

Decision of the European Ombudsman closing his inquiry into complaint 875/2011/JF against the European Commission

Decision

Case 875/2011/JF - Opened on 01/07/2011 - Decision on 27/06/2013 - Institution concerned European Commission (No further inquiries justified) |

The complainant is a British motorcyclist, who alleged that the Commission failed properly to reply to his correspondence. In summary, that correspondence: (i) contested the quality of a survey that had been conducted before the Commission made a legislative proposal in the area of road safety, and (ii) requested access to a number of Commission documents in support of that proposal. When that institution failed to reply to the complainant's criticism and to provide him with the requested documents, he turned to the Ombudsman.

The Ombudsman's inquiry revealed that the Commission had wrongly discontinued correspondence with the complainant. The Ombudsman invited the Commission to consider providing guidance to its staff as regards the circumstances in which the Code of Good Administrative Behaviour may legitimately be invoked to discontinue correspondence.

The Ombudsman also found that the Commission was wrong to have conducted the survey in question in English only. This situation resulted in the overall number of replies being necessarily limited. In light of the Commission's follow-up to his conclusions in case 640/2011/AN, the Ombudsman encouraged the Commission to acknowledge in the present case that it would have been better not to have confined the survey to the English language and to consider whether there are any lessons to be drawn for the future.

It also became apparent that what the complainant ultimately sought was a change in legislation affecting him as a motorcyclist. In particular, he disagreed that certain measures proposed by the Commission, that is to say, fitting motorcycles with a number of technical warning devices and carrying out random roadside inspections, would reduce accidents. The Ombudsman explained that the merits of European Union legislation fall outside his mandate and invited the complainant to consider submitting his arguments to the European Parliament in a petition.

Finally, the Ombudsman noted that, during the inquiry, the Commission had assured him that it was prepared to submit the complainant's views to its expert groups working on the relevant legislative proposals. The Ombudsman therefore invited the Commission to confirm to him that it had indeed followed up those assurances and had forwarded the complainant's views on



those proposals to its expert groups. With the actions mentioned above, the Ombudsman closed the case.

The background to the complaint

[1]

1. On 22 September 2010, the complainant, a British motorcyclist, wrote an e-mail to, among other persons, the Commissioner for Transport (the 'Commissioner'). The complainant made a number of remarks concerning the Commission's questionnaire relating to the 'Periodic Technical Inspections' survey (the 'PTI survey'), which preceded the Commission's planned proposal for new legislation in the area of Road Safety. In sum, the complainant considered the questions of the PTI survey biased. In addition, according to the complainant, the wording used in English, which was the only language of the questionnaire, showed lack of knowledge of the domain in the United Kingdom (the 'UK') and in Ireland. In the complainant's view, the Commission had designed the questionnaire in a poor fashion. As regards the matters in the survey, the complainant disagreed that Powered Two-Wheelers ('PTWs') should be subject to random roadside inspections. In this respect, he contested that there was any evidence to conclude that vehicle defects contributed to fatalities or serious injuries to motorcyclists.

2. On 27 October 2010, the Commissioner's Cabinet (the 'Cabinet') replied that time constraints and resources prevented the Commission from publishing all documents in all languages of the European Union (the 'EU'). While this, inevitably, restricted some replies, the Commission's experience was that a questionnaire in English was accessible to a very large number of EU citizens. Moreover, citizens could reply in any of the official languages of the EU. The Commission would take all answers into account in the same way as it would those in English. The Cabinet carefully assessed the complainant's comments on the quality of the questionnaire. It noted: "*There is always a possibility to enhance the quality of the work.*" However, it did not accept his basic assessment that the survey was fundamentally flawed.

3. In November 2010, the complainant replied to the Cabinet, by e-mail copied to a number of German, French and Italian Members of the European Parliament ('MEPs'), expressing, among other things, the view that the majority of citizens of the MEPs' nationalities would not have had a level of English sufficient to understand the PTI survey questions, namely, the technical issues relating to the vehicle mechanics involved. The complainant enclosed his very detailed analysis of the PTI survey concluding, in sum, that the Commission's work was unsatisfactory. In particular, according to the complainant, the Commission failed to produce evidence of sufficient attention to detail, which is required for a legislative measure with an impact on people's safety and rights.

4. In sum, the complainant considered that the Commission's proposal restricted "*his freedoms as PTW*". In addition, in his view, some of the proposed measures favoured major manufacturers to the detriment of small and medium enterprises and consumers. The complainant further disagreed with the Commission's conclusions in an impact assessment that anti-lock braking system ('ABS') and daylight running lights were capable of preventing



accidents involving PTWs. He argued that the main cause of accidents resulting in death or in serious injuries for motorcyclists were other vehicles. The complainant expressed the view that the Commission should rather look into ways of improving driving and road design.

5. On 19 January 2011, the Commission's Directorate-General for Mobility and Transport ('DG MOVE') replied that it had two different ongoing legislative projects: one on 'roadworthiness testing' and another on 'type-approval'. The legislative project on roadworthiness testing was addressed to Member States and aimed at ensuring checks throughout the lifetime of a vehicle to determine whether the relevant safety and environment systems were being kept in an acceptable condition. The type-approval legislative project was addressed to vehicle manufacturers and type-approval authorities, and aimed at fair competition when bringing products on the market, enhancing safety and environmental and consumer protection. DG MOVE agreed that accidents involving motorcycles were often caused by human behaviour. It explained that " *two of the seven objectives defined in the Policy Orientations on Road Safety 2011-2020* " concerned education and training, as well as enhancing the protection of vulnerable road users. Finally, DG MOVE emphasised that the European Parliament (the 'EP') and the Council of the European Union (the 'Council') would examine its legislative proposals in the context of the democratic process leading to their possible adoption, and decide whether or not to adopt them, and if so, with or without first amending them.

6. During January and February 2011, the complainant and the Commission exchanged further correspondence on the subject. In sum, while supporting improvements in PTWs' safety, the complainant considered that the Commission failed to provide any evidence that its strategy would result in significant benefits in terms of that safety. In his view, the Commission failed to act in accordance with the principles of sound financial management and good administration, and misdirected resources to measures which did not necessarily have the potential of saving lives.

7. In an e-mail dated 13 February 2011, the complainant further argued that DG MOVE did not advance any evidence in support of its rejection of his criticism of the PTI survey. He took the view that, under the Charter of the Fundamental Rights of the European Union (the 'Charter') [2] , he had a right to that evidence. Hence, he asked DG MOVE to provide him with the documents justifying its defending of the PTI survey [3] . He argued that the PTI survey's questionnaire allowed for the conclusion that his rights as PTW-driver would be infringed. He pointed to the possibility of being subject to random roadside inspections without any reasonable suspicion of breach of the law. Any such measure would, in his view, be disproportionate, as other studies, namely, one co-financed by the Commission (the 'MAIDS study'), showed that only a minor percentage of motorcycle drivers' fatalities were attributable to vehicle failure. Consequently, the above measure would, in his view, have an only insignificant impact on the reduction of those fatalities.

8. The complainant also stated that the impact assessment relating to the proposed legislation was not publicly accessible. He requested access to that document and asked that it be published on a website managed by the EU which was easy to find. He took the view that he had already duly demonstrated that some of the statements made in that impact assessment



were incorrect.

