



# DESIGN RIGHTS

## FOR VISIBLE SPARE PARTS OF MOTOR VEHICLES:

### FAIR AND NECESSARY



The European automobile industry is traditionally a strong supporter of harmonised EU rules. With regard to design rights for visible automotive spare parts, ACEA proposes that the EU maintains and where necessary reintroduces a protection of at least 10 years across the EU. Abolishing design rights, as proposed by the European Commission, would harm competitiveness, lead to a loss of jobs and create no consumer benefits.



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## FACT BOX

### DESIGN RIGHTS EXIST IN MOST EU COUNTRIES

In a majority of EU Member States (17 out of 27), vehicle manufacturers can at present legally protect the design of visible spare parts if these designs are novel and sufficiently distinctive. Such protection implies that third parties cannot copy the design of these parts during the term of protection (maximum 25 years).

### A LIMITED NUMBER OF VEHICLE PARTS IS CONCERNED

The law allows protection for only very few parts per vehicle. Typically, these are exterior body parts such as bonnets, bumpers, radiator grilles, wings, doors and lights. The design of these parts makes a vital contribution to the identity and appearance of the vehicle that is so important for its commercial success.

### AUTOMAKERS DO NOT HAVE A MONOPOLY

These parts account for a small share of the aftermarket (5%) so that design protection cannot be construed as giving vehicle manufacturers a monopoly position. It is generally estimated that vehicle manufacturers and independent producers each hold approximately 50% of the total aftermarket.

### DESIGN RIGHTS ARE COMMON PRACTICE ABROAD

Design protection for spare parts exists equally in Japan, where the term of protection is 15 years. It does not exist in the US but this has caused quality and safety disputes that have led most US states to adopt strict laws regulating the use of aftermarket crash parts. Typically, repairers must inform consumers about the origin of the parts they are using.

### A TEN-YEAR TERM OF PROTECTION IS FAIR

The market for spare parts grows only very gradually after the launch of a new vehicle. According to a study carried out by the French automotive research institute GIPA in 2004, the first five years account for only 11% of bodywork repairs. By contrast, 47% of such repairs take place more than ten years after the vehicle's launch. A ten-year term of protection would therefore still provide copiers with ample business opportunities.

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# THE COMMISSION'S PROPOSAL TO ABOLISH DESIGN RIGHTS FOR AUTOMOTIVE SPARE PARTS :



## 1 DEPRIVES AN INNOVATIVE INDUSTRY OF PROPER RETURNS ON INVESTMENT

Vehicle manufacturers design, develop, engineer and test vehicles and parts. They set up a complex logistics and distribution system for their products and make parts available until ten years after the end of production of the vehicle. Copiers take a free ride on these investments: they simply reverse engineer and sell the most profitable parts for as long as they are in demand. This is unfair competition.

## 2 THREATENS EUROPEAN COMPETITIVENESS AND JOBS

The parts affected by this proposal (bonnets, bumpers, radiator grilles, wings, doors, lights) are almost exclusively produced by vehicle manufacturers in Europe today. If copying were permitted, an estimated 50,000 jobs would be lost to large copiers in Asia. This is in sharp contrast with the conclusions and spirit of the High-Level Group for a Competitive Automotive Regulatory System for the 21<sup>st</sup> century (CARS 21) which was set up by the Commission to strengthen the EU automotive industry's competitiveness.

## 3 CONTRADICTS ITS OWN IPR POLICY

The proposal would abolish the design rights that currently exist in a majority of Member States and permit the copying of spare parts in Europe. At the same time, the EU is stepping up the fight against counterfeiting and piracy. The EU is neither credible nor consistent when it tells the Chinese not to copy European products but would permit the copying of parts within Europe.

## 4 UNDERMINES VEHICLE SAFETY

Before they can be put on the market, vehicles and their component parts must meet an impressive series of technical requirements. Safety tests are an important part of this. However, the EU has absolutely no safety requirements in place for after-market parts. Clearly, a repaired vehicle must be as safe as one that is new.

## 5 BRINGS NO CONSUMER BENEFITS

The abolition of design rights will not lead to lower consumer prices. Authoritative studies have shown that on average, parts prices in Member States without design protection are 7.3% higher than in Member States with protection. Any profits or cost savings that could result from the use of potentially cheaper copy parts are likely to end up in the pockets of parts traders, repairers and insurance companies. There is no consumer benefit involved.

