



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

approving the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999

{SEC(2005)1748}

(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”).¹

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 European 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”,² 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 registration. 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.

The objective of this proposal is to establish a link between the Community design system and the international registration system established under the Geneva Act. This link will enable designers to file a single international application at the International Bureau of WIPO designating, amongst other Contracting Parties, the European Community in order to obtain protection under the Community design system.

2. The Geneva Act

The Hague System 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.³

¹ OJ L 3, 5.1.2002, p. 1.

² 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.

³ Belgium, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Netherlands, Slovenia, Spain. n Five EU Member States – out of 18 countries in total - have become party to the Geneva Act (Estonia, Hungary, Latvia, Slovenia and Spain). Updates will be published on the WIPO website: www.wipo.int.

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 registration 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 deposit 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 Geneva Act, 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.

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.

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

3. Legal basis

A Community act to accede to the Geneva Act must be based on Article 308 EC, the provision of the Treaty on which the common rules, i.e. the Community Designs Regulation, are based. In addition, a reference should be made to Article 300 of the Treaty, which confers powers to the European Community to enter into agreements between the European Community and one or more States or international organisations.

A recent precedent on a similar intellectual property exercise is Council Decision 2003/793/EC of 27 October 2003 approving the accession of the European Community to the Protocol relating to the Madrid Agreement concerning the international registration of marks, adopted at Madrid on 27 June 1989.⁴ This Decision is based on Article 308 EC, in conjunction with Article 300 (2), second sentence, and Article 300(3), first subparagraph.

4. Procedure for the accession of the European Community to the Geneva Act

Under Article 27(1)(ii) of the Geneva Act, an intergovernmental organization may become party provided the following conditions are fulfilled:

- at least one of the Member States of the intergovernmental organization is a member of WIPO, and
- the organization maintains an Office through which protection of industrial designs may be obtained with effect in the territory in which the constituting treaty of the intergovernmental organization applies;
- the Office of such organization is not the subject of a notification under Article 19 of the Geneva Act.

The European Community fulfils those conditions. First, all Member States are member of WIPO. Second, OHIM is managing the administration of the Community design system set up under Regulation 6/2002. Third, OHIM is not subject of a notification under Article 19 of the Geneva Act.⁵

According to Article 27(2) of the Geneva Act, the instrument of accession to the Act shall be deposited by any State or international organization if it has not signed this Act. The EC has not signed the Geneva Act and is therefore obliged to deposit the instrument of accession. Article 27(3)(a) declares that for the EC accession the effective date of the deposit of the instrument of accession shall be the date on which the instrument is deposited. According to

⁴ OJ L 296 of 14.11.2003, p. 20.

⁵ This provision is relevant for countries which share a common Office, like the Benelux countries.

Article 28(3)(b) the accession of the EC then becomes effective three months after the date on which its instrument of accession has been deposited.

5. Declarations to be made in the framework of the accession of the Community to the Geneva Act

The Geneva Act and the Common Regulations under the Geneva Act, the London Act and the Hague Act of the Hague Agreement provide for the possibility or obligation for Contracting States to make certain declarations concerning the operation of the international registration system. Declarations made in the instrument of accession become effective on the date on which the Contracting Party becomes bound by the Act.

The Commission proposes that declarations to the Director-General of WIPO be made on the following matters.

(i) 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) 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.⁶

(ii) 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 that 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. The designation fee shall be transferred by the International Bureau to the respective Contracting Party.⁷

⁶ In this respect, the Geneva Act differs from the Madrid Protocol concerning the international registration of marks, which specifies in Article 2 (2) that international applications shall be filed with the International Bureau through the intermediary of the office with which the basic application was filed or by which the basic registration was made.

⁷ The total fees payable in connection with an international application consist of (i) a basic fee; (ii) the standard designation fee or the individual designation fee, (iii) a publication fee. These fees are payable

In terms of income, the choice between the standard designation fee and the individual designation fee will have budgetary consequences for the Office. The European Community should therefore take advantage of this option and determine its own individual designation fee.

Such determination will have to be made on the basis of a number of elements. Fees will have to be sufficient to cover the costs incurred by the procedures relating to designs the protection of which is requested in the EU. This means not only the costs relating to examination of such designs in OHIM but also other procedures like invalidities and appeals. Such determination has not yet been made as a prior financial analysis is required. To undertake such an analysis, the major conditions of the accession to the Hague Agreement will have to be examined in detail. The Commission also needs to have a better idea as to the possible number of invalidities and appeals international designations could generate and thus the level of work involved for the OHIM.

On the basis of these studies, the Commission will propose an amendment of the Fees Regulation which will contain the level and structure of the fees to be fixed for the designation of the European Community through the Geneva Act.

(iii) Article 17(3)(c) of the Geneva Act obliges each Contracting Party to notify the Director-General of the International Bureau of the maximum duration of protection provided by its law. Article 12 of the Community Design Regulation provides for the maximum duration of protection of 25 years. The European Community shall notify the Director-General accordingly.

Declarations are not relevant or should not be made on other issues as foreseen in the Geneva Act and the Common Rules. Several of these possible declarations are not relevant for the European Community because they concern specific features of national legislation unknown in or not applicable to the Community Design Regulation, or because they are only relevant for examining offices.⁸ Possible declarations on the effect of change of ownership and on exchange of documents do require a further explanation.

- According to Article 16(2) of the Geneva Act, any contracting party may, in a declaration, notify the Director-General of WIPO that a recording of change of ownership in the International Register shall not have the same effect as a recording in its own Register until it has received the statement or documents specified in that declaration. However, in order to keep the international system as simple and efficient as possible, the Community should not submit such a declaration. Thus the international register will have full and direct effect in the EU.
- Article 10(5)(a) of the Geneva Act specifies that the Office of each Contracting Party may notify the International Bureau that it wishes to receive a copy of each

at the time of filing of the international application, with an exception in the case of a request for deferment of publication. See Rule 12 of the Common Regulations.

⁸ These issues concern the deferred publication (Article 11); the unity of design (Article 13); certain views of the design required (Rule 9); special requirement concerning the applicant (Rule 8); security clearance (Rule 13); prohibition of self-designation (Article 14); mandatory contents of an international application (Article 5 and Rule 7); extension of time for notifying refusal and date from which industrial design is protected (Rule 18); common offices of several states (Article 19) and, indirectly, the language regime between the national office and the International Bureau (Rule 6).

international registration in which it has been designated immediately after the registration has been effected, along with any relevant statement, document or specimen accompanying the international registration. The Community should not require such copies since the examination as to the grounds for refusal (public policy, morality and definition of the design) can be carried out on the basis of the publication of the international registrations by the International Bureau. Consequently, there is no need for OHIM to receive complete files from WIPO.

6. Commentary on the Articles

Article 1

In Article 1 the Council is invited to approve the Geneva Act. The text of the Geneva Act is attached to this decision in all the official languages of the European Community.

