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11.03.2013

0875/2011/JF
E2013-170635

[redacted]

From: [redacted]
Sent: 10 March 2013 21:22
To: Euro-Ombudsman
Cc: [redacted]
Subject: Complaint 0875/2011/JF - Follow up to recent communications with EC [redacted]
Attachments: EU Ombudsman - 0875.2011 follow up 20130310 Annex.pdf; EU Ombudsman - 0875.2011 follow up 20130310.pdf; EU Ombudsman - 0875.2011 follow up Cover 20130310.pdf

Dear Ombudsman Diamandouros,

It is with deep regret that I need to advise I have received no communications from the European Commission following my emails of 21/10/2012 and 21/01/2013. There is little reason in terms of evidence to believe it would be rational and balanced of me to expect any further communications on the subject.

Please find attached my formal comments in respect of the subject of the two emails and my complaint. It was a hard decision to take as to whether to raise the issue of the proposed regulation of Roadworthiness Tests in advance of the vote in the EU Parliament. However, the processes and relationships involved in the drafting of the proposed regulation and raised under my complaint indicated it was appropriate to do so.

The attached will be my final comments. I will advise you of any communications received from the EC should any be forthcoming. The rest is in your hands. I have to have faith that you will reach your decision following the law. Whilst my critique is forthright I believe I have supported my arguments with evidence, most of it drawn from the EC's own documentary trail. I believe my complaint speaks to the heart of the issues around standards of governance we as EU citizens should be entitled to expect through appropriate application of treaty provisions.

Kind regards

[redacted]

Annex to Detail Statements

Measure	Evidence presented by the EC to support the measure	Liberty lost through measure	Cost imposed by measure
Anti-tampering	1) None – A recommendation made that the evidence should be collected and the Commission has known how to collect it and has collected similar evidence in the past. 2) Evidence that the measure is ineffective and thus imposing needless cost on the law abiding as a person who has the mind to do so easily circumvents the measure.	The right to repair an A2 class motorcycle with cheaper non-original equipment manufacturer parts in the event of a crash through own fault.	Additional costs of manufacture and design amortised across all similar models Additional costs of repair through need to use "manufacturer approved parts" Additional challenges in restoring what may one day become tomorrow's historic vehicles
Automatic Headlamp On	None in the Impact Assessment. No additional substantive evidence in the working papers since the last directives associated with motorcycle lighting requirements – see previous documents in complaint re tell-tale symbols	Right to choose how to protect ones own life in difficult lighting conditions in line with current best practice advice "Choose lighting according to conditions"[1] Potential loss of life Potential loss of health. Note – the evidence is that most motorcyclists ride with their lights on most of the time. I do most of the time. I value the right to adapt according to conditions.	Potential cost of loss of life to family Potential costs arising from life changing injuries – recoverable from third party

[1] Motorcycle ROADCRAFT: the police rider's handbook to better motorcycling, p51.

Measure	Evidence presented by the EC to support the measure	Liberty lost through measure	Cost imposed by measure
Proposed Roadworthiness Test Regulations	Biased evidence base missing key cost elements		Additional direct costs associated with more stringent tests Additional indirect cost associated with travelling further to one of fewer inspection service suppliers Costs offset by reduction in costs for removal of testing requirements for classic vehicles Restriction on the number of suppliers and thus choice as citizen / consumer. Potentially loss of life of faculties if critical components not reassembled correctly

Detail observations to supplement complaint 0875/2011/JF

I find myself feeling incredulous at the situation surrounding the drafting of the Proposed Regulation for periodic Roadworthiness Tests[1]. What leads to this sense of incredulity is the charge of a "Conflict of Interest" from no less an august body than the French Senate[2]. The charge follows a drafting process in which officials of the European Commission (EC) have supposedly subjected the proposed regulation and Impact Assessment[3] to an internal review. This situation also follows a "mere" citizen questioning the propriety of the EC staff's behaviours and relationships with the advising consultancies as far back as April 2011. Is it not unreasonable to assume that a reasonably competent legislative organisation, having had the allegation of an improper relationship with advising consultancies made against them and put into the public domain along with a request for investigation, would be doubly careful to ensure that allegations of improper relationships and "Conflicts of Interest" could not be substantiated in the methodology and the evidence body supporting the drafting of the act. Whilst I am not suggesting financial impropriety, it seems that the relationship is so close as to ensure the EC lost its objectivity in selecting the appropriate advising consultants and in subjecting their findings to critical review and is thus improper.

In addition to the French Senate[4] finding the proposed regulation to breach the Principle of Subsidiarity[5], the Parliamentary Scrutiny Committee responsible in my own government produced a reasoned opinion that also alleges a breach of the Principle of Subsidiarity[6].

Whilst there is much that I object to in the detail of the proposed regulation, such as the requirements for visual inspections of brake linings[7] and the classification of "Historic" vehicles, I am not in principle against the idea of a EU wide Roadworthiness Test. Nor am I against one that covers motorcycles including my 1958 classic motorcycle, provided the case is made properly and proportionately. Knowing I have to subject my vehicles to inspection helps keep me motivated to maintain them in a good roadworthy condition. Indeed as a young man of 16 – 18 the need for my main means of transport to be subjected to our MOT test here in the UK may in part have dissuaded me from removing baffles and carrying out other such modifications to my machine. The other reason being my then instructors pointing out that in the main such modifications reduced performance. At the same time having to submit my moped and motorcycles to MOT testing did not prevent me from modifying those machines using cheaper aftermarket exhausts etc. to repair them when I had the misfortune to be involved in accidents, e.g. skids on farm mud left on the road in corners and on ice. The tragedy of this particular proposal is that the way the EC has undertaken the drafting of this legislative proposal, because of avoidable apparent conflicts of interest on the part of the advising consultants and a failure to collect adequate evidence for dispassionate analysis, it has produced a proposal that is so seemingly disproportionate as to get the backs up of a number of member states and their citizens.

In principle I prefer a roadworthiness inspection regime to designing and building in Anti-Tampering measures to machines. The data from the Netherlands, cited in the TÜV Nord

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[1] REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC COM(2012) 380 final
[2] http://www.senat.fr/leg/ppr12-017.html
[3] Impact Assessment SWD(2012) 206 final
[4] http://www.senat.fr/leg/ppr12-017.html
[5] Treaty of the European Union Article 5 (4) and Protocol 2 Article 5
[6] http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86-xv/86xv04.htm
[7] Annex 2 p15

report 2003[8] shows that Anti-Tampering measure are ineffective yet represent a cost to the law abiding citizen without any benefit whereas an inspection regime can reduce illegal modification significantly, 80% (UK) - 95% compliance without being draconian as previously stated in my complaint. Personally I have no objection to the emissions of my motorcycle being tested. My car is tested so, in my view, it would be unreasonable to expect that my motorcycles were not also to be subject to similar testing. However, how I feel about Roadworthiness Testing is not sufficient to justify the imposition of new standards of testing that will impose additional costs on citizens across Europe. The case for such legislation must be made in a proportionate manner based on adequate evidence.

My own line of argument in criticising the compliance of the proposed regulation with the principals of subsidiarity and proportionality would be slightly different to that my own government and that of the French Senate. I respect their respective views on this issue. I submit that on the evidence and analysis I present following it is not possible to appraise its proportionality as required by Treaty of the European Union Article5 (4) and Protocol 2 Article 5.