1

## RETURNS ON INVESTMENT ENCOURAGE INNOVATION

Design protection is a legitimate encouragement for innovation. It protects the designer against unfair competition from people or companies who copy without investing in the process or making an effort to innovate. Removing design protection can often be a license for the «free rider» to deprive the innovator of any reward for the commercial risk that has been run, and of the possibility of spreading development costs over a number of years' production. The logic of design protection applies as much to visible parts as it does to the entire motor vehicle.



2

## COMPETITIVENESS AND EMPLOYMENT IN THE EU ARE AT STAKE

With its Lisbon agenda, the EU intends to speed up economic growth and create more jobs through innovation and research and development. With its CARS 21 report (Competitive Automotive Regulatory System for the 21<sup>st</sup> century), the Commission aims to create the proper legislative framework conditions for enabling Europe's vehicle manufacturers to stay competitive. Abolishing design rights for visible spare parts will make it more difficult to achieve these objectives.

### The economic and social consequences of the proposal would be far-reaching:

- # Loss of revenue for the European automobile industry in the range of € 2 billion per year with a direct impact on their profitability in their home market, hampering their investment and innovation capacity.
- # Loss of 50,000 jobs at the vehicle manufacturers and their suppliers in Europe. Most of these lost jobs in new model design and development are high-wage and high-skill and crucial to the industry's future competitiveness.
- # Transfer of most of these jobs to companies in Asia. Large Taiwanese companies are ideally placed to benefit from the proposed liberalization. The two largest copiers of visible spare parts in Taiwan together have a turnover that is higher than the combined turnover of all independent body parts producers in Europe. One of them, TYC, has 11 factories in China and is already buying out small-scale manufacturers and distributors in Italy in order to penetrate the European market if and when it is liberalised. The US market, where Asian body parts manufacturers hold an 80% market share, provides a telling example of what could happen in Europe.

Contrary to what some European lobby groups claim, there will be no job creation within automotive-related sectors in Europe. According to a study conducted by Automotive Business Research Ltd. in 2007, there are approximately 30 independent, small companies producing body parts for the aftermarket in Europe. They are located mostly in Italy and Spain and employ no more than 2,700 people. Many of the parts these companies sell and most of the equipment and tools they use already come from low cost countries outside Europe. Considering their small scale, limited resources and comparatively high labour costs, it is clear that independent European body parts producers stand no chance of competing effectively with the large Asian players.

The only European companies that could benefit from the proposal are parts traders, repairers and insurance companies. They could increase their profits or reduce their costs without necessarily passing these benefits on to consumers. Still, they would not create one single job since the market for replacement parts will not grow. Car drivers tend to replace parts only when it is really necessary, for example when they have had an accident.

Removing design protection for visible parts would inflict a level of economic damage on EU business and employment that would far exceed any potential benefits to parts traders, repairers or insurers.



3

## EU POLICY ON INTELLECTUAL PROPERTY MUST BE CONSISTENT

The global economic costs to public welfare of counterfeiting and piracy are enormous. They include loss of tax revenues to governments, greater risk of physical harm to consumers and serious threats to the future sustainability of businesses in many industrial sectors.

The EU makes great efforts to protect and enforce intellectual and industrial property rights (IPR), both within Europe and elsewhere. The Directive on the enforcement of IPR rightly condemns counterfeiting and piracy as cheating the consumer. It obliges national governments to punish offenders with severe fines and even imprisonment in the most serious cases. In international trade negotiations, the EU always insists that third countries should respect and enforce IPR. This is currently the case in particular with certain Asian countries where copying of spare parts and even entire motor vehicles is widespread.

It is thus surprising to see that the Commission at the same time proposes to abolish certain IP rights, in this case design rights, within Europe. It could create the impression that it is fine to copy spare parts in Europe but not in China. This is both unacceptable and incoherent.

4

## VEHICLE SAFETY DESERVES PRIORITY

The proposal conflicts directly with the pedestrian safety Directive that obliges manufacturers to limit the impact of collisions between vehicles and pedestrians. Sheet metal body parts and their design are crucial elements in determining pedestrian safety and the Directive requires various tests to ensure compliance with its technical requirements. An independent study commissioned by the European Parliament found that «the great majority of parts subject to design rights protection used in crash repair play a direct role in ensuring the safety of pedestrians and other road users with whom vehicles may collide» («The consequences for the safety of consumers and third parties of the proposed Directive amending Directive 98/71/EC on legal protection of design rights», Autopolis/Thatcham, September 2006).

By contrast, it is currently impossible to certify the safety performance of copy parts since the EU has no safety requirements or test in place for such products.

