Tatsos

— second, this practice of theirs makes a mockery of any declared desire to see transparency of the Union’s institutional functions,
— third, they bear full responsibility for the lack of trust that Europe’s peoples place in European institutions,
— and fourth, in this way they are projecting a bureaucratic image of democracy, whose result will be to distance Europe’s citizens still further from the unification effort.

President. — I have received a motion for a resolution pursuant to Rule 40(5) of the Rules of Procedure. (1)

Westendorp, President-in-Office of the Council. — (ES) Mr President, I thank Members for the various observations they have made on the Council’s working methods. Probably these criticisms are deserved when we take into account the way the Council itself has acted until recently, but I think the effort which has been made to establish a code of conduct is a step in the right direction. Of course, a code of conduct is not a binding legal measure. It could not be. It is simply a question of a rule governing conduct, a kind of self-discipline for the Council itself when it acts, when it makes its declarations, by which, basically, it undertakes to make these declarations as infrequently as possible. In the second place it undertakes to incorporate points in the body of the measure, in the recitals or in the statement of reasons rather than to issue them as declarations and where, by way of exception, such declarations are made, to announce the fact for the sake of transparency.

This is therefore a 180° turn in the way in which the Council has acted until now. The Spanish presidency has made an effort to arrange things in this way just as we were to a large extent responsible for the introduction of the citizenship chapter in the Treaty on European Union. So I would ask you, as some Members said — I think it was Mr Crowley and Mr Haarder — to wait and see what results this code of conduct produces; we should trust that the Council will follow this line of openness and transparency and only if this code of conduct does not live up to expectations should Members raise the matter again with the presidency of the Council.

Monti, Member of the Commission. — (IT) Mr President, I wish to say how much the Commission appreciates the contributions to this debate and emphasize once again how much importance the Commission attaches to the fundamental values of transparency and — at the same time and in the same terms — respect for the distinction between the roles of the different institutions.

Precisely because it is the guardian of the Treaty, the Commission is the first to be duty-bound to comply with the Treaty. In this context, as Members of this House are aware, the Commission has taken steps to ensure that its own work becomes more visible to the outside world. As regards the publicizing of the Council’s work, that is governed by the Council’s internal rules and only the Council can reply. I have already said that the Commission applauds the changes under way, as outlined by Mr Westendorp.

One speaker mentioned the responsibility of the Commission, not of the Community, but of the Commission as an institution. The Commission has emphasized, as I have reiterated today, that it will exercise caution in its use of declarations, and that it will not make declarations which conflict with the text of the legislative act. At the same time, the Commission believes that it must have a right to see any unilateral declarations which might be included in the Council minutes and, given its role in the legislative process, we feel that the Commission’s views on whether its own unilateral declarations should be made public must be duly taken into account.

In conclusion, I would firmly stress that the Commission believes that it has always complied with its obligations under Article 189(2) of the Treaty and points 1 and 3.5 of the code of conduct with the European Parliament, in particular by keeping the latter informed of its own position. The Commission will therefore inform this House of the content of any future declarations which it makes within the Council wherever necessary.

Cot (PSE). — (FR) Mr President, I just wanted to ask Mr Monti to make one point clear. If I have understood correctly, the Commission reserves the right to make unpublished unilateral declarations, because of their possible incidence on the responsibility that the Community would incur. Is that actually what you are saying?

Monti, Member of the Commission. — (IT) Mr President, the Commission reserves the right to make unilateral declarations, sparingly and with caution, when it really deems it necessary. The Commission also takes the view that the decision as to whether to make public any declarations annexed to the Council minutes is up to the Council. Finally, it believes that, given its role in the legislative process, its own wishes regarding the publication of any declarations it may make must be duly taken into account.

President. — The debate is closed.

The vote will take place tomorrow at 12 noon.

6. Legal protection of designs

President. — The next item is the report (A4-0227/95) by Mr Medina Ortega, on behalf of the Committee on Legal Affairs and Citizens’ Rights, on the proposal for a European Parliament and Council Directive (COM(93) 0344 — C3-0513/93 — 00/0464(COD)) on the legal protection of designs.

Medina Ortega (PSE), rapporteur. — (ES) Mr President, the report I am presenting deals with the legal protection of industrial designs. It is an aspect of intellectual property and actually the protection of designs occupies an intermediate position between the protection of industrial property and that of intellectual property, since there is a very important intellectual element in the protection of the property in designs. I would say that when the history of art in the 20th century is written, probably along with the study of the cathedrals and great painters certain designs will be mentioned, as for example the Coca-Cola bottle, the Duesenberg motorcar or even the Toblerone bar. That is, certain designs have certain artistic characteristics which give them some relevance from the intellectual point of view.

