

Industrial property: legal protection of designs

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Parliament and Council managed, at the end of a marathon to reach agreement under the conciliation procedure on the directive on the protection of industrial designs and models (rapporteur: Manuel MEDINA ORTEGA, PES, E). The compromise reached between Parliament and Council with the aid of the Commission, under the co-chairmanship of Lord SIMON, President of the Council, and Nicole FONTAINE, Vice-President of Parliament, primarily concerns Article 14, relating to the "repairs clause", i.e. the conditions subject to which car garages and workshops may carry out repairs (using spare parts supplied by the manufacturer or manufactured by third parties). The solution which the negotiators worked out was to have a "standstill plus", i.e. to freeze the existing legislative situation in each Member State while also allowing any state to liberalise the market further. No obstacle will be allowed to the free movement of the parts in question. The Council abandoned its position of seeking to allow a "free-for-all", i.e. allowing the Member States carte blanche to introduce or change national legal provisions in this area. Parliament made concessions on its preference for a totally harmonised system of fair and reasonable remuneration for right holders for any use of the design of a component part which is used in the repair of a complex product. The other point at issue was the method to be used by the Commission to assess the consequences of the directive after its entry into force (Article 18). Parliament wished to have a provision included in the text requiring the Commission to consult manufacturers of original parts and spare parts, with the aim of arriving at a voluntary agreement between the parties on a system of fair and reasonable remuneration. Parliament finally accepted the Council's request that this provision should not be incorporated into the text after receiving assurances from Commissioner Mario MONTI that the Commission would issue a declaration referring to