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## European citizens should not have to wait 10 more years for a real right to repair

Joint call for a clear, unequivocal and immediately applicable EU Repair Clause  
to create an accessible and affordable right to repair

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On the 28<sup>th</sup> of November 2022, the European Commission published proposals for the revision of the EU Design Directive ([COM\(2022\) 667](#)) and the EU Design Regulation ([COM\(2022\) 666](#)). We appreciate the proposals, especially the introduction of an EU-wide Repair Clause in the Design Directive (Art. 19) and the confirmation of a permanent Repair Clause in the Design Regulation (Art. 20a), but believe that the intention behind this inclusion could materialise more efficiently with some targeted improvements.

Both legislative proposals ensure on one side full protection to manufacturers' design rights over their products (such as a vehicle), and avoid on the other side monopolies in after-sales markets on visible spare parts (such as vehicle body panels, headlights, and windscreens) by excluding those for the purpose of repair and replacement from such protection. **Today such Repair Clauses exist only in some Member States.** We strongly support the intention of the European Commission to deploy this approach throughout the entire European Union. Harmonised rules for design protection and exemptions are a major step forward to simplify the EU regulatory framework, and a well-rounded Repair Clause would ensure competition and consumer's choice for visible spare parts, submit their prices to competition, promote innovation and make the right to repair becoming a reality for all European consumers<sup>1</sup>.

Therefore, **we call on the European Parliament and the Council to pay attention to the following issues:**

- An efficient Repair Clause needs to cover both **new and existing designs** to fully benefit the consumers. The European Commission itself recognised that there is "*no broad economic justification*" for maintaining design protection on visible spare parts<sup>2</sup>. Therefore, the European Commission's proposal of a compulsory **10-year transition period** for Member States to implement a Repair Clause in national law is not justified. This will prevent the EU-wide Repair Clause in the Design Directive from having any effect on all existing products for another 10 years, denying consumers the benefit of a right to an affordable and accessible vehicle repair. **We urgently call on the European Parliament and the Council to agree on a shorter and flexible transition period, leaving to Member States the choice of applying the Repair Clause to all designs in advance.** A maximum transition period of up to 3 years would provide sufficient time for Member States to transpose the Directive into national law, while still being able to apply the Repair Clause to existing designs at an earlier date.<sup>3</sup>
- It is also important to ensure **clarity and legal certainty** in the wording of the Repair Clause, so that it applies uniformly and unequivocally to the benefit of all European consumers and businesses. The **undue restriction of the Repair Clause to "form-dependent component parts of complex products only"** (Recital 35), "upon whose appearance the design of the component part is dependent" (Art. 19(1))<sup>4</sup>, and the **unclear and redundant consumers information requirements**<sup>5</sup>, should be removed.

<sup>1</sup> According to a study prepared for the European Commission, between 450 and 720 million EUR would be saved annually by European consumers on automotive spare parts, if there were already a EU-wide Repair Clause in the Design Directive (Herz, Mejer, Effect of design protection on price and price dispersion, MPRA Paper 104137, 1 June 2020). The prices of automotive spare parts significantly increase, in particular in non-liberalised countries, and sometimes represent half of the cost of automotive repairs.

<sup>2</sup> European Commission, [Evaluation of EU legislation on design protection](#), SWD(2020) 264, 6 November 2020

<sup>3</sup> See Annex 1 - Table 1

<sup>4</sup> See Annex 1 - Table 2

<sup>5</sup> See Annex 1 - Table 3

## Annex 1 – Main points & recommendations

Table 1 – Ten more years of unfair monopoly for existing designs in the transition period

- ✗ **Imposing a 10-year transition period on existing designs would create a considerable burden on society:**
- Independent spare part providers will still be kept out of captive markets for spare parts for all existing vehicles and products in certain countries;
  - Holders of design rights will continue to enjoy unfair monopolies on spare parts in after-sales markets in non-liberalised countries;
  - Consumers will continue to pay higher prices in non-liberalised countries;
  - Independent spare parts distributors will still be economically penalised in cross-border trade;
  - Consumers and repairers will continue to face legal uncertainty over the type of product that can be repaired with independent or original equipment;
  - The EU Single Market for repairs will remain fragmented.

