

From: [REDACTED]
Sent: 03 August 2011 15:47
To: Euro-Ombudsman
Subject: Ref 0875/2011/jf FAO [REDACTED]
Dear [REDACTED]

MÉDIATEUR EUROPÉEN



3 AOUT 2011

ARRIVÉ LE

I would like to update you on a changes to fact since I made my complaint.

1. I have joined Motorcycle Action Group UK as a result of my research into the proposed regulations.
2. I have graduated with a Graduate Diploma in Law. As the GDL is not a recognised European qualification I therefore feel under no obligation to declare it. However, I believe it is a courtesy to yourselves in the Ombudsman's office to do so. It gives me no right in Law to practice on behalf of anyone or present myself as a qualified lawyer. I am not. I am at best merely a student of Law with much to learn. My complaint was made on my own behalf.

I would also like to correct some stated facts in my case. Since speaking to my mother, I have learned that my grandmother was an associate lecturer in History, not a senior lecturer but retired from service as a magistrate from the position of Chair of the Bench. It was over 35 years ago my grandmother died so I had not remembered correctly.

I also made a typographical error. Page 19 para 3 should read case 24/62 as is correctly referenced in paragraph 5 on the same page, not 26/62 as written.

I trust these errors will not prejudice my case unduly.

Many thanks for your action in this matter.

Kind regards
[REDACTED]

04/08/2011

0875/2011/JF
E2011-140567

From: [REDACTED]
Sent: 03 August 2011 15:18
To: Euro-Ombudsman
Subject: Ref 0875/2011/jf FAO [REDACTED] FW: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations

Dear [REDACTED]

Further to my case and Issue 3 that the ombudsman is unable to proceed with

1. The EC is talking to me on this subject
2. I am requesting information on 16 points. I believe this will start to form the basis for substantiating or otherwise my claim in Issue 3 based on any patterns and bias in the availability or non availability of documents

Kind regards

[REDACTED]



----- Forwarded Message

From: [REDACTED]
Date: Wed, 03 Aug 2011 13:30:08 +0100
To: [REDACTED]
Cc: [REDACTED]

Conversation: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations
Subject: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations

Dear [REDACTED]

Thank you for your and your team's attention to my request of the 15th July 2011. I acknowledge receipt of the email from [REDACTED] indicating my request and case has been passed to [REDACTED]

I am requesting 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 the EU as a whole that can be attributed to roadside inspections alone 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 weighs 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

04/08/2011

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 a 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.

Given the preamble to the Treaties, Charters etc. and in particular Article 2 of the Treaty of the European Union, I would also appreciate the working definition of liberty that is used by the EC when assessing the impact of draft legislative acts, proposed Regulations and Directives, on individual citizens.

Please ask your officials to ensure that the documents in this request and my previous request, July 15th 2011, are indexed against the 16 points set out in this and my previous email with a document, page and paragraph reference. It will save us all time in the long run. Your officials won't need to validate my referencing of your documents in the future. If the documents don't exist against any of the 16 points raised please make a statement to that effect by point concerned.

Yours sincerely

[REDACTED]

----- End of Forwarded Message

0875/2011/JF
E2011-140568

From: [REDACTED]
Sent: 03 August 2011 15:20
To: Euro-Ombudsman
Subject: Ref 0875/2011/jf FAO [REDACTED] FW: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations

Dear [REDACTED]

FYI



----- Forwarded Message

From: [REDACTED]
Date: Fri, 15 Jul 2011 06:53:26 +0100
To: [REDACTED]
Cc: [REDACTED]
Conversation: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations
Subject: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations

Dear Vice President [REDACTED]

I am writing to request information under Article 42 of the Charter of Fundamental Rights of the European Union.

You will be aware by now of my concern that ancient fundamental rights and liberties that I and my countrymen have had since Magna Carta 1297 are under attack as a result of proposals for regulations covering Motorcycle Type Approval and the Roadworthiness (Periodic Technical Inspections) of Motorcycles being made by your officials.

I am writing to request 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 over and above the regime MOT/PTI inspections with police roadside inspection when another offence has 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 implement roadside emissions testing for motorcycles by EU country.

04/08/2011

Please provide an index of the documents with a reference to the relevant sections.

I look forward to your response within the standard time limits.

Yours sincerely

[REDACTED]

----- End of Forwarded Message

0875/2011/JF
E2011-140569

From: [REDACTED]
Sent: 03 August 2011 15:22
To: Euro-Ombudsman
Subject: Ref 0875/2011/jf FAO [REDACTED] FW: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations

Dear [REDACTED]

FYI

Kind regards



----- Forwarded Message

From: [REDACTED]
Date: Fri, 22 Jul 2011 15:00:38 +0200
To: [REDACTED]
Cc: [REDACTED]

Subject: RE: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations

Dear [REDACTED]

Your Email has been registered as ARES (2011)801293, and assigned to [REDACTED] member of Cabinet in charge of this matter.
The answer to your Email requires further work which is currently in progress.

Best regards,

[REDACTED]
European Commission
Cabinet of VP [REDACTED]
Documents management, Mail and Archives
[REDACTED]



Please consider your environmental responsibility before printing this e-mail.

04/08/2011

From: [REDACTED]
Sent: Friday, July 15, 2011 7:53 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations

Dear Vice President [REDACTED]

I am writing to request information under Article 42 of the Charter of Fundamental Rights of the European Union.

You will be aware by now of my concern that ancient fundamental rights and liberties that I and my countrymen have had since Magna Carta 1297 are under attack as a result of proposals for regulations covering Motorcycle Type Approval and the Roadworthiness (Periodic Technical Inspections) of Motorcycles being made by your officials.

I am writing to request 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 over and above the regime MOT/PTI inspections with police roadside inspection when another offence has been committed that we have here in the UK. I would also like the date of those documents.
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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.

04/08/2011

7. Documents of the estimated cost of implement roadside emissions testing for motorcycles by EU country.

Please provide an index of the documents with a reference to the relevant sections.

I look forward to your response within the standard time limits.

Yours sincerely

[REDACTED]

----- End of Forwarded Message

04/08/2011

0875/2011/JF
E2011-142701

From: [REDACTED]
Sent: 21 September 2011 00:06
To: Euro-Ombudsman
Subject: 0875/2011/JF FAO [REDACTED] FW: Roadside Inspections - Request for Access to Documents - MaR/cb - CAB ARES (2011)
Attachments: 20110909%20[REDACTED]20Motorcycle%20Type-Approval[1].pdf.zip; Emissions Calculation MCycles.xlsx.zip

Dear [REDACTED]

Please find attached a letter received from [REDACTED] in VP [REDACTED] cabinet. They have replied with a list of the publically available documents to support their case which I'm going through. The issue is that although I haven't yet located the information I was looking for to support the point you rejected, the references I've so far looked at seem to be being misused to support the roadside inspection case and the anti-tampering elements of the Type Approval Regulation.

Kind regards

[REDACTED]

----- Forwarded Message

From: [REDACTED]
Date: Tue, 20 Sep 2011 22:58:34 +0100
To: [REDACTED]
Cc: [REDACTED]

Conversation: Roadside Inspections - Request for Access to Documents - MaR/cb - CAB ARES (2011)
Subject: Roadside Inspections - Request for Access to Documents - MaR/cb - CAB ARES (2011)

Dear [REDACTED]

Thank you for your letter of 7th September attached. So far I have found the information and links I have had time to review most informative. I regret I have not been able to give the communication the full consideration it warrants. The reason being I am recovering from a motorcycle accident, cracked ribs, spinal injuries etc., the usual range of other injuries. I was hit from behind, 2.7% of MAIDS cases, slowing down for pedestrian traffic lights that had been activated by children. The car driver behind seems to have believed that amber meant go faster rather than slow down and stop for the red about to activate. I was aware of the car behind me being too close having looked in my mirrors. Saferider technologies were not required and would have likely interfered with my decision making at risk to the children. I chose not to use my motorcycles performance and run the lights myself lest the lights turned red and I risk the children with the resultant potential for carnage. I knew being hit was going to hurt. Vibrating saddles and handlebars would have been a distraction in my view. I've lived the experience, and fortunately lived through it.

