

**CONSULTATION 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**

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# **Consultation 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**

## **EXECUTIVE SUMMARY**

1. The European Commission published a proposal on 14 September 2004 to amend Directive 98/71/EC on the legal protection of designs so as to encourage competition in the spare parts market.
2. The key proposals are:
  - To deny registered designs protection to components used to repair a “complex product”.
  - To ensure that consumers are informed about the origin of spare parts.
3. This means the Commission proposes a liberalisation of the aftermarket in visible spare parts across the European Union by inserting a repair clause into the Directive. This repair clause states that there will be no design protection in a design which is a component part of a “complex product” (products which are composed of multiple components) and is used to repair that product so as to restore its original appearance. This would mean no registered design protection would be available for spare parts which must match the product as a whole.
4. There should be no change in the United Kingdom, which currently has a liberal regime. In the UK, the right in a registered design for a component part of a product is not infringed if such a part is used in a repair of the original product.
5. The industry most affected is the car industry, where visible parts such as body panels, bumpers, windscreens, and light clusters often need replacement. However, the directive as currently drafted would apply to all industry sectors which relate to repairable “complex products” such as household devices and electronic goods.

### **Who is being consulted**

6. Responses are welcome from anyone in the UK or abroad who is interested in the operation of the intellectual property system in the UK but especially from those who have been, are, or expect to be users of or affected by the registered designs system. Copies of the consultation have been sent to the organisations listed in Annex B and to a small number of individuals.
7. This consultation document has been prepared in accordance with the Government Code of Practice on Written Consultations. The Code criteria are set out in Annex C.

## **How and when to respond**

8. The consultation will be open until 31 May 2005. There is a consultation response form which you may wish to use to reply if it is helpful to you. Responses may also be sent by post, e-mail or fax. Please send your responses to the following address, or if you have any questions about the consultation please contact:

Pierre Oliviere  
Intellectual Property and Innovation Directorate  
The Patent Office  
Cardiff Road  
Newport  
NP10 8QQ

Phone: 01633 814493

Fax: 01633 814922

Email: [Pierre.oliviere@patent.gov.uk](mailto:Pierre.oliviere@patent.gov.uk)

9. If you are responding on behalf of a representative group, please give a summary of the people and organisations that you represent.

10. A list of those organisations and individuals consulted is in Annex B. We would welcome suggestions of others who may wish to be involved in this consultation process.

## **Alternative copies**

11. Hard copies may be obtained from the Patent Office by contacting Barbara Squires, by telephone 01633 814389, or e-mail [Barbara.Squires@patent.gov.uk](mailto:Barbara.Squires@patent.gov.uk). Versions of the document in Welsh, Braille or audio cassette are available on request.

## **Confidentiality**

12. This is part of a public consultation exercise. If you do not want all or part of your response or name made public, please state this clearly in the response and please give your reasons for claiming confidentiality.

13. We will handle any data you provide appropriately in accordance with the Data Protection Act 1998 and the Freedom of Information Act 2000.

## **Help with queries**

14. Questions about the policy issues raised in the document can be addressed to Pierre Oliviere, whose details are given in paragraph 6 above.

15. If you have comments or complaints about the way this consultation has been conducted, these should be sent to the Patent Office's Consultation Co-ordinator:

Kath Gibbs,  
Consultation Co-ordinator  
The Patent Office,  
Concept House,  
Cardiff Road,  
Newport,  
NP10 8QQ.

Phone: +44 (0)1633 813775  
Fax: +44 (0)1633 814509  
Email: [kath.gibbs@patent.gov.uk](mailto:kath.gibbs@patent.gov.uk)

16. A copy of the Code of Practice on Consultation is in Annex C.

### **Consultation questions**

1. Should the UK seek:
  - a. to maintain the current status quo in Europe? (i.e. Member States may only make changes in their laws which liberalise the market in spare parts but do not have to.)
  - b. to ensure a harmonised spare parts market which is liberalised?
  - c. to ensure a harmonised spare parts market which provides registered design protection for a limited time? If so, how long should such protection last?
  - d. to ensure a harmonised spare parts market which operates on the basis of a compulsory licensing and remuneration system? How long for? Or
  - e. some other system? Please give details.
2. Can you put a figure on the cost or benefit of this proposal:
  - a. to your business?
  - b. to your sector?
  - c. to the UK economy as a whole?
  - d. to UK consumers?
3. What other factors affect competition in the spare parts market and how great is their effect compared to design protection? (e.g. warranties, franchises, insurance companies.)
4. Which industrial sectors or products, other than the automotive sector, would or could be affected by this proposal?
5. Do you have any comments on the particular wording of the proposed Article 14 (1)?

6. Do you agree that there should be a legal requirement for consumers to be informed as to the origin of spare parts (see proposed Article 14 (2))? Do you have any comments on the proposed text?
7. Do you have any comments on the Partial RIA?
8. Do you have any other comments?

