



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2005  
COM(2005)689 final

2005/0274 (CNS)

Proposal for a

**COUNCIL REGULATION**

**amending Regulation (EC) No 6/2002 and (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs**

**{SEC(2005)1749}**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### **1. Introduction**

On 12 December 2001, the Council adopted Regulation (EC) No 6/2002 on Community Designs (hereinafter referred to as “the Community Designs Regulation”).<sup>1</sup>

The Community Designs Regulation establishes the Community design system, which provides for the acquisition of protection for designs with unitary effect for the whole territory of the Community. According to the Regulation, a design may be protected either by an unregistered Community design, if the design is made available to the public in the manner provided for in the Regulation, or by a registered Community design, if registered under the procedure provided for in the Regulation.

The Community Designs Regulation entrusts the Office for the Harmonization in the Internal Market (Trade Marks and Designs), hereinafter referred to as “the Office”,<sup>2</sup> to handle the administration of the Community design. On 1 January 2003, the Office enabled applications for registered Community designs with the first date of filing being granted on 1 April 2003.

On 23 December 2003, the 1999 Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999 (hereinafter referred to as “the Geneva Act”) entered into force. The Geneva Act allows designers to obtain design protection in a number of countries through a single international deposit. Thus, under the Geneva Act, a single international application filed with the International Bureau of the World Intellectual Property Organization (WIPO) replaces a whole series of applications which, otherwise, should have been effected with different national or regional Offices.

One of the main innovations of the Geneva Act is that intergovernmental organizations which have a regional office for the purpose of registering designs with effect in the territory in which the constituting treaty of the organization applies, may accede. This innovation was introduced into the Geneva Act with the specific intention of allowing the Community to adhere to the international registration system after the entry into force of the Community design system.

In order to prepare for the accession of the Community to the Geneva Act, the Commission has elaborated two proposals, which are jointly presented to the Council. The first Commission proposal relates to the accession of the Community to the Geneva Act.<sup>3</sup>

This second proposal contains the measures which are necessary to give effect to the accession of the Community to the Geneva Act.

### **2. The structure of the Commission proposal**

It is proposed that the measures giving effect to the accession of the Community to the Geneva Act be incorporated in the Community Design Regulation through amendment of

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<sup>1</sup> OJ L 3, 5.1.2002, p.1.

<sup>2</sup> The OHIM is established by Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, OJ L 11, 14.1.1994, p. 1.

<sup>3</sup> See COM (2005)

existing provisions and addition of a new Title XIa on “International Registration of Designs”.<sup>4</sup>

In principle, the substantive provisions applying to the international registration designating the Community are the same as the provisions which apply to Community designs.

Thus, international registrations designating the European Community and Community designs shall both be subject to the same law relating to designs (Title II), both shall be objects of property (Title III), may be subject to an application for a declaration of invalidity (Title VI), an appeal shall lie from the decision of the Invalidity Division (Title VII), and the jurisdiction and procedures in legal actions relating to Community designs shall be the same for international registrations designating the European Community as for Community designs (Title IX).

For these reasons, the new Title XIa contains many cross-references to other Articles of the Regulation.

The inclusion of this new title in the Regulation facilitates access to all the provisions which apply to a design protected for the entire territory of the European Community, be it through the registration of the design as a Community design or be it through an international registration of the design designating the European Community under the Geneva Act.

By means of the proposed structure, implementing measures, such as laid down in Commission Regulations (EC) No 2245/2002<sup>5</sup>, No 2246/2002<sup>6</sup> and No 216/96<sup>7</sup> will apply in principle *mutatis mutandis*. Where necessary, the Commission will amend them, for instance regarding the examination as to the grounds for refusal referred to in Article 106e of this proposal.

### **3. The Geneva Act**

The Geneva Act forms part of the Hague System, which is based on the Hague Agreement Concerning the International Registration of Industrial Designs. This Agreement is constituted by three different Acts: the London Act of 1934, the Hague Act of 1960 and the Geneva Act of 1999. The three Acts are autonomous and coexist with respect to their substantive provisions. Contracting parties may decide to become party to only one, to two or to all three of the Acts. They automatically become member of the Hague Union which at present has 42 Contracting States, amongst which 12 EU Member States.<sup>8</sup>

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<sup>4</sup> A similar structure was followed at the amendment of the Community trademark Regulation in order to give effect to the accession of the European Community to the Madrid Protocol (Council Regulation (EC) No 1992/2003 of 27 October 2003 amending Regulation (EC) No 40/94, OJ L 296, 14.11.2003, p.1).