9. The complainant further commented on the allocation of the Commission's budget for Road Safety. In his view, sound financial management would provide for allocating financial resources to analysing causes with a likely impact on reduction of fatalities. In this respect, the complainant noted the "[r] obust cause analysis " undertaken in the MAIDS study. The resulting MAIDS report was later used to develop at least one safety research project, the 'WATCH-OVER', which demonstrated that the major causal accident scenarios involved other vehicles pulling across the path of the motorcycle.

10. The complainant attached his detailed economic and statistical analysis on " *MAIDS Accident Cause vs Resolution Impact* ". His conclusion was, in sum, that the measures directed at improving the technical conditions of PTWs from a safety standpoint would save many fewer lives, and have a much lower financial benefit, than would measures based on the root causes of accidents identified in the MAIDS study. Consequently, the Commission was not allocating its Road Safety budget in accordance with the principle of sound financial management, by preferring to improve motorcycles' technical standards instead of reducing traffic errors by drivers of other vehicles, which would allow it to maximise saving peoples' lives. In the complainant's view, DG MOVE should therefore carefully analyse the MAIDS study data before deciding its allocation of the Road Safety budget. The complainant requested access to the documents justifying the Commission's policy options [4] .

11. In addition, the complainant commented on another project, which is called 'SAFERIDER'. According to the complainant, that project provided for warning devices, namely vibrating saddles and handlebar grips, being fitted onto motorcycles, as well as for helmet cheek pads and head up displays assisting PTWs. The complainant doubted their effectiveness and warned of situations (such as those in the MAIDS study) where those devices could, in his view, even add to the possible injuries resulting from accidents caused by other vehicles. The complainant asked DG MOVE to provide him with evidence of the impact on fatalities and injuries prevention that the SAFERIDER project was expected to deliver, based on the causal factor identified in the MAIDS study. As a motorcyclist, he did not see the value of being warned through a vibrating saddle that a vehicle has pulled out in front of him. DG MOVE ought, in his view, to review the foreseeable practicalities and address the concerns he had raised before allocating further funds or making legislative recommendations.

12. Finally, the complainant thanked DG MOVE in advance for copying its forthcoming response with the requested information to all the persons he had copied in his e-mail, as well as to the MEPs included in the list at the bottom of that e-mail, and for providing a translation of those documents into German, French and Italian for the convenience of those MEPs.

13. On 23 February 2011, DG MOVE replied that its services did their best to respond in an appropriate way to the complainant's request of 22 September 2010. In DG MOVE's view, the rules provided for in:

" Article [1] 4 of the Code of Good Administrative Behaviour ... do not apply to correspondence



which can reasonably be regarded as improper, for example, because it is repetitive, abusive and/or pointless. Then the Commission reserves the right to discontinue any such exchanges of correspondence. "

DG MOVE thus informed the complainant that it "*will stop all exchange of correspondence in the future*".

14. On 10 April 2011, the complainant contacted the European Ombudsman.

The subject matter of the inquiry

15. The Ombudsman opened an inquiry into the following allegations and claims [5] :

Allegations:

The Commission's Directorate-General for Mobility and Transport (DG MOVE) wrongly decided to discontinue correspondence with the complainant.

DG MOVE failed properly to deal with the complainant's request for access to documents relating to:

(a) the "*Periodic Technical Inspections*" (the 'PTI survey');

(b) the impact assessment on "*Type Approval*" conducted by the Directorate-General for Enterprise and Industry;

(c) the budget allocated by the Commission to "*Road Safety*"; and

(d) the "*SAFERIDER*" programme.

Claims:

DG MOVE should properly address the technical points and questions raised in the complainant's e-mail of 13 February 2011.

DG MOVE should give the complainant access to the requested documents.

16. In his letter opening the inquiry into the complaint, the Ombudsman asked the Commission to explain whether it would be willing to convey the complainant's opinions to its relevant expert group working on the relevant draft legislation, and assure the complainant that his opinions will be taken into due consideration by the relevant experts.



The inquiry

17. On 1 July 2011, the Ombudsman forwarded the complaint to the President of the European Commission for an opinion.

18. On 23 November 2011, the Ombudsman received the Commission's opinion, which he forwarded to the complainant with an invitation to make observations.

19. The complainant sent his observations on the Commission's opinion on 7 February, 4 and 8 May, 21 and 22 October, and 18 November 2012, and on 21 January, 10 March, 30 April and 10 June 2013. Further correspondence sent by the complainant after the Ombudsman had opened his inquiry and before the Commission submitted its opinion, namely that of 3 August, 21 September, 9 and 23 October, and 13 November 2011, was taken into consideration by the Ombudsman in the context of the complainant's observations.

The Ombudsman's analysis and conclusions

Preliminary remark on the scope of the Ombudsman's inquiry

20. The Treaty on the Functioning of the European Union ('TFEU') [6] and the Statute of the European Ombudsman [7] empower the Ombudsman to investigate instances of maladministration. The Ombudsman has consistently taken the view that neither the merits of EU legislation nor the political work of the European Parliament fall within the concept of maladministration. Furthermore, in evaluating the actions of the Commission in formulating legislative proposals, the Ombudsman's role is not to substitute his judgment for that of the Commission but to check that correct procedures were followed and that there was no manifest error of appraisal. The Ombudsman will not, therefore, deal with the complainant's detailed submissions insofar as they contest, in substance, the merits either of legislation that has been adopted, or of legislative proposals that are before the European Parliament. The complainant remains free to submit his relevant arguments and documentation to the European Parliament in the form of a petition.

A. Allegation of wrongful decision to discontinue correspondence and related claim

21. The complainant alleged that DG MOVE was wrong to decide to discontinue correspondence with him because, contrary to the Commission's view, his correspondence had not been improper, repetitive, abusive or pointless. The complainant took, in this respect, the view that his e-mail of 13 February 2011 provided evidence-based criticism. For this reason, the complainant claimed that the Commission should properly reply to each of the technical points



and questions raised in that e-mail, namely those relating to: (i) the PTI survey; (ii) the process leading to the Commission's legislative proposals; (iii) the SAFERIDER project; and (iv) the budget allocated to Road Safety.

The PTI survey

Arguments presented to the Ombudsman

22. The complainant argued, in sum, that the Commission failed properly to draft the PTI survey questionnaire. In his view, DG MOVE failed properly to conduct research to draft legislation which had an important impact on citizens. In this respect, he referred to the right to good administration enshrined in Article 41 of the Charter [8] and, in particular, to the right "to be heard fairly". In the complainant's view, the PTI survey questionnaire was drafted in such a way that not all citizens would be able to understand the questions and the underlying issues. In addition, the questions were, according to him, ambiguous, leading, biased and/or unclear. Consequently, still according to the complainant, the responses were likely to correspond to distorted interpretations of those questions. The complainant considered also that conducting a survey in English only did not respect the right of every person to be heard. DG MOVE had an obligation to seek the views of citizens in the languages recognised as official languages of the EU, irrespective of the translation costs. Finally, the complainant took the view that DG MOVE did not offer any reason or evidence as to why his criticism should be rejected.

