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Committee on the Internal Market and Consumer Protection

2004/0203(COD)

14.12.2005

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council amending Directive 98/71/EC on the legal protection of designs (COM(2004)0582 – C6-0119/2004 – 2004/0203(COD))

Draftsman(*): Manuel Medina Ortega

(*). Enhanced cooperation between committees – Rule 47 of the Rules of Procedure’.

PA_Leg

SHORT JUSTIFICATION

Background

As a preliminary remark, you rapporteur would point out that the sole reason for this legislation is to resolve the sole issue remaining after the adoption of Directive 98/71. As many members of this committee will recall, the compromise reached in the codecision procedure between Parliament and Council, with the aid of the Commission, primarily concerned Article 14, relating to the "repairs clause", i.e. the conditions subject to which garages and workshops carrying out repairs must use spare parts supplied by the manufacturer or may use spare parts manufactured by third parties. The solution which the negotiators worked out was to have a "standstill plus", i.e. to freeze the existing legislative situation in each Member State while also allowing any State to liberalise the market further. No obstacle was to be allowed to the free movement of the parts in question. The Council abandoned its position of seeking to allow a "free-for-all", i.e. allowing the Member States carte blanche to introduce or change national legal provisions in this area. Parliament made concessions on its preference for a totally harmonised system of fair and reasonable remuneration for right holders for any use of the design of a component part used in the repair of a complex product. The other point at issue was the method to be used by the Commission to assess the consequences of the Directive after its entry into force (Article 18). Parliament wished to have a provision included in the text requiring the Commission to consult manufacturers of original parts and spare parts, with the aim of arriving at a voluntary agreement between the parties on a system of fair and reasonable remuneration. In the event, Parliament accepted the Council's request that this provision should not be incorporated into the text after receiving assurances from the competent Commissioner that the following declaration would be printed together with the Directive in the *Official Journal*:

"Immediately following the date of adoption of the Directive, and without prejudice to Article 18, the Commission proposes to launch a consultation exercise involving manufacturers of complex products and of component parts in the motor vehicles sector.

The aim of this consultation will be to arrive at a voluntary agreement between the parties involved on the protection of designs in cases where the product incorporating the design or to which the design is applied constitutes a component part of a complex product upon whose appearance the protected design is dependent. The Commission will coordinate the consultation exercise and will report regularly to the Parliament and the Council on its progress. The consulted parties will be invited by the Commission to consider a range of possible options on which to base a voluntary agreement, including a remuneration system and a system based on a limited period of design protection."

When it proved impossible to reach a voluntary agreement, the Commission ordered a study to be carried out into the possible options for harmonising the aftermarket in spare parts. The study focused on the automotive sector, reflecting the importance of the economic impact in this sector.

On the basis of an extended impact assessment the Commission came to the conclusion that "the option to exclude design protection in the aftermarket for spare parts is the only effective

one to achieve an internal market. Liberalisation promises benefits in many respects without serious drawbacks. It would improve the functioning of the Internal Market, allow for more competition in the aftermarket, bring down prices for consumers and create opportunities and jobs for SMEs."

Assessment

Your draftsman considers that the Commission's proposal should be endorsed for the following reasons relating to the sound functioning of the internal market and to the economic welfare of consumers:

First, from the point of view of the *internal market*, there is a single market for new cars but no single market for car spare parts. This means that automotive spare parts cannot be freely produced and traded within the Community. As a result of this fragmentation and the uncertainty about how the Community's design regime will evolve, citizens cannot be certain whether or not the purchase of certain spare parts is lawful. In parts of the Community consumers are not free to choose between competing spare parts. For the same reason, parts manufacturers, especially SMEs, cannot use the economies of scale offered by a single market and they are discouraged from generating investment and employment which they might otherwise do.

Secondly, the "*must fit/must match*" requirement means there is no need for intellectual property protection since no creativity is involved. That requirement also means that consumer safety will not be jeopardised.

Thirdly, the regime proposed will boost *competition* and this will have a positive spin off for *consumers* in terms of price competition and keeping insurance costs down.

Lastly, deregulation will allow SMEs to have a greater share of the aftermarket for spare parts and there is no evidence that the result will be the importation of vast amounts of spare parts now produced in the Community. It is well known that multinationals already produce a multiplicity of parts such as car bumpers, in low-cost countries.

CONCLUSION

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, with which it is working under the enhanced cooperation procedure provided for in Rule 47 of the Rules of Procedure, to endorse the proposal for a directive, with the addition of a new recital 1 a.

(1a) Whereas the abolition of design protection is contrary to internationally recognised principles of intellectual property protection and would constitute a dangerous precedent for the protection of intellectual property rights in other areas as well at a time when the European Union has undertaken, in particular within the WTO, to press for the acceptance by third countries of a protection regime for intellectual property rights which would put an end to imitation and counterfeiting.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council amending Directive 98/71/EC on the legal protection of designs			
References	COM(2004)0582 – C6-0119/2004 – 2004/0203(COD)			
Committee responsible	JURI			
Opinion by Date announced in plenary	IMCO 14.12.2004			
Enhanced cooperation – date announced in plenary	12.5.2005			
Draftsman Date appointed	Manuel Medina Ortega 18.04.2005			
Previous drafts(wo)man				
Discussed in committee	4.5.2005 22.11.2005	24.5.2005 12.12.2005	15.6.2005	11.7.2005
Date adopted	12.12.2005			
Result of final vote	+: 26 -: 1 0: 0			
Members present for the final vote	Maria Carlshamre, Charlotte Cederschiöld, Evelyne Gebhardt, Małgorzata Handzlik, Malcolm Harbour, Anna Hedh, Edit Herczog, Anneli Jäätteenmäki, Pierre Jonckheer, Wolf Klinz, Henrik Dam Kristensen, Kurt Lechner, Lasse Lehtinen, Toine Manders, Arlene McCarthy, Manuel Medina Ortega, Zita Pleštinská, Luisa Fernanda Rudi Ubeda, Leopold Józef Rutowicz, Heide Rühle, Andreas Schwab, Eva-Britt Svensson, József Szájer, Marianne Thyssen, Jacques Toubon, Bernadette Vergnaud, Barbara Weiler, Phillip Whitehead			
Substitute(s) present for the final vote	Benoît Hamon			
Substitute(s) under Rule 178(2) present for the final vote				
Comments (available in one language only)	...			