<sup>5</sup> Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs, OJ L 341, 17.12.2002, p. 28.

<sup>6</sup> Commission Regulation (EC) No 2246/2002 of 16 December 2002 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) in respect of the registration of Community designs, OJ L 341, 17.12.2002, p. 54.

<sup>7</sup> Commission Regulation (EC) No 216/96 of 5 February 1996 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs), OJ L 28, 6.2.1996, p. 11.

<sup>8</sup> Belgium, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Netherlands, Slovenia, Spain. Five EU Member States – out of 18 countries in total - have become party to the

The system of international registration of designs arose from a need for simplicity and economy. In effect, it enables design owners originating from a Contracting State to obtain protection of their designs with a minimum of formality and expense.

The international application can be filed in one language (English or French), upon payment of a single set of fees. The applicant has to designate the Contracting States in which protection is sought. An international application is normally sent directly to the International Bureau. Upon receipt, the International Bureau checks that the international application complies with the prescribed formal requirements and then publishes the application – or better, the registration - in the *International Designs Bulletin* (on WIPO's internet website). Following publication, each national Office must identify the international registrations in which they have been designated, in order to proceed with the substantive examination, if any, provided for by its own legislation.

Any substantive aspect of the protection (including in particular the substantive examination carried out by each Office, the assessment of the conditions of protection and the scope of that protection) is thus entirely a matter of the legislation of each designated Contracting Party.

As a result of that examination, the Office may notify to the International Bureau a refusal of protection for its territory. However, an international registration may not be refused on grounds of non-compliance with formal requirements. Such requirements must be considered as already satisfied, following the examination carried out by the International Bureau.

Once the international application has been accepted it produces the same effect in each of the countries designated as if the design had been deposited there directly. The international registration is therefore equivalent to a national right in terms of its scope of protection and enforcement. At the same time, the international registration facilitates the maintenance of protection: there is a single application to renew and one simple procedure for recording any changes (e.g. in ownership or address).

The adoption of the Geneva Act in 1999 had a twofold objective, namely:

- to make the Hague System more attractive for applicants and to extend the system to new members; to that end, the 1999 Act has introduced a number of features into the Hague system with a view to facilitating the accession to the Hague Union of countries which administer design examination systems (such as USA and Japan);
- to provide for the establishment of a *link* between the international registration system and regional systems by providing that intergovernmental organizations may become a party to the Act.

The second objective opens the door for the accession of the European Community to the Hague System. The territory of the EU would then be regarded as a single country for the purposes of the Agreement, with the Community design rules as the relevant domestic legislation. The OHIM would become the Office responsible for the substantive examination of international applications in which the Community has been designated.

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Geneva Act (Estonia, Hungary, Latvia, Slovenia and Spain). Updates will be published on the WIPO website: [www.wipo.int](http://www.wipo.int).

The Geneva Act system became fully operational on 1 April 2004. On that date, the Geneva Act and the modernised Common Regulations under the Hague Agreement, which simplify the entire proceedings, became effective.

The Community design system and the international registration system as established by the Hague Agreement can be considered as being complementary. The Community design system provides for a complete and unified regional designs registration system which covers the whole territory of the European Union. The Hague Agreement constitutes a treaty centralizing the procedures for obtaining protection of designs in the territory of the designated Contracting Parties.

#### **4. Legal basis**

Since the rules giving effect to the accession of the European Community to the Hague Agreement are incorporated in the Regulation through the inclusion of a new and separate Title within that Regulation and an amendment of existing provisions in the Regulation, the legal basis for this proposal must be the same as the legal basis of the Regulation, i.e. Article 308 of the Treaty.

#### **5. The Articles**

##### **Article 1, paragraph 1**

Article 1, paragraph 1, modifies Article 25(1)(d) by adding “or by a design right registered under the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999 (...) and which has effect in the Community, or by an application for such a right” as a further earlier right available to be invoked as a ground of invalidity. Such an addition is needed to clarify that an international application or registration has the same value as prior design as a design right under national or Community design law.

##### **Article 1, paragraph 2**

The provisions giving effect to the accession of the European Community to the Geneva Act shall be incorporated in the Community Designs Regulation through inclusion of the new Title XIa on international registration of designs.

