



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.9.2004
COM(2004) 582 final

2004/0203 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(presented by the Commission)

{SEC(2004) 1097}

EN

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

This proposal concerns design protection of spare parts intended to restore the appearance of complex products such as motor vehicles. It aims to complete the Internal Market through the process of liberalisation begun and partially achieved in Directive 98/71/EC, so as to increase competition and offer consumers greater choice as to the source of spare parts used for repair purposes. At the same time it maintains the overall incentive for investment in design as it does not affect design protection for new parts incorporated at the manufacturing stage of a complex product.

The current situation of different, opposed regimes of design protection for spare parts where 9 Member States have liberalised and 16 Member States extend design protection to spare parts is totally unsatisfactory from an internal market point of view. In the automotive sector, which is the sector most affected, there is a single market for new cars but no single market for their spare parts. Automotive spare parts currently cannot be freely produced and traded within the Community. Due to this fragmentation and the uncertainty about the evolution of the Community's design regime citizens are insecure as to whether or not and in which Member State the purchase of certain spare parts is lawful, and they are deprived in parts of the Community of choosing between competing spare parts. For the same reason, parts producers, 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.

The economic impact of design protection on the prices of spare parts has been disputed by interest groups from both sides (for and against liberalisation). However, price comparisons provided by industry associations and other stakeholders are based on anecdotal evidence or at best on simple averages over some parts and some countries. To obtain better data the Commission carried out an in depth and systematic analysis to assess whether there is a systematic difference in the prices of original spare parts in Member States with design protection and Member States without. The findings of the study, which are described in the Extended Impact Assessment, support the conclusion that markets are systematically distorted.

The analysis of a sample of prices for 11 spare parts for 20 car models in 9 Member States and Norway, of which 6 countries grant design protection for these parts and 4 do not, reveals that prices for 10 of these parts are significantly higher in Member States with design protection than in Member States without. The only part for which the price is not significantly higher is the radiator – but that part does not benefit from design protection as it is not part of the outer skin of a car. For the other parts, bumpers, doors, wings, lamps, lids and bonnets, prices were between 6.4% and 10.3% higher in Member States granting design protection. These results show that vehicle manufacturers as the right holders exercise considerable market power in these Member States to the detriment of consumers.

In sum, the current situation with a mixed protection regime is creating trade distortions in the Internal Market: resources and production are not allocated on the basis of competitiveness and production is not determined by market mechanisms. This leads to distortion of prices and obstacles to trade. It can be expected that in a liberalised Internal Market prices would decrease. In addition, business opportunities and jobs would be created for independent SMEs, who have thus far only been able to obtain a modest share of the market, also in Member States without design protection.

The current proposal should be placed in the context of a debate with a long history. Directive 98/71/EC on the legal protection of designs¹ was adopted on 13 October 1998. It aims to ensure coherence between national provisions of design law which most directly affect the functioning of the internal market, ensuring a high level of protection for industrial property and encouraging investment in manufacturing. Under the directive the appearance of a product may be protected against use by third parties if it is new and original design. However, at the time, it was not possible to harmonise the design regime in relation to the after market in spare parts.

Design protection grants exclusivity to a new and original design for the appearance of an individual product (eg a vase), a complex product (e.g. a car) or a component part (e.g. a door panel).

The primary market for component parts concerns their incorporation at the initial manufacturing and production stage of a complex product. Once that complex product is sold to a consumer and used, it can suffer accidents, breakdowns or damages and parts may have to be replaced or repaired. This constitutes the secondary market or aftermarket for spare parts. The same part might enter the market as an initial component (new part) in the primary market or as a spare part in the secondary market. However it is only the secondary market (aftermarket) which is affected by the current proposal.

Not all the spare parts on the market will be affected by this proposal. The spare parts concerned are defined as “a component part used for the purpose of the repair of a complex product so as to restore its original appearance”. A complex product is a product composed of different components or parts that can be replaced or repaired in case of damage with a spare part. There are spare parts for which it is not imperative that the original design feature is used to restore the original appearance of the product, for example because it has a standard shape or function. There are other spare parts for which the design is necessary to restore the original function or appearance of the product, in other words, the part or component of the complex product can only be replaced by a spare part identical to the original part. These are often called “must match” spare parts and only they are the subject matter of this proposal.

At present, the Directive does not exclude the protection of spare parts by a design right, in other words, the protection conferred on the design of the new part in the primary market can equally well apply to the spare part in the secondary market or aftermarket. However, in spite of the fact that Member States were not able to agree on harmonisation in the aftermarket, article 14 of the Directive did stipulate that Member States shall maintain their existing laws in this regard and may change those provisions only in a way that liberalises the spare parts market (the “freeze plus” solution). What is more, Article 18 of the Directive provides for the Commission to analyse the consequences of the Directive and to come forward with any changes to the Directive to complete the market in spare parts. As the Directive did not change the status quo for existing spare parts regimes in MS, except to allow for liberalisation, an analysis of the consequences of the Directive itself at this stage would not assist in deciding what further changes are necessary. Instead, the Commission focussed its study on the specific issue of design protection in the aftermarket.

¹ OJ 289, 28.10.98, p. 28.

