Case-law Research Report

Component parts of complex products (Article 4(2) and (3) EUDR)

February 2025

This report is the result of discussions within the Consistency Circles and the General Consistency Meeting of the Boards of Appeal. It is a working document that reflects case-law and views at the given date of the report. It does not have any binding effect on the Boards of Appeal.

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1 Introduction

1 This report is a compilation of case-law from the Court of Justice (CJ), the General Court (GC) and the Boards of Appeal (the Board or the BoA), drawn up with the aim of identifying and analysing the relevant case-law and trends on the topic.

2 The purpose is to further support the work of the BoA with a view to maintaining and enhancing the **consistency** of decision-making practice with the case-law of the EU Courts and among the BoA. As such, it contributes to improving the **predictability** of decisions and legal certainty in general. Through divulging relevant legal information, it also serves to increase **knowledge, awareness and transparency** among the various BoA stakeholders.

3 It is a working document that reflects existing case-law and the result of discussions within the Consistency Circles and the General Consistency Meeting of the BoA at the given date of the report. **It does not have any binding effect on the BoA**. It has been made available to the staff of the BoA and the public in general for information purposes only.

4 On 8 December 2024, Regulation (EU) 2024/2822 of the European Parliament and of the Council of 23 October 2024 amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/2002 ('the Amending Regulation') entered into force ([1]). For the ease of the reader, reference is made to the provisions of the amended EUDR where they are in substance identical to those of the CDR.

5 This report analyses the case-law regarding the requirements of protection of component parts of complex products within the context of invalidity applications filed on the basis of Article 25(1)(b) EUDR in conjunction with Article 4(2) EUDR.

2 Legal Framework

2.1 EU law

6 **Recital 12 CDR** ([2]) refers to the requirement of visibility of component parts: 'Protection should not be extended to those component parts which are not visible during normal use of a product, nor to those features of such part which are not visible when the part is mounted, or which would not, in themselves, fulfil the requirements as to novelty and individual character. Therefore, those features of design which are excluded from protection for these reasons should not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection'.

([1]) The date of application for the amendments of Articles 3 and 4 CDR is 01/05/2025.
([2]) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ L 3, 5.1.2002, p. 1). While this recital has not been maintained in the Amending Regulation, it forms part of the legal framework of the decisions and judgments analysed.

7 **Recital 13 EUDR** ([3]) states that 'apart from being shown visibly in an application for registration of an EU design, design features of a product do not need to be visible at any particular time or in any particular situation of use in order to benefit from design protection. An exception to that principle applies to the design protection of component parts of a complex product that need to remain visible during normal use of that product'.

8 **Article 3(3) EUDR** gives the definition of a 'complex product': 'a product that is composed of multiple components which can be replaced, permitting disassembly and re-assembly of the product'.

9 **Article 4(2) EUDR** on the requirements for protection stipulates that 'a design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character: (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character'.

10 **Article 4(3) EUDR** defines the notion of 'normal use' within the meaning of Article 4(2)(a) EUDR: it 'shall mean use by the end user, excluding maintenance, servicing or repair work'.

11 **Article 1(c) and Article 3(3) and (4) of the Directive 98/71/EC** of the European Parliament and of the Council of 13 October 1998 ([4]) on the legal protection of designs contain corresponding provisions ([5]).

2.2 Other instruments

12 The **Office Guidelines** refer to the concept of component parts of complex products in Examination of design invalidity application, Section 5, The different grounds for invalidity, Point 5.4 Invisible component parts of complex products.

3 Case-law Analysis

13 Visibility is an essential criterion for protection by design law ([6]). In principle, a registered EU design enjoys protection for all the features of appearance claimed that

([3]) Regulation (EU) 2024/2822 of the European Parliament and of the Council of 23 October 2024 amending Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs and repealing Commission Regulation (EC) No 2246/2002 (OJ L, 2024/2822, 18.11.2024).
([3]) Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 (OJ L 289, 28.10.1998, p. 28–35).
([4]) Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 (OJ L 289, 28.10.1998, p. 28–35).
([5]) See also Article 2(5) and Article 3(3) and (4) of the Directive (EU) 2024/2823 of the European Parliament and of the Council of 23 October 2024 on the legal protection of designs (recast) (Text with EEA relevance) (OJ L, 2024/2823, 18.11.2024).
([6]) 21/09/2017, C-361/15 P & C-405/15 P, Shower Drains, EU:C:2017:720, § 63.

are shown visibly in the representation of the design as registered, irrespective of whether or not these features will remain visible once the product to which the design will be applied is used or mounted ([7]).

14 According to Recital 12 CDR, the protection of designs should not be extended to component parts of complex products that are not visible during normal use of that product, or to those features of the part that are not visible when the part is mounted. Therefore, these features should not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection.

15 Consequently, with regard to designs applied to or incorporated in a product which constitutes a component part of a complex product within the meaning of Article 3(3) EUDR, Article 4(2) EUDR lays down a special rule that limits the protection to the features of the component part that, once incorporated into the complex product, remain visible during the normal use of that complex product, provided that those visible features meet themselves the requirements of novelty and individual character. This limitation of the legal protection of designs to the visible features of the component part concerned is explained by the fact that the appearance of that component derives exclusively from these features ([8]). In other words, features of component parts of complex products that are not visible once the component part is mounted cannot contribute to the appearance of the complex product and therefore do not enjoy protection ([9]).

