is sought to be determined*”.

This representation, in the form of a visual reproduction, may be “*static, dynamic or animated and shall be effected by any appropriate means, using generally available technology, including drawings, photographs, videos, computer imaging or computer modelling*”.

Only the features that are visibly represented in the application will be protected, regardless of whether they are visible during the exploitation of the design.

Thus, except for specific rules relating to parts of complex products, the visibility requirement only applies to filing.

Finally, the Design Package no longer limits the number of views to seven, leaving it to the discretion of Member States to determine the exact number.

### ► Simplification of applications

Regulation: Recitals 22 and 25; Article 35(1); Article 37; Article 38 – applicable as of May 1, 2025  
Article 47a – applicable as of July 1, 2026

Directive: Recital 40; Article 27

To simplify and harmonize the system for filing European Union design applications, the filing process is now centralized through the European Union Intellectual Property Office (EUIPO).

The Design Package allows applicants to include multiple designs belonging to different Locarno classes within a single application. However, the Regulation sets a maximum limit of 50 designs that can be included in a single multiple application. The Directive, however, remains silent on this point.

Applicants may withdraw their design application or modify it at any time. However, such modifications are strictly limited to minor details.

Finally, it is now possible to pay for the filing of designs up to one month after the filing.



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### ► Increase in renewal fees

Regulation: Article 50d; Annex 1 – applicable as of May 1, 2025

The filing fee for a design with the EUIPO has been simplified and remains unchanged at **€350**. For each additional design included in a multiple application, the fee is set at **€125**.

Regarding renewal fees, there is a significant increase, particularly for the third and fourth renewals:

Renewal Fees per Design	Current Fees	New Fees
First renewal	€90	€150
Second renewal	€120	€250
Third renewal	€150	€400
Fourth renewal	€180	€700

Renewals of international designs designating the European Union will not increase, with a uniform fee of €62 per design per renewal.

### ► Computation of deadlines

Regulation: Article 50d – applicable as of May 1, 2025

Directive: Article 32

The Design Package introduces a modification to the principle of renewal of registered designs:

Regulation (EC) no. 6/2002, Article 13	Regulation (EU) 2024/2822, Article 50d Directive (EU) 2024/2823, Article 32
<i>3. The request for renewal shall be submitted and the renewal fee paid <b>within a period of six months ending on the last day of the month in which protection ends</b>. 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.</i>	<i>3. The request for renewal shall be submitted <b>within a six months period prior to the expiry of the registration</b>. The renewal fee shall also be paid within that period. Failing that, the request may be submitted and the fee paid within a further period of six months following the expiry of the registration, provided that an additional fee for late payment of the renewal fee or late submission of the request for renewal is paid within that further period.</i>

Previously, the request for renewal was filed up until the last day of the month in which the protection period expires. Pursuant to the Design Package, however, the request for renewal must be filed during the six-month period before or on the exact due date.



► **Deferment of publication**

Regulation: Article 50 – applicable as of May 1, 2025

Directive: Recital 41; Article 30

The Design Package allows holders of registered designs to request, at the time of filing their application, a deferment of the publication of the registered design for a maximum period of thirty months from the filing or priority date.

At the end of the deferment period, or the period specifically requested by the holder, the design is published. However, the holder has the option to waive this publication by submitting a request to renounce the registered design no later than three months before the end of the deferment period.

In addition, the Directive allows Member States to introduce a system of publication only at the request of the holder, rather than automatically.

This deferment of publication aims to protect the commercial success of a venture by delaying the public disclosure of the design.

► **New grounds for non-registrability**

Regulation: Article 47 – applicable as of July 1, 2026

Directive: Article 13

The Design Package introduces new grounds for refusing design applications.

From now on, Member States may provide that the registration of a design will be refused if:

- the design application contains a total or partial reproduction of elements belonging to cultural heritage which are of national interest;
- the design application constitutes an improper use of signs, emblems and coats of arms other than those referred to in Article 6ter of the Paris Convention and which are of particular public interest to the Member State concerned.

The Design Package does not, however, require Member States to implement these changes but rather leaves it to their discretion.



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### ■ Invalidity proceedings and letter of consent

#### ▶ Fast-track invalidity proceedings

Regulation: Article 53a – applicable as of May 1, 2025

The Design Package introduces a fast-track invalidity procedure before the EUIPO in cases where the right holder does not contest the grounds for invalidity or the requests for invalidity that are submitted.

#### ▶ Administrative invalidity procedure

Directive: Article 31

The Design Package offers Member States the possibility of providing for an efficient and rapid administrative procedure before their national offices enabling them to request the invalidation of a registered national design.

