

V O L V O

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Remissyttrande över EU:s mönsterskyddsregler

Kommentarer från AB Volvo med anledning av Förslag till Europaparlamentets och rådets direktiv om formskydd (omarbetning), och Förslag till Europaparlamentets och rådets förordning om ändring av rådets förordning (EG) nr 6/2002 om gemenskapsformgivning och om upphävande av kommissionens förordning (EG) nr 2246/2002.

Sammanfattning

AB Volvo, Volvokoncernens moderbolag, har noterat och granskat EU-kommissionens förslag att omarbota direktiv 98/71 om rättsligt skydd för industriella mönster samt ändra förordning 6/2002 om gemenskapsmönster.

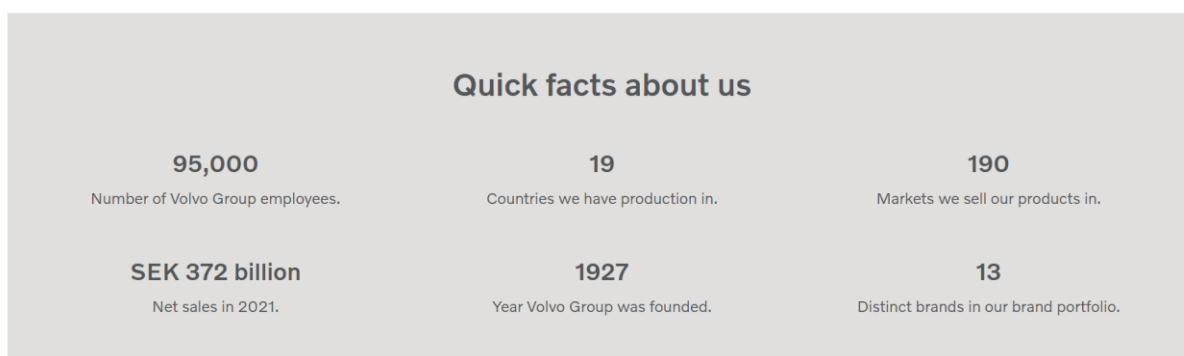
AB Volvo stödjer inte det föreslagna undantaget för skydd av reservdelar eftersom detta skulle frånta en innovativ industri en rimlig avkastning på gjorda investeringar, hota europeisk konkurrenskraft och arbetstillfällen och motsäga EU:s ansträngningar att bekämpa piratkopiering utan att ge några påtagliga konsumentfördelar. Se avsnitt 1.2 *"Economic importance of IPR and negative effects of counterfeiting and piracy"*, https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159553.pdf.

Generellt stödjer AB Volvo harmonisering men inte på bekostnad av borttagandet av de lagliga rättigheter som finns i många av EU:s medlemsstater idag. Ett alternativ till sloandet av mönsterskydd för reservdelar skulle kunna vara att istället förkorta giltighetstiden för reservdelar till 15 år.

Skulle den europeiska lagstiftaren ändå besluta att slopa mönsterskyddet för reservdelar anser vi att den föreslagna reparationsklausulen endast bör gälla framtida mönsterregistreringar och bibehålla befintliga rättigheter opåverkade samt att införa en strängare skyldighet för tillverkarna (av icke originaldelar) att uttryckligen informera konsumenterna om delarnas ursprung.

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Volvo Group is one of the world's leading group of companies within the automotive industry and sustainable transport solutions. Volvo Group drives prosperity through transport and infrastructure solutions, offering trucks, buses, construction equipment, power solutions for marine and industrial applications, financing and services that increase our customers' uptime and productivity. We are committed to shaping the future landscape of sustainable transport and infrastructure solutions. Volvo Group actively contributes to the development of electrified and autonomous solutions. This is of course for the benefit of our customers but also for the society and for the environment at large.



AB Volvo önskar framföra följande synpunkter.

AB Volvo does not support the proposed exclusion of spare parts designs from legal protection.

While the present lack of harmonisation is not ideal, vehicle manufacturers can handle the practical issues resulting from the existence of different rules at national level. We support harmonised EU rules but believe this harmonisation should not consist of eliminating legal rights that exist in most Member States today (15 including Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Malta, Portugal, Romania, Slovakia, Slovenia, and Sweden). We remain convinced that design registrations of spare parts should be eligible for protection under the same conditions as design registrations of any other product.

In our view, the proposal to exclude designs of spare parts from legal protection would:

- Deprive an innovative industry of fair 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 all parts available until ten years after the end of production of the vehicle. It is normal and efficient to reward these efforts with design rights on spare parts. 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 and is in no way beneficial to end consumers but could instead be considered as unfavourable of vehicle manufacturers.