16 It follows that, where Article 4(2) EUDR is invoked as a ground for invalidity, and none of the features of the design for a component part of a complex product remain visible during normal use of the complex product once the component part has been incorporated, the design must be declared invalid for this reason alone. However, where only certain features of the component part do not meet the visibility requirement, only those features are to be disregarded in the assessment of the novelty or individual character of the component part. The Board cannot examine Article 4(2) EUDR as a ground for invalidity on its own motion, if not invoked and argued by the parties ([10]).

17 Case-law analysis of decisions that include an assessment of Article 4(2) EUDR shows that not every product composed of multiple components meets the definition of a complex product (section 3.1) and that not every part of a product can be considered a component part of a complex product (section 3.2). Furthermore, pursuant to Article 4(2) and (3) EUDR, it must be determined which features of the component part remain visible during normal use (section 3.3). Only those features are to be taken into

([7]) 21/09/2017, C-361/15 P & C-405/15 P, Shower Drains, EU:C:2017:720, § 62. See also Recital 13 and Article 18a inserted by the Amending Regulation: '*Protection shall be conferred for those features of the appearance of a registered EU design which are shown visibly in the application for registration*'.
([8]) 16/02/2023, C-472/21, Monz Handelsgesellschaft International, EU:C:2023:105, § 36, 42; The GC describes the provision in 22/03/2023, T-617/21, Welding torches (part of -), EU:T:2023:152, § 25 as an 'exception' to the system of protection laid down in Article 4(1) EUDR that should be interpreted narrowly in order to minimise the exclusion of protection of designs. This judgment was issued only shortly after C-472/21, which refers to Article 4(2) EUDR as a 'special rule' rather than '*an exception to be interpreted narrowly*'.
([9]) 16/02/2023, C-472/21, Monz Handelsgesellschaft International, EU:C:2023:105, § 43; 22/03/2023, T-617/21, Welding torches (part of -), EU:T:2023:152, § 25.
([10]) 27/08/2021, R 1306/2020-3, Acoplamientos para vehículos, § 35-37; confirmed by 12/10/2022, T-652/21, Acoplamientos para vehículos, EU:T:2022:634.

account when assessing the novelty and/or individual character of the design for that component part of a complex product (section 3.4).

3.1 Identification of a complex product

18 Article 4(2) EUDR applies only where the design at issue refers to a product that constitutes a component part of a complex product. It follows that the first step in the assessment is to identify whether the product to which the design is to be applied forms part of a complex product (point 3.1.1.). Case-law analysis shows examples where a complex product could be established (point 3.1.2) and cases where no complex product could be identified (point 3.1.3).

3.1.1 Criteria for the identification of a complex product

19 If there is no complex product within the meaning of Article 3(3) EUDR, Article 4(2) EUDR cannot apply from the outset.

20 According to Article 3(3) EUDR, a 'complex product' means a product which is composed of multiple components that can be replaced, permitting the disassembly and reassembly of the product.

21 In addition, the notion of 'replacement permitting the disassembly and reassembly of a product' requires that the multiple components are adapted to each other so that they may be removed and reinserted in a way that does not affect the integrity of the entire product. Accordingly, where a product is permanently fixed or otherwise attached to another product in such a way that its removal would damage the other product, the combination of the two cannot be considered to constitute a complex product within the meaning of Article 3(3) EUDR.

3.1.2 Cases where complex products have been identified

22 Case-law gives some examples of products that have been considered 'complex products' within the meaning of Article 3(3) EUDR.

- In **MONZ** ([11]): it was considered that a bicycle or a motorcycle is a complex product, comprising component parts such as a saddle.

- In **INTERNAL COMBUSTION ENGINE** ([12]): the GC confirmed the Board's findings that a lawnmower is a complex product that includes an internal combustion engine.

([11]) 16/02/2023, C-472/21, Monz Handelsgesellschaft International, EU:C:2023:105, § 34.
([12]) 09/09/2011, T-10/08, Internal combustion engine, EU:T:2011:446, § 20.

- In **STAUBSAUGERBEUTEL** ([13]): it was held that a vacuum cleaner was a complex product composed of several different components that can be replaced.

- In **DISPOSITIVO DI MOVIMENTAZIONE** ([14]): in light of their specific handling characteristics, reclining chairs and divans were considered to be complex products that can be disassembled and reassembled into their various components, including the handling devices.

- In **HEATING BOILERS** ([15]): it was considered that a pellet boiler was a complex product comprising several components, including a burner cup.

- In **WELDING TORCH** ([16]): the welding torch was considered to be a complex product made of several parts.

