



European Scrutiny Committee

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From: William Cash MP

28 October 2012

Mr Jose Manuel Barroso
President of the European Commission
European Commission
Rue de la Loi 200
1049 Brussels, Belgium

Dear Mr. Barroso,

Draft Regulation on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC (34131), COM(12) 380, 12786/12

I am writing as the Chairman of the European Scrutiny Committee in the House of Commons to inform you, in the context of the right of national parliaments to submit Reasoned Opinions on subsidiarity and of the spirit of a consensus-seeking approach by the EU institutions, of the outcome of the Committee's consideration of the Commission's proposal for a Regulation on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC.

On 17 October my Committee recommended that House of Commons should send a Reasoned Opinion to the three EU institutions concerned with this proposal.¹ Unfortunately, the Parliamentary timetable did not permit the House of Commons to issue a reasoned opinion within the eight-week deadline. Consequently the Committee agreed that it should write to the presidents of the three EU institutions within the context of political dialogue to draw their attention to its view, as contained in the enclosure to this letter.

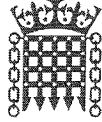
I am writing in similar terms to the Presidents of the European Parliament and the Council of the European Union.

CHAIRMAN

Yours,
Bill Cash

¹ See <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86-xv/86xv02.htm>.





House of Commons

European Scrutiny Committee

Periodic Roadworthiness tests for motor vehicles and their trailers: Reasoned Opinion

Fifteenth Report of Session 2012-13

Documents considered by the Committee on 17 October 2012,
including the following recommendation for debate:

Periodic Roadworthiness tests for motor vehicles and their
trailers: Reasoned Opinion





House of Commons
European Scrutiny Committee

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trailers: Reasoned Opinion

Report, together with formal minutes

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Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

EC	(in " <i>Legal base</i> ") Treaty establishing the European Community
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	(in " <i>Legal base</i> ") Treaty on European Union
GAERC	General Affairs and External Relations Council
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
RIA	Regulatory Impact Assessment
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) can be downloaded from the Cabinet Office website:
<http://europeanmemorandum.cabinetoffice.gov.uk/search.aspx>.

Letters sent by Ministers to the Committee relating to European documents are available for the public to inspect; anyone wishing to do so should contact the staff of the Committee ("Contacts" below).

Staff

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1 Transport: roadworthiness

(a) (34131) 12786/12 + ADDs 1–3 COM (12) 380	Draft Regulation on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC
(b) (34138) 12803/12 + ADDs 1–3 COM (12) 381	Draft Directive amending Council Directive 1999/37/EC on the registration documents for vehicles
(c) (34139) 12809/12 + ADDs 1–4 COM (12) 382	Draft Regulation on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC

<i>Legal base</i>	Article 91; co-decision; QMV
<i>Documents originated</i>	13 July 2012
<i>Deposited in Parliament</i>	(a) 25 July 2012 (b) and (c) 30 July 2012
<i>Department</i>	Transport
<i>Basis of consideration</i>	EM of 27 July 2012 and Minister's letter of 4 October 2012
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	Possibly 20 December 2012
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	(a) Not cleared; further information requested. For debate on a draft Reasoned Opinion on or before 22 October. (b) and (c) Not cleared: further information requested.

Background

1.1 The current EU regime sets minimum standards for roadworthiness testing across the EU. Before a vehicle is allowed to be put on the market, it has to fulfil all the relevant type or individual approval requirements guaranteeing an optimal level of safety and environmental standards. Every Member State has the obligation to register for the first time any vehicle that has EU type-approval on the basis of a "Certificate of Conformity" issued by the vehicle manufacturer. This registration is the official authorisation for the use on public roads and enforces the different introduction dates of different vehicles' requirements. Following this, cars on the road have to be regularly submitted to periodic roadworthiness tests. The aim of these tests is to ensure that such cars remain roadworthy,

safe and do not pose any danger to the driver and other road users. Cars are therefore checked for compliance with certain requirements, such as those for safety and environmental protection, as well as for retrofitting requirements.

The documents

1.2 The Commission has proposed this new package of measures dealing with roadworthiness of motor vehicles and trailers. It moves beyond the current regime by seeking to ensure a vehicle maintains compliance with its original specification throughout its life in respect of safety elements and environmental protection. The two draft Regulations and the draft Directive in the package would replace existing Directives already transposed into domestic legislation. The Commission's primary aim is to harmonise vehicle testing throughout the EU to reduce fatalities, injuries and harmful emissions. The package aims to facilitate the market in second hand vehicles by easing the movement of used vehicles between Member States and to reduce fraud in the second hand car market.