Now that all Member States have transposed Directive 98/71/EC into their national legislation the situation is as follows:

- Austria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Lithuania, Malta, Poland, Portugal, Slovakia, Slovenia and Sweden have still effectively design protection for spare parts.
- In Belgium, Hungary, Ireland, Italy, Latvia, Luxembourg, The Netherlands, Spain and United Kingdom a repairs clause is foreseen, allowing design protection on new products but leaving the possibility for alternative parts in repair or replacement in the aftermarket.
- Greece provides for a repairs clause combined with a term of protection of 5 years and a fair and reasonable remuneration. This system of remuneration has not yet been put into practice.

An important parallel development is that legislation on the unitary Community design administered by the Office for Harmonisation in the Internal Market (Alicante) went a stage further towards liberalisation of the secondary market with Article 110(1) of Council Regulation (EC) No 6/2002 on Community designs. This provides that “protection as a Community design shall not exist for a design which constitutes a component part of a complex product used ... for the purpose of repair of that complex product so as to restore its original appearance”. In other words there is no protection available under the Community design regime (as opposed to national design rights) for “must-match” spare parts in the aftermarket. That text has been taken as a basis for the current proposal addressing national regimes.

Since the adoption of the Directive on the legal protection of designs, the Commission has adopted a new Regulation (EC) no. 1400/2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry². This new regulatory regime has resolved some practical issues regarding the distribution of spare parts, in particular the objective to protect effective competition on the market for repair and maintenance services, *inter alia* by allowing users to choose between competing spare parts. However, it does not deal directly with the crucial question of the protection or not of spare parts by an industrial property right. Thus, Regulation 1400/2002 does not preclude the need for greater approximation and liberalisation of national laws in relation to spare parts. On the contrary, the liberalisation on the secondary market is indispensable to release the full benefits of this Regulation.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. Description of the market

The discussion on design protection in the aftermarket for complex products is a longstanding one (around 15 years) and was triggered by, precisely, the automotive sector which constitutes a special case. The main reasons for this is are that: design plays an important part in the consumer's original choice of vehicle; cars are subject to accidental damage; and they are expensive and durable items which their owners repair by replacing a part rather than buying a

² OJ 203, 1.8.2002, p. 30.

new car. Other market sectors are much more fragmented, volumes are too small, and models and design change too rapidly for independent producers to have an economic incentive to enter the market.

It is important to bear in mind that the debate about spare parts concerns only a small proportion of the overall market for automotive vehicles and their component parts. New parts are not affected, and many spare parts either do not fulfil the criteria for design protection or are not used as replacement parts to restore the overall appearance of the original vehicle. Estimates from different interested parties vary considerably. As explained in the Extended Impact Assessment, the overall automotive replacement market is € 42 to 45 billion in EU15. According to ECAR, who favour liberalisation, the market size concerned by this proposal could potentially account for approximately 25% or 9-11 billion €. However the car manufacturers estimate that the affected market comprises only 5% of the whole market.

The main types of parts concerned are replacement body panels, auto glazing and lighting units. These may be supplied by vehicle manufacturers (VMs), original equipment suppliers (OES) and independent suppliers (IS). These distinctions are not rigid as original equipment suppliers sometimes act both under contract to VMs and separately as independent suppliers - even for the same part. This applies particularly to automotive glazing and lighting.

Independent suppliers find it difficult to enter this market. The defining characteristic of all products in this market is their “must-match” design, which means that replacing parts must be identical to the originals. Given the precision engineering of modern cars the tolerance for error is often very small. Independent suppliers are obliged to reverse engineer the parts based on original samples. By contrast, original equipment suppliers benefit from the moulds that are used in the production of parts for the primary market. The ability of independent suppliers to keep the aftermarket supplied with high quality non-original parts is also reduced by regular small revisions to body shape and design introduced as the vehicle manufacturers ‘refresh’ their models. The inferior fit of non-original body panels might be the reason why OES parts continue to hold considerable market share even in countries where liberalisation of design protection regulations makes competition possible. Where product characteristics, manufacturers’ sophistication and the pattern of supply have made the fit issue less of a problem (e.g. glazing, lighting), the IS market share appears to be much larger. This illustrates the fact that design right is only one factor in the vehicle manufacturers’ ability to control the aftermarket in spare parts, even though that does not make it any less important to address.

Within the automotive market the following sub-sectors will be most-affected by the proposal:

- Production of *body panels* was traditionally a core activity of vehicle manufacturers. Metal body panels are still mostly produced by the vehicle manufacturers themselves. This position is eroding, with greater outsourcing of panel production, but all evidence suggests that the vehicle manufacturers retain a strong hold on the aftermarket. Plastic body panels such as bumpers are often provided by specialist companies on the basis of industrial contracts based on exclusivity, including on spare parts. The total turnover of the independent body panel producers inside the EU can be estimated at 375 M€ (5% of the total market in body panels of € 7.5 billion in the EU-15).
- In the *auto glazing* market, glass producers estimate the average windscreen replacement rate at 5%, giving an annual market of around 10 million screens replaced each year. The aftermarket for glazing products in EU-15 is estimated at €1 billion. There is *de facto* liberalisation in the auto glazing sector as vehicle manufacturers buy in parts from

producers. The patterns of parts supply and fitting are very different from both body panels and lighting. The European auto glazing market is dominated by three manufacturers: Pilkington, Saint Gobain and Glaverbel. Each of these has a substantial global presence in addition to a major share of the EU market. It is estimated that between them they have a 75% share of the EU aftermarket.