## **Background**

17. This proposal seeks to amend existing EC design protection legislation (Directive 98/71/EC), which harmonised most aspects of registered design protection across Europe. Design in this context means the visible appearance of an object, not its technical features. The objective of design protection is to grant exclusivity in new and original designs thereby providing a return on the investment made and an incentive for new design.

18. The proposal concerns design protection of spare parts intended to restore the appearance of complex products (products which are composed of multiple components). An important example of such a product is a motor vehicle. The proposal seeks to liberalise the market in visible spare parts (the “aftermarket”).

19. The original sale of such a product provides the initial opportunity for the designer to recoup their investment via design protection. Should the product be damaged (e.g. in a car crash) then there is a question over whether or not the designer should have a further monopoly over the spare parts used to restore the visible aspect of the product. As the parts used in this case “must match” in order for the repaired product to regain its original appearance, design protection can result in a monopoly in the aftermarket.

20. In the UK at the moment there is a liberalised regime for visible spare parts used for repairs and so the customer can shop around for the best deal on the parts required (the UK has a so-called “repair clause”). However, in other parts of the EU (e.g. France and Germany) the original manufacturer retains monopoly rights over these parts.

21. Under current UK law, the right in a registered design of a component part (i.e. spare part) is not infringed when used for the repair of a complex product so as to restore it to its original appearance. This allows independent manufacturers of spare parts to compete in the spare part aftermarket without risk of infringing the registered designs of the original manufacturers, and has resulted in the development of a strong independent sector offering alternatives to, and competing with original manufacturers in the repair aftermarket.

22. The substance of this proposal was contained in the original proposal for Directive 98/71/EC. At the time agreement could not be reached and instead the compromise “freeze plus” solution contained in Article 14 of Directive 98/71/EC was reached. This meant that the Member states (some liberalised, some with a monopoly in the aftermarket) could amend their laws so as to provide for greater liberalisation but amendment resulting in less liberalisation was not permitted. The intention was that greater liberalisation would eventually be achieved at the national level but in fact no significant changes have occurred since in the Member States.

23. The current proposal would, if agreed, introduce a “repair clause” into the laws of other Member States along the lines of the one which already exists in the UK. However it should be noted that the particular form of the proposal differs from that in UK law. UK law states that design rights are “not infringed” by use of must-match parts for repair but the proposal’s construction is that protection “shall not exist”.

24. Additionally, an obligation would be introduced to inform consumers about the origin of parts so as to enable them to make an informed choice.

25. Further information on the proposal may be found in the Commission’s Explanatory Memorandum and Extended Impact Assessment, which are available on their designs page. [http://europa.eu.int/comm/internal\\_market/en/indprop/design/index.htm](http://europa.eu.int/comm/internal_market/en/indprop/design/index.htm)

**DESIGN PROTECTION  
FOR SPARE PARTS**

**CONSULTATION RESPONSE FORM**

**The closing date for this consultation is 31 May 2005**

The Patent Office may be required by the Freedom of Information Act 2000 to make available, on public request, individual consultation responses. This will extend to your response. If however your response contains information which you regard as confidential, please let us know and give your reasons for treating the information as confidential.

Name: \_\_\_\_\_

Organisation (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Return completed forms to:

Pierre Oliviere  
Intellectual Property and Innovation Directorate  
The Patent Office  
Cardiff Road  
Newport  
NP10 8QQ

Phone: 01633 814493

Fax: 01633 814922

Email: [Pierre.oliviere@patent.gov.uk](mailto:Pierre.oliviere@patent.gov.uk)

Which of the following best describes your organisation (choose one):

	Small to Medium Enterprise
	Representative Organisation
	Trade Union
	Interest Group
	Big Business
	Local Government
	Central Government
	Other (please describe):

**Question 1.**

Should the UK seek:

- a. to maintain the current status quo in Europe? (i.e. Member States may only make changes in their laws which liberalise the market in spare parts but do not have to.)
- b. to ensure a harmonised spare parts market which is liberalised?
- c. to ensure a harmonised spare parts market which provides registered design protection for a limited time? If so, how long should such protection last?
- d. to ensure a harmonised spare parts market which operates on the basis of a compulsory licensing and remuneration system? How long for? Or
- e. some other system? Please give details.

a       b       c       d       e     

Comments:

**Question 2.**

Can you put a figure on the cost or benefit of this proposal:

- a. to your business?
- b. to your sector?
- c. to the UK economy as a whole?
- d. to UK consumers?

a - Comments:

b - Comments:

c - Comments:

d - Comments:

Other comments:

**Question 3.**

What other factors affect competition in the spare parts market and how great is their effect compared to design protection? (e.g. warranties, franchises, insurance companies.)

Comments:

**Question 4.**

Which industrial sectors or products, other than the automotive sector, would or could be affected by this proposal?

Comments:

**Question 5.**

Do you have any comments on the particular wording of the proposed Article 14 (1)?