23. In its opinion, the Commission first referred to its " *Communication towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission* " (the 'Consultation Principles') [9] and took the view that it had met the requirements set out in those principles. It also explained that its guiding principle is to give interested parties a voice and emphasised that, in its resolution on the 'White Paper on Governance', the EP explicitly stated that a consultation of interested parties can only ever supplement and never replace the procedures and decisions of legislative bodies.

24. The Commission then explained that, following the 'Interactive Policy-Making Initiative', it set up an Internet-based consultation mechanism, designed to receive and rapidly store reactions to new initiatives in a structured way. The Commission used this Internet consultation mechanism for the purpose of the PTI survey. It drafted the questions of that survey in close cooperation with an external consultant, involving both highly educated senior economists and native English speakers. In addition to the Internet consultation, the Commission also organised workshops for experts and stakeholders in the area of roadworthiness testing during the consultation phase.

25. In his extensive and detailed observations, the complainant referred, among other things, to the Ombudsman's views on the language regime applied by the Commission to its consultations. The complainant, once again, took the view that the Commission failed to provide



him with any evidence suitable to rebut his analysis of the PTI survey.

The Ombudsman's assessment

26. At the outset, the Ombudsman notes that the Commission did not offer any useful comment on the complainant's substantial criticism of its PTI survey questionnaire. While it contested the statement that the questionnaire was "[f] *undamentally flawed* " in its direct communications with the complainant, it did not reply to the complainant's request of 13 February 2011 for reasons underlying the questions of the survey. It simply found that the complainant was addressing it in an abusive and repetitive manner, which, in its view, justified its interrupting any and all correspondence with him. However, in his e-mail of 13 February 2011, the complainant clearly set out his views in more detail than he had in his previous correspondence and made a number of specific requests to the Commission for information and documents. The Commission was not, therefore, justified in invoking the Code of Good Administrative Behaviour to discontinue its correspondence with the complainant.

27. The Ombudsman notes, however, that the Commission's opinion remedied the above maladministration in substance by offering additional explanations with respect to the PTI survey. In particular, the Commission explained that it had cooperated closely with external consultants, including senior economists and English language experts, to draft that survey and had applied the Consultation Principles. In addition, it had organised workshops for experts and stakeholders in the area of roadworthiness. Clearly, however, it would have been better if the Commission had provided these additional explanations directly to the complainant rather than wrongly invoking the Code of Good Administrative Behaviour and thereby provoking a complaint to the Ombudsman. With an eye to avoiding similar problems in the future, the Ombudsman will make a further remark inviting the Commission to consider providing guidance to its staff as regards the circumstances in which the Code of Good Administrative Behaviour may legitimately be invoked to discontinue correspondence.

28. While the Ombudsman notes that the complainant is still dissatisfied with, to summarize his view, the Commission's failure properly to justify its contesting of his criticism of the PTI survey, the Ombudsman considers that the Commission has offered a complete and easily understood account of the means and options available to it when drafting the questionnaire and conducting the consultation. Even if this may still be insufficient fully to explain the reasons underlying the questions of the PTI survey, the Ombudsman notes that the complainant's critical views in respect of that survey were posted by the Commission on its relevant website, together with other contributions received [10]. The Ombudsman therefore concludes that, in substance, the complainant had an opportunity to express his views about the PTI survey and that the Commission has published them, together with other contributions and PTI survey results, in a manner which is both sufficiently transparent and accessible to the general public.

29. As regards the fact that the Commission published the PTI survey in English only, the Ombudsman recalls his conclusions on another complaint, namely 640/2011/AN concerning public consultations. In that case, the Commission also argued that constraints of time and



resources justified its publishing of the consultation paper only in that language. It emphasised that it nevertheless accepted contributions in other official languages of the EU.

30. In that case, the Ombudsman underlined that citizens must understand the information which is provided to them by the EU Institutions. In cases where they are called on to participate in the decision-making process, multilingualism becomes an essential precondition for the effective exercise of the citizens' democratic right to become informed about matters that may lead to legislative action [11] . Restricting the number of EU citizens who could, in fact, exercise their right " *to participate in the democratic life of the Union* ", as provided in Article 10(3) of the Treaty on European Union ('TEU') and, as a result, limiting the " *broad consultations* " required by Article 11(3) TEU to the English-speaking " *parties concerned* ", means excluding non-English speaking citizens *ab initio* from that democratic exercise [12] . As a result, the Ombudsman concluded that "[t] he Commission should ensure that all European citizens are able to understand its public consultations, which should, as a matter of principle, be published in all the official languages ... [and that] its failure to do so is an instance of maladministration. "

31. In the present case, the Commission was not able to show that the fact that the PTI survey was conducted only in English did not reduce the number of responding participants. On the contrary, even if the Commission accepted contributions in languages other than English, it acknowledged that publishing the PTI survey only in English inevitably restricted some replies. Given that the Commission did not provide any information as to the number of contributions it received in languages other than English, the Ombudsman visited the Commission's website containing information on the PTI survey [13] , only to confirm the low number of replies received in languages other than English [14] . This, in the Ombudsman's view, reasonably confirms the complainant's statement that, in sum, non-English speaking citizens may have had difficulties understanding the PTI survey's questions and, consequently, did not even take part in it.

32. It follows from all of the above that the Commission's publishing of the PTI survey only in English constitutes an instance of maladministration.

33. When the Ombudsman finds an instance of maladministration, he tries to find, as far as possible, a friendly solution that could put a satisfactory end to the complaint [15] . In the present case, however, the TPI survey has been completed and it is not obvious what remedial measures the Commission could take. As regards the possible general implications of the maladministration for the future, the Ombudsman notes that, on 25 April 2013, the Commission informed him about the follow-up to his conclusions in case 640/2011/AN, namely, that it will:

"[e] xplore all available means to ensure wider language accessibility to public consultation documents, such as ensuring a more systematic provision of links to available translations for relevant documents and increasing services' awareness of available translation tools and means to facilitate their effective use..."

In light of the Commission's above assurances, the Ombudsman considers that no further inquiries are necessary in the present case. The Ombudsman will, however, make a further



remark encouraging the Commission to acknowledge that it would have been better not to have confined the PTI survey to the English language and to learn lessons for the future.

The processes leading to the Commission's legislative proposals

Arguments presented to the Ombudsman

34. The complainant has extensively reviewed the impact assessment that formed the basis of the Commission's Proposal for an EP and Council Regulation on the approval and market surveillance of two- or three-wheel vehicles and quadricycles (the 'Proposal for an Approval and Market Regulation') [16] . According to the complainant, the impact assessment contained distorted findings, which resulted in a legislative measure which is disproportionate when compared with the causes of accidents it would, allegedly, avoid. In the complainant's view, the data available was insufficient to demonstrate that the Commission's Proposal for an Approval and Market Regulation would have any positive impact on emissions and fatalities. The complainant emphasised that the MAIDS study, funded by the Commission and quoted in the impact assessment, demonstrated that only 0.7% of accidents involving fatality or serious injury were attributable to the mechanical condition of the motorcycles as the primary cause. The complainant referred to Article 5 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality [17] and took the view that the Commission failed to act in accordance with those principles.