The internal market could not come into being of course if we did not rely on a harmonization of the basic rules regarding legal protection of designs. That is the purpose of the proposal for a directive which is submitted to Parliament today for its approval in first reading. At the same time there is submitted a proposal for a regulation intended to ensure the adoption of uniform rules in this matter, but the question is one of great complexity and that why Parliament’s has taken so long.

The first proposals — the proposal for a directive and for a regulation — were adopted in December 1993. The previous rapporteurs, Mr Bru and Mr van Raay, could not finish their work in the short time remaining to the previous Parliament...
and at the beginning of the new Parliament a new rapporteur was appointed for the directive, whilst Mr van Raay continued as the rapporteur for the regulation. I, as present rapporteur, have needed practically a year to submit this proposal for a directive following ten meetings of the Committee on Legal Affairs, including one important hearing. In the discussions the rapporteur’s points of view were not always accepted by the majority — what the rapporteur does in those circumstances is to note the majority point of view adopted in committee — and I shall refer to those aspects on which the Committee on Legal Affairs considers that amendments should be made to the proposal for a directive.

The scope of the directive is very broad since it covers all registered designs and applications for designs. But the design refers only to the outward appearance of the product. That is to say that we are not concerned with the internal design, the design, for example, of the piston of an engine which is housed in a casing or under a hood. The committee wished to emphasize this external aspect by introducing an amendment, No 2, which stresses the externally visible appearance of the product so as to exclude from protection those parts which are hidden or not visible in an industrial product.

A special difficulty arises in the protection of a design which forms part of a complex product. Article 3(3) refers to this matter. The question is one of protecting the parts of such a product when some of them need to be replaced because of accident, wear and tear or the mere need for embellishment. The proposal for a directive was limited to requiring novelty and individual character for the protection of such parts or pieces. The Committee on Legal Affairs wished to restrict that protection by introducing other requirements, namely the visibility of the piece during normal use of the product when incorporated, with the corresponding characteristics of novelty and individual character and defining normal use as ‘use by the end user’, not including maintenance, servicing or repair; that is, it is not a matter of protecting the embellishment of the product in the workshop, but once the product is assembled, finished and in a position to be used by the consumer.

The raison d’être of the protection of the design is to encourage creativity. Thus there would be no sense in protecting those designs lacking novelty which were a repetition of other previous models. For example it would be hard for the typical square casing of a television set to obtain protection. From this point of view it is essential for determining protection that another identical design shall not previously have been made public, that is, a design which differs soley in minor details. The Commission proposal defines such publication when it has been published prior to its registration or exhibition in any other form, used in trade or otherwise disclosed. Disclosure to a third person under explicit or implicit conditions of confidentiality does not constitute publication (Article 4 of the proposal for a directive). The Committee on Legal Affairs wished to make the requirement of publication a little more exact by means of Amendment No 4. It might happen that such publication, exhibition or use in trade might have occurred in such a way that those events could not reasonably be known to the specialized circles in the relevant sector operating within the European Union before the date on which the application for registration was lodged or the date of priority if such is alleged. That is, the publication must take place within the Union and there must be a reasonable possibility of its being known to the specialized circles in the sector to prevent its being blocked by restricted disclosures outside the area of the Union.

The design can be protected only if it is novel and has an individual character (Article 3(2) of the proposal). According to the Commission proposal individuality arises if the overall impression produced by the design on the informed user differs from the overall impression produced by any other design (Article 3(1)). The Committee on Legal Affairs wished to reinforce that impression by the addition of ‘significantly’ to the verb ‘differs’ so as to place greater emphasis on the impression. Thus it would not be enough for the shape of a radio set to be different; it would have to be significantly different in order to give rise to legal protection and that is the purpose of Amendment No 6 to Article 5(3).

In spite of the short time available to me I must refer also to the amendment to Article 7(2) with regard to the ‘must fit’ requirement, and above all to the most important amendments, Nos 10, 15 and 16, which refer to the so-called repair clause. Under the Commission proposals the repair clause is introduced in the proposal for a directive. The alternative formulae are in Amendments Nos 10 and 16 — it seems that the text of Amendment No 16 might be more acceptable than that of Amendment No 10 — and at the same time a system is laid down which we might regard as a system or principle of compulsory licences.

Mr President, I think, to be brief, that the amendments approved by the Committee on Legal Affairs help to make the text more reasonable and more complete and I hope they will obtain the approval of the various Groups in this Parliament.

IN THE CHAIR: Mr CAPUCHO

Vice-President

Hlavac (PSE). — (DE) We are all in favour of protecting intellectual property and therefore of harmonizing and extending the legal protection of designs and trademarks. The rapporteur has already spoken of that. The Commission had presented both a draft directive and a draft regulation. Originally both were to come under the co-decision procedure. Following a Court of Justice decision, however, we were denied co-decision in the case of the regulation.