Comments:

**Question 6.**

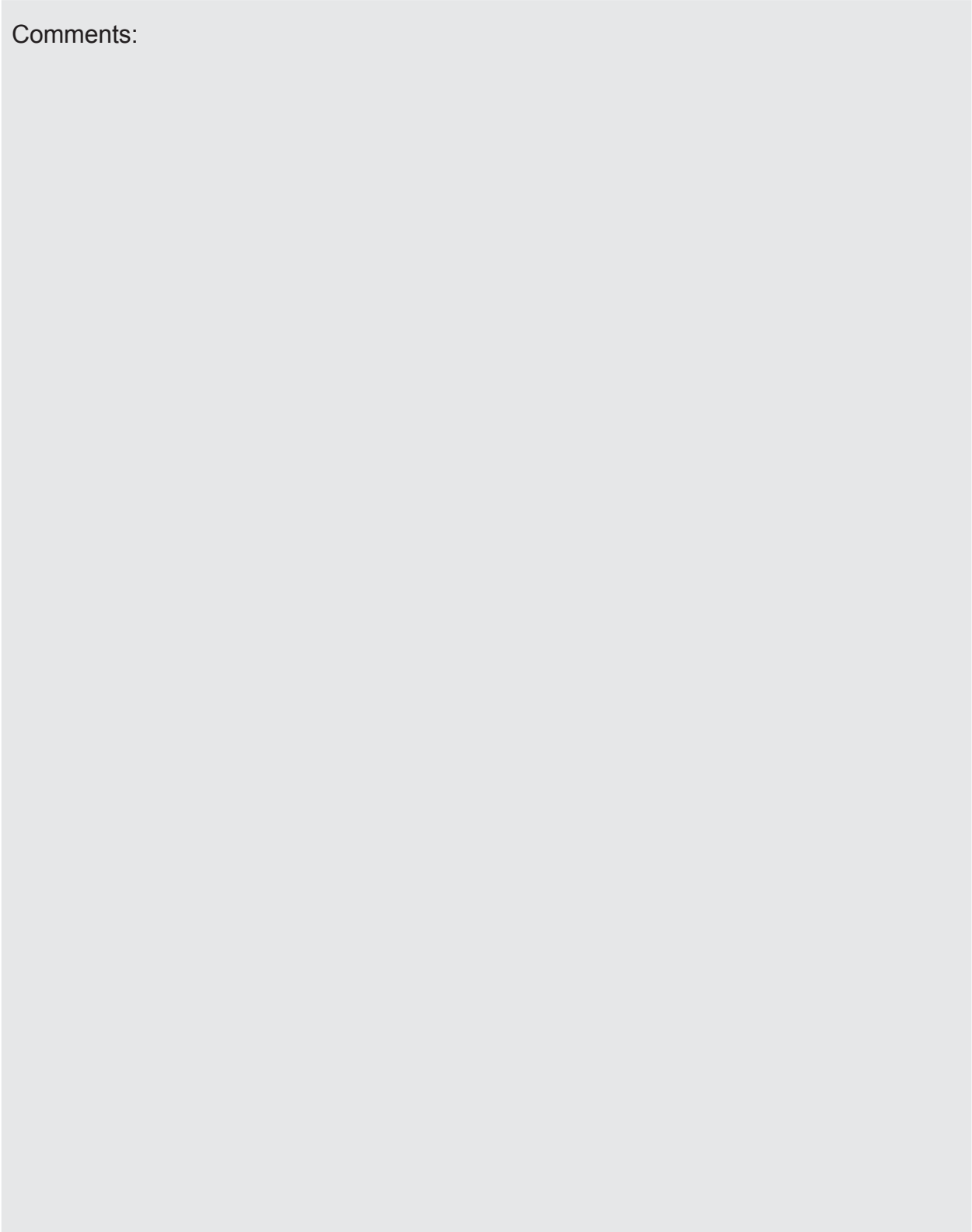
Do you agree that there should be a legal requirement for consumers to be informed as to the origin of spare parts (see proposed Article 14 (2))? Do you have any comments on the proposed text?

