

Reasoned opinion of the Committee on Foreign and European Affairs in the House of Representatives of the Republic of Cyprus

Sent to the Presidents of the European Parliament, the Council and the Commission pursuant to Article 6 of the Protocol on the application of the principles of subsidiarity and proportionality (Protocol No 2 to the Treaty on European Union)

Proposal for a 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]

Proposal for a Directive of the European Parliament and of the Council amending Council Directive 1999/37/EC on the registration documents for vehicles [COM (2012) 381].

Proposal for a Regulation of the European Parliament and of the Council on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC [COM (2012) 382]

1. The Treaty framework concerning the application of the principles of subsidiarity and proportionality

1.1. Article 5(3) of the Treaty provides that:

‘Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.’

1.2. Likewise, Article 2 of Protocol No 2 to the Treaty provides that the European Commission

shall consult widely before proposing legislative acts and that these consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged.

1.3. Article 5 of Protocol No 2 to the Treaty provides that:

‘Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal’s financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved’.

1.4. Finally, as laid down in Articles 5(3) and 12(b) of the Treaty, national parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in Protocol No 2, that is, sending a reasoned opinion within eight weeks of the date of transmission of a draft European legislative act in all the official languages of the European Union.

1.5. The guidelines for the application of the principle of subsidiarity were laid down in the Treaty of Amsterdam, in particular in the Protocol on the application of the principles of subsidiarity and proportionality. It should be noted that these guidelines are still useful for exercising the control in question.

In particular, the guidelines concern:

- whether there are supranational aspects to the matter under consideration which cannot be effectively addressed by action taken at national level,
- whether action taken at national level or lack of action at EU level conflicts with the

requirements of the Treaties of the European Union or is contrary to the interests of the Member States, and

- whether there are clear advantages to action at EU level compared to action at national level, by reason of the scale or effects of the proposed action.

Furthermore, for an action at EU level to be compatible with the principle of proportionality:

- the means used to achieve it must be appropriate, and
- these means must not exceed what is necessary to attain the objective.

The relevant Protocols, both of Amsterdam and of Lisbon, impose certain restrictions on the European Union in relation to the requirement to apply the principle of proportionality:

- the form of the action taken by the Union must be as simple as possible, and European legislation should preferably be enacted in the form of directives rather than regulations;
- account must be taken of the need to minimise any burden, whether financial or administrative, falling upon national governments, economic operators and citizens; and
- EU action must allow as wide as possible a field for national action.

2. Aspects of the legislative package which are not compatible with the principle of subsidiarity

Having examined the legislative package in question, the Parliamentary Committee on Foreign and European Affairs came to the conclusion that the proposal does not comply with the principle of subsidiarity. More specifically, the Committee decided that the scope of the arrangements in these legislative proposals goes beyond what is necessary to achieve the Union's objectives, thus excessively limiting Member States' regulatory scope. It decided that opting for a regulation rather than a directive in two of the three proposals constitutes an unnecessary choice of the more stringent regulatory instrument. Moreover, the Parliamentary Committee in question concluded that the economic cost to citizens and the administrative burden on businesses could be either avoided or substantially reduced, arising only where required by improvements in the content and operation of roadworthiness testing.

3. Justification

3.1. According to the European Commission, the legislative proposals in question are intended to establish updated, harmonised rules for roadworthiness testing in order to further increase road safety and environmental protection. In assessing the impact of the proposed legislation, the European Commission found two main causes of the problem: first, the scope of existing EU legislation is too limited and the level of the requirements is too low; second, among stakeholders there is no exchange of data or information that is vital to the effectiveness of testing. Furthermore, the European Commission notes that, due to the flexibility of the existing rules, the quality of roadworthiness testing varies across the EU, a situation which can be changed only by coordinated regulatory action at EU level. It states that some issues, such as organising technical roadside inspections, training inspectors and implementing supervisory activities, should be left to Member States. Moreover, the documentation refers to studies which have shown that technical defects in motor vehicles account for 6% of all accidents, with 2 000 people killed and even more injured every year. With regard to environmental impact, it is noted that technical defects lead to an increase in emissions of approximately 1.2% to 5.7% on average, and in some vehicles emissions are up to 20 times greater.

3.2. The Parliamentary Committee on Foreign and European Affairs does not deny that improving the entire system of roadworthiness testing will have a positive impact on road safety and the environment. However, two of the three legislative proposals [COM (2012) 380 and COM (2012) 382] are in the form of a regulation rather than a directive, in order to repeal existing directives. It is known that regulations, as a legal instrument, have immediate effect and, unlike directives, allow Member States no flexibility. In accordance with the principle of proportionality, as set out above, action taken by the EU should be as simple as possible, and when legislating it should give preference to directives over regulations. In the case in point, improving and upgrading the existing legal framework and responding to technological progress could take the form of a proposal for an amending directive, in which it would also be possible to incorporate the objectives being pursued by the EU or to broaden the scope of the existing rules. The choice of a regulation as a legislative instrument may, in the EU's view, provide the required assurance of compliance but it goes beyond what is necessary in an area which has up to now been regulated by a directive and it does not leave as much scope as possible for national decision-making, as required by the principle of subsidiarity. Choosing a directive at this

point, with progressively stricter harmonised measures, would allow greater scope for the Member States and at the same time fulfil the need for a stricter framework.

3.3. These legislative proposals will not only involve extra costs for EU citizens but will also place an additional burden on businesses, although according to the European Commission these will certainly be offset. The studies presented by the European Commission show that there is a correlation between the level of road safety and the number of technical deficiencies of vehicles. However, this means that the content and effectiveness of the testing need to be improved, which is why several measures which are being proposed constitute a step in the right direction. *Increased frequency of roadworthiness testing does not necessarily mean better quality testing*, however. The legislative proposals increase the frequency of inspections in conjunction with several other measures. The reasoning given by the EU is that responsible businesses which ensure the safety and proper maintenance of their vehicles should be rewarded with less frequent inspections in order to avoid unnecessary administrative and financial costs. This reasoning leads indirectly to the conclusion that the frequency of tests does not imply that the technical checks being carried out are of good quality but that *better and more efficient tests would eliminate the need for more frequent testing*. It is thus possible to avoid imposing financial costs on individuals and additional administrative burdens on businesses by supporting measures to improve roadworthiness testing. In conclusion, the Parliamentary Committee takes the view that the proposed legislative package goes beyond what is strictly necessary.

3.4. In view of the above, the Parliamentary Committee on Foreign and European Affairs concluded that the legislative package in question is not compatible with the principle of subsidiarity and that it does not fulfil the criteria sufficiently to justify the need for regulatory action by the EU on this scale and using these means.