##### *Section 1 – General provisions*

##### ***Article 106a (Application of provisions)***

As a general rule, Article 106a of this proposed amendment of the Regulation provides that in principle Council Regulation (EC) No 6/2002 on Community designs and the regulations implementing that Regulation shall apply to international registrations under the Geneva Act designating the Community.

Moreover, it is clarified that the International Register will take the place of the register maintained by the Office where international registrations designating the European Community are concerned. Any recording in the International Register related to an international registration designating the European Community shall have the same effects as if it had been made in the register maintained by the Office.

The same reasoning applies to publication: all publications in relation to an international application designating the Community shall be carried out by the International Bureau and shall have the same effects as publications by the Office. In addition, the reasoning applies to the language regime of Article 98 of the Regulation.

## *Section 2 – International Registrations Designating the European Community*

### ***Article 106b (Procedure for filing the international designation)***

Article 4(1)(a) of the Geneva Act states that the international application may be filed, at the option of the applicant, either directly with the International Bureau or through the Office of the applicant's Contracting party. However, according to Article 4(1)(b) of the Geneva Act, a Contracting Party may notify that international applications may not be filed through its Office.

The Hague system draws most of its advantages from its simplicity and the location of the receiving office seems to be of minor importance for the application of designs. The European Community should therefore exclude the filing of an application through the Office in order to avoid useless duplication of work. Direct filing at WIPO is also to be preferred in order to avoid confusion by applicants between applications for registering Community designs and applications for international registrations. Such confusion would be all the more problematic in case of payment of the basic fee for an international application, which has to be paid in any event directly to the International Bureau and which is payable at the time of filing. If applicants would erroneously pay the fee to OHIM, this Office would have to return the fee. It is significant that at present WIPO does not receive applications filed through national offices even from those Contracting Parties who would permit such a procedure.

For this reason, the Commission proposes that the Community, in its instrument of accession, declares that international applications may not be filed through its Office. Accordingly, Article 106b specifies that international applications pursuant to Article 4(1) of the Geneva Act indicating the Community shall be filed directly at the International Bureau.

### ***Article 106c (Designation fees)***

- (1) The Geneva Act provides in Article 7 that the prescribed fees shall include a standard designation fee that has to be paid for each designated Contracting Party. In addition, any Contracting Party which is an intergovernmental organisation may declare that, for each application and for each renewal of an international registration in which it is designated, the standard designation fee is replaced by an individual designation fee, whose amount shall be indicated in the declaration and can be changed in further declarations. The fixed amount may not be higher than the equivalent of the amount which the Contracting Party would be entitled to receive for a national application and renewal, that amount being diminished by the savings resulting from the international procedure.
- (2) The Commission proposes that the Community, in its instrument of accession, declares that the prescribed designation fees referred to in Article 7(1) of the Geneva Act in relation to the application and the renewal are replaced by individual designation fees. These fees are payable to the International Bureau and shall be transferred by the International Bureau to OHIM.

- (3) The Commission will also propose an amendment to Regulation (EC) No 2246/2002 on the fees payable by OHIM, where the amounts of the individual designation fees will be fixed, in accordance with the requirements of the referred Article 7(2) and Rule 28 of the Common Regulations.

### ***Article 106d (Effects of international registration designating the Community)***

#### *Paragraph 1*

Pursuant to Article 48 of the Community Designs Regulation, an application for a registered Community design shall be registered by the Office as a registered Community design provided the requirements are fulfilled that an application for a registered Community design must satisfy and to the extent that the application has not been refused by virtue of Article 47 of the Community Designs Regulation.

Pursuant to Article 47, an application for a registered Community design shall be refused where the Office notices grounds for non-registrability, i.e. where the design for which protection is sought does not correspond to the definition under Article 3(a), or is contrary to public policy or accepted principles of morality.

The provision of Article 106d of this proposed amendment of the Regulation ensures that the commencement of protection of an international registration designating the Community is subject to the same conditions as apply to a registered Community design, i.e. an international registration designating the European Community shall not have the effect of a Community design registration in the territory of the European Community before the Office could examine the international registration for the grounds of non-registrability.

#### *Paragraph 2*

Article 106d(2) of this proposed amendment of the Regulation stipulates that where the Office does not refuse the effects of an international registration designating the European Community in its territory pursuant to Article 12(2) of the Geneva Act, or where any such refusal has been withdrawn, the effects of the international registration shall commence with the date of its registration pursuant to Article 10(2) of the Geneva Act and the effects shall be the same as the effects of a registered Community design.

