



Spare Parts in Design Protection Law: Towards an EU-wide Repairs Clause for an Accessible and Affordable Right to Repair

Executive Summary: The European Commission is preparing a revision of the Design Directive (98/71) and Community Design Regulation (6/2002) in Q2 2022. It is crucial to complete the harmonisation of the provisions on design protection for visible and replaceable spare parts in complex products such as vehicles. Harmonisation would bring substantial benefits in terms of legal certainty, fair competition, consumer costs, innovation and employment, hence ensuring an accessible and affordable right to repair. In addition, the absence of a repairs clause in many Member States is still a serious obstacle to the achievement of the Circular Economy objectives.

I. Spare Parts in Design Protection Law: an incomplete harmonization

As part of the Intellectual Property Action Plan¹ and the Circular Economy Action Plan², the European Commission intends to **improve access to replaceable spare parts** and **product repairability**. The absence of an EU-wide repairs clause in design protection law is one of the main obstacles to these objectives.

In IP law, **design rights protect the appearance, the visible form of a product, which results from attributes such as its shape**. They protect a wide variety of products such as textiles, jewelry, furnishing and household goods. They can also apply to more complex products such as manufactured goods, electronic devices and vehicles. In the latter case, we observe **important national differences in the scope of design protection for complex products**, which need **spare part changes and reparations** during their lifetime, such as vehicles.

The EU has harmonised national laws on design protection under the **Design Directive (98/71)**, which ensures equivalent protection to right holders in all EU Member States. However, the Directive does not address the case of must-match visible parts (e.g. car body panels, windscreens), which often need to be replaced in case of an accident, and which must exactly match the design of the original component. This results in a patchwork of national legislation differing on this particular point.

Some EU Member States have introduced a **repairs clause** in their design law, whereby the manufacturer of a product (e.g. the vehicle manufacturer) gets protection on the overall design of the car and on first fitted visible parts, but the protection does not extend to the corresponding visible must-match spare parts. Consumers can choose between competing suppliers of spare parts and repairers.

Other Member States **do not have a repairs clause** in their design law, hence allowing original manufacturers to enjoy full design rights on these parts not only on the market of new vehicles, but also on the corresponding spare parts on the aftermarket. This eliminates any possible competition as only the original manufacturer can replace visible must-match parts.

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| REPAIRS CLAUSE INTRODUCED: |
| <i>Belgium, Germany (2021), Hungary, Ireland, Italy, Latvia, Luxembourg, Netherlands, Poland, Spain</i> |
| REPAIRS CLAUSE NOT INTRODUCED: |
| <i>Austria, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Lithuania, Malta, Portugal, Romania, Slovenia, Slovakia</i> |
| OTHER REGIMES: |
| <i>Denmark & Sweden (15-year protection), Greece (repairs clause + 5-year protection)</i> |

Extending design protection to visible and replaceable spare parts of complex products is an abuse of the rule's intent: instead of fostering competition, it leads to product monopoly and to monopoly pricing.

II. What is at stake? The case of Automotive Spare Parts

There are about 308 million of road vehicles in the EU that require permanent maintenance and repairs. This service market (also called aftermarket or secondary market) is independent and distinct from the market for new vehicles. An important segment of this market consists of **body-integrated visible spare parts**, which **must match the exact same design** as the original component. It includes:

- Body panels (e.g. bumpers, wings, bonnets, bootlids, etc.): ~75%
- Integrated lighting (e.g. front and rear lamps): ~13%
- Automotive glass (e.g. windscreens): ~12%

The annual sales of visible automotive spare parts in the European market amounts to **~20 billion EUR**, with 47% of sales concluded through vehicle manufacturers' channels.³ Prices are on the rise, especially in countries without a repairs clause (e.g. +11% from 2017 to 2019 in France); spare parts alone represent approximately half of the price of vehicle reparations.⁴

Applying design protection to automotive spare parts gives the vehicle manufacturer a product monopoly, deprives vehicle owners from any choice and makes them captive consumers. The absence of a harmonised repairs clause discriminates against independent aftermarket suppliers in many EU Member States. It also increases the price of automotive spare parts by about 5-8% on average, with large differences between carmakers (up to 13%). If there was an EU-wide repairs clause, EU consumers would save between 450 and 720 million EUR annually.⁵

Applying design protection to automotive spare parts hinders EU growth, innovation and employment by adding unnecessary market barriers and invites costly litigation against the SMEs by the large car makers. The European automotive aftermarket accounts for over 4.5 million jobs, most of them employed in over 500,000 SMEs. In the absence of a repairs clause, only the vehicle manufacturer can supply spare parts, which are often imported from non-EU countries. An EU-wide repairs clause would encourage job creation in the EU and help Europe's independent producers to supply spare parts both for the EU market and globally.

