I. INTRODUCTION

The Rapporteur, Mr Klaus-Heiner LEHNE (EPP/ED - DE), presented a report consisting of five amendments (amendments 1-5) to the proposal for a Directive on behalf of the Committee on Legal Affairs. In addition, Mr Jean-Paul GAUZÈS (EPP/ED - FR) and others tabled two amendments (amendments 6 and 7), the EPP/ED political group tabled one amendment (amendment 8), and Mr Giuseppe GARGANI (EPP/ED - IT) and others tabled one amendment (amendment 9).

II. DEBATE

Commissioner McCREEVY opened the debate, which took place on 11 December 2007, and:

- noted that at present ten Member States have liberalised the market in spare parts whilst the other seventeen Member States extend design protection to this sector. In the automotive sector, which is the sector most affected, there is a single market for cars, but no single market for their spare parts. Prices are distorted and trade is obstructed;
stated that the Commission’s Extended Impact Assessment had demonstrated that the proposed exclusion of design protection in the aftermarket for spare parts is the only correct way to establish a single market;
recalled that the Commission had found that consumers are currently paying a 6-10% premium for spare parts in those Member States which provide for design protection;
argued that the independent distribution sector will be able to offer a larger range of spare parts. This will lead to more choice and lower prices;
predicted that liberalisation will provide opportunities for independent spare parts manufacturers - who are mostly SMEs - and create a European market that will be large enough to allow new entrants to emerge;
stated that the essential purpose of design protection is to promote design innovation, but noted that spare parts must by their very nature be identical in design to the original parts. The consumer pays for the design when he purchases the new car. He should not be required to pay once again each time he needs to purchase a spare part; and
stated that the proposed repairs clause strikes a fair balance between protecting innovation where appropriate, and maintaining free trade and competition where necessary.

The Rapporteur:
recalled that this debate has now entered its seventeenth year. The Parliament had already grappled with this issue in 1994, but without result. The Conciliation Committee was not able to come to an agreement on this subject and had to leave it to one side. Some years have already passed since the Commission originally submitted the current proposal;
noted that the Commission proposal contains a five-year transitional period for those Member States which extend design protection to this sector. He had heard many arguments for and against this over the last seventeen years and most were not convincing;
stated that no evidence has been provided for the argument that the inclusion of a repair clause would lower prices. The opposite is in fact the case. The spare parts sector has been liberalised in the United Kingdom, but not in Germany. Paradoxically, spare parts cost more in the United Kingdom than in Germany;
argued that car manufacturers need to pass on their design costs to customers in one way or another. If they do not include them in the price of spare parts, they will include them in the price of new cars. Either way, the consumer has to bear the costs in the end. Furthermore, insurance premiums are related to the cost of new cars;
rejected the argument that the car industry is using this to protect itself against competition from the Far East. The industry could rapidly find alternative ways to protect itself (for example, patent protection of intelligent car-bonnets and intelligent exterior mirrors by placing logos on them or by making warranty agreements dependent on the use of these parts);

rejected the safety argument because type approval will continue;

stressed the importance of protecting intellectual property rights. There is a danger of sending the wrong signal to China and India;

agreed with Commissioner McCREEVY that a genuine internal market requires uniform rules. That means that we should follow the lead of the two thirds of Member States who have liberalisation, not the one third that do not;

advocated the compromise solution of licensing which Commissioner MONTI had promoted in the 1990s, but regretted the impossibility of finding a majority in favour of this approach; and

called for liberalisation but also for the granting of a transition period to those Member States that need it. The choice is between a period of either five or eight years. Either way, the Parliament should signal to the Council that there should be a transition period. The Portuguese presidency seems to be supporting a longer period rather than a shorter one. It might well be advisable to move in this direction. The Parliament should not complicate the situation on this point because this might jeopardise the possibility of securing an agreement in second reading.

Speaking on behalf of the Committee on Economic and Monetary Affairs, Mr Wolf KLINZ:

stated that a transition period of five years seemed rather too long. This proposal has been under discussion for many years;

argued that, since there is an internal market for motor vehicles, there should also be one for spare parts; and

predicted that liberalisation would reduce prices, stimulate innovation, benefit SMEs, promote employment and increase consumer choice.
Speaking on behalf of the Committee on the Internal Market and Consumer Protection, Mr Manuel MEDINA ORTEGA (PES – ES):
• stated that all parties are in favour of protecting intellectual property rights. A uniform approach is needed across Europe; and
• called for a long transition period to compensate companies for their loss of intellectual property rights. The Rapporteur suggested five years, but his Committee supported a period of eight years. He predicted that the Parliament was more likely to divide on national lines than on political group lines.

Speaking on behalf of the EPP/ED political group, Mrs Piia-Noora KAUPPI (EPP/ED – FI):
• stated that a transition period of five years is already long enough. Seventeen years have already passed. Industry will therefore have had more than enough time to adjust. It is now time for attention to be paid to consumers’ rights; and
• dismissed as absolute nonsense industry scaremongering that the Directive would lead to the loss of 50,000 jobs and losses of € 2 billion. The proposed Directive will instead provide a boost to SMEs and to employment.

Speaking on behalf of the PES political group, Mrs Lidia GERINGER DE OEDENBERG (PES – PL) could accept a transition period of no more than five years.

Speaking on behalf of the ALDE political group, Mr Alexander LAMBSDORFF (ALDE - DE) called for a transition period of five years. He deplored the fact that the German government is opposing this in Council and called on it to abandon its anti-competitive stance.

Speaking on behalf of the Greens/EFA political group, Mrs Eva LICHTENBERGER called for a transition period of no more than five years.

