



## **FEDERATION OF EUROPEAN MOTORCYCLISTS' ASSOCIATIONS COMMENTS ON COMMISSION PROPOSAL - COM (2004) 582 FINAL - AMENDING DIRECTIVE 98/71 ON THE LEGAL PROTECTION OF DESIGNS**

The Federation of European Motorcyclists' Associations is the representative federation of Powered Two-Wheeler users across Europe. FEMA represents 24 national associations before the European Union Institutions and the United Nations Economic Commission for Europe.

*FEMA welcomes the long awaited presentation from the European Commission of the proposal for a Directive amending Directive 98/71 on the legal protection of designs. FEMA, along with other stakeholders, was consulted as a consumer organisation, in the very early stages of its preparation by Directorate-General for Internal Market.*

*In June 2003, the Commission launched an extended impact assessment study with the view to liberalise the after-market in spare parts through the amending of the legislation in force. The study focussed solely on the automotive sector, given the size of its market and the impact that the liberalisation would have in this sector. On the basis of this assessment the Commission came to the conclusion that the option to exclude design protection in the after-market for spare parts is the only effective one to achieve the Internal Market. In the Commission proposal spare parts ("must-match" parts) are defined as component parts, including visible parts, used for the purpose of the repair of a complex product so as to restore its original appearance. This liberalisation would be applicable to any sector where replacement and repair of complex products are at stake, including the Powered Two-Wheeler sector.*

### **The motorcycles' spare parts after-market in Europe**

The motorcycles after-market is not comparable to the automotive after-market in terms of size and volumes; it is indeed much smaller. The starting point must be the consideration of the number of Power Two wheelers on EU roads, which are about 30 million. The market is also affected by other relevant factors such as fragmentation and small volumes that especially in certain markets, along with a rapid change of models and designs, do not constitute a good economic incentive for independent producers to enter the market concerned. **It is clearly recognisable that the price of motorcycles spare parts can vary significantly from market to market depending on the size, the standard and the cost of living of the market concerned.** In other words, design right is not the only one factor that contributes to the control of the after-market in spare parts on the part of the motorcycles manufacturers; yet this does not imply that the legal protection of design must not be addressed.

Moreover, one of the things insurance companies take into account before setting categories for a vehicle is how much it will cost to repair it in case of damage. To this end Insurance Companies look at a basket of commonly damaged original parts, to which they relate the vehicle insurance premium.

As a consequence, allowing independently produced spare parts to be marketed where design protection is still granted, by introducing a repair clause, would positively contribute to lowering insurance premiums.

For this reason FEMA has launched amongst its National organisations a Consultation focussed on the motorbike sector and the prices of spare parts. The aim was to evaluate the impact that such liberalisation would have on the motorcycle spare parts after-market and the benefit for the riders/consumers that it would determine.

### **Survey concerning prices on spare parts in Europe**

The following spare parts prices are extracted from a limited survey carried out in 2003 by SMC - FEMA Swedish member - and later that year published on their member magazine MC-Folket.

Since for practical reasons it was impossible to carry out an extended survey, FEMA decided to focus on one reasonably common model (Model X). Therefore the manufacturer and model of the motorcycle concerned are not disclosed; however the data collected provide valid general indications. The spare parts considered are those produced and marketed by the Vehicles Manufacturers or by the Original Equipment Suppliers.

The first of the two sets of data regards Austria, Denmark, Finland, France, Germany, Norway and Sweden, where design protection for spare parts is still granted.

#### **Model X - prices in euro**

<b>Spare Parts</b>	<b>Austria</b>	<b>Denmark</b>	<b>Finland</b>	<b>France</b>	<b>Germany</b>	<b>Norway</b>	<b>Sweden</b>
Oil filter	9,85	11,00	11,00	10,47	9,05	16,00	10,53
Air cleaner	32,80	41,00	40,00	42,96	33,00	46,00	36,37
1 spark plug	24,90	21,00	42,00	25,90	31,00	31,00	29,10
Chain kit	225,00	217,00	282,00	231,23	286,00	339,00	212,37
Side mirror	60,30	84,00	66,00	48,31	59,85	106,00	49,07
Clutch lever	23,00	33,00	40,00	18,77	16,45	42,00	19,54
Brake lever	50,70	75,00	60,00	41,31	51,00	93,00	43,00
1 turn indicator	77,70	50,00	88,00	78,19	85,10	137,00	63,41
Fuel tank	883,10	842,00	842,00	594,05	771,45	858,00	720,16
Side panel	626,60	616,00	638,00	586,33	327,95	627,00	529,18
<b>Total</b>	<b>2013,95</b>	<b>1990,00</b>	<b>2109,00</b>	<b>1677,52</b>	<b>1670,85</b>	<b>2295,00</b>	<b>1712,73</b>

The second set of data concerns Ireland and United Kingdom, where a repair clause is foreseen, allowing design protection on new products but leaving the possibility for alternative parts in repair or replacement in the after-market.

#### **Model X - prices in euro**

<b>Spare Parts</b>	<b>Ireland</b>	<b>UK</b>
Oil filter	10,56	11,57
Air cleaner	29,28	32,64
1 spark plug	25,80	28,28
Chain kit	263,20	235,27
Side mirror	47,83	52,44
Clutch lever	19,39	21,26
Brake lever	42,69	46,80
1 turn indicator	66,81	73,23
Fuel tank	581,50	637,49
Side panel	407,32	446,54
<b>Total</b>	<b>1494,38</b>	<b>1585,52</b>

**From the comparison between data available it can be inferred that where the liberalisation is already in place - Ireland and UK in our survey, the price of the original spare parts is lower because of the existing competition between the manufacturers and Independent Producer. The survey shows that the consumers living in the Member States having chosen to provide for a repair clause, pay less for the same set of spare parts.**

**Indeed, the presence of Independent producers in these markets plays an important role in keeping the price of original parts down and gives riders more choice and lower prices.**

### **Legal developments**

The current situation is even more cumbersome considering the parallel legal developments at EU level. Legislation on the unitary Community design administered by the Office for Harmonisation in the Internal Market brought about liberalisation of the secondary market with Article 110(1) of Council Regulation (EC) No 6/2002 on Community designs. In other words there is no protection available under the Community design regime (as opposed to national design rights) for “must-match” spare parts in the after-market.

In some Member States, the consumer/rider has to pay twice for the same design: once when he/she buys a new motorcycle and the second time when there is the need to repair it.

The data available clearly show that where the liberalisation is already in place the price of the original spare parts is lower or somehow determined also by the existing competition between the manufacturers and Independent Producer. Indeed, the presence of Independent producers in these markets plays an important role in keeping the price of original parts down and gives riders more choice and lower prices.

The current situation would end only through a harmonised repair clause. For the above-mentioned reasons, **FEMA fully supports the liberalisation option as proposed by the Commission. It would:**

- **improve the functioning of the Internal Market,**
- **enhance competition,**
- **bring down spare parts prices and therefore be beneficial for the consumer/rider allowing wider and better choice and lower prices,**
- **contribute to lower insurance premiums.**

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