



The European Campaign
for the Freedom
of the Automotive Parts
and Repair Market

ECAR

Urgent need for a free market in spare parts and free consumer choice

ECAR Position on the draft Directive amending Directive 98/71/EC on the legal protection of designs

[COM(2004) 582 final 14.9.2004 – 2004/2003 (COD)]

- January 2009 -

A crucial point for the liberalisation of the market in visible automotive spare parts has been reached: The responsibility rests with a minority of Member States. Liberalisation indeed is long overdue and indispensable. A free and single market:

- **ensures freedom of choice and competition-controlled prices for the consumer;**
- **safeguards competition for the benefit of the consumer;**
- **prevents independent parts producers, distributors and repairers (overwhelmingly small and medium-sized enterprises (SMEs)) from being driven from the market;**
- **stimulates efficiencies and employment growth within the EU.**

The EU “spare parts” issue – a long overdue solution

ECAR welcomes the European Commission’s proposal of a Repair Clause, which liberalises the market in spare parts and allows free competition.

BACKGROUND

Since 1991 the EU has been discussing the “spare parts” issue without reaching agreement. Car manufacturers claim that the protection of their new cars’ body “design” should also be extended to the pertinent spare parts – such as bumpers, wings, bonnets, lamps or windscreens. This way competition in the spare parts market would be completely eliminated; and instead of free competition, as exists for new cars, a spare-parts monopoly would emerge in a huge EU market worth about €12 bn.

Consequently, and consistently, the Commission proposed a “**Repairs Clause**”. ECAR believes this is the correct answer to the current economic and legal scenario. Design of visible car components enjoys full protection, but the protection does not extend to the corresponding spare parts and therefore fosters and safeguards competition to a maximum extent. Many Member States have al-

ready enacted such a clause and liberalised their markets. Even more are now supporting in the Council of Ministers the Commission's proposal which likewise has been approved by the European Parliament at the end of 2007.

Despite this broad consensus, the dossier is currently facing a blocking minority, even though after years of discussion the public interest and the social benefits of a repair clause, as well as the improvement of free competition, are obvious.

The repairs clause is the right legal solution

The "Repairs Clause"

- is legally the only accurate and "right" solution
- protects 270 million EU vehicle owners from excessive pricing
- has nothing to do with the safety of spare parts
- contributes to the promotion of SMEs
- prevents economic harm and yields overall efficiency gains

... is legally the only accurate and "right" solution

The purpose of design law is to foster competition in design and at the same time to maintain competition in products. It is therefore perfectly legitimate and in the public interest to grant car manufacturers protection for their body "designs" of new cars. If a car manufacturer enjoys such protection, other car manufacturers must choose a different and distinguishable design. Thus competition in new cars is not hindered by design protection, as the consumer continues to have a choice between a variety of car models at different prices.

If, on the other hand, design protection is extended to body *spare* parts, things are different. Since a *spare* wing or a *spare* lamp must look exactly like the original it is impossible to give them a different "design". In order to avoid breaking the law, a producer of such parts therefore has no alternative but to stay away from this market. This means in practice that competition in spare parts is eliminated.

...protects 270 million EU vehicle owners from excessive pricing

As a result, the consumer has no choice of spare parts, but is forced to buy the spare parts exclusively from car manufacturers at prices fixed at their discretion as monopolists.

Hence the clause works to the benefit of 270 million EU vehicle owners. Many price surveys carried out by the Commission and official organisations within and outside the EU demonstrate that competition led to car makers' prices coming down by about 30-40%.

... prevents economic harm and yields overall efficiency gains

Moreover, the economic effects of a spare parts monopoly must be taken into account. They are serious indeed. The producers of body panels (bumpers, wings, bonnets) must simply close their business. The producers of lamps and glass are also severely hit. Many of them are still in a position to supply a vehicle maker with spare parts (limited to car models where they are under contract) but are not allowed to sell the same parts on their own directly to the aftermarket. As regards spare parts for car models outside a contract they must stop production in the EU (even if it is bound for export). Independent wholesalers lose more than 25% of their trade volume and independent repairers must buy the spare parts from their strongest competitors, the authorised dealers/repairers, at non-competitive tariffs which, in the long run, drives them out of business.

In view of this scenario it is unarguable that a design-led spare parts monopoly puts the survival of the independent aftermarket as a whole in serious jeopardy.

... prevents negative consequences for small and middle-sized enterprises (SMEs)

The independent parts producers, distributors and repairers are overwhelmingly SMEs. Hence, a spare-parts monopoly jeopardises an SME structure which, despite many negative external interventions, has preserved its competitiveness for decades. Any measure taken that endangers their existence contradicts the European Union's policy approach to promote the "extreme growth potentials" and "employment opportunities" of SMEs through a "Small Business Act for Europe".

... sustains employment in the European Union

The Repairs Clause definitely does not impair but rather sustains employment in the EU.

Although IPRs are not and cannot be an instrument of employment policy, ECAR would like to say that statements claiming that if there were liberalisation the EU car industry would lose 50 000 jobs are incorrect.