- As concerns *lighting*, the integral lighting aftermarket is estimated as being worth €1.22 billion per annum. Figures suggest around half are OES parts. The bulk of European lighting unit production in Europe is today accounted for by a few firms: Valeo, Hella and Automotive Lighting. Historically these firms have also supplied the same lights to the aftermarket with very little competition from outside the EU. The machine mould used for OE production of a lighting unit would be used to make lights that would be sold into the aftermarket through independent distribution channels, without the vehicle manufacturers' logo.

Finally, it is useful to note that, given the type of market, the bulk (80% by some estimates) of spare parts repairs are “crash parts” fitted in jobs paid for by insurers. Fitters are reimbursed for the work that they undertake on the basis of an agreed schedule of rates for replacement parts and a standard labour cost.

For those jobs, the insurer's power to specify what kind of part is used to replace the damaged article (i.e. OE or IS) and the price it is willing to pay for the replacement give it significant market power.

2.2. Consultation, study and impact assessments

After the adoption of the Directive, an attempt was made to create a level playing field in the aftermarket through a *voluntary agreement* among the parties concerned. To that end, the Commission undertook, in a statement concerning the after-market in spare parts published with the Directive, to launch and co-ordinate a consultation exercise on design protection for component parts of complex products in the motor vehicle sector and to inform the European Parliament and the Council of the progress thereof. A series of bilateral meetings with interested parties took place from October to November 2000. The conclusion of the consultations was that the positions of the parties will remain completely opposed and too far apart to reach a voluntary agreement.

Given the impossibility of a voluntary agreement, and in addition to consultation of numerous other sources, the Commission commissioned a study of the possible options to harmonise the aftermarket in spare parts. The study focused on the automotive sector, reflecting the importance of the economic impact in this sector.

The aim of the study was to examine how four alternative regimes for design protection would translate into future impact on competition, Community industrial sectors and consumers, against a baseline corresponding to the present situation, namely:

- The resent situation or “*status quo*”.
- “Liberalisation”, i.e. no design protection of spare parts. This option assumes the revision of Directive 98/71/EC for must-match parts that would remove design protection for must-match parts across the European Union.

- A system seeking a short term of design protection. Under this alternative, design protection for spare parts would be effective for only a limited period in time. After this period, the spare parts can no longer be covered by design protection and any producer will be free to produce them.
- A remuneration system for the use of protected designs, including the appropriate level for remuneration. In the context of this option, independent producers could produce spare parts in exchange for a reasonable remuneration to be paid to the holder of the design right.
- A combination of both the systems previously mentioned, that is to say, a *short term* of full design protection and a *remuneration* system for a subsequent period.

For each option the assessment of the Commission is set out in the Commission's own Extended Impact Assessment which has been based on the study as well as additional contributions from the car manufacturers, independent suppliers and insurers.

On the basis of this assessment the Commission has come 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. As the Extended Impact Assessment demonstrates, the other options imply little or no change to the current unsatisfactory situation. Given the limited life-span of cars, a system granting legal protection to original producers for a limited period would eliminate the economic incentive for independent suppliers to enter the market. A remuneration system is administratively burdensome and offers little legal certainty.

2.3. Expected benefits from the proposal

The beneficial effects of this proposal can be summarised as follows:

- For the consumer

Consumers will benefit directly from the increased competition and the completion of the Internal Market. The independent distribution sector will be in a position to put a larger spectrum of parts on offer, including parts from original equipment suppliers as well as the normally cheaper parts from independent producers. This will lead to a greater variety of makes of parts, giving the repairer and/or the insurer, hence the final consumer, a greater choice and a lower price for must-match parts. The Commission's figures suggest consumers are paying a 6 to 10% premium for the spare parts covered by the proposal in Member States which allow design protection. Currently, in some Member States the consumer pays twice for the same design: once when he buys a new car and the second time when it needs repairs. A harmonised repairs clause would end this state of affairs.

- Competitiveness of business and competition

Without a repairs clause the consumer will have a choice of repairer for body-integrated parts but no choice of the parts themselves. This proposal intends to remedy this uneven situation and increase competition in all parts of and for all players in the value chain. While car manufacturers will lose part of their market share as well as their monopoly rents, it will also

open business opportunities to independent spare parts producers, mostly SMEs, and create a European market of sufficient scale allowing new entrants to emerge.

Competitiveness of EU car manufacturers vis-à-vis producers in third countries will not be adversely affected. In the USA design protection is not extended to spare parts. It is true that in Japan design protection is extended to spare parts for a maximum period of 15 years. However, this proposal will also significantly increase the market for EU suppliers by allowing them to produce parts for Japanese and other foreign-produced cars in the EU. 15% of all cars on the road in the EU are produced in third countries. This significant share of the market would open to EU producers, which is why Japanese and American vehicle manufacturers oppose EU-wide liberalisation.

What is more, in terms of reward for the investment for design right holders, the actual costs of development of a new design and the protection of ex-ante incentives to innovate amounts to only € 50 to 60 per car. This amount can be adequately addressed by the grant of exclusive rights covering only the exploitation of the design for the production and sale of the complex product on the primary market. Vehicle manufacturers will certainly continue to be able to use design as a marketing instrument for their core business irrespective of whether or not there is protection in the aftermarket.