Yes

No

Not sure

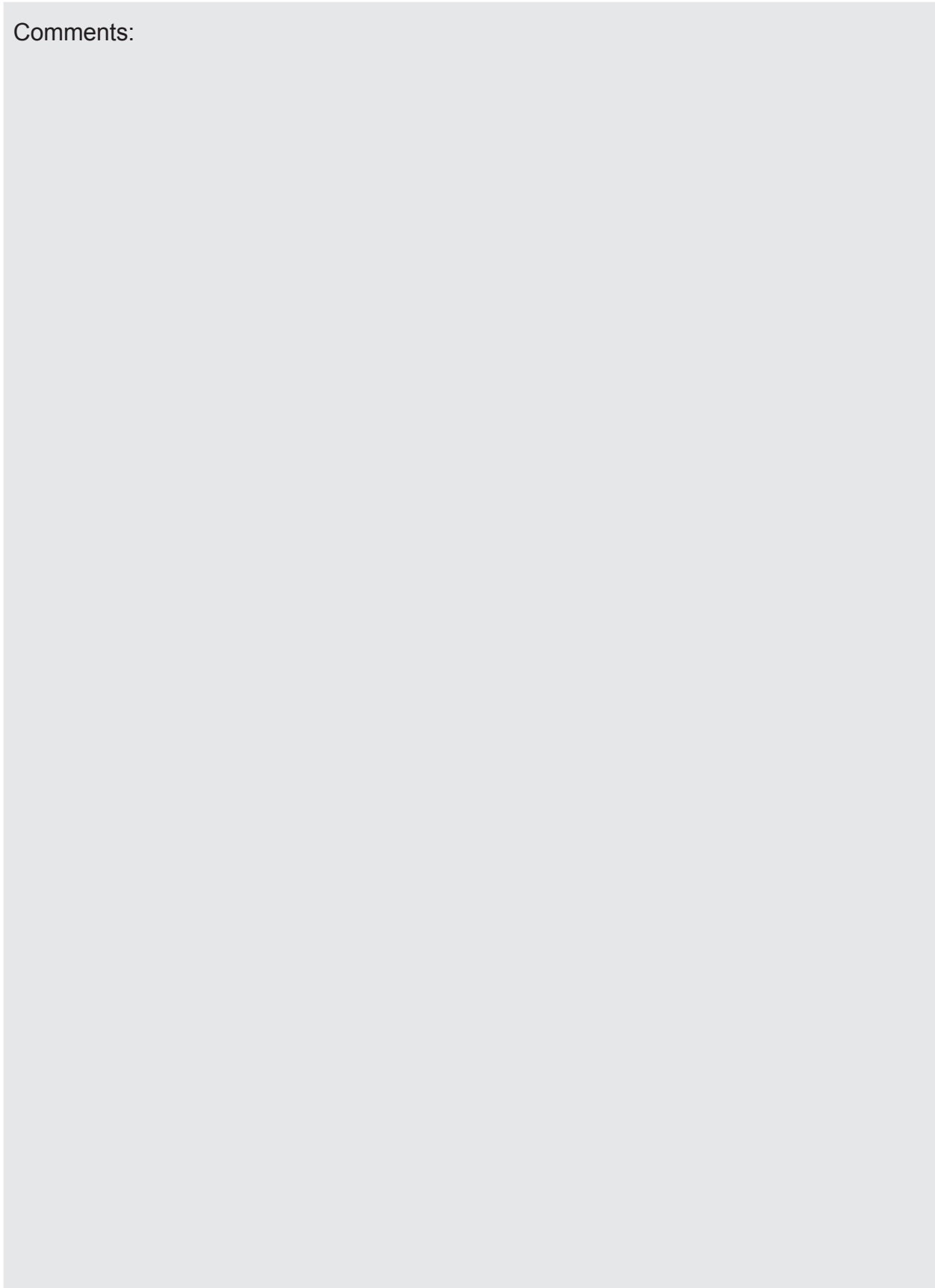
Comments:



**Question 7.**

Do you have any comments on the Partial RIA?

