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REPORT

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))

Committee on Legal Affairs

Rapporteur: Klaus-Heiner Lehne

Draftsman (*): Manuel Medina Ortega, Committee on the Internal Market and Consumer Protection

(*): Associated committees – Rule 47 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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(*) Associated committees: Rule 47 of the Rules of Procedure

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0582)¹,
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0119/2004),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0453/2007),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
RECITAL 4

(4) Whereas to complement the provisions of Commission Regulation (EC) No 1400/2002 concerning the ability of a manufacturer to place its trade mark or logo on components or spare parts visibly and in an effective manner, ***Member States shall ensure that consumers are duly informed about the origin of spare parts, such as information about trade marks or logos placed on the parts concerned,***

(4) Whereas to complement the provisions of Commission Regulation (EC) No 1400/2002 concerning the ability of a manufacturer to place its trade mark or logo on components or spare parts visibly and in an effective manner, ***it must be ensured that consumers are duly informed about the origin of spare parts, such as by information about trade marks or logos placed on the parts concerned,***

¹ OJ C ... / Not yet published in OJ.

Amendment 2

ARTICLE 1

Article 14, paragraph 1 (Directive 98/71/EC)

1. Protection as a design shall not exist for a design which constitutes a component part of a complex product used within the meaning of Article 12(1) of this Directive, for the purpose of the repair of that complex product so as to restore its original appearance.

1. Protection as a design shall not exist for a design ***that is incorporated in or applied to a product*** which constitutes a component part of a complex product ***and is*** used within the meaning of Article 12(1) of this Directive for the ***sole*** purpose of the repair of that complex product so as to restore its original appearance. ***This provision shall not apply where the primary purpose of putting the aforesaid component part on the market is other than the repair of the complex product.***

Justification

Only visible body-integrated spare parts, so-called "Must-match" parts, for the purpose of repair are concerned and thus no protection of design shall exist in this area; however, component parts for other purposes, i.e. to change the outward appearance of a complex product, are not part of the exemption.

Amendment 3

ARTICLE 1

Article 14, paragraph 2 (Directive 98/71/EC)

2. ***Member States shall ensure*** that consumers are duly informed about the origin of ***spare parts*** so that they can make an informed choice between competing ***spare parts***.

2. ***Paragraph 1 shall apply provided*** that consumers are duly informed about the origin of ***the product used for the repair by making use of a marking, such as a trade mark or a trade name, or in another appropriate form*** so that they can make an informed choice between competing ***products offered for repair***.

Justification

The market is to inform consumers of the origin of the component parts for repair by means of trade names rather than applying national regulation.

Amendment 4

ARTICLE 1

Article 14, paragraph 2a (new) (Directive 98/71/EC)

2a. The Repairs Clause is only valid for visible spare parts in the after market once the complex product is commercialized in the primary internal market by the holder or with his consent.

Amendment 5
ARTICLE 1 A (new)

Article 1a

Member States under whose existing legislation protection as a design exists for a design which constitutes a component part of a complex product used within the meaning of Article 12(1) of Directive 98/71/EEC for the purpose of the repair of that complex product so as to restore its original appearance, may retain this design protection for five years after the entry into force of this directive.

EXPLANATORY STATEMENT

I. Substance of the proposed directive

The proposed directive relates to design protection of spare parts intended to restore the appearance of complex products. It seeks to achieve the complete liberalisation of the secondary market in spare parts. This concerns the motor vehicle industry, but also the machinery, capital goods and consumer goods industries.

The proposal relates solely to the secondary market (aftermarket) in spare parts and deals only with spare parts the form of which is crucial to restoring the original function or appearance of the product: in other words, the part or component of the complex product can only be replaced with a spare part identical to the original part (“must-match” spare parts).

Article 1 of the proposal for a directive, amending Article 14 of Directive 98/71/EC, now exempts such spare parts from design protection on the secondary market. A “repair clause” is introduced whereby there is no design protection *‘for a design which constitutes a component part of a complex product used within the meaning of Article 12(1) of this Directive, for the purpose of the repair of that complex product so as to restore its original appearance’*.

II. Background

Under Directive 98/71/EC of 13 October 1998 on the legal protection of designs¹, the visible characteristics of a product can be protected from use by third parties. The protection of designs confers exclusive rights for the appearance of an individual product, a complex product or a component, provided the design is new and possesses individual character (see Articles 1 and 3 of Directive 98/71/EC).

