Council Regulation (EC) No 1891/2006 of 18 December 2006 amending Regulations (EC) No 6/2002 and (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs

COUNCIL REGULATION (EC) No 1891/2006

of 18 December 2006

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the European Parliament,

Whereas:

(1) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs[(1)] created the Community design system whereby undertakings can by means of one procedural system obtain Community designs to which uniform protection is given and which produce their effects throughout the entire area of the Community.

(2) Following preparations initiated and carried out by the World Intellectual Property Organisation (WIPO) with the participation of the Member States which are members of the Hague Union, the Member States which are not members of the Hague Union and the European Community, the Diplomatic Conference, convened for that purpose at Geneva, adopted the Geneva Act of the Hague Agreement concerning the international registration of industrial designs (hereinafter referred to as the 'Geneva Act') on 2 July 1999.

(3) The Council, by Council Decision 954 approved the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs[(2)] and authorised the President of the Council to deposit the instrument of accession with the Director-General of WIPO as from the date on which the Council has adopted the measures which are necessary to give effect to the accession of the Community to the Geneva Act. This Regulation contains those measures.

(4) The appropriate measures should be incorporated in Regulation (EC) No 6/2002 through the inclusion of a new title on 'International registration of designs'.

Changes to legislation: *Council Regulation (EC) No 1891/2006 is up to date with all changes known to be in force on or before 25 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) The rules and procedures relating to international registrations designating the Community should, in principle, be the same as the rules and procedures which apply to Community designs applications. According to this principle, an international registration designating the Community should be subject to the examination as to the grounds for non-registrability before it takes the same effect as a registered Community design. Likewise, an international registration having the same effect as a registered Community design should be subject to the same rules on invalidation as a registered Community design.

(6) Regulation (EC) No 6/2002 should therefore be amended accordingly.

(7) The accession of the Community to the Geneva Act will create a new source of revenues for the Office for the Harmonisation in the Internal Market (Trade Marks and Designs). Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark[3] should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Article 2

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

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

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

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

or

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

or

(iii) by a design right registered under the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999, hereinafter referred

***Changes to legislation:** Council Regulation (EC) No 1891/2006 is up to date with all changes known to be in force on or before 25 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

to as "the Geneva Act", which was approved by Council Decision 954/2006 and which has effect in the Community, or by an application for such a right;

2. The following title is inserted after title XI:

TITLE XIa:

INTERNATIONAL REGISTRATION OF DESIGNS

Section 1

General provisions

Article 106a

Application of provisions

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

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

Section 2

International registrations designating the community

Article 106b

Procedure for filing the international application

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

Article 106c

Designation fees

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