I do not want to go into detail here but just note that thereafter we decided to proceed as quickly as possible and put our position to the Council. I welcome the fact that the Council waited for Parliament’s opinion in its deliberations. I want to thank Mr Medina Ortega, the rapporteur, for attaching importance to speeding up the procedure and reaching a decision as rapidly as possible. I also thank him for the fairness with which he described the controversial debate in committee, thereby making it clear what the majority view was.

The central point in our discussion, which was indeed very controversial, was the question of how to treat spare parts. In most sectors that is of no importance, but it certainly is in the car industry. As we know, cars have a high purchase price and a long life. Spare parts are constantly needed because of accidents and wear and tear, so that a large market has formed.

If — as discussed in committee — not only the car itself but the visible spare parts had also come under design protection for 25 years, that would have had considerable economic implications. According to the Commission’s compromise proposal, as from the third year a repair clause would have come into effect. We proposed — after what was indeed extensive discussion — that the repair clause should apply as from the first day. A regulation that protects spare parts in the same way
as the car itself would have affected small and medium-sized enterprises in particular, which in Austria alone would mean 200 to 300 firms and more than 50,000 jobs. But above all, the position of the consumer would have deteriorated seriously, because a car manufacturers’ monopoly would undoubtedly have driven prices up.

I think it must be left to the consumer himself to decide whether he wants an original spare part, possibly at a higher price, or a cheaper spare part. This is particularly important in the case of older cars. So we decided by a majority in favour of a repair clause applying from day one and for a compulsory licence. I am in fact not very happy with this, but it is a question of finding a balanced compromise. That is why I think the solution we have adopted here is in the interests of the European economy and of the consumer.

Alber (PPE).—(DE) Mr President, ladies and gentlemen, a layman would certainly think that the protection of industrial design is an uninteresting and harmless affair, in a sense just a routine matter that affects few people. In reality, of course, it affects a market worth billions. And the problems are not so much legal as of an economic and financial nature. In political terms it is almost a question of squaring the circle, that is to say of protecting intellectual property, which is linked to remuneration, of which we are of course all in favour, and also of free access to the market, of the internal market, of competition. It is also a question of interests, in terms of prices and insurance. It is almost impossible to cater for all this together. Firstly, we are concerned with the financial interests of large industry, secondly with those of small and medium-sized enterprises, i.e. of the suppliers, and thirdly of course with those of the consumers, who in their turn are interested in low prices. There are implications for insurance and so forth.

Of course it would have been nice if everything could have been discussed as a whole so that we could obtain a consistent result. Nearly two years ago, in December 1993, the Commission presented two proposals, a regulation and a directive. The regulation is needed so that we can finally achieve uniform, Europe-wide rules. Unfortunately, the European Court of Justice decided that Article 100a could not be used as a legal basis because of the GATT effects, but that Article 235 applied instead. For us of course that creates an enormous dilemma. But perhaps one could anticipate Maastricht II here and involve Parliament. We are actually opposed to having no more than an alibi function with regard to democratization and legitimization in such an important matter.

Much of this could have been easier for us, because the directive, which is merely concerned with harmonizing what already exists, does not now deal with all the problems and they cannot all be resolved.

For reasons of time I will therefore confine myself to just a few points. We have settled the most important matters by defining the criteria of legal protection, namely the new and individual character of a product, rather more closely. Here we have concentrated on the visible parts, which I believe is the right thing to do.

The main point of dispute is, of course, as mentioned, the repair clause. Here the question arises: should a deadline be fixed or not? I think it would be sensible basically to choose either none or 25 years, otherwise we will just have a compromise that satisfies no-one. The Committee on Legal Affairs and Citizens’ Rights decided by a majority on none. I consider that sensible, especially because the rules on spare parts are so decisive in the car sector, as the previous speaker mentioned. So if spare parts are now allowed to be copied, the protection of intellectual property will of course suffer. Therefore it is only logical also to establish a certain obligation to provide compensation. In terms of legal theory, this wide area would of course also have to be incorporated in the regulation, but here we have little say.

To make sure no-one can say we are representing the interests of lobbies, we have submitted a coherent compromise and therefore actually included a compensation clause in the draft directive, although, as I have said, it does not really belong there in terms of legal theory. Of course that greatly restricts the facts of the case, which is why many people will not agree with it at all. Many people say the design is often developed by the supplier, while others assert our approach is anti-consumer. All this still needs clarifying in detail. What is now contained in the amendments, for instance in Amendment No 15, is only the legal establishment of an idea but not the final formulation of that idea. I want to lay special emphasis on that. That is why I would again call on the Commission at this point really to consider Parliament’s proposals when it deliberates on the regulation and not just to take note of them but to look at them in terms of quality and content too. Otherwise there is no point in our considering them in detail.