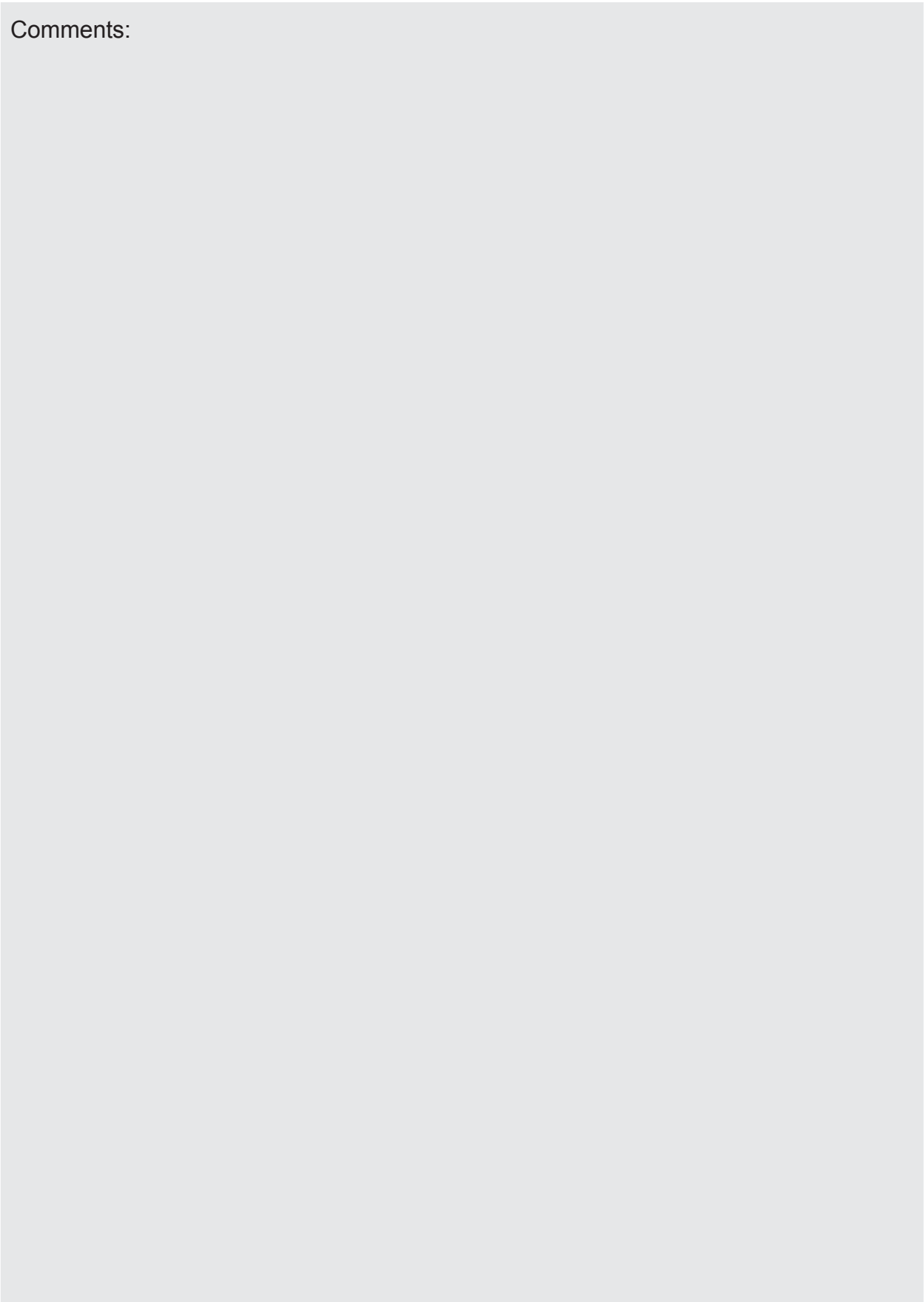
Comments:



**Question 8.**

Do you have any other comments?

Comments:



**Do you have any other comments that might aid the consultation process as a whole?**

*Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.*

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

**Please acknowledge this reply**

Here at the Patent Office we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

Yes    No

## THE COMMISSION'S PROPOSED DIRECTIVE

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 Commission,

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

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

(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;

(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 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

## RECIPIENTS OF THIS CONSULTATION

Copies of this consultation document have been sent the following organisations. Copies have also been sent to a number of individuals.

ABPI  
ACID  
ADF  
Agricultural Engineers Association  
Allvoice  
Anti-Counterfeiting Group  
Arnander Irvine & Zietman  
Ashurst Morris Crisp  
Association of British Insurers  
AURIL  
Babcock International Ltd  
Baker & McKenzie  
Bar Council  
Belron International Limited  
Beresford & Co  
Berwin Leighton Paisner  
Biotechnology and BSRC  
Boult Wade & Tennant  
BPP Leeds IP Group  
British Generics Manufacturers Association Ltd  
British Library  
British Pharmaceutical Group Ltd  
British Poultry & Meat Federation  
British Retail Consortium  
Cardiff Law School  
Chartered Society of Designers  
Chemical Industries Association  
CIMMYT  
CIPA  
Clifford Chance  
Competition Law Association  
Confederation of British Industry  
Consumers' Association Ltd  
Crafts Council  
Cranfield University  
Crop Protection Association  
Cruickshank & Fairweather  
Davenport Lyons  
Deloitte & Touche  
DTI  
Dyson  
EC Laws Committee - LES Britain & Ireland  
ECAR  
Eureka Manufacturing Co. Ltd

Europe Analytica  
Federation of the Electronics Industry  
FICPI  
Frank B Dehn  
Freshfields  
Gallfent & Co  
Gill Jennings & Every  
Greenpeace  
Harbottle & Lewis  
Howrey Simon Arnold & White  
Incorporated Society of British Advertisers  
International Chambers of Commerce  
Inventorslink Inc  
IPLA  
ITMA  
Lancaster University  
Linklaters & Paines  
Lodestar Translations  
Lovells  
Magister Ltd  
Marketforce Communications  
Mewburn Ellis  
Microsoft Ltd  
Mishcon de Reya  
MoD  
Motorcycle Action Group  
Nokia  
Norton Rose  
Office of Government Commerce  
Olswang  
Pfizer Limited  
Pilkington Technology Centre  
PJB Publications  
Practical Law Company  
Preventative Medicines Tech Inc.  
RMIF  
RWS Group  
SCRIPT  
SIBLE University of Sheffield  
Simmons & Simmons  
SMMT  
Society of Numismatic Artists & Designers  
State Patent Bureau of the Republic of Lithuania  
Taylor & Meyer  
The British Brands Group  
The British Motorcyclists Foundation  
The Law Society  
The Law Society of Scotland  
TMPDF