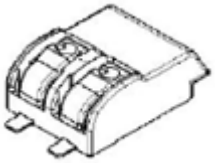
3.1.3 Cases where no complex product could be identified

23 Case-law also contains examples of products which were found not to be complex products within the meaning of Article 3(3) EUDR:

- In **STRÜMPFE** ([17]): the contested design relates to the closing band of a heating sock. Contrary to the findings of the Invalidity Division, the Board found that the sock does not constitute a complex product. According to the evidence submitted, the socks can be worn without the closing band which implies that the band is not a component part.

([13]) 23/08/2021, R 299/2021-3, Staubsaugerbeutel, § 26.
([14]) 09/12/2021, R 51/2017-3, Dispositivo di movimentazione, § 55.
([15]) 12/04/2022, R 685/2021-3, Heating boilers, § 20.
([16]) 16/07/2021, R 2843/2019-3, Welding torches (part of -), § 25; confirmed by 22/03/2023, T-617/21, Welding torches (part of -), EU:T:2023:152.
([17]) 16/02/2023, R 878/2022-3, Strümpfe, § 21.

- In **FUßBODENELEMENTE** ([18]) the design is to be applied to flooring strips which are intended to be joined together for floor or wall coverings. However, floors and walls cannot be considered products that are composed of multiple components that can be replaced permitting the disassembly and reassembly of the floor or wall.



- In **ELEKTRISCHE STECKVERBINDER** ([19]): electric connectors, and the circuit boards to which they are soldered, do not constitute a complex product that would permit the connectors to be disassembled and reassembled.

3.2 Identification of component parts of complex products

24 Once a complex product has been identified, it has to be examined whether the contested design and/or the prior design apply to a component part of that complex product based on criteria set out by case-law (point 3.2.1.). Case-law analysis shows examples of parts of products that are not considered to be component parts of a complex product (point 3.2.2) and examples of parts of a complex product that are considered to be a component part within the meaning of Article 4(2) EUDR (point 3.2.3).

25 As a preliminary remark, it is noted that the product to which the conflicting designs refer should be assessed on the basis of the representation as registered or otherwise disclosed and, if applicable, the evidence submitted by the parties. For registered designs, the product indication may help define the subject matter of the protection sought ([20]). However, given that the product indication does not affect the scope of protection of a registered design (see Article 36(6) EUDR), it cannot be decisive. The mere fact that the indication does not include the words 'part of' is therefore irrelevant in the assessment ([21]).

([18]) 28/05/2020, R 904/2018-3, Fußbodenelemente, § 26; 28/05/2020, R 911/2018-3, Fußbodenelemente, § 19.
([19]) 07/12/2020, R 68/2019-3, Elektrische Steckverbinder, § 34; 11/01/2021, R 1825/2019-3, Elektrische Steckverbinder, § 17-18.
([20]) See BoA case-law research report *Identification of the product,* § 15 (October 2022).
([21]) 19/12/2023, R 489/2022-3, Protective face masks, § 24.

26 Case-law has also clarified that the criteria for identifying a component part of a complex product and, accordingly, assessing its visibility during normal use, apply to the contested design and the prior design alike ([22]).

3.2.1 Criteria for the identification of component parts

27 While Article 3(3) EUDR defines a complex product, the EUDR does not provide a definition of what constitutes a 'component part of a complex product'. In the preliminary ruling on **ACACIA**, related to the transitional provision of Article 110 CDR (the so-called 'repair' clause), the Court of Justice held, by making reference to Article 4(2) EUDR, that the words 'component part of a complex product' cover multiple components intended to be assembled into a complex industrial or handcraft item which can be replaced permitting the disassembly and reassembly of the item and without which the complex product could not be subject to normal use ([23]).

28 In another preliminary ruling, **FERRARI**, relating to the disclosure of an unregistered design for a component part of a complex product, it was found that the appearance of the component part of a complex product must be visible and must itself be capable of producing an overall impression (i.e. it cannot be completely lost in the product as a whole). This follows from Article 3(3) EUDR, which requires the component part to be defined by features that constitute its particular appearance, namely by particular lines, contours, colours, shapes and textures ([24]).

29 In **WELDING TORCHES (PART OF -)** ([25]), the GC referred to the CJ's definition given in **ACACIA** and specified that the question of whether a product constitutes a component part of a complex product must be assessed on a case-by-case basis, according to a set of relevant factors. It confirmed that the following criteria may serve to assess whether something constitutes a component part of a complex product within the meaning of Article 4(2) EUDR.

Contested design No 1 292 122-0001

([22]) 03/10/2014, T-39/13, Skirting Boards, EU:T:2014:852, § 52.
([23]) 20/12/2017, C-397/16 & C-435/16, Acacia, EU:C:2017:992, § 61-65.
([24]) 28/10/2021, C-123/20, Ferrari SpA, EU:C:2021:889, § 50.
([25]) 22/03/2023, T-617/21, Welding torches (part of -), EU:T:2023:152, § 28, 36, 39-40, 48-49, 56, 62, 68-70.

i. The consumable nature of the product, the absence of a firm and durable connection with the complex product and the regular purchase and replacement of the part. Owing to its consumable nature, the end user, who regularly purchases and replaces electrodes, is able to perceive and assess its characteristics.

ii. The absence of disassembly and reassembly when the component part is being replaced. A product which is intended to be replaced regularly and in a straightforward manner by end users is less likely to constitute a component part than a product which needs to be replaced by a professional.

iii. The fact that the complex product is considered to be complete without the component part. When purchasing a torch without an electrode or when the electrode is removed, the end user will not perceive the torch as being broken or incomplete.

iv. The interchangeability of the part. The torch is compatible with electrodes produced by different companies.