This procedure of invalidity remains optional, however, so that it will be necessary to wait for the transposition of the Directive into national law to determine whether such a procedure will actually be implemented in the concerned country.

#### ▶ Letter of consent

Regulation: Article 25(7) – applicable as of July 1, 2026

Directive: Article 14(7)

The Design Package has introduced the possibility for the holder of a prior design, a distinctive sign or a protected work to expressly consent, by means of a letter of consent, to the registration of a new design application.

In such a case, the registered design cannot be declared invalid, provided that the prior holder had previously given his express consent to the registration before applying for invalidity.

### ■ Right to the registered design and presumption of validity

#### ▶ Right to the registered design

Directive: Article 11(3)

The Design Package also provides clarification on the rights to the registered design, aligning with what was already established by Regulation (EC) No. 6/2002.

In principle, the right to a registered design belongs to the designer or his successor in title. If several people have jointly developed the design, the right belongs to them jointly.

Inspired by the rules applicable to French and Spanish patents, the Design Package introduces a provision whereby the right to a national registered design belongs to the employer when it has been created by an employee in the performance of his duties or in accordance with the employer's instructions.



However, this automatic devolution to the employer is subject to two limits:

- the possibility of derogating from it by a contrary agreement between the parties concerned;
- and
- the compliance with the provisions of the applicable national legislation.

► **Presumption of validity of a registered design in infringement action**

Directive: Article 17

In the context of infringement action, the Design Package establishes a presumption of validity for the registered design in favor of the rights holder, aligning with the provisions of Regulation (EC) No. 6/2002.

This presumption may be reversed by any means in the Member State where the infringement action is brought, including through a counterclaim.

■ **Scope of rights**

► ***Jus prohibendi* (or the right to prohibit) of the design holder**

Regulation: Recitals 15, 16 and 17; Article 19(2)(d) and Article 19(3) – applicable as of May 1, 2025

Directive: Recitals 14, 27, 28, 29 and 30; Article 16(2)(d) and Article 16(3)

The Design Package enables the holder of a registered design to prevent any third party from introducing, in the course of trade and without their authorization, counterfeit goods in transit, regardless of whether they originate in or are intended for sale in the European Union.

Furthermore, in view of the growing problem of 3D printing technologies in various industrial sectors, particularly with the use of artificial intelligence, and in order to effectively combat the illicit reproduction of protected designs, the Design Package introduces an additional right of prohibition for the holder of a design: the holder may now prohibit the creation, downloading, copying, sharing or distribution, to third parties, of any support or software recording the protected design, when it is intended to enable the reproduction of a product incorporating or applying this design, without his consent.



► **Limits of protection**

Regulation: Recital 18; Article 20 – applicable as of May 1, 2025

Directive: Recitals 31 and 32; Article 18

The Design Package introduces two new limitations of the rights conferred to design holders.

Indeed, the holder of a prior design will not be able to enforce the rights conferred by the registration of the design against:

- acts carried out in order to identify or refer to a product as being that of the design holder;
- acts carried out for the purposes of comment, criticism or parody.

► **Introduction of the repair clause**

Regulation: Recital 19; Article 20a – applicable as of May 1, 2025

Directive: Recitals 32, 33, 34 and 35; Article 19

A major and expected change in the Design Package: the introduction of the repair clause, which excludes spare parts from design protection:

- whose appearance is dictated by the design of said part;

and

- those used solely to enable the repair of a complex product, with the aim of restoring its original appearance.

The manufacturer or seller of a part of a complex product may only invoke this clause if he has previously informed consumers of the commercial origin and identity of the product intended for the purpose of the repair of the complex product.

The Design Package provides a transitional period of eight years, until December 9, 2032, to enable Member States to comply with these new provisions and fully integrate the repair clause into their national legislation.

**Extension of REUD rights based on a prior national use**

Directive: Recital 36; Article 21

In accordance with Article 22 of Regulation (EC) No. 6/2002, a third party may assert a right based on the prior use of a design in good faith.

The Design Package extends this defense claim to national designs registered in all EU Member States.





### Conclusion and Practical Advice

The changes introduced by the Design Package are significant and will substantially impact the management, protection, and defense of designs.

To ensure a smooth transition and maintain effective protection of your rights, it is essential to adapt your practices to the new requirements.

We specifically recommend:

- to adapt your internal processes to comply with the new provisions and deadlines;
- to strategically review your designs portfolio to take into account the increase in renewal fees;
- to evaluate the opportunity to file new types of designs:
- to harmonize copyright and design ownership terms in your employment contracts, to ensure legal consistency and avoid conflicts;
- to file intervention requests with customs authorities;
- to examine new ways of defending design rights.

CASALONGA would be pleased to assist you in implementing these modifications and in managing, protecting and defending your rights.