Moreover ECAR believes that the European employment situation as a whole would benefit from this liberalisation. The following are some of the reasons:

- First of all, it is only jobs in production that might be shifted abroad, jobs in wholesale and retail distribution always remaining "local".
- According to their own productivity figures, car manufacturers (including their suppliers) need at most about 16 000 employees in order to cover the EU requirement for bodywork spare parts. Both the Commission and experts realistically assume that the independent aftermarket, if at all and in the best case, may gain an additional 10-15% market share as a result of liberalisation. This would affect between 1 600 and 2 400 production jobs in the car industry. However, even this comparatively modest number of jobs is not entirely lost from Europe but will pass on to EU-based parts producers. With the benefits of the Repairs Clause they will gain additional competitiveness so that they can meet any competition and generate new jobs.

- Car manufacturers import about 40% of the spare parts they sell in the EU from abroad, mainly from low-cost countries around the world. Along this process many jobs have already been re-located and are currently lost from Europe. Liberalisation allows EU parts producers to compete against the car industry's imports and thus to retain jobs in the EU, even bringing some jobs back to the EU.
- Moreover, a spare parts monopoly excluding any competition within the EU would give car manufacturers a strong incentive to intensify their profitable efforts to produce at low cost abroad and to levy high prices here in Europe. This way design protection would drive jobs out of the EU.

... has nothing to do with the safety of spare parts

The safety of road users is, no doubt, a high public good which has to be taken seriously. ECAR opposes the argument that design protection is needed to ensure the safety of spare parts. Indeed:

- Design protection by its very nature is not capable of ensuring overall safety because it is based on the outside appearance of a product and not on its material construction.
- The EU boasts an efficient legal regime that subjects safety-critical parts to a rigid type-approval or authorisation process. As a study commissioned by the European Parliament in 2006 confirmed, this regime "is more than adequate to ensure safety ... of spare parts".
- It is telling that the car industry, which first raised the safety problem, has never been able to produce any evidence of safety problems in the marketplace.

... is the unique road to eventually reach a single market in spare parts

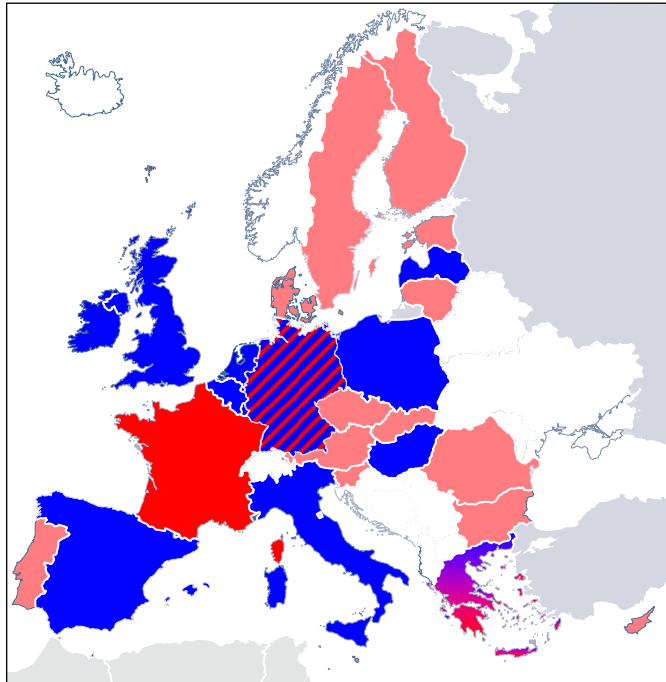
For many years there has been a single market for cars but not for spare parts. Given that a majority of Member States has or is planning a Repairs Clause, it seems impossible to reintroduce Community-wide design protection. Thus, the only way to finalise the single market in spare parts is to agree with the Repairs Clause.

For all these compelling legal social and economic reasons, ECAR supports the Repairs Clause and urges its adoption without delay.

The present standstill must be resolved. Legal, economic and social considerations require a Repairs Clause and its adoption now.

APPENDIX:

**The EU-27 „market“ of body-integrated visible spare parts
- after transposition of Directive 98/71/EC and access of new Member States -**



Blue:
Member States with a Repairs Clause
and thus free competition.

Dark Red:
France: no Repairs Clause and rigid
implementation of design protection.

Red:
Member States without a Repairs
Clause where, however, prior to
harmonising the design law there
were de facto no design inter-
ferences; former law had not finally
answered the spare parts question.

Red/blue hatching:
Germany: Assurance of the vehicle
makers to the German Government
not to use (possible) design protection
for hampering competition in the
spare parts market until the spare
parts issue is solved at EU level.

About ECAR:

Established in 1993, the European Campaign for the Freedom of the Automotive Parts and Repair Market (ECAR) is an alliance of 10 independent EU organizations representing vehicle parts producers, distributors, independent repairers, the European motor insurance industry, a large cross section of small and medium-sized enterprises as well as the 270 million motoring consumers in the European Union. ECAR's main objective is to promote free competition and to prevent vehicle makers from monopolizing the vehicle spare parts market through abuse of design protection. For more information, visit www.ecar-eu.com.

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