I note that you have personally signed the letter and endorsed it. I assume you have studied its content and queried the rigour of analysis supporting it and whether the documents would provide a reasonable and demonstrable basis for the measures intended. This overrules the previous position that the European Commission had with respect to communicating with me on this and other issues. For that I am appreciative. I also assume Vice President [REDACTED] endorses that work and has trusted you with overseeing it.

I do have some initial observations.

21/09/2011



I note that in your position you must be aware of the legal distinction in EU law between a Regulation such as the proposed Type Approval Regulations, which must be taken directly into member state national law, and a Directive which allows some member states some latitude to interpret it in the light of national circumstances. I note that the Commercial Vehicles Roadside Inspection regime is set out in a directive. I respect that PTI is not part of the Type Approval Regulation as proposed by the Commission.

I note your distinction between PTI tests and Roadside inspections. I have been fully aware of that distinction all along since figuring out that PTI meant Periodic Roadworthiness Inspection (UK MOT) not the annual service interval for a vehicle. Roadside Inspection has always been something different in my mind, hence my deep objection to the concept.

My case against Roadside inspection as seemingly envisaged so far is supported by the following evidence

1. The EC funded MAIDS study found that technical condition of the motorcycle is the primary cause of accidents in only 0.7% of the examined accidents. It does not appear to distinguish between technical causes related to tampering, modification of the power train, and those due to negligence in maintenance.
 1. Tyre and Brake faults were reported separately
2. The MAIDS found, across its sample base covering France with no PTI regime and Germany with I understand a TÜV PTI regime that 12.3 % of mopeds exhibited signs of tampering. This was cited in the Impact Assessment supporting the proposed Type Approval regulations.
 1. The converse is that 87.7% of vehicles in the exposure group were not tampered with and were compliant
 2. The impact assessment provides no other estimates of likely tampering levels
 3. Annex XVIII.3 states that further work will be undertaken to establish levels of tampering in the PTW fleet and the effect of tampering on emissions
3. The EC funded 2003 TÜV Nord Anti Tampering study found that where a PTI regime exists that tampering across all PTWs is in the order of 5%
 1. The converse is that 95% of all motorcycles are likely to be untampered
 2. The study recommended to the EC that further work was required to determine baseline data about current levels of tampering
4. The Commission's Impact Assessment fails to define the actual scale of fatalities and accidents that are likely to be saved, based on primary cause, by the Type Approval Regulations being proposed. My conclusion is that the fact that 12.3% of Mopeds can be tampered with and only 0.7% of accidents are down to technical condition of the L class vehicle across all L class types undermines the assumption that tampering overloads the other components to any significant extent, especially for L1 vehicles and L3.

The non existence of a clear link between tampering and accidents could easily be down to it not being economic to design and manufacture brake and chassis components solely for the moped and 11kw classes meaning components on the smaller L class vehicles are shared with larger capacity models within the same category range, i.e. a moped may share components with a 100cc bike and a 125cc with a 150cc or 175cc bike to facilitate operation of a cost effective supply chain.

The evidence I cite above shows a high level of compliance with the original manufacturers configuration and that where tampering occurs it appears to have little impact on the primary causation of accidents. The sample base is probably too small to arrive at a definitive level of accidents caused by tampering.

So far, from the references you have supplied, I have been able review the following documents:

- 1) Air Pollution from motor vehicles, A Faiz, C Weaver, M Walsh 1996
- 2) Auto Oil Study 2000

21/09/2011

- 3) DIRECTIVE 2000/30/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 2000
- 4) European Commission report on the technical roadside inspection of the roadworthiness of commercial vehicles
- 5) Eurostat Panorama of Transport 2009 edn.
- 6) Also the Eurostat database
- 7) The FEMA position statement, of which I was already aware.

I note from the above research.

1. The Auto-oil I study referred to in the Directive 2000/30/EC seems not to be available, only the Auto oil II study seems to be available.
2. The Auto-oil II provides no cost benefit analysis of roadside inspection regimes
3. The Faiz et al, Air Pollution from motor vehicles report measures the cost effectiveness of Roadside Inspection regimes using Cost per Tonne of HC Emission Reduction. This seems an eminently sensible approach. It reports the EPA 1995 study as showing that Inspection & Maintenance Regime, which I understand to be PTI, cost USD500 per ton, whereas a decentralised system, which I understand to be roadside inspection, costs were estimated at up to USD15,000
4. That the effectiveness of inspection of Commercial Vehicles across Europe appears highly variable.
5. That the detection of exhaust system defects in checks by Germany is 4.7%, i.e. About the same as TÜV Nord cite for motorcycle tampering compliance levels under a PTI regime which rather undermines the need for Roadside inspections.
 1. The defects in Gaseous emissions is 0.1% indicating that there is little direct relationship between an exhaust defect and compliance with emissions regulations at the Type Approval specification for commercial vehicles.
 2. That some countries do inspect gaseous emissions at the roadside.
6. That the emissions limits for motorcycles are measured in mg/km whereas for commercial vehicles it is measured in mg/kwh making direct cost effectiveness comparisons difficult. I'm assuming your staff have calculated a common metric to make the Commission's case.

From the documents so far reviewed I sense that the EC has yet to produce a cost model for L class vehicles. Another key parameter when considering the cost effectiveness is the percentage gains available from current compliance levels to 100% compliance given that 100% compliance is unlikely to be feasible. However, I do suspect that had the model been produced it would likely have already been included in the TA impact assessment and no statement as to the investigation of current tampering levels and impact on emissions would be required to obtain baseline data.

Given the higher annual distances covered by commercial vehicles and the higher fuel consumption, estimated at 7-9mpg for a 44 tonne HGV and 12-14 mpg for an 18 tonne HGV it is reasonable to assume that the HC/NOX emission will be much higher than for a motorcycle at 40-50mpg / moped at 80-120 mpg. They are fundamentally different vehicles with fundamentally different engine and usage characteristics and it would therefore be irrational, both mathematically and in principle, to assume that a resultant calculation of cost per tonne of hydrocarbon reduced for commercial vehicles would be the same for L class vehicles and be directly applicable to them.

I have modelled the gross HC/NOX emissions for various compliance and emissions levels for L Class Vehicles. All assumptions are documented and the input factors described. I have based my assumptions on the final 160mg/km emissions levels that the draft Type Approval regulation currently under consideration envisages. I have modelled the emissions based on current evidence points covering Tampering levels as evidenced in MAIDS and under PTI regimes in the TÜV Nord Report on Tampering. In my modelling I've also endeavoured to factor in the reduction in HC/NOX emissions arising from L3 vehicles changing to 4stroke combustion cycles and the consequent emission levels that a tampered engine might have, i.e. all calculations based on the 4 stroke cycle. I note the study quoted by Faiz et al is a 1986 study and they highlight the criticality of test cycle used. I used the Panorama of Transport 2009

statistics as the basis for determining the annual gross km covered by motorcycles. I have not including projected traffic growth to keep the model simple. I would expect to see that factored in as part of the Commission's calculations. Ultimately it is the ratio between the annual distances covered and annual HC/NOX emissions for L class vehicles and Commercial vehicles that are important rather than the absolute values themselves if the proportionality of any roadside inspection measure is to be demonstrated as required by Protocol 2 Article 5.

I trust that in any cost benefit analysis required for any PTI impact assessment considering roadside inspection of Motorcycles the EC demonstrates the number of extra motorcycle stops that will be required to obtain a 1 tonne reduction in HC/NOX emissions over and above that of a commercial vehicle.