Article 2

Article 2(1) specifies that following the adoption of this proposal, the President of the Council shall deposit the instrument of accession with the Director-General of WIPO, in accordance with Article 27 of the Geneva Act. In order to avoid any complications on the implementation of the Geneva Act within the European Community, it has been clarified that the instrument of accession may be adopted as from the date on which the Council and the Commission have adopted the necessary implementing measures (Council Regulation amending Regulation (EC) No 6/2002 on Community Designs; Commission Regulation amending the implementing Regulation 2245/2002; Commission Regulation amending the Fees Regulation 2245/2002).

The second paragraph specifies the declarations that shall be made in the instrument of accession.

Article 3

Following accession to the Geneva Act, the European Community will become a member of the Assembly of the Hague Union (Article 20 and 21 of the Geneva Act). This implies, for example, that the European Community may vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Act, and that the European Community shall not participate in the vote if any one of its Member States exercises its rights to vote, and *vice versa*.

The tasks of the Assembly are, amongst others, to deal with all matters concerning the maintenance and development of the Union and the implementation of the Geneva Act; give directions concerning the preparations for conferences of revision and decide the convocation of any such conference; and amend the Common Regulations under the Geneva Act.

In accordance with Article 300 of the Treaty, the European Commission shall represent the European Community in the Assembly of the Hague Union. The European Community delegations may also include representatives of the Office.

In view of the above and in order to avoid unnecessary cumbersome procedures whenever future meetings of the Assembly of the Hague Union take place, Article 3(1) of the proposal provides that the Council authorises the European Commission to represent the European Community at the future meetings of the Assembly of the Hague Union and to negotiate

matters, on behalf of the Community, which fall under the competence which the Assembly has pursuant to Article 21 of the Geneva Act. Article 3(2) specifies that the position of the European Community will be drawn up by the European Commission and the Member States within the competent Council working party or at on-the-spot meetings convened in the course of the work carried out within the framework of WIPO.

7. Supplementary measures to be taken in the context of the accession of the Community to the Geneva Act

The accession of the European Community to the Geneva Act requires several implementing measures at Community level.

First, the Community legislator has to provide rules which adapt the Community design system to the system of international applications under the Geneva Act. It is proposed that the measures giving effect to the accession of the European Community to the Geneva Act be incorporated in the Community Design Regulation by means of an amendment of existing provisions and addition of a new and separate title on “International Registration of Designs”.

Second, there is a need for modification of the implementing rules to give effect to the accession to the Geneva Act. This requires a modification of the Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing the Community Designs Regulation.⁹

Third, there is a need for modification of Commission Regulation (EC) No 2246/2002 of 16 December 2002 on the fees payable to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in respect of the registration of Community designs.¹⁰ The amended Fees Regulation should establish the individual fee system for international registrations, in line with the declaration made in this Decision.

Since the European Community would become bound by the Geneva Act three months after the date on which it has deposited its instrument of accession, the necessary implementing measures should enter into force before the expiry of the three months period.

8. Conclusions

On the basis of the above, the Council is invited to adopt the attached decision approving, on behalf of the European Community, the Geneva Act, authorising the President of the Council to deposit the instrument of accession to the Geneva Act with the Director General of WIPO, and authorising the European Commission to represent the European Community at the meetings of the Assembly of the Hague Union to be held under the auspices of WIPO and to negotiate and approve matters, on behalf of the European Community, which fall under the competence of the Assembly.

⁹ OJ L 341 of 17.12.2002, p. 28.

¹⁰ OJ L 341 of 17.12.2002, p. 54.

Proposal for a

COUNCIL DECISION

approving the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308, in conjunction with Article 300(2), first subparagraph, second sentence, and Article 300(3), first subparagraph, thereof,

Having regard to the proposal from the Commission¹¹,

Having regard to the opinion of the European Parliament¹²,

Having regard to the opinion of the European Economic and Social Committee¹³,

Whereas:

- (1) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs¹⁴, which is based on Article 308 of the Treaty, aims to create a market which functions properly and offers conditions which are similar to those obtaining in a national market. In order to create a market of this kind and make it increasingly a single market, that Regulation created the Community design system whereby undertakings can by means of a single procedure 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 Geneva Act was adopted in order to introduce certain innovations to the system for the international deposit of industrial designs provided for in the London Act,

¹⁴ OJ C , , p. .

¹⁵ OJ C , , p. .

¹³ OJ C , , p. .

¹⁴ OJ L 3, 5.1.2002, p. 1. Regulation as amended by 2003 Act of Accession.

which had been adopted on 2 June 1934, and the Hague Act, which had been adopted on 28 November 1960.

- (4) The objectives of the Geneva Act are to extend the Hague system of international registration to new members, and to make the system more attractive to applicants. As compared to the London Act and the Hague Act, one of the main innovations is that an intergovernmental organisation which maintains an office authorized to grant protection to designs with effect in the territory of the organisation may become party to the Geneva Act.
- (5) The facility whereby an intergovernmental organisation which has a regional office for the registration of designs may become a party to the Geneva Act was introduced in order to allow, in particular, for the Community to accede to that Act, and hence, to the Hague Union.
- (6) The Geneva Act entered into force on 23 December 2003 and became operational on 1 April 2004. On 1 January 2003, the Office for the Harmonization in the Internal Market (Trade Marks and Designs) admitted applications for registered Community designs, the first date of filing being granted on 1 April 2003.
- (7) The Community design system and the international registration system as established by the Geneva Act are complementary. The Community design system provides for a complete and unified regional designs registration system which covers the whole territory of the Community. The Hague Agreement constitutes a treaty centralising the procedures for obtaining protection of designs in the territory of the designated Contracting Parties.
- (8) The establishment of a link would enable designers to obtain, through one single international application protection for their designs in the Community under the Community design system and in the territories of the Geneva Act inside and outside the Community.
- (9) Moreover, the establishment of a link between the Community design system and the international registration system under the Geneva Act will promote a harmonious development of economic activities, will eliminate distortions of competition, will be cost efficient and will increase the level of integration and functioning of the internal market. Therefore, the Community needs to accede to the Geneva Act in order to make the Community design system more attractive.
- (10) The Commission should be authorised to represent the Community in the Assembly of the Hague Union after the accession of the Community to the Geneva Act.
- (11) This Decision does not affect the right of the Member States to participate in the Assembly of the Hague Union with regard to their national designs.

.HAS DECIDED AS FOLLOWS

Article 1

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), is hereby approved on behalf of the Community with regard to the matters within its competence.

The text of the Geneva Act is attached to this Decision.

Article 2

1. The President of the Council is hereby authorised to deposit the instrument of accession with the Director-General of the World Intellectual Property Organization as from the date on which the Council and the Commission have adopted the measures which are necessary for the establishment of a link between Community design law and the Geneva Act.

2. The declarations which are attached to this Decision shall be made in the instrument of accession.

Article 3

1. The Commission is hereby authorised to represent the European Community at the meetings of the Hague Union Assembly held under the auspices of the World Intellectual Property Organization.