Overall, liberalisation would have a positive impact on competition in the EU aftermarket. It would foster a more dynamic market in the long run. The improved competitive environment will especially benefit SMEs active in this sector. It is worth pointing out that even in liberalised markets, such as the UK, manufacturers have thus far retained up to 95% of the key market in body panels. It can be concluded therefore that it is extremely difficult for SMEs to loosen the grip of the manufacturers on the aftermarket, making it all the more necessary as well as urgent to complete the internal market in this area.

- Employment

Shifts in the market shares of spare parts producers will necessarily be reflected in shifts in employment. Against the potential small detrimental impact on employment by EU car manufacturers, SMEs stand to increase their market share and create employment opportunities. The following beneficial effects on employment in the EU spare parts industry can already be reasonably expected:

- First, new EU jobs will be created by the growth of the market for spare parts. In a liberalised regime, EU parts manufacturers will be allowed to produce in the EU parts for supplying important export markets (USA, South America, Eastern Europe). Design protection in the aftermarket currently denies this opportunity.
- Second, about 15 % of the cars on Community roads are cars imported from abroad. These imports include inter alia Japanese, Korean and U.S. makes, but also cars produced by EU vehicle makers in the U.S. and elsewhere. Parts for these cars are almost exclusively produced in Japan, Korea, Taiwan and the U.S. All the vehicle makers at issue have registered car component designs in the EU and have complete control over this segment of the aftermarket.
- Third, there is likely to be a positive net employment impact in distribution due to the increased sales of spare parts. While some jobs might be lost in the authorised dealer networks, new jobs will emerge in the free market.

- Fourth and finally, it needs to be noted that the car industry themselves import many parts from third countries: Volkswagen imports wings from South Africa; Renault imports bonnets from Taiwan; and Audi imports rear lamps from Brazil. If EU-based SMEs could obtain a greater share of the market, these jobs will return to the EU. All in all, liberalisation should not have a negative impact on employment in the EU.

- Safety and health

The issue of the safety, quality and structural integrity of spare parts has been raised regularly. They are clearly crucial for consumers. However design protection is meant to reward the intellectual effort of the creator of a design and to protect the appearance of the product, but not its technical functions or quality (which could be subject respectively to patent or trademark protection). If the design of a bumper is not protected because it does not fulfil the requirement of novelty, it does not necessarily mean that it is less safe than another protected bumper.

Safety and quality of products, including spare parts are safeguarded by other EC legislation and national laws, where the necessary standards are set in terms of product safety and access to technical information. More specifically in the automobile sector, over 90 Directives are in place, which regulate the construction and functioning of motor vehicles. A "framework directive" provides for the general rules applicable to the type-approval of motor vehicles. The information to be given by any manufacturer going through a type-approval procedure for a product is extremely detailed. All this information is required irrespective of the product being covered by an industrial design right or not. (See the Extended Impact Assessment for details.) Design rights, which protect the appearance and aesthetics of a product, have a neutral impact with regard to safety or pedestrian protection and would not be capable of providing safety guarantees which are available through other specific mechanisms. Consumers would benefit directly and/or indirectly from the increased competition and the completion of the Internal Market resulting from liberalisation.

2.4. Conclusion

The main purpose of design protection is to grant exclusive rights to the appearance of a product, but not a monopoly over the product as such. However, protecting designs in the aftermarket for spare parts for which there is no practical alternative would lead to a product monopoly. Design protection should allow obtaining a fair return on the investment made and fostering innovation through competition, which is achieved in the production of new products. If third parties are allowed to produce and distribute spare parts, competition is maintained. If design protection is extended to spare parts, such third parties would infringe those rights, competition would be eliminated and the holder of the design right would de facto be given a product monopoly.

The **liberalisation option** promises net benefits in many respects. It would improve the functioning of the Internal Market and would allow for more competition in the aftermarket and access and participation of SMEs in this market. The consumer would benefit from more choice and lower prices. Besides the increase of legal certainty, it would also have as a consequence the simplification of daily lives of administrations, courts, companies, especially SMEs, and consumers.

3. EXPLANATORY NOTE TO THE PROVISIONS

Article 1

At the time when directive 98/71/EC on the legal protection of designs was adopted, it was not possible to harmonise the design regime in relation to the after market in spare parts. There was a lack of agreement on the role of design protection in respect of “must match” spare parts for complex products. Therefore, at present, article 14 of the Directive stipulates that Member States shall maintain their existing laws in this regard and may change those provisions only in a way that liberalises the spare parts market.

This article intends to harmonise and complete the internal market in the area through the full liberalisation of the market for spare parts.

The repairs clause does not limit the right of design right holders, it prevents the existence of monopolies on the spare parts market. The design right on the appearance of a primary product will not be extended to the product in the secondary market.

A provisional and transitory Repairs Clause is already foreseen in article 110(1) of Council Regulation (EC) No 6/2002 of 12 December 2001 with effect on Community design³. This proposal intends to achieve harmonisation of national design protection systems and consistency with the Community design.

In order that consumers are informed about the different origins of competing spare parts and can exercise their choice in full knowledge of whether the spare part comes from the original vehicle manufacturer or another source, paragraph 2 of this Article provides for Member States to ensure that consumers are duly informed as to the origin of spare parts and make an informed choice between competing parts.

Article 2

The entry into force is foreseen at the latest two years after adoption of the Directive. This means that, as from that date, no design right holder will any longer be able to assert his right to prevent independent production or distribution of spare parts for the aftermarket. This should constitute a final step to the realisation of a liberalisation of the aftermarket in spare parts. An extended implementation period is proposed by the Commission in view of the existing situation in Member States.