Mr Christoph KONRAD (EPP/ED - PL) stated that a transition period of five years is more than generous.
Mr Malcolm HARBOUR (EPP/ED – UK):
- stated that intellectual property was not an issue in this context. Intellectual property is a right granted to producers, but it is not a right that they can abuse in an anti-competitive manner. In the United Kingdom and elsewhere, it was clear that the car manufacturers were abusing their monopoly;
- recalled the introduction of motor vehicle type approval. The EU now has for the first time a regime in which independently manufactured parts that are crucial to vehicle safety systems have to be tested independently to the same standards as the parts produced by the car manufacturer. This nullifies safety-based objections to the current proposal; and
- stated that a five-year transition period was very generous and expressed the hope that the Council will accept it.

Mr Jean-Paul GAUZÈS (EPP/ED – FR):
- stated that the current proposal will significantly breach Community protection of intellectual property rights;
- denied that liberalisation would benefit consumers. The proposed Directive might actually encourage the appearance of spare parts of inferior quality or even of forgeries; and
- called for a transition period of eight years.

Mrs Marian THYSSEN (EPP/ED – BE) stated that she could accept a five-year transition period, but could not accept anything longer than that.

Mr Jacques TOUBON (EPP/ED – FR):
- stated that there was no evidence that the proposed Directive will lower prices or benefit consumers. Those Member States that have abolished protection have not recorded any notable benefit;
- predicted that the abolition of intellectual property rights will damage European industry. It will open the door to forgery and enable competitors in China and India to embark upon the unbridled manufacture of these products. This would be contrary to the Lisbon Strategy which aimed to make intellectual property a weapon of competitiveness and innovation;
• argued that the proposal was anachronistic and inspired by a questionable ideology. The survival of European industry is at stake. Now is not the time to disarm. Commissioner MANDELSON will be going to Peking to oblige China to respect intellectual property - but the Parliament is at the same time calling this into question. The proposal should be simply abandoned as unrealistic and irresponsible; and
• in a spirit of compromise, called for a transition period of eight years.

Mr Christian ROVSING (EPP/ED – DK) argued that liberalisation would benefit consumers by reducing the price of spare parts and by reducing insurance premiums. Allowing existing monopolies to continue would harm consumers’ interests.

Commissioner McCREEVY once more took the floor and argued that the current mixed design protection regime creates trade distortions, impairs the internal market, and harms both business and consumers. The full liberalisation of this market sector will produce net benefits in many respects (for example, more competition, more access for SMEs, legal certainty, simplification of day-to-day administration).

III. VOTE

The parliament adopted six amendments when it voted in plenary on the following day, 12 December 2007 (amendments 1-5 and 8).

The Commissioner did not state the Commission’s stance on the amendments.

The text of the amendments adopted and the European Parliament's legislative resolution are annexed to this note.
Legal protection of designs ***I


(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0582),

– having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0119/2004),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Economic and Monetary Affairs and the Committee on the Internal Market and Consumer Protection (A6-0453/2007),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.
Recital 4

(4) Whereas to complement the provisions of Commission Regulation (EC) No 1400/2002 concerning the ability of a manufacturer to place its trade mark or logo on components or spare parts visibly and in an effective manner, **Member States shall ensure** that consumers are duly informed about the origin of spare parts, such as information about trade marks or logos placed on the parts concerned.

(4) Whereas to complement the provisions of Commission Regulation (EC) No 1400/2002 concerning the ability of a manufacturer to place its trade mark or logo on components or spare parts visibly and in an effective manner, it **must be ensured** that consumers are duly informed about the origin of spare parts, **by means** such as information about trade marks or logos placed on the parts concerned:

Amendment 8
Recital 4 a (new)

4a. Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles\(^1\) includes provisions for the testing of spare parts manufactured by independent producers to ensure that they meet safety and environmental criteria and the new procedures which it prescribes will provide enhanced consumer safeguards in a fully deregulated market;

\(^1\) **OJ L 263, 9.10.2007, p. 1.**

Amendment 2
ARTICLE 1
Article 14, paragraph 1 (Directive 98/71/EC)

1. Protection as a design shall not exist for a design which constitutes a component part of a complex product used within the meaning of Article 12(1) of this Directive, for the purpose of the repair of that complex product so as to restore its original appearance.

1. Protection as a design shall not exist for a design that is incorporated in or applied to a product which constitutes a component part of a complex product and is used within the meaning of Article 12(1) for the sole purpose of the repair of that complex product so as to restore its original
appearance. *This provision shall not apply where the primary purpose of putting the aforesaid component part on the market is other than the repair of the complex product.*

**Amendment 3**

**ARTICLE 1**

Article 14, paragraph 2 (Directive 98/71/EC)

2. **Member States shall ensure** that consumers are duly informed about the origin of *spare parts* so that they can make an informed choice between competing *spare parts*.

2. **Paragraph 1 shall apply provided** that consumers are duly informed about the origin of *the product used for the repair by the use of a marking, such as a trade mark or a trade name, or in another appropriate form* so that they can make an informed choice between competing *products offered for use in effecting the repair*.

**Amendment 4**

**ARTICLE 1**

Article 14, paragraph 2 a (new) (Directive 98/71/EC)

2a. **Paragraph 1 shall apply only in respect of visible component parts in the after market once the complex product is marketed in the primary market by the holder of the design right therein or with his consent.**

**Amendment 5**

**ARTICLE 1 A (new)**

**Article 1a**

*Member States under whose existing legislation protection as a design exists for a design which constitutes a component part of a complex product used within the meaning of Article 12(1) of Directive 98/71/EC for the purpose of the repair of that complex product so as to restore its original appearance, may retain that design protection for five years after the entry into force of this Directive.*