2. On all matters lying within the competence of the Community with regard to Community design, the Commission shall negotiate in the Hague Union Assembly on behalf of the Community and in accordance with the following arrangements:

(a) the position which the Community may adopt within the Assembly shall be prepared by the relevant Council working party or, if this is not possible, at on-the-spot meetings convened in the course of the work within the framework of the World Intellectual Property Organization;

(b) as regards decisions involving amendments to Regulation (EC) No 6/2002, or to any other act of the Council requiring unanimity, the Community position shall be adopted by the Council acting unanimously on a proposal from the Commission;

(c) as regards other decisions affecting Community design law, the Community position shall be adopted by the Council acting by a qualified majority on a proposal from the Commission.

Done at Brussels,

For the Council
The President

Geneva Act of July 2, 1999

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INTRODUCTORY PROVISIONS

Article 1

Abbreviated Expressions

For the purposes of this Act:

(i) “the Hague Agreement” means the Hague Agreement Concerning the International Deposit of Industrial Designs, henceforth renamed the Hague Agreement Concerning the International Registration of Industrial Designs;

(ii) “this Act” means the Hague Agreement as established by the present Act;

(iii) “Regulations” means the Regulations under this Act;

(iv) “prescribed” means prescribed in the Regulations;

(v) “Paris Convention” means the Paris Convention for the Protection of Industrial Property, signed at Paris on March 20, 1883, as revised and amended;

(vi) “international registration” means the international registration of an industrial design effected according to this Act;

(vii) “international application” means an application for international registration;

(viii) “International Register” means the official collection of data concerning international registrations maintained by the International Bureau, which data this Act or the Regulations require or permit to be recorded, regardless of the medium in which such data are stored;

(ix) “person” means a natural person or a legal entity;

(x) “applicant” means the person in whose name an international application is filed;

(xi) “holder” means the person in whose name an international registration is recorded in the International Register;

(xii) “intergovernmental organization” means an intergovernmental organization eligible to become party to this Act in accordance with Article 27(1)(ii);

(xiii) “Contracting Party” means any State or intergovernmental organization party to this Act;

(xiv) “applicant’s Contracting Party” means the Contracting Party or one of the Contracting Parties from which the applicant derives its entitlement to file an international application by virtue of satisfying, in relation to that Contracting Party, at least one of the conditions specified in Article 3; where there are two or more Contracting Parties from which the applicant may, under Article 3, derive its entitlement to file an international application,

“applicant’s Contracting Party” means the one which, among those Contracting Parties, is indicated as such in the international application;

(xv) “territory of a Contracting Party” means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituent treaty of that intergovernmental organization applies;

(xvi) “Office” means the agency entrusted by a Contracting Party with the grant of protection for industrial designs with effect in the territory of that Contracting Party;

(xvii) “Examining Office” means an Office which *ex officio* examines applications filed with it for the protection of industrial designs at least to determine whether the industrial designs satisfy the condition of novelty;

(xviii) “designation” means a request that an international registration have effect in a Contracting Party; it also means the recording, in the International Register, of that request;

(xix) “designated Contracting Party” and “designated Office” means the Contracting Party and the Office of the Contracting Party, respectively, to which a designation applies;

(xx) “1934 Act” means the Act signed at London on June 2, 1934, of the Hague Agreement;

(xxi) “1960 Act” means the Act signed at The Hague on November 28, 1960, of the Hague Agreement;

(xxii) “1961 Additional Act” means the Act signed at Monaco on November 18, 1961, additional to the 1934 Act;

(xxiii) “Complementary Act of 1967” means the Complementary Act signed at Stockholm on July 14, 1967, as amended, of the Hague Agreement;

(xxiv) “Union” means the Hague Union established by the Hague Agreement of November 6, 1925, and maintained by the 1934 and 1960 Acts, the 1961 Additional Act, the Complementary Act of 1967 and this Act;

(xxv) “Assembly” means the Assembly referred to in Article 21(1)(a) or any body replacing that Assembly;

(xxvi) “Organization” means the World Intellectual Property Organization;

(xxvii) “Director General” means the Director General of the Organization;

(xxviii) “International Bureau” means the International Bureau of the Organization;

(xxix) “instrument of ratification” shall be construed as including instruments of acceptance or approval.

Article 2

Applicability of Other Protection Accorded by Laws of Contracting Parties and by Certain International Treaties

(1) [*Laws of Contracting Parties and Certain International Treaties*] The provisions of this Act shall not affect the application of any greater protection which may be accorded by the law of a Contracting Party, nor shall they affect in any way the protection accorded to works of art and works of applied art by international copyright treaties and conventions, or the protection accorded to industrial designs under the Agreement on Trade-Related Aspects of Intellectual Property Rights annexed to the Agreement Establishing the World Trade Organization.

(2) [*Obligation to Comply with the Paris Convention*] Each Contracting Party shall comply with the provisions of the Paris Convention which concern industrial designs.

CHAPTER I

INTERNATIONAL APPLICATION AND INTERNATIONAL REGISTRATION

Article 3

Entitlement to File an International Application

Any person that is a national of a State that is a Contracting Party or of a State member of an intergovernmental organization that is a Contracting Party, or that has a domicile, a habitual residence or a real and effective industrial or commercial establishment in the territory of a Contracting Party, shall be entitled to file an international application.

Article 4

Procedure for Filing the International Application

(1) [*Direct or Indirect Filing*] (a) 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.

(b) Notwithstanding subparagraph (a), any Contracting Party may, in a declaration, notify the Director General that international applications may not be filed through its Office.

(2) [*Transmittal Fee in Case of Indirect Filing*] The Office of any Contracting Party may require that the applicant pay a transmittal fee to it, for its own benefit, in respect of any international application filed through it.

Article 5

Contents of the International Application

(1) [*Mandatory Contents of the International Application*] The international application shall be in the prescribed language or one of the prescribed languages and shall contain or be accompanied by

- (i) a request for international registration under this Act;
- (ii) the prescribed data concerning the applicant;
- (iii) the prescribed number of copies of a reproduction or, at the choice of the applicant, of several different reproductions of the industrial design that is the subject of the international application, presented in the prescribed manner; however, where the industrial design is two-dimensional and a request for deferment of publication is made in accordance with paragraph (5), the international application may, instead of containing reproductions, be accompanied by the prescribed number of specimens of the industrial design;
- (iv) an indication of the product or products which constitute the industrial design or in relation to which the industrial design is to be used, as prescribed;
- (v) an indication of the designated Contracting Parties;
- (vi) the prescribed fees;
- (vii) any other prescribed particulars.

(2) [*Additional Mandatory Contents of the International Application*] (a) Any Contracting Party whose Office is an Examining Office and whose law, at the time it becomes party to this Act, requires that an application for the grant of protection to an industrial design contain any of the elements specified in subparagraph (b) in order for that application to be accorded a filing date under that law may, in a declaration, notify the Director General of those elements.

(b) The elements that may be notified pursuant to subparagraph (a) are the following:

- (i) indications concerning the identity of the creator of the industrial design that is the subject of that application;
- (ii) a brief description of the reproduction or of the characteristic features of the industrial design that is the subject of that application;
- (iii) a claim.