Unipart  
University of Alicante  
University of Cambridge  
University of London Queen Mary & Westfield College  
University of Oxford  
Urquhart-Dykes & Lord  
Visteon Global Technologies  
Wedlake Bell

## CODE OF PRACTICE

### THE CONSULTATION CODE OF PRACTICE CRITERIA

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
7. The complete code is available on the Cabinet Office's web site, address <http://www.cabinetoffice.gov.uk/regulation/docs/consultation/pdf/code.pdf>

## PARTIAL REGULATORY IMPACT ASSESSMENT

### 1. Title of proposal

1.1 A proposal for a Directive of the European Parliament and of the Council amending Directive 98/71/EC on the legal protection of designs. (COM (04) 582 final)

### 2. Purpose and intended effect of measure

#### (i) The objective

2.1 This proposal seeks to amend existing EC design protection legislation (Directive 98/71/EC), which harmonised most aspects of registered design protection across Europe. The directive left national provisions on spare parts unharmonised, but subject to a “standstill” clause (i.e. changes permitted only in the direction of greater liberalisation). The proposal concerns design protection of spare parts intended to restore the appearance of complex products (products which are composed of multiple components). An important example of such a product is a motor vehicle but various other consumer goods fall within this definition. The proposal seeks to liberalise the market in visible spare parts (the “aftermarket”), by limiting manufacturers’ design rights for complex products to the primary market.

#### (ii) The background

2.2 The objective of design protection is to grant exclusivity in new and original designs thereby providing a return on the investment made and an incentive for new design. The original sale of such a product provides the initial opportunity for the designer to recoup their investment via design protection. Should the product be damaged (e.g. in a car crash) then there is a question over whether or not the designer should have a further monopoly over the spare parts used to restore the visible aspect of the product. As the parts used in this case “must match” in order for the repaired product to regain its original appearance, design protection can result in a monopoly in the aftermarket. The UK motor spare parts market had a turnover of €16 billion in 2002, in France and Germany this figure was €22 billion and €55 billion, respectively<sup>1</sup>.

2.3 In the UK there is no such monopoly in visible spare parts used for repairs and so the customer can shop around for the best deal on the parts required (the UK has a so-called “repair clause”). However, in other parts of the EU (e.g. France and Germany) the original manufacturer retains monopoly rights over these parts.

#### (iii) Risk assessment

2.4 Currently, 16 EU Member States have design protection in the spare parts aftermarket and 9 (including the UK) have a liberalised regime. Therefore, spare parts currently cannot be traded freely within the whole of the European Community so the market for independent spare parts producers is restricted. Consumers, such as repairers, are therefore limited in their choice of suppliers of spares parts and may be uncertain as to the legality of certain sources of supply.

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<sup>1</sup> EU (2004) Extended Impact Assessment SEC(2004) 1097

### **3. Options**

3.1 Option 1: Do nothing

3.2 The current status quo would continue. EU Member states (some liberalised, some with a monopoly in the aftermarket) can amend their laws so as to provide for greater liberalisation but amendment resulting in less liberalisation is not permitted.

3.3 Option 2: Support the Commission's proposal.

3.4 This would liberalise the laws of other Member States along the lines of the situation which exists in the UK already resulting in full harmonisation with minimal action required on the UK side.

3.5 Option 3: Introduce a short term of design protection in the aftermarket for spare parts.

3.6 This would require changes to the legal regime in the UK and a readjustment to this new situation by all UK participants in the spare parts market. Furthermore, the UK legal system may need to cope with more litigation.

3.7 Option 4: Introduce a remuneration scheme.

3.8 This option would also require an amendment to current UK law. The market would be harmonised with independent spare parts producers able to access the market at a cost. A new layer of bureaucracy would be required to administer the system.

3.9 Option 5: Introduce a combination of short-term design protection and remuneration

3.10 This would have the same implication as implementing both options 3 and 4.

### **4. Benefits**

4.1 Option 1: No adjustment is required on the part of industry and no legislative changes are required, hence there is no change in benefit, or in the distribution of it.

4.2 Option 2: The single market would be completed in a manner which is consistent with the current position in the UK. Harmonisation of EU laws would help both consumers, such as repairers, insurers and drivers, and producers to determine opportunities for legal sources of spare parts supply, other than from vehicle manufacturers. This will help reduce the cost of entering into market transactions. It is also likely to boost competition in the EU as a result of removing a legal barrier to entry to the market in spare parts. In the US, where in most states the market is liberal, there are significant differences in prices charged by original equipment manufacturers and non-original equipment manufacturers for various car parts and car models<sup>2</sup>. Independent spare parts makers from the UK, and other countries, would be able to access previously restricted markets in other EU Member States. If non-original parts suppliers are able to increase their market shares in other countries, then it may be profitable for them to offer UK consumers a greater choice in the spare parts market. This is the preferred option at this stage.

