

FIGIEFA Workshop Design Protection & Repair Clause

March 2023

5 rules for a successful online meeting



Set up the name that appears (your name + association)
so that participants know who is present, and who is talking



Mute yourself if you are not talking
so that there is no background noise or echo



Use a headset with microphone
so that participants can distinctly hear you



Pay attention to the background light, and a white wall behind you is advised
so that participants can correctly see you



If you have comments or questions, use the chat or raise a virtual hand
so that the moderator will give you the floor ASAP

1. Introduction



Agenda

1. Introduction, roll-call, competition compliance policy (5mn)
2. Design protection in the aftermarket (15mn)
 - a. Which parts are affected
 - b. Patchwork of national legislations
 - c. Practical consequences
 - d. Q&A
3. European Commission's proposal & ECAR's assessment (30mn)
 - a. Proposal to include a EU-wide Repairs Clause in the European Design legislation
 - b. Painpoints & recommendations
 - c. Q&A
4. Strategy discussion (40mn)
 - a. General considerations
 - b. Legislative timeline
 - c. FIGIEFA/ECAR campaign
 - d. Activities at national level
 - e. Q&A
5. Closing

FIGIEFA Competition Rules

- Exchange of confidential information concerning market behaviour is inadmissible; in particular this relates to – *production capacities, productions or sales volumes, import volume, market shares, price policy, distribution and marketing terms, marketing strategies, information regarding relationships with suppliers;*
- Pursuant to Art. 81 and 82 EC Treaty the following activities are prohibited within the scope of the Preliminary Agreement:
 - *Coming to arrangements about prices, markets and customers (see Art. 81 paragraph 1 a)-e) EC Treaty);*
 - *Joint boycotting of other companies;*
 - *The unjustified unequal treatment of trade partners;*
 - *The abusive exploitation of a dominating market position.*

2.

Design protection in the aftermarket



Visible spare parts

Glazing



Body parts



Bumpers

Lighting



Current situation: EU legislation

Design Directive

- Design **Directive** (98/71): harmonization of national laws on the protection of designs
- **Spare Parts**: Art. 14: freeze plus clause (new national provisions on spare parts can only be introduced in a view to liberalize the market)

Design Regulation

- Design **Regulation** (6/2002): EU-wide system for Community design
- **Spare Parts**: Art. 110: Repair Clause

Current situation: EU legislation

Design Directive

- Vehicle Manufacturers can register a vehicle design at national level (ie. in each EU Member State)
- Vehicle Manufacturers can use the rights conferred by the design registrations according to the national law on the territory of this country.

Design Regulation

- Vehicle manufacturers can register a vehicle design once at EU-level (at the OHIM in Alicante).
- The design is then valid for the whole EU territory, BUT as the Regulation has a Repair Clause, they cannot exert their design registrations against Aftermarket Operators!

Design Directive : Patchwork of national legislations (1)



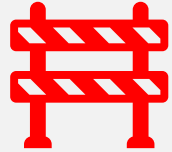
- No harmonisation in the EU = Different regimes in EU Member States
- Growing number of Member States supporting liberalisation (ex: PL, DE)
- Denmark & Sweden: the protection period for visible must match spare parts is 15 years maximum.

Design Directive : Patchwork of national legislations (2)



- **DE:** Repair Clause adopted in 2020
 - RC applies to models registered as of the date of introduction of the new law (ie. 2 December 2020)
 - No retroactivity for existing designs (which remain protected for a period of up to 25 years).
- **FR:** Repair Clause for glazing (since 01.01.2023) & partial liberalization of other visible parts:
 - For original equipment manufacturers as from since 01.01.2023.
 - All others: protection period of 10 years (instead of 25) since 01.01.2023.

Current situation: Practical consequences



Markets limited in terms of geographical scope and of content:

- No possibility for independent repairers to use alternative parts from independent parts producers
- No possibility for independent parts producers to commercialise their spare parts in countries without Repairs Clause



Legal uncertainties:

- Risk of preliminary injunctions and seizures in parts wholesalers (under criminal sanctions) by VMs

Current situation: Practical consequences



→ Independent producers of spare parts are eliminated.



→ Independent distributors lose their competitiveness.



→ Independent repairers lose their competitiveness.



→ The survival of thousands of SMEs is at risk.



→ Tens of thousands of jobs are threatened.

The Repair Clause: Main characteristics

- **Community Design Regulation : Article 110 (Repair Clause)**

“(...) protection as a Community design shall not exist for a design which constitutes a component part of a complex product used within the meaning of Article 19(1) for the purpose of the repair of that complex product so as to restore its original appearance.”

