

POSITION PAPER

Brussels, March 2019

PUBLIC CONSULTATION EVALUATION OF EU LEGISLATION ON DESIGN PROTECTION 2019

1.- On the occasion of the public consultation evaluating the EU legislation on design protection by the EU Commission, EMECA would like to present its view on whether the design protection legislation works as intended and whether it can be considered fit for purpose. We will refer specifically to the **EU Council Regulation 6/2002 on Community Designs** (hereinafter referred to as “EU Regulation 06/2002”)

2.- EMECA, the European Major Exhibition Centres Association, is a Brussels based business association that represents 22 large and leading trade fair companies. The EMECA venues organise over 1,800 exhibitions a year with more than 410,000 exhibitors and 42 million visitors on a gross rented display area of roughly 37 million square meters.

3.- **Trade Fairs and Exhibitions (hereinafter referred to as “Trade Fairs”)**, especially international B2B events, serve as **platforms for innovation and trends and as a showcase for all offers** in a determined industry. At Trade Fairs, one can find comprehensive presentations of products, processes and services of today and of the future. The strength of trade fairs lies precisely in combining face-to-face conversations with the opportunity to examine real products.

Inevitably, the problem of counterfeiting may occur and become visible during Trade Fairs, when the whole range of products of one sector is shown at one place. Nonetheless, disclosure is an essential part of the process of selling goods and services.

4.- EMECA Member companies are aware of the problem of counterfeiting. They are working actively in this field and offer **effective support to the Exhibitors of Trade Fairs (hereinafter referred to as “Exhibitors”) to prevent and fight brand and product piracy.**

One effective tool, especially for SMEs, to protect their products and help prevent counterfeits at Trade Fairs is the **Exhibition Priority Certificate**. Priority Certificates are issued by the Trade Fair Organisers and handed over to Exhibitors to prove that a certain item was shown during the respective Trade Fair. Very often, Priority Certificates are used as a proof for the unregistered Community Design. Furthermore, the **date of the Priority Certificate** is accepted as registration date by the respective **national Patent and Trademarks Offices** of Member States when the Exhibitor applies to register a national design within six months after the Trade Fair.

5.- Unfortunately, Exhibition Priority Certificates issued by modern professional B2B Trade Fairs are **not accepted by the European Union (EU) to register trademarks or designs**. According to **Art. 44 of EU Regulation 6/2002** only such Priority Certificates will be accepted that are falling under the **Convention on International Exhibitions signed in Paris in 1928** (hereinafter referred to as “Convention”) and revised in 1972.

However, these kinds of events (Expos such as in Milan 2015 and Dubai 2020) nowadays serve as platforms where individual/certain countries present themselves, but they do not play any significant role as B2B platforms – in contrary to professional B2B Trade Fairs. **This Convention was signed by 157 countries and is very unlikely to be changed** and adapted to reflect the current practice of Trade Fairs and to cater the needs of the companies in a reasonable timeframe. It is obvious that for this particular point the **existing legislation does not work anymore as originally intended**.

6.- **During 2019, the EU Regulation 6/2002 is expected to be submitted to revision**. On this occasion, EMECA suggests to **adopt a modern**

common position on the notion of International Trade Fairs for Art. 44 of EU Regulation 6/2002, so that Priority Certificates can be accepted by the EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE (hereinafter referred to as “EUIPO”) in the same way as by the national authorities.

This would make the **legal protection of design rights in the EU consistent** and would lead to a considerable facilitation for European companies insofar that they would find the **same conditions for designs registration on both national and European level.**

7.- EMECA proposes to replace the reference to the Convention with the most widely accepted current definition of International Trade Fairs.

This is the definition for International Trade Fairs by UFI, the Global Association of the Exhibition Industry (hereinafter referred to as “UFI”), widely accepted and used by other trade fairs associations and numerous national legislations and government actions in Europe and worldwide.

According to the UFI standards (UFI Auditing Rules Annex 1) an International Trade Fair must fulfil one of these conditions:

- a) Either the number of **direct foreign exhibitors and multinational exhibitors must be at least 10%** of the total number of exhibitors
- b) Or the number of **foreign visits or visitors must represent at least 5%** of the total number of visits or visitors, respectively. For public fairs, this percentage is to be counted on the basis of professional visits or visitors, if they are identified.

Examples of organisations using this or a variation of this definition are listed in the Annex.

8.- Usually, in order to be granted the **right to issue Exhibition Priority Certificates** by national authorities, the **Trade Fairs have to fulfil one or both internationality criteria** mentioned and in many cases an external audit of these figures is required.

National legislations going further than this definition or entitling more Trade Fair Organisers to issue Priority Certificates recognised by national

authorities, would remain unchanged by the adoption of this definition for the recognition of Priority Certificates according to Art. 44 of EU Regulation 6/2002.