#### *Paragraph 3*

While there is no need to republish the international registrations which are recorded in the International Register in the Register of the Office, Article 106d(3) of this proposed amendment of the Regulation obliges the Office to provide information about the registrations under the Geneva Act designating the European Community. This could for instance be effectively done by creating on the OHIM website a hyperlink to the Hague System. The modalities should be laid down in the Implementing Regulation.

### ***Article 106e (Grounds for refusal)***

#### *Paragraph 1*

The grounds for refusal set forth in Article 106e of this proposed amendment of the Regulation are identical to the grounds of non-registrability pursuant to Article 47(1), thereby

ensuring that an international registration designating the Community is subject to the same examination as applications for registered Community designs.

#### *Paragraph 2*

The provision of Article 106e of this proposed amendment of the Regulation guarantees the holder of an international registration designating the Community the right to submit observations or to renounce the international registration in respect to the European Community in compliance with Article 12(3)(b) of the Geneva Act.

The corresponding provision in Article 47(2) stipulates furthermore that an applicant for a registered Community design shall be allowed an amendment of the application. However, this further option cannot be applied to an international registration because the grounds for refusal pursuant to paragraph 1 may only be overcome by an amendment of the design in question whereas the Geneva Act does not provide for an amendment of the design of an international registration after the design has been registered in the International Register.

The regular procedure would be as follows: the Office will examine ex officio as to the grounds for refusal. If the Office, in carrying out this examination, notices a ground for refusal, it will notify the International Bureau, including the grounds on which the refusal is based. Such notification will be issued within the six months from the publication of the international registration (Rule 18(1) of the Common Regulations). The International Bureau, without delay, transmits a copy of the notification of refusal to the holder (Article 12(3) of the Geneva Act). Within the time limit specified by the Office in the notification the holder is allowed to renounce of the international registration in respect of the Community or to submit observations in order to overcome the grounds for refusal. In the course of the examination as to the grounds of refusal the holder and the Office communicate directly with each other. Where the holder overcomes the ground(s) for refusal, the Office shall withdraw the refusal and notify the International Bureau accordingly.

#### *Paragraph 3*

Article 106e(3) specifies that the conditions for the examination as to the grounds for refusal shall be laid down in the implementing regulation.

### ***Article 106f (Invalidation of the effects of an international registration)***

#### *Paragraph 1*

Article 106f of this proposed amendment of the Regulation implements Article 15(1) of the Geneva Act allowing for a declaration of invalidity of the effects of an international registration in the territory of the European Community.

This provision ensures that a declaration of invalidity of the effects of an international registration in the territory of the European Community shall be subject to the same provisions as apply to an application for a declaration of invalidity of a registered Community design. Third parties may pursue a declaration of invalidity of the effects of an international registration in the Community either by means of an application submitted to the Office according to Article 52 or by a counterclaim before a Community design court according to Article 81(d).



In case of seeking invalidation of the effects before the Office, Titles VI and VII apply. In particular, the holder may submit observations to the application for a declaration of invalidity, pursuant to Article 31 of the Implementing Regulation. The final decision of the Invalidity Division is subject to appeal (Article 55(1) of the Community Designs Regulation).

In this respect, Article 15(1) of the Geneva Act is observed. This provision requires that invalidation of the effects of the international registration may not be pronounced without the holder having, in good time, been afforded the opportunity of defending his rights.

#### *Paragraph 2*

Article 15(2) of the Geneva Act requires the Office of the Contracting Party in whose territory the effects of the international registration have been invalidated, where it is aware of the invalidation, to notify it to the International Bureau. This obligation has been copied in Article 106f(2). It is obvious that the Office will be aware of the invalidity if this is the result of an invalidity procedure at the Office, or if a Community design court informs the Office on a declaration of invalidity, in accordance with Article 86 (4) of the Community Designs Regulation.

#### **Article 2**

Article 97 of the Community Designs Regulation specifies that unless otherwise provided in the title on supplementary provisions concerning the Office, Title XII of the Regulation on the Community trade mark shall apply to the Office with regard to its tasks under this Regulation. Title XII of the Regulation on the Community trade mark includes Article 134(3) on the Office's revenues. This provision has been modified in light of the accession to the Madrid Protocol which created a new source of revenues, being the "total fees payable under the Madrid Protocol referred to in Article 140 of this Regulation for an international registration designating the European Communities...".