³ “....protection as a Community design shall not exist for a design which constitutes a component part of a complex product used within the meaning of article 19(1) for the purpose of the repair of that complex product so as to restore its original appearance”.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission⁴,

Having regard to the opinion of the European Economic and Social Committee⁵,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁶,

- (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 third 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;
- (2) Whereas the differences in the laws of the Member States on the use of protected designs for the purpose of permitting the repair of a complex product so as to restore its original appearance, 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, directly affect the establishment and functioning of the internal market as regards goods embodying designs; whereas such differences can distort competition within the internal market;
- (3) Whereas it is therefore necessary for the smooth functioning of the internal market to approximate the design protection laws of the Member States as concerns the use of protected designs for the purpose of repair of a complex product so as to restore its original appearance;
- (4) Whereas to complement the provisions of Commission Regulation no 1400/2002 concerning the ability of a manufacturer to place its trade mark or logo on components

⁴ OJ C [...], [...], p. [...].

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

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.

- (5) Directive 98/71/EC should be amended accordingly

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Article 14 of Directive 98/71/EC is replaced by the following:

“Article 14

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.
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.”

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than two years after its adoption. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Internal Market for Goods and Services

Activit(y/ies): liberalise the aftermarket in spare parts

TITLE OF ACTION: PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 98/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 OCTOBER 1998 ON THE LEGAL PROTECTION OF DESIGNS.

1. BUDGET LINE(S) + HEADING(S)

12 02 01 Implementation and development of the Internal Market

12 01 04 01 Implementation and development of the Internal Market – Expenditure on administrative management

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): € million for commitment

Not applicable

2.2. Period of application:

(start and expiry years)

Indefinite

2.3. Overall multiannual estimate of expenditure:

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) (*see point 6.1.1*)

Not applicable

€ million (*to three decimal places*)

	Year [n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Commitments							
Payments							

(b) Technical and administrative assistance and support expenditure (*see point 6.1.2*)

Commitments							
Payments							

Subtotal a+b							
Commitments							
Payments							

(c) Overall financial impact of human resources and other administrative expenditure
(*see points 7.2 and 7.3*)

Commitments/ payments							
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TOTAL a+b+c							
Commitments							
Payments							

2.4. Compatibility with financial programming and financial perspective

- [x] Proposal is compatible with existing financial programming.
- [...] Proposal will entail reprogramming of the relevant heading in the financial perspective.
- [...] Proposal may require application of the provisions of the Interinstitutional Agreement.

2.5. Financial impact on revenue:⁷

- [x] Proposal has no financial implications (involves technical aspects regarding implementation of a measure)

OR

- [...] Proposal has financial impact – the effect on revenue is as follows:

(NB All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.)

⁷

For further information, see separate explanatory note.

(€ million to one decimal place)

		Prior to action [Year n-1]	Situation following action					
Budget line	Revenue		[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5]
	a) Revenue in absolute terms							
	b) Change in revenue	Δ						

(Please specify each budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line.)

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
Non-comp	Diff/	<u>NO</u>	<u>NO</u>	<u>NO</u>	3

4. LEGAL BASIS

(Show main legal basis only.) Article 95 of the EC Treaty.

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention ⁸

5.1.1. Objectives pursued

(Describe the problem(s)/need(s) (in measurable terms) that the intervention is designed to solve/satisfy (the baseline situation against which later progress can be measured). Describe the objectives in terms of expected outcomes (for example as a change in the above baseline situation).

At the time when the Directive 98/71/EC on the legal protection of the design of spare parts was adopted, it was not possible to harmonise the design regime in relation to the after market in spare parts in the car sector.

The key point is whether design protection could be used for a component part used to repair a complex product and thus in an after-market situation. The current situation is that consumers have no choice and they might be overcharged for spare parts (panels, lighting and automotive glass) to repair their vehicle. The aim is to give consumers a choice as to which spare parts are used to repair their vehicle.

⁸ For further information, see separate explanatory note.

5.1.2. Measures taken in connection with ex ante evaluation

(This involves:

- (a) explaining how and when the ex ante evaluation was conducted (author, timing and where the report(s) is/are available) or how the corresponding information was gathered;⁹*

In 2003 the Commission committed a study to the European Policy Evaluation Consortium (Technopolis, Paris) on impact assessment of the possible options to liberalise the after-market in spare parts.

- (b) describing briefly the findings and lessons learnt from the ex ante evaluation.)*

Different options on how to liberalise the after-market in spar parts was examined:

Status quo: If national regulations remain unchanged, the privileged position of vehicle manufacturers in the countries where design protection exists today will continue to exist and harmonisation of the internal market is not achieved.

No design protection in the aftermarket: As a consequence, in those Member States where such a protection exists today, the aftermarket will no longer be open solely to the vehicle manufacturers, but, theoretically, to any supplier of automotive glazing, lighting or body panels.

Term-limited protection: After this limited period any producer will be free to produce spare parts. During the term prices could increase since there is no competition.

Remuneration system: Uncertainties over ownership of design rights, fairness and whether all producers of spare parts would pay their remuneration to the original designer, will remain.

Term-limited design protection plus remuneration system: Costs will be relatively high. Probably few independent sector actors will in such a case make the investments.