9.- One **practical example** that illustrates the relevance of this issue is the **Polish Act on Industrial Property Rights**. In 2007, when the Polish Industrial Property legislation was amended, the Exhibition Priority was repealed. Upon the initiative of the Polish entrepreneurs, who were convinced of the value of the Exhibition Priority, an assessment of the effects was made. The result was considered beneficial for the Polish economy. Therefore, in 2015, the **Polish legislation was amended reintroducing the Exhibition Priorities** as a protective mechanism.

10.- EMECA considers that the review of the EU Regulation 6/2002 is an opportunity for both **adapting an up-to-date definition of International Trade Fairs and for introducing the recognition of Exhibition Priority Certificates**.

It would officially certify the value of Trade Fairs for European industries, the quality and relevance of the Trade Fair sector in Europe, and its contribution to the European economy in general. Most importantly, the recognition of Exhibition Certificates by EUIPO would work as an additional effective armour against piracy, since the Exhibitors could protect their products more effectively across all EU Member States.

11.- **EU-wide registration of designs with EUIPO was intended to offer an accessible, effective and affordable tool to companies and SMEs in particular. Closing the gap described above in the design protection would modernise and improve the way the registration works and would largely benefit all companies, especially start-ups or SMEs.** These would be encouraged to invest into innovation and to fully take advantage of the Internal Market. Ultimately, this would boost commercial exchanges and accelerate European growth and job creation.

ANNEX

DEFINITION OF “INTERNATIONAL TRADE FAIRS” by UFI, THE GLOBAL ASSOCIATION OF THE EXHIBITION INDUSTRY

UFI Auditing Rules, see Annex 1, page 9:

<https://www.ufi.org/wp-content/uploads/2017/01/Auditing-Rules-for-the-Statistics-of-UFI-Approved-Events-and-UFI-Approved-International-Events-January-2017.pdf>

FOUR EXAMPLES OF THE CONCEPT “INTERNATIONAL TRADE FAIRS” ACROSS EUROPE

1.- IN FRANCE:

Definition used by the French Government:

Arrêté du 24 avril 2009 portant sur la reconnaissance du caractère international des manifestations commerciales (Version consolidée au 14 mars 2019)

Art. 2 :

Une manifestation commerciale bénéficie de la reconnaissance officielle de son caractère international simple et de l'appellation « international » si elle remplit les conditions suivantes :

1. Avoir réuni, au cours de sa session précédente, au moins 10 % d'exposants étrangers par rapport au nombre total d'exposants ; ou avoir accueilli, au cours de sa session précédente, au moins 5 % de visites étrangères par rapport au nombre total de visites.

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020591889>

2.- IN SPAIN:

Definition used by the Spanish Ministry for Industry, Commerce and Tourism:

Este carácter internacional es un reconocimiento otorgado por el Ministerio de Economía y Competitividad, y en concreto la Secretaría de Estado Comercio. Su concesión a las ferias, en cuanto instrumentos de política comercial que son, está ligada al cumplimiento de ciertos requisitos. Se ha pretendido en primer lugar acercar los criterios de concesión, a los utilizados en el exterior, y en concreto a los aplicados por la Unión de Ferias Internacionales (UFI). Así se establecen los siguientes:

- El cumplimiento verificado objetivamente, bien por una empresa especializada en auditorías, bien por la AFE, de una de las siguientes condiciones:
- Que el número de expositores extranjeros directos sea al menos el 10% del total de expositores directos.
- Que los visitantes extranjeros no supongan menos del 5% del número total de visitantes.
- (...)

<http://www.comercio.gob.es/es-es/comercio-externo/instrumentos-apoyo/ferias-internacionales/paginas/introduccion.aspx>

3.- IN GERMANY:

Definition by AUMA (Association of the German Trade Fair Industry) and recognised by the German Ministry for Economy and Energy:

Klassifizierung von Messen und Ausstellungen in Deutschland - AUMA-Kategorie international

In der Regel kommen bei Messen der AUMA-Kategorie international über 50% der Besucher aus mindestens 100 km Entfernung und über 20% aus mindestens 300 km Entfernung. Sie haben außerdem einen Auslands-Ausstelleranteil von mindestens 10% und mindestens 20 ausländische Aussteller und einen Anteil von mindestens 5% Auslandsfachbesuchern und mindestens 100 Auslandsfachbesucher. Bei Fachbesuchermessen ab 4000 m² Nettofläche ist eine FKM-Prüfung notwendig.

<https://www.auma.de/de/messelexikon#entryId=8>

4.- IN ITALY:

Definition by Conferenza dei Presidenti delle Regioni e delle Province autonome (Roma, 24 ottobre 2002)

E' riconosciuta la qualifica "internazionale" alla manifestazione fieristica di qualifica "nazionale", quando, nelle ultime due edizioni, si sia registrata una partecipazione di:

- almeno il 15% del numero totale di espositori, di espositori esteri provenienti da almeno 10 paesi esteri o, alternativamente, proveniente da almeno 5 paesi esteri extra U.E.;
- ovvero almeno l'8%, del numero complessivo di visitatori, di visitatori esteri;
- ovvero almeno il 4%, del numero complessivo di visitatori, di visitatori esteri extra U.E.

(...)