✓ **Our recommendation: a shorter and flexible transition period of up to 3 years.**

Art. 19(3) – Design Directive

*“Where at the time of adoption of this Directive the national law of a Member State provides protection for designs within the meaning of paragraph 1, the Member State ~~shall may~~, by way of derogation from paragraph 1, continue at the latest until... [OP please insert the date = ~~ten three~~ years from the date of entry into force of this Directive] to provide that protection for designs for which registration has been applied before the entry into force of this Directive.”*

Table 2 – Restriction of the Repair Clause to “form-dependent component parts” only

- ✗ **The restriction of the Repair Clause to “form-dependent component parts” is unclear and unjustified.**
- Such a restriction is not based on any valid intellectual property principle; it would only create legal uncertainty and restrict consumers’ benefits from the Repair Clause. All that matters is that spare parts are used for the purpose of restoring the product back to its original appearance. This has always been enshrined as such in all existing EU design legislations and in CJEU case law (in particular the Acacia case); there is no justification for additional elements that would unnecessarily limit and make more complex the scope of the Repair Clause, and trigger the risk of legal uncertainty that may harm the development of the circular economy.

✓ **Our recommendation: keep the original wording of the existing EU Design Directive & Regulation.**

Art. 19(1) – Design Directive (& Recitals 34-35)

Art. 20a(1) – Design Regulation (& Recital 16)

*“Protection shall not be conferred on a registered design which constitutes a component part of a complex product, ~~upon whose appearance the design of the component part is dependent, and~~ which is used within the meaning of Article 16(1) for the sole purpose of the repair of that complex product so as to restore its original appearance.”*

Table 3 – Unclear and redundant information requirements on product origin

- ✗ **The information requirements on “product origin” are unclear and redundant.**
- Consumers should not be misled and should make informed choices: this is a crucial condition for well-functioning repair markets. The existing consumer protection legislation (on trade practices<sup>6</sup>, advertisement<sup>7</sup>, and product safety<sup>8</sup>) already ensures that there are meaningful information requirements. It is not in the remit of intellectual property law to (poorly) duplicate such requirements. The proposed wording on the “origin” of spare parts is too simplistic and ambiguous, and it does not address the case of spare parts containing components of multiple origins.

✓ **Our recommendation: avoid unclear and redundant information requirements.**

Art. 19(2) – Design Directive (+ last sentence in Recital 35)

Art. 20a(2) – Design Regulation (+ last sentence in Recital 16)

**[Delete]**

Or

**[Amend as follows Art. 19(2) of the design directive and 20a(2) of the design regulation]**

*“Paragraph 1 cannot be invoked by the manufacturer or the seller of a component part of a complex product who failed to duly inform consumers, through a clear and visible indication on the product or in another appropriate form, about the origin producer of the product to be used for the purpose of the repair of the complex product, ~~so that they can make an informed choice between competing products that can be used for the repair.~~ The definition of “producer” is to be understood as the definition included in Art. 2 (e) of Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety.”*

<sup>6</sup> Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

<sup>7</sup> Directive 2006/114/EC of 12 December 2006 concerning misleading and comparative advertising.

<sup>8</sup> Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety.

## Annex 2 – Facts & figures

<b>13 out of 27 EU Member States</b>	<p>regretfully still allow vehicle manufacturers to enjoy <b>full design rights both on the overall design of a car, and on each of its visible ‘must-match’ spare parts</b> such as body panels, car bumpers, lighting and windscreens. This creates a monopoly on the repair aftermarket to the detriment of independent operators.</p> <p>Among the remaining ones:</p> <ul style="list-style-type: none"><li>• 10 Member States have introduced a Repair Clause in their national design law, allowing the liberalisation of the automotive aftermarket to independent spare part producers to the benefit of European consumers.</li><li>• 4 Member States apply a mixed regime, partially open to competition.</li></ul>
<b>“Fair and effective competition is undermined”</b>	<p>when design rights apply on must-match visible spare parts<sup>9</sup>, according to the <b>European Commission</b>. The Economic and Legal Review found that there is <b>“no economic justification”</b> to maintain design protection.</p> <p>The European Parliament<sup>10</sup> also called on the European Commission to introduce a EU-wide Repair Clause.</p>
<b>16.3 billion €</b>	<p><b>The total annual sales of visible automotive spare parts in the EU (2019)</b>. Out of these:</p> <ul style="list-style-type: none"><li>• Body panels (e.g., bumpers, wings, bootlids) represent around 75% of sold spare parts.</li><li>• Integrated lighting (e.g., front and rear lamps) represent around 13%.</li><li>• Automotive glass (e.g., windscreens and windows) represent around 12%.</li></ul>
<b>Between 450 and 720 million €</b>	<p>would be <b>saved each year by European consumers</b> on automotive spare parts<sup>11</sup>, if there were an EU-wide Repair Clause in the EU Design Directive.</p> <p>The cost of design protection on automotive spare parts is <b>an important and growing expenditure item for consumers, to the sole benefit of vehicle manufacturers</b>:</p> <ul style="list-style-type: none"><li>• Countries without a Repair Clause have seen a price increase of automotive spare parts over the recent years (+11% in France from 2017-2019; up to +13% for some brands).</li><li>• The cost of spare parts alone represents approximately half of the price of vehicle repairs in non-liberalised countries<sup>12</sup>.</li></ul>
<b>69 %</b>	<p>of all sold visible automotive spare parts in the EU are <b>OEMs’ (Original Equipment Manufacturer’s)</b><sup>13</sup>, and are therefore bearing the vehicle manufacturer’s trademark (even though a majority of them is produced by the OESs (original equipment suppliers)). OEM authorized workshops count for a lower share of sales in liberalized countries (29%) than in non-liberalized countries (41%).</p>
<b>80 %</b>	<p>of total <b>imported automotive spare parts</b> produced outside the EU are used for the purpose of <b>vehicle manufacturing</b> (first assembly by vehicle manufacturers). Imported independent automotive spare parts account for a marginal share (20%, value of 1.3 bn€).</p> <p><b>The Repair Clause does not increase imports</b>: EU Member States with a national Repair Clause have not seen an increase of imported independent spare parts resulting from liberalisation.</p>
<b>500 000 companies &amp; 4.3 million workers</b>	<p>are involved in the <b>European independent automotive aftermarket</b>, many of them SMEs. An EU-wide Repair Clause would increase the development, growth and innovation potential of independent manufacturers, workshops and service providers.</p>

