

E2012-154753

MÉDIATEUR EUROPÉEN



7 MAI 2012

ARRIVÉE

From: [REDACTED]
Sent: 04 May 2012 18:04
To: Euro-Ombudsman
Cc: [REDACTED]
Subject: [SPAM SUSPECTED] Complaint 0875/2011/JF - Supplementary Observations
Categories: SPAM
Attachments: 0875-2011-JF Supplementary Observations 20120503.pdf

Dear Ombudsman Diamandouros,

Subsequent to my submission I have become aware of additional documentary evidence that I believe supports my contention that the proposed Type Approval Regulations COM(2010) 542 final provisions covering Automatic Headlight On breach Protocol 2 Article 5 provisions concerning Subsidiarity and speak to the heart of the issue of breach. The additional evidence came to my attention as a result of undertaking a Bikesafe workshop with the Metropolitan Police in London <http://www.bikesafe.co.uk/About-BikeSafe/>. I had previously, in my early 20s, undertaken elements of the Institute of Advanced Motorists www.iam.org.uk motorcycling course. I undertook the Bikesafe workshop to ensure that, having returned to motorcycling after some years, my skills and understanding of current best practice were up to scratch.

I was provided with a copy of the "Institute of Advanced Motorists guide How to be a better rider: The Essential Guide" (ISBN 9 780956 223923 0 4). This is an update to the 1982 version of the IAM Advanced Motorcycling Manual I already had. I was reminded that all Advanced Training for Motorcycles and Cars in the UK is provided to the same system based on the Police Foundation's "Roadcraft the Police Driver's Handbook" and "Motorcycle Roadcraft: The police rider's handbook to better motorcycling". I purchased the car handbook and an update the 1981 impression of the Motorcycle Roadcraft Handbook so that I had up to date copies of best practice handbooks. These handbooks represent unimpeachable authority on best practice safe driving and riding techniques in the UK and its road conditions. The handbooks cover all aspects of machine control and driving / riding. They constitute the basis for police rider and driver instruction. The manuals exclude emergency response driving.

I will send additional marked-up copies through the post as it critical that you can verify the veracity of my statements and can see where I have made edits in my extraction of the salient points.

Roadcraft: the Police Driver's handbook. 2007 Edn Sixth impression 2011, The Stationery Office Limited, London ISBN 978 0 11 702168 6

Motorcycle Roadcraft: The police rider's handbook to better motorcycling. 1996 Edn Nineteenth impression 2011, The Stationery Office Limited, London ISBN 978 0 11 341143 6

In my view both handbooks represent the output from consistent and effective approaches to road safety and driver and rider training. The approach taught has been in existence and proven to be effective for over thirty five years.

I believe the information has been in the public domain and that, had due process been followed by the Commission, organisations such as The Police Foundation and The Institute of Advanced Motorists should have been identified and contacted directly for discussions as to the impact of the proposed regulations. I do not believe such discussion, should they have taken place, are recorded in the MCWG documentation and their evidence weighed in the Impact Assessment.

After discussion with your appointed solicitor [REDACTED] as to the acceptability of submitting the evidences at this point I respectfully request to enter the attached observations based on best practice driving and riding described in the handbooks above. I request your latitude in this respect. I believe the timelines of the publications are germane to the issue of mandating hardwired Automatic Headlight On

07/05/2012

(AHO)/Daytime Running Lights (DRL) rather than switchable systems and thus to the breach I allege of the Protocol 2 article 5 provisions in respect of subsidiarity. I would appreciate this communication, and the handbooks following by post, being entered to complete my observations.

Kind regards

To follow by post

Police Rider's Handbook and Police Driver's handbook



03/05/2011

Dear Ombudsman Diamandouros

Subject: proposed regulation COM(2010) 542 final, impact assessment SEC(2010) 1152 final. Provisions requiring "Automatic Headlamp On" Alleged breach of Protocol 2 Article 5

As previously stated in my case; in the UK we have not mandated daytime use of lights. We have taken a conscious decision to not mandate daytime "lights on" driving. My understanding is that we have some of the safest roads in Europe in terms of traffic density and casualty rates in terms of people killed or seriously injured (KSI) per km or mile.

As you are no doubt aware, Police Drivers / Riders are considered to be some of the best professional practitioners in the field.

The Police Driver (Cars) handbook¹ does not recommend using lights on all the time. Some say the objection to AHO is analogous to the objection to compulsory Seat Belt use. If it were analogous to the seat belt scenario then I believe our Police would recommend using lights on all the time when driving a car as best practice. The handbook (p35) recommends Under the heading "Using lights in bad weather":

"Choose your lights according to the circumstances.

- Switch on your headlights when visibility is poor in daylight or fading light. Use dipped headlights in fog or heavy rain in daylight because sidelights are virtually invisible.
- As a general rule use your dipped headlights whenever your wipers are in constant use.
- ..."