I am also in the process of modelling various scenarios for commercial vehicle emissions. Preliminary indications on that front are that it would be deeply questionable to equate the cost effectiveness of roadside inspections for L class vehicles with commercial vehicles as you suggest in your letter. Furthermore when considering the proportionality of inspecting commercial vehicles one has to consider that they cover much higher annual distances, operate in more extreme conditions such as building sites and that if critical components fail commercial vehicles are much more likely to demolish buildings, bridges and cause multi-vehicle accidents killing others while preserving the life of the driver. I don't forget arriving in Brussels, meeting the car taking me to an automotive client in St Truiden and the client when surprised surprised and delighted to see me. I'd just missed by minutes the 1997 M42 pile-up on my way to Birmingham Airport for the first morning flight out. He'd heard about it on the radio. Anecdotally, I can't say I can ever remember such an accident being caused by a motorcycle and internationally reported within the duration of a trip from Birmingham to St Truiden.

On the basis that all the evidence above, produced or cited by your staff, except my own estimates of the fuel consumption of the HGVs and L class vehicles, for which I'm sure you have more accurate numbers available, it would seem there is little grounds on the basis of emissions for forcing Random roadside inspections on motorcycle riders unless you have the cost per tonne reduction in Hydrocarbons data for motorcycles to hand or they are buried deep in the documents you pointed me to. I note from your letter you are not planning a requirement for testing emissions during roadside inspections.

Based on the EC's own data, i.e. the EC funded MAIDS report, it does not seem there is a demonstrable cost effective safety case for roadside inspections, especially considering the majority of accidents are down to human factors and are caused by the other vehicle driver as in my own case.

I'll let you know how I progress with the other documents. As I continue my review I may find the emissions evidence and calculations your staff believe supports the discriminatory introduction of roadside inspections for L Class Vehicles through regulation as a proportionate measure under Protocol 2 Article 5. On what basis would that be a reasonable expectation on my part? On the basis that you state the Commission has been working on this for seven years it would save time and further correspondence on the issue if you could point me to the precise documentation that demonstrates the comparative reductions expected under a Roadside inspection regime for motorcycles against expected compliance levels and against that achieved for Commercial Vehicles along with the associated costs per tonne in reduction of HCs by return of email. Given your statement about transparency it would not on my part be unreasonable for me to expect that the source data for any such calculations would be available otherwise the truth of your statements in your letter are at best deeply questionable and from the point of view of any draft legislation, proportionality not demonstrable.

The gross mass of HC/NOX emissions must have been calculated or projected somewhere within the EC sources. The available potential reductions in HC/NOX emissions for all PTWs does not seem to be great as my calculations show. This implies a high cost per tonne in HC/NOX emission reductions relative to that for commercial vehicles thus undermining the case that roadside inspections would be a proportionate measure. After seven years and knowing the measure required for cost effectiveness it is

not unreasonable for me to expect that the Commission has calculated the measure to make its case. The measure is after all one you cite as appropriate given you accept it as the basis for measuring the cost effectiveness of roadside inspections for Commercial Vehicles.

Regards

[REDACTED]

----- Forwarded Message

From: [REDACTED]

Date: Fri, 9 Sep 2011 11:37:11 +0200

To: [REDACTED]

Subject: your e-mail to Cab Vice-President [REDACTED]

----- End of Forwarded Message

----- End of Forwarded Message



EUROPEAN COMMISSION

Cabinet of Vice-President
Member of Cabinet

Brussels, 7 September 2011
MaR/cb – CAB ARES D(2011)

[REDACTED] BSc MBA
e-mail: [REDACTED]

Dear [REDACTED]

Thank you for your e-mail to Vice-President [REDACTED] dated 15 July 2011 in which you express concern that your fundamental rights and liberties are under attack by proposals for European legislation related to Motorcycle Type-Approval and the Roadworthiness Testing of Motorcycles and in which you request access to different documents.

First, I would like to refer to our letter dated 19 January 2011 in which we have explained the fundamental difference between type-approval and roadworthiness testing.

Regarding type-approval, and as foreseen in the current procedures, a fully-fledged impact assessment has been conducted by the Commission regarding the overhaul of the existing type-approval requirements for L-category vehicles and the report was published on the Commission services' website¹.

L-category vehicles are light vehicles mainly composed of two- or three-wheel mopeds, motorcycles with and without a sidecar, tricycles and quadricycles. The purpose of this impact assessment is 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 Member States and to industry stakeholders, based upon the best evidence available at the time of writing. The efficiency and effectiveness of the assessed policy measures and its coherence with the existing related type-approval legislation were assessed. This detailed analysis finally resulted in preferred policy options.

While we stress that the options chosen represent a balance between the assessed aspects and every step of this process has been regularly shared with the stakeholders as detailed below, we understand that the preferred policy options might not be custom-tailored for every EU citizen or circumstance.

¹ http://ec.europa.eu/enterprise/sectors/automotive/documents/proposals/index_en.htm

A strict and rigorous procedure was followed to guarantee the quality of the impact assessment. The final report was separately reviewed and approved by an Impact Assessment Board, consisting of senior, high level Commission Services' staff as foreseen in the current procedure. This procedure included as well the guidance provided by a steering group of Commission Services involved in the concerned issues. At the same time the Commission Services have been regularly discussing the issues and possible policy measures in the Motorcycle Working Group over a timeframe of more than 7 years that was very well attended by user associations, Member States' authorities and industry representatives. The agenda, discussion material and meeting minutes of these Motorcycle Working Group meetings are publicly accessible². In parallel, multiple bilateral meetings with stakeholders were held and concerns expressed by individuals were analysed and taken into account if feasible. We are therefore confident that we have provided the necessary transparency that is to be expected from the Commission Services while conducting an impact assessment.

The proposal is currently under examination by the European Parliament and the Council. Only when both the European Parliament and the Council agree with the proposal and adopt it, the new measures will become applicable for new vehicles.

Regarding the issue of roadside inspections and compliance with type-approval, it is clear that compliance with type-approval requirements can not be really accessed at the roadside as type-approval tests are usually laboratory tests with *i.a.* defined processes of preconditioning of the vehicle before testing, the use of special certified fuels for emission tests or even certified road surface for noise tests. In the general context one could describe roadside inspections as a mostly visual assessment of the maintenance condition of a vehicle with fewer requirements as at a periodic roadworthiness test of what is known in the UK as MOT test. Finally and as already stated in recital 8 of the current Directive 2000/30/EC related to technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community,³ effective enforcement through targeted additional technical inspections is an important cost-effective measure to control the standard of maintenance of vehicles on the road.

Regarding roadworthiness testing legislation and following the procedures for the preparation⁴ of a draft for a proposal, a fully-fledged impact assessment is currently under finalisation. This impact assessment will be based on evidence and identify both direct and indirect economic, social and environmental impacts on those who are affected, as well as on society in general. The impact will be assessed against the current situation in qualitative, quantitative and, where possible, in monetary terms. Out of this assessment the different options will be compared by categories of impacts. This impact assessment is supported by a study prepared by a UK based economic consultancy institute and carried out by high graduated (Harvard University, Oxford University) senior economists.

² http://circa.europa.eu/Public/irc/enterprise/automotive/library?l=/mcwg_motorcycle&vm=detailed&sb=Title

³ OJ L 203, 10.8.2000, p.1

⁴ IA guidelines [SEC(2009) 92]

Before a proposal for a legal act may be approved by the Commission the impact assessment report will be subject to a quality review and examination by the Impact Assessment Board. After receiving a positive opinion from the Impact Assessment Board the Commission services may draft a proposal for a legislative act. The impact assessment study will be made public after its approval by the Impact Assessment Board. The documents that you are asking for were used for drafting the Impact Assessment study. You can find the bibliography of these public documents in annex.

Yours sincerely

A large, irregular black redaction mark covering the signature area.