From my perspective I submit that the breach of the Principle of Proportionality[9] is directly connected to the conflict of interest that the advising consultants had and in that conflict, evidence of a relationship that is too close between the EC and the advising consultants to the detriment of the legislative process and to European Democracy. The Commission appears to have failed to firstly require impartial collection of an evidence base, secondly to have accepted mere assertions and assumptions made by the consultancy and thirdly failed to perform an effective review board process, which had it been undertaken effectively should have captured and prevented the release of a document that left the proposal open to the criticisms made by the French Senate, my own government and from me as someone the EC appears to regard a mere citizen whose views and rights are inconsequential.

My line of reasoning is as follows.

I note the following from the draft legislative act and supporting detailed statement aimed at enabling appraisal of compliance with the principle of proportionality:

1. Article 12 (4) of the proposed Regulation - “When carrying out a roadworthiness test, the inspector shall be free of any conflict of interests, in particular as regards economic, personal or family links with the holder of the registration certificate of the vehicle subject to testing.”
    1. Given the discussion in paragraph 1.70 of Annex XIV to the impact assessment and other sections of the impact assessment itself with regard to fraud it can be reasonably concluded that this Article is a response to a perceived problem of fraud and conflicts of interest for the inspector arising from various relationship types with the vehicle driver or rider. Specifically these might be familial pressure to pass unfit vehicles or, that an inspector associated with a repair operation to fail otherwise fit vehicles in order to pick up additional repair work that is unnecessary to ensure the safe operation of an inspected vehicle and consequential revenues from the vehicle owner.
        1. As “Economic relationship” is not defined in Article 3 one has to analyse the general scope of economic relationships discussed in the

[8] Anti-tampering devices relating to two or three wheeled vehicles – final report, TÜV Nord, 2003, Hannover
[9] Treaty of the European Union Article 5 (4) and Protocol 2 Article 5

impact assessment. When reading paragraph 1.70 it is clear that economic relationship as set out in Article 12(4) can be read to encompass relationships in which the inspection centre receives revenues for vehicle repairs.

2. The perceived fraud risk problem seemingly has no estimation of scale for those countries such as the UK with a garage-based regime as opposed to a specialised inspection regime, nor of the effect of the problem on road safety in those countries.
    1. That the impact assessment also states that government supervision and inspection of garages can mitigate the risks of fraud.
3. The Impact Assessment provides no economic and competitive modelling of access to Inspection Services across Europe under either garage based regimes or specialist inspection regimes.
    1. From my previous professional experience working for a software house that provided Geographic Information System (GIS) capabilities embedded in its products as far back as 1997 I know that such an analysis is relatively easy to perform given the will. An example of a company providing such technologies is Atlas[10] / ESRI founded in 1989. The EC has a duty under the generally accepted principles of good governance based on Efficiency, Effectiveness and the concept of "Fairness" or Equity in the provision of Public Services to ensure that those in remote areas of low population density are not unduly disadvantaged. If ensuring "Fairness" in the provision of services is not part of the EC's thinking then it not unreasonable to expect it might lose what consent it has to be involved in the government of peoples. Such economic modelling based on access to "competitive" services and distance travelled based on population density, for which the data is available, rather than minimising the cost to government of supervising inspections might throw up a different legislative approach as the optimum.
        1. The information required to perform such an analysis would seem to be along the lines as follows:
            i. The minimum scale of economic operations from a single service line inspection only service, Costs of location facilities, equipment and staff – DEKRA would seem to be a good source of information
            ii. The number of customers required to return an acceptable level of profit
            iii. The minimum number of customers required to retain a competitive market of two or more suppliers in a given region / area
            iv. Population density by region/area
            v. Number of vehicles per head for the same regions
            vi. As the Department for Transport (DfT) licenses multi line service operations as the UK MOT stations the information as to location of licensed testing stations could be obtained by postcode[11]. An assumption could be made that competitive market

[10] Atlas GIS www.atlasgis.net About Atlas page
[11] http://data.gov.uk/dataset/mot-active-vts

equilibrium has been reached. A further assumption can be made that in terms of a competitive model of suppliers per 10,000 population / vehicles the UK (England, Wales and Scotland) model can form a proxy for all garage based testing approach even if the data isn't available for other countries.

vii. With the number and locations above one can get to a similar number of providers per head of population required.

2. Given I can shape the potential structure and sources of data required within half an hour, from which indicative values could be calculated, it is surprising that the EC with the resources of the statistical service at its disposal cannot get to such an analysis itself within a seven year period unless of course it has determined the outcome of the research finding it wants to justify a regulation rather than undertake a true analysis and determine the minimum legislative act necessary, as required by the protocol, or to frame an effective policy and achieve the established policy goals.
3. The DEKRA provided analysis makes a point of saying that their model can be implemented with a maximum of 300 stations across Spain without considering how far the citizen, required to have an inspection by law, has to travel.

2. That DEKRA cite international expansion as one of their core strategic objectives. DEKRA Annual Report 2011 – Chair of Supervisory Board *"With the introduction of the <<DEKRA 2015>> strategy programme, the Group is aiming to increase that growth and improve profitability in order to secure its position as a leading global provider of safety services in the testing, inspection and certification industry. The management team has set a clear course for expansion, with an increasing focus on the United States and the growth markets of Brazil and Asia."*
3. That the impact assessment study observes, p8 section 1.43 b), "*testing services are limited in the extent to which they can compete for business from other Member States.*"
4. That the impact assessment study p41 para 1.160 observes. "*An advantage of the garage-based system is the high number of test locations spread over the country, reducing the distances motorists have to travel for the test, and the time it costs them.*"
    1. It is reasonable to assume that a highly competitive distributed multi-service garage based local testing delivery regime constitutes a significant competitive barrier to entry for specialised testers wishing to enter such a market. However, it doesn't stop them. They just have to compete with a different model.
    2. No study of the effectiveness or otherwise of supervisory actions to mitigate the risk of fraud or conflict of interest has been undertaken. Whereas evidence from the UK indicates that supervisory action can be undertaken to prevent fraud[12]. Using fairly simple data checking algorithms based on expected time to inspect, expected failure rates, pass rates, number of

[12] http://www.dft.gov.uk/vosa/newsandevents/pressreleases/2010pressreleases/03-11-10garageownerguiltyoffakingmottests.htm

vehicles processed by a centre a supervisory body can identify garage based test centres that require supervisory investigation.

5. That the Impact Assessment, section 2.3 under the heading of Supervision of Inspectors, acknowledges that DEKRA amongst others were found by the German government to require supervision to ensure the required quality of service is delivered. Examples of supervisory techniques included "mystery shoppers"
    1. Such methods are used to supervise inspection regimes such as the UK MOT test so the mitigating action must by definition be acceptable if it is an acceptable supervisory method for specialist inspection regime.
6. That DEKRA are the organisation that advised upon and chose how to cut the analyses presented as to what constitutes least rigorous, medium level and high-level inspection regimes. Annex XIV "Impact Assessment Study" page v section 30.
    1. In effect, one of the key industry suppliers with a stated objective of international expansions is permitted to define how the effectiveness of regimes is to be assessed and provide the analysis to support the restructuring of inspection regimes in other member states.
7. That despite the preamble to the proposed regulation implying that garage-based systems will still be allowed under the proposed regulation, paragraph 10 on page 10, and section 5.7 of the impact assessment indicating that garage based systems are not being proscribed by the proposed regulation. It is being reported[13] that the Rapporteur for EU Parliament committee responsible for scrutinising the legislation as having stated that one of the priorities for the committee assessing the proposed regulation is that "inspectors must be independent, (inspectors should not offer repair services at the same time)". It seems that it is not only myself that misread the thrust of the proposed regulation and that that misreading is down to the biased study presented in Annex 14. One can foresee much EU Parliamentary time being taken up with this particular aspect without evidence as to the ineffectiveness of supervised garage based approaches as in the UK.
8. That the road deaths per million inhabitants metric used to justify the proposed regulation, and which would rightly get me fired if I were in my strategy and performance management consulting role to propose such a metric for this purpose to either a client or employer, is not an appropriate metric for assessing the relationship between fatalities and the Roadworthiness regime in a country. There are too many other causal factors for road fatalities to correlate the fatalities to the inspection regime in place.
    1. Were the metric to represent the true relationship between fatalities and the inspection regime in place one can see from the impact assessment Table 1[14] that the German approach is significantly less effective than the UK and Netherlands approaches and the Swedish approach is no better than the UK approach. Indeed, forcing the German (DEKRA) model on the UK using the "Fatalities per Million Inhabitants" metric as a basis for assuming a true statistical correlation one might reasonably expect fatalities to increase by 28% in the UK.
9. The EC in the Impact Assessment Annex 13 p91 paragraph 5 calculate staff costs for additional inspections based on 25 minutes to undertake a test. The EC cite the UK's MOT Scheme Evidence Base report of 2008 for as the source for this estimated time to undertake a tests