3.2.2 Examples of parts of complex products considered not to be component parts within the meaning of Article 4(2) EUDR

30 According to the criteria set out above, the electrode of a welding torch was found not to constitute a component part of a complex product within the meaning of Article 4(2) EUDR ([26]). The Court took all the factors mentioned above into account, including the fact that when purchasing a torch without an electrode or when the electrode is removed from the torch, the end user does not perceive that torch as being broken or incomplete.

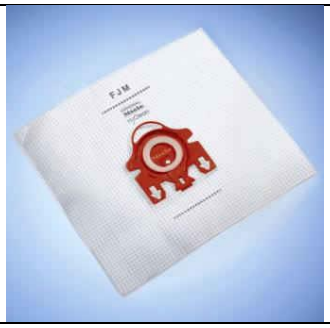
31 In **COT BUMPERS** ([27]), the Board considered that although the cot could be considered a complex product, the cot bumpers were mere accessories which may or may not be added to the bars of a cot. The disassembly or reassembly of the cot bumper does not affect the functionality of the cot in any way. Therefore, the cot bumpers are not component parts of that complex product.

Contested design No 001230460-0001

32 In **STAUBSAUGERBEUTEL [Vacuum cleaner bag]** ([28]), the Board found that vacuum cleaner bags cannot be considered component parts of the complex product vacuum cleaner. While forming part of a vacuum cleaner, the bag is a mere consumable. Once

([26]) 22/03/2023, T-617/21, Welding torches (part of -), EU:T:2023:152, § 56.
([27]) 25/07/2017, R 208/2016-3, Cot bumpers, § 27-28.
([28]) 23/08/2021, R 299/2021-3, Staubsaugerbeutel, § 26-34.

full, the bag is disposed of and replaced by an empty bag, not by another full bag. The replacement of the bag does not require disassembly and reassembly of the vacuum cleaner and the bag is not necessary to test the functionality of the vacuum cleaner. The absence of the bag is unlikely to be accepted by sellers or manufactures as a valid reason to consider the vacuum cleaner as malfunctioning.



Contested design No 000992078-0003

3.2.3 Examples of parts of products considered to be component parts of a complex product within the meaning of Article 4(2) EUDR

33 In **ACACIA**, the Court of Justice held that a car rim should be classified as a component part of a complex product, namely a motor vehicle, within the meaning of Article 4(2) EUDR.

34 In **MONZ** ([29]), the CJ indicated that the saddle of a bicycle or a motorcycle constitutes a component part of a complex product as a saddle may be replaced permitting the disassembly and reassembly of the complex product (a bicycle or motorcycle). Moreover, without that component part, the complex product could not be subject to normal use.

3.3 Visibility during normal use

35 According to Article 4(2) EUDR, a component part of a complex product is considered new and to have individual character if, once incorporated into the complex product, it remains **visible during normal use** of the complex product, and to the extent that these visible features fulfil the requirements of novelty and individual character. Article 4(3) EUDR adds that 'normal use' refers to use of the complex product by the '**end user**'.

36 It follows that, for a component part of a complex product to enjoy design protection, **first**, account has to be taken of the normal use of that complex product by the end user, and the component part, once mounted, must remain at least partially visible during this normal use (point 3.3.1). Case-law analysis provides examples of features of component parts that were found visible (point 3.3.2) and features that were found not to be visible (point 3.3.3). **Second**, the visible features of the component part must

([29]) 16/02/2023, C-472/21, Monz Handelsgesellschaft International, EU:C:2023:105, § 34.

themselves fulfil in themselves the requirements regarding novelty and individual character (point 3.4).

3.3.1 Criteria for the determination of the visibility of the features during normal use of the complex product by the end user

a) Normal use by the end user

37 Article 4(3) EUDR defines normal use as use by the end user excluding maintenance, servicing and repair work. The notion of 'normal use' refers to the **customary use** of the complex product **by the end user** and excludes use of the product at other stages of trade, thus preventing circumvention of the visibility condition. It is to be understood as opposed to use by manufacturers, sellers or repairers ([30]). Accordingly, the intention of the manufacturer or the designer as to how the complex product should be used cannot be decisive ([31]).

38 Furthermore, the GC indicated in **SKIRTING BOARDS** ([32]) that although potential uses should not be ruled out, purely **hypothetical uses** of the product to which the design is to be applied could not be taken into account. Therefore, the argumentation that the contested design to be applied to a component part for use as an insert in a skirting board could also be used as a stand-alone product, was rejected.

39 In **MONZ**, the Court of Justice stated that the notion of 'normal use' is to be interpreted broadly and covers acts relating to the customary use of a product, as well as other acts which may reasonably be carried out during this use and which are customary from the perspective of the end user, including those which may be performed before or after the product has fulfilled its principal function, such as the storage and transportation of the product ([33]).