35. In its opinion, the Commission explained that, when preparing proposals for legal acts, it follows the impact assessment procedures provided for in its Impact Assessment Guidelines [18] . These Impact Assessment Guidelines provide detailed information on the applicable processes, steps to be taken, and good practices. Before the Commission approves a proposal for a legal act, an impact assessment is examined by the Impact Assessment Board. It is only after receiving the latter's positive opinion that the Commission may draft a proposal for a legislative act. This draft proposal is then subject to what is known as "Inter Service Consultation", where other DGs of the Commission are invited to comment on the proposal. Compliance of the draft proposal with the impact assessment report is assessed during that Inter Service Consultation. Once adopted, the Commission's proposal is then submitted to the EP and the Council for examination. Only when both the EP and the Council agree on the proposal and adopt it, does the new legislative measure become applicable.

36. In the case at hand, between December 2008 and December 2009, the Commission conducted a fully-fledged impact assessment regarding the overhaul of the existing type-approval requirements for L-category vehicles, as provided for in the applicable procedures, in preparation of the revision and updating of the corresponding market surveillance and approval legislation [19] . The Commission explained that L-category vehicles are light vehicles mainly composed of two- or three-wheel mopeds, two-wheel motorcycles with and without a sidecar, tricycles and quadricycles. In this context, between December 2008 and March 2009, stakeholders, including individuals, were invited to provide their opinions regarding



issues of type-approval legislation [20] . The resulting report is available online [21] . Subsequently, on 4 October 2010, the Commission presented its Proposal for an Approval and Market Regulation [22] .

37. According to the Commission, the purpose of the impact assessment was to estimate the potential societal, environmental and safety advantages and disadvantages, as well as the associated costs and benefits to European citizens, national authorities in the Member States and to industry stakeholders, based upon the best available evidence available at the time of writing. The Commission assessed the efficiency and the effectiveness of the policy measures and their coherence with the existing related type-approval legislation. The options finally chosen represent a balance between the assessed aspects. The Commission, in addition, regularly shared every step of this process with the stakeholders. It nevertheless understood that the preferred policy options could not be custom-tailored for every EU citizen or circumstance.

38. The Commission assured that it had followed a strict and rigorous procedure to guarantee the quality of the impact assessment. A separate Impact Assessment Board, consisting of senior high-level Commission staff, reviewed the final report, in accordance with the applicable procedure. Then, an Impact Assessment Steering Group of the Commission provided additional guidance. The resulting detailed analysis on preferred policy options was then used as basis for the Commission to draft its Proposal for an Approval and Market Regulation.

39. The Commission emphasised that, while conducting the public consultation, carrying out the impact assessment and drafting the actual proposal, it was also regularly discussing the issues and possible policy measures in the Motorcycle Working Group. Indeed, it did so for more than seven years. User associations, Member State authorities and industry representatives attended these meetings. The agenda, discussion material and minutes of meetings are all publicly available [23] . In parallel, the Commission held multiple bilateral meetings with stakeholders, and analysed and took account of concerns expressed by individuals. The Commission thus conducted the impact assessment and drafted the Proposal for an Approval and Market Regulation in a fully transparent manner.

40. Finally, the Commission explained that its Proposal for an Approval and Market Regulation was under scrutiny by the EP and the Council. Only when these two institutions agree on the proposal and adopt it, will the new measures become applicable for new vehicles.

41. In his observations, the complainant, in sum, repeated the arguments he previously submitted. To these, he added detailed and extensively documented arguments in respect of the Commission's Proposal for an Approval and Market Regulation [24] .

42. In his last observations on the Commission's opinion, the complainant offered a further detailed technical analysis of the Commission's Proposal for a Regulation on periodic roadworthiness tests for motor vehicles and their trailers (the 'Proposal for a Roadworthiness Regulation') [25] . In sum, the complainant raised issues of conflict of interest "*on the part of the advising consultants* " and argued that the Commission had also failed to produce



appropriate evidence in support of this new legislation. He set out his detailed disagreement with a number of provisions of the Proposal for a Roadworthiness Regulation and pointed out what he considered to be flaws in the impact assessment supporting that proposal. He, finally, added an " *estimate [of] staff costs understatements* " in respect of the above proposal, which he also sent to the EP.

The Ombudsman's assessment

43. The Ombudsman appreciates the Commission's detailed explanation in the opinion about the procedure preceding its legislative proposals. In his view, the Commission's opinion provides a complete and easily understood account of the steps it has undertaken before submitting its proposals to EP and Council scrutiny. The Ombudsman particularly notes that the Commission's impact assessments have been submitted to its Impact Assessment Board and have had the benefit of the guidance of an Impact Assessment Steering Group, before being integrated in the legislative proposals presented for Inter Service Consultation and, finally, to the EP and the Council.

44. In this respect, the Ombudsman notes that it emerges from the complainant's consecutive submissions that, in sum, he does not contest the Commission's account of the steps taken and/or of the entities involved in the procedure leading to its submission to the two Institutions of the legislative proposals for approval and adoption. The complainant does, however, have strong views on the legislative proposals as such. In the Ombudsman's understanding, the complainant considers that the policy options underlying the Commission's proposals for an Approval and Market Regulation and for a Roadworthiness Regulation are inconsistent with the available data relating to the causes of accidents involving PTWs. Consequently, according to the complainant, the above proposals are ineffective for minimising those causes, and adopting any such legislation would amount to preferring the interests of the industry over the interests of the road users, in particular PTWs, at large. This is, in the Ombudsman's understanding, the main point of the complainant's criticism vis-à-vis the Commission, justifying his strong opposition to the options set out in the provisions of the legislative proposals put forward by that institution. Moreover, this is an opinion shared by a significant number of motorcyclists who have contacted the Ombudsman and expressed their strong support for the complaint.

45. The Ombudsman must, in this respect, refer the complainant to the preliminary remark made in paragraph 20 above, which explains the reasons why the Ombudsman will not inquire into the substantive merits of legislation or of legislative proposals that are before the European Parliament. He invites the complainant to consider submitting a petition on this matter to the European Parliament.

The SAFERIDER project

Arguments presented to the Ombudsman



46. The complainant noted that the SAFERIDER project aimed at studying devices with the potential of making PTW riding safer. According to the complainant, DG MOVE expected some warning devices to be fitted onto new motorcycles within two years. Press releases reported that the Commission had stated that such systems would be introduced through legislation as a last resort if manufacturers did not adopt them voluntarily. The complainant thus concluded that the SAFERIDER project team was under considerable political pressure to deliver technology regardless of its ability to save lives.

47. The complainant explained that the technology in question was designed to warn motorcycle drivers of other vehicles that may present a threat to them. However, the need for such technology is, in the complainant's view, in contradiction with the findings of another programme, the " *PISA* " project, where the most important piece of research was the creation of technology to warn other vehicle drivers of the PTW's presence. It followed that some of the proposals made in the SAFERIDER project were, in the complainant's view, useless. This would suggest that the Commission did not take motorcyclists' views seriously or even blatantly ignored them.