At the time of the adoption of Directive 98/71/EC it was not possible to reach agreement on the harmonisation of design protection for “must-match” spare parts. The directive accordingly contains no harmonisation of design law as it affects the downstream market in spare parts and currently does not exclude spare parts from design protection. So the design protection which is conferred for the new part on the primary market can also be applied to the spare part on the secondary market (aftermarket).

Article 14 of Directive 98/71/EC provides for a transitional arrangement whereby the Member States are to maintain in force their existing legal provisions in this area *‘until such time as amendments to this Directive are adopted on a proposal from the Commission in accordance with the provisions of Article 18’* and may change those provisions only if the purpose is to liberalise the market for such parts (the “freeze-plus” solution).

It was in 1993 that the Commission first proposed EC legislation on the legal protection of designs. However, the Council was unable to agree on a common position until 1997. The European Parliament, at first reading, had identified the protection of designs of spare parts

¹ OJ L 289, 28.10.1998, p. 28.

for the repair of complex products (such as motor vehicles) as a crucial political issue. However, the Council was not in a position to approve harmonised provisions on the design protection of spare parts for repair purposes. At second reading, on 22 October 1997, Parliament decided by an overwhelming majority to propose once again the “repair clause” adopted at first reading which the Council had ignored. The aim of this provision was to enable a design to be used for the purpose of repairing a complex product provided the user paid the holder of the right to the design a fair and reasonable remuneration. Parliament considered that this was the best way to approximate the national legal systems, which in some cases diverged widely in this area. Since the Council was again unable to accept these Parliament amendments at second reading, conciliation proceedings were opened. The result of the long and difficult negotiations was the “freeze plus” solution as it now appears in Article 14 of Directive 98/71/EC. At present, following the transposition of Directive 98/71/EC, there are varying situations in the Member States regarding spare parts intended to restore the appearance of complex products. Your rapporteur points out that these differing legal practices show up particularly when compared at international level. The aim is to avoid competitive disadvantages for Europe in a world context¹.

III. Your rapporteur’s position

Although the proposal for a directive in principle covers all spare parts which serve to repair a complex product “so as to restore its original appearance”, discussions centre on its most important area of application, namely spare parts for motor vehicles. However, it should not be forgotten that these are issues of principle relating to the scope of design protection.

There are two fundamentally contrasting views of design protection for “must-match” spare parts on the secondary market.

The first holds that design protection for spare parts is a logical corollary of the right to intellectual property. In this view, drawing a distinction between the primary and secondary markets for spare parts would contradict fundamental principles of intellectual property rights.

In the other view, design protection should not be extended to cover spare parts because this would lead to prohibited monopoly positions. Supporters of this view defend the repair clause in the proposal for a directive as the most appropriate solution to the problem.

Your rapporteur considers that the solution proposed by the Commission, which means that design protection for spare parts ceases immediately, fails to take sufficient account of this tension between the various interested parties. Your rapporteur therefore proposes a transitional solution, whereby those ‘Member States under whose existing legislation protection as a design exists for a design which constitutes a component part of a complex product used within the meaning of Article 12(1) of Directive 98/71/EEC for the purpose of the repair of that complex product so as to restore its original appearance’ may retain this design protection for another five years after the entry into force of the directive.

¹ In the USA, a design patent may be obtained for a spare part under practically the same protection conditions as in Europe: 35 USC (United States Code) 171: "Whoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title. The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided."

The proposal for a directive relates to design protection issues and consequently does not touch matters of the safety of vehicles and their components. Nevertheless, liberalisation may have indirect effects on product quality and thus also on safety. The study commissioned on this topic found that the type approval procedure should be extended to cover certain safety-related spare parts in order to guarantee the safety of the spare parts. Your rapporteur therefore welcomes the fact that the proposal to extend the type approval procedure to safety-related spare parts has been included in Article 31 of Directive 2007/46/EC of 5 September 2007 (OJ L 263, 9.10.2007, p.1).

13.7.2005

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS (*)

for the Committee on Legal Affairs

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

Draftsman: Wolf Klinz

SHORT JUSTIFICATION

Background

The Directive 98/71/ EC concerns the legal protection of design. The aim of design law is to protect the appearance, outside and visible form of a product. In this context protection should grant exclusivity in new and original design and reward the intellectual work of the creator of a design.

Article 14 deals with the repair of a complex product. It was from its creation only temporary in nature. Member States shall keep in force their existing legal provisions on protection of design - meaning protection of design or liberalised markets, i.e. no protection of design - until an amendment changes this Directive. Member States shall change their legislation only if they liberalise the market ("freeze plus" solution).