40 Normal use does not include 'maintenance, service and repair work'. The notion of maintenance includes acts performed by a professional because it may involve uses where the component part becomes visible to an extent which goes beyond what is visible to the end user. Accordingly, simple operations that are expected to be performed by the end user may not fall under the notion of 'maintenance, service and repair work' ([34]), particularly when constituting acts performed before or after the principal use of the complex product ([35]). However, this question has not been addressed in the case-law analysed and will require further clarification in future.

41 According to case-law, 'maintenance' also includes installation. In **HEAT EXCHANGER INSERTS** ([36]), the GC confirmed the findings of the Board that installation of boilers for domestic use by professionals in building or maintenance

([30]) See 20/01/2015, T-615/13, Heat exchangers, EU:T:2015:31, § 13, 16.
([31]) 16/02/2023, C-472/21, Monz Handelsgesellschaft International, EU:C:2023:105, § 52.
([32]) 03/10/2014, T-39/13, Skirting boards, EU:T:2014:852, § 28, 37-38.
([33]) 16/02/2023, C-472/21, Monz Handelsgesellschaft International, EU:C:2023:105, § 55.
([34]) 22/03/2023, T-617/21, Welding torches (part of -), EU:T:2023:152, § 48.
([35]) See Opinion of the Advocate General, 08/09/2022, C-472/21, Monz Handelsgesellschaft International, EU:C:2022:656, § 40-41.
([36]) 20/01/2015, T-617/13, Heat exchanger inserts, EU:T:2015:32, § 14.

companies cannot be considered normal use of the boiler. In **SKIRTING BOARDS** ([37]) the GC found the installation of electric cables in the recess of a skirting board to be temporary operations falling under the exception of 'maintenance, servicing and repair work' under Article 4(3) EUDR.

b) Visibility of the component part

42 In **MONZ** ([38]), where the contested design related to the saddle of a bicycle or a motorcycle, the CJ specified that an assessment *in abstracto* of the visibility of the component part, unconnected to any practical situation of use of the product, is not sufficient. Nevertheless, it is not necessary that the component part remains fully visible the whole time that the complex product is being used. The CJ further indicated that the visibility of a component part of a complex product must be assessed from the perspective of the end user but that the perspective of an **external observer** must also be taken into consideration. With regard to the latter, it is to be observed that this finding was made in response to questions asked by the referring court, namely, whether visibility should be assessed from a certain observer perspective ([39]). However, in the absence of case-law on the issue, the relevance of this additional perspective remains unclear.

Contested design

43 On the contrary, if the component part of a complex product is not, at least, partially visible, during normal use of the complex product, the first requirement of Article 4(2) EUDR is not met.

c) Distinction between 'end user' and 'informed user'

44 The 'end user' within the meaning of Article 4(3) EUDR is to be distinguished from the 'informed user' referred to in Article 6(1) EUDR ([40]). While both notions imply that the person concerned uses the product in which the design is incorporated in accordance

([37]) 03/10/2014, T-39/13, Skirting boards, EU:T:2014:852, § 42.
([38]) 16/02/2023, C-472/21, Monz Handelsgesellschaft International, EU:C:2023:105, § 45-46.
([39]) 16/02/2023, C-472/21, Monz Handelsgesellschaft International, EU:C:2023:105, § 31.
([40]) See BoA case-law research report *The informed user* (March 2023).

with the purpose for which that product is intended ([41]), the notion of the end user is solely needed to establish the perspective from which the visibility of the features of the component part during normal use is to be assessed. Whether or not the end user is familiar with the existing design corpus and the degree of attentiveness they may potentially display when using the complex product are irrelevant from the outset.

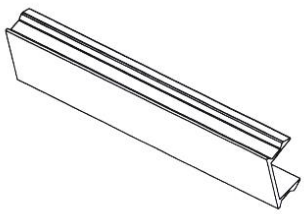
45 Use of the term 'end user' should therefore be limited to the assessment of the visible features of a component part pursuant to Article 4(2) EUDR, whereas the notion of 'informed user' should be reserved for the assessment of individual character ([42]). Given their different purpose, the terms 'end user' and 'informed user' should not be used interchangeably because the perspective of the informed user is irrelevant in the assessment of the features of the component part that remain visible during normal use of the complex product and the perspective of the end user is irrelevant in the assessment of the individual character of the component part ([43]).

46 In the same vein, use of the notion of 'visibility during normal use' should be limited to the assessment under Article 4(2) EUDR because it is only where the conditions of this provision are met, that features which are not visible to the end user are to be excluded from the examination of individual character ([44]). The 'visibility during normal use' stipulation, within the meaning of Article 4(2) EUDR, must therefore be distinguished from the 'manner of use' stipulation to be considered under Article 6 EUDR in order to assess to what extent a given feature of appearance may impact the overall impression produced by a design on the informed user ([45]).