A similar modification of the Community trade mark Regulation is needed following the accession of the EC to the Geneva Act. The fees payable under the Geneva Act should be included as a new source of revenues for the Office.

#### **Article 3**

The Community shall become bound by the Geneva Act three months after that date on which it has deposited its instrument of accession with the Director-General of the International Bureau.

In this respect, it should be recalled that Article 2 of the Commission's proposal for a Council Decision approving the accession of the European Community to the Geneva Act to which reference was made earlier provides that following the adoption of that decision by the Council, the Council may deposit that instrument of accession with the Director-General of the International Bureau from the date on which the Council adopted the necessary measures to give effect to the accession of the Community to the Geneva Act.

Proposal for a

## COUNCIL REGULATION

### **amending Regulation (EC) No 6/2002 and (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission<sup>9</sup>,

Having regard to the opinion of the European Parliament<sup>10</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>11</sup>,

Whereas:

- (1) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs<sup>12</sup> created the Community design system whereby undertakings can by means of one procedural system obtain Community designs to which uniform protection is given and which produce their effects throughout the entire area of the Community.
- (2) Following preparations initiated and carried out by the World Intellectual Property Organization (WIPO) with the participation of the Member States which are members of the Hague Union, the Member States which are not members of the Hague Union and the European Community, the Diplomatic Conference, convened for that purpose at Geneva, adopted the Geneva Act of the Hague Agreement concerning the international registration of industrial designs (hereinafter referred to as the “Geneva Act”) on 2 July 1999.
- (3) The Council, by Council Decision [...] approved the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs<sup>13</sup> and authorised the President of the Council to deposit the instrument of accession with the Director-General of WIPO as from the date on which the Council has adopted the measures which are necessary to give effect

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<sup>9</sup> OJ C , , p. .

<sup>10</sup> OJ C , , p. .

<sup>11</sup> OJ C , , p. .

<sup>12</sup> OJ L 3, 5.1.2002, p. 1. Regulation as amended by 2003 Act of Accession.

<sup>13</sup> OJ L , , p. .

to the accession of the Community to the Geneva Act. This Regulation contains those measures.

- (4) The appropriate measures should be incorporated in Regulation (EC) No 6/2002 through the inclusion of a new title on “International registration of designs”.
- (5) The rules and procedures relating to international registrations designating the Community should, in principle, be the same as the rules and procedures which apply to Community designs applications. According to this principle, an international registration designating the Community should be subject to the examination as to the grounds for non-registrability before it takes the same effect as a registered Community design. Likewise, an international registration having the same effect as a registered Community design should be subject to the same rules on invalidation as a registered Community design.
- (6) Regulation (EC) No 2002/6 should therefore be amended accordingly.
- (7) The accession of the Community to the Geneva Act will create a new source of revenues for the Office for the Harmonization in the Internal Market (Trade Marks and Designs). Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark<sup>14</sup> should therefore be amended accordingly.

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 6/2002 is amended as follows:

1. Article 25(1)(d) is replaced by the following:

“(d) if the Community design is in conflict with a prior design which has been made available to the public after the date of filing of the application or, if priority is claimed, the date of priority of the Community design, and which is protected from a date prior to the said date

i) by a registered Community design or an application for such a design, or

ii) by a registered design right of a Member State, or by an application for such a right, or

iii) by a design right registered under the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999, hereinafter referred to as “the Geneva Act”, which was approved by Council Decision [...] <sup>15</sup> and which has effect in the Community, or by an application for such a right;”

2. The following title is inserted after title XI:

“TITLE XIa:

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<sup>14</sup> OJ L 11, 14.1.1994, p. 1. Regulation as last amended by Regulation (EC) 422/2004 (OJ L 70, 9.3.2004, p. 1).

<sup>15</sup> OJ L , , p. .

# INTERNATIONAL REGISTRATION OF DESIGNS

## SECTION 1

### GENERAL PROVISIONS

#### *Article 106a*

##### **Application of provisions**

1. Unless otherwise specified in this title, this Regulation and any Regulations implementing this Regulation adopted pursuant to Article 109 shall apply, *mutatis mutandis*, to registrations in the international register maintained by the International Bureau of the World Intellectual Property Organization (hereinafter referred to as “international registration” and “the International Bureau”) designating the Community, under the Geneva Act.

