

RECU LE 22.10.2012

0875/2011/JF

E2012-163844

From: [REDACTED]
Sent: 21 October 2012 23:58
To: [REDACTED]@ec.europa.eu
Cc: Euro-Ombudsman
Subject: Proposal for a regulation of the European Parliament and European Council on the periodic roadworthiness tests for motor vehicles... COM(2012) 380 final and EU Ombudsman case ref (0875/2011/JF)

Dear Vice President [REDACTED]

I am expecting that your staff have been waiting for my comments on this proposed regulation. I note your assurance to the European Ombudsman under the case reference above that your staff will not deal with me in a disproportionate manner.

You will be well aware that one of the heads of my complaint (0875/2011/JF – still to be decided) against the European Commission (EC) made to the European Ombudsman covered an allegation that there seemed to be an improper relationship between the EC staff and consultancies in the field. Specifically the improper relationship seemed to manifest itself in terms of undue influence in relation to what were then referred to as Periodic Technical Inspections and are now being more clearly referred to as Roadworthiness Inspections.

I note the following:

1. Article 12 (4) of the proposal - “When carrying out a roadworthiness test, the inspector shall be free of any conflict of interests, in particular as regards economic, personal or family links with the holder of the registration certificate of the vehicle subject to testing.”
 1. Given the discussion in paragraph 1.70 of Annex 14 to the impact assessment and other sections of the impact assessment itself with regard to fraud it can be reasonably concluded that this Article is a response to a perceived problem of fraud and conflicts of interest for the inspector arising from various relationship types with the vehicle driver / rider. Specifically these might be familial pressure to pass unfit vehicles or, that an inspector associated with a repair operation to fail otherwise fit vehicles in order to pick up additional repair work that is unnecessary to ensure the safe operation of an inspected vehicle and consequential revenues from the vehicle owner.
 2. The perceived fraud risk problem seemingly has no estimation of scale for those countries such as the UK with a garage based regime as opposed to a specialised inspection regime, nor of the effect of the problem on road safety
 1. That the impact assessment also states that government supervision and inspection of garages can mitigate the risks of fraud.
 3. The Impact Assessment provides no economic and competitive modelling of access to Inspection Services across Europe under either garage based regimes or specialist inspection regimes.
 1. From my previous professional experience working for a software house that provided Geographic Information System (GIS) capabilities embedded in its products as far back as 1997 I know that such an analysis is relatively easy to perform given the will. The EC has a duty under the principles of good governance based on Efficiency, Effectiveness and the concept of “Fairness” or Equity in the provision of Public Services to ensure that those in remote areas of low population density are not unduly disadvantaged. If ensuring “Fairness” in the provision of services is not part of the EC’s thinking then it not unreasonable to expect it might lose what consent it has to be involved in the government of peoples. Such economic modelling based on access to “competitive” services and distance travelled based

on population density, for which the data is available, rather than minimising the cost to government of supervising inspections might throw up a different legislative approach as the optimum.

2. That DEKRA cite international expansion as one of their core strategic objectives. DEKRA Annual Report 2011 – Chair of Supervisory Board *“With the introduction of the <<DEKRA 2015>> strategy programme, the Group is aiming to increase that growth and improve profitability in order to secure its position as a leading global provider of safety services in the testing, inspection and certification industry. The management team has set a clear course for expansion, with an increasing focus on the United States and the growth markets of Brazil and Asia.”*
3. That the impact assessment study observes, p8 section 1.43 b), *“testing services are limited in the extent to which they can compete for business from other Member States.”*
4. That the impact assessment study p41 para 1.160 observes. *“An advantage of the garage-based system is the high number of test locations spread over the country, reducing the distances motorists have to travel for the test, and the time it costs them.”*
 1. It is reasonable to assume that a distributed multi-service garage based local testing delivery regime constitutes a significant barrier to entry for specialised testers wishing to enter such a market.
 2. That no study of the effectiveness or otherwise of supervisory actions to mitigate the risk of fraud or conflict of interest has been undertaken
5. That the Impact Assessment, section 2.3 under the heading of Supervision of Inspectors, acknowledges that DEKRA amongst others were found by the German government to require supervision to ensure the required quality of service is delivered. Examples of supervisory techniques included “mystery shoppers”
6. That DEKRA are the organisation that advised upon and chose how to cut the analyses presented as to what constitutes least rigorous, medium level and high level inspection regimes. Annex XIV “Impact Assessment Study” page v section 30.
 1. In effect, one of the key industry suppliers with a stated objective of international expansions is permitted to define how the effectiveness of regimes is to be assessed and provide the analysis to support the restructuring of inspection regimes in other member states.
7. That the road deaths per million inhabitants measure used to justify the proposed measure, and which would rightly get me fired if I were in my strategy and performance management consulting role to propose such a metric for this purpose to either a client or employer, is not an appropriate metric for assessing the relationship between fatalities and the Roadworthiness regime in a country. There are too many other causal factors for road fatalities to correlate the fatalities to the inspection regime in place.
 1. Were the metric to represent the true relationship between fatalities and the inspection regime in place one can see that the German approach is significantly less effective than the UK and Netherlands approaches and the Swedish approach is no better than the UK approach. Indeed, forcing the German (DEKRA) model on the UK using the “Fatalities per Million Inhabitants” metric as a basis for assuming a true statistical correlation one might reasonably expect fatalities to increase by 28% in the UK.

