



EUROPEAN
EXHIBITION
INDUSTRY
ALLIANCE

E F I C
European Furniture Industries Confederation

POSITION PAPER

Brussels, September 2023

Review of EU Legislation on Design Protection 2023 Pledge for Exhibition Certificates recognition by EUIPO

WHAT CONCERNS US?

We would like to draw your attention to the proposal the European Commission has published, specifically to the Exhibition Priority as foreseen by article 44 of the CDR.

This current review and legislative process of the CDR is the decisive moment to

- 1 - **harmonise** EU design registrations with Member States legislation and practice and
- 2 - recognise the Exhibition Priority Certificates issued by **modern international industrial trade fairs** (and not only from the World Exhibitions according to the 1928 Convention on International Exhibitions as last revised on 30 November 1972¹).

Exhibition organisations as well as numerous design heavy industries like the furniture sector have flagged to the European Commission for many years the discrepancy between the outdated definition of exhibitions used in article 44 CDR and the non-acceptance by the EUIPO of Exhibition Priority Certificates issued by trade fairs on the one hand and the use of a modern definition of exhibitions² and the acceptance of Exhibition Priority Certificates by national legislation and practice on the other hand. Unfortunately, the proposed text does not reflect the needs of the industries and particularly the start-ups, young companies and SMEs, for whom the Exhibition Priority is an important and easy-to-access tool to protect their Intellectual Property (IP).

We therefore ask for your support once more to update the reference and adapt the text to the needs of businesses.

WHAT DO WE PROPOSE?

The article could read as follows: Article 44 Exhibition priority

1. If an applicant for a registered EU design has disclosed products in which the design is incorporated, or to which it is applied, at an official or officially recognised international exhibition *by the EU Member States* that fulfils the following criteria:

- 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***

the applicant may, if the application is filed within a period of 6 months from the date of the first disclosure of such products, claim a right of priority from that date.

¹ <https://www.bie-paris.org/site/en/>

² Cf. Annex

2. An applicant who wishes to claim priority pursuant to paragraph 1 shall file a declaration of priority either together with the application or within 2 months of the date of filing. The applicant shall, within 3 months of the declaration of priority, file evidence that the products in which the design is incorporated, or to which it is applied, have been disclosed within the meaning of paragraph 1.

3. An exhibition priority granted in a Member State or in a third country does not extend the period of priority laid down in Article 41.;

(35) the following Article 44a is inserted:

'Article 44a
Conferral of implementing powers

The Commission shall adopt implementing acts specifying the type and details of evidence to be filed for claiming an exhibition priority in accordance with Article 44(2). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 109(2).;

WHY IS THIS IMPORTANT?

Only 10% of European SMEs protect their IP, a study by EUIPO confirmed.³ Registered IPR improves the SMEs' reputation, provides better long term business prospects, creates concrete financial gains and helps preventing copying.

Trade fairs and exhibitions, 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. Trade fairs are THE place where novelties are disclosed, presented to the market for the first time.

Trade fairs and exhibition organisers in Europe are aware that many exhibitors present their novelties without any legal IP protection at their trade fairs and exhibitions. They are working actively in this field and offer effective support to the exhibitors to raise awareness to IP, prevent and fight trademark 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.

EMECA and UFI as the two legal entities forming EEIA have signed partnership agreements with EUIPO. Both became member of the Ideas Powered for business Network and disseminate EUIPO's services towards the exhibition organisers and the trade fairs attendees, exhibitors and visitors. The aim is to reach out to the maximum number of European and even international companies to raise awareness about IP protection and the EUIPO's protection schemes. Besides, EEIA has been partnering and working actively with the IPR Helpdesks in the past for the benefit of the companies that need advice and seek protection of their IP. EFIC has also signed a partnership agreement with the EUIPO and is engaging in awareness campaigns towards its members as well as at the relevant furniture trade fairs in Europe.

Now, supporting actively the EUIPO and working in partnership with the EUIPO makes it even more urgent to rectify the gap in protection for the companies using the Exhibition Priority. It would be very illogic and disappointing for the companies to find that the Exhibition Priority cannot be used for a protection that is being actively promoted by the same entities, the trade fair organisers and the sectorial organisations.

KINDLY SUPPORT BY

Adopting a modern common position on the notion of International exhibitions and trade fairs, so that Exhibition Priority Certificates can be accepted by the EUIPO in the same way as by the EU Members States 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.

³ EUIPO Intellectual Property SME Scoreboard 2022, <https://euiipo.europa.eu/ohimportal/en/web/observatory/sme-scoreboard>

ANNEX

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-exterior/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.

(...)

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/2021/07/Amendments-to-the-Auditing-Rules-for-the-Statistics-of-UFI-Approved-Events_June2021.pdf

Should you have any questions, please contact:

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Background Information

About EEIA

The European Exhibition Industry Alliance represents nearly 400 European exhibition organisers and venue operators in Brussels to the European institutions and stakeholders. These trade fairs and exhibition players are organised in UFI, the Global Association of the Exhibition Industry and the European Major Exhibition Centres Association EMECA.

For more information please visit: www.exhibition-alliance.eu www.ufi.org www.emeca.eu

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About EFIC

EFIC is the European Furniture Industries Confederation, representing over 70% of the total turnover of the European Furniture Industries, a sector employing 1 million people in about 120.000 enterprises across the EU and generating a turnover of over 100 billion Euros. The EFIC membership is composed of 18 national associations, one individual company member and several clusters.

Further information can be found on our website: <https://www.efic.eu/>

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