- **What does that mean? A fair and balanced solution !**

- Protection for new visible parts : **YES**

- It grants vehicle manufacturers full protection over their car designs (against competitors / other VMs)

- But **NO** protection for the corresponding visible spare parts (on the aftermarket) when they are produced and used for repair purposes

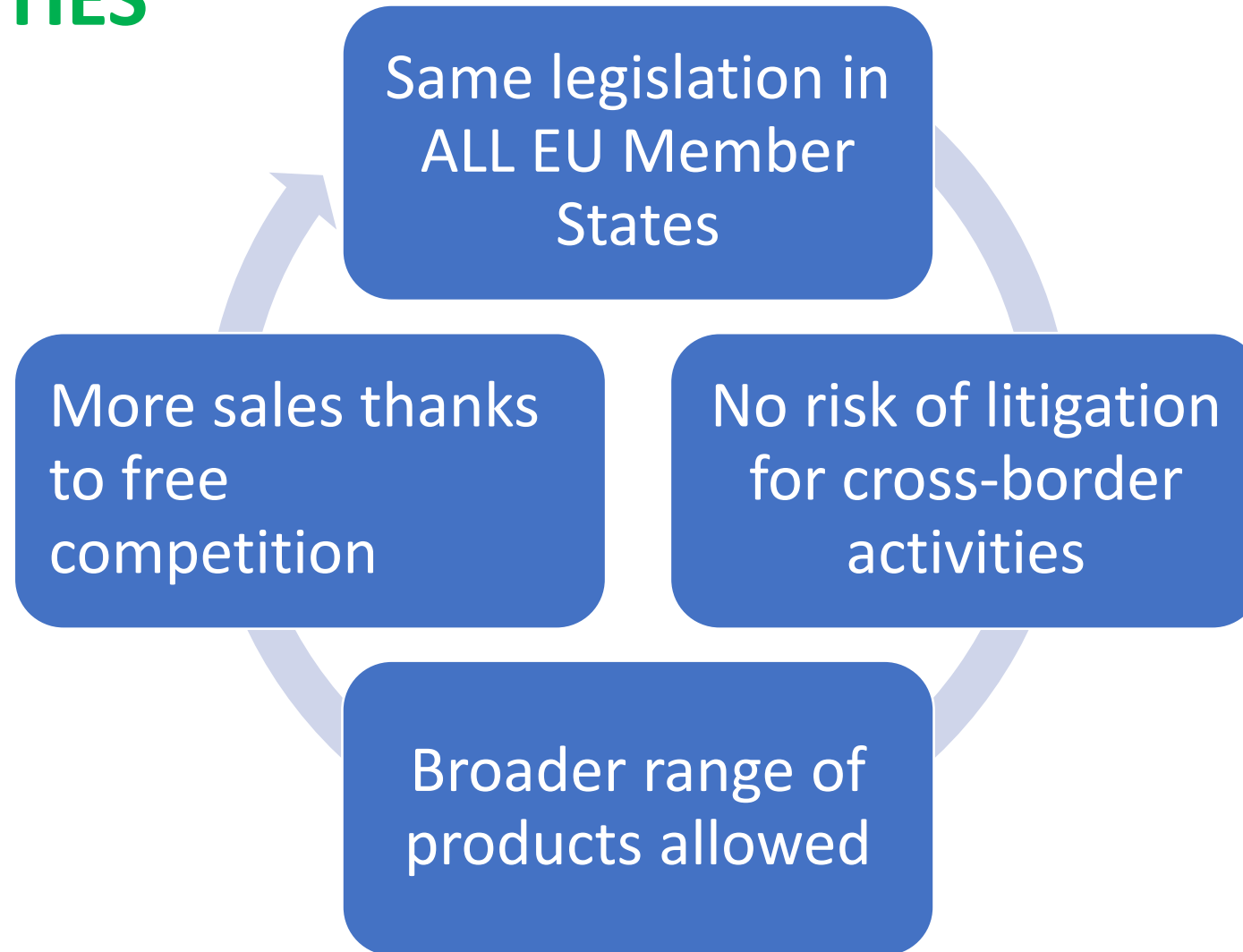
- It grants consumers **the right to repair their cars with the parts of their choice and at reasonable prices.**

- It grants Europe's SMEs **the right to compete** in the automotive aftermarket.

- It grants millions of European workers **the right to keep their jobs.**

Repair Clause: Impact for the business

OPPORTUNITIES



3.

European Commission's proposal & ECAR's assessment



EC proposal: Enshrining the Repairs Clause in 2 texts

Repair Clause
introduced in the
Directive proposal



Repair Clause
confirmed as
permanent in the
Regulation proposal



EC proposal: 3 problems with the proposed Repair Clause

I.

Restriction of the Repair Clause to **form-dependent component parts** of complex products only

II.

Unclear & redundant consumers **information requirement**

III.

No full retroactivity but a compulsory **10-year transition period** for countries without a RC

Issue 1: Restriction to form-dependent component parts



Risk:

Exclusion of wheel rims and exterior mirrors (and maybe other parts subject to interpretation)



Recommendation:

Deletion of the restriction to form-dependent component parts of complex products only (paragraph 1 of Art. 19 of Directive and Art. 20a of Regulation)



Arguments:

- Not coherent with the intention of the EU lawmaker
- Consumers should always have a choice
- No need for such limitation under any IP principle

Issue 2: Consumers' information requirement



Risk:

Plethora of legal actions throughout the supply chain if unclear



Recommendation:

Deletion of consumers information requirement “about the origin of the product to be used for the purpose of the repair of the complex product” (paragraph 2 of Art. 19 & Art. 20a)



