



Revision of EU legislation on design protection

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Where are we?

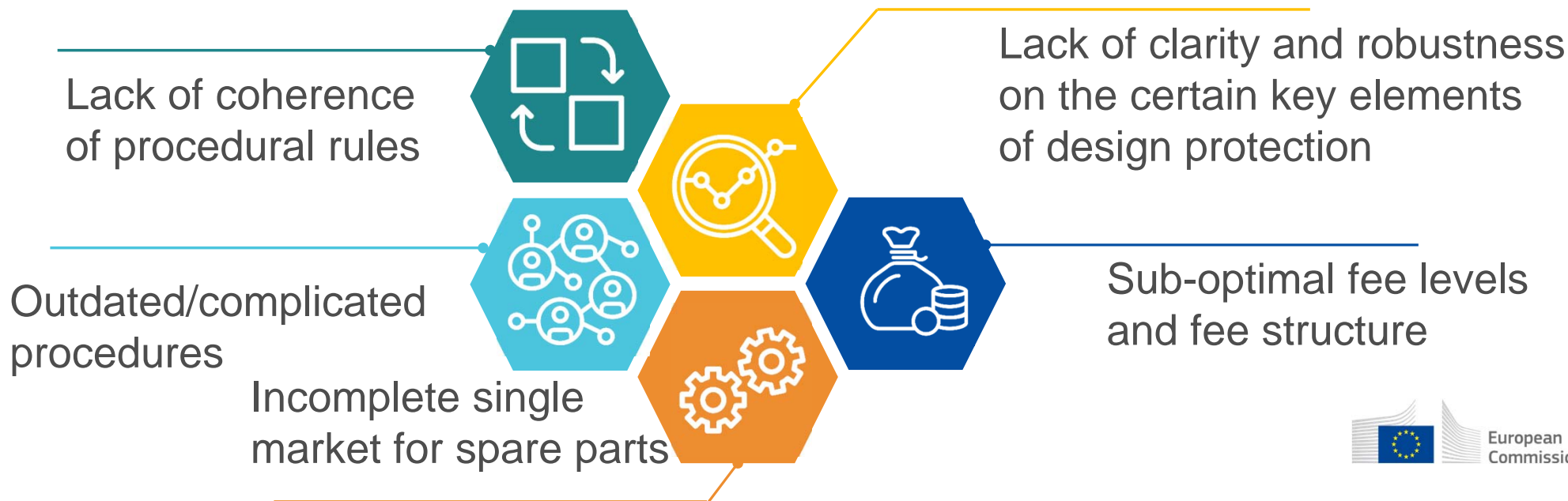
- [Directive 98/71/EC](#) and [Council Regulation \(EC\) No 6/2002](#) > 20 years old.
- Revision of designs acquis announced in [IP Action Plan](#) of 25/11/2020
- In 2020, the Commission concluded an [evaluation of EU legislation on design protection](#)
- Two public consultations from [18/12/2018 until 30/04/2019](#) and from [29/04 to 22/07/2021](#).
- Draft Impact Assessment Report: green light RSB 24/11/2021.
- Currently work on proposals.

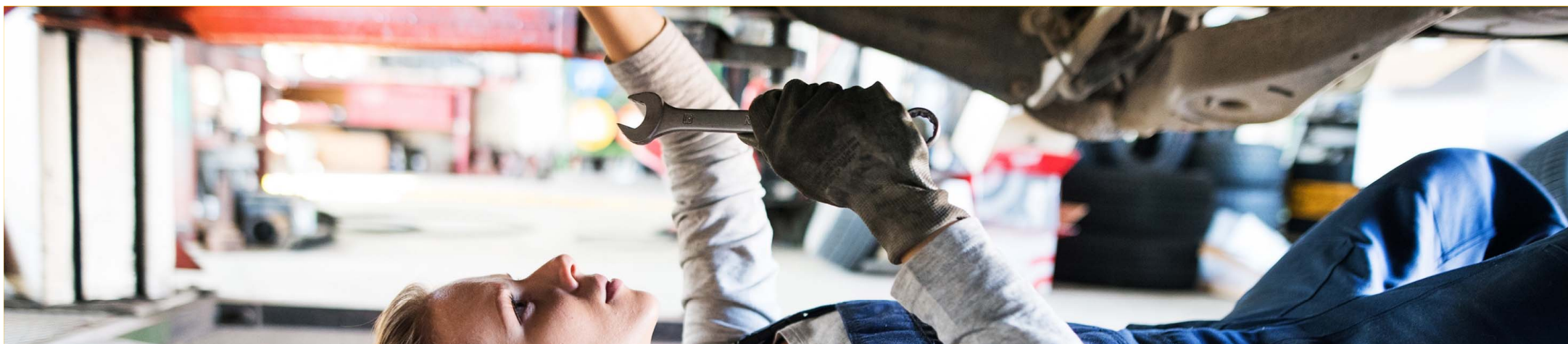
Evaluation Report – conclusions

Overall conclusion:

The EU legislation on designs still broadly fit for purpose. However, a number of relevant shortcomings identified.