48. The complainant referred also to the WATCH-OVER project, which had, according to him, examined the potential of collaborative devices between cars, motorcycles and other vulnerable road users, such as cyclists and pedestrians. According to the complainant, the initial materials with respect to motorcycle fatalities clearly related to MAIDS root cause data. Riders' inattention was a factor in approximately only 10% of the MAIDS accident causes. However, the SAFERIDER website did not provide any document that showed consideration of the relationship between the MAIDS root causes of accidents involving motorcycle rider fatality or injury and the solutions being developed in a direct, traceable and verifiable manner. Additionally, some of the SAFERIDER project's " *use cases* " were confidential, which was not the case with the WATCH-OVER project's use cases. This, in the complainant's view, showed that the former cases would not withstand public scrutiny, as such scrutiny would demonstrate that certain avenues of research and product development were not viable from a business perspective. The complainant further criticised some of the SAFERIDER project's presentation materials, which, he considered, misinterpreted the views of the European motorcyclists and were intended to induce bias. Other material used to justify the technology suggested a manipulation of MAIDS data "*[t]o meet a particular agenda*". Similar to the PTI survey, in the complainant's view, the quality of input into the whole SAFERIDER process was not what one would have expected from a Commission-funded programme.

49. In its opinion, the Commission explained that the SAFERIDER project was a study conducted under the Seventh Framework Programme managed by (the former) Directorate-General Information Society and Media ('DG INFSO'). The results of the project have been published on the Internet [26] .

50. The Commission clarified that the results of these kinds of studies do not necessarily lead to legal requirements to equip motorcycles with any of the products that have been investigated. Any legal requirement will have to follow the applicable procedures, as explained previously in



respect of the procedures applicable to Commission's legislative proposals.

51. In his observations, the complainant referred to the SAFERIDER website, with which he was, in sum, not fully satisfied. He added that DG MOVE must have been involved in the SAFERIDER project, in the same way as DG INFSO was.

The Ombudsman's assessment

52. The Ombudsman understands that by referring to the information available on the Internet in respect of the SAFERIDER website, the Commission intended to provide the complainant with a document containing links to the project's website, relevant coordinator and partners. The Ombudsman notes that the SAFERIDER website, accessible through the Commission's link, mentions the Seventh Framework Programme and DG INFSO. It follows that the Commission's position in reply to this part of the complainant's allegation is reasonable.

53. The Ombudsman nonetheless also notes that, in sum, the complainant disagrees with the SAFERIDER project's results as they allegedly do not represent the conclusions of the MAIDS study correctly. Since the SAFERIDER project targeted road safety, in the complainant's view, DG MOVE should have also been involved in that project. The Ombudsman understands the complainant's above views to relate to his interpretation of the conclusions resulting from available studies in respect of means appropriate to enhance PTW drivers' safety. In sum, the complainant doubts the effectiveness of warning devices, such as vibrating saddles, handlebar grips, cheek pads and head up displays, to be fitted onto motorcycles and helmets, as that project advises. As explained in the preliminary remark made in paragraph 20 above, the Ombudsman's role is not to substitute his judgment for that of the Commission. The Ombudsman's inquiries into this aspect of the case have revealed neither a procedural error, nor a manifest error of appraisal. The Ombudsman underlines once again, however, that the complainant could contest the Commission's policies through a petition to the European Parliament.

The Commission's budget allocated to Road Safety

Arguments presented to the Ombudsman

54. Finally, the complainant argued that DG MOVE failed to demonstrate that it was spending funds wisely and that it was directing them to areas where they would have a maximum effect. The absence of a strategic plan, showing the relationship between the investment in the motorcycle safety programmes and the expected outcomes in terms of projected lives saved, represented, in his view, a complete and utter failure to comply with the principle of sound financial management, laid down by TFEU. The complainant considered that programmes without a sound financial basis, which visibly demonstrated a misallocation of resources in terms of lives saved and injuries avoided, should be abandoned.



55. In its opinion, the Commission stated that the general information related to the budget and the annual budget procedure is made public and available on the Internet [27] .

56. As regards Road Safety, the Commission explained that the budget allocated to it at the time of its opinion was about EUR 1 million per year. This budget is used in line with the objectives identified in the Policy Orientations on Road Safety.

57. In his observations, the complainant took, in sum, the view that the information provided by the Commission only dealt with general levels of expenditure and did not link money to the resolution of problems. According to him, the Commission was yet to refer him to the "[t] he strategy document that ties root cause of accidents to details of the budget allocated to addressing each root cause. "

The Ombudsman's assessment

58. While the Ombudsman acknowledges that the complainant is correct to point, essentially, to the need for the use of funds from the EU budget to be as effective and efficient as possible, it emerges clearly from the complainant's submissions that what he contests is the Commission's policy choices, that is to say, the options adopted in its legislative initiatives which have an impact on the freedoms of the drivers of PTWs. These are, in the complainant's view, inadequate to tackle the causes of death and serious injury in accidents involving motorcycles, as identified in the MAIDS study. Consequently, according to him, the Commission is allocating funds inadequately.

59. As explained in the preliminary remark made in paragraph 20 above, the Ombudsman's role is not to substitute his judgment for that of the Commission. The Ombudsman's inquiries into this aspect of the case have revealed neither a procedural error, nor a manifest error of appraisal. The Ombudsman underlines once again, however, that the complainant could contest the Commission's policies through a petition to the European Parliament.

B. The Ombudsman's invitation to the Commission to convey the complainant's opinions to its relevant expert group

60. In his letter opening his inquiry into the complaint, the Ombudsman invited the Commission to explain, when replying to the allegation and claim identified in paragraph 15 above, whether it would be willing to convey the complainant's opinions to its expert group working on the relevant draft legislation and to assure the complainant that his opinions would be taken into due consideration by the experts.

61. In its opinion, the Commission replied that it was prepared to put the complainant's comments and opinions on the regulatory proposals available to the relevant expert groups



working on the relevant legislation for consideration as appropriate. It further assured that it would continue correspondence with the complainant "[i]n a non disproportionate way".

62. In his observations on the Commission's opinion, the complainant, in sum, emphasised that the Commission failed to acknowledge receipt of the communications he sent to it after the Ombudsman had opened his inquiry. He took the view that it was too late to put his remarks and comments to the expert groups.

The Ombudsman's assessment

63. At the outset, the Ombudsman welcomes the Commission's reply that it was prepared to submit the complainant's opinions to the relevant expert groups for their due consideration. The Commission's acceptance to convey the complainant's dissenting views to its experts demonstrates its willingness to listen and to remain open towards stakeholders' contributions to initiatives having significant impact on their lives.

64. The Approval and Market Regulation has already been adopted by the EP [28] , and published in the Official Journal of the European Union [29] . According to the complainant, the Commission did not even acknowledge receipt of his further communications to it and, because of that fact, he doubted that the Commission ever took them into appropriate account. The Ombudsman has no reasons to doubt the Commission's assurances, and trusts that the Commission has acted as promised. He therefore invites the Commission to confirm to him that it has followed up its own assurances and has forwarded the complainant's comments and opinions on its regulatory proposals to the expert groups working on the relevant legislation, for their consideration. The Ombudsman will further forward to the Commission the complainant's observations on its opinion, plus annexes, for its consideration as to their adequate follow-up in light of its above assurances.

C. Allegation of failure properly to deal with a request for access to documents and related claim

Arguments presented to the Ombudsman

65. In his original complaint, the complainant alleged that DG MOVE failed properly to deal with his request for access to documents relating to:

(a) the PTI Survey;

(b) the impact assessment on " *Type Approval* " conducted by the Directorate-General for Enterprise and Industry;

(c) the budget allocated by the Commission to " *Road Safety* "; and



(d) the " *SAFERIDER* " programme.

