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Committee on Economic and Monetary Affairs

2004/0203(COD)

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

PA_Leg

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:

Text proposed by the Commission¹

Amendments by Parliament

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

(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

¹ Not yet published in OJ.

monopoly;

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(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 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***

(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.

information about trade marks or logos placed on the parts concerned.

Amendment 5
RECITAL 4 (A) (new)

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

Amendment 6
ARTICLE 1, PARAGRAPH 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 - ***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, 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, PARAGRAPH 1 (new)

Article 14, paragraph 1 (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, PARAGRAPH 2

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, paragraph 2 (A) (new)

(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, PARAGRAPH 2 (B) (new)

Article 14, paragraph 2 (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	No
Draftsman Date appointed	Wolf Klinz 30.11.2004
Discussed in committee	29.3.2005 23.5.2005 14.6.2005 12.7.2005 13.7.2005 05
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