<sup>9</sup> European Commission, [Evaluation of EU legislation on design protection](#), SWD(2020) 264, 6 November 2020

<sup>10</sup> European Parliament, [An intellectual property action plan to support the EU’s recovery and resilience](#), 2021/2007(INI), November 2021

<sup>11</sup> Herz & Mejer, [Effect of design protection on price and price dispersion: Evidence from automotive spare parts](#), MPRA Paper 104137, June 2020

<sup>12</sup> FEDA, [Libéralisation des pièces détachées : le Gouvernement doit tenir sa promesse](#), March 2021

<sup>13</sup> Wolk After Sales Experts for the European Commission, [Market structure of motor vehicle visible spare parts in the EU](#), September 2021

## Signatories



**AIRC** is the global federation of leading national organisations in the area of repairing damaged vehicles, and building vehicles for commercial use. These member organisations together represent more than 50,000 vehicle repair and vehicle builder companies in many countries.

<https://airc-int.com/>



**CLEPA** is the European association of automotive suppliers, representing over 3,000 companies supplying state-of-the-art components and innovative technologies for safe, smart, and sustainable mobility. CLEPA brings together over 120 global suppliers of car parts, systems, and modules and more than 20 national trade associations and European sector associations. CLEPA is the voice of the EU automotive supplier industry linking the sector to policy makers. Automotive suppliers in Europe generate 1.7 million direct jobs.

<https://clepa.eu/>



**ECAR** is the European Campaign for the Freedom of the Automotive Parts and Repair Market. Established in 1993, it includes 5 independent European organisations representing vehicle parts producers and distributors, a large cross-section of SMEs as well as the interests of 300 million consumers in the European Union. ECAR's objective is the establishment of a harmonised, free and real European Single Market for automotive visible replacement parts: body panels; integrated lighting; automotive glass; rear-view mirrors etc. They are also called “must-match” visible spare parts.

<https://www.ecar-alliance.eu/>



**FIGIEFA** is the international federation of independent automotive aftermarket distributors. Its members represent independent distributors and wholesalers of automotive replacement parts and components and their associated repair chains. The 44,000 companies represented employ over 350,000 people in Europe in their 64,000 outlets, spread across Europe. Many of these companies are SMEs. FIGIEFA's aim is to maintain free and effective competition in the market for vehicle replacement parts, servicing and repair.

<https://www.figiefa.eu/>



**Insurance Europe** is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers pay out over €1 000bn annually — or €2.8bn a day — in claims, directly employ more than 920 000 people and invest over €10.6trn in the economy.

<https://www.insuranceeurope.eu/>



**SMEUnited** is the association of crafts and SMEs in Europe with around 70 member organisations from over 30 European countries. SMEUnited is a recognised employers' organisation and European Social Partner and acts on behalf of crafts and SMEs in the European Social Dialogue and in discussions with the EU institutions.

<https://www.smeunited.eu/>