15 Member States (Austria, Denmark, Finland, France, Germany, Portugal, Sweden, Cyprus, Czech Republic, Estonia, Lithuania, Malta, Poland, Slovakia, Slovenia) have protected markets, 9 Member States (Belgium, Ireland, Italy, Luxembourg, Netherlands, Spain, United Kingdom, Hungary, Latvia) have liberalised markets and Greece has a time-limited protection.

This provision was a compromise of antagonists and supporters of a possible Europe-wide liberalisation, but was not meant to be a long term solution.

The Commission's Proposal

The Commission has currently proposed to liberalise the secondary market of spare parts. Thus protection of design should not exist for a component part of a complex product used for

the purpose of the repair of this product so as to restore its original appearance. The liberalisation is proposed on the condition that Member States ensure that the consumers are informed about the origin of spare parts so that they can decide if they want to buy a spare part of the vehicle manufacturer (VM), of the original equipment supplier (OES) or of an independent supplier (non-OES).

The Member States have to adapt their national legislation, entering into force at the latest two years after the adoption of the proposed directive.

Data

Scope of the proposed Directive

The proposed Directive only concerns visible "must match" (i.e. body-integrated) spare parts for complex products. Although the proposal affects essentially any sector where the replacement and repair of visible components of complex products is at stake, it largely concerns the automotive aftermarket and has only a minor impact on other markets such as sanitary appliances, watches, motorbikes and domestic electrical appliances. The data for these other markets is difficult to quantify and mostly affects the luxury segment of these markets; experts agree that only the automotive aftermarket is of major importance and thus crucially affected. The areas specifically concerned are namely, car body panels, automotive glass and lighting. 9-11 billion € are annually spent to buy these spare parts. A certain minimum demand for repair and replacement is necessary for spare part manufacturers to operate profitably. Thus offering spare parts is only profitable for certain volume cars. Nevertheless, a several billion € market is concerned.

Possible advantages and disadvantages of the proposed Directive

Prices: In markets with design protection a monopolistic pricing system risks to create overcharges for spare parts. A liberalised market offers a greater choice and a high probability of lower prices. A study showed that 10 out of 11 spare parts are more expensive in protected markets than in liberalised markets. Furthermore -for example- the VM price for a wing front can be up to over 200% higher than it is on the free market.

Innovation: The liberalisation does not affect innovation negatively. Innovation is created through competition in the primary market. The main purpose of creating a car design is to ensure the uniqueness of a car brand in order to defend the market position of a brand. The design of a new car is crucial for the buying decision of the consumer and the basis for a successful sale, but design does not affect consumer behaviour in the aftermarket.

Employment: Independent manufacturers in low-cost countries frequently lack the technical know-how to produce parts at the quality level required by the European market. Production abroad is done rather by the VM themselves as they outsource and dislocate the production of spare parts in order to import them afterwards in the EU. In contrast, SMEs in the EU can better guarantee jobs in their own markets. SMEs currently suffer from the lack of harmonisation in Europe and will benefit from a liberalisation. In addition, all suppliers will benefit from the opening-up of the market as the production of spare parts for non-EU cars will be permitted. Currently, 15% of the cars in the EU are imported from abroad (e.g. from

Japan, Korea and US) and all non-EU VM have registered car component designs in the EU.

Safety: Safety is not a question of design protection. No safety test exists for granting design protection. Safety is instead subject to a regime of type-approval for some parts and could be extended to all other parts through further European legislation.

Competition: No competition exists in protected markets. The consumer must buy the spare parts from the VM. They can contact the OES for some spare parts, although this is only possible for products of some of the big and powerful OES. A single European market does not exist and national protected markets are, in reality, protected to a different degree for different spare parts. To liberalise the market would mean to open it up to competition. Competition is not only price competition, but other factors such as service, product quality and reputation come into play. Even in liberalised markets the market share of VM/ OES stays high, e.g. in the USA independent body panels have reached only 15% of the market share.

Conclusions

Your rapporteur wishes to express his strong support for the Commission's Proposal. It is not satisfactory that we have a single market for new cars but no single market for spare parts.

A liberalisation of the secondary market of spare parts will lead to more competition and push the development of the internal market. The prices will become more elastic. Innovation is not negatively affected. In fact it might be increased since VM will tend to design the parts of their products in such a way that independent suppliers will find it difficult to manufacture these spare parts. Your rapporteur supports the claim for intellectual property, but in our opinion it is no obstacle for a liberalisation of this market. In addition, it is remarkable that there is only one single case where a VM sued another VM for the copying of design in the primary market, even if some models greatly resemble each other. SMEs will benefit from the liberalisation. The liberalisation will have positive effects on the employment in the EU and finally the individual consumer will be able to have the freedom of choice and should be able to accept the responsibility for that choice.