3.3.2 Examples of features of component parts found visible during normal use

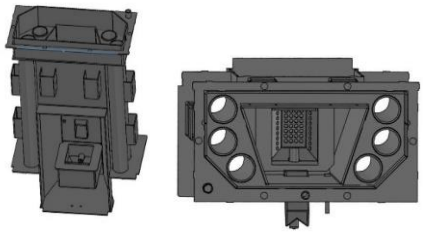
47 In **SKIRTING BOARDS** ([46]), the Court indicated that the visibility of the features had to be assessed solely in the context of normal use of the complex product, namely, when the component part is inserted to cover a recess in a skirting board or wall. Only the features that remain visible once the part is mounted, that is, during its normal use, can be taken into account in the assessment of its individual character.

([41]) 29/11/2018, T-651/17, Spray guns for paint, EU:T:2018:855, § 19.
([42]) Opinion of the Advocate General, 08/09/2022, C-472/21, Monz Handelsgesellschaft International, EU:C:2022:656, § 36.
([43]) See for a confusing use of both terms: 06/11/2024, T-544/23, DEVICE OF AN EMBLEM (fig.) / DEVICE OF A STRIPE (fig.) et al., EU:T:2024:787, § 73-76.
([44]) See also Recital 13 EUDR: Apart from being shown visibly in the application for registration of an EU design, the design features of a product do not need to be visible at any particular time or in any particular situation of use in order to benefit from design protection. In that sense, Article 4(2) EUDR establishes a special rule for designs that are applied to component parts of a complex product which can only contribute to the appearance of the complex product to the extent that they are visible and therefore need to remain visible during normal use of that product (16/02/2023, C-472/21, Monz Handelsgesellschaft International, EU:C:2023:105, § 36, 38, 42-43).
([45]) See for a confusion between manner of use and visibility during normal use: 13/11/2024, T-545/23, Cerchioni per ruote di veicoli, EU:T:2024:810, § 61-62; 20/11/2024, T-464/23, Leuchten, EU:T:2024:850, § 71-72.
([46]) 03/10/2014, T-39/13, Skirting boards, EU:T:2014:852, § 28, 37-38.



Contested design No 000070438-0002

48 These principles are applied by the Board. For example, in **HEATING BOILERS** ([47]), based on the evidence provided showing the complex product in use, the Board noted that, where applied to the complex product, namely a pellet boiler incorporating a front door with a window, the front part of the structure corresponding to the contested design remains visible during normal use of the boiler. The Board further rejected the invalidity applicant's claim that Article 4(2) EUDR would require the component part to remain visible in its entirety, as Recital 12 CDR expressly refers to the features that are not visible when the part is mounted.

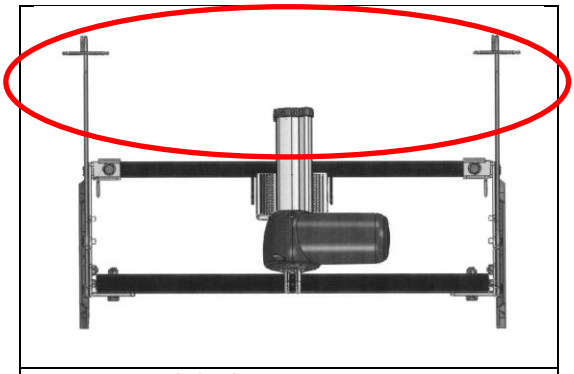


Contested design No 003846518-0005

Complex product (pellet boiler)

49 The same reasoning was applied in **DISPOSITIVO DI MOVIMENTAZIONE (Handling device)** ([48]) where the Board considered normal use of the complex product, namely a reclining sofa, encompassed not only being seated but also adjusting the extension or inclination of the handling devices. In fact, the Board found that the extendible arms (highlighted by the red circle in the image below) will be visible when the headrest of the furniture is fully extended. Therefore, at least some of the features of the contested design are visible during normal use of the complex product, even though they may not be noticeable when the end user is seated.

([47]) 12/04/2022, R 685/2021-3, Heating boilers, § 23, 28.
([48]) 09/12/2021, R 51/2017-3, Dispositivo di movimentazione, § 76.



Contested design No 001950676-0008

3.3.3 Examples of features of component parts found not to be visible

50 In **HEAT EXCHANGERS** ([49]), the GC confirmed the Board's findings that once the heat exchanger is incorporated into the boiler, as part of the complex product, it does not remain visible during normal use, which is the normal functioning of a boiler. Therefore, the contested design must be declared invalid pursuant to Article 4(2) EUDR.

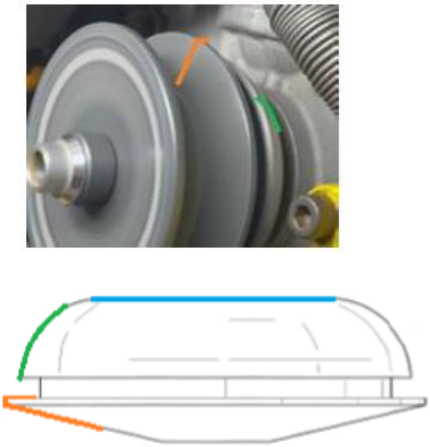
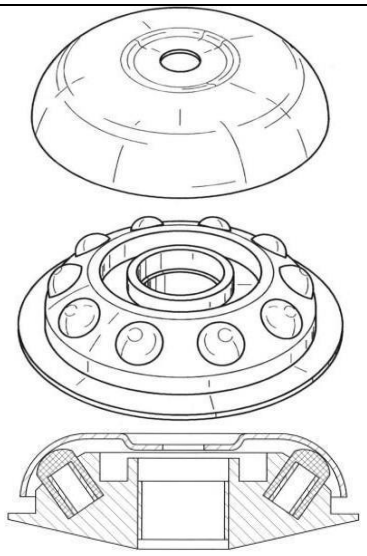
Heat exchanger mounted in a boiler