[13] http://www.fema-online.eu/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=350&cntnt01returnid=15

[14] SWD(2012) 206 final, Impact Assessment, p 9 (pdf format absolute page ref as document not page numbered)

1. The UK's MOT Scheme Evidence Base 2008 document.
    1. States, p22 para 64 (first bullet on page), "MOT tests take on average 60 minutes, and re-tests on average 7.2 minutes". This leads to the productivity of inspectors being overstated by a factor of 2.4 with a consequent understatement of the staff costs by the same factor.
    2. Demonstrates,pp20,21 paras 61-63, it is necessary and possible (Note Protocol 2 Article 5 requirements – "*wherever possible quantitative indicators"*) to factor in the citizens time to take their vehicle to a test centre. This does not appear to have been factored into the EC's cost model in the impact assessment. The DfT estimates do demonstrate it is possible to factor in time and some estimate of national average income for each member state based on the model of testing used and the distribution of test centres (Note Protocol 2 Article 5 requirements). Average incomes in each member state, travel time and thus costs to citizens are possible to assess and have been assessed for the UK. Protocol 2 Article 5 requires the financial and administrative burden to citizens to be minimised. In the absence of including this quantitative data that is demonstrably possible to estimate based on one of the source documents for the impact assessment how is it possible to appraise compliance with the principle of proportionality?
2. That the UK MOT test, taking 60 minutes, does not include visual inspection of brake linings and brake discs / drums for contamination. The proposed regulation, Annex 2 p15 requires visual inspection of said items under 1.1.13 b and 1.1.14 b.
    1. To carry out inspection of the pad or lining surfaces or the internal surfaces of a drum brake requires removal of the wheels on a car and in the case of a drum brake disassembly and subsequent reassembly of the unit.
    2. To carry out the same process on a motorcycle equipped with drum brakes as found on many small capacity motorcycles requires,
        1. Removal of the front wheel, including disconnection of the torque arm where fitted, disassembly of the brake unit, inspection of the surfaces, reassembly which can require realigning the front forks etc.
        2. Removal of the rear wheel, including disconnection of the torque arm, disconnection of the final drive chain in most cases – few bikes having shaft or belt drive, disassembly of the brake unit without introducing oil contamination from the chain, inspection of the surfaces, reassembly of the components and most critically for motorcycle safety correct tensioning of the chain according to manufactures specification for that model and realignment of the rear wheel to ensure accurate tracking of the front and rear wheels and correct torque settings on the axle nuts.
            1. Failure to tension the chain correctly can either, if too slack result in a chain jumping its sprockets causing *in extremis* a fatal crash or, if too tight cause excessive chain wear and significant damage to gearbox components.

2. Failure to realign the rear wheel correctly will lead to the bike handling in a dangerous manner and again *in extremis* to a fatal crash.
3. Ensuring lack of cross contamination of chain oil, correct model specific chain tension and correct wheel alignment takes care and time. Contamination of brake surfaces during inspection can lead to brake failure.

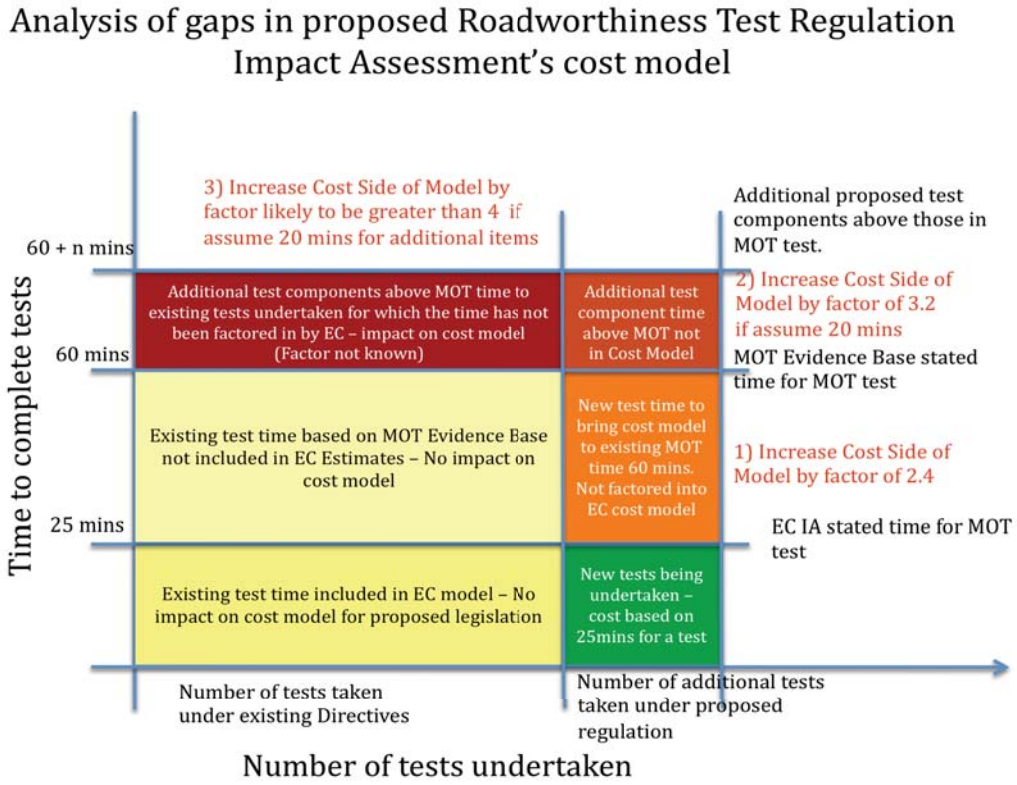
3. The extra time to ensure these additional disassembly and reassembly operations cannot have been factored into the estimated time taken to undertake the tests and thus staff costs if those staff cost estimates have been based on the UK MOT Test times as state, whether accurately or inaccurately. As it took a qualified Yamaha mechanic 15 minutes to replace the two sets of disc pads on my ABS equipped late FZ6 Fazer, a benchmark model in the case for mandating of ABS on the Type Approval regulations, one can reasonably expect that the disassembly and reassembly of a set of a pair of drum brake units could take double that. I know it takes me over 45 minutes on my classic motorcycle to get everything disassembled checked reassembled and aligned correctly.
4. Using the evidence available to me from the EC's own documents, DEKRA and the UK's DfT it is clear the time estimated for completing a test bears no relationship to that which could be reasonably expected in reality and that a correct reasonable time estimate based on the proposed test would have been a simple enough information for a reasonably competent specialist inspection body, such as DEKRA, providing input to the legislative process to have provided. I know how long it takes me as someone without professional training and experience as a mechanic.
    1. I venture to suggest that reasonably competent advising consultants such as DEKRA acting in the interests of the EU rather than their own interests should be more than capable of estimating the time to conduct a test by class of vehicle, HGV, Car, Motorcycle etc., according to the required new standards. Why therefore is the EC relying on a misstatement of the time taken to undertake what they themselves imply is an inferior vehicle test? Why have such estimates not been required of DEKRA?
    2. I further venture to suggest that reasonably competent advising consultants criticising the inadequacy of various national systems must have the evidence as to the content of those tests and the expertise to estimate the time in hours labour to complete each test and provide an estimate of the difference in hours labour against the new standard test on a country by country basis. Without the evidence as to test content on what basis to they justify the statements as to the inadequacy of the existing national tests and the superiority and need for the new test. Even if they don't have the information one can reasonably assume that they

have access to the content of the minimum standard test required under the current directives.