In short I may say: we have certainly not managed to square the circle but we have managed to bring the various interests together in a somewhat more coherent manner. So I would be glad if the majority of this House could accept the amendments tabled by the Committee on Legal Affairs and Citizens’ Rights.

Schaffner (UPE).—(FR) Mr President, in order to understand what is at stake in terms of economics and employment covered by the legal protection of designs and models, it is necessary to bear in mind, at all times, the growing importance design is acquiring in our culture. This is indeed an area where Europe has the reputation of being more creative than its principal competitors. If we wish to maintain and develop this competitive advantage fully, it is necessary to provide intellectual property rights with adequate legal instruments.

That is why it is important, as proposed by the Commission and accepted by the Committee on Legal Affairs and Citizens’ Rights to provide protection for unregistered models. This is essential for some sectors of industry, where products have a short shelf-life and a large number of designs and models are created. This kind of protection is absolutely necessary to defend these creations against imitations and forgeries. We are concerned here with a highly competitive global market, where information circulates in real time.

As to the fiercely debated compensation clause, it seems to me essential to insist on the need for it to conform with both the letter and the spirit of the GATT ADEPIC agreement, which provides a minimum of ten years protection for designs and models. The adoption of a compensation clause lasting less than ten years constitutes a dangerous precedent, which would allow certain countries to find an excuse to avoid the obligations arising from the GATT. Likewise it should be noted that the Geneva Convention also provides a minimum of ten years protection.

My final point, which I wish to stress, is the principle of absolute novelty. That has never prevented protection from being broad and powerful. It is the only simple and objective principle. Relative novelty, based on knowledge of specialized sectors in the Community, is a dangerous idea. Its interpretation, necessarily subjective, will be a source of contention. Its application would provoke abuse — copies of third countries’
models - and carries the risk of retaliatory measures from those countries.

This directive and the discussions it raises are the true reflection of what President Herzog told us yesterday. Europe's two souls are clashing. Our role, of course, is to reconcile those two souls. But we must take care that the mentality of the consumer does not sweep away the mentality of the producer, thus losing his soul, but also his job and his security.

Wijzenbeek (ELDR). - (NL) Mr President, preparation of this report has been a very level-headed affair. For that alone the rapporteur is to be complimented. But it is clear too that in those areas where we have compromised, no one is really happy so far with all aspects of the compromise we have reached. But in any event I can say, on behalf too of my fellow-Liberal Mr Gasoliba who was the draftsman of the opinion of the Economic and Monetary Affairs Committee, that my Group will not be withholding its support from the report.

But we have also been greatly subject to outside influences. It is obvious, and the previous speaker said so too, that there is a conflict between the consumer and the designer of a product. It is my firm belief that the design holder or designer has for a long time been losing out somewhat. That is certainly true when on the other hand we say: there is the consumer's interest to be thought about; there is the insurers' interest, and we must not overemphasize reparability.

But it is also true that industry has for far too long made repair costs much too expensive and thus artificially brought down the price of new models. That is so not only with cars but with many industrial goods.

So it is clear that a design which merits protecting must have commercial freedom if it is to circulate in a truly single market. For us Liberals this must always be a paramount concern of the legislation. Consequently we shall support this report, even though it is not altogether on target. I persist in my view that the idea of 'made to fit' leaves far too much margin for interpretation.

Ullmann (V). - (DE) Mr President, ladies and gentlemen, as has been mentioned, the deliberation process on the directive was extremely lengthy, thorny and hampered by procedural difficulties. That is why we should begin by extending very great thanks to the rapporteur, whose work sometimes had to verge on a war of attrition. However, the result is something to be proud of and in that respect I do not agree with many of the previous speakers.

The draft directive before us is not just an extremely important economic law - because it affects many branches of industry - but also an extremely modern law. Because the definitions in it are so highly formalized, it is very easy to use for the purposes of jurisdiction.

For instance, Article 7 is formulated in such a way that copies required for repairs can also be treated differently in law from the protected design. As a German I can only hope this will be transposed rapidly in our country so that we no longer speak of the old-fashioned tasteful designs of 1876 but can refer to the legal protection of designs.