(c) Where the international application contains the designation of a Contracting Party that has made a notification under subparagraph (a), it shall also contain, in the prescribed manner, any element that was the subject of that notification.

(3) [*Other Possible Contents of the International Application*] The international application may contain or be accompanied by such other elements as are specified in the Regulations.

(4) [*Several Industrial Designs in the Same International Application*] Subject to such conditions as may be prescribed, an international application may include two or more industrial designs.

(5) [*Request for Deferred Publication*] The international application may contain a request for deferment of publication.

Article 6

Priority

(1) [*Claiming of Priority*] (a) The international application may contain a declaration claiming, under Article 4 of the Paris Convention, the priority of one or more earlier applications filed in or for any country party to that Convention or any Member of the World Trade Organization.

(b) The Regulations may provide that the declaration referred to in subparagraph (a) may be made after the filing of the international application. In such case, the Regulations shall prescribe the latest time by which such declaration may be made.

(2) [*International Application Serving as a Basis for Claiming Priority*] The international application shall, as from its filing date and whatever may be its subsequent fate, be equivalent to a regular filing within the meaning of Article 4 of the Paris Convention.

Article 7

Designation Fees

(1) [*Prescribed Designation Fee*] The prescribed fees shall include, subject to paragraph (2), a designation fee for each designated Contracting Party.

(2) [*Individual Designation Fee*] Any Contracting Party whose Office is an Examining Office and any Contracting Party that is an intergovernmental organization may, in a declaration, notify the Director General that, in connection with any international application in which it is designated, and in connection with the renewal of any international registration resulting from such an international application, the prescribed designation fee referred to in paragraph (1) shall be replaced by an individual designation fee, whose amount shall be indicated in the declaration and can be changed in further declarations. The said amount may be fixed by the said Contracting Party for the initial term of protection and for each term of renewal or for the maximum period of protection allowed by the Contracting Party concerned. However, it may not be higher than the equivalent of the amount which the Office of that Contracting Party would be entitled to receive from an applicant for a grant of protection for an equivalent period to the same number of industrial designs, that amount being diminished by the savings resulting from the international procedure.

(3) [*Transfer of Designation Fees*] The designation fees referred to in paragraphs (1) and (2) shall be transferred by the International Bureau to the Contracting Parties in respect of which those fees were paid.

Article 8

Correction of Irregularities

(1) [*Examination of the International Application*] If the International Bureau finds that the international application does not, at the time of its receipt by the International Bureau, fulfill the requirements of this Act and the Regulations, it shall invite the applicant to make the required corrections within the prescribed time limit.

(2) [*Irregularities Not Corrected*] (a) If the applicant does not comply with the invitation within the prescribed time limit, the international application shall, subject to subparagraph (b), be considered abandoned.

(b) In the case of an irregularity which relates to Article 5(2) or to a special requirement notified to the Director General by a Contracting Party in accordance with the Regulations, if the applicant does not comply with the invitation within the prescribed time limit, the international application shall be deemed not to contain the designation of that Contracting Party.

Article 9

Filing Date of the International Application

(1) [*International Application Filed Directly*] Where the international application is filed directly with the International Bureau, the filing date shall, subject to paragraph (3), be the date on which the International Bureau receives the international application.

(2) [*International Application Filed Indirectly*] Where the international application is filed through the Office of the applicant's Contracting Party, the filing date shall be determined as prescribed.

(3) [*International Application with Certain Irregularities*] Where the international application has, on the date on which it is received by the International Bureau, an irregularity which is prescribed as an irregularity entailing a postponement of the filing date of the international application, the filing date shall be the date on which the correction of such irregularity is received by the International Bureau.

Article 10¹⁵

International Registration, Date of the International Registration, Publication and Confidential Copies of the International Registration

(1) [*International Registration*] The International Bureau shall register each industrial design that is the subject of an international application immediately upon receipt by it of the international application or, where corrections are invited under Article 8, immediately upon receipt of the required corrections. The registration shall be effected whether or not publication is deferred under Article 11.

(2) [*Date of the International Registration*] (a) Subject to subparagraph (b), the date of the international registration shall be the filing date of the international application.

(b) Where the international application has, on the date on which it is received by the International Bureau, an irregularity which relates to Article 5(2), the date of the international registration shall be the date on which the correction of such irregularity is received by the International Bureau or the filing date of the international application, whichever is the later.

¹⁵ When adopting Article 10, the Diplomatic Conference understood that nothing in this Article precludes access to the international application or the international registration by the applicant or the holder or a person having the consent of the applicant or the holder.

(3) [*Publication*] (a) The international registration shall be published by the International Bureau. Such publication shall be deemed in all Contracting Parties to be sufficient publicity, and no other publicity may be required of the holder.

(b) The International Bureau shall send a copy of the publication of the international registration to each designated Office.

(4) [*Maintenance of Confidentiality Before Publication*] Subject to paragraph (5) and Article 11(4)(b), the International Bureau shall keep in confidence each international application and each international registration until publication.

(5) [*Confidential Copies*] (a) The International Bureau shall, immediately after registration has been effected, send a copy of the international registration, along with any relevant statement, document or specimen accompanying the international application, to each Office that has notified the International Bureau that it wishes to receive such a copy and has been designated in the international application.

(b) The Office shall, until publication of the international registration by the International Bureau, keep in confidence each international registration of which a copy has been sent to it by the International Bureau and may use the said copy only for the purpose of the examination of the international registration and of applications for the protection of industrial designs filed in or for the Contracting Party for which the Office is competent. In particular, it may not divulge the contents of any such international registration to any person outside the Office other than the holder of that international registration, except for the purposes of an administrative or legal proceeding involving a conflict over entitlement to file the international application on which the international registration is based. In the case of such an administrative or legal proceeding, the contents of the international registration may only be disclosed in confidence to the parties involved in the proceeding who shall be bound to respect the confidentiality of the disclosure.

Article 11

Deferment of Publication

(1) [*Provisions of Laws of Contracting Parties Concerning Deferment of Publication*] (a) Where the law of a Contracting Party provides for the deferment of the publication of an industrial design for a period which is less than the prescribed period, that Contracting Party shall, in a declaration, notify the Director General of the allowable period of deferment.

(b) Where the law of a Contracting Party does not provide for the deferment of the publication of an industrial design, the Contracting Party shall, in a declaration, notify the Director General of that fact.

(2) [*Deferment of Publication*] Where the international application contains a request for deferment of publication, the publication shall take place,

(i) where none of the Contracting Parties designated in the international application has made a declaration under paragraph (1), at the expiry of the prescribed period or,

(ii) where any of the Contracting Parties designated in the international application has made a declaration under paragraph (1)(a), at the expiry of the period notified in such declaration or, where there is more than one such designated Contracting Party, at the expiry of the shortest period notified in their declarations.