5. As such the financial model first underestimates the staff costs based on an incorrect statement of the time taken to conduct the UK test by a factor of 2.4 and even if the correct UK test time had been stated would have still significantly underestimated the time taken because of the incorrect test standard, i.e. not the proposed test standard, being used as the basis for estimation.
6. The same financial model restricts itself to assessing the cost of the additional number of tests being conducted. It contains no readily identifiable estimate of the extra time taken, and associated costs, to conduct the "superior" test standard against the existing number of tests currently being undertaken each year. The absence of this data will likely cause a very significant understatement of costs in the financial model supporting the cost benefit analysis required to support appraisal of the measure. Again, reasonably competent advising consultants classed as world experts in this field should have been able to estimate the labour effort and labour cost differences on a member state by member state basis

3. This completely reframes the options and costs and makes the Cost Benefits case required for assessment of the proportionality of the measure invalid.
4. To summarise the gaps Figure 1 following provides a visual representation of the gaps in the cost model when set against an existing time estimate based on the EC's statement as to the time for a UK MOT test and the DfT's statement.

Figure 1



10. In this instance the objectives of the Treaty are stated as policy under the areas of
    1. Making roads safer

2. Contribution to the reduction in emissions of CO_2 and other pollutants
3. Reduction of the administrative obstacles to movement of second hand cars within Europe.

To restate my understanding of TEU Article 5(4) and Protocol 2 Article 5 elaborated in other documents in my complaint it is as follows.

TEU Article 5(4) states:

"Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality."

Protocol 2 Article 5 states:

"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."

Draft legislative acts are defined in Protocol 2 Article 3 as:

"For the purposes of this Protocol, 'draft legislative acts' shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank, for the adoption of a legislative act."

As the proposal, COM(2012) 380 final, is title " A proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL …" it clearly falls under the definition of a draft legislative act as defined in Protocol 2 Article 3.

As I read it Protocol 2 Article 5 can be broken down into a number of tests relevant to a proposed regulation, as distinct from a proposed directive, that a draft legislative act must meet.

A draft legislative act:

1) Should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality.

2) Should contain some assessment of the proposal's financial impact.

3) Be substantiated by qualitative, and wherever, possible quantitative indicators.

4) 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

Considering the second of these tests the supporting statement, i.e. the impact assessment, to this act contains some assessment of the proposal's financial impact in terms of benefits of the implementation of the specialised inspection service paradigm.

This is based on several factors

1) Assumptions as to a correlation between the level of fatalities and test quality requirements. No evidence as to a statistical correlation coefficient with associated confidence interval for the correlation is provided. The measure, based on gross fatalities by its very nature misleading as it does not factor in the proportion of those fatalities that are attributable to testable vehicle roadworthiness factors. Testing regimes such as the UK regime and the German regime and the proposed new regime only offer point tests showing a pass at a given point in time so even factors such as tread depth, tyre pressure and brake lining thickness, identified in the MAIDS study[15] into motorcycle accidents where technical failure was the primary cause as the principle reasons for the accidents, cannot be guaranteed not to be "off specification" even a week later let alone eleven months on. That is to say a measure that should be considered professionally inadequate for the purpose with no substantiated supporting data to enable assessment of the strength of correlation is used to justify the need for the proposal.
2) The valid need to counter fraud but supported by unquantified assumptions as to the scale of problems of fraud in garage based systems and no indication of the effectiveness of supervisory activities in preventing fraud in those member states adopting alternative approaches to the proposed specialist inspection service regime such as garage based approaches.
3) The need to minimise the costs to the member states as governing bodies, citing the ability to run the current Spanish testing regime from 300 specialist centres, but no evidence of the matching need to minimise on an equitable basis the financial and administrative burdens on economic operators and more importantly the citizen voters and taxpayers in those member states.
4) A financial model that purports to provide a reasonable cost benefit analysis that demonstrates the benefits of the proposed regulation outweigh the costs of implementing the proposed regulation yet misstates key assumptions as to time required to undertake a test and consequentially introduces significant errors resulting in an understatement of costs.

I acknowledge that based on an extremely narrow literal interpretation of the word "some" in the phrase the proposal could be argued to technically comply with the phrase "some assessment of the proposal's financial impact".

However my understanding is that in interpreting EU law one uses a purposive approach rather than a literal approach. In this instance it seems to me the purpose of the phrase "some assessment of the proposal's financial impact" is to support test 1) in the protocol, i.e. the assessment of the financial impact should be sufficient to enable appraisal of the proportionality of the proposed legislative act. In this instance I contend that enabling the appraisal of proportionality requires:

1. Comparative quantitative evidence as to the cost impact on Citizens having to travel further to fewer test centres and the knock on effect of reduction in business for those garages authorised to test vehicles in those countries where the regime

[15] MAIDS 2004

changes from a garage based system to a specialist inspection agency based system. I believe I have demonstrated that the tools and data are available to calculate indicative values at least for the UK that could provide a proxy for other countries with similar approaches to vehicle testing.

2. An estimation of the impact of fraud on those member states with garage based systems and also the effectiveness and costs to supervise garage based systems. I believe publically available UK data[16] indicates that systems to police fraud can be effective.
3. Correct stating of staff costs that are based on the actual time to conduct a test by class of vehicle rather than a significant understatement of costs based on a significant misrepresentation of time and effort taken to complete the extra tests and extra component checks reported in a key source document.

I submit that it is insufficient to enable appraisal of proportionality through:

1. Providing data to support one side of the financial case and unsupported assertion to knock down the other options as to the operation of national systems of testing; and,
2. Using supporting cost data that;
    a. Significantly underestimates the major cost element (test time 25 minutes) based on misstatement of source materials, namely the MOT Scheme Evidence base at 60 minutes for the additional number of tests to be conducted under the proposed regulation;
    b. Is not based on an estimate of the time to conduct the proposed new test standard;
    c. Fails to factor into the cost estimate the additional time required to conduct the additional work in the new test standard against the number of tests currently estimated as conducted.

The third test that I see in the protocol requires that the draft legislative act should be supported by qualitative data and wherever possible quantitative data. In the detailed statement enabling the appraisal of is impact assessment. Quantitative data is provided to support the specialist inspection supplier model. In making the case against garage based regimes only assumptive assertions are made. However, as I demonstrated, quantitative data as to the distribution of test centres is readily available for the UK that could form a proxy for other member states using a similar system should those member states not have the data. The Commission has established the principle for the acceptability of using UK data as a proxy in its approach to calculating staff costs for the measure. As reasonably competent advising consultants critiquing existing national standards and who themselves are an inspections supplier, DEKRA should have been able to supply estimates of the time to complete each national test and the time required to conduct a new standard test for factoring into the cost side of the financial case. If they can't, on what basis are their recommendations being taken seriously and on what basis of competence were they awarded the contract to support the drafting of the measure. On that basis the Impact Assessment fails to meet the requirements of providing support through quantitative data wherever possible. On the assumption of the competence of DEKRA in operating tests one is led to the conclusion that they appear to have put their own commercial interests before the wider EU interests in framing the information provided.