On the basis of the above evidence points and the absence of key economic analysis that could reasonably have been undertaken using Geographical Information System (GIS) technologies and spatial analysis approaches that have been available for at least 15 years, but might prove disadvantageous to an argument aimed at restructuring entire testing regimes in some member states, I request answers to the following questions:

1. Why are key analyses to demonstrate that the burden on the citizen, economic and administrative, missing, namely:
 1. An analysis of the evidence, rather than mere assertion as in the Impact Assessment and Impact Assessment Study, that garage based regimes, producing a positive outcome in terms of citizen access in sparsely populated areas, under effective government supervision result in a

statistically higher fatality rate than a specialist inspection regime?

2. Accessibility to Inspection centre by region, expected distance in kilometres and miles?
2. Who, other than DEKRA, will benefit from the absence of those analysis?
3. Given the claimed clear correlation between the severity of inspection regimes and the chosen metric, fatalities per million inhabitants, what is the correlation coefficient of the analysis and at what statistical confidence interval?
4. On what basis was it irrational that the French Senate recently found that, in respect of inspections of motorcycles, there was a clear conflict of interest between DEKRA's role as a provider of inspection services and its role in providing advisory services to the European Commission on this subject (<http://www.senat.fr/leg/ppr12-017.html>)?
5. Given the seven year timeframe, as stated in previous communications to me, over which the development of this draft legislative act has taken place was it not possible to fund and obtain an analysis of a true statistical relationship between fatalities and Roadworthiness using a more reasonable metric such as Fatalities attributable to technical defect as primary cause per million vehicle kilometres / miles analysed by category of vehicle?
6. If, whilst acknowledging that roadworthiness tests are within the competence of trained mechanics, it is deemed inappropriate for garages to conduct roadworthiness tests under government supervision because of the risks of fraud and / or conflicts of interest is it more appropriate for a major supplier of testing services to be engaged by the European Commission to assist so closely in the framing of the analysis upon which the draft legislative act is founded?

In answering my questions please request your staff to extend the courtesy of providing page and paragraph references to any documents and verify that they are in the public domain. It was disappointing to have to approach Mr Walsh directly for the Faiz, Walsh et al study covering Air Pollution from Vehicles and cited by the European Commission as a key source. Citing a study that was not generally in the public domain created the impression that the European Commission was being less than transparent and was endeavouring to hide sources.

Noting the significant difference between the DEKRA statistics for motorcycle fatalities attributable to technical condition and other studies such as MAIDS I am requesting that you provide to me, under my right of access to documents (Article 15 Consolidated Version of the Treaty of the Functioning of the European Union, formerly TEC Article 255), and also publish the raw data that indicates details of the PTWs themselves, the technical defect(s) identified as causing each fatal accident and the sampling method for the study. It would seem to me to be inappropriate, given our rights as citizens to "Good governance", for the data set not to be in the public domain and open to review and challenge given it is a primary source upon which sections of the draft legislative act are justified.

I will follow up with further detailed comments on this draft legislative act separately as they would be outside the scope of my complaint to the EU Ombudsman and thus not rightly part of this communication upon which the EU Ombudsman has been copied.

Yours faithfully

[Redacted Signature]