66. In support of the above allegation, the complainant argued that he has a right of access deriving from Article 42 of the Charter. In addition, he argued that the Ombudsman emphasised the citizens' rights to good administration and access to documents in his meeting with the College of Commissioners of 15 February 2011.

67. The complainant claimed that DG MOVE should give him access to the requested documents.

68. In his view, DG MOVE had a legal duty to supply the documents requested or clearly state that those documents do not exist. In case they do exist, the relevant information should be published on the Commission's website, along with the supporting data to give a sight line of the trail of evidence from root cause to regulation. If these do not exist, then appropriate processes should be put in place so as to guarantee that: (i) surveys are managed properly; (ii) budgets address problem root causes; and (iii) robust impact assessments are provided. DG MOVE should thus publish all supporting documentation, references and validation of its project management approach. It should further make public all use cases, motorcyclist representatives' views of the projects, cost-benefit analyses and impact assessments delivered by the *SAFERIDER*, *PISa* and " *APROSYS* " projects. Their confidential nature would be in breach of consumers' right to information. DG MOVE should thus clearly identify the basis of the allocation of financing to motorcycle safety projects in terms of root cause, programme, and respective impacts on motorcycle drivers' fatality reduction, and make it public.

69. In addition to the requests for access referred to in his original complaint, the complainant sent two further access requests to the Commission, on 15 July [30] and 3 August 2011 [31], that is, before the Commission's opinion to the Ombudsman.

70. In its opinion, the Commission emphasised that it uses internet facilities for publication of documents to increase transparency. This allows for an immediate access to these documents.

71. As such, according to the Commission, all information related to the processes applicable to the preparation of legislative proposals is public and accessible on the Internet [32]. The Commission's Internet consultations and contributions to them are also publicly available on the Internet [33]. Impact assessment reports are also made public on the Internet, together with the draft proposals when approved by the Commission and submitted to the EP and to the Council. As regards the Proposal for an Approval and Market Regulation, the whole package is available on the Internet [34]. Similarly, the Commission referred the complainant to the general information on the EU budget available on its website [35].

72. The Commission provided further links to the Internet websites containing documents relating to: (i) the impact assessment in preparation of the revision and update of L-category vehicle market surveillance and approval [36] (including the resulting report) [37]; (ii) *SAFERIDER* [38]; and (iii) the meetings of the Motorcycle Working Group [39].



73. As regards all other documents requested by the complainant, the Commission explained that it carefully considered them and would reply in accordance with the applicable rules on public access to Commission documents [40] .

74. In his observations, the complainant found it encouraging that the Commission was considering his requests for public access to documents carefully.

The Ombudsman's assessment

75. At the outset, the Ombudsman notes that the Commission referred the complainant to a number of documents, namely contributions from public authorities, companies and associations, and individual citizens, all made available on its websites [41] . Among these documents, it is possible to find the report pertaining to the results of the public consultation which preceded the Commission's proposal for an Approval and Market regulation [42] . Relatedly, the Ombudsman was able quickly to find the documents pertaining to the PTI survey [43] and details of the SAFERIDER project, including results [44] . He further identified the Commission's webpage pertaining to 'Better Regulation', providing for, among others, links to information on the Commission's impact assessments and consultations [45] . All the above allows, in the Ombudsman's view, for the conclusion that the information pertaining to the Commission's Road Safety policy is, in sum, available on the Commission's websites in a manner sufficient to be easily consulted by the general public.

76. In respect of the complainant's further requests for access to documents submitted after the Ombudsman had opened his inquiry, the Ombudsman notes that on 7 September 2011, the complainant was sent a reply from the Commission offering, in sum, the same explanations as those provided in the Commission's opinion to the Ombudsman as well as a "[b]ibliography of... public documents " used by the Commission to draft the impact assessment study [46] . The Ombudsman notes that the complainant has not contested the adequacy of this reply.

77. As regards the complainant's further request submitted on 3 August 2011 [47] , the Ombudsman understands from the complainant's last submissions to him that he no longer insists on this request. In fact, the complainant's ultimate goal is that the new legislation already in place, as well as the possibly forthcoming legislation " *affecting his freedoms as PTW* ", is amended or repealed in its entirety. The Ombudsman notes that the repeal or amendment of the legislation is a matter that could be the subject of a petition to the European Parliament.

78. Consequently, in the Ombudsman's view, no further inquiries in respect of the complainant's requests for access to documents are justified.

D. Conclusion

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following



conclusion and three further remarks:

No further inquiries are justified.

The complainant, the President of the Commission and the Chairperson of the Committee on Petitions will be informed of this decision.

E. Further remarks

1. The Ombudsman invites the Commission to consider providing guidance to its staff as regards the circumstances in which the Code of Good Administrative Behaviour may legitimately be invoked to discontinue correspondence.

2. In light of the Commission's follow-up to his conclusions in case 640/2011/AN, the Ombudsman encourages the Commission to acknowledge in the present case that it would have been better not to have confined the PTI survey to the English language and to consider whether there are any lessons to be drawn for the future.

3. The Ombudsman invites the Commission to confirm that it has forwarded the complainant's comments and opinions on its regulatory proposals to the expert groups working on the relevant legislation, for their consideration.

P. Nikiforos Diamandouros

Done in Strasbourg on 27 June 2013

[1] The complainant's complaint, further correspondence and observations on the Commission's opinion are voluminous documents containing arguments concerning detailed and complex technical, economic and statistical assessments. For the sake of simplification, in the present decision, the Ombudsman will concisely summarise those arguments as far as they relate to the allegations and claims identified in paragraph 15 of this decision below.

[2] Article 42 of the Charter provides for a "*Right of access to documents [-] Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.*"



[3] The complainant requested: " 1. Documentary evidence recording the grounds for and an analysis supporting the rejection of my critique of the PTI survey;

2. The documented assessment criteria used by [DG MOVE] to validate the PTI survey questions as good practice prior to launch of the survey. I expect this to include:

1. Any Final Documents detailing the standards and process for managing the design of EC Surveys, i.e. Documented workflows and quality checkpoints;

2. The Document standards and criteria for survey questionnaire design issued by the EC along with their published date and effective date. I note FAO and UNESCO publish such standards.

3. The academic references used to validate the questionnaire design standards applied by the EC;

4. Documents demonstrating the PTI Survey's compliance with the standard requested in 2 above, i.e. in line with the evaluations ... carried out. I expect a question by question assessment.