[16] See footnote 8 previous

The fourth test I see in the protocol requires that the burden, financial or administrative, falling upon the Union, National Governments, economic operators and citizens be minimised and commensurate with the objective to be achieved.

In analysing the financial model presented in the Impact Assessment it is clear that the financial and administrative burden has been considered in respect of that to be imposed upon the Union and National governments. However, there is no study of travelling required by citizens for either the specialist inspection service provider model or for the garage based inspection model. Travel would come under financial burden in terms of direct costs incurred using fuel and also, in my view under, administrative burden. Living in London with an inspection centre within 500 metres means that travel time is insignificant, however for those living in more remote parts of my country or our continent then travel time to and from an inspection centre can become a significant burden. In addition the same impact assessment claims jobs created in training inspectors under a new model within Europe, yet seems not to offset those gains with potential job losses in garages that may have their authorisations to perform inspections removed assuming a specialist inspection service is implemented by a member state as the advising consultants recommend and the Rapporteur for the committee in the European Parliament now appears to be pursuing. It seems therefore that the proposed regulation contains within it the potential to restructure a member state's inspection service, backed by an impact assessment that recommends only one model as acceptable, yet the supporting impact assessment while providing incomplete quantitative data to support part of the argument for the measure relies on mere assertion and the absence of data to appraise the other options in relation to the measure within the draft legislative act under consideration. No evidence is presented to support the case that the German approach results in lower fatalities than the UK approach and costs the citizen less.

I therefore submit that on the evidence the fourth test within Protocol 2 Article 5 is also failed.

Given that the three tests that enable appraisal of the proportionality of the measure, i.e. the first test in the Protocol, can be demonstrated to fail then it follows the Protocol 2 Article 5 has been breached and consequentially TEU Article 5(4) which is supported by the Protocol for its interpretation.

It is deeply disturbing that this proposed regulation and the proposed Type Approval regulation encompassed within my complaint should both contain explicit statements of compliance with the principles of subsidiarity and proportionality on behalf of the EC yet are so easily demonstrated not to be in compliance with those principles as set out in the relevant treaty articles and protocol. To me it demonstrates a complacent and arrogant disregard for the rule of law. Once again I submit that the EC have behaved as law makers willing to remove the liberties of their fellow citizens and submit their fellow citizens to punishment of fines, and potentially worse if the implication of inability or unwillingness to pay were considered, for non compliance with the legislation they drafts whilst at the same time being seeming unwilling to comply with the laws in the legal framework that grants them the power to set those laws.

I have previously raised the issue of the Automatic Headlamp On measure within the Type Approval regulations. I would like to add to my comments based on recent research and 2010 comments of the German Minister for Transport cited by DEKRA that have recently come to my attention. I trust you will accept these into your consideration. I acknowledge, whilst fundamentally disagreeing with the premise and concept, the EU Parliament's view that the regulation is required because the measure is coming into effect for all vehicles.

Before I continue with supplementary evidence. I will refer to an anecdote my mother passed on to me as she was training for her IAM certificate to provide context. I was about twelve at the time and it has stuck in my mind ever since. The instructor, a police trained driver, asked her "What is the fastest thing on the road?" Most men at the time answered something along the lines of a Ferrari or Jaguar. The instructor's answer to his own question was "a child on the pavement beside the road, it can be under your wheels faster than you can react" Children are the most vulnerable of road users. It is our responsibility as other road users to look out for them and for other vulnerable road users. It is a matter of record that I have done so myself at the cost of injury to my spine and ribs. I stayed on the brakes whilst slowing for an amber stop signal when the car behind tried to run the lights with me in between. I wasn't prepared to risk the carnage had the lights gone red and the children who had activated the crossing started to cross. You can imagine for yourself the outcome had I accelerated through a red light under such circumstances.

I note the following

1. That DEKRA in their Motorcycle Safety Report 2010 report[17], p 9 inset, that Jan Mücke, the then Parliamentary State Secretary at the Federal Ministry of Transport, Building and Urban Affairs in Germany stated "*For many years we contributed to this by providing funding for safety training for riders of two-wheeled vehicles until such training was established in the market. That motorcyclists now drive with their lights on and are therefore easily recognised on traffic is important for their safety. That is why I am utterly opposed to compulsory daytime headlights for passenger cars and lorries, as this would lead to motorcyclists no longer standing out and to their being easily ignored.*"
2. That TRL[18] in its report, a literature review study, to the New Zealand government found
    a. Section 3.1 p17 cites Lesley's definition of conspicuity as *"the extent to which an object stands out from its surroundings. Conspicuity is different to visibility (although in practice the same factors affect both) which is usually defined as the ease with which an object can be detected when an observer* is aware of its location".
    b. Page 25 para one cites Jennesse et al as finding that "*widespread adoption of DRL did indeed appear to increase the relative risk for DRL-relevant fatal motorcycle crashes, particularly so on urban roads (where the underlying mechanism described above would be expected to be strongest, due to the larger numbers of vehicles one would expect to see in urban environments).*" The finding is qualified. The citation goes on to state the recommendation *"that in light of their findings regarding the possible detrimental effects on motorcyclist safety on urban roads, if DRL for the wider vehicle fleet continues to rise then other measures should be taken to increase motorcyclists conspicuity at the same time, and in such a way that*

[17] Motorcycle Road Safety Report 2010, DEKRA Automobil Gmbh. http://www.dekra.ua/en/web/guest/verkehrssicherheitsreport-2010 As the English version appears to be withdrawn and replace by an HGV Study and only available via Google / Bing search the French Version I believe states the same. http://www.dekra.de/Share/Blaetterberichte/2010vsrfr/blaetterkatalog/index.html

[18] http://trl.co.uk/online_store/reports_publications/trl_reports/cat_road_user_safety/report_literature_review_of_interventions_to_improve_the_conspicuity_of_motorcyclists_and_help_avoid_looked_but_failed_to_see_accidents.htm

motorcyclists are given a 'visual signature' that is not reliant simply on lights that may be confusable with the lights used on the majority of other traffic."

c. The report then describes Cavallo & Pinto *"(in press) have shown that when cars have their lights on, motorcycles with their lights on are indeed more difficult to detect, although novel lighting configurations such as yellow lights and lights on the rider's helmet as well as the motorcycle appear to help redress this balance"*.
d. My understanding is that the European Parliament regards Automatic Headlamp On for motorcycles as essential now that Type Approval Regulations for cars, buses and lorries now require Automatic Headlamp On or daytime running lights. This begs the question as to whether any of the engineers recommending automatic headlamps on for Buses and Lorries actually stood outside and watched traffic on an urban street to see how many of the Buses and Lorries passing by were so hard to see that they needed headlights on in daytime.
e. To restate the data with respect to accident statistics. The DfT[19] UK study found that 38% of motorcycle accidents in the study sample involved a right of way violation by the other party. In less that 20% of these accidents was the motorcyclist primarily to blame. The MAIDS 2004[20] study found that perception failure by other vehicle drivers was the primary contributory factor in 36.6 percent of accidents studied.
f. My understanding is that pedestrians, cyclists and motorcyclists are the road users classed as "vulnerable road users". Buses and Lorries are not in this category of road user.
g. Automatic Headlamp On and Daytime Running Lights are deliberately designed to pull the eye of other road users to the vehicle. The lights have to be bright enough to draw the eye in bright sunlight.
h. Systems thinking, as a discipline and model describes the archetype of "Fixes that Fail".[21] As previously stated in my complaint, MAIDS 2004 found a very high proportion of riders were using their headlamp during daylight hours and were still not seen by other road users. All the countries in this study have Daytime use of headlamp laws for all vehicles.