(3) [*Treatment of Requests for Deferment Where Deferment Is Not Possible Under Applicable Law*] Where deferment of publication has been requested and any of the Contracting Parties designated in the international application has made a declaration under paragraph (1)(b) that deferment of publication is not possible under its law,

(i) subject to item (ii), the International Bureau shall notify the applicant accordingly; if, within the prescribed period, the applicant does not, by notice in writing to the International Bureau, withdraw the designation of the said Contracting Party, the International Bureau shall disregard the request for deferment of publication;

(ii) where, instead of containing reproductions of the industrial design, the international application was accompanied by specimens of the industrial design, the International Bureau shall disregard the designation of the said Contracting Party and shall notify the applicant accordingly.

(4) [*Request for Earlier Publication or for Special Access to the International Registration*] (a) At any time during the period of deferment applicable under paragraph (2), the holder may request publication of any or all of the industrial designs that are the subject of the international registration, in which case the period of deferment in respect of such industrial design or designs shall be considered to have expired on the date of receipt of such request by the International Bureau.

(b) The holder may also, at any time during the period of deferment applicable under paragraph (2), request the International Bureau to provide a third party specified by the holder with an extract from, or to allow such a party access to, any or all of the industrial designs that are the subject of the international registration.

(5) [*Renunciation and Limitation*] (a) If, at any time during the period of deferment applicable under paragraph (2), the holder renounces the international registration in respect of all the designated Contracting Parties, the industrial design or designs that are the subject of the international registration shall not be published.

(b) If, at any time during the period of deferment applicable under paragraph (2), the holder limits the international registration, in respect of all of the designated Contracting Parties, to one or some of the industrial designs that are the subject of the international registration, the other industrial design or designs that are the subject of the international registration shall not be published.

(6) [*Publication and Furnishing of Reproductions*] (a) At the expiration of any period of deferment applicable under the provisions of this Article, the International Bureau shall, subject to the payment of the prescribed fees, publish the international registration. If such fees are not paid as prescribed, the international registration shall be canceled and publication shall not take place.

(b) Where the international application was accompanied by one or more specimens of the industrial design in accordance with Article 5(1)(iii), the holder shall submit the prescribed

number of copies of a reproduction of each industrial design that is the subject of that application to the International Bureau within the prescribed time limit. To the extent that the holder does not do so, the international registration shall be canceled and publication shall not take place.

Article 12

Refusal

(1) [*Right to Refuse*] The Office of any designated Contracting Party may, where the conditions for the grant of protection under the law of that Contracting Party are not met in respect of any or all of the industrial designs that are the subject of an international registration, refuse the effects, in part or in whole, of the international registration in the territory of the said Contracting Party, provided that no Office may refuse the effects, in part or in whole, of any international registration on the ground that requirements relating to the form or contents of the international application that are provided for in this Act or the Regulations or are additional to, or different from, those requirements have not been satisfied under the law of the Contracting Party concerned.

(2) [*Notification of Refusal*] (a) The refusal of the effects of an international registration shall be communicated by the Office to the International Bureau in a notification of refusal within the prescribed period.

(b) Any notification of refusal shall state all the grounds on which the refusal is based.

(3) [*Transmission of Notification of Refusal; Remedies*] (a) The International Bureau shall, without delay, transmit a copy of the notification of refusal to the holder.

(b) The holder shall enjoy the same remedies as if any industrial design that is the subject of the international registration had been the subject of an application for the grant of protection under the law applicable to the Office that communicated the refusal. Such remedies shall at least consist of the possibility of a re-examination or a review of the refusal or an appeal against the refusal.

(4)¹⁶ [*Withdrawal of Refusal*] Any refusal may be withdrawn, in part or in whole, at any time by the Office that communicated it.

Article 13

Special Requirements Concerning Unity of Design

(1) [*Notification of Special Requirements*] Any Contracting Party whose law, at the time it becomes party to this Act, requires that designs that are the subject of the same application

¹⁶ When adopting Article 12(4), Article 14(2)(b) and Rule 18(4), the Diplomatic Conference understood that a withdrawal of refusal by an Office that has communicated a notification of refusal may take the form of a statement to the effect that the Office concerned has decided to accept the effects of the international registration in respect of the industrial designs, or some of the industrial designs, to which the notification of refusal related. It was also understood that an Office may, within the period allowed for communicating a notification of refusal, send a statement to the effect that it has decided to accept the effects of the international registration even where it has not communicated such a notification of refusal.

conform to a requirement of unity of design, unity of production or unity of use, or belong to the same set or composition of items, or that only one independent and distinct design may be claimed in a single application, may, in a declaration, notify the Director General accordingly. However, no such declaration shall affect the right of an applicant to include two or more industrial designs in an international application in accordance with Article 5(4), even if the application designates the Contracting Party that has made the declaration.

(2) [*Effect of Declaration*] Any such declaration shall enable the Office of the Contracting Party that has made it to refuse the effects of the international registration pursuant to Article 12(1) pending compliance with the requirement notified by that Contracting Party.

(3) [*Further Fees Payable on Division of Registration*] Where, following a notification of refusal in accordance with paragraph (2), an international registration is divided before the Office concerned in order to overcome a ground of refusal stated in the notification, that Office shall be entitled to charge a fee in respect of each additional international application that would have been necessary in order to avoid that ground of refusal.

Article 14

Effects of the International Registration

(1) [*Effect as Application Under Applicable Law*] The international registration shall, from the date of the international registration, have at least the same effect in each designated Contracting Party as a regularly-filed application for the grant of protection of the industrial design under the law of that Contracting Party.

(2) [*Effect as Grant of Protection Under Applicable Law*] (a) In each designated Contracting Party the Office of which has not communicated a refusal in accordance with Article 12, the international registration shall have the same effect as a grant of protection for the industrial design under the law of that Contracting Party at the latest from the date of expiration of the period allowed for it to communicate a refusal or, where a Contracting Party has made a corresponding declaration under the Regulations, at the latest at the time specified in that declaration.

(b)¹⁷ Where the Office of a designated Contracting Party has communicated a refusal and has subsequently withdrawn, in part or in whole, that refusal, the international registration shall, to the extent that the refusal is withdrawn, have the same effect in that Contracting Party as a grant of protection for the industrial design under the law of the said Contracting Party at the latest from the date on which the refusal was withdrawn.

(c) The effect given to the international registration under this paragraph shall apply to the industrial design or designs that are the subject of that registration as received from the International Bureau by the designated Office or, where applicable, as amended in the procedure before that Office.

(3) [*Declaration Concerning Effect of Designation of Applicant's Contracting Party*] (a) Any Contracting Party whose Office is an Examining Office may, in a declaration, notify the

¹⁷ See footnote 16.

Director General that, where it is the applicant's Contracting Party, the designation of that Contracting Party in an international registration shall have no effect.

(b) Where a Contracting Party having made the declaration referred to in subparagraph (a) is indicated in an international application both as the applicant's Contracting Party and as a designated Contracting Party, the International Bureau shall disregard the designation of that Contracting Party.