Conclusions: With this proposal the Commission intends to harmonise and complete the internal market in the area through the full liberalisation of the market for spare parts.

5.1.3. Measures taken following ex post evaluation

(Where a programme is being renewed the lessons to be learned from an interim or ex post evaluation should also be described briefly.)

5.2. Action envisaged and budget intervention arrangements

(This point should describe the logic behind the proposal. It should specify the main actions to achieve the general objective. Each action should have one or more specific objectives. These should indicate the progress expected over the proposed period. They should also look

⁹

For minimum information requirements relating to new initiatives, see SEC(2000) 1051.

beyond immediate outputs but be sufficiently precise to allow concrete results to be identified. Specify for each main action:

the target population(s) (specify number of beneficiaries if possible);

Vehicle manufacturers, suppliers, wholesalers, auto repair shops, insurers and final consumers.

the specific objectives set for the programming period (in measurable terms);

preparation of a proposal amending Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs.

the concrete measures to be taken to implement the action ;

the immediate outputs of each action; and

the contribution of these outputs to the expected outcomes in terms of satisfying needs or solving problems

Information should also be given on the budget intervention arrangements (rate and form of the required financial assistance).)

5.3. Methods of implementation

(Specify the methods to be used to implement the planned actions: direct management by the Commission using either regular or outside staff or by externalisation. In the latter case, give details of the arrangements envisaged for this externalisation (TAO, Agencies, Offices, decentralised executive units, management shared with Member States - national, regional and local authorities.)

Indicate the effect of the externalisation model chosen on the financial intervention, management and support resources and on human resources (seconded officials, etc.).)

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B - (over the entire programming period)

(The method of calculating the total amounts set out in the table below must be explained by the breakdown in Table 6.2.)

6.1.1. Financial intervention

Commitments (in € million to three decimal places)

Breakdown	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Action 1							
Action 2							
etc.							
TOTAL							

*6.1.2. Technical and administrative assistance, support expenditure and IT expenditure
(commitment appropriations)*

	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. years]	Total
1) Technical and administrative assistance							
a) Technical assistance offices							
b) Other technical and administrative assistance: - intra-muros: - extra-muros: <i>of which for construction and maintenance of computerised management systems</i>							
Subtotal 1							
2) Support expenditure							
a) Studies							
b) Meetings of experts							
c) Information and publications							
Subtotal 2							
TOTAL							

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)¹⁰

(Where there is more than one action, give sufficient detail of the specific measures to be taken for each one to allow the volume and costs of the outputs to be estimated.)

Commitments (in € million to three decimal places)

Breakdown	Type of outputs (projects, files)	Number of outputs (total for years 1...n)	Average unit cost	Total cost (total for years 1...n)
				4=(2X3)
Action 1 - Measure 1 - Measure 2				
Action 2 - Measure 1 - Measure 2 - Measure 3 etc.				
TOTAL COST				

If necessary explain the method of calculation

¹⁰

For further information, see separate explanatory note.

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

Human and administrative resource requirements will be covered from within the budget allocated to the managing DG in the framework of the annual allocation procedure.

7.1. Impact on human resources

Types of post	Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
	Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A	2 A	2 A	<i>If necessary, a fuller description of the tasks may be annexed.</i>
	B			Attending meetings at the Council to negotiate the proposal amending Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs.
	C			
Other human resources	0	0	0	
Total	2	0	2	

7.2. Overall financial impact of human resources

Type of human resources	Amount (€)	Method of calculation *
Officials	216.000 €	Annual costs per official:
Temporary staff		108.000 € x 2 officials = 216.000 €
Other human resources (specify budget line)		
Total	216.000 €	

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount €	Method of calculation
Overall allocation (Title A7)		
12 01 02 11 01 – Missions		
12 01 02 11 02 – Meetings and conferences		
12 01 02 11 03 – Committees ⁽¹⁾		
12 01 02 11 04 – Studies and consultations		
Other expenditure (specify)		
Information systems		
Other expenditure - Part A (specify)		
Total		

The amounts are total expenditure for twelve months.

⁽¹⁾ Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	€
II.	Duration of action	years
III.	Total cost of action (I x II)	€

(In the estimate of human and administrative resources required for the action, DGs/Services must take into account the decisions taken by the Commission in its orientation/APS debate and when adopting the preliminary draft budget (PDB). This means that DGs must show that human resources can be covered by the indicative pre-allocation made when the PDB was adopted.)

Exceptional cases (i.e. those where the action concerned could not be foreseen when the PDB was being prepared) will have to be referred to the Commission for a decision on whether and how (by means of an amendment of the indicative pre-allocation, an ad hoc redeployment exercise, a supplementary/amending budget or a letter of amendment to the draft budget) implementation of the proposed action can be accommodated.)

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

(Adequate follow-up information must be collected, from the start of each action, on the inputs, outputs and results of the intervention. In practice this means (i) identifying the indicators for inputs, outputs and results and (ii) putting in place methods for the collection of data).

8.2. Arrangements and schedule for the planned evaluation

(Describe the planned schedule and arrangements for interim and ex post evaluations to be carried out in order to assess whether the intervention has achieved the objectives set. In the case of multiannual programmes, at least one thorough evaluation in the life cycle of the programme is needed. For other activities ex post or mid-term evaluations should be carried out at intervals not exceeding six years.)