Contested design No 001618703-0001

51 In **VARIADORES DE VELOCIDAD** ([50]), the contested design was to be applied to speed variators (component part) to be used in a motorbike. The Board found the evidence submitted by the design holder insufficient to demonstrate that the speed variator could be mounted in a way in which it would remain visible during the normal use of the motorbike. With regard to the images that show the speed variator mounted in the customary, not merely hypothetical, way, the features that remained visible were not sufficiently clear to establish the subject matter of the design, in accordance with the principles established in the **FERRARI** preliminary ruling (see above in

([49]) 10/09/2013, R 291/2012-3, Heat exchangers, § 38; 20/01/2015, T-615/13, Heat exchangers, EU:T:2015:31.
([50]) 19/04/2024, R 1315/2023-3, Variadores de velocidad, § 52 *et seq* (pending before the GC under T-331/24).

paragraph 28). Therefore, the visibility requirement within the meaning of Article 4(2) EUDR was not fulfilled and the design was declared invalid.

	
Speed variator mounted in a motorbike	Contested design No 000350319-0001

3.4 Assessment of novelty or individual character of a component part of a complex product

52 Once the features of appearance of the component part of a complex product that remain visible during the normal use of that complex product have been established in accordance with Article 4(2)(a) EUDR, it must be assessed whether those features fulfil the requirements regarding novelty and individual character pursuant to Article 4(2)(b) EUDR. However, it is for the party who relies on Article 4(2) EUDR to invoke and identify prior designs that could destroy the novelty and individual character of the contested design ([51]).

53 As a general rule, the **point of reference** when assessing novelty and/or individual character is the contested design since it is its validity that is at issue ([52]). Accordingly, where the contested design relates to a component part within the meaning of Article 4(2) EUDR, the point of reference when assessing its novelty and individual character is the contested design, to the extent that its features of appearance remain visible during normal use of the complex product ([53]). Regarding the prior design, likewise only those features that remain visible during normal use can be taken into account ([54]). Therefore, as a preliminary step, the visible features of the prior design will also need to be determined.

([51]) See by analogy 24/01/2024, T-537/22, Building blocks from a toy building set, EU:T:2024:22, § 59-66; 12/04/2022, R 685/2021-3, Heating boilers, § 31.
([52]) See previous report *Assessment of individual character (Article 6 CDR),* (May 2024).
([53]) 09/09/2011, T-10/08, Internal-combustion engine, EU:T:2011:446, § 19.
([54]) 03/10/2014, T-39/13, Skirting boards, EU:T:2014:852, § 52.

54 So far case-law has not addressed the assessment of the **novelty** of a component part of a complex product and cannot therefore provide any guidance in that respect.

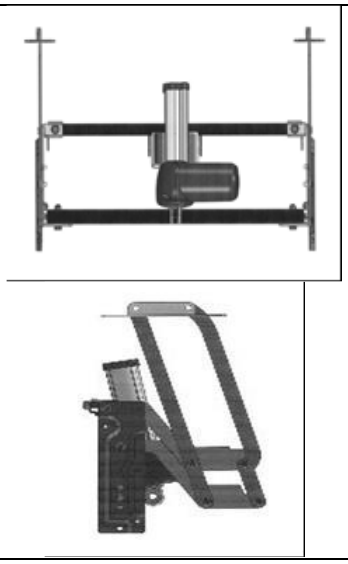
55 With regard to the assessment of **individual character**, and in accordance with Article 6 EUDR, when assessing the overall impression of a design, the product category, the perception of the informed user, and the designer's degree of freedom should be taken into account ([55]).

56 The **informed user** is to be determined by reference to the complex product. In other words, the informed user of a component part of a complex product is the person who uses the complex product, knows the various designs that exist in the sector concerned, possess a certain degree of knowledge with regard to the features that those designs normally include and, as a result of their interest in the complex products concerned, shows a relatively high degree of attention when they use them ([56]).

57 By contrast, the designer's **degree of freedom** is to be assessed with respect to the component part ([57]).

58 For example, in **DISPOSITIVO DI MOVIMENTAZIONE (Handling device)** ([58]) the Board indicated that the conflicting designs refer to component parts of sofas, which constituted complex products and, therefore, **only the visible features of both conflicting designs** should be taken into account in the comparison. The informed user was held to be the person who uses sofas, and the degree of freedom was considered to be limited by the technical constraints and specific dimensions allowing the handling devices to adjust into the frame and the restraints for extending and/or for inclining the articulated telescopic arms. The Board noted that both designs showed the same features (expanders – rectangular shapes made of two parallel flat rods) while the other features would not be visible (the frame and the piston) as they were to be placed inside the complex product (sofa). It concluded that the designs produced the same overall impression.