Berthu (EDN). - (FR) Mr President, the proposal for a directive on the protection of designs and models definitely constitutes progress. Nevertheless, we are surprised to find in Article 14 an arrangement which contradicts the general spirit of the text by limiting to three years instead of twenty-five, in the other cases, the protection of designs and models relating to spare parts. We are told that this measure will reduce the price of these parts. But this reasoning, even admitting that the facts support it, and that is far from certain, seems inconsistent to us from a logical point of view. In fact the protection of intellectual property in designs and models has the aim of promoting innovation by ensuring that those who have invested in the research and launch of a product will be in a position to recover their investment and reap the fruits of their efforts. This is a general principle of progressive societies which we have, furthermore, promised to respect in signing several international agreements on this subject.

So it would be absurd to exempt ourselves from this general rule for a particular sector. It is almost as if the Committee on Legal Affairs and Citizens' Rights should say to us tomorrow: 'we have a good idea: in order to reduce the price of books, we are going to abolish author's copyright'. You would no doubt take the view, ladies and gentlemen, that such a proposal is absurd and you would be right. The same goes for the protection of designs and models when applied to spare parts. That is why we shall not be voting for Article 14 and neither will we vote for Amendments Nos 10 and 15 which only confuse the question without offering a real solution. The only solution must be the application of the same law in all cases, or, at a pinch, protection for at least ten years, as provided for in Amendment No 16.

Oddy (PSE). - Mr President, I wish to thank colleagues for the patience and conscientiousness with which this difficult industrial design proposal has been considered in the Committee on Legal Affairs and Citizens' Rights.

This is an important economic subject: the inventiveness and creativity of the workers of the European Union are indispensable to the continued economic prosperity of that Union. It is essential we create a practical, legal framework which will permit appropriate economic conditions to ensure continued industrial wealth.

It is necessary to balance the needs of consumers, manufacturers and components manufacturers in the general framework ofintellectual property law. We have had to consider the extent and scope of protection so that it does not overlap with other forms of intellectual property, such as patents, and embodies an appropriate aesthetic test.

Several years of discussion in the Legal Affairs Committee has produced a broad consensus on what should be contained within the definition of industrial design. I wish to flag up to the Commission though that I believe it is important to retain an unregistered, industrial design right for the fashion and textile industry. The last remaining controversial area is the extent to which copying of spare parts should be permitted as an exception to industrial design rights.

The need for choice and fair pricing for the consumer has to be balanced against the need for the manufacturer to recoup research and development costs. The three-year rule proposed by the Commission did not create the best solution, and I support the right to copy ab initio. The price for the original article should reflect the research and development investment of the manufacturer rather than the market in parts.

However, I do not feel that the proposed licence arrangements in Amendments Nos 15 and 10 are a sensible compromise. To be effective, legislation should be clear, simple, practical and avoid unnecessary litigation. I can only see the licence proposal providing a bureaucratic nightmare: it would be overly cumbersome and a target for long, drawn-out, excessive
litigation in determining what is a fair and reasonable remuneration to the primary manufacturer. I can only see the licence proposal resulting in the closure of factories in the components industry, and a consequent loss of jobs.

It is estimated that for every job in the car industry, there are five dependent jobs in the components industry. We simply cannot afford to lose these jobs in the European Union. The car industry is still a major vehicle of economic wealth and a wealth creator, and we cannot afford to lose jobs.

As I represent a constituency rich in both car factories and components factories, I do not wish to see any job losses or any factories closing down.

I will not be supporting the licence clause as I do not feel it would be in the best interests of my constituents in the West Midlands.

Thyssen (PPE). — (NL) Mr President, in a smoothly functioning single market a common system of designs and models is essential. It goes without saying that this will have to coexist with the national systems for a certain time and it also goes without saying that all systems will have to be aligned with each other. So the proposals for a regulation and a directive are both welcome. Both meet a real need, certainly among small businesses for which bureaucracy and legal complexities are always an inordinately heavy burden.

The most controversial parts of these proposals have been addressed both by the Committee on Legal Affairs and Citizens' Rights and the Committee on Economic and Monetary Affairs and Industrial Policy and I think, Mr President, that we have secured a satisfactory end result.

A number of amendments have been put down to ease the concerns of the textile sector; this sector too must be adequately protected and I thus hope that the House will vote for those amendments. We also managed to complete the debate on the repair clause. No protection for a period of 25 years, or even 10 or 3 years, but zero years and I believe this was the best choice. Anyone who needs a replacement part must get the right part, and if that part is protected it can only be manufactured by the model rightholder and I think, Mr President, that such a monopoly is excessive. It dominates the market too much because the purchaser has no alternative.

Amidst the plethora of economic interests at issue here the Committee on Legal Affairs and Citizens' Rights seeks to steer a middle course and have compulsory registration. I would have preferred not to see this because I fear it will generate a lot of red tape and lawsuits but in a first reading, certainly in a first reading, I can live with it, and it is perhaps the most balanced solution.