A study on ex-post evaluation could be envisaged within the framework of the Design Directive as a whole.

9. ANTI-FRAUD MEASURES

(Article 3(4) of the Financial Regulation: "In order to prevent risk of fraud or irregularity, the Commission shall record in the financial statement any information regarding existing and planned fraud prevention and protection measures.")

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES(SMEs)

TITLE OF PROPOSAL

Proposal for a Directive of the European parliament and of the Council amending Directive 98/71/EC of the European parliament and of the Council of 13 October 1998 on the legal protection of designs.

DOCUMENT REFERENCE NUMBER

COM(2004) 582

THE PROPOSAL

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

Directive 98/71/EC on the legal protection of the design of spare parts was adopted on 13 October 1998. At the time, it was not possible to harmonise the design regime in relation to the after market in spare parts. There was a lack of agreement on the role of design protection in respect of “must match” spare parts for complex products. Therefore, at present article 14 of the Directive stipulates that Member States shall maintain their existing laws in this regard and may change those provisions only in a way that liberalises the spare parts market.

The Commission committed itself to analysing the consequences of the provisions of Directive 98/71/EC for Community industry, for consumers, for competition and for the functioning of the internal market, in particular considering harmonisation, and, after consultation with the parties most affected, the Commission committed itself to proposing to the European Parliament and to the Council, any changes to Directive 98/71/EC needed to complete the internal market.

THE IMPACT ON BUSINESS

2. Who will be affected by the proposal?

- which sectors of business?

In principle, all sectors are affected by compliance with intellectual property, but in particular full liberalisation will benefit independent producers and distributors of component parts of complex products. A complex product is composed of multiple components which can be replaced permitting disassembly and reassembly of the product, such as cars, bikes, motorbikes, watches or electrical household appliances.

According to an extended impact assessment undertaken, the sector which will be most affected, given its economic value, is the automotive market. This market is supplied by parts manufacturers of which there are three groupings:

- vehicle manufacturers
- original equipment suppliers
- independent suppliers.
 - which sizes of business (what is the concentration of small and medium-sized firms)?

It concerns both large and small businesses, in particular those active in the field of creation and innovation. Estimates for the annual volume of the total EU market in automotive replacement parts range from 42 to 45 billion €, of which the market in replacement body panels, auto glazing and lighting units is estimated to account for approximately 25% or 9-11 billion €.

- are there particular geographical areas of the Community where these businesses are found?

The entire territory of the Community is concerned (repair shops). Production of personal vehicles was just under 15 000 000 per annum in 2001 and 2002, with a slight decrease in production in 2002. Germany and France together account for about half of production, and Spain, UK, Italy and Belgium for another 40%, the remainder being produced in Austria, the Netherlands, Portugal and Sweden.

3. What will business have to do to comply with the proposal?

The abolition of design protection for spare parts in the aftermarket will enhance competition. The means of enforcing intellectual property rights and competition law are available to businesses by the legislation of the Member States.

4. What economic effects is the proposal likely to have?

The extended impact assessment study focused on the automotive sector, given the economic impact in this sector, however its conclusions and subsequent harmonisation at European level are of application to any sector where replacement and repair of complex products occur.

- on employment

Liberalisation would have an affect on who produces the spare parts and the channels through which they are distributed and sold, but no direct link is expected with an increase or a decrease in employment. New actors may emerge in any link of the value chain or existing actors may change role. No quantitative increase can be calculated at this stage, nevertheless any change, however small it might be, will have a substantial beneficial impact for the independent sector, given the huge market at stake.

- on investment and the creation of new businesses

Liberalisation of the design protection regime will open markets hitherto closed to competition and create a European market of sufficient scale that new entrants will be expected.

- on the competitiveness of businesses

Competition in the automotive repair sector is affected not only by the design protection regime, but also by broader initiatives aimed at reforming the overall structure of the motor vehicle sector. In 2002 the Commission adopted a new Regulation (EC) no. 1400/2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry. With the expiry of the so-called Block Exemption Regulation 1475/95 there is the prospect of increased competition in the sale of vehicles to consumers and increased access to original equipment parts within the servicing and repair sector. Changes in distribution of spare parts may take place, but under influence of Block Exemption Regulation, and hence will not apply to design protected parts. In the countries concerned, the consumer therefore will eventually have a choice of repairer for body-integrated parts but no choice of the parts themselves. This proposal intends to remedy such situation and lead to increased competition in all parts of the chain:

- between suppliers of the different types of parts, with increasing competition coming from outside Europe;
- between VMs and their suppliers who will compete for control of distribution;
- between VMs and independent distribution;
- between the formerly “franchised dealerships” segment and the independent distribution and repair segments but also within each individual segment;
- between insurance companies.

- on the consumer

Insurers are in effect the primary or immediate consumers in much of the replacement parts market, in as much as the share of insurance covered by Casco, for the rest and the remainder of the market, end consumers pay directly for replacement parts. The final consumer has a direct interest in the quality of the repair insofar as it affects the subsequent appearance, safety and value of the vehicle.

The issue of the safety, quality and structural integrity of spare parts are clearly crucial for consumers. However design protection rewards the intellectual effort of the creator of a design and protects the appearance of the product, not its technical qualities. If the design of a bumper is not protected because it does not fulfil the requirement of novelty, it does not necessarily mean that it is less safe than another protected bumper. Even more when the same manufacturer would produce both parts for the car manufacturer and for the independent or retail repairer.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?