2. Any recording of an international registration designating the Community in the International Register shall have the same effect as if it had been made in the register of Community designs of the Office, and any publication of an international registration designating the Community in the Bulletin of the International Bureau shall have the same effect as if it had been published in the Community Designs Bulletin.

## SECTION 2

### INTERNATIONAL REGISTRATIONS DESIGNATING THE COMMUNITY

#### *Article 106b*

##### **Procedure for filing the international application**

International applications pursuant to Article 4(1) of the Geneva Act shall be filed directly at the International Bureau.

#### *Article 106c*

##### **Designation fees**

The prescribed designation fees referred to in Article 7(1) of the Geneva Act are replaced by an individual designation fee.

#### *Article 106d*

##### **Effects of international registration designating the European Community**

1. An international registration designating the Community shall, from the date of its registration, have the same effect as an application for a registered Community design.

2. If no refusal has been notified or if any such refusal has been withdrawn, the international registration of a design designating the Community shall, from the date referred to in paragraph 1, have the same effect as the registration of a design as a registered Community design.

3. The Office shall provide information on international registrations referred to in paragraph 2, in accordance with the conditions laid down in the Implementing Regulation.

#### *Article 106e*

#### **Grounds for refusal**

1. The Office shall communicate to the International Bureau a notification of refusal not later than six months from the date of publication of the international registration, if in carrying out an examination of an international registration, the Office notices that the design for which protection is sought does not correspond to the definition under Article 3(a), or is contrary to public policy or to accepted principles of morality.

The notification shall state the grounds on which the refusal is based.

2. The refusal of the effects of an international registration in the Community shall not become final before the holder has been allowed the opportunity of renouncing the international registration in respect of the Community or of submitting observations.

3. The conditions for the examination as to the grounds for refusal shall be laid down in the Implementing Regulation.

#### *Article 106f*

#### **Invalidation of the effects of an international registration**

1. The effects of an international registration in the Community may be declared invalid partly or in whole in accordance with the procedure in Titles VI and VII or by a Community design court on the basis of a counterclaim in infringement proceedings.

2. If the Office is aware of the invalidation, it shall notify it to the International Bureau."

#### *Article 2*

Article 134(3) of Regulation (EC) No 40/94 is replaced by the following:

“3. Revenue shall comprise, without prejudice to other types of income, total fees payable under the fees regulations, total fees payable under the Madrid Protocol referred to in Article 140 of this Regulation for an international registration designating the European Communities and other payments made to Contracting Parties to the Madrid Protocol, total fees payable under the Geneva Act referred to in Article 106c of Regulation (EC) No 2002/6 for an international registration designating the European Community and other payments made to Contracting Parties to the Geneva Act, and, to the extent necessary, a subsidy entered against a specific heading of the general budget of the European Communities, Commission section”.

#### *Article 3*

This Regulation shall enter into force on the date on which the Geneva Act enters into force with respect to the European Community.

The date of entry into force of this Regulation shall be published in the *Official Journal of the European Union*.

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

Done at Brussels,

*For the Council  
The President*

## LEGISLATIVE FINANCIAL STATEMENT

**Policy area: Internal Market for Goods and Services**

**Activity: Prepare measures which are necessary to give effect to the access of the European Community to the Geneva Act on the international registration of designs**

**TITLE OF ACTION: PROPOSAL FOR A COUNCIL REGULATION AMENDING REGULATION (EC) NO 6/2002 AND (EC) NO 40/94 TO GIVE EFFECT TO THE ACCESSION OF THE EUROPEAN COMMUNITY TO THE GENEVA ACT OF THE HAGUE AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS**

**1. BUDGET LINE(S) + HEADING(S)**

**2. OVERALL FIGURES**

**2.1. Total allocation for action (Part B): € million for commitment**

Not applicable

**2.2. Period of application:**

(start and expiry years)

Start: Date of entry into force

Expiry: Indefinite

**2.3. Overall multiannual estimate of expenditure:**

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

None

(b) Technical and administrative assistance and support expenditure *(see point 6.1.2)*

None

(c) Overall financial impact of human resources and other administrative expenditure *(see points 7.2 and 7.3)*

€ million (to three decimal places)

	2006	2007	2008	2009	2010	2011	Total
Commitments/ payments	0.054	0.054	0.054	0.054	0.054	0.054	0.324

TOTAL a+b+c							
Commitments	0.054	0.054	0.054	0.054	0.054	0.054	0.324
Payments	0.054	0.054	0.054	0.054	0.054	0.054	0.324

#### 2.4. Compatibility with financial programming and financial perspective

[X] Proposal is compatible with existing financial programming.