Extending design protection to automotive spare parts for safety reasons is a blatant misuse and mischaracterization of its intended purpose. Design protection only protects the outside appearance of a product; its technical characteristics are not taken into account. Automotive spare parts are subject to a number of EU safety standards that apply to all producers in order to ensure identical safety requirements.

Opposing the repairs clause on the grounds of counterfeiting and piracy concerns is also a misuse of its intended purpose. Counterfeiting presupposes that there is an infringement of an IP right. Such infringement does not exist where competing must match spare parts are put on the market. As stated by the Commission in a previous proposal, *"the fight against counterfeiting and piracy must not be used to try to keep unwelcome competitors out of the market or to hamper legitimate competition."*⁶

In full coherence with the current EU policy objectives, the harmonization by way of an EU-wide repairs clause would strongly support cost-efficient product repairability in the automotive aftermarket, but also shorten (EU-based) production circuits and channel services, local growth, innovation and employment.

III. Way forward: ensure accessible and affordable spare parts with an EU-wide repairs clause

In the current EU legal framework, only the Community Design Regulation includes a common, EU-wide repairs clause which only applies to *community* design rights. However, **the Design Directive – which harmonises *national* design rights – does not include any specific provisions relating to spare parts and repairs of complex products**, hence enabling the current patchwork of conflicting national laws and incomplete harmonization.

| | PURPOSE | PROVISIONS ON SPARE PARTS AND REPAIRS |
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| DESIGN DIRECTIVE (98/71) | Harmonisation of national laws on design protection , ensuring that national design rights give equivalent protection in all EU Member States. | <ul style="list-style-type: none"> No harmonised provisions on spare parts and repairs for complex products. Art. 14 (freeze plus clause): Member States must maintain their existing legal provisions on spare parts in force; they can only change these provisions to further liberalize the market. |
| COMMUNITY DESIGN REGULATION (6/2002) | Parallel, EU-wide system for community design , applying uniformly in all EU Member States, and coexisting alongside national design protection. | <ul style="list-style-type: none"> Harmonised provisions on protection of visible must match spare parts of complex products Art. 110: pending amendments to this Regulation, community design shall not protect a component part of a complex product used for repair purpose so as to restore its original appearance. |

The European Commission has on several occasions proposed including a harmonised repairs clause in national design protection (1993, 1997, 2004). **In May 2014**, despite the fact that the European Parliament had endorsed the repairs clause, **the European Commission withdrew its proposal due to 10 years of discussion, delay, postponement and blockage in the Council of Ministers**. Since then, Art. 14 of the Design Directive still allows Member States to extend national design protection to the individual, visible must-match spare parts of complex products such as cars.

The European Commission is preparing a revision of the EU design legislation (Q2 2022). An [Economic Review](#) and a [Legal Review](#) have been performed and published in 2016, then followed by a [public consultation](#) (2018-2019) and an [Evaluation Report](#) (2020).⁷ The reviews have confirmed that “*there is no broad economic justification for maintaining spare parts protection*” at national level, and that the provisions of the Directive should be aligned with those of the Regulation.

A harmonised repairs clause in national design protection would strongly support the ‘right to repair’ principle, by further enabling fair competition in aftermarkets, and improving cost-efficiency for repairs and replacement parts, in particular in the automotive sector. It would also promote local employment and innovation in the EU (e.g. independent aftermarket suppliers, service-providers and SMEs), hence strengthening Europe’s strategic autonomy in global value chains for product reparations.

¹ European Commission, *Intellectual Property Action Plan*, COM(2020) 760, November 2020.

² European Commission, *Circular Economy Action Plan*, COM(2020) 98, March 2020.

³ Estimates by GlobalData, including Switzerland and Norway, excluding Luxembourg, Cyprus and Malta. GlobalData, *The European Car Crash Repair Parts Market 2012 – 2022: Market size, market forecast and recommendations*, February 2017.

⁴ FEDA, *Libéralisation des pièces détachées : le Gouvernement doit tenir sa promesse*, March 2021.

⁵ Herz, Mejer, *Effect of design protection on price and price dispersion: Evidence from automotive spare parts*, MPRA Paper 104137, 1 June 2020.

⁶ COM(2003) 0046.

⁷ European Commission, *Evaluation of EU legislation on design protection*, SWD(2020) 264, 6 November 2020.