



C L E P A
European Association of
Automotive Suppliers

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Statement of CLEPA position on the repair clause

CLEPA is in favour of the Commission's proposed repair clause for the following reasons:

- The repair clause removes the opportunity for car manufacturers to use their design rights in the specific context of visible spare parts, used to restore the initial appearance of a complex product e.g. a vehicle. Adopting the repair clause would firmly align the legal balance between visible parts and non-visible parts which already benefit from free competition expected from the 1400/2002 MVBER.

- The argument raised by car manufacturers that adopting the repair clause would help pirates market fake products with potentially safety issues is wrong :

- Other means exist to fight against pirates, such as false homologation, default of certification, patent and/or trademark infringement);
- Preventing car equipment suppliers from developing adaptable products would actually facilitate the development of pirates' offers, which would then represent the only alternative to car dealer offers for end-users

- Car manufacturers' arguments tend abusively to assimilate pirates with car equipment suppliers: The debate against pirates is not realistic: allowing car manufacturers to continue to use their design rights on visible parts would result in a monopoly worth €10 billion.

- The use of design rights by car manufacturers against visible parts does not aim at protecting their Intellectual Property but instead it distorts competition on the aftermarket:
 - Car manufacturers could still use their design rights against any use not intended to restore the initial appearance of the vehicle (for instance they would still be entitled to use their design rights to prevent the use of their headlamps by another car manufacturer)

- A design right can only be used to protect a design/style, and could not be used to restrict access to a market (CJCE Parke Davis 1968 – Magill 06/04/95/IMS 29/04/04)

- The Commission explanatory brochure on 1400/2002 MVBER (answer N°104) has made it clear that a car manufacturer could not use against a spare parts manufacturer, IP rights, acquired from this spare part manufacturer in the frame of a project development:

“Question 104: If a vehicle manufacturer enters into an agreement with a spare part manufacturer which provides that any intellectual property rights (IPR) or know how that the spare part manufacturer has developed is to be transferred to the vehicle manufacturer, can the vehicle manufacturer use these rights to restrict the right of the spare part manufacturer to distribute the spare parts manufactured using those rights?”

No. Even though the Regulation does not rule out such a transfer of rights, IPRs or know how may not be used by the supplier (vehicle manufacturer or its importer) to restrict the spare part manufacturer's right to sell the spare parts in question to authorised and independent repairers²²⁸. If the supplier were to use IPRs or know how in this way, Regulation 1400/2002 would not apply to its distribution system."

Even though the design of a car is to be attributed to the car manufacturers, some visible parts of a car, such as headlamps and rear-lamps for instance, are initially defined by the car manufacturers by a simple envelope and indeed require the specific know-how and design input of original equipment spare part manufacturers to come to life.

Spare part manufacturers of headlamps have their own design centres and issue style suggestions thanks to technical innovations, which have a definitive impact on the aesthetic and appearance of the final product (e.g. complex shape surface, LEDs, materials...). Spare parts manufacturers have developed their proprietary know-how on regulation compliance, technical performance, manufacturability and tooling design, which is needed for any headlamp project to come to life.

Clearly, the contribution from a spare parts manufacturer must be considered not only in terms of technical contribution but also in terms of aesthetic design, given the process from a simple envelope issued from the car manufacturer to the final product fitted on the vehicle.

Therefore car manufacturers cannot assert to have full and sole ownership on the design of such visible parts. For this reason, most development agreements between car manufacturers and spare parts suppliers provide that any IP rights resulting from the development will be the car manufacturer's sole property.

In CLEPA's view, the repair clause is a correct translation on visible parts of the meaning set forth by Answer 104 of the MVBER explanatory brochure.

- The repair clause does not create any risk of misappropriation of design/style by a 3rd party:
 - In order to restore the appearance of the vehicle, the replacement part (e.g. the headlamp) must be exactly the same as the original one ("must match" obligation)
 - There is no styling competition on the aftermarket: the styling decision by the end user has been made when purchasing the vehicle, and not when repairing a broken headlamp
 - The essence of the design right (protect IP) is definitely not affected by the sale of spare parts to restore the initial appearance of the product.

- The current situation has numerous actual or potential adverse consequences:
 - Double payment by customers for the use of design rights: First payment when purchasing the vehicle; second payment when purchasing the replacement parts;
 - car manufacturers indeed use design rights in order to either prevent the sale of visible parts by spare parts manufacturers (Renault vs Norauto pending lawsuit in France) thus limiting the offer to end users, or to get IP fees which inevitably impacts on prices for end-users.

Lastly, it should be noted that the adoption of the repair clause would not only benefit the EU automotive suppliers, but also the consumers, in terms of price, competitive offers, service and development innovation.