([55]) See previous reports *The informed user* (March 2023), *Designer's degree of freedom* (June 2023), and *Assessment of individual character (Article 6CDR)* (May 2024).
([56]) 09/09/2011, T-10/08, Internal-combustion engine, EU:T:2011:446, § 25.
([57]) 09/09/2011, T-10/08, Internal-combustion engine, EU:T:2011:446, § 38.
([58]) 09/12/2021, R 51/2017-3, Dispositivo di movimentazione, § 139-143.

	
Prior design	Contested design No 001950676-0008

4 Conclusions

59 Analysis has shown that the Third Board's decisions are consistent and in line with the case-law of the General Court and the Court of Justice.

60 The following conclusions can be drawn in order to safeguard consistency:

(i) Article 4(2) EUDR lays down a **special rule** to be applied to designs that constitute a component part of a complex product. If no **complex product** in the meaning of Article 3(3) EUDR can be identified, or if the contested design cannot be qualified as a component part, the limitations contained in Article 4(2) EUDR do not apply from the outset.

(ii) In the assessment of whether a part of a product constitutes a **component part of a complex product** within the meaning of Article 4(2) EUDR, all the relevant factors are to be taken into account, such as its firm and durable connection with the complex product, the question of whether or not the complex product would be considered to be complete without the part and the interchangeability or consumable nature of the part.

(iii) The notion of **'normal use by the end user'** within the meaning of Article 4(3) EUDR goes beyond the customary use of a complex product and includes acts which may be carried out by the end user before or after the complex product has fulfilled its principal function, such as its storage and transportation.

(iv) The notion of **'visibility during normal use'** does not require the component part to remain fully visible the whole time that the complex product is being used. The visible features are those that are visible from the perspective of the **end user** and an **external observer**.

(v) Where it has been found that **none of the features of the component part remain visible** during the normal use of the complex product by the end user, the design is **to be declared invalid** pursuant to Article 4(2) EUDR for this reason alone. In this case, there is no need to examine its novelty and individual character.

(vi) Where it has been found that **at least some of the features of the component part remain visible** during the normal use of the complex product by the end user, the assessment of **novelty and individual character** of the contested design should be performed, on the one hand, on the basis of **those features only** in accordance with Article 4(2)(b) EUDR and, on the other hand, the corresponding features of the prior design.

(vii) In terms of terminology, given the different purposes of the special rule under Article 4(2) EUDR and the assessment of individual character under Article 6 EUDR, **the terms 'end user' and 'informed user' should not be used interchangeably**. In the same vein, the notion of 'visibility during normal use' should only be used in the assessment under Article 4(2) EUDR.

Annex
List of cases reviewed

Court of Justice and General Court

21/09/2017, C-361/15 P & C-405/15 P, Shower Drains, EU:C:2017:720
20/12/2017, C-397/16 & C-435/16, Acacia, EU:C:2017:992
28/10/2021, C-123/20, Ferrari, EU:C:2021:889
16/02/2023, C-472/21, Monz Handelsgesellschaft International, EU:C:2023:105

09/09/2011, T-10/08, Internal combustion engine, EU:T:2011:446
07/11/2013, T-666/11, Felino balzante, EU:T:2013:584
03/10/2014, T-39/13, Skirting boards, EU:T:2014:852
20/01/2015, T-615/13, Heat exchangers, EU:T:2015:31
29/11/2018, T-651/17, Spray guns for paint, EU:T:2018:855
12/10/2022, T-652/21, Acoplamientos para vehículos, EU:T:2022:634
22/03/2023, T-617/21, Welding torches (part of -), EU:T:2023:152
06/11/2024, T-544/23, DEVICE OF AN EMBLEM (fig.) / DEVICE OF A STRIPE (fig.) et al., EU:T:2024:787
13/11/2024, T-545/23, Cerchioni per ruote di veicoli, EU:T:2024:810
20/11/2024, T-464/23, Leuchten, EU:T:2024:850

Boards of Appeal

10/09/2013, R 291/2012-3, Heat exchangers
25/07/2017, R 208/2016-3, Cot bumpers
28/05/2020, R 904/2018-3, Fußbodenelemente
28/05/2020, R 911/2018-3, Fußbodenelemente
07/12/2020, R 68/2019-3, Elektrische Steckverbinder
11/01/2021, R 1825/2019-3, Elektrische Steckverbinder
16/07/2021, R 2843/2019-3, Welding torches (part of -)
23/08/2021, R 299/2021-3, Staubsaugerbeutel
27/08/2021, R 1306/2020-3, Acoplamientos para vehículos
09/12/2021, R 51/2017-3, Dispositivo di movimentazione
12/04/2022, R 685/2021-3, Heating boilers
16/02/2023, R 878/2022-3, Strümpfe
19/12/2023, R 489/2022-3, Protective face masks
19/04/2024, R 1315/2023-3, Variadores de velocidad (pending before the GC under T-331/24)