3. The language complexity assessment criteria used to validate the level of English required to comprehend the PTI survey;

4. The level of language complexity for the PTI survey ... and the level of linguistic analysis expertise of assessor(s);

5. Data indicating the percentage of the population by EU member states having the English language comprehension level to be able to effectively comprehend the PTI survey and respond to it; and

6. Data evidencing the likely reduction in fatalities by EU Member State of a PTI regime involving random roadside inspections against a regime involving stops of inspection only where a police officer or official has reasonable grounds for suspicion an offence is being committed. "

[4] The complainant requested: " 1. The detailed strategic root cause analysis to framework budget allocations based on MAIDS root cause proportions, Total EU-wide accidents, appropriate VoSL values and weighted costs of severe and minor injuries broken down by EU member state...;

2. Details of the programmes, e.g. WATCH-OVER and SAFERIDER, targeted at addressing the principal root causes of accidents involving PTWs, and the budgets associated with those programmes;

3. Where programmes are at a stage where legislation was being formulated resulting in potential costs for PTW riders within the EU, details of the expected reduction of lives saved with the economic benefits and the costs of compliance by citizens of the EU and the member states, by programme and by Member state;



4. With specific reference to the proposed PTI regime, the documents illustrating the reduction of fatalities and injuries expected as a result of the proposals broken down by EU member state and the reduction in fatalities and injuries that could be expected based on a regime of annual inspections backed by police stop and inspection where reasonable suspicion of an offence forms the grounds for stopping the vehicle. It is reasonable to expect that the numbers will be consistent with the upper limits for fatalities and injuries indicated by the Root Cause case described in MAIDS when Mapped to EU-wide PTW fatality statistics and not overstate the benefits to be obtained... "

[5] In his complaint, the complainant had also raised an allegation of improper behaviour on the part of the Commission officials. In his letter opening the inquiry into the complaint, the Ombudsman explained to the complainant that there were insufficient grounds to include that allegation in his inquiry due to lack of (i) sufficient evidence, and (ii) any appropriate administrative approaches to the Commission in its regard, in accordance with Article 2(4) of the Ombudsman's Statute ("*[a] complaint ... must be preceded by the appropriate administrative approaches to the institutions and bodies concerned*").

[6] Article 228(1) TFEU reads as follows: "*[a] European Ombudsman, elected by the European Parliament, shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies...* "

[7] Article 2(2) of the Statute of the European Ombudsman reads: "*[a] ny citizen of the Union... may... refer a complaint to the Ombudsman in respect of an instance of maladministration...* "

[8] OJ 2010 C 83, p. 389.

" Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions



or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language. "

[9] COM (2002) 704 final.

[10] The complainant's remarks to the PTI survey are included on the website including the details of the PTI survey:

http://ec.europa.eu/transport/road_safety/take-part/public-consultations/pti_en.htm

[11] See paragraphs 28 and 29 of the Ombudsman's decision on complaint 640/2011/AN, available on the Ombudsman's website (www.ombudsman.europa.eu).

[12] See paragraph 32 of the Ombudsman's decision on complaint 640/2011/AN.

[13] http://ec.europa.eu/transport/road_safety/take-part/public-consultations/pti_en.htm

[14] The Ombudsman was able to find one reply (or rather a comment on the PTI survey) in French and another in German.

[15] Article 6.1 of the European Ombudsman's Implementing Provisions: "*[i] f the Ombudsman finds maladministration, as far as possible he co-operates with the institution concerned in seeking a friendly solution to eliminate it and to satisfy the complainant. "*

[16] COM (2010) 542 final

[17] OJ 2010 C 83, p. 206. Article 5 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality reads as follows: "*Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved. "*

[18] SEC (2009) 92.

[19] The Commission referred to the following website:

<http://ec.europa.eu/enterprise/sectors/automotive/documents/proposals/> [Link]



[20] The Commission referred to the following website:

http://ec.europa.eu/enterprise/sectors/automotive/documents/consultations/2008-type-approval/index_en.htm

[Link]

[21] The Commission referred to the following website:

http://ec.europa.eu/enterprise/sectors/automotive/documents/consultations/2012-emissions-nrmm/index_en.htm

[Link]

[22] The Commission referred also to the preparation of the revision of the roadworthiness legislation (Agenda Planning 2010/MOVE/014). In this respect, it stated that DG MOVE carried out a further impact assessment, as from the beginning of 2010. Between 29 July and 24 September 2010, DG MOVE conducted a public consultation via internet.

[23] The Commission referred to the following website:

<http://circa.europa.eu/Public/irc/enterprise/automotive/library?l=/mcwg>

motorcycle&vm=detailed&sb=Title which, after the Ombudsman's inspection, appeared to be no longer valid.

[24] Some of these arguments may be summarised as follows. The complainant emphasised that the UK appeared to question the quality of the Commission's impact assessment supporting its type-approval legislative proposal and conducted its own independent consultation and impact assessment. He also exhaustively analysed the publicly available documents used by the Commission to prepare its type-approval legislative draft. He again took the view that the available data showed that the single biggest cause of accidents involving PTWs was the behaviour of other vehicles' drivers, even when motorcycle drivers were perfectly visible by using a headlamp during daylight. These accidents were therefore likely to occur even after the introduction of the new legislation focusing on the technical control of motorcycles. The complainant also analysed in great detail the Proposal for an Approval and Market Regulation - namely, the measures relating to: (i) 'anti-tampering'; (ii) automatic lighting; (iii) ABS brakes; and (iv) on-board diagnostics - and the corresponding impact assessment. With respect to the last mentioned item, he took the view that the Commission failed to provide appropriate evidence in the impact assessment in justification of its policy options. In situations where that information was available, namely, that provided by the MAIDS study and "TüV Nord", that evidence did not support the measures proposed by the Commission. This put into question the proportionality of the proposed measure in respect of, for instance, 'tampering' in the EU PTW fleet. By failing to comply with the requirements of producing a detailed statement that supports appraisal of the Proposal for an Approval and Market Regulation, in violation of its own Impact Assessment Guidelines and Article 5(4) TEU and Article 5 of Protocol 2, the Commission committed a serious instance of maladministration. The complainant further considered that the documents which were publicly available suggested that the relevant provisions of the Proposal for an Approval and Market Regulation resulted from submissions from industry, which did not necessarily have customers' interests as their prime motivation. He emphasised that the Commission's impact assessment contained no analysis of the impact of the "Automatic Lighting On" measure during daylight in terms of reduction of accidents expected or the financial



consequences deriving from accidents taking place when PTW riders have, for example, inadvertently left their lights off. In addition, the Commission failed to assess the impact of the measure on the compensation awarded following accidents involving PTWs in the various EU Member States. Therefore, in the complainant's view, the Commission failed to demonstrate a convincing cost/benefit analysis before presenting its draft Proposal for an Approval and Market Regulation, namely, as regards legal issues pertaining to situations of negligence resulting in accidents. He suggested that the measure be put on hold until the Commission receives legal advice from each Member State as to its likely impacts on legal liability, negligence and compensation payouts in accidents. Moreover, he considered that that advice should be made public. In his view, the "automatic lights on" measure did thus not represent the minimum necessary to achieve the objective with regard to PTW safety and, as such, should be struck out of the Commission's proposal. The complainant also disagreed with the provisions of the Proposal for an Approval and Market Regulation in respect of ABS brakes. In the complainant's view, it should have been possible to leave the ABS brakes as switchable on/off. He considered that the Commission again failed to produce evidence of any positive impacts of the measure on safety and of the brakes' performance in a variety of road conditions. Relatedly, as regards 'on-board diagnostics' system, the complainant considered that the Commission failed once again to provide evidence that citizens' financial and administrative burdens were minimised by the proposed measure. He emphasised that citizens should have easy access to diagnostic equipment, and took the view that alerts and warnings concerning non-standard parts should not be permitted. In his direct communications to the Commissioner following his observations on the Commission's opinion, the complainant further took the view that some of the further measures relating to roadworthiness inspections provided evidence of an improper relationship between the Commission staff and consultancies on the field. In this regard, he again emphasised his opinion that important evidence justifying Commission's policy options was missing from the impact assessment. He finally requested access to documents containing data pertaining to the technical defects identified as causing fatal accidents and information on the sampling method used.