Article 15

Invalidation

(1) [*Requirement of Opportunity of Defense*] Invalidation, by the competent authorities of a designated Contracting Party, of the effects, in part or in whole, in the territory of that Contracting Party, of the international registration may not be pronounced without the holder having, in good time, been afforded the opportunity of defending his rights.

(2) [*Notification of Invalidation*] The Office of the Contracting Party in whose territory the effects of the international registration have been invalidated shall, where it is aware of the invalidation, notify it to the International Bureau.

Article 16

Recording of Changes and Other Matters

Concerning International Registrations

(1) [*Recording of Changes and Other Matters*] The International Bureau shall, as prescribed, record in the International Register

(i) any change in ownership of the international registration, in respect of any or all of the designated Contracting Parties and in respect of any or all of the industrial designs that are the subject of the international registration, provided that the new owner is entitled to file an international application under Article 3,

(ii) any change in the name or address of the holder,

(iii) the appointment of a representative of the applicant or holder and any other relevant fact concerning such representative,

(iv) any renunciation, by the holder, of the international registration, in respect of any or all of the designated Contracting Parties,

(v) any limitation, by the holder, of the international registration, in respect of any or all of the designated Contracting Parties, to one or some of the industrial designs that are the subject of the international registration,

(vi) any invalidation, by the competent authorities of a designated Contracting Party, of the effects, in the territory of that Contracting Party, of the international registration in respect of any or all of the industrial designs that are the subject of the international registration,

(vii) any other relevant fact, identified in the Regulations, concerning the rights in any or all of the industrial designs that are the subject of the international registration.

(2) [*Effect of Recording in International Register*] Any recording referred to in items (i), (ii), (iv), (v), (vi) and (vii) of paragraph (1) shall have the same effect as if it had been made in the Register of the Office of each of the Contracting Parties concerned, except that a Contracting Party may, in a declaration, notify the Director General that a recording referred to in item (i) of paragraph (1) shall not have that effect in that Contracting Party until the Office of that Contracting Party has received the statements or documents specified in that declaration.

(3) [*Fees*] Any recording made under paragraph (1) may be subject to the payment of a fee.

(4) [*Publication*] The International Bureau shall publish a notice concerning any recording made under paragraph (1). It shall send a copy of the publication of the notice to the Office of each of the Contracting Parties concerned.

Article 17

Initial Term and Renewal of the International Registration and Duration of Protection

(1) [*Initial Term of the International Registration*] The international registration shall be effected for an initial term of five years counted from the date of the international registration.

(2) [*Renewal of the International Registration*] The international registration may be renewed for additional terms of five years, in accordance with the prescribed procedure and subject to the payment of the prescribed fees.

(3) [*Duration of Protection in Designated Contracting Parties*] (a) Provided that the international registration is renewed, and subject to subparagraph (b), the duration of protection shall, in each of the designated Contracting Parties, be 15 years counted from the date of the international registration.

(b) Where the law of a designated Contracting Party provides for a duration of protection of more than 15 years for an industrial design for which protection has been granted under that law, the duration of protection shall, provided that the international registration is renewed, be the same as that provided for by the law of that Contracting Party.

(c) Each Contracting Party shall, in a declaration, notify the Director General of the maximum duration of protection provided for by its law.

(4) [*Possibility of Limited Renewal*] The renewal of the international registration may be effected for any or all of the designated Contracting Parties and for any or all of the industrial designs that are the subject of the international registration.

(5) [*Recording and Publication of Renewal*] The International Bureau shall record renewals in the International Register and publish a notice to that effect. It shall send a copy of the publication of the notice to the Office of each of the Contracting Parties concerned.

Article 18

Information Concerning Published International Registrations

(1) [*Access to Information*] The International Bureau shall supply to any person applying therefor, upon the payment of the prescribed fee, extracts from the International Register, or information concerning the contents of the International Register, in respect of any published international registration.

(2) [*Exemption from Legalization*] Extracts from the International Register supplied by the International Bureau shall be exempt from any requirement of legalization in each Contracting Party.

CHAPTER II

ADMINISTRATIVE PROVISIONS

Article 19

Common Office of Several States

(1) [*Notification of Common Office*] If several States intending to become party to this Act have effected, or if several States party to this Act agree to effect, the unification of their domestic legislation on industrial designs, they may notify the Director General

(i) that a common Office shall be substituted for the national Office of each of them, and

(ii) that the whole of their respective territories to which the unified legislation applies shall be deemed to be a single Contracting Party for the purposes of the application of Articles 1, 3 to 18 and 31 of this Act.

(2) [*Time at Which Notification Is to Be Made*] The notification referred to in paragraph (1) shall be made,

(i) in the case of States intending to become party to this Act, at the time of the deposit of the instruments referred to in Article 27(2);

(ii) in the case of States party to this Act, at any time after the unification of their domestic legislation has been effected.

(3) [*Date of Entry into Effect of the Notification*] The notification referred to in paragraphs (1) and (2) shall take effect,

(i) in the case of States intending to become party to this Act, at the time such States become bound by this Act;

(ii) in the case of States party to this Act, three months after the date of the communication thereof by the Director General to the other Contracting Parties or at any later date indicated in the notification.

Article 20

Membership of the Hague Union

The Contracting Parties shall be members of the same Union as the States party to the 1934 Act or the 1960 Act.

Article 21

Assembly

(1) [*Composition*] (a) The Contracting Parties shall be members of the same Assembly as the States bound by Article 2 of the Complementary Act of 1967.

(b) Each member of the Assembly shall be represented in the Assembly by one delegate, who may be assisted by alternate delegates, advisors and experts, and each delegate may represent only one Contracting Party.

(c) Members of the Union that are not members of the Assembly shall be admitted to the meetings of the Assembly as observers.

(2) [*Tasks*] (a) The Assembly shall

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Act;

(ii) exercise such rights and perform such tasks as are specifically conferred upon it or assigned to it under this Act or the Complementary Act of 1967;

(iii) give directions to the Director General concerning the preparations for conferences of revision and decide the convocation of any such conference;

(iv) amend the Regulations;

(v) review and approve the reports and activities of the Director General concerning the Union, and give the Director General all necessary instructions concerning matters within the competence of the Union;

(vi) determine the program and adopt the biennial budget of the Union, and approve its final accounts;

(vii) adopt the financial regulations of the Union;

(viii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Union;

(ix) subject to paragraph (1)I, determine which States, intergovernmental organizations and non-governmental organizations shall be admitted to its meetings as observers;

(x) take any other appropriate action to further the objectives of the Union and perform any other functions as are appropriate under this Act.

(b) With respect to matters which are also of interest to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) [*Quorum*] (a) One-half of the members of the Assembly which are States and have the right to vote on a given matter shall constitute a quorum for the purposes of the vote on that matter.

(b) Notwithstanding the provisions of subparagraph (a), if, in any session, the number of the members of the Assembly which are States, have the right to vote on a given matter and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States and have the right to vote on that matter, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States, have the right to vote on the said matter and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(4) [*Taking Decisions in the Assembly*] (a) The Assembly shall therefore take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name, and

(ii) any Contracting Party that is an intergovernmental organization may vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Act, and no such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote, and *vice versa*.