Mr President, I think it is particularly regrettable that the change in legal base means that, procedurally, two dossiers which belong together are being separated and that we now have to deal with them in an illogical order. But there is a good side to that. Because the regulation is based on Article 245 the Council will have to decide unanimously on the language arrangements for the Design Office. Those who want Danish, Greek, Finnish, Swedish, Dutch and, Mr President, Portuguese too to have an equal chance in the Trademark Office must now put pressure on their governments to face up to their responsibilities, because unless each of our governments agrees, the discriminatory language system applied by the Trademark Office cannot be adopted by the Design Office. Every government now has the chance to speak up for its citizens' interests, and we are counting on them to do so, under pressure from us if need be.

Florio (UPE). — (IT) Mr President, the Commission's proposal for a directive on the protection of designs was the subject of a large number of amendments in the Committee on Legal Affairs. As coordinator of my group, I worked closely with the committee's rapporteur, Mr Medina Ortega, whom I commend on his work, and with the coordinator of the PPE Group, Mr Janssen van Raay, on a scheme to provide protection for designs for ten years, in accordance with the provisions of Article 26(3) of the TRIPS and GATT agreements. But the amendments adopted by the Legal Affairs Committee have radically altered this approach, removing all protection for designs in certain cases, especially that of reproducing them for purposes of repair, subject merely to the offer of reasonable remuneration to the holder of the right.

I would point out that the Commission's text, on the other hand, provides for the protection of designs for a limited period of just three years. It too is out of step with the TRIPS and GATT agreements in this respect.

My group is now proposing to the House, through an amendment to Article 14, that the normal period for the protection of designs should be set at ten years. If this House were to rule that a design can be freely reproduced as soon as it is placed on the market, this would seriously disadvantage the holders of rights, who have nearly always invested substantial sums of money; there would be no protection for the creativity and innovation of European industry. Moreover, the doors would be opened wide to imitations coming from third world countries with low labour costs, with a resulting adverse impact on employment in the European Union.

Gebhardt (PSE). — (DE) It was as though every day was Christmas, at least that is what it seemed like to me in the last few weeks, days and hours, because we received so many friendly letters about legal protection from industry users during that time. However, unlike at New Year, the good wishes were addressed not to us but to the senders themselves. They hoped we would vote in such a way as to ensure that the money rolled in for them. Of course we cannot make it quite so easy for them. Instead, we have to add a repair clause to the protection of designs that applies from day one. That is the only way we can be fair to both sides — the producers and the consumers — and the only way we can protect the designer's intellectual property and protect the consumer against exorbitant repair bills.

The Committee on Legal Affairs and Citizens' Rights decided in favour of a repair clause applying from day one. I consider that right because it will avoid price cartels by producers and suppliers that could lead to exorbitant spare parts prices and repair bills. In the car industry, for instance, it not just be those who were directly affected, but indirectly all drivers would be asked to pay up because of rising insurance premiums.

On the other hand, that does not mean that while we protect the consumer we outlaw intellectual property and deliver it into the hands of predatory copyists. Nor is it acceptable for one side to have to bear the high development and design costs while the other benefits from it at a zero tariff rate. Protected designs may only ever be used by third parties if they have paid fair and adequate remuneration for them. Great attention must be paid to this, for nothing is stolen with quite such insolence as intellectual achievement.

Barzanti (PSE). — (IT) Mr President, I think the compromise which emerged from the Committee on Legal Affairs following the patient, intelligent work of my colleague, Mr Medina Ortega, is worthy of support, even though — and why deny it — it might not arouse tremendous enthusiasm. Indeed, criticism
will inevitably be voiced from a number of quarters: car manufacturers will not be satisfied, for obvious reasons; perhaps the manufacturers of car components will be more satisfied, though not entirely so. And the very fact that this directive is being interpreted as referring almost exclusively to spare parts for cars should make us think hard. In actual fact, its scope is far broader.

Despite the inevitable criticism from various quarters, and the fact that one might not be totally satisfied with the compromise which has been reached, I nevertheless wish to stress that if the proposal is amended as indicated by the Legal Affairs Committee, so as to ensure that spare parts can be available immediately, on the basis of a compulsory licence allowing fair recompense for car manufacturers and hence adequate protection of intellectual property, this is an approach that is worth pursuing. I say so because, as Mr Medina Ortega rightly stated, we find ourselves half way between intellectual property in the narrow sense and increased mass production in industry, with obvious wide-ranging consequences, not least as regards consumer rights.

Yet this compromise had to be reached. It means that the Commission's proposal, which has been in abeyance for so long, can be revived. We hope that between now and the final decision-making phase, a more thoroughly satisfactory solution may emerge.