1.3 Broadly the Commission aims to:

- widen the scope of vehicles that are to be tested;
- increase the frequency at which vehicles are tested (for those Member States that require tests every two years);
- ensure vehicles and their components comply with original manufacturers' specifications;
- ensure higher standards for vehicle testers and test equipment;
- facilitate interchange of information on vehicle inspection between Member States; and
- reduce mileage fraud on used vehicles.

1.4 More specifically the draft Regulations and Directive would require:

- compulsory testing for all classes including motorbikes and three wheel vehicles;
- increased frequency of periodic roadworthiness tests for old vehicles with a minimum in all Member States of a first test at four years, then two years, then annually thereafter (commonly called 4–2–1);
- improved quality of vehicle tests by setting common minimum standards for equipment and inspectors;
- elimination of almost all exemptions from periodic testing;
- bringing all trailers and all agricultural tractors capable of more than 40 kph into scope of testing;
- subjecting electronic safety components to mandatory testing;

- clamping down on mileage fraud, with mandatory registered mileage readings and a new offence for non-compliance;
- an interchange of electronic information on vehicle inspection;
- Member States to use powers to deal with ‘dangerous’ vehicles; and
- introduction of a system to de-register a vehicle if deemed to be un-roadworthy.

1.5 The roadworthiness package is part of a wider initiative to reduce the number of citizens killed on roads within the EU, as set out in the Commission Communication: *Towards a European road safety area: policy orientations on road safety 2011–2020*.¹ The target set in the Communication is to halve the number of people killed, from 35,000 in 2009.

1.6 The package is accompanied by the Commission’s Impact Assessment, which suggests that between 900 and 1100 lives will be saved annually by adopting this draft legislation.

The Government’s view

1.7 In his Explanatory Memorandum the then Parliamentary Under-Secretary of State, Department for Transport (Mike Penning), comments first on the legal basis and subsidiarity aspects of the proposals, saying that:

- the legal basis proposed for this package is Article 91 TFEU;
- the Government considers that the vast majority of the provisions in the proposals as currently drafted fall within the scope of that Article;
- Article 19 of the draft Regulation on periodic roadworthiness tests, document (a), would, however, require Member States to introduce a specific offence on odometer tampering;
- the wording of the Article is ambiguous — so the Government is seeking clarification from the Commission on whether the offence is intended to be a civil offence or a criminal offence;
- if it is intended to be a criminal offence, the Government will need to give consideration as to whether the appropriate legal base has been cited and whether the provision would create an obligation in the field of Justice and Home Affairs (JHA);
- if a JHA obligation is created, the Government would also consider its position on whether or not the UK should opt in to the Regulation, within 3 months of the publication of the last language version of the proposal (13 July 2012);
- the EU has competence under Article 91 TFEU to adopt measures relating to transport safety and has exercised competence to set the requirements of technical inspection of motor vehicles through Directives for many years;

1 (31840) 12603/10: see HC 428–viii (2010–11), chapter 9 (17 November 2010).

- much of the detail on how vehicles meet roadworthiness standards has been previously left to Member States to determine;
- the Commission feels, however, that this has led to an unacceptable divergence of standards at periodic testing and at roadside inspection and so has proposed this package;
- it is looking to harmonise standards of roadworthiness in order to support the single market by ensuring the free movement of vehicles throughout the EU and the commonality of standards;
- the proposals create mandatory processes that go beyond what Member States currently determine themselves;
- the proposal for deregistering of unroadworthy vehicles is an example of this — the UK has an alternative system of prohibition that achieves the same end;
- the Commission’s view would be that other Member States should have in place systems similar to those applying in the UK; and
- while the proposals fall within EU competence and in a number of respects would reflect UK practice, the Government is concerned that the package may constrain UK freedom to adjust vehicle testing arrangements in future, compared with the constraints of the existing Directive.

1.8 Turning to the policy implications of the proposals the Minister says that:

- the Commission claims that its package will lead to a significant saving of lives across the EU;
- the Government will reach its own view on this, but any road safety benefits are likely to be greater in Member States with a poor road safety record;
- in the UK, where annual testing after three years and testing for motorcycles is already required, any safety benefits are likely to be negligible; and
- there are likely, however, to be significant cost implications in the UK.