(c) On matters concerning only States that are bound by Article 2 of the Complementary Act of 1967, Contracting Parties that are not bound by the said Article shall not have the right to vote, whereas, on matters concerning only Contracting Parties, only the latter shall have the right to vote.

(5) [*Majorities*] (a) Subject to Articles 24(2) and 26(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(6) [*Sessions*] (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the members of the Assembly or on the Director General's own initiative.

(c) The agenda of each session shall be prepared by the Director General.

(7) [*Rules of Procedure*] The Assembly shall adopt its own rules of procedure.

Article 22

International Bureau

(1) [*Administrative Tasks*] (a) International registration and related duties, as well as all other administrative tasks concerning the Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may be established by the Assembly.

(2) [*Director General*] The Director General shall be the chief executive of the Union and shall represent the Union.

(3) [*Meetings Other than Sessions of the Assembly*] The Director General shall convene any committee and working group established by the Assembly and all other meetings dealing with matters of concern to the Union.

(4) [*Role of the International Bureau in the Assembly and Other Meetings*] (a) The Director General and persons designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly, and any other meetings convened by the Director General under the aegis of the Union.

(b) The Director General or a staff member designated by the Director General shall be *ex officio* secretary of the Assembly, and of the committees, working groups and other meetings referred to in subparagraph (a).

(5) [*Conferences*] (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with intergovernmental organizations and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by the Director General shall take part, without the right to vote, in the discussions at revision conferences.

(6) [*Other Tasks*] The International Bureau shall carry out any other tasks assigned to it in relation to this Act.

Article 23

Finances

(1) [*Budget*] (a) The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union and its contribution to the budget of expenses common to the Unions administered by the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered to be expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) [*Coordination with Budgets of Other Unions*] The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) [*Sources of Financing of the Budget*] The budget of the Union shall be financed from the following sources:

- (i) fees relating to international registrations;
- (ii) charges due for other services rendered by the International Bureau in relation to the Union;
- (iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;
- (iv) gifts, bequests and subventions;
- (v) rents, interests and other miscellaneous income.

(4) [*Fixing of Fees and Charges; Level of the Budget*] (a) The amounts of the fees referred to in paragraph (3)(i) shall be fixed by the Assembly on the proposal of the Director General. Charges referred to in paragraph 3(ii) shall be established by the Director General and shall be provisionally applied subject to approval by the Assembly at its next session.

(b) The amounts of the fees referred to in paragraph (3)(i) shall be so fixed that the revenues of the Union from fees and other sources shall be at least sufficient to cover all the expenses of the International Bureau concerning the Union.

(c) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(5) [*Working Capital Fund*] The Union shall have a working capital fund which shall be constituted by the excess receipts and, if such excess does not suffice, by a single payment made by each member of the Union. If the fund becomes insufficient, the Assembly shall decide to increase it. The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General.

(6) [*Advances by Host State*] (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The

amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(7) [*Auditing of Accounts*] The auditing of the accounts shall be effected by one or more of the States members of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 24

Regulations

(1) [*Subject Matter*] The Regulations shall govern the details of the implementation of this Act. They shall, in particular, include provisions concerning

- (i) matters which this Act expressly provides are to be prescribed;
- (ii) further details concerning, or any details useful in the implementation of, the provisions of this Act;
- (iii) any administrative requirements, matters or procedures.

(2) [*Amendment of Certain Provisions of the Regulations*] (a) The Regulations may specify that certain provisions of the Regulations may be amended only by unanimity or only by a four-fifths majority.

(b) In order for the requirement of unanimity or a four-fifths majority no longer to apply in the future to the amendment of a provision of the Regulations, unanimity shall be required.

(c) In order for the requirement of unanimity or a four-fifths majority to apply in the future to the amendment of a provision of the Regulations, a four-fifths majority shall be required.

(3) [*Conflict Between This Act and the Regulations*] In the case of conflict between the provisions of this Act and those of the Regulations, the former shall prevail.

CHAPTER III

REVISION AND AMENDMENT

Article 25

Revision of This Act

(1) [*Revision Conferences*] This Act may be revised by a conference of the Contracting Parties.

(2) [*Revision or Amendment of Certain Articles*] Articles 21, 22, 23 and 26 may be amended either by a revision conference or by the Assembly according to the provisions of Article 26.

Article 26

Amendment of Certain Articles by the Assembly

(1) [*Proposals for Amendment*] (a) Proposals for the amendment by the Assembly of Articles 21, 22, 23 and this Article may be initiated by any Contracting Party or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(2) [*Majorities*] Adoption of any amendment to the Articles referred to in paragraph (1) shall require a three-fourths majority, except that adoption of any amendment to Article 21 or to the present paragraph shall require a four-fifths majority.

(3) [*Entry into Force*] (a) Except where subparagraph (b) applies, any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of those Contracting Parties which, at the time the amendment was adopted, were members of the Assembly and had the right to vote on that amendment.

(b) Any amendment to Article 21(3) or (4) or to this subparagraph shall not enter into force if, within six months of its adoption by the Assembly, any Contracting Party notifies the Director General that it does not accept such amendment.

(c) Any amendment which enters into force in accordance with the provisions of this paragraph shall bind all the States and intergovernmental organizations which are Contracting Parties at the time the amendment enters into force, or which become Contracting Parties at a subsequent date.

CHAPTER IV

FINAL PROVISIONS

Article 27

Becoming Party to This Act

(1) [*Eligibility*] Subject to paragraphs (2) and (3) and Article 28,

(i) any State member of the Organization may sign and become party to this Act;

(ii) any intergovernmental organization which maintains an Office in which protection of industrial designs may be obtained with effect in the territory in which the constituting treaty of the intergovernmental organization applies may sign and become party to this Act, provided that at least one of the member States of the intergovernmental organization is a member of the Organization and provided that such Office is not the subject of a notification under Article 19.

(2) [*Ratification or Accession*] Any State or intergovernmental organization referred to in paragraph (1) may deposit

- (i) an instrument of ratification if it has signed this Act, or
- (ii) an instrument of accession if it has not signed this Act.

(3) [*Effective Date of Deposit*] (a) Subject to subparagraphs (b) to (d), the effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited.

(b) The effective date of the deposit of the instrument of ratification or accession of any State in respect of which protection of industrial designs may be obtained only through the Office maintained by an intergovernmental organization of which that State is a member shall be the date on which the instrument of that intergovernmental organization is deposited if that date is later than the date on which the instrument of the said State has been deposited.

(c) The effective date of the deposit of any instrument of ratification or accession containing or accompanied by the notification referred to in Article 19 shall be the date on which the last of the instruments of the States members of the group of States having made the said notification is deposited.