Annex: Bibliography

Annex: BIBLIOGRAPHY

White Paper 2011 - Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system

http://ec.europa.eu/transport/strategies/2011_white_paper_en.htm

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

http://ec.europa.eu/transport/road_safety/pdf/road_safety_citizen/road_safety_citizen_100924_en.pdf

European Commission report on the technical roadside inspection of the roadworthiness of commercial vehicles, COM(2010) 754 final [http://www.eur-](http://www.eur-Lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0754:FIN:EN:PDF)

[Lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0754:FIN:EN:PDF](http://www.eur-Lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0754:FIN:EN:PDF)

Eurostat:

<http://epp.eurostat.ec.europa.eu/>

http://ec.europa.eu/transport/publications/statistics/statistics_en.htm

CITA, AUTOFORE report:

(http://ec.europa.eu/transport/roadsafety_library/publications/autofore_executive_summary.pdf.)

CITA, Idelsy report:

http://ec.europa.eu/transport/road_safety/projects/doc/idelsy.pdf

UK Department of Transport Study, 2008

'MOT Scheme Evidence-base' Department for Transport, UK, 2008

<http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/pgr/roads/vehicles/mot/mot/>

CARE Database, DG MOVE

http://ec.europa.eu/transport/road_safety/specialist/statistics/care_reports_graphics/index_en.htm

FEMA position on PTI [http://www.fema-](http://www.fema-online.eu/uploads/documents/vehicle%20aspects/20100903_FEMA_Position_Statement_PTL.pdf)

[online.eu/uploads/documents/vehicle%20aspects/20100903_FEMA_Position_Statement_PTL.pdf](http://www.fema-online.eu/uploads/documents/vehicle%20aspects/20100903_FEMA_Position_Statement_PTL.pdf)

Air Pollution from motor vehicles, A. Faiz, C. Weaver, M. Walsh, 1996

http://www.walshcarlines.com/pdf/air_pollution_from_moto.a72.pdf

Auto Oil Study, 2000,

http://www.ec.europa.eu/environment/archives/autooil/pdf/auto-oil_en.pdf

Denmark's State Audit report after liberalisation of PTI

[http://www.rigsrevisionen.dk/media\(1073,1033\)/11-2008.pdf](http://www.rigsrevisionen.dk/media(1073,1033)/11-2008.pdf)

Study of the economical impact of mileage fraud, CRM used car management (in Proceedings of Cars 2010 conference, Brussels, 18 November 2010

www.cars2010.eu

DG Clima, European second hand car market analysis, February 2011

http://ec.europa.eu/clima/studies/transport/vehicles/docs/2010_2nd_hand_car_en.pdf

Campaigns and Awareness-Raising Strategies in Traffic Safety (CAST) (2009) "A theoretical approach to assess road safety campaigns: Evidence from seven European countries" Project co-financed by DG Energy and Transport

www.ec.europa.eu/transport/road_safety/pdf/projects/cast.pdf

CITA General Questionnaire, 2009

www.cita-vehicleinspection.org

Handbook on estimation of external costs in the transport sector (2008)

http://ec.europa.eu/transport/sustainable/doc/2008_costs_handbook.pdf

EGEA (European Garage Equipment Manufacturers) [http://www.egea-](http://www.egea-association.eu/publications.php?PHPSESSID=4fa9b2be38a42f478136d6dd9973078d)

[association.eu/publications.php?PHPSESSID=4fa9b2be38a42f478136d6dd9973078d](http://www.egea-association.eu/publications.php?PHPSESSID=4fa9b2be38a42f478136d6dd9973078d)

ACEM <http://www.acem.eu/cms/marketfigures.php>

0875/2011/JF
E2011-143574

From: [REDACTED]
Sent: 09 October 2011 22:20
To: Euro-Ombudsman
Subject: 0875/2011/JF FW: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations MaR/cb CAB ARES D(2011)

FAO [REDACTED]

Dear [REDACTED]

I regret I made an error of fact in my email to [REDACTED] earlier this evening. Please find following my correction.

Kind regards

[REDACTED]



----- Forwarded Message

From: [REDACTED]
Date: Sun, 09 Oct 2011 21:18:34 +0100
To: [REDACTED]
Cc: [REDACTED]

Conversation: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations MaR/cb CAB ARES D(2011)

Subject: FW: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations MaR/cb CAB ARES D(2011)

Dear [REDACTED]

I wish to correct an error of fact from my previous email sent 09/10/2011 19:02 BST. It is this email of the 3rd August 2011 that I believe remains unacknowledged not my email of 15th July 2011. I respect I have fallen short of the standards I expect of myself in this instance.

The rest of my argument remains the same subject to this correction.

Yours sincerely

[REDACTED]

----- Forwarded Message

From: [REDACTED]
Date: Wed, 03 Aug 2011 13:30:08 +0100
To: [REDACTED]
Cc: [REDACTED]

Conversation: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations

Subject: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations

Dear Vice President [REDACTED]

10/10/2011

Thank you for your and your team's attention to my request of the 15th July 2011. I acknowledge receipt of the email from [REDACTED] indicating my request and case has been passed to [REDACTED]

I am requesting 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 the EU as a whole that can be attributed to roadside inspections alone 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 weighs 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 a 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.

Given the preamble to the Treaties, Charters etc. and in particular Article 2 of the Treaty of the European Union, I would also appreciate the working definition of liberty that is used by the EC when assessing the impact of draft legislative acts, proposed Regulations and Directives, on individual citizens.

Please ask your officials to ensure that the documents in this request and my previous request, July 15th 2011, are indexed against the 16 points set out in this and my previous email with a document, page and paragraph reference. It will save us all time in the long run. Your officials won't need to validate my referencing of your documents in the future. If the documents don't exist against any of the 16 points raised please make a statement to that effect by point concerned.

Yours sincerely,

[REDACTED] BSc MBA

----- End of Forwarded Message

----- End of Forwarded Message

10/10/2011

[REDACTED]

From: [REDACTED]
Sent: 09 October 2011 20:08
To: Euro-Ombudsman
Subject: Re: Complaint 0875/2011/JF
Dear Ombudsman Diamandouros,



Thank you for your letter of the 20th September and thank you for your and your staff members' patience in dealing with this case and with me.

I am surprised and disappointed that the European Commission is unable to prepare a response within 3 months. It took me merely 25 working days total effort, at a maximum, working in my own free time over the period from my first becoming aware of the issue. I endeavoured to keep track of my own efforts and to turn responses round within the time limits I expected of the EC. I didn't have access to the expert resources the EC has available to it.

I note that the EC has resumed communications with me over my most recent request for access documents so I believe they are conceding my first point though they have still not provided access to the original documents I raised my case over. We shall see what they come back with on that point.

I note also that my own government has apparently questioned the quality of the EC Impact Assessment supporting the Type Approval Legislation and is running an independent consultation and Impact Assessment.

It seems I was somewhat prescient in my expectations of needing medical treatment as a result of a motorcycle accident. Some of the safety issues and potential restrictions on home maintenance I raised have been thrown into stark relief by my own recent accident in which I was knocked off my bike by a car hitting me from behind whilst I was slowing down for a light controlled crossing activated by children. It was the discussion with the doctor about possible neck surgery that unnerved me. I could more or less cope with the pain with the help of strong pain killers. If I seem harsh in my critique of the EC, it is my current rights I regard as being under threat, and under threat on the basis of insubstantial evidence and that the reduction of which will do nothing at all to improve my safety or the safety of fellow riders while increasing costs significantly. If the EC wishes to adversely affect our rights then I believe we as citizens have the right for the evidence to be produced, produced on a credible basis and the proportionality of the measures demonstrated. I have always considered it a privilege to have earned my motorcycle licence and have succeeded in keeping a clean car and motorcycle licence over 30 years.

I am recovering from my injuries but in no way am I dissuaded from either riding a motorcycle or from my case. If anything I am strengthened in my resolve. Why should I be run off the road by an unobservant driver or dissuaded from pursuing a case against an organisation that has the temerity to refuse access to documents so shortly after being reminded of their obligations by you.

Kind regards

[REDACTED]

On 20/09/2011 16:00, "Euro-Ombudsman" [REDACTED] wrote:

Dear [REDACTED]

Please find attached a letter from the European Ombudsman related to your complaint.