Under the general heading of weather conditions (p35); "bright sunshine, especially when it is low in the sky" is classed as a condition that reduces visibility. It is not a rare situation in the UK We have a northern maritime climate with low sun for long periods at peak time from late autumn through to early spring. This can lead to hard complex lighting conditions with high levels of dazzle when the sun is shining.

Under the heading of "Bad weather conditions on fast moving roads" (p158) and sub heading "Bright sun" (p159)

"Bright sun low in the sky can cause serious dazzle, especially on east / west sections of road: use your visors to reduce dazzle... If you are dazzled by bright sun, other drivers may be too slow so allow for this when overtaking."

Note that in our standard car driving approach and the advanced driving approach the use of headlights during daylight hours is only recommended in conditions of poor visibility, not all

¹ Roadcraft: the Police Driver's handbook. 2007 Edn Sixth impression 2011, The Stationery Office Limited, London ISBN 978 0 11 702168 6

the time as is mandated through driver regulations in other EU countries. Responsibility is placed on the driver to observe effectively. This responsibility is backed by sanctions such as prosecution for offences such as "Driving without due care and attention". We are encouraged to use our brains as drivers for the sake of safety.

The Police Rider (motorcycle) handbook² makes the following recommendations.

(p5) "To become a better rider, we have to recognise the resistance in ourselves to accepting responsibility, and to take steps to overcome it"

(p22) Under the heading Conspicuity.

..."If the situation is busy it can be difficult to distinguish a machine and rider against the background and we saw earlier that many drivers have a blind spot when it comes to looking for riders. At night riders face more difficulties: the headlight is often insufficiently bright to attract attention, it may become lost among the confusion of other headlights and because it is only one light, it provides a poor cue for assessing speed and distance.

You should do everything you can to make yourself more conspicuous. You can do this by:

- Wearing a jacket or overvest that is fluorescent that and has reflective markings
- Using daytime running lights
- Using a bright quartz halogen headlamp.

..."

The above represent different options for achieving the objective of conspicuity to be used as appropriate.

"...In making your riding plan you should always take into account your conspicuousness, and consider how well you stand out against the background. Be aware that this can change rapidly: a white machine against a black road is relatively visible, but the same machine against a white lorry merges into the background..."

(p50, p51) Under the heading "use of lights in bad weather"

"Choose your lights according to the circumstances. Lights have two purposes: they help you to see better and they help others to see you. In daylight the second purpose is often the more important/

- Switch on your dipped headlight when visibility is poor in daylight or fading light. Use dipped headlight in rain, snow, mist or fog.
- Use dipped headlight when going from good light to poor, for example when entering an avenue of trees."

Note bright low sun is considered a weather condition that reduces visibility. Therefore the converse of putting a light on needs to apply. One needs to create a silhouette. Adding a light source to break up a dark silhouette image with a bright light (low sun) behind it just makes the bike more difficult to see. The emphasis in the UK recommended approach is on using our brains, i.e. "Choose your lights according to the circumstances" and individual responsibility.

Mandating AHO/DLR at manufacture by definition implicitly criticises the competence of the UK police to train their own riders and drivers to a safe standard of driving and makes them

² *Motorcycle Roadcraft: The police rider's handbook to better motorcycling*. 1996 Edn Nineteenth impression 2011, The Stationery Office Limited, London ISBN 978 0 11 341143 6

complicit in the road casualty rate for this country given their driver and rider handbooks are used as the basis for the systematic teaching of advanced techniques. As the date of publication for the latest edition of the rider's handbook shows, the police in 1996 were aware of daytime running lights in their recommendation in the police riders handbook but they are still in the same book recommending adapting lighting to the circumstances and being aware of the image the bike presents against the background. It would be a simple enough editorial procedure to have updated practice to state "drivers / riders should use dipped headlights during daylight at all times" for both cars and bikes, and remove both the recommendations to adjust use of lights according to the conditions from both training handbooks.

If the proposed regulation is the minimum necessary in law and the principle of subsidiarity is not being breached according to the Treaty of the European Union and the Protocol; it follows that there is apparently an astonishing implicit conclusion to be drawn that the UK approach to police rider and driver training and the UK approach to the training of its citizens seeking best practice skills, in stating in the acknowledgements for each handbook that the approaches represent current best practice, are grossly negligent and have knowingly been so for some years (at least since 1996)! Do the KSI statistics, available to the Commission, when analysed by root cause and voluntary use of headlights bear out the conclusion that the measure is the minimum necessary and that UK approaches are grossly negligent? I believe the Commission needs to demonstrate it has reconciled these positions as to be the minimum necessary it is reasonable to believe the measure itself must be demonstrably aligned to best practice. On what evidence presented in the Impact Assessment, has the Commission demonstrated that using headlights on all the time is verifiably best practice?