[25] COM (2012) 0380.

[26] The Commission referred to the following website:

http://ec.europa.eu/transport/road_safety/pdf/projects/saferider.pdf [Link]

[27] The Commission referred the complainant to its Financial Programming and Budget website: http://ec.europa.eu/budget/index_en.cfm [Link]

[28] According to the information available on the EP's Legislative Observatory website (<http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?id=587785#tab-0> [Link]), on 20 November 2012, the EP adopted, at first reading and by 643 votes to 16, and 18 abstentions, a legislative resolution for a Regulation of the EP and of the Council on the approval and market surveillance of two- or three-wheeled vehicles and quadricycles.

[29] Regulation (EU) No 168/2013 of the EP and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles, OJ 2013 L



60, p. 52.

[30] On 15 July 2011, the complainant requested "[u] nder Article 42 of the Charter of Fundamental Rights of the European Union... access to documents as follows in English version.

1. Documents indicating the extra level of compliance the regime of roadside inspections with no evidence of an additional offence being committed recommended in the Impact Assessment for the proposed type approval regulations will achieve and above the regime MOT/PTI inspections with police roadside inspection when another offence had been committed that we have here in the UK. I would also like the date of those documents.

2. Details of the agencies, and the supporting documents, making recommendations to impose Roadside Inspections solely for the purpose of Type Approval compliance.

3. Documents covering the market size in terms of provision of roadside inspection services for motorcycles, cars and lorries and inspection delivery capability by country.

4. Documents detailing which countries currently stop motorcycles to impose roadside inspections of motorcycles against current type approval standards as the sole basis for stopping the motorcycle, e.g. no Speeding offence, Dangerous driving offence etc as the primary reason for the stop.

5. Documents covering the current level of non compliance with current type approval broken down by country and L class vehicle.

6. Documents detailing the level of PTI / Roadworthiness inspection in force in each EU country.

7. Documents of the estimated cost of implementing roadside emissions testing for nmotorcycles by EU country... "

[31] On 3 August 2011, the complainant "[r] equest [ed] additional documentation in English under Article 42 of the Charter of Fundamental Rights of the European Union.

1. Documents weighing the impact of detention for roadside inspection on individual motorcyclists, e.g. Length of time the motorcyclist will be stopped at the roadside for appropriate authorities to conduct a roadside inspection for tampering and emissions.

2. Documents detailing the evidence of and evidence for the expected percentage of compliant riders stopped by EU country.

3. Documents detailing the evidence for the expected reduction in non compliance with L class vehicle emissions limits by country and for the EU as a whole as distinct from Roadside Inspections in conjunction with an annual or otherwise roadworthiness inspection.

4. Documentary evidence of the analysis of a roadside inspection regime in the context of free



movement of persons.

5. Documents detailing the reasoning that weights the reduction in riders' rights of free movement against the benefit in improved compliance with type approval regulations.

6. Documents detailing evidence of the cultural expectations of free movement and grounds for police or other authorities to restrain citizens by standard; No reasonable suspicion of breach of the law (i.e. Arbitrary selection of citizens for stopping), reasonable suspicion of a breach of the law, and conditions in which those stop powers can be exercised e.g. prevention of terrorism, no constraints on the exercise of police power, by EU country.

7. Documentary evidence of the expected impact on the citizen motorcyclist with police relationships in implementing roadside inspection regime by country.

8. Documentary evidence of the EC's consideration of how a proposal for roadside inspection might be implemented without the arbitrary stopping and detention of individual citizen motorcyclists, e.g. Reasonable suspicion of an offence and what the EC might consider grounds for reasonable suspicion other than riding a motorcycle.

9. Documentary evidence of the assessment of proven capability to introduce a roadside inspection regime as per the standards considered by major provider of services; e.g. UK standard, France standard, Germany standard, proposed standard etc. by DEKRA, TuV Nord, TRL etc... "

[32] The Commission provided the following link: <http://ec.europa.eu/governance> [Link] The Ombudsman's inspection of the link revealed that it is, apparently, no longer working.

[33] http://ec.europa.eu/yourvoice/consultations/index_en.htm [Link]

[34] The Commission provided for the following link:
<http://www.europarl.europa.eu/oeil/file.jsp?id=5877852> [Link] After inspection, the Ombudsman found that the foregoing link has been updated to:
<http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?id=587785>

[35] The Commission referred to its Financial Programming and Budget website:
http://ec.europa.eu/budget/index_en.cfm [Link]

[36] The Commission referred to the following link:
http://ec.europa.eu/enterprise/sectors/automotive/documents/proposals/index_en.htm [Link]
containing " *automotive - reference documents and legislative proposals* ".

[37]
http://ec.europa.eu/enterprise/sectors/automotive/documents/consultations/2008-type-approval/index_en.htm
[Link]



[38] The Commission provided the following link:
http://ec.europa.eu/transport/road_safety/pdf/projects/saferider.pdf The Ombudsman's inspection of the link revealed that it is, apparently, no longer working.

[39] The Commission provided the following link:
http://circa.europa.eu/Public/irc/enterprise/automotive/library?l=/mcwg_motorcycle&vm=detailed&sb=Title [Link] The Ombudsman's inspection of the link revealed that it is, apparently, no longer working.

[40] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

[41]
http://ec.europa.eu/enterprise/sectors/automotive/documents/consultations/2012-emissions-nrmm/index_en.htm [Link]

[42]
http://ec.europa.eu/enterprise/sectors/automotive/files/consultation/2_3_wheelers/results_report_en.pdf [Link]

[43] The details of the PTI survey can be found at:
http://ec.europa.eu/transport/road_safety/take-part/public-consultations/pti_en.htm [Link]

[44] http://www.transport-research.info/web/projects/project_details.cfm?ID=44562 [Link]

[45] http://ec.europa.eu/governance/better_regulation/index_en.htm [Link]

[46] The reply contained Internet links to the following documents:

- White paper 2011 - Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system;
- Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, Towards a European road safety area: policy orientations on road safety 2011 - 2020, COM(2010) 389 final;
- European Commission report on the technical roadside inspection of the roadworthiness of commercial vehicles, COM(2010) 754 final;
- Eurostat statistics;
- CITA, AUTOFORE report;
- CITA, Idelsy report;



- UK Department of Transport Study, 2008 'MOT Scheme Evidence-base';
- CARE Database, DG MOVE;
- FEMA position on PTI;
- Air pollution from motor vehicles, A. Faiz, C. Weaver, M. Walsh, 1996;
- Auto Oil Study, 2000;
- Denmark's State Audit report after liberalisation of PTI;
- Study of the economical impact of mileage fraud, CRM used car management (in Proceedings of Cars 2010 conference, Brussels, 18 November 2010;
- DG Clima, European second hand car marked analysis, February 2011;
- Campaigns and Awareness-Raising Strategies in Traffic Safety (CAST) (2009) "A theoretical approach to assess road safety campaigns: Evidence from seven European countries" Prohject co-financed by DG Energy and Transport;
- CITA General Questionnaire, 2009;
- Handbook on estimation of external costs in the transport sector (2008);
- EGEA (European Garage Equipment Manufacturers); and
- ACEM.

[47] See footnote 31.