

LEGISLATIVE ASPECTS CONCERNING ECODESIGN

*Codruța BOLOS, Ph.D. Professor, „Petru Maior” University, Tg. Mureș, Romania
Crenguța LEAUA Ph.Dc., attorney at law, “Tanasescu, Leaua, Cadar & Asociații” Law
firm, Bucharest, Romania*

Abstract: The paper presents the modern definition of the notion of ecodesign as well as the current international, European and national approach of ecodesign

Key words: ecodesign, legislation

1. INTRODUCTION

International attention on environment protection is now focused not only on restoration of the damaged environment, but also on the prevention of further damage, without stopping the industrial or commercial activities, i.e. the management of the productive process ecologically. This led to the implementation on the international legislation of the notion of ecodesign.

The meaning of the word *design* has different interpretations in the common language. In a Latin culture design is frequently associated with aesthetics, shape and forms where in reality design is a lot more complex. In Anglo-Saxon culture design means creation, planning on a broader sense and not just style color aesthetics and external appearance.

On a first level of comprehension, the most *general* one, the word “ecodesign” seems to be self explanatory, i.e. design based on ecological principles. This takes into consideration the design of products, as well as plants, technologies, various construction works or other installations and schemes, interventions in the natural surroundings and landscape. *In this sense, the “ecodesign” means the design of any project considering its particular situation and application in order not to have a negative impact on the environment.*

However, in its legal, narrow meaning, “ecodesign” is restricted to the area where laws were issued focusing on this notion. In this perspective, “ecodesign” means the design of a product considering its situation at the end of its life cycle, so that any sub-ensemble or component of the product should easily recycle.

2. DISTINCTION BETWEEN ECODESIGN AND OTHER LEGAL NOTIONS

In order to fully understand the legal meaning of “ecodesign”, distinction should be made between other possible legal notions which may result from either the same words “ecology” and “design” or from the same legal norms.

Environment protection versus Ecodesign

Environment protection is a comprehensive notion, in which the ecodesign has only one certain segment and that is the designing of products in a way so that they respect the regulations regarding environment protection.

Design versus Ecodesign

Norms who regularize the activity of designing products cover larger areas of control than the ecodesign, regularizing, for example, the development conditions of the commercial design activity, other technical norms regarding design, the quality of the design activity etc.

The quality of design versus ecodesign

In the design activity is concerned, there are different technical norms which establish the quality standards in this domain. Ecodesign overlaps only partly these norms, being an extra requirement, having as purpose the protection of the environment.

Industrial property rights design versus ecodesign

The word “design” is used in the legal language in the area of intellectual property rights in the “industrial design” collocation and also to designate intellectual property rights over the drawings and industrial models.

The purpose of the norms from the intellectual property right domain is that of giving certain exclusive rights to some persons regarding their creative work, and to protect those rights, to ensure the technical and intellectual progress of humankind. The purpose of ecodesign norms is to protect the environment and ensure life quality.

There is indeed an interference area between intellectual property rights and the obligations referring to ecodesign: in order for a design to be registered as protected industrial property right, certain criteria must be complied with. One of these criteria is that the design should not violate public order. Legislation concerning ecodesign, as part of the legislation for the protection of the environment is usually seen as pertaining to public order. That is why, the applicant for a registration of an industrial property right on design will have to ensure that, in order to obtain the registration, the ecodesign legislation is observed.

3. THE NORMATIVE FRAMEWORK OF ECODESIGN

There is vast legislation concerning the design of various products, but there is little general legislation addressing directly this issue. Most of the laws address products' design only focused on particular type of products. The specific domain which triggered the appearance of regulations concerning Ecodesign is the environment protection. Moreover, Ecodesign meets customers' requirements, allows low recycling costs and is part of marketing techniques of manufacturers and traders of various products.

The issue of the relevance of the Ecodesign can be considered at two different levels:

- On the level of *general interest* of the society, of the economic and social policy. From this perspective, regulations on ecodesign are aimed to protecting and improving the quality of life, the environment, and the consumer. Such regulations are comprised in various norms, either in international or in national normative documents.
- On the level of *particular interest*, in civil and commercial relationships. From this perspective, requirements of ecodesign may be inserted voluntarily by the parties in their contracts, the beneficiary of such designs having as main purpose the improvement of the quality of the products in order to offer higher standards to the final consumer.

Only the first level, reflecting the general interest of the society, may be found in various regulations of the ecodesign.

Juridical norms regarding the ecodesign within the member states of the European Union can be found on many legislation levels: international level, the European Union's legislation level and the national level.

4. ASPECTS CONCERNING PRESENT LEGISLATION IN THE FIELD OF ECODESIGN – EXAMPLES.

The normative framework at international level. Examples.