The proposal does not contain specific measures for SMEs.

CONSULTATION

6. List the organisations which have been consulted about the proposal and outline their main views.

As a first step in the consultation exercise, the Commission had bilateral discussions with the five main groups concerned with a view to obtaining a clearer picture of the economic issues revolving around spare parts for cars and motorcycles, in particular body parts. These main groups are: vehicle manufacturers (including car and motorcycle manufacturers, represented by ACEA, ACEM, UNICE), suppliers (CLEPA), independent component producers (ECAR), insurance companies (CEA), and consumer organisations (AIT/FIA, BEUC, and FEMA). In order to prepare for these bilateral discussions, the services of the Commission drafted a questionnaire (Annex I) on the economic situation concerning spare parts for cars and motorcycles, and more specifically body parts. This questionnaire was sent to all the mentioned organisations in November 1999, responses reached the Commission by June 2000.

Then the Commission started bilateral discussions with the mentioned parties, additionally individual companies and organisations, which are represented by each of those groups, have been invited to attend these meetings. Meetings with ACEM, CLEPA, CEA, ACEA, FEMA, ECAR, BEUC, and AIT/FIA took place.

The results of this consultation showed a wide divergence on the position of interested parties, in particular between producers of complex products and independent producers of component parts of such complex products.

Manufacturers of complex products consider that design protection for spare parts is an inevitable consequence of the Intellectual Property Right (“IPR”) concerned. The existence of a design right provides compensation for investment in design and also rewards creativity. As such it parallels other IPRs. According to this view, primary and after-markets are not separable, and to make any such distinction would be artificial and should be avoided in the interests of consistency in the application of general IPR principles.

Independent producers of component parts of complex products, however, consider that design protection for spare parts creates unjustified monopoly situations in the after-market. The prices of spare parts of equivalent quality are lower where they are not design-protected. They say that a limit to this IPR must be established to avoid a negative impact on competition, and that this is the only way to avoid manufacturers gaining full control over the after-market.

In June 2003, the Commission launched an extended impact assessment study of the possible options to liberalise the aftermarket in spare parts. The study focused on the automotive sector, given the economic impact in this sector; however its conclusions and subsequent harmonisation at European level are applicable to any sector where

replacement and repair of complex products occur. The Commission received the final report end of November 2003.

The following interested parties were consulted:

- ACEA, the European Automobile Manufacturers Association (collective interview, contact: M. Greven); 2 meetings were organised with representatives of ACEA's members
- Michel Aribard, Jean-Paul Blin, French Ministry of Economy, Finance and Industry
- Gabriel de Bérard, President, FEDA, Fédération des Syndicats de la Distribution Automobile
- Ralf Bergner (Chief Executive), Lars Homqvist (Vice-President), Ad Ham (Chair of Aftermarket Working Group & Managing Director Automotive Europe of Bosal NV), Clepa, European Association of Automotive Suppliers
- CCFA, le Comité de Constructeurs Français d'Automobile (contact: N. Mignotte & H. Perreau); 1 meeting was organised with representatives of the French car manufacturers
- Miguel Angel Cuerno, ANCERA (Asociación Nacional de Comerciantes de Equipos, Recambios, Neumáticos y Accessorios para Automóviles) independent Spanish parts distributors
- Carlo Dellacasa, ANFIA (Italian National Association for Automotive Industry), Components group
- Isabelle Fourrier (Legal Counsel) / Menno Schönlank (Marketing Director, Aftermarket Activity), Valeo
- Renatto Gallo, ASCAR (Italian Association of producers and sellers of independent spare parts for cars)
- Philippe Gaultier, Marketing director, Plastic Omnium
- Jack Gills, Executive Director, the Certified Automotive Parts Association (CAPA), USA
- Sylvia Gotzen, Secretary General, Figiefa, International Federation of Automotive Aftermarket Distributors
- Sabine Gluthe (Intellectual Property Management) / Karl-Heinz Hinz (Quality Management) / Gerhard Bauer (Chief Trademark Council), DaimlerChrysler
- Teresa Herrero, ANFAC Asociacion española de fabricantes de automoviles et camiones
- Jean-Louis Marsaud, Director, Comité Européen d'Assurances

- Martin McGreavy, Sales & Marketing Manager, EV (parts wholesalers)
- Jacques Monnet (Chief Executive) / Christian Boure (General Secretary), Fiev, the (French) Federation of Automotive Suppliers
- Miguel Angel Obregon, Sernauto, the Spanish association of component manufacturers for the automotive industry
- Gerhard Riehle, ECAR Campaign Coordinator
- Peter Roberts, Chief Executive, Thatcham
- Louis Shakinovsky (Legal Director) / Katherine Marshall (Senior Group Legal Counsel)/ Marcus Schmidt (Strategy Development Manager), Belron
- Brian Spratt, Chief Executive, Automotive Distribution Federation (UK)
- Marie-Pierre Tanugi-de Jongh, Directeur, A+Glass
- Roger Thomas, Vice President, Aftermarket Operations Europe, Pilkington AGR (UK) Ltd. Also member of the Groupement Européen des Producteurs de Verre Plat's Aftermarket working group.
- Victoria Villamar Bouza, Legal Officer, BEUC Bureau Européen des Unions de Consommateurs
- Martin Wiedermann, Automotive Lighting