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[...] (2022) **XXX** draft

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

**amending Regulation (EC) No 2245/2002
implementing Council Regulation (EC) No 6/2002 on Community designs**

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of XXX

**amending Regulation (EC) No 2245/2002
implementing Council Regulation (EC) No 6/2002 on Community designs**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs¹, and in particular Article 107(3) thereof,

Whereas:

- (1) The reform of the Union's legislation on design protection included the amendment of Council Regulation (EC) No 6/2002 by Regulation (EU) 202X/XX.
- (2) That amendment included an update of the terminology of Regulation (EC) No 6/2002 in order to align it with the terminology of both the Lisbon Treaty and Regulation (EU) 2017/1001 of the European Parliament and of the Council². To ensure coherence, the terminology of Commission Regulation (EC) No 2245/2002³ should be updated accordingly.
- (3) Furthermore, the amendment of Regulation (EC) No 6/2002 included the streamlining of certain aspects of the EU design registration system, such as the deletion of the marginally used options to file a specimen instead of a representation of a design and to file an EU design application through the central industrial property office of a Member State and not directly with the European Union Intellectual Property Office (EUIPO)('the Office'). For the sake of coherence, it is therefore necessary to make corresponding adjustments to certain implementing rules contained in Regulation (EC) No 2245/2002.
- (4) In the context of the necessary alignment of Regulation (EC) No 6/2002 with Articles 290 and 291 of the Lisbon Treaty, a number of rules involving essential elements of legislation that are currently contained in Regulation (EC) No 2245/2002 were incorporated into Regulation (EC) No 6/2002. For reasons of efficiency and the avoidance of duplication, the relevant rules contained in Regulation (EC) No 2245/2002 therefore need to be deleted.
- (5) The incorporation of new rules into Regulation (EC) No 6/2002 that are currently contained in Regulation (EC) No 2245/2002 also affects a number of rules concerning fees payable to the Office. It is therefore necessary to adapt the existing references to those rules in Regulation (EC) No 2245/2002 to the corresponding new rules incorporated into Regulation (EC) No 6/2002.

¹ OJ L 3, 5.1.2002, p. 1.

² Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ L 154, 16.6.2017, p. 1).

³ 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).

- (6) In line with the corresponding amendment of Regulation (EC) No 6/2002, it is necessary to align the rules contained in Regulation (EC) No 2245/2002 on duration of time limits and representation before the Office with the Agreement on the European Economic Area in order to refer to the territory of the European Economic Area (EEA) instead of to ‘the Community’.
- (7) Regulation (EC) No 2245/2002 should therefore be amended accordingly.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 109 of Regulation (EC) No 6/2002,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2245/2002 is amended as follows:

- (1) the title is replaced by the following:
‘Commission Regulation (EC) No 2245/2002 of 16 December 2002 implementing Council Regulation (EC) No 6/2002 on European Union designs’;
- (2) throughout the articles, the words ‘Community design’ are replaced by ‘EU design’ and any necessary grammatical changes are made;
- (3) in Article 24(2), Article 25(3), Article 31(6), Article 48(2), Article 62(3), Article 68(3), Article 70(4), Article 80, point (c), Article 81(2), Article 82(1), (3), and (4) the words ‘the Community’ is replaced by ‘the Union’ and any necessary grammatical changes are made;
- (4) Article 1 is amended as follows:
 - (a) in paragraph 1, point (c) is replaced by the following:
‘(c) a representation of the design in accordance with Article 4 of this Regulation.’;
 - (b) in paragraph 2, point (a) is replaced by the following:
‘(a) a single description per design not exceeding 100 words explaining the representation of the design; the description must relate only to those features which appear in the reproductions of the design; it shall not contain statements as to the purported novelty or individual character of the design or its technical value.’;
- (5) Article 2 is amended as follows:
 - (a) paragraph 1 is replaced by the following:
‘1. An application may be a multiple application requesting the registration of up to 50 designs.’;
 - (b) paragraph 2 is deleted;
- (6) Articles 5, 6 and 7 are deleted;
- (7) Article 10 is amended as follows:
 - (a) paragraph 1 is replaced by the following:
‘1. The Office shall notify the applicant that a date of filing cannot be granted if the full amount of the application fees payable pursuant to Article 36(4) and

Article 37(2) of Regulation (EC) No 6/2002 has not been received by the Office within 1 month of filing of the application or if the application does not contain all the following:

- (a) a request for registration of the design as a registered EU design;
 - (b) information identifying the applicant;
 - (c) representation of the design pursuant to Article 4(1), points (d) and (e).’;
- (b) paragraph 3 is replaced by the following:
- ‘3. The Office shall call upon the applicant to remedy the deficiencies noted within a time limit specified by it where, although a date of filing has been granted, the examination reveals that:
- (a) the requirements set out in Articles 1, 2 and 4 or the other formal requirements for applications laid down in Regulation (EC) No 6/2002 or in this Regulation have not been complied with;
 - (b) the full amount of any additional fees payable pursuant to Article 36(4) of Regulation (EC) No 6/2002 in respect of deferment of publication or Article 37(2) of that Regulation in respect of multiple applications has not been received by the Office;
 - (c) where priority has been claimed pursuant to Articles 8 and 9, either in the application itself or within 1 month after the date of filing, the other requirements set out in those Articles have not been complied with.’;
- (c) paragraph 4 is replaced by the following:
- ‘4. If the deficiencies referred to in paragraph 3, point (a), are not remedied before the time limit expires, the Office shall reject the application.’;
- (d) paragraph 5 is replaced by the following:
- ‘5. If the deferment fee payable pursuant to Article 36(4) of Regulation (EC) No 6/2002 is not paid before the time limit expires, the Office shall reject the application.’;
- (e) in paragraph 6, the first subparagraph is replaced by the following:
- ‘If any additional fees payable pursuant to Article 37(2) of Regulation (EC) No 6/2002 in respect of multiple applications are not paid or not paid in full before the time limit expires, the Office shall reject the application in respect of all the additional designs which are not covered by the amount paid.’;
- (8) Articles 11a, 13, 15 and 16 are deleted;
- (9) in Article 17, paragraph 1 is replaced with the following:
- ‘1. After publication, the Office shall issue to the holder a certificate of registration which shall contain the entries in the Register provided for in Article 72(2) of Regulation (EC) No 6/2002 and a statement to the effect that those entries have been recorded in the Register.’;
- (10) Chapter III is deleted;
- (11) in Article 57(1), the first subparagraph is replaced by the following:
- ‘1. Where Regulation (EC) No 6/2002 or this Regulation provide for a time limit to be specified by the Office, such time limit shall, when the party concerned has its

domicile or its principal place of business or an establishment within the European Economic Area (EEA), be not less than one month, or, when those conditions are not fulfilled, not less than 2 months, and no more than 6 months.’;

- (12) Article 60 is deleted;
- (13) in Article 62, paragraph 2 is deleted.
- (14) Article 64 is replaced by the following:

‘Article 64

Amendment of the special list of professional representatives in design matters

1. The entry of a professional representative in the special list of professional representatives in design matters referred to in Article 78(4) of Regulation (EC) No 6/2002 (‘the list’) shall be deleted at the request of the professional representative.
 2. The entry of a professional representative in the list shall be deleted automatically:
 - (a) in the event of the death or legal incapacity of the professional representative;
 - (b) where the professional representative is no longer a national of a Member State of the EEA, unless the Executive Director has granted an exemption pursuant to Article 78(6), point (a), of Regulation (EC) No 6/2002;
 - (c) where the place of business or employment of the professional representative is no longer in the EEA;
 - (d) where the professional representative no longer possesses the entitlement referred to in Article 78(4), point (c), of Regulation (EC) No 6/2002.
 3. The entry of a professional representative in the list shall be suspended of the Office's own motion where the entitlement of the professional representative to represent natural or legal persons before the Benelux Office for Intellectual Property or before the central industrial property office of a Member State of the EEA as referred to in Article 78(4), point (c), of Regulation (EC) No 6/2002 has been suspended.
 4. A professional representative whose entry has been deleted shall, upon request pursuant to Article 78(5) of Regulation (EC) No 6/2002, be reinstated in the list if the conditions for deletion no longer exist.
 5. The Benelux Office for Intellectual Property and the central industrial property offices of the Member States of the EEA concerned shall, where they are aware thereof, promptly inform the Office of any relevant events referred to in paragraphs 2 and 3.
 6. The amendments of the list shall be published in the Official Journal of the Office.’;
- (15) in Article 65, paragraph 2 is deleted;
 - (16) in Article 67, paragraph 1 is replaced by the following:

‘1. Applications for registration of an EU design may be submitted by electronic means, including the representation of the design.

The conditions shall be laid down by the Executive Director.’;
 - (17) Articles 69 and 71 are deleted;

(18) Chapter XVI is deleted.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [*OP please insert the date = the first day of the month following 3 months after the date of entry into force of Regulation XXX amending Regulation (EC) No 6/2002*].

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

Done at Brussels,

*For the Commission
The President
Ursula von der Leyen*