At international level, there are several treaties and conventions focusing on environmental laws, such as the United Nation Convention on climate change signed at Rio (1992) or the Basel Convention concerning transport control beyond country borders of dangerous waste and its elimination (1991); the Vienna Convention concerning the protection of the ozone layer (1985); the Montreal Protocol concerning substances which diminish the

ozone layer (1997); the Convention regarding persistent organic pollutants signed at Stockholm (2001).

States that are signatories of the international treaties concerning the environment protection and eco – design do have to comply with their international obligations.

Sometimes, the requirements concerning ecodesign or eco-labeling may interfere with some economy rights, such as those provided for the states members of the World Trade Organization (WTO). In these situations, the international court decides, like in the **Asbestos case (2001)**. In this case, Canada claimed that a French ban on the use, production and import of asbestos - a deadly carcinogen - violated France's WTO obligations, but the court decided in favor of France.

The normative framework at the level of European Union. Examples

At the level of the European Union, the normative framework concerning ecodesign may be found in a broad range of areas of protection of the environment such as:

- wastes management;
- electronic and electrical equipment products using electric power;
- utilization restrictions of certain dangerous substances;
- industrial machines;
- telecommunications and radio equipments;
- responsibility for damaged products;
- products security, etc.

For example, the EU Directive 91/156/CEE, seeks the prevention and reduction of waste production through the use of clean technologies, technical development and marketing of products respecting the environment; the Directive of European Parliament and Council no. 2002/95/CE from 27 January 2003 establishes restrictions of the utilization of certain dangerous substances, electrical and electronic equipment (RoHS); the Directive 2002/96/CE regarding the waste of electric and electronic equipment (WEEE); the Directive of the Council no. 92/42/EEC from 21 May 1992 regarding the requirements for draining the hot water from liquid or gas combustion boilers; the Directive of European Parliament and Council no. 2000/55/CE from 18 September 2000 establishing the energy storage requirements applicable to fluorescent lighting wastes. Another important directive is no. 2005/32/EC from July 2005 regarding the framework for setting up the ecodesign requirements for energy using products (EuP). It also establishes the ecodesign parameters for EuP, its specific requirements concerning sources, manufacturer, CE labeling etc.

Member states of the European Union must comply with the requirements of the EU directives. In both cases, states not complying with the obligations assumed by the treaties have been confronted with international cases.

The European Union Treaty gives the Commission powers to take legal action against a Member State that is not respecting its obligations. Where the Court of Justice finds that the Treaty has been infringed, the offending Member State is required to take the measures necessary to conform, and also may be bound to pay a financial penalty.

For example, The European Court of Justice (Second Chamber) decided, on 07 July 2005, in the case *C-364/03, Commission vs. Hellenic Republic*, by stating that, by not defining the policies or strategies for progressively adapting in line with the best available technology the steam turbine units and the gas turbine units of the power station operated by the Dimosia Epicheirisi Ilektrismou (a public electricity undertaking) has failed to fulfil its obligations under the Council Directive 84/360/EEC on removing air pollution from industrial plants. The court also ordered the Hellenic Republic to pay the costs.

In the case no. *C-227/01, Commission vs. Kingdom of Spain*, issued on 16 September 2004, The European Court of Justice declared that, by failing to carry out an assessment of the effects on the environment of the 'project for a Valencia-Tarragona railway line, Las Palmas-Oropesa section. Roadbed', which forms part of the project known as the 'Mediterranean corridor', the Kingdom of Spain has failed to fulfil its obligations under the Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment and ordered the Kingdom of Spain to pay the costs.

The national normative framework. Examples.

At the national level, internal legislation of each state imposes sanctions for violation of the legal obligations by various companies or individuals.

One should note that environmental permits are not issued for those companies who does not present a design of their activity with respect of the environmental legislation.

If, later on, during their activity, companies violates the provisions of various national environmental laws, such permits may be withdrawn, and activity of the companies ceased, additional to obligation to pay significant fines and, in serious breaches, even suffering criminal charges.

4. CONCLUSION ¶

The norms regarding the ecodesign, although not that visible to the general public as the civil, criminal or tax legislation, is an area that benefits from the increasing attention of the international, European and national legislative bodies. Sanctions are issued for breaching of the legal obligations for stated, undertakings and individuals. However, sanctions are not the best way to obtain the observance of the legal obligations, but only a step on the long road of reaching the aim of these legal norms: the protection of the environment and the improvement of the quality of life. The best way we all have to try to contribute is the increasing of the awareness of the importance of the protection of the environment and, in this respect, which is the role of the design, in its technical meaning, which is based on ecological principles.

5. REFERENCES

- [1].*** <http://eur-lex.europa.eu>
- [2].*** www.mfhr.gr/files/en/jurisprudence.asp