1.9 Continuing with more detailed comments, the Minister says that:

Legislative

- the current system of domestic legislation that reflects EU legislation would be replaced by the two proposed Regulations;
- the existing acts and subsequent instruments would require considerable revision if the proposed package is adopted as drafted;

Registration Schemes

- the proposed package would require all trailers to be tested;

- in order to deliver and enforce this there would have to be a national registration system for trailers — a study in 2009 estimated a cost of £237 million;

Testing

- currently the Vehicle and Operator Services Agency (VOSA) administers the MOT scheme, together with testing of heavy goods vehicles and public services vehicles;
- it authorises the suitability of premises, the competency of testers and provides training on a commercial basis;
- it also gives instruction on technical and legal updates;
- the proposed package would add new types of vehicle into the testing regime, would add to the content of the test itself and would place pressure on VOSA resources;
- the additional volume of vehicles falling into the testing regime would increase demand at test stations;
- the requirement to establish and maintain an electronic database on vehicle roadworthiness already falls to VOSA — the need to coordinate with similar systems across the EU would represent a major, as yet uncosted, IT project;

Businesses and motorists

- the Government is still analysing the likely impact of the new measures;
- but it looks likely that, if adopted as proposed, they would increase the cost of the MOT test for motorists;
- there might be implications too for manufacturers and the after-market industry;
- the businesses that carry out testing in UK are predominantly commercial garages and most are small or micro business;
- the proposed package would result in an increase in the number of vehicles falling within testing schemes and the change to standards might generate additional work for garages;
- they would, however, face additional costs in terms of new equipment, training and accessing technical specifications on vehicles;
- the Commission would like to see harmonisation of the level of qualification and a higher standard of training for inspectors across the EU;
- this would require a system to recognise qualifications and training requirements for some 58,000 testers in the UK; and
- the most affected identifiable group of motorists would be those who use any form of trailer (including caravans) — they would be required to register their trailers and test them on an ongoing basis.

1.10 On the financial implications the Minister says that:

- the Commission's impact assessment gives an annual cost over the whole EU for their preferred option of €3,347 million (£2,691 million), with a claimed road safety benefit of €5,807 million (£4,669 million);
- some of the benefits the Commission identify are based on assumptions which the Government will want to test with the industry;
- the benefit calculation is particularly sensitive to assumptions on the number of lives saved as a result of improved inspection standards; and
- the Government cannot yet offer a view on how robust the Commission's assumptions are.

1.11 The Minister tells us that the Commission carried out a generic consultation exercise in 2010, that this did not, however, indicate the precise content of the current package and that the Government will be carrying out informal consultation with industry and representative groups. He also attaches to the Explanatory Memorandum an impact assessment checklist for each of the two draft Regulations and for the draft Directive.²

1.12 In his letter the Parliamentary Under-Secretary of State, Department for Transport (Stephen Hammond), reports first that:

- at the first three meetings of the Council working group on the package, which began in September, delegates discussed the Commission's impact assessment and Articles 1 to 8 of the draft Regulation on periodic roadworthiness tests, document (a); and
- due to the contentious nature of some of the elements of the proposal and widespread concern of many Member States about the regulatory burdens imposed by the package, progress to date has been slow.

1.13 The Minister then turns to the possible JHA implications of Article 19 of the draft Regulation on periodic roadworthiness tests, document (a), which his predecessor highlighted to us. He says that:

- UK officials sought an early meeting with the Commission to discuss this issue;
- the Commission was very clear that there was no intention to create a criminal offence and that it would be at the discretion of the Member State to decide whether it wished to make the offence a civil or criminal offence;
- the Government asked for formal confirmation of this during the working group meeting on 28 September; and
- the Commission again stressed that it had no intention of mandating that odometer fraud becomes a criminal offence in Member States and agreed that this

² See the Explanatory Memorandum at <http://europeanmemorandum.cabinetoffice.gov.uk/>.

should be reflected in all language versions of the proposal and that the required changes will be made.

Conclusion

1.14 The Minister's analysis of the proposal's compliance with subsidiarity is superficial. The regulatory and financial impact of these proposals on Government agencies and motorists necessitated a far profounder analysis, in the context of the UK, of the Commission's arguments that action at EU level is now required to enhance road safety and environmental protection. Given the eight-week deadline in which national parliaments have to issue a Reasoned Opinion on non-compliance with the principle of subsidiarity, we expect this type of analysis to be contained in an Explanatory Memorandum, as well as after the Government has conducted its own impact assessment.

1.15 For the reasons set out in the Reasoned Opinion attached to this Report, we conclude that document (a), the draft Regulation on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC, does not comply with the principle of subsidiarity. Accordingly we recommend that the House adopt a Reasoned Opinion to be sent to the President of the Commission, Council and European Parliament before midnight on 22 October 2012.

1.16 Attached to the Reasoned Opinion are relevant excerpts from a letter we received from the Northern Ireland Assembly Committee for the Environment, setting out its concerns with document (a). We were grateful to receive this.