- Threaten European competitiveness and jobs

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The parts affected by this proposal (i.e., bonnets, bumpers, radiator grilles, wings, doors, lights and the alike) are almost exclusively produced by vehicle manufacturers in Europe today. If copying were permitted, a significant number of jobs would be lost to large copiers for instance in Asia and South America. This stands in sharp contrast with the Commission's intention to implement a new industrial policy to strengthen the competitiveness of European industries.

Thus, the EU would uniquely weaken its own automotive industry since none of the other major manufacturing countries (US, Japan, South Korea, China, Brazil, India, Russia) limit the design protection of automotive spare parts in this way.

- Contradict and jeopardize the EU's IPR policy

The proposal would abolish the design rights that currently exist in most Member States. It would permit the copying of spare parts within the EU while, at the same time, the EU is making considerable efforts to combat counterfeiting and piracy, which occurs frequently for automotive spare parts. The Commission's approach is not only inconsistent but also reduces the EU's credibility in international trade negotiations and undermines its efforts to stop the copying of European products around the world.

Moreover, the proposal would contradict the fundamental rights contained in the Charter of fundamental rights of the European Union, especially the right to property and the protection of intellectual property.

The proposal is setting a dangerous precedent since this potentially could open up and jeopardize other IP rights under wrong presumptions to strengthen society needs, i.e. patents within the pharmaceutical industry.

Other parts of the world are taking other steps when it comes to the protection of spare parts. China is for example improving the possibilities to protect spare parts. That means that in comparison to European companies, Chinese companies will have a competitive advantage. The possibility to protect spare parts in the home market can be crucial.

- Brings no consumer benefits

The abolition of design rights does not necessarily lead to lower consumer prices. To the best of our knowledge no studies have shown that there is a direct link between spare parts prices and design protection within the EU. Any profits or cost savings that could result from the use of potentially cheaper copied parts are likely to end up in the pockets of parts traders, repairers, and insurance companies. There are no consumer benefits.

- Works against the circular economy

The EU strongly promotes resource efficiency, repair, re-use, and recycling as part of its strategy to stimulate the circular economy. Vehicle manufacturers increasingly recover parts from vehicles that are no longer used or that have been involved in accidents, recondition them if necessary and offer them as remanufactured spare parts. Such parts are sustainable in that no new raw materials need to be used. They are also competitively priced compared to new original parts. In our view, they represent a much better and more sustainable option than copy parts produced outside the EU, which

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require the use of new raw materials, must be transported to the EU, and are often manufactured according to lower environmental standards. It can also be noted that imported spare parts might not be covered by the CBAM proposal, thus the current proposal might lead to conflict with the CBAM intent to reduce CO2.

- 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 no safety requirements in place for after-market parts. Clearly, a repaired vehicle must be as safe as one that is new.

For example, components such as bumpers, bonnets, and tailgates are critical in meeting pedestrian safety requirements, specifically for head impacts. Meeting these requirements necessitates very carefully engineered components and controlled manufacturing processes. Currently vehicle manufacturers produce these parts themselves, or they are supplied by approved suppliers to exacting specifications to ensure the vehicle remains legally compliant throughout its life. If such parts were to be copied without respect for the manufacturer's specifications, this would make the vehicle non-compliant, damage the reputation of the manufacturer and reduce vehicle and road safety.

The same is true for the sensors that are increasingly used for driver assistance systems and automated driving. These are often positioned behind the front grille and behind the front and rear fenders. They are calibrated to the known specification of materials used on these components. Changing the material specification of these parts, the coatings thereon, or the paints used could affect the signals sent by the sensors and render the driver assistance systems unreliable and jeopardize vehicle and road safety.

If adopted, the repair clause should apply only to future design registrations and leave all existing rights unaffected.

Existing design rights for spare parts should remain valid until the end of the period for which they were granted, which is usually between 15 and 25 years. The proposal to limit their validity to 10 years from the date of entry into force of the Directive constitutes an unjustified expropriation, undermines legal certainty, and contradicts design right owners' legitimate expectations.

Furthermore, we recommend incorporating a stronger and clearer obligation requiring the manufacturer or seller of the (non-original) spare part to inform the customer about the origin of the product. To empathize this, see for instance the ECJ decision in the Acacia cases (C-397/16 and C-435/16).

We look forward to a continued dialogue and are available for any questions or clarifications.

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