Proposal will entail reprogramming of the relevant heading in the financial perspective.

Proposal may require application of the provisions of the Interinstitutional Agreement.

#### 2.5. Financial impact on revenue:

[X] Proposal has no financial implications (involves technical aspects regarding implementation of a measure)

OR

Proposal has financial impact – the effect on revenue is as follows:

Not applicable

### 3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
Non-comp	Diff	NO	NO	NO	No 5

#### 4. LEGAL BASIS

Articles 308 EC

#### 5. DESCRIPTION AND GROUNDS

##### 5.1. Need for Community intervention

##### 5.1.1. Objectives pursued

The proposal contains the measures which are necessary to give effect to the accession of the European Community to the Geneva Act. The appropriate measures should mainly be incorporated in Regulation (EC) No 6/2002 through the inclusion of a new title on “International registration of designs”. The accession of the Community to the Geneva Act will create a new source of revenues for the Office for the Harmonization in the Internal Market (Trade Marks and Designs) - OHIM, and Regulation (EC) No 40/94 should therefore be amended accordingly.



### *5.1.2. Measures taken in connection with ex ante evaluation*

The European Community already showed its great interest in the Hague System when it decided to take an active part in the international negotiations which led to the Diplomatic Conference held in Geneva in 1999, when the new act was adopted. Organizations representing the potential users of both the Community design system and the international registration system repeatedly expressed their strong interest in establishing a link between the two systems. In 2004 the Commission launched a consultation with interested parties (Member States, business and professional organisations, and private companies) on the possible impact on business of the accession of the EC to the Hague System. An overwhelming majority of the responses, bordering on unanimity, supported the idea that the Community should accede in the near future to the Geneva Act.

### *5.1.3. Measures taken following ex post evaluation*

Not applicable

## **5.2. Action envisaged and budget intervention arrangements**

The rules and procedures relating to international registrations designating the Community should, in principle, be the same as the rules and procedures which apply to Community designs applications. According to this principle, an international registration designating the Community should be subject to the examination as to the grounds for non-registrability before it takes the same effect as a registered Community design. Likewise, an international registration having the same effect as a registered Community design should be subject to the same rules on invalidation as a registered Community design. No financial assistance is involved.

## **5.3. Methods of implementation**

OHIM will need to adapt its internal procedures and working methods in order to deal with the international applications at the International Bureau of WIPO in which the European Community is designated in order to obtain protection under the Community design system. The Commission will need to negotiate in the Hague Union Assembly on behalf of the Community following coordination in the relevant Council working party or at on-the-spot meetings convened in the course of the work within the framework of WIPO.

## **6. FINANCIAL IMPACT**

### **6.1. Total financial impact on Part B - (over the entire programming period)**

Not applicable

### **6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)**

Not applicable

## 7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

### 7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A	0,5	0	0,5	<p><i>If necessary, a fuller description of the tasks may be annexed.</i></p> <p>Coordination with OHIM. Preparing for and attending meetings of Council and Parliament to negotiate the proposal through the adoption. Preparing for and participating in meetings of the Hague Union and coordinate positions with the Member States.</p>
	B				
	C				
Other human resources		0	0	0	
Total		0,5	0	0,5	

### 7.2. Overall financial impact of human resources

Type of human resources	Amount (€)	Method of calculation *
Officials	54.000	Annual costs per official: 108.00 €
Temporary staff		
Other human resources (specify budget line)		
Total	54.000	

The amounts are total expenditure for twelve months.

### 7.3. Other administrative expenditure deriving from the action

Not applicable

The amounts are total expenditure for twelve months.

<sup>1</sup> Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	€54.000
II.	Duration of action	2006-2011
III.	Total cost of action (I x II)	€324.000

## **8. FOLLOW-UP AND EVALUATION**

### **8.1. Follow-up arrangements**

Not applicable

### **8.2. Arrangements and schedule for the planned evaluation**

On-going evaluation will be possible through monitoring the volume of international registrations in which the Community design system is designated.

## **9. ANTI-FRAUD MEASURES**

No financial assistance is involved.