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<sup>2</sup> EU (2004) Extended Impact Assessment SEC(2004) 1097

4.3 Option 3: The manufacturers of original parts (e.g car makers and some consumer goods manufacturers) would retain monopoly rights over spare parts that may be needed to restore the appearance of their products (estimated to be a market worth € 9 to 11 billion<sup>3</sup> for car parts) for a limited period. This would allow these manufacturers a longer period to recoup their investment in design. Providing that the size of the market is large enough and the likelihood of success is high enough then UK spare parts suppliers may be able to enter spare parts markets in EU countries where the design rights exist in the after market, after an initial period of protection, but this is by no means guaranteed.

4.4 Option 4: Original parts manufacturers would still obtain some further benefit from the sales of design protected spare parts while independent producers would have conditional access to the spare parts market, though depending on the terms of the remuneration scheme, entry may be unprofitable. Hence the outcome could be much like Option 3.

4.5 Option 5: The manufacturers of original parts would enjoy an increased return on their investment in design. The benefits for UK spare parts producers entering EU markets currently protected by design rights is likely to be lower than in either option 4 or 5, unless either the limited period of protection or remuneration rate were to be reduced in comparison to each of these options.

### **Business sectors affected**

4.6 The main sector affected is the car industry and suppliers of visible spare parts for cars. Broadly speaking, the players in this market are:

- Original equipment manufacturers, who may supply both vehicle manufacturers and repairers;
- Non-original equipment manufacturers, who supply repairers;
- Vehicle manufacturers, who may also supply the repair market;
- Repairers;
- Insurance companies, who are often the purchasers of spare parts.

### **Issues of equity and fairness**

4.7 The usual balance present in the case of intellectual property rights applies, namely between the need to encourage innovative investment, on the one hand, and the cost to consumers on the other. In this case it is the ability of design right holders to recoup their investments weighed against the need of the public to repair goods they have bought. The liberalisation option set out in the proposal, which broadly coincides with current UK law, still permits rights owners the opportunity to recoup their investment on the first sale of the product. Subsequently, however, the public can then choose to go to the original supplier or a third party if the product needs to be repaired. This seems to be the fairest option.

4.8 The alternative of extending protection to the spare parts market (options 3, 4 and 5) would mean that original manufacturers would have the opportunity to set the price not only of the original product but also of the visible spare parts which may be needed to repair it later. Consumers would be denied the choice they currently enjoy in the spare parts market and third party suppliers would face barriers to entry.

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<sup>3</sup> SEC(2004) 1097

## 5. Costs

### (i) Compliance costs

#### 5.1 Option 1: None

5.2 Option 2: Minimal costs to UK operations. With the likelihood of increased competition, there may be a redistribution of benefits for companies in European countries. For instance, vehicle manufacturers will face stiffer competition in countries where design protection for the after market exists. On the other hand, non-original equipment manufacturers could enter these markets.

5.3 Option 3: The independent spare parts sector would be excluded from markets in which they were previously allowed to operate and this could result in redundancy of stock, equipment or even staff. Furthermore, repairers may end up sourcing supplies exclusively from vehicle manufacturers if the limited period of exclusivity is long relative to car life cycles, particularly if production runs for non-original equipment suppliers are small, leading to higher costs. Suppliers would also need to spend more to monitor whether their rights are being infringed. UK consumers are likely to lose out through a reduction in competition.

5.4 Option 4: Companies would need to establish systems to manage the collection and distribution of payments under the remuneration scheme. They would also need to monitor and enforce it. There may also be a cost to Government and suppliers of establishing the rules of the remuneration system. Consumers are likely to be detrimentally affected by the loss of competitive pressure.

5.5 Option 5: Suppliers, consumers and the Government are likely to face a combination of the costs of the options 3 and 4.

5.6 It is not possible to give figures for the cost of each option at this stage. However, options 1 and 2 would have zero or minimal cost implications in the UK while options 3, 4 and 5 would each involve new compliance costs for all stakeholders. Even on this qualitative basis it seems clear that option 2 should be preferred in terms of cost/benefit analysis.

### (ii) Other costs

5.7 As mentioned above, if the Commission's proposal is adopted in its current form, consumers stand to benefit from the increased competition. It is not expected that there will be a significant environmental impact. There may be an effect on employment on an EU level but whether this would be positive, negative or neutral overall is not clear. In any case as the legislative situation in the UK is broadly in line with the proposed liberalised system it seems likely that these effects will be minimal in the UK.

### (iii) Costs for a typical business

5.8 As discussed above, the costs for businesses operating in the UK should be minimal as this proposal is broadly in line with what is currently the situation in the UK.

## **6. Consultation with small business: the Small Firms' Impact Test**

6.1 The Commission consulted SMEs as part of its impact assessment and the results were that, for the automotive sector at least, it is SMEs who stand to gain the most from the increase in competition in the market for visible spare parts. For firms operating solely in the UK, as there is likely to be little change in the legal situation, it may be that the benefit will not be felt directly. However SMEs are likely to find it easier to do business (e.g. importing parts) as the legal situation in the rest of the EU should become closer to that in the UK. The Small Business Service has been consulted and agrees that the proposals are likely to benefit small firms.