The Registry

10/10/2011

0875/2011/JF
E2011-143573

MÉDIATEUR EUROPÉEN



10 OCT. 2011

ARRIVÉ LE

From: [REDACTED]
Sent: 09 October 2011 20:37
To: Euro-Ombudsman

Subject: FW: ref 0875/2011/JF - Roadside Inspections of Motorcycle Compliance with Type Approval Regulations: MaR/cb CAB ARES D(2011)

FAO [REDACTED]

Dear [REDACTED]

Please find following my communication sent to [REDACTED] today.

I believe the fact that the Commission have so far failed to provide any direct chain from Evidence, in terms of a projected measure of the cost effectiveness of roadside inspections in terms of cost per tonne reduction of unburned hydrocarbons applied L class vehicles in the form of publically available information indicates that my issue raised under point 3 of my original complaint has merit.

I note that the Commission has asserted there is non-public information in [REDACTED] letter to me of the 7th September. I note also that my email requesting access to documents on 15th July 2011 remains unacknowledged and unanswered. I have previously forwarded a copy of this email to you.

I am not sure as a matter of processes as to whether I have to wait for a further response from [REDACTED] or whether I now have sufficient grounds, given the apparent lack of a public domain calculation on the cost effectiveness of a measure incorporating Roadside Inspections of vehicles compared with other measures and the failure to respond to one of my emails requesting access to documents to request the ombudsman reconsiders his closure of the issue I raised under point 3 relating to undue influence from commercial organisations. It did take some effort to trawl through the document list the Commission provided in response to one of my emails.

Kind regards

[REDACTED]

----- Forwarded Message

From: [REDACTED]
Date: Sun, 09 Oct 2011 19:02:33 +0100
To: [REDACTED]
Cc: [REDACTED]

Conversation: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations: MaR/cb CAB ARES D(2011)

Subject: Roadside Inspections of Motorcycle Compliance with Type Approval Regulations: MaR/cb CAB ARES D(2011)

Dear [REDACTED]

I am writing as a follow up to my preliminary email, dated 20/09/2011. I believe my comments are unlikely to come as a surprise. I have trawled through all the documents you directed me to and not located any information that would provide a basis for concluding that targeting L class vehicle emissions through roadside inspection is cost effective using the same cost per tonne of reduction in unburned hydrocarbons using the only measure cited in the references justifying the cost effectiveness of roadside testing of Commercial Vehicles. I believe the chain of referencing would be Directive, Auto-

10/10/2011

Oil I to the Faiz A, Walsh J et al Air Pollution Report cited in the document list provided. I believe your staff have been aware of the likelihood of me finding no direct link having read the references provided in advance themselves.

I am still willing to give Vice President [REDACTED] and yourself some latitude on this issue as I respect you are dependent on your officials being thorough, transparent and honest with you both. However that latitude has some limits based on the comments you signed your name to on behalf of the Commission in your letter of the 7th of September.

Before I continue I note the following:

- I have not yet received acknowledgement of my email of the 15th July 2011 to Vice President [REDACTED] perhaps should have included you on the cc list but believe it is not unreasonable to have received an acknowledgement and the requested documentation by now.
- The UK MOT reference you cite:
<http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/pgr/roads/vehicles/mot/mot> page 51 shows that in terms of deaths per 10,000 vehicles using a random inspection system such as I understand from the data is used in Germany against a targeted approach such as we have here makes little difference. Both countries showed a death rate of 1.2 per 10,000. I draw my conclusions as to the nature of the German system based on the EC report on the technical roadside inspection of the roadworthiness of commercial vehicles com(2010) 754 final.
- The handbook on estimation of external costs in the transport sector, an EC publication, in considering Air Pollution costs in table 15 on page 57 omits completely any reference to L class vehicles. It would be reasonable to assume that if the costs were high relative to other sectors those costs associated with L class vehicles would be included in the table.
- Your staff, as you state, have been working on the proposals for seven years!

In your letter to me of 7th September you state, paragraph 5 page 1, "While we stress that the options chosen represent a balance between the assessed impacts and every step of this process has been regularly shared with the stakeholders as detailed below, we understand that the preferred policy options might not be custom tailored to every EU citizen or circumstance".

It would be unreasonable for me to expect that the policy options be custom tailored to me. However, as a citizen, it is not unreasonable for me to expect that when policy options are drafted by the EC, that will if converted into legislation impact me, that there is a clear line of sight from the policy option to adequate publically available supporting evidence. It is also reasonable for me to expect that when a proposal is made in draft legislation that the evidence chain and line of reasoning from evidence to policy option would meet the standards required in the EU's founding Treaties and Protocols.

This is before any legislation is proposed that might take away my rights and/or increase my costs.

Tracing a direct line line of sight and reasoning from Auto-Oil I is difficult given that the report seems to be superseded by the Auto Oil II report which does not appear to contain either a cost effectiveness measure for roadside inspections nor a reference to the Faiz, Walsh et al report. Given that I can't state it does not exist and that access to the Auto-Oil I documents, stated as being available, is apparently not available I'll concede the possibility that the link to the cost per tonne of reduction in unburned hydrocarbons as a measure may exist. It is disappointing that having made an Article 42 Charter of Fundamental Rights of the EU application I should be pointed to documents which appear to be no longer accessible in the public domain.

Do you agree that for cost effectiveness of legislation to be demonstrated it requires that it is based on a performance measure that combines a quantifiable projected reduction in pollution and the all

quantified costs (€), both direct and indirect, to the citizen and governments of introducing the proposed legislation? Do you agree that to omit either the cost element or the projected reduction in pollutants from the performance measure would be to fail to provide a measure of cost effectiveness? If not, what would constitute a rational performance measure of cost effectiveness? Without such a measure; how would one compare the cost effectiveness of one legislative proposal against another and meet the Protocol 2 Article 5 provision that the need for any burden, whether financial or administrative, falling on national governments, economic operators and citizens to be minimised and commensurate with the objective to be achieved? The objective in this case being a reduction in polluting emissions.

In my view it is not unreasonable to expect that proper evidence is collated over a seven year period and that policy options are drafted on the basis of strong publically available evidence, not on a whim or on hidden submissions from unknown parties. The EC staff in DG Move, in citing the Faiz A, Walsh J et al Air Pollution Study, were aware that the measure of the cost effectiveness of Roadside Inspections for Commercial Vehicles is based on a Cost per tonne reduction in unburned hydrocarbons. Given that knowledge and the ability to perform the calculations of projected emission levels based on the levels contained in the Draft Type Approval Regulations now before the Parliament and Council for consideration, it is reasonable to assume that the calculations for L class vehicles would have been projected under different inspection regimes and put into the public domain after seven years and the costs per tonne reduction in hydrocarbon emissions for L class vehicles calculated. It is possible to calculate such indicative estimates as the Faiz A, Walsh J Air Pollution Report demonstrates.

For such fundamental projections not to be available after seven years suggests they are:

1. Available and not being published because they do not support the desired political policy option; or,
2. Commission staff have not fulfilled their obligations to research to the level required under Protocol 2 Article 5 to demonstrate any legislation framed in line with the policy option will be proportionate;
 1. How would it be credible to believe in the Commission staff's competence and professionalism under such a scenario?
 2. Given the Faiz, Walsh et al report of 1996 would not a competent official first arrange for the calculation of comparative cost per tonne reductions in unburned hydrocarbons for L class vehicles given the protocol and the known judgement 24/62 ECJ with the standards of evidence it expects to support a measure?
 3. Would it not otherwise be disingenuous to justify the cost effectiveness of a measure incorporating random roadside inspections for L class vehicles on the basis that the measure is cost effective for commercial vehicles given the visible huge differences in the characteristics of the vehicles themselves and the known different characteristics of their usage?

