Industrial property: legal protection of designs

2004/0203(COD) - 14/09/2004 - Legislative proposal

PURPOSE : amending EU Directive on the legal protection of designs in order to create an internal market for spare parts.

PROPOSED ACT : Directive of the European Parliament and of the Council.

CONTENT : the European Commission is presenting this proposal in a bid to harmonise and complete the internal market for spare parts by adopting the liberalisation route for opening up the market. At the same time it seeks to retain an element of incentive to invest in design since the proposed amendment will not affect design protection for new parts incorporated at the manufacturing stage of a complex product.

Currently, the internal market offers consumers a single market for new cars but no single market for their spare parts. For example, automotive spare parts cannot be freely produced and traded within the Community. This is to the detriment of the consumer and those SMEs seeking a foothold in the spare parts market. Studies indicate that in countries relying on design protection for spare parts, prices are between 6.4% and 10.3% higher. In addition, under the current situation, whereby a mixed protection regime is in place, trade distortions are created.

When EU Directive 98/71/EC on the legal protection of design was adopted there was no agreement on how to liberalise the after market for spare parts. As a result, article 14 of the Directive stipulated that Member States shall maintain their existing laws and may change those provisions only in a way that liberalises the spare parts market. It is this article, which the current proposal is seeking to amend. The amendment introduces provisions for the full liberalisation of the market for spare parts. The repairs clause does not limit the right of design holders but it does prevent 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. In addition, paragraph 2 of the amended Article provides for Member States to ensure that consumers are duly informed as to the origin of spare parts allowing them to make an informed choice between competing parts.

The European Commission suggests that the proposal, if adopted, will be beneficial to consumers, it will help create of climate of competitiveness amongst the business sector – particularly independent spare parts producers, it will help employment and it will help promote health and safety issues relating to spare parts.