I contend that the Commission's approach to framing these proposed regulations has not taken account of the complex system of interactions between road users and the environments. They have taken a silver bullet approach that appears to seek to maximise the supply chain benefits of manufacturers. The alternate view is, by definition, that the Commission is making an implicit and damning criticism of professional advanced driver / rider training in the UK and implying it is less than competent and is irresponsible. I doubt that the Association of Chief Police Officers, National Police Driving Schools Conference, Police Foundation and National Extension College as sponsors of these training handbooks and the Institute of Advanced Motorists would concur with the view that they are incompetent. Where are the references that show that the national police and advanced driver / rider training handbooks and their recommendations have been sought, actively taken account of and used in formulating the measure, rather than just being ignored as an inconvenient contra-indicator?

Peter Senge, a leading management thinker, in his book *The Fifth Discipline*³ identifies "Systems Thinking" as a critical component in managing complex systems. The "Systems Thinking" concept of archetypes⁴ shows how not understanding system wide interactions can lead to unanticipated negative side effects that may be severe. Where in the Impact Assessment is an analysis or system map that demonstrates the EU won't end up with implementing "Fixes that fail", "Drifting goals", "Shifting the burden" or "Accidental adversaries" archetypes through the proposed measure?

I contend that the Commission needs to take account of all citizens lives when designing

³ Senge, P.M, *The Fifth Discipline*, Doubleday USA, 1990.

⁴ <http://www.systems-thinking.org/arch/arch.htm>

safety systems and the consequences of changes to systems. To imply, through the stated need for change, that the nationals' lives and rights in a currently comparatively safe system of road regulations are worth less consideration than the lives of other nationals in more dangerous environments and can thus be overridden and, that road safety standards and training in a relatively safe road environment are inadequate without an understanding of the different systems and why they may or not work is arrogant in the extreme. I am not requesting that other European nations drop their regulations mandating lights on during daylight. I am asking that our systems and need for on/off switches and the right to "choose our lights according to the circumstance", as recommended by the trainers of our best professional drivers / riders, be respected under the principle of subsidiarity and not overridden for the sake of supply chain efficiencies when other member states have the option to enforce their own legislative preferences through other methods. Having a EU wide on/off switch requirement does not prevent any other member state imposing their own requirements for lighting use.

I see no evidence in the MCWG considerations or the Impact Assessment supporting the proposed measure that the Commission has taken account of UK circumstances nor of any potential adverse impacts from the regulations. The Commission attitude seems to be to ignore contra-indicating evidence rather than find solutions that work for all and apply the principles of subsidiarity. Where is the evidence that either the Commission or UNECE have explained how the UK with high traffic densities has relatively safe roads, when compared with other EU member states, and why our police and advanced rider / driver training programmes are inadequate on the use of lights to the extent that this measure is required? Where is the evidence that the UK approach to driver / rider training is so egregiously substandard relative to other member states that it needs to be overridden by a technical solution? In the supporting impact assessment for the measure and the MCWG documentation, where is the evidence of any willingness to learn from the UK experience and expertise as a member state and understand the root causes of the issues the measure is attempting to address? Is it that the measure is being driven more by the inability of other member states and their respective police forces to enforce their own traffic regulations, most likely appropriate to their own conditions, than any real need for the measure on an EU wide basis as required by the tests:

- Is it the minimum necessary to ensure a high standard of public safety?
 - If it were really the minimum necessary then one would expect that the casualty statistics in the UK relating to right of way violations would be significantly higher than other EU member states.
- Does it comply with the principles of subsidiarity?
 - Surely the principle of subsidiarity was introduced into the EU Treaties and Protocols to cater for such issues for which national practices achieve the same overall EU objective but through national approaches appropriate to local conditions and where introduction of EU wide measures may have serious potential negative side effects in terms of systems and citizens' rights, lives and livelihoods. Surely it is the Commission's duty of care to ensure it takes account of the value of all Citizens' lives, and where appropriate those citizens own personal responsibility for their actions? Is it not the responsibility and duty of the Commission to thoroughly investigate and demonstrate transparently that the legislative solution adopted is the minimum necessary and the objective cannot be achieved by other means, e.g. national legislation. Is it not disproportionate to punish one citizen's responsibility and restrict their rights to protect themselves with measures aimed at countering another citizen's irresponsibility and non-compliance

with their own member state's traffic laws? I'm not asking Germany to give up mandating drivers and riders use headlights during the day through driver related regulations. I have lived in Germany for a period of nine months and have driven and subsequently ridden on their "unrestricted autobahns". I can thus understand the value to them of ensuring their high speed drivers are visible in the distance when they close legally at much higher speeds on traffic that is travelling at what I understand to be the recommended maximum of 130kph. That is a national circumstance.

Where in this case in the impact assessment is the evidence of best practice "holistic systems" approaches to analysing the problem and drafting measures being applied to each of the problems being addressed by the Proposed Regulation? Are we, as citizens, not entitled to be assured that high quality "best practice" processes have been adopted in formulating measures through seeing the evidence in impact assessments? Protocol 2 Article 5 suggests that we should be provided with such transparent assurance.

Kind regards

A black rectangular redaction mark covering the signature of the sender.

10