

## EU Design Reforms: ‘Repair Clause’

The New European Design Directive No. 2024/2823 (see [here](#)) came into force on 8 December 2024. From 1 May 2025, it will be possible to file European Union Designs (EUDs), as they will then be known, at the EU IPO under the new [European Design Regulation \(Amending Regulation 2024/2822\)](#). Some of the major changes (e.g. to allow for electronic representations) will not come into force until 1 July 2026, after secondary legislation is enacted. What this secondary legislation contains, as well as the EU IPO’s new design guidelines due to be published soon, is eagerly awaited. For now, a good summary of the early procedural changes is available on the EU IPO website at: [Design Reform - EUIPO](#).

We have already commented on the effect the changes in EU Design Law could have in relation to unregistered design rights in the EU in our briefing [EU Design Law Reforms & the Protection of Unregistered Design Rights; Is a Fundamental Change Now on the Cards? - J A Kemp](#). For the rest of this briefing, we focus on another major change, namely, that the ‘repair clause’ that exempts certain products (spare parts) used to repair more complex products, where certain criteria are met.

Whilst Article 110 of existing [Council Regulation \(EC\) No 6/2002](#) contains a comparable provision, this provision was only transitional where the wording of Article 110 makes it clear that the provision subsists only until such time as amendments to the Regulation enter into force. The new Article 20a of the new European Design Regulation, therefore, marks the permanent introduction of the exclusion from protection of design rights in this area, albeit with an additional requirement that customers are informed that the part is specifically for the purposes of repair and is not an original part.

In addition, since a repair clause is also included in Article 19 of the new Directive, all EU Member States will be required to implement comparable provisions in their national design legislation. Any EU Member States whose national design legislation does not already include a repair clause will have until 9 December 2032 to give effect to the changes introduced by the Directive (this date marking the end of the relatively generous transitional period provided for by Article 19(4) of the Directive). Once implemented fully, a greater degree of harmonisation will be achieved between EU Member States, including in aligning

national design systems with the protection provided at the EU level by EUDs. This is desirable for a number of reasons, not least because it will reduce barriers to trade between Member States but also because it will support greater competition in the EU spare parts market. At the national level, the expansion of the repair clause will be particularly welcomed by manufacturers of spare parts for the automotive sector where, currently, the fragmentation of national design legislation gives rise to uncertainty for both businesses and consumers alike. By way of example, whilst Germany has since 2020 implemented a repair clause in its national design legislation, neighbouring Austria has not. As a result, the current law often gives rise to situations in which a product that is sold in multiple countries within the EU does not infringe a design that is registered at the European Community level but which may infringe an earlier design that is registered nationally (in Austria, for example, but not in Germany).

In terms of the scope of the ‘repair clause’ provision, this excludes from design protection replacement parts that are used to restore a complex product to its original appearance. The effect of this clause is to make European Union design rights (in both registered and unregistered forms) unenforceable in certain circumstances. These rights are not lost nor rendered invalid but cannot be relied upon in order to prevent the use of that design by a third party.

In order to fall under the ‘repair clause’ exemption/exclusion, the following requirements must also be met:

### 1. Used exclusively for the purpose of repair

Article 20a, para. 1 - the spare part must be used solely for the purpose of repairing a complex product so as to restore its original appearance. This limits the scope of the repair clause to cases where there is a requirement that any component parts match the original design of the product. This would, for example, extend to and include car doors and car body panels, where these components must be reproduced in a form that is identical to that of the parts being replaced. If this were not permitted, car manufacturers would otherwise secure a monopoly over the manufacture and sale of spare parts.

### 2. Requirement to inform customers

Article 20a, para. 2 - the repair clause imposes an obligation on those manufacturing and selling spare parts to inform customers that the part they are purchasing is intended specifically for repair and is not an original part. This requirement is intended to ensure that consumers are not misled whilst supporting fair competition. The reforms do however stop short of imposing an obligation on those selling such parts to ensure that the product sold is not in fact then used for non-repair purposes.

### 3. Part must be visible

Article 20a, para. 1 - the repair clause applies exclusively to parts that are visible once a complex product is assembled. This is clear from the wording included at paragraph 1 of Article 20a where it is stated that the design of the component part must be dependent on the *appearance* of the complex product. By way of example, a car headlight would fall within the repair clause exclusion, whilst a non-visible, internal part would not.

#### Comments

For the reasons explained above, the introduction of a permanent 'repair clause' seeks to address long-standing issues in the 'aftermarket' sector by allowing third parties to manufacture and

sell spare parts for the purposes of repair. In so doing, manufacturers will no longer be able to claim a monopoly over component parts that are sold within the EU for the purpose of restoring a complex product to its original appearance. The clause is therefore seen as a way of promoting competition and affordability in sectors including, in particular, automotive repair, and represents a shift in balancing the interests of design rights holders and independent manufacturers. Whilst the effect of the relatively generous transitional period provided for by Article 19(4) of the Directive is such that full harmonisation between EU Member States (in respect of national rights) will not be realised until 2032, the introduction of a repair clause in the new EU Regulation provides immediate clarity in relation to EUDs.

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