Cold war thinking had the MAD (Mutually Assured Destruction) concept to describe the out turn of an arms race that led to arsenals of nuclear weapons that could destroy the earth many times over. Taking the Type Approval legislation mandating cars, busses and lorries automatic headlamp on and now Motorcycles mandating of Automatic Headlamp On in conjunction with the fact that these regulations are designed to draw the eye to the vehicle, the Cavallo and Pinto recommendation and the concept of "Fixes that Fail" from systems thinking one is led to ask: is the "Fix that Fails" MAD (Mutually Assured Dazzling) to the detriment of other vulnerable road users not equipped to power themselves in the nascent lighting arms race? If the eye is pulled by light towards the bus or car the eye is by definition being pulled away from the cyclist, the child on the pavement (sidewalk) or the motorcyclist who is lost in the mêlée of lights. Why else did Jan Mücke make the statement he did other than to explicitly acknowledge this premise? It is an irrational statement in any other context than the rider being lost in the mêlée of lights.

[19] Motorcycle Accident In Depth Study 2004, Department For Transport p21 Section 4.1
[20] Motorcycle Accident In Depth Study, 2004 ACEM, p30 para 3
[21] http://www.systems-thinking.org/theWay/sff/ff.htm

One would reasonably expect that were Automatic Headlamp On for vehicles to be the minimum necessary, as required by Protocol 2 Article 5, then the absence of laws requiring daytime use of headlamps in the UK would be reflected in significantly worse fatality statistics in the UK when compared to other EU member states of similar size and traffic density.

Table 1, on the following page, which is sourced from the Commission's own Statistical Pocketbooks for 2011 (2009 data)[22] has the UK with the best Fatalities outcomes.

Table 2 sourced from the Commission's Statistical Pocketbooks for 2012 (2010 data)[23] shows that UK performance in terms of road fatalities per million passenger cars is better than all but two of the countries with mandatory headlamp use.

Sweden, along with Finland and Norway are probably three countries that actually need such laws to help in their Northern latitudes and reduced daylight hours. They are also countries in which motorcycles are unlikely to be ridden all year round as we do in the UK. The data begs the question: why with such seemingly unsafe policies and attitudes at a national level is the UK performing better than the majority of member states? How can the EC imply through its actions that the UK's policies and approaches to road safety including the use of lights in daytime are substandard?

[22] http://ec.europa.eu/transport/facts-fundings/statistics/pocketbook-2011_en.htm
[23] http://ec.europa.eu/transport/facts-fundings/statistics/pocketbook-2012_en.htm

Table 1

2.7.2

Road Fatalities Country Rankings

Fatalities
2009

per million inhabitants		per 10 billion pkm		per million passenger cars	
UK	38	UK	34	UK	80
SE	39	SE	36	SE	83
NL	39	FI	43	NL	85
DE	51	NL	43	MT	90
MT	51	DE	46	DE	100
FI	52	IE	49	FI	102
IE	54	IT	54	IT	117
DK	55	DK	57	ES	123
ES	59	FR	58	IE	124
FR	68	SI	68	FR	137
IT	70	LU	69	LU	142
EU27	**70**	EU27	**71**	DK	144
SK	71	ES	75	AT	146
EE	73	BE	85	EU27	**148**
AT	76	AT	86	CY	157
PT	79	EE	92	SI	163
HU	82	MT	93	EE	179
SI	84	PT	96	BE	185
CZ	86	LT	101	PT	190
BE	88	CY	116	CZ	203
CY	89	CZ	119	LT	220
LU	94	EL	136	SK	245
LT	111	SK	142	HU	271
LV	113	LV	148	LV	277
BG	119	PL	158	PL	281
PL	120	BG	191	EL	286
EL	129	HU	194	BG	370
RO	130	RO	358	RO	676

Source: tables 1.5, 2.3.4, 2.6.2, 2.7.1 and estimates as well as national statistics for powered two-wheelers pkm

Notes:

Fatalities: all fatalities on the road: car drivers and passengers, bus and coach occupants, powered two-wheelers' riders and passengers, cyclists, pedestrians, commercial vehicle drivers, etc. indicated in table 2.7.1 for 2009.

pkm: indicator of traffic volume (in the absence of consistent vehicle-kilometre data); passenger-kilometres of cars indicated in table 2.3.4 for 2009 plus (mostly estimated) passenger-kilometres of motorised two-wheelers.

inhabitants: the sum of the population indicated in table 1.5 at 1 January 2009 and 1 January 2010 divided by two.

passenger cars: the sum of the stock of vehicles indicated in table 2.6.2 for 2008 and 2009 divided by two.

Table 2

2.7.2

Road Fatalities Country Rankings

Fatalities
2010

per million inhabitants		per 10 billion pkm		per million passenger cars	
SE	28	SE	27	SE	62
UK	31	UK	29	MT	63
NL	32	NL	37	UK	65
MT	36	DE	40	NL	71
DE	45	FI	41	DE	87
DK	46	IE	46	LU	96
IE	47	LU	48	FI	96
FI	51	DK	49	IE	111
ES	54	SI	53	IT	112
EE	58	FR	54	ES	112
EU27	**62**	IT	55	DK	119
LU	63	EU27	**64**	AT	125
FR	63	MT	66	FR	127
AT	66	ES	70	CY	130
SI	67	BE	74	SI	130
IT	68	AT	74	EU27	**131**
SK	68	EE	76	EE	142
HU	74	LT	98	BE	155
BE	75	CY	100	LT	177
CY	75	PT	110	CZ	180
CZ	76	EL	119	PT	210
PT	88	CZ	120	SK	228
LT	91	LV	129	PL	232
LV	97	PL	129	EL	243
PL	102	SK	135	HU	247
BG	103	HU	137	LV	283
RO	111	BG	162	BG	304
EL	111	RO	303	RO	555

Source: tables 1.5, 2.3.4, 2.6.2, 2.7.1 and estimates as well as national statistics for powered two-wheelers pkm

Notes:

Fatalities: all fatalities on the road: car drivers and passengers, bus and coach occupants, powered two-wheelers' riders and passengers, cyclists, pedestrians, commercial vehicle drivers, etc. indicated in table 2.7.1 for 2010.

pkm: indicator of traffic volume (in the absence of consistent vehicle-kilometre data); passenger-kilometres of cars indicated in table 2.3.4 for 2010 plus (mostly estimated) passenger-kilometres of motorised two-wheelers.

inhabitants: the sum of the population indicated in table 1.5 at 1 January 2010 and 1 January 2011 divided by two.

passenger cars: the sum of the stock of vehicles indicated in table 2.6.2 for 2009 and 2010 divided by two.

My interpretation of the European Commissions data on the use of Automatic Headlamp On is that it seems to be based on point tests of conspicuity, i.e. a light standing out from the background, rather than a systems approach of considering the effects of lighting in the context of the general road environment. From my perspective this indicates a lack of clarity of thought in constructing the evidence base.

Assuming, as I contend, that the EC has not complied with the requirements of the Treaties and Protocols governing their use of power then one needs to consider the implications of such a breach of treaty law.

As a consultant in the strategy and performance management space one of the key tools used to aid clarity of thought in understanding and explaining the dynamics of complex issues is the two by two (2 x 2) matrix structure. Examples of use being for portfolio management in determining projects, products or subsidiaries to fund or divest – BCG Matrix[24] and assessing cultural profiles Hofestede's Emerging Cultural Profiles[25].