A liberalisation of the secondary market of spare parts is the right way forward.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1
RECITAL 1

(1) Whereas the sole purpose of design protection is to grant exclusive rights to the appearance of a product, but not a monopoly over the product as such; whereas protecting designs for which there is no practical alternative would lead in fact to a product monopoly; whereas such protection would come close to an abuse of the design regime; whereas if *thirds* parties are allowed to produce and distribute spare parts, competition is maintained; whereas if design protection is extended to spare parts, such third parties infringe those rights, competition is eliminated and the holder of the design right is de facto given a product monopoly,

(1) Whereas the sole purpose of design protection is to grant exclusive rights to the appearance of a product, but not a monopoly over the product as such ***or the component parts thereof***; whereas protecting designs for which there is no practical alternative would lead in fact to a product monopoly ***on the products for which they were used***; whereas such protection would come close to an abuse of the design regime; whereas if *third* parties are allowed to produce and distribute spare parts ***for repair purposes***, competition is maintained; whereas if design protection is extended to spare parts, such third parties infringe those rights, competition is eliminated and the holder of the design right is de facto given a product monopoly,

Amendment 2
RECITAL 3 A (new)

(3a) The abolishment of protection of design for visible spare parts for repair purposes leads to new liberties for small and medium-sized enterprises and favourable offers for the consumer,

Amendment 3
RECITAL 3 B (new)

(3b) Whereas in the light of the definitions of ‘original spare parts’ and ‘spare parts of matching quality’ set out in Article 1(1)(t) and (u) of Regulation (EC) No 1400/2002 and of Article 4(1)(i), (j), (k), and (l) thereof, restrictions on trade in automotive

¹ Not yet published in OJ.

spare parts should be prohibited,

Justification

Liberalisation of the spare parts market is central to the liberalisation of the entire motor vehicle sector introduced under the block exemption regulation (Regulation (EC) No 1400/2002). That being the case, the restrictions imposed on spare parts trade and the monopoly accorded to the motor manufacturers – the pretext in each case being ‘design protection’ – are plainly contrary to current competition law and should consequently be removed.

Amendment 4

RECITAL 4

(4) Whereas to complement the provisions of Commission Regulation (EC) No 1400/2002 concerning the ability of a manufacturer to place its trade mark or logo on components or spare parts visibly and in an effective manner, ***Member States shall ensure that consumers are duly informed about the origin of spare parts, such as information about trade marks or logos placed on the parts concerned,***

(4) Whereas to complement the provisions of Commission Regulation (EC) No 1400/2002 concerning the ability of a manufacturer to place its trade mark or logo on components or spare parts visibly and in an effective manner, ***it must be ensured that consumers are duly informed about the origin of spare parts, such as by information about trade marks or logos placed on the parts concerned,***

Amendment 5

RECITAL 4 A (new)

(4a) This directive should become effective independently of ongoing studies and possible impact assessments,

Amendment 6

ARTICLE 1

Article 14, paragraph 1 (Directive 98/71/EC)

1. Protection as a design shall not exist for a design which constitutes a component part of a complex product used within the meaning of Article 12(1) of this Directive, for the purpose of the repair of that complex

1. Protection as a design shall not exist for a design - ***incorporated in or applied to a product*** - which constitutes a component part of a complex product used within the meaning of Article 12 (1) of this Directive,

product so as to restore its original appearance.

for the *exclusive and sole* purpose of the repair of that complex product so as to restore its original appearance. ***Protection of design shall exist if a design is applied for decorative and appearance reasons only, i.e. not to repair this product in order to restore, but rather change its original appearance.***

Amendment 7

ARTICLE 1

Article 14, paragraph 1 a (new) (Directive 98/71/EC)

1a. The Commission shall monitor the implementation of this Directive, especially as regards its impact on the prices and safety of spare parts, the terms which insurance companies impose on insured persons, and the effects of the new regulatory regime on the conditions of competition. At periodic intervals it shall submit a report to the Council and the European Parliament setting out its findings and proposing appropriate measures consistent with Union objectives.

Justification

Provides for regular assessment to gauge the impact of the regulatory regime, with particular reference to the most sensitive matters.

Amendment 8

ARTICLE 1

Article 14, paragraph 2 (Directive 98/71/EC)

2. Member States shall ensure that consumers are duly informed about the origin of spare parts so that they can make an informed choice between competing spare parts.