**Monti, Member of the Commission.** — (IT) Mr President, ladies and gentlemen, the discussion has centred on the harmonization of national legislation. But we must not neglect the potential impact of today's debate on the proposal concerning the legal protection of Community designs. In fact, the solutions found now to questions affecting the requirements, scope and nature of the protection will have to be applied in just the same way to the regulation.

In view of the above, I wish to express my satisfaction at the way in which the discussions have been handled in the various committees. With regard to the amendments tabled by your committees to the text of our proposal, I am pleased to say that the majority of them, if adopted by the House, will be accepted by the Commission.

I would indicate briefly that the Commission can accept without reservation Amendments Nos 2, 3, 4, 6, 7, 8, 9 and 11. Amendments Nos 10 and 13 to 16 require further consideration, since they all relate to a very controversial aspect of the directive and the regulation, to which several speakers have referred: this is the so-called 'repair clause', the object of Article 14 of the draft directive.

The amendments relating to the repair clause, with the exception of Amendment No 16, can be dealt with together. They contain three new elements. Firstly, it is proposed that the three-year transitional period envisaged by the Commission should be abandoned, so that the right to reproduction for repair purposes can exist as soon as the product is placed on the market. Secondly, this modification is coupled with a provision for payment of fair compensation to the holder of the right by the manufacturer of the copied parts or, if these have been manufactured outside the Community, by the importer.

The Commission believes that to set the amount of compensation at an appropriate level, the investment needed to develop a design must be taken into account. Also, the Commission considers that a system of legal licensing is entirely compatible with Article 6 of the regulation on exemption for the car distribution sector: that article states that distributors may use spare parts not provided by manufacturers.

In the Commission's view, the licensing system should not impinge in any way on the free movement of goods in the internal market, and it can accept the amendment tabled with a view to creating a level playing-field for Community producers of spare parts, bearing in mind the rules on competition laid down in the Treaty. Thirdly, and finally — and here I am moving on to Amendments Nos 13 and 14, which add an Article 18c — the Commission would be expected to monitor developments and report to Parliament on the functioning of the repair clause no later than five years after the entry into force of the directive. Amendment No 14 is preferable, in that it refers to the directive and not to the regulation.

The Commission has thought these amendments over carefully. If the House wishes a legal licence covering repairs to be introduced, the Commission is prepared to follow this approach and do whatever it can to make such a system work. On this point, Amendment No 10 would be preferable to No 15.

The Commission cannot, on the other hand, accept Amendment No 16, which also concerns the repair clause. Instead of introducing a system of compensation, this proposal would extend the transitional period to ten years, an extension which might impair the delicate balance achieved in the Commission's proposal. It would, moreover, render the repair clause inoperable by restricting its application to spares for machines which, after ten years, have become obsolete.

Let us now take a brief look at two amendments which the Commission, although it endorses the principle behind them, is not in a position to accept as they stand, for purely technical reasons. The first is Amendment No 5, on the definition of what constitutes an individual character as described in Article 5(1) of the directive. The present text states that designs are protected as long as they fulfil two requirements: novelty and individuality. The proposed amendment to Article 5(1) deletes the word 'significantly' with reference to the need for an individual character, thereby lowering the threshold of protection and not only rendering paragraph 2 redundant, but actually causing it to conflict with the purpose of the article.

For this reason, the Commission would be inclined to adopt the amendment, provided that the restriction on the range of designs with which the comparison must be made, pursuant to paragraph 2, is removed at the same time. If, however, the amendment to Article 5(1) were to be adopted in its present form, the Commission would itself have to remove that restriction in its amended proposal.

The second amendment which the Commission cannot accept is No 12, introducing a new Article 18h, which relates to the burden of proof. This proposal should be discussed in conjunction with Amendment No 1, which introduces a new recital to substantiate the new provision.

There are two simple reasons why the Commission cannot accept Amendments Nos 12 and 1. First of all, the amendments would apply only in the rare cases where the normal rule on the apportionment of the burden of proof is reversed, to the detriment of the holder of the rights. Secondly, even if a provision of this kind were useful, it would give rise to serious doubts with regard to Community competence and the principle of subsidiarity. The Commission therefore suggests that this point should be addressed solely in the context of the proposal for a regulation, and not in that of the proposal for a directive.

I shall conclude by saying how very much I appreciate the work done in the committees. I congratulate the rapporteur in
particular, and would point out lastly that the Commission reserves the right to introduce certain changes of wording in its amended proposal. Finally, I hope that the proposal for a regulation on Community designs will benefit from as much active participation, from as many Members of this House, as has been the case with this proposal for a directive.

President. — The debate is closed.

The vote will take place tomorrow at 12 noon.