Critical to the use of these frameworks is the choice of the dimensions used to analyse the issue at hand. One challenge faced by the EU at the moment, that you yourself have drawn attention to with your Europe in Crisis event last year, is one of a perceived unaccountability and democratic deficit. In the context of the issues I have raised with my complaint there seem to be two critical dimensions of analysis; firstly the attitude towards political decision making for which Totalitarianism and Anarchism represent the polar opposites, and secondly the attitude towards the rule of law for which rigid application of the law and despotism, arbitrary decision making, represent polar opposites. I'll acknowledge that one could view my own nation's tradition of legal interpretation as tending towards the Rigid Application end of this axis.

It has been a feature of the Totalitarian regimes, both Fascist and Communist, that once dominated much of our continent that they operated on a basis that laws applied to the citizen but did not consider themselves bound by the constitutions and laws they claimed to operate under, i.e. one rule for the government and its officials and a different rule for the citizen.

The word "Arbitrary" in English according to the Oxford English Dictionary version with which I am most familiar is defined as:

*"Arbitrary: **adjective, Derived from mere opinion; capricious; unrestrained; despotic; (law) discretionary"*** [26]

By definition therefore the absence of evidence to support decision-making and framing laws makes any decision made or law framed arbitrary. I submit that this definition of arbitrary can apply laws made on the basis of insubstantial or manipulated evidence where the governing body has failed to undertake the necessary work to ensure the proportionality of the legislative act can be properly assessed.

In the instance of these draft legislative acts that I am contesting the issue as to lawful discretionary use of power arises. My understanding is that the legal concept of discretion enshrined in European Union law is the Margin of Appreciation. This is generally a broad latitude of discretion that is given to the governing body in constitutional or treaty law.

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[24] http://www.mindtools.com/pages/article/newTED_97.htm
[25] http://cloud.lib.wfu.edu/wiki/sgw/index.php/Image:Hofstede.JPG
[26] The Concise Oxford English Dictionary (1964) Edn

However, the ECJ in Judgement 24/62 was unequivocal in its requirement that the European Commission must produce adequate evidence against which the proportionality of the EC's decision in that case could be assessed. It follows therefore that if the law is to be consistent that the standards of requirement for evidence also applies to draft legislative acts such as Regulations and Directives. The ECJ in that instance was excoriating in its criticism of the lack of evidence. Protocol 2 Article 5 allows for situations in which it is not possible to produce quantitative indicators utilising the phrase "wherever possible" but in so doing limits discretionary use of power wherever it is possible to produce the quantitative indicators. Protocol 2 Article 5 and the ECJ decision show where the limits of the Margin of Appreciation lie in respect of drafting legislative acts in the absence of quantitative indicators. It seems rational that the Margin of Appreciation should be very tightly limited with regard to the requirements for evidence supporting the appraisal of the proportionality of a draft legislative act to protect the governing body from the charge of despotism.

The Preamble to the Treaty of the European Union includes as its second statement

"DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,"

And as its fourth statement

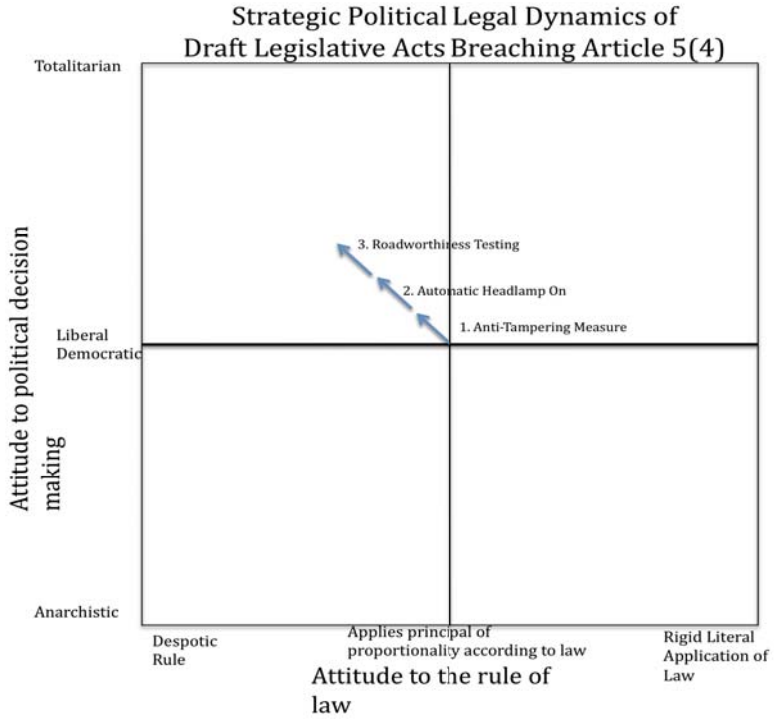
"CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,"

Liberty is not something that comes free of charge. It is a gift passed down to us at great price by others. The rule of law along with a willingness by citizens to pay the ultimate price of their own lives are key defences of liberty.

Through the process of framing legislation in this area some of us as citizens have lost a significant measure of liberty. I for one am in the process of losing my liberty to choose, according to circumstances, how to protect myself whilst undertaking a lawful activity that admittedly carries a higher risk than others find acceptable to take. The evidence points to a reality that the major part of that risk to me in riding a motorcycle comes from the actions and carelessness of other road users. I am also subjected to legal measures that raise the cost of that activity in a vain attempt to reduce the risk. The question that needs to be answered is: Is that Liberty being removed on the basis of legally framed proportionate measures founded upon robust and solid evidence as to the root causes of the risks that take into account the holistic systems effects of the measures? The table in the Annex to these detail comments represents my analysis of the situation for a law-abiding citizens taking into account the outcome of council and EU Parliamentary votes on the Type Approval Regulation.

On this basis I submit that the 2*2 analysis set out in Figure 2 below represents a balanced representation of the dynamic effects of these legislative measures on liberty within the EU.

Figure 2



Laws drafted without significant supporting evidence when that evidence is demonstrably available are by definition arbitrary and thus despotic. When lawmakers act in a manner which shows disregard for the law itself they emulate totalitarian regimes in their behaviour. Based on either the lack of evidence presented, as required by the TEU and Protocol, for the Type Approval Regulation I've challenged or the lack of balance and completeness in the evidence presented in support of the Proposed Roadworthiness Testing Regulation the trajectory of travel of law making for this domain of the European Commission's activities seems clear as I illustrate.

From my perspective totalitarianism can arise as much through the slow *ling chi* of liberties eroded through arbitrary laws enacted outside the provisions of treaties, protocols and other constitutional provisions as through the rise to power of charismatic and despotic individuals. What standards of government are we to expect within the EU.

Since initially submitting my case I have had to attend the Accident and Emergency unit at my local hospital four times due to road traffic accidents. All four accidents involved rear end shunts to my vehicle by other car drivers. Three of them were at traffic lights signalling stop. Two, the first and the last, were while I was riding my motorcycle. The last involving a collision speed estimated at at least 40mph / 60kph leading to me being thrown across the junction like a rag doll and needing to undergo the indignity of being cut out of my clothes to avoid exacerbating spinal injuries sustained. It seems I was prescient in the opening remarks to my complaint. It is difficult to come to terms with the cold fact that not only may I lose my life through the actions of other drivers, a reality I live with every time I ride my bike and naturally make every effort to avoid, it is even more so when I consider that my risk in some circumstances is being further increased through what appear to be the capricious actions of legislators who seemingly show blatant disregard for treaty provisions defining how legislation should be framed.