The third most serious option covering the non existence of the numbers is this:

That the Commission staff are listening more closely to other agency and consultancy sources, sources that are unwilling to have their recommendations made public, than it is to draw its conclusions based on evidence publically available and open to scrutiny and in protecting the rights of the citizens. If this scenario were to be true it would represent serious undue influence on behalf of other interests. As far as I can see on the evidence available the only individuals and concerns gaining from such a situation would be commercial agencies and consultancies specialising in Roadside Inspection using the German approach. VOSA wouldn't gain as in the UK we have targeted inspections of cars, which as the UK data, cited by the EC in support of the measures under consideration, demonstrate achieve the same low death rate in 2003 of 1.2 deaths per 10,000 vehicles as Germany.

What concerns me deeply is that the UK MOT study that the EC appears to be citing as justifying random roadside inspections states in paragraph

147. *"The risks are that such a step-change in roadside enforcement could not be delivered in practice - at least not without at the same time risking the delivery of other priorities. There is also the further risk that the burden it would place on the motorist might in fact be more significant than that of an annual MOT test."*

150. *"In addition, pulling over cars to the side of the road for checking generally tends not to be particularly cost-effective, given the limited nature of checking that can be undertaken in such a location." in respect of cars.*

151. *"Significantly increasing roadside enforcement could also decrease journey reliability – both for the individual motorist who was subject to a check, and also more broadly in the area where enforcement activity was taking place. This could increase time costs, and hence have an impact on the cost effectiveness of the activity itself, and also on its cost effectiveness in comparison with testing. The point being that whereas motorists can currently choose when and where their MOT test is undertaken - so that it is at a convenient time - they would not have that ability with increased roadside enforcement."*

None of the evidence presented in the publically available documents that demonstrates for L class vehicles the Costs per tonne reduction in Hydrocarbon emissions nor any modelling of the costs in terms of impact on journey times etc. that rebuts the evidence from the UK's inspection regime for light vehicles.

Note your comments on paragraph 3 page 2 of your letter. Whoever put your letter together and the list of citations, in a similar manner to those who are drafting the legislation, seems to have ignored key evidence that contradicts what seems to be the preferred policy option.

I have never argued against some level of targeted roadside inspections but imposing the regime that is required for Commercial vehicles on to L class vehicles seems not to be supported by the evidence in terms of accident statistics nor by evidence covering likely non compliance rates nor by cost effectiveness in terms of any likely cost per tonne reduction in unburned Hydrocarbons given the low level of emissions overall and any probable reduction the emission levels that can be achieved given those levels required in the Type Approval regulations currently under consideration.

Given

1. the absence of calculated cost effectiveness based on the same measure as for Commercial vehicles and by definition the knowledge that it is required to make the cost effectiveness case for roadside inspections and the 7 years to calculate it; and,
2. evidence showing the low causation of accidents due to technical failure, namely MAIDS; and,
3. the EC apparently demonstrably ignoring the evidence with regard to impact and cost effectiveness of intensive roadside inspection regimes for light vehicles, namely the UK DoT MOT Scheme Evidence Base; and,
4. that you through your letter to me recognise L class vehicles as being light vehicles; and,
5. continued insistence that the roadside inspection regime under consideration, seemingly that of Germany, is justified in the absence of any publically available evidence directly supporting increasing the level of roadside inspection and some evidence to the contrary, see above; and,
6. acknowledgement that there is unpublished information incorporated in the decision making; and,
7. the failure to provide the access to documents requested 15th July,

On what basis would it be credible for me and other citizens to believe that the Commission's staff are not being unduly influenced by the agendas of agencies and organisations whose motives are not in the public domain? My perception is that there is an overdue influence from German testing organisations that would stand to gain commercially from providing consultancy services in the field of roadside inspections. I note you, by implication, refer to documents that are not in the public domain and thus must relate to commercial interests. I don't believe such issues would come under the heading of

10/10/2011

national or international security which would be the only other legitimate reason for them being held back from release to public scrutiny.

If it is to be credible that there is not undue influence please point me to the public evidence in the list you cited as supporting your case that demonstrates that the measure proposed would be proportionate under Protocol 2 Article 5. Please point me to the document, page, paragraph and line number which shows:

1. the cost per tonne in reduced hydrocarbon emissions arising from L class vehicles given the final Euro 5/6 compliance levels and reasonable assumptions as to non compliance with those measures, i.e. 5% TÜV Nord reported level of non compliance across L class vehicles
2. the cost impact of introducing such as the proposed measure on the journey times of compliant vehicles vs. other hydrocarbon reduction measures
3. the expected improvement in the reduction in fatalities from the measure and the costs against the Value of Statistical Life.

I may have missed it in reading the documents and in my electronic scans on key words. I shall take failure to provide the document, page, paragraph and line number as a concession from the EC that the calculations have yet to be performed.

Please note your the statement in your letter to me cited above "we understand that the preferred policy options might not be custom tailored to every EU citizen or circumstance". Surely the drafters of the treaties, in part, inserted the Protocols covering the evidence levels required to minimise the risks of undue national or commercial influence being brought to bear and to protect the good name of the EU through provisions requiring clear, transparent, evidence based framing of legislation. Such provisions if followed protect the reputation of the EU and the Commission as much as they protect us as citizens from arbitrary legislation.

The Commission, as you have stated in your letter, of the 7th September, with apparent emphasis and pride has been working on this issue for seven years. If you cannot point to basic supporting evidence such as requested above in the public domain after seven years why not? What competent person researching evidence in the area would not spot the criticality of the calculation of the cost effectiveness measure and not, early on in the seven year programme, arrange for its production before determining policy options and drafting proposals? I've only had since the 7th of September to review the evidence and I highlighted it in the interim email to you on the 20/09/2011. In under two weeks, given the document list cited, I located the only measure of cost effectiveness, for such a regulatory proposal, that seems to be in the public domain.

I note that the proposed legislative acts are not yet at formal draft stage but is it a mark of an efficient, competent, open and transparent body to proceed in drafting policy options for seven years without performing the necessary calculations to justify those policy options?

I am most interested to learn your explanation and justification of the situation.

You will note, from my complaint, that your staff seem fully capable, in full knowledge of Protocol 2 Article 5 and judgement 24/62 ECJ, of putting together an impact assessment of claiming full compliance with the principles of proportionality whilst burying a statement to the effect that they need to collect baseline data to support the measure proposed in Annex XVIII and that an impact assessment so constructed can pass the impact assessment review board. Given that, what credence should I and other citizens give to your undersigned statements concerning the rigour of the review process and to your reassurances and undersigned word about the rigour of the process?

Your sincerely

10/10/2011

[REDACTED]

Cc European Ombudsman

-----End of Forwarded Message

10/10/2011

0875/2011/JF
E2011-144626

From: [REDACTED]
Sent: 23 October 2011 23:16
To: Euro-Ombudsman
Subject: Ref 0875/2011/JF FW: Proposed Type Approval Regulations L Class vehicles ref(D (2011) 61.851)

Dear Ombudsman Diamandouros

Please find following a copy of my latest concern raised with the Commission about the Type Approval Regulations covering L class vehicles. I believe this can validly be included in my case raised with you as it relates to another area where the Impact Assessment purportedly supporting the draft legislative act, in this case the Type Approval Regulations, does not meet the evidential criteria for proportionality set out in Protocol 2 Article 5 accompanying the Treaty of the European Union. Failure to comply with the principles of proportionality set out in Protocol 2 Article 5 was the main substantive point in Issue 4 of my case raised earlier in the year.

Kind regards

[REDACTED]

----- Forwarded Message

From: [REDACTED]
Date: Sun, 23 Oct 2011 22:00:36 +0100
To: [REDACTED]
Cc: [REDACTED]



Conversation: Proposed Type Approval Regulations L Class vehicles ref(D (2011) 61.851)
Subject: Proposed Type Approval Regulations L Class vehicles ref(D (2011) 61.851)

Dear [REDACTED]

Further to my previous complaints about the current legislative proposal;
Regulation (EU) No .../2010 of the European Parliament and of the Council on the approval and market surveillance of two- or three-wheel vehicles and quadricycles.