7. Heritage: the Raphael programme

President. — The next item is the report (A4-0225/95) by Mr Sanz Fernández, on behalf of the Committee on Culture, Youth, Education and the Media, on the proposal for a European Parliament and Council Decision establishing a Community action programme in the field of cultural heritage (Raphael) (COM(95)0110 — C4-0141/95 — 95/0078(COD)).

Sanz Fernández (PSE), rapporteur. — (ES) Mr President, yesterday morning the President of the Federal Republic of Germany gave us a fine pro-European address in this very hemicycle. Adopting a quotation from Ortega y Gasset, Mr Herzog reminded us that the greater part of our spiritual heritage was not given us by our respective countries but by the common European heritage.

The European Union's financial aid policy for conservation and restoration of monuments of European significance or for facilitating citizens' access to the common cultural heritage is an eloquent political gesture. It demonstrates the importance of that heritage as a sign of the cultural identity of Europeans and our responsibility to conserve them for future generations. In doing so we are helping to extend the feeling of belonging to a Community far beyond our region or nation of origin. The Raphael programme will therefore help to bring about the European citizenship necessary for creating a genuine union of European peoples.

Apart from its intrinsic cultural value, the conservation of the cultural heritage creates various jobs with important economic and social repercussions and constitutes a source of employment: cultural tourism is developing as a consequence of the existence and enhancement of the value of the heritage which thus acts as a factor of economic, social and regional progress for Europe.

The Community has been pursuing for several years past an active policy of aid to the conservation of the heritage. We must remember the important part which this European Parliament played in supporting and encouraging the majority of these programmes, particularly from the point of view of its responsibility as a budgetary authority.

Every year the Commission organizes a series of programmes based on the structural funds or cultural projects which represent a real success in spite of their scant budgetary allocation.

The Commission proposal reorientates and extends the activities so far developed, with a coherent approach: it supplies these pilot activities with a legal basis and takes the form of a multi-annual programme until the year 2000.

It is an ambitious, well prepared programme, but the budget — Ecu 67 million — does not measure up to that ambition, does not reflect the stimulus which must accompany the launch of a multi-annual programme after several years of pilot schemes and does not reflect the importance of the subject in question. With this inadequate budget we run the risk that the programme will turn into a series of small ceremonial projects which we think tends to exacerbate the present situation.

The Committee on Culture proposes to increase the budget to Ecu 96 million for the first five years. Other amendments by the Committee on Culture emphasize the importance of facilitating access of all citizens to our heritage, but particularly access for the young and the under-privileged. And the request is made that wherever possible the under-privileged should be engaged to implement the projects. The Commission is asked to give priority to publicity and the dissemination of information on the Raphael programme for the sake of transparency and raising the awareness of experts and the public in general.

The field of application of the Community project is extended to all disciplines relating to our heritage, adding to those which already appear in the proposal the places and landscapes surrounding the monument, the historic sites which help to define a historic-cultural identity of Europe, libraries and sites of industrial archaeology.

The report also proposes the carrying out of studies to compile a list of stolen cultural objects to facilitate their recovery; awareness of the impact of large-scale public works on the countryside surrounding historical sites; an analysis of the effects of environmental pollution on the heritage; recognition of the effects of mass tourism on monuments; determination of the role of modern architecture in the restoration and conservation of the immovable heritage and urban areas.

Other amendments emphasize the importance of scientific research and exchange of experts in the sector and in particular the need to make arrangements for people to take up restoration as a career at various levels of training.

Similarly measures are proposed for keeping up craft trades and activities, avoiding letting them disappear and encouraging the teaching of traditional heritage occupations.

Mr President, Raphael, together with Kaleidoscope 2000 and Ariane are three essential programmes for promoting culture in the European Union. The Council's common position in Kaleidoscope 2000 and, above all, the absence of a common position in Ariane have entailed failure and disappointment. Let us hope that Raphael will have a better welcome in the Council of Ministers.

Alavanos (GUE/NGL), draftsman of the opinion of the Committee on External Economic Relations. — (EL) Mr President, on behalf of the Committee on External Economic Relations I want to congratulate both the rapporteur, Mr Fernández, on his very good work, and the Commissioner, Mr Oreja, because his services really played a very creative and positive part at all stages of the great debate that took place about the Raphael programme.

My own committee — the Committee on External Economic Relations — concentrated mainly on the issues of cooperation with third countries and international organizations. The Raphael programme has this external dimension, with important activities and directions such as;

- first, support for the preservation of cultural heritage,
- second, the formation of networks and reciprocal relations with third countries,
- third, access for our citizens, but on an international scale, and
- fourth, participation in innovative activities to inform and mobilize the professions.