What are those shortcomings?





Revision of design legislation – tentative aims

- Bringing single market for spare parts closer to completion.
- Make the RCD protection system more accessible and efficient for individual designers, SMEs and design intensive industries.
- Enhancing complementarity and interoperability between the Community and national design systems, in particular through harmonisation of procedural rules.

How?

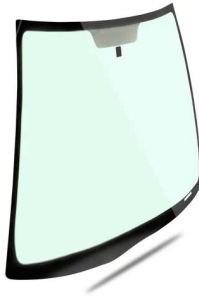
By exploring ways to:

- Harmonise the laws on spare parts protection. 
- Streamline and simplify CDR procedures, in alignment with those for EUTM 
- Adjust fee levels and the fee structure for RCDs 
- Harmonise national laws and align them with the RCD system



Lack of harmonisation for spare parts

- What are we talking about?
- „Must match“ for the restoration of the original outer appearance.



- Some Member States offer design protection, others not.
- Design right offers monopoly.
- Must match – so no alternative.

Spare parts EU level <-> national level

Article 110 CDR contains transitional “repair clause”.

Exempts visible repair spare parts from protection.

Article 14 DDir. contains transitional ‘freeze-plus clause’.

Member States to retain their national provisions. Change is only possible in case of excluding protection.

Result: a patchwork of conflicting national laws.

Table A.5.1. Implementation of repair clause in the EU Member States

| | Repair clause | | Repair clause |
|---------------------|---------------|------------------|---------------|
| Austria (AT) | no | Ireland (IE) | yes |
| Belgium (BE) | yes | Italy (IT) | yes (2001) |
| Bulgaria (BG) | no | Latvia (LV) | yes |
| Croatia (HR) | no | Lithuania (LT) | yes |
| Cyprus (CY) | no | Luxembourg (LU) | yes |
| Czech Republic (CZ) | no | Malta (MT) | no |
| Denmark (DK)* | no | Netherlands (NL) | yes |
| Estonia (EE) | no | Poland (PL) | yes (2007) |
| Finland (FI) | no | Portugal (PT) | no |
| France (FR) | no | Romania (RO) | no |
| Germany (DE) | yes (2020) | Slovakia (SK) | no |
| Greece (EL) | yes | Slovenia (SI) | no |
| Hungary (HU) | yes | Spain (ES) | yes |
| | | Sweden (SE) | no |

Source: Legal review on industrial design protection in Europe (2016) and Beldiman and Roeser (2017)

Patchwork of conflicting national laws

Earlier attempt to liberalise the spare parts aftermarket failed.

Proposal to amend Art 14 DDir (COM(2004)582) was withdrawn in 2014.

Reason: blocking minority in the Council led by Germany and France.

Legal situation in these countries has recently changed.

Germany introduced a repair clause exemption in December 2021. France introduced a partial and sectorial repair clause exemption.

Lack of harmonisation

- Anticompetitive and disruption of trade.
- Legal uncertainty, particularly detrimental for SMEs.
- Where spare parts are protected, right holder has market power over repair shops and customers (“lock-in effect”).
- Against the spirit of the Antitrust Motor Vehicle Block Exemption Regime.
- EU consumers overspend 450 to 720 million euros annually on purchase of visible automotive spare parts.



Liberalisation of spare parts aftermarket?

Arguments contra exemption of protection for spare parts

- Would be alien to IP system.
- Would deprive car manufacturers of a fair return on investment.
- Would eliminate the incentive for innovation -> reduced design diversity.





Liberalisation of spare parts aftermarket?

Arguments against protection for spare parts

- Would be against the purpose of design protection, i.e. to foster creativity through design innovation.
- Would lead to elimination of competition in the aftermarket. There is no design alternative.
- Lack of fair competition would lead to reduced consumer choice and higher prices.

Approximation of parallel design systems

- **How?**
 - Through further approximation of national laws and their coherence with the RCD system.
 - Including procedural aspects that are currently not included in the Directive.
 - **E.g.:** new means of representation, multiple applications, deferment of publication, no prior art examination, invalidation proceedings before the IP office.
- **Benefits:** Easier and less costly design protection across MS.

More accessible and efficient RCD system

- **How?** Simplification of procedures + change fees
 - Modernize representation requirements (dynamic 3D-representation and video filing)?
 - Abolition single class requirement for multiple applications?
 - Reduction of registration or renewal fees?
- **Benefits:**
 - Cheaper acquisition of the right for SMEs.
 - Better use of the designs in the register.

Keep in touch



Review of the EU rules on Industrial designs
[Intellectual property – review of EU rules on industrial design \(Design Regulation\)](#)
[Intellectual property – review of EU rules on industrial design \(Design Directive\)](#)



Evaluation of EU legislation on design protection
<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1846-Evaluation-of-EU-legislation-on-design-protection>



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Thank you



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