Firstly I'd like to say safety is a concern of my own. I know what it is, as a result of a motorcycle accident, to lie strapped immobile to an A&E trolley with back and neck injuries and discussing possible neck surgery with the doctor while waiting for CT equipment to become available. I was hit from behind by a car. I know what it is to have consider the potential impact on my life in such circumstances. Many of my fellow motorcyclists have suffered far worse. From my younger days I also know what it is to choose between a hedge or the radiator grill of a lorry coming the other way that had cut over to my side of the road. My headlamp was on at the time and I was wearing a Sam Browne reflective belt. I know what it is to skid and tumble as a result of field mud, fine glacial clay, left on a bend by a farm tractor and to crash on spilled diesel. I avoid iron manhole covers in the road like the plague. I note the ECs utter failure to get an effective standard for wet polished skid resistance for manhole covers in place despite good solutions being available and the evidence available as to the dangers of ductile iron covers to PTW riders and cyclists.

Liberty, freedom of choice and the desire to be treated as a responsible adult are also fundamental concerns of my own.

28/10/2011

The main subject of this email is another area of the proposed regulation in which I contend the EC has breached the principles of proportionality enacted in The Treaty of the European Union Article 5(4) and Protocol 2 Article 5.

The proposed regulation meets the terms to be construed as a draft legislative act under Protocol 2 Article 5

The proposed regulation covers a wide number of subjects, Emissions, Tampering, Safety many of which are covered by the Impact Assessment.

I agree with the EC funded research that a significant factor in the number of accidents involving powered two wheelers (PTW) result from a driver failing to see the PTW rider, MAIDS studies. I won't explore how much of that might be down to the seemingly ever thickening door pillars in modern cars that obstruct a driver's vision save to say it is a well established law of physics that light travels in a straight lines. It is EU legislation that has resulted in the reduced visibility that drivers have and that potentially contributes to the problem the EC is trying to address by punishing us as motorcyclists with ever more restrictive legislation. Headlights will never be visible through a car's metal door pillar.

To establish a common ground of evidence as to nature and the scale of the problem. I will take the time and show you the courtesy of reference everything rather than make assertions.

The MAIDS 2004 report found that Other Vehicle (OV) driver traffic scan errors were present or contributed to the accident in 62.9% of cases, table 4.6 p33, and OV driver error was the primary factor causing the accident in 50.4% of cases, table 4.1 p29. The MAIDS study covered an analysis of accidents in France, Germany, Italy, Spain and the Netherlands

In the same year the UK Government produced a study covering PTW accident causation namely In Depth Study of Motorcycle Accidents (IDSMA-DfT), Department of Transport, November 2004 – Road Safety Research Report number 54. This document is a public domain document and was available to the EC as a source in drafting the type approval legislation had it chosen to use it. This study found that 38% of accidents involved a right of way violation (ROWV), Section 4.1 p21. Of these accidents the PTW rider was either fully or partly to blame in less than 20% of cases. Both studies show that OV driver behaviour is the single biggest cause of accidents involving PTWs.

The MAIDS report also found:

- The headlamp was not in use in 24.2% of accidents, table 8.10 p99.
- In over 69% of accidents the headlamp was verifiably in use!
- Perception failures were committed by 50.9% OV drivers who only had a car licence whilst for OV drivers who also had a PTW licence failure to see the PTW occurred in only 13.2% of cases where the primary cause of the accident was an OV driver perception failure. Fig7.8 p 84

The IDSMA-DfT found that, in 2004:

- 60% of riders responding to the survey in the study chose to ride with lights on, section 4.7.6 p34.
- Speeding, travelling in excess of the speed limit, was a contributory factor in only 3.6% of the accidents in the accident database, para 2 page 35.
- For multi vehicle accidents the OV driver was primarily to blame in 56% of accidents, Table 7 page 39.
- For 12% of accidents involving another vehicle the rider was verifiably using aids to conspicuity, e.g. Daytime use of lights, although the report authors believe there was significant underreporting of use of such aids by the Police, para 1 Page 22.

Based on the MAIDS data we can make the following assumptions

28/10/2011

- Minimum Case: The headlamp was in use in all single vehicle accidents and those where the rider was primarily responsible it still leaves an overlap of approximately 20% with accidents where the OV driver was primarily responsible. That implies that in 40% of cases where the OV driver was responsible the rider had their lights on.
- Normal Distribution Case: That the headlamp use was statistically normally distributed over the type of accidents then in nearly 70% of the 50.4% accidents where the OV driver was primarily responsible the rider had their headlamp on.

On this basis we have the case that for between 40% and 70% of the accidents for which the primary responsibility of the accident was attributable to the OV driver the rider was maximising their conspicuity and the OV driver still failed to drive with due care and attention.

On this basis it is reasonable to assume that accidents involving ROWV by OV drivers will continue after the introduction of the measure and that these will involve riders using lights and other aids. As MAIDS found, it is OV driver approaches to scanning traffic rather than conspicuity of the rider that is the major issue.

It is these accident types that the measure in Article 20, safety requirement 8, *"installation of lighting and light signalling devices, including automatic switching of lighting"* is presumably intended to address, Annex II p83 of the proposed regulation.

Such accidents cause both death, for which the killed rider can receive no compensation but any family might, and serious or minor injuries for which the rider may be entitled to damages from the OV driver because of negligence.

It is also reasonable to assume that significant numbers of PTWs without "Automatic Lighting On" will remain in use for at least another 10 to 15 years following the introduction of the measure.

The Impact Assessment covering the Type Approval Regulations contains no analysis of the impact of "Automatic Lighting On" in terms of reductions of accidents expected nor any other positive or negative impacts. The subject of the article and safety requirement appears to be completely absent from the Impact Assessment on the major area of road safety the measure seems designed to address.

It is my understanding that in the UK legal system liability for any compensation due to negligence will fall on the OV driver unless a contributory factor such as excessive speed on the part of the rider was a contributory factor under the legal concept of contributory negligence. I am not familiar with the legal concept of negligence in other EU jurisdictions and how it might apply.

You will no doubt be aware that 2004 is before "Automatic headlamp on" became commonplace on L3 class PTWs. In the UK it is not currently mandatory to ride with a light on and liability remains with the OV driver if they are the cause of the accident.

It is reasonable to assume that through no fault of the PTW rider a bulb may fail. The rider may not be aware of bulb failure during daylight hours. I always carry a spare myself to cover for that event. However, not all machines have readily accessible lights that enable roadside replacement of a blown bulb. I suggest you try replacing a bulb on the Honda CB1300 S (Faired) model in daylight, let alone at night and in the rain. Since learning to ride I have usually ridden with headlamp on with the major exception being that of my moped in 1978/9 which did not have sufficient generator capacity to run with a light on all the time.

My understanding is that in the current UK legal environment including current type approval regulations using a light in daytime is a precautionary measure and that not using a light in daylight would not constitute a significant element of contributory negligence in the event of an accident, except at dusk

and dawn when lights are required. It is the duty of the driver to drive with due care and attention and look for PTWs. It is the duty of the PTW rider to ride lawfully but the rider is not duty bound to take extra measures to be conspicuous, it is merely a sensible precaution. I accept it is the duty of the rider to have a light that is in working order.

The new regulation mandates the "Automatic Lighting On" for PTWs with the force of law. It makes no reference to the accessibility and the average time taken to replace a bulb, nor indicate to the rider that the bulb has failed in use. In mandating "Automatic Lighting On" it seemingly creates a duty of care in law for a rider to have the light on at all times and thus partially absolves OV drivers of the duty to drive with due care and attention.