Arguments:

- The proposed requirement is unclear
- The proposed requirement is redundant

Issue 3: No retroactivity & 10-year transition period



Risk:

No competition for at least 10 more years



Recommendation:

Shorten the proposed compulsory 10-year transition period for existing designs in Member States which do not have a national Repair Clause or at least give the Member States the choice of the length



Arguments:

- Only a full Repair Clause from day 1 will truly bring freedom of choice for consumers
- Creation of legal unity and harmonization of the internal market justify shorter period

Q & A Session

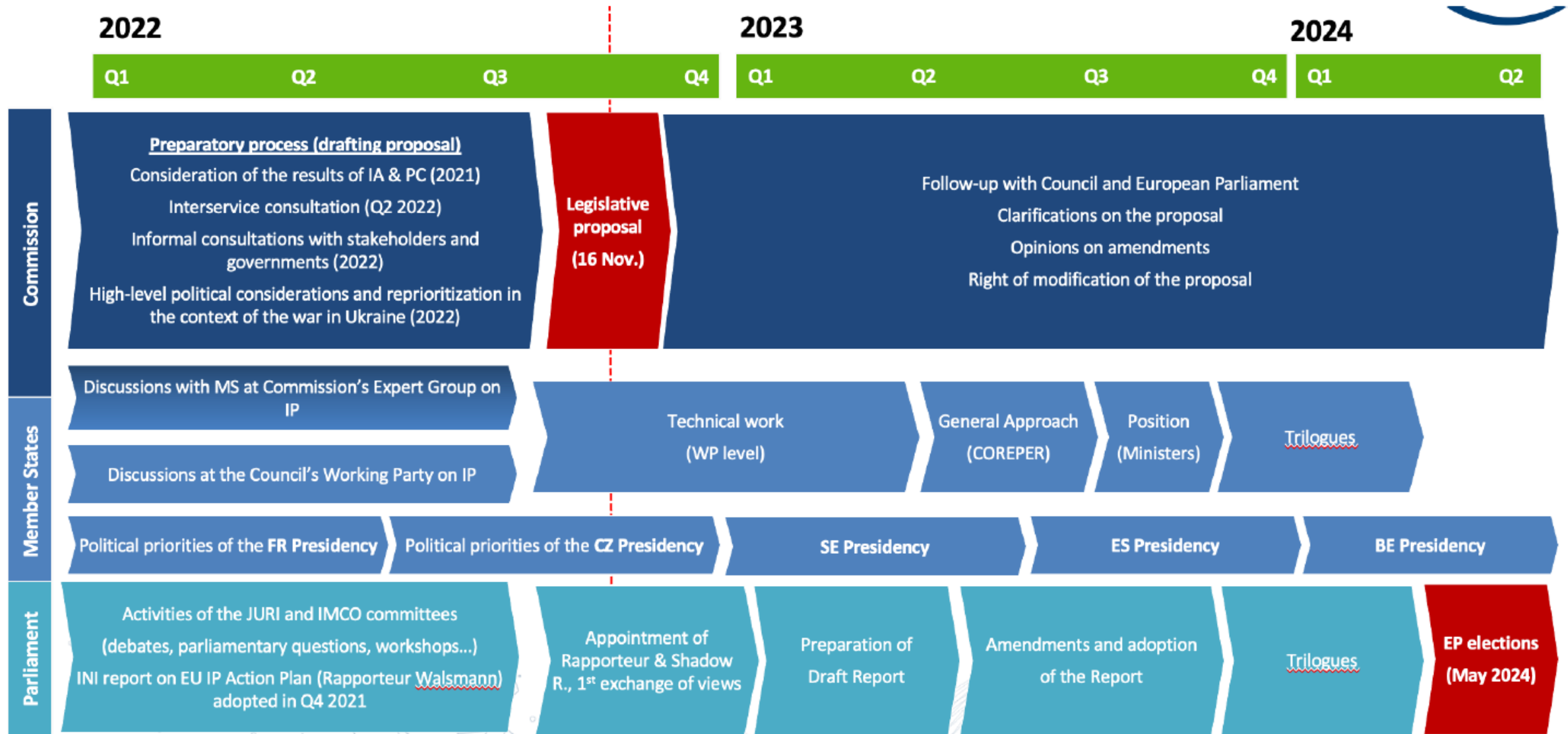


4.

Strategy discussion



Legislative timeline



FIGIEFA/ECAR campaign: Objectives

Ensure the adoption of a EU-wide Repair Clause in the revision of the Design Directive, which should be:

Applicable to all EU
Member States

Not linked to additional
requirements

Applicable to all visible
must-match spare parts

Applicable as much as
possible and as soon as
possible to all designs

FIGIEFA/ECAR campaign: Targets



European Parliament:

secure wide political support in favour of a full repairs clause among the most influential political groups



Council of the EU:

build upon the growing majority of liberalised Member States in order to push for a full repairs clause



European Commission:

ensure regular exchanges in view of the interinstitutional (trilogue) negotiations

Q & A Session



5. Closing



**Many thanks for
your attention!**

www.figiefa.eu
@FIGIEFA