A comparative study concerning an original Ford Fiesta bonnet and various copy bonnets carried out by the independent UK test agency MIRA in 2007 revealed that “the tested copy bonnets produced higher injury levels than the original bonnet with the worst result at location B, where the risk of injury increases from 24% on the original bonnet to 41%”. It concludes that “unless the copy bonnet has been developed and tested for pedestrian protection, it is unlikely to offer the same levels of protection as the original bonnet”.

5





## CONSUMER BENEFITS ARE AN ILLUSION

A main prerequisite of liberalisation should be consumer benefit. The Commission's consultants, Technopolis, came to the conclusion that «the final consumer will not necessarily benefit from liberalisation in terms of lower prices». They assumed that even when copied parts could be produced more cheaply than original parts, the resulting cost savings would not necessarily be passed on to consumers. They expected these savings to remain in the pockets of parts traders, repairers and insurance companies.

There is ample factual evidence to suggest that this conclusion is correct. A study carried out by automotive specialists Eurotax Glass' in 2005 found that on average spare parts prices were 7.3% higher in countries without design protection than in countries with design protection. Germany, with design protection, was the cheapest market with prices 10% below average. Prices in the UK and Hungary, both without design protection, were respectively 17 and 13% above the average. The study compared prices in ten EU Member States and concentrated on the six most relevant spare parts for 73 models covering all major market segments: bonnet, bumper, grille, wing, door and headlamp. 2007 data for the Volkswagen Golf show that these conclusions are still valid today.

In addition to the higher cost of spare parts in countries without design protection, a study carried out by insurance group Allianz concluded that fitting copy parts frequently costs more since they often take longer to fit.

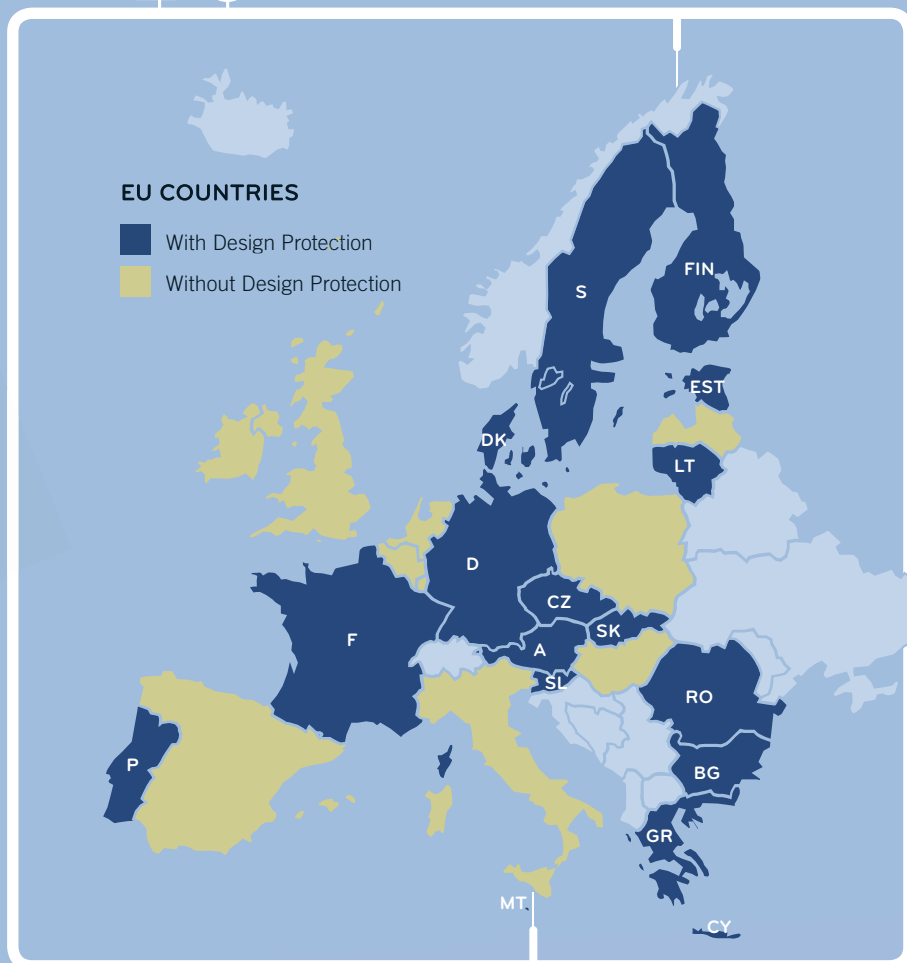
**VW Golf parts prices 2007**

				
Wing	100	90	108	113
Bonnet	100	99	104	113
Rear lid	100	110	129	114
Door Panel	100	126	104	155



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# EU



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