In mandating "Automatic Lighting On" the regulations could reasonably be foreseen to create a legal environment in which riding without the headlight on an older machine could be considered contributory negligence in the event that a car driver commits a ROWV. The increasing number of riders that will have bikes with "Lighting On" during daylight hours will create a traffic environment in which to have lights off, e.g. on an older bike, will be an unusual occurrence. It can reasonably be foreseen that lawyers for insurance companies of drivers committing ROWVs, knowing the legal position with respect to Type Approval, would argue that the rider had an obligation to ride with lights on irrespective of primary fault in the driver not scanning traffic correctly. Thus the regulation would likely create a transfer of liability from the driver to the rider through contributory negligence. This would impact negatively any payouts to the victim of the OV driver's lack of what would be considered "due care and attention" in the current legal environment. On this basis the Regulation seems designed to punish law abiding motorcyclists for the lack of attention of OV drivers and the EC's own introduction of automotive design regulations that obstruct the car drivers view of PTWs. On the evidence of the number of drivers who don't pay attention it will also make little difference to the appalling accident statistics for PTW riders. For someone who may be rendered paraplegic for life the level of compensation received for injuries is critical.

As PTW riders are vulnerable road users and are often killed or suffer severe injuries any payouts in the event of an injury can make a huge difference to their life after an accident. Payouts are not generally made to the driver or rider at fault.

The impact assessment contains no societal or economic impact assessment of:

- Any reduction in payouts to victims and or families of ROWVs committed by OV drivers due to implementation of the measure, either through a failure of the light of which the rider was unaware or through riding an older vehicle without lights on during the transition period.
- Any costs that will fall to the state as a result of reductions in insurance payouts.
- Any increase in risk to riders of older or classic PTWs in an environment in which drivers learn to assume PTWs are identified in the traffic by lights on.

Protocol 2 Article 5 requires that:

*"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.**"*

In respect of the proposed regulations the EC has not, within the impact assessment, considered the potential financial impacts of the measure on national governments nor the citizens who become victims

of ROWVs committed by other road users. This failure to provide an impact assessment occurs in the area of safety that relates to the single most important accident causation factors that affect EU citizens who ride PTWs. The EC is also introducing an "unassessed" measure that could affect compensation payments in the face of available evidence, MAIDS and IDSMA-DfT studies cited above, that the effectiveness of the measure is not clear cut. The EC is aware from the studies above that drivers of other vehicles still commit ROWVs killing and injuring riders, irrespective of the rider maximising their conspicuity with aids.

Once again I request that the EC complies with its founding legal framework, see Protocol 2 Article 5, and demonstrate the financial case showing the cost benefit analysis before presenting regulations that may have unforeseen effects as would appear to be the case here. May I suggest that in future Impact Assessments they not only contain analyses of Impact Types by categories: Economical, Environmental, Safety and Societal but also by another category Legal by member state. Consideration of legal issues such as the frameworks surrounding negligence would seem to be a minimum requirement in a field such as Road Safety. I contend that Legal impact is covered under the head of administrative burden in Protocol 2 Article 5. I request that you put on hold this particular measure until the EC has received legal advice from each member state as to the likely impact on legal liability, negligence and compensation payouts in an accident scenario and a provide a proper cost benefit analysis of the financial and administrative burdens from the measure. I request that the legal advice from each member state is published. In the UK the relevant legal framework includes the Laws of Tort. Of all the measures in the Type Approval Regulations proposed I see this as potentially the worst because it creates the possibility in the event of an accident of transferring some of the liability for a OV driver error to the PTW rider, i.e. From the culprit to the victim.

Once again, if I am wrong as a matter of fact about this measure being omitted from the Impact Assessment please provide the page, paragraph and supporting evidence table with the cost benefit analysis. I will be happy to stand corrected if the evidence is presented. If your officials cannot provide such a reference to evidence in the impact assessment it is evidence of yet another example where the EC seeks to legislate to the disadvantage of citizens whilst ignoring completely the requirements and obligations placed upon it in the founding treaties and protocols through which it is granted its powers to legislate.

Regards



CC
European Ombudsman
IMCO

----- End of Forwarded Message

28/10/2011

[REDACTED]

From: [REDACTED]
Sent: 13 November 2011 22:56
To: Euro-Ombudsman
Subject: Case ref 0875/2011/jf
Dear Ombudsman Diamandouros



Firstly I'd like to thank your officials for their patience with me [REDACTED] is always courteous and professional. Following my conversation with [REDACTED] on Thursday 10th of November I've had time to reflect on the implications of the European Commission's failure to respond to my complaint with the above reference by the extended deadline of 31st October 2011.

I would like to know what action you as Ombudsman plan to take over the failure by the European Commission to answer the complaint made?

Whilst I am interested in what the Commission might have to say, I believe that their failure to deliver a response to my complaint within the extended timelines further supports the merits of my case. If the Commission had the evidence to support their case they could have delivered it within the timeline they committed to. The European Commission have had 2 weeks over their committed deadline to respond. I must therefore formally request that, given the Commission's failure to respond within the time you reasonably expected and they committed to, you find in my favour. I believe the Commission are abusing the process with regard to this complaint and should be held to account if your office is to mean anything to us as citizens.

From my perspective it seems that at best there has been a complete failure of project management in delivery of the response from the European Commission. My grounds for this statement are set out below.

As you can deduce from my case documentation I have some level of project and programme management experience. I have passed project management examinations as part of my professional development. In my own professional life I am considered to be only as good as my last job. In a project management role the performance measure of success is delivery to time, cost and quality. Key to successful and efficient delivery is an understanding of the products required to be delivered by the project by when. The products are broken down into the sub-products or components at the beginning of the project. It helps establish the planning timelines and feasibility so one can go back to the recipient of the project outputs and negotiate or renegotiate timelines. An effective project manager works back from the final output and delivery date to the components that are required and estimates the effort involved in each stage, including authorisation milestones.

Responding to this case is a project in its own right for the European Commission. It consists of a number of components namely a response to each issue I raised and the alleged breaches in each issues. Each of these can be planned, delegated to appropriate resources and delivered as products within the project context.

An example of good practice in project management methodology can be found in the manual *Managing Successful Projects with Prince2* produced by the Office of Government Commerce and published by The Stationery Office here in the UK. This manual was cited in my original complaint.

At a minimum, based on my project management experience, published information and the conversation I had with [REDACTED] 10/11/2011, covering the internal authorisations that would likely be required there should at a minimum be a Product Breakdown Structure, a project plan incorporating "authorisation by" dates for each component in the response as milestones and a risk log

15/11/2011

for this case. That is if we assume a reasonably competent project manager in a reasonably efficient organisation. Lack of a risk log would show a lack of understanding of the risks of failure to deliver in a legal process, or a belief that there are no or few consequences, or an acceptance of the consequences. I leave determining which to your judgement.

I am one citizen working on this complaint in my free time. The Commission has access to much greater resources both technical and legal with which to respond to my complaint within the deadline. You will note that I have endeavoured at all times to respond to the Commission within the timelines that they set for themselves to respond.

If I can for instance read several highly technical documents on commercial vehicle emissions identify the key issue within a fortnight and respond in just over a month then I do not believe it is unreasonable to expect the Commission to be able to respond to my complaint in a timely manner?

I note that in my original complaint I alleged that there was:

1. A breach of my CFREU Article 41 rights, Article 41 Headed "The Right to Good Administration"
2. A failure to meet the provisions of TFEU Article 298 covering provision of an open, efficient and independent European Administration.

I respectfully request that you ask for the project management documentation from the Commission that should in my view, in an efficient administration, exist for a case such as mine. I do not need them for myself but I believe their existence and quality or their non existence will be an indicator for yourself as to the merits of my case on the above points.

Is it good administration and evidence of an efficient administration for the European Commission to fail to respond to you within the extended timeline after waiting to the 15th September 2011 to request the extension to the timeline? Would not an efficient administration operating to the principles of good project management practice have identified the workload upfront and requested the extension earlier? I note that it seems to have been the Commission committing to deliver by the 31st October if I understood your letter of 20th September correctly.

If this were a court process, what would be the consequences of failing to deliver a defence by the court date? I ask the question rhetorically. If my understanding from my conversation with [REDACTED] is correct the Commission have not even had the courtesy to explain the reason for missing their committed deadline of the 31st October to you.

Kind regards

[REDACTED]