(d) Any instrument of ratification or accession of a State may contain or be accompanied by a declaration making it a condition to its being considered as deposited that the instrument of one other State or one intergovernmental organization, or the instruments of two other States, or the instruments of one other State and one intergovernmental organization, specified by name and eligible to become party to this Act, is or are also deposited. The instrument containing or accompanied by such a declaration shall be considered to have been deposited on the day on which the condition indicated in the declaration is fulfilled. However, when an instrument specified in the declaration itself contains, or is itself accompanied by, a declaration of the said kind, that instrument shall be considered as deposited on the day on which the condition specified in the latter declaration is fulfilled.

(e) Any declaration made under paragraph (d) may be withdrawn, in its entirety or in part, at any time. Any such withdrawal shall become effective on the date on which the notification of withdrawal is received by the Director General.

Article 28

Effective Date of Ratifications and Accessions

(1) [*Instruments to Be Taken into Consideration*] or the purposes of this Article, only instruments of ratification or accession that are deposited by States or intergovernmental organizations referred to in Article 27(1) and that have an effective date according to Article 27(3) shall be taken into consideration.

(2) [*Entry into Force of This Act*] this Act shall enter into force three months after six States have deposited their instruments of ratification or accession, provided that, according to the most recent annual statistics collected by the International Bureau, at least three of those States fulfil at least one of the following conditions:

(i) at least 3,000 applications for the protection of industrial designs have been filed in or for the State concerned, or

(ii) at least 1,000 applications for the protection of industrial designs have been filed in or for the State concerned by residents of States other than that State.

(3) [*Entry into Force of Ratifications and Accessions*] (a) Any State or intergovernmental organization that has deposited its instrument of ratification or accession three months or more before the date of entry into force of this Act shall become bound by this Act on the date of entry into force of this Act.

(b) Any other State or intergovernmental organization shall become bound by this Act three months after the date on which it has deposited its instrument of ratification or accession or at any later date indicated in that instrument.

Article 29

Prohibition of Reservations

No reservations to this Act are permitted.

Article 30

Declarations Made by Contracting Parties

(1) [*Time at Which Declarations May Be Made*] Any declaration under Articles 4(1)(b), 5(2)(a), 7(2), 11(1), 13(1), 14(3), 16(2) or 17(3)(c) may be made

(i) at the time of the deposit of an instrument referred to in Article 27(2), in which case it shall become effective on the date on which the State or intergovernmental organization having made the declaration becomes bound by this Act, or

(ii) after the deposit of an instrument referred to in Article 27(2), in which case it shall become effective three months after the date of its receipt by the Director General or at any later date indicated in the declaration but shall apply only in respect of any international registration whose date of international registration is the same as, or is later than, the effective date of the declaration.

(2) [*Declarations by States Having a Common Office*] Notwithstanding paragraph (1), any declaration referred to in that paragraph that has been made by a State which has, with another State or other States, notified the Director General under Article 19(1) of the substitution of a common Office for their national Offices shall become effective only if that other State or those other States makes or make a corresponding declaration or corresponding declarations.

(3) [*Withdrawal of Declarations*] Any declaration referred to in paragraph (1) may be withdrawn at any time by notification addressed to the Director General. Such withdrawal shall take effect three months after the date on which the Director General has received the notification or at any later date indicated in the notification. In the case of a declaration made under Article 7(2), the withdrawal shall not affect international applications filed prior to the coming into effect of the said withdrawal.

Article 31

Applicability of the 1934 and 1960 Acts

(1) [*Relations Between States Party to Both This Act and the 1934 or 1960 Acts*] This Act alone shall be applicable as regards the mutual relations of States party to both this Act and the 1934 Act or the 1960 Act. However, such States shall, in their mutual relations, apply the 1934 Act or the 1960 Act, as the case may be, to industrial designs deposited at the International Bureau prior to the date on which this Act becomes applicable as regards their mutual relations.

(2) [*Relations Between States Party to Both This Act and the 1934 or 1960 Acts and States Party to the 1934 or 1960 Acts Without Being Party to This Act*] (a) Any State that is party to both this Act and the 1934 Act shall continue to apply the 1934 Act in its relations with States that are party to the 1934 Act without being party to the 1960 Act or this Act.

(b) Any State that is party to both this Act and the 1960 Act shall continue to apply the 1960 Act in its relations with States that are party to the 1960 Act without being party to this Act.

Article 32

Denunciation of This Act

(1) [*Notification*] Any Contracting Party may denounce this Act by notification addressed to the Director General.

(2) [*Effective Date*] Denunciation shall take effect one year after the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not affect the application of this Act to any international application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

Article 33

Languages of This Act; Signature

(1) [*Original Texts; Official Texts*] (a) This Act shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(2) [*Time Limit for Signature*] This Act shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 34

Depositary

The Director General shall be the depositary of this Act.

DECLARATION

on direct filing

The President of the Council, when depositing this instrument of accession with the Director-General of WIPO, shall attach the following declaration to the instrument of accession:

“The European Community declares that international applications may not be filed through its Office.”

DECLARATION

on the individual fee system

The President of the Council, when depositing this instrument of accession with the Director-General of WIPO, shall attach the following declaration to the instrument of accession:

“The European Community declares that, in connection with each international registration in which it is designed, and in connection with the renewal of any international registration resulting from such an international application, the prescribed designation fee referred to in Article 7 (1) of the Geneva Act shall be replaced by an individual designation fee, whose amount shall be: ”¹⁸

DECLARATION

on the duration of protection in the European Community

The President of the Council, when depositing this instrument of accession with the Director-General of WIPO, shall attach the following declaration to the instrument of accession:

“The European Community declares that the maximum duration of protection provided for by its law is 25 years.”

¹⁸ On the basis of a financial analysis of the impact of the accession of the European Community to the Geneva Act, the European Commission will propose an amendment to 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).

LEGISLATIVE FINANCIAL STATEMENT

Policy area: Internal Market for Goods and Services

Activity: Prepare access of the European Community to the Geneva Act on the international registration of designs

TITLE OF ACTION: PROPOSAL FOR A COUNCIL DECISION APPROVING THE ACCESSION OF THE EUROPEAN COMMUNITY TO THE GENEVA ACT OF THE HAGUE AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS, ADOPTED IN GENEVA ON 2 JULY 1999.

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 in conjunction with Article 300(2) EC and Article 300(3) EC

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention

5.1.1. Objectives pursued

The objective of the proposal is to establish a link between the Community design system and the international registration system established under the Geneva Act of the Hague System. This link will enable designers to file a single international application at the International Bureau of WIPO designating, amongst other Contracting Parties, the European Community in order to obtain protection under the Community design system.

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 of business on 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 proposed Decision authorizes the President of the Council to deposit the instrument of accession to the Geneva Act with the Director-General of WIPO, and includes declarations which shall be made in the instrument of accession. The proposal also authorizes the Commission to represent the Community in the Assembly of the Hague Union after the accession of the Community to the Geneva Act. No financial assistance is involved.

5.3. Methods of implementation

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
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		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A	0,5 A	0	0,5 A	<i>If necessary, a fuller description of the tasks may be annexed.</i> 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.
	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: 108.000 €
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

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.