## **7. Competition Assessment**

7.1 The competition filter test indicates that there are no substantial competition issues (see annex). The proposal will increase competition in the visible spare parts sector, which will no longer be monopolised by the manufacturers of the original products. However, as the proposal, in its current form, reflects the current position in the UK, it is unlikely that the market will change significantly in the UK as a result of this proposal.

## **8. Enforcement and sanctions**

8.1 On the whole, no enforcement will be needed as design rights are a private law matter. However, there is a requirement in the proposal that customers be informed of the provenance of the parts they buy.

## **9. Monitoring and review**

9.1 This proposal has arisen following an analysis by the Commission of the effects of Directive 98/71/EC in accordance with Article 18 of that directive. The Patent Office will monitor the effect of the proposal according to its usual monitoring and review processes to ensure that the objectives are met.

## **10. Consultation**

(i) Within government

10.1 DTI Legal, Better Regulation Team, DTI Automotive Unit, DTI CCP, DTI EWT, DTI Economist and UKREP.

(ii) Public consultation

10.2 The Patent Office has already issued a web notice in order to solicit initial views from interested parties. This will be followed up with a formal consultation according to established procedures.

## **11. Summary and recommendation**

11.1 It is recommended that option 2 be pursued. This option would bring the law of other EU Member States into line with that of the UK. This would open European markets to UK consumers and businesses at a minimal cost to the UK.

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## ANNEX TO PARTIAL RIA – COMPETITION FILTER TEST

### Description of the Markets Affected

#### Products

The main sector to be affected by the liberalisation of design rights over spare parts is the motor industry. Here there are four main types of products:

- (1) Metal body panels;
- (2) Plastic body panels, such as bumpers;
- (3) Lighting; and
- (4) Automotive glass.

#### Metal body panels

Vehicle manufacturers tend to produce these themselves, both for the primary and the after market. The EC finds the EU market dominated by original equipment manufacturers, leaving 5% for independent producers. In terms of car supply, the EU market is oligopolistic with Renault (10.2%); VW (9.6%); Ford (9.0%); Opel (9.0%); Peugeot (8.0%); Citroen (6.4%); Fiat (5.8%) and Toyota (5.2%) accounting for the majority of sales.

#### Plastic body panels

Vehicle manufacturers are likely to source these from a single supplier and hold the design rights as a separate component.

#### Lighting

Vehicle manufacturers buy their lighting from specialist suppliers, who also supply the aftermarket and compete to supply lighting for vehicles where they were not the original supply. The main European suppliers are Valeo, Hella and Automotive Lighting (merger of Bosch and Magneti Marelli), leading to an oligopolistic market structure.

#### Automotive glass

The supply of these products is similar to that of lighting. This market is also oligopolistic, with Pilkington, Saint Gobain and Glaverbel as the main European suppliers.

#### Geographic Scope

The market is likely to be worldwide.

#### Barriers to entry

- Design rights – lighting products, automotive glass and plastic body parts may be protected by design rights, where they are novel. Patents may also make entry into the lighting and glass products difficult.
- Scale economies – it is likely that suppliers of vehicle manufacturers, or vehicle manufacturers themselves, produce at a greater volume and hence lower unit cost.
- Sunk costs – existing suppliers may have established distribution networks with repairers

## Consumers

Repairers either stock the parts themselves, or purchase them on behalf of insurance companies or vehicle owners. Competitive pressures may force insurance companies to put pressure on repairers to offer them the best deal for spare parts, hence there is some buyer power.

## Competition filter questions

Q1: In the markets affected does any firm have more than 10% market share?

Q2: In the markets affected does any firm have more than 20% market share?

Q3: In the markets affected do the three largest firms have more than 50% market share?

There are not enough data available to answer questions 1 to 3.

Q4: Would the costs of the regulation affect some firms substantially more than others?

No it will not, since UK regulations will be largely unchanged.

Q5: Is the regulation likely to affect the market structure?

In terms of operation of the UK repair market, the situation is unlikely to change. If it does then the change will be pro-competitive, for instance, if by expanding the European market suppliers now find it profitable to supply the UK market repair market.

Q6: Would the regulation lead to higher set up costs for new or potential firms that existing firms do not have to meet?

The new regulation will not affect set up costs for firms wishing to supply the UK market.

Q7: Would the regulation lead to higher on-going costs for new or potential firms that existing firms do not have to meet?

It will not, for the reason that the UK regulations will be largely unchanged and European ones will be harmonised.

Q8: Is the sector characterised by rapid technological change?

The four products under consideration are not affected by rapid technological change.

Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?

It is likely to improve these choices.

## Conclusion

Although there are not enough data to be able to answer the first three questions, there are no major competition issues which arise under this test.