My personal experience provides anecdotal evidence that the supports the proposition, and seeming lack of documentary evidence as to the relative proportions of resources directed to resolving the primary causes of motorcycle fatalities and injuries, that the European Commission is misdirecting its efforts and financial resources in its attempts to reduce the fatality and injury rate. With two accidents in my car and two others on my motorcycle the probability of an accident seems evenly balanced between vehicles. However when one looks at accident causation all were the fault of the other car driver. Although all accidents have resulted in A&E attendance it is the consequences of the accidents while on my motorcycle that have been far worse for me. Attempts to fix the motorcycle or the motorcyclist are doomed to failure when the majority cause of our injuries and deaths is the action of other road users. I acknowledge that there are people who take liberties with the law whilst riding motorcycles. In doing so the run of the MAIDS evidence is that they rarely kill or injure other road users when things go wrong. It is their own life that is put at risk. The same cannot be said of those who take such liberties or are careless in a car. I have experienced directly the spinal and brain injuries to give substance to this statement.

Given the European Commission's view of the importance of conspicuity for motorcycle safety I note the importance of motorcycle / moped road position as illustrated in the IAM Advanced Motorcycling Handbook[27] previously supplied. I also note the European Commission's concern that the incidence of death or serious injury is failing to fall for moped riders. I observe that most riders of this category of vehicle seem to be forced to ride close to the kerb by faster moving traffic in urban environments. Riding near the kerb has two negative consequence; firstly the moped is harder to see from the perspective of the car driver attempting to join the road; and secondly, the moped rider's options for taking avoiding action are more restricted should a vehicle commit a right of way violation. The rider can only brake in the hope they might stop or hit the car. To explain more clearly, if one imagines the priority traffic lane numbered 1 to 5 with one at the kerb and 5 at the white line; a rider in position 1 may only be able to make a swerve to position 2 or 3 in the time it takes for the car driver to move across the lane from the side road to position 5. If the rider is in position 4 or 5 then they a) can see the car approaching the junction sooner and prepare for avoiding action, b) are more likely to be seen by the driver and c) can swerve to position 5, 6 or 7 assuming no oncoming vehicle.

I therefore respectfully request that you require the European Commission to investigate the road positioning of mopeds involved in Right of Way Violation accidents and their speed relative to traffic. If my hypothesis that moped riders involved in these types of accidents are in the road positions I observe and their speed is slower than the urban limit and 85th percentile traffic speed I further request you ask the European Commission to consider why that it should be the case. If my hypothesis that other road users effectively force moped riders into the gutter because the moped is unable to travel at the mean traffic speed is supported by the evidence then I would ask that the European Commission be requested to consider a whole systems approach and a counter intuitive action of setting the maximum allowable top speed of this class of vehicle at around 45mph / 70kph. This would allow the rider to adopt the correct road position on most urban roads. It would also reduce the attractiveness of tampering to young riders with more wayward dispositions, as this speed is closer to the practicable maximum performance that can be obtained from a 50cm^3 engine. Not every youngster would insist on breaking the urban speed limit. The worst case would most likely be that the number breaching traffic regulations would be no more than breach them at 17 in a car. There are other means of enforcement of speed limits. Training and

[27] How to be a better rider: Advanced Motorcycling the essential guide. p42

licensing can be made compulsory for mopeds. The cost of insurance for riders who acquire speeding tickets soon focuses the minds of the more rational on riding or driving within the law. Making tampering less attractive because gains are harder to come by would also support the European Commission's environmental objectives in terms of emissions. I learned on a moped capable of 45mph. It didn't kill me. I chose to respect the speed limits as a 16 year old. There are other means for governments to enforce speed limits than to restrict vulnerable road users to maximum speeds below the mean urban traffic speeds in free flowing traffic and thus leaving them in a position of being bullied into the kerb by faster moving heavier vehicles. My understanding from MAIDS is that it is urban traffic environments that most accidents happen and that the majority of those accidents are the result of right of way violations by another road user.

In submitting my complaint I do so in the hope that there is the possibility that as someone with influence, should you agree with my evidence based reasoning, you may be able to persuade this branch of the European Commission to give substance to the meaning of the words in the treaty: *"CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law"*, or should my understanding of the meaning of TEU Article 5(4) and Protocol 2 Article 5 be incorrect will be able to explain clearly in law how the Treaty and Protocol provisions have been complied with clear reference to page and paragraph references in the documents and evidence supporting the draft legislative acts. To me it would seem to have been a simple enough task for the European Commission to rebut my challenges directly with evidence had the TEU Article 5(4) and Protocol 2 Article 5 been complied with or were my understanding of the meaning of these provisions to be fundamentally flawed. The European Commission seems either not to have the evidence or does not consider me as a citizen someone worth responding to with a reasoned evidence based case either directly or through its submissions to you.

If I am correct the consequences for our democracies and for us, as citizens of Europe and our respective member states, are dangerous. Even if I am wrong the perception; that such a disparity between the common understanding of the meaning of the words in the texts and an interpretation of law that rejects my case would imply, undermines the credibility and authority of the European Union and its institutions.

[redacted]

10th March 2013

Ombudsman P. Nikiforos Diamandouros
European Ombudsman
1 Avenue du Président Robert Schuman
CS 30403
FR-67001 Strasbourg Cedex
FRANCE

Dear Ombudsman Diamandouros:

Ref: 0875/2011/JF – Relationship between the European Commission and Advising Consultancies and developments in other aspects of my complaint.

I am writing to follow up on my most recent communications with the European Commission (EC) relating to my complaint. As you are aware I wrote to Vice President [redacted] on 21/10/2012 and 21/01/2013

My communications with the EC were prompted by the release of the proposed regulation covering the road testing of vehicles covered under more than one of the heads of my complaint. Whilst this may have tied your hands in respect of closure I felt the nature of what I was reading in the draft legislative act and the Impact Assessment were directly relevant to the substance of my complaint.

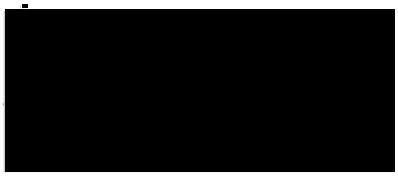
I regret the need to inform you that I have not, as of today, received even so much as an acknowledgement of receipt of those emails. I understand the performance standard for responses to be two months. Whilst the two months is not finished in respect of the last email I believe there is little reason to suppose I will receive a response given I have not had even an acknowledgement of the first email.

It is deeply disappointing, given Vice President [redacted]' personal assurance to you on behalf of the EC not to deal with me in a disproportionate manner, that the EC should fail to provide even an acknowledgement of receipt of the email mentioned above. This looks to me more like the behaviour of an organisation implementing its previous line not to communicate with me rather than the behaviour of an organisation wishing to honour its assurance to you not to treat me disproportionately. Measured responses, or even a holding response saying it will take time to respond in accompanied by a commitment to respond by a given date would be a reasonable and proportionate way to deal with me. I recognise the gravity of the allegations made. In making those allegations I believe I stuck to the evidence to back my statements. As I state in my accompanying detailed statement it is not just me that appears to be concerned about the behaviour of the advising consultants. This raises questions as to how the consultancy came to be selected and its relationship with the EC.

As there have been developments on the Type Approval front I wish to submit further evidence that has recently come to my to my attention on the subject of Automatic Headlamp On provisions. I trust this will be acceptable.

I note that I have not yet been granted access to the strategy document that ties root cause of accidents to details of the budget allocated to addressing each root cause. I believe this to be a key document for any organisation attempting to address a serious strategic issue effectively and demonstrating that it is doing so in a transparent manner.

Yours sincerely



Enclosures:
Detail comments
Annex to detail comments