2. Paragraph 1 shall apply provided that consumers are duly informed about the origin of the product used for the repair by the use of a marking, such as a trade mark or a trade name, or in another appropriate form so that they can make an informed choice between competing products offered for repair.

Amendment 9

ARTICLE 1

Article 14, paragraph 2 a (new) (Directive 98/71/EC)

2a. The Repairs Clause is only valid for visible spare parts in the after market once the complex product is commercialized in the primary internal market by the holder or with his consent.

Amendment 10

ARTICLE 1 Article 14, paragraph 2 b (new) (Directive 98/71/EC)

2b. Consumers, garages, and parts distributors should not, under any circumstances, be required to pay any additional charge, licence fee, or consideration for the use of spare parts for repair purposes.

Justification

The selling price of a car already includes the costs incurred in designing the model, which are consequently paid in full when the car is bought. When the car is repaired, no one should be made to pay the design costs again. Given that it has already been paid for at the time of purchase of the car, there is no reason to charge for design twice or several times over. On the contrary, this would adversely affect small and medium-sized businesses and inhibit growth.

PROCEDURE

Title	Proposal for a European Parliament and Council directive amending Directive 98/71/EC on the legal protection of designs				
References	COM(2004)0582 – C6-0119/2004 – 2004/0203(COD)				
Committee responsible	JURI				
Committee asked for its opinion Date announced in plenary	ECON 30.11.2004				
Enhanced cooperation					
Draftsman Date appointed	Wolf Klinz 14.12.2004				
Discussed in committee	29.3.2005	23.5.2005	14.6.2005	12.7.2005	13.7.2005
Date amendments adopted	13.7.2005				
Result of final vote	for: 36 against: 5 abstentions: 1				
Members present for the final vote	Zsolt László Becsey, Pier Luigi Bersani, Bowles Sharon Margaret, Udo Bullmann, Ieke van den Burg, David Casa, Paolo Cirino Pomicino, Elisa Ferreira, Jean-Paul Gauzès, Robert Goebbels, Benoît Hamon, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Piia-Noora Kauppi, Wolf Klinz, Christoph Konrad, Guntars Krasts, Kurt Joachim Lauk, Astrid Lulling, Gay Mitchell, Cristobal Montoro Romero, Joseph Muscat, John Purvis, Alexander Radwan, Bernhard Rapkay, Dariusz Rosati, Eoin Ryan, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Sahra Wagenknecht, John Whittaker				
Substitutes present for the final vote	Harald Ettl, Catherine Guy-Quint, Ona Juknevičienė, Jules Maaten, Thomas Mann, Kamal Syed Salah, Corien Wortmann-Kool				
Substitutes under Rule 178(2) present for the final vote	Antonio Masip Hidalgo				

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’.

SHORT JUSTIFICATION

Background

As a preliminary remark, your 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 24.5.2005 15.6.2005 11.7.2005 22.11.2005 12.12.2005
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)	...

PROCEDURE

Title	Amendment of the legal protection of design			
References	COM(2004)0582 - C6-0119/2004 - 2004/0203(COD)			
Date submitted to Parliament	14.9.2004			
Committee responsible Date announced in plenary	JURI			
Committee(s) asked for opinion(s) Date announced in plenary	ECON	IMCO		
	14.12.2004			
Associated committee(s) Date announced in plenary	IMCO			
	12.5.2005			
Rapporteur(s) Date appointed	Klaus-Heiner Lehne			
	26.10.2004			
Previous rapporteur(s)	Alexander Radwan			
Discussed in committee	21.4.2005	29.11.2005	3.10.2006	20.12.2006
	26.2.2007			
Date adopted	20.11.2007			
Result of final vote	+: 25			
	-: 0			
	0: 0			
Members present for the final vote	Carlo Casini, Marek Aleksander Czarnecki, Bert Doorn, Cristian Dumitrescu, Monica Frassoni, Lidia Joanna Geringer de Oedenberg, Neena Gill, Othmar Karas, Pii-Noora Kauppi, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Hans-Peter Mayer, Manuel Medina Ortega, Aloyzas Sakalas, Diana Wallis, Tadeusz Zwiefka			
Substitute(s) present for the final vote	Mogens N.J. Camre, Charlotte Cederschiöld, Luis de Grandes Pascual, Vicente Miguel Garcés Ramón, Kurt Lechner, Eva Lichtenberger, Gabriele Stauner			
Substitute(s) under Rule 178(2) present for the final vote	Toine Manders, Tomáš Zatloukal			
Date tabled	22.11.2007			