1.17 Whilst the issue of a criminal offence of odometer fraud has been resolved satisfactorily, we note that other important issues remain, with regard particularly to the potential onerous burdens for government, businesses and motorists. So before considering these proposals further we should like to hear about:

- developments in working group discussions that might mitigate potential burdens; and
- the Government's own assessment of the costs and benefits of the proposals, especially in the light of the comments it is seeking from interest groups.

Meanwhile the documents remain under scrutiny.

Reasoned Opinion of the House of Commons

Submitted to the Presidents of the European Parliament, the Council and the Commission, pursuant to Article 6 of Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality

concerning

a Draft Regulation on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC³

Treaty framework for appraising compliance with subsidiarity

1. The principle of subsidiarity is born of the wish to ensure that decisions are taken as closely as possible to the citizens of the EU. It is defined in Article 5(3) TEU:

“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.”

2. The EU institutions must ensure “constant respect”⁴ for the principle of subsidiarity as laid down in Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality.

3. Accordingly, the Commission must consult widely before proposing legislative acts; and such consultations are to take into account regional and local dimensions where necessary.⁵

4. By virtue of Article 5 of Protocol (No 2), any draft legislative act should contain a “detailed statement” making it possible to appraise its compliance with the principles of subsidiarity and proportionality. This statement should contain:

- some assessment of the proposal’s financial impact;
- in the case of a Directive, some assessment of the proposal’s implications for national and, where necessary, regional legislation; and
- qualitative and, wherever possible, quantitative substantiation of the reasons “for concluding that a Union objective can be better achieved at Union level”.

3 COM(380) final.

4 Article 1 of Protocol (No. 2).

5 Article 2 of Protocol (No. 2).

The detailed statement should also demonstrate an awareness of the need for any burden, whether financial or administrative, falling upon the EU, national governments, regional or local authorities, economic operators and citizens, to be minimised and to be commensurate with the objective to be achieved.

5. By virtue of Articles 5(3) and 12(b) TEU national parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in Protocol (No. 2), namely the reasoned opinion procedure.

Previous Protocol on the application of the principle of subsidiarity and proportionality

6. The previous Protocol on the application of the principle of subsidiarity and proportionality, attached to the Treaty of Amsterdam, provided helpful guidance on how the principle of subsidiarity was to be applied. This guidance remains a relevant indicator of compliance with subsidiarity. The Commission has confirmed it continues to use the Amsterdam Protocol as a guideline for assessing conformity and recommends that others do.⁶

“For Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States’ action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community.

“The following guidelines should be used in examining whether the abovementioned condition is fulfilled:

- the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;
- actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States’ interests;
- action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.”⁷

“ The form of Community action shall be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. The Community shall legislate only to the extent necessary. Other things being equal, directives should be preferred to regulations and framework directives to detailed measures”.

6 See, respectively, pages 2 and 3 of the 2010 and 2011 Reports on Subsidiarity and Proportionality (COM(10) 547 and COM(11) 344).

7 Article 5.

Proposed legislation

Legislative objectives

7. The Commission's explanatory memorandum explains that:

“[t]he objective of the proposal is to lay down updated harmonised rules on the roadworthiness testing of motor vehicles and their trailers with a view to enhance road safety and environmental protection.

“The proposal aims at contributing to reach the target of a reduction of road fatalities by half until 2020 as laid down in the Policy Orientations on Road Safety 2011–2020. It will also contribute to the reduction of emissions in road transport linked to poor maintenance of vehicles.”⁸

These objectives will be fulfilled by:

“extend[ing] the scope of the existing regime to new categories of vehicles, including motorcycles, as well as the frequency of inspections for older vehicles to those having reached a high mileage”;⁹

and by:

“lay[ing] down new requirements on several issues related to the standard and quality of testing, namely test equipment, skills and training of testing personnel and supervision of the testing system.”¹⁰

Subsidiarity

In its explanatory memorandum the Commission says the proposal complies with subsidiarity because:

“[t]he objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason: the technical requirements for roadworthiness testing have been set on a minimum level at Union level and their implementation by Member States has led to a high diversity in the requirements throughout the Union with negative impacts both on road safety and on the internal market.”¹¹

There is a further, but limited, analysis of subsidiarity in the Commission's Summary of impact assessment:

8 COM(380) final, page 2.

9 As above, page 3

10 As above, page 3.

11 As above, page 7.

“The right to act for the EU in the field of transport is set out in the Treaty on the Functioning of the European Union. More particularly, Art. 91 of the Treaty puts on the legislators the obligation to lay down measures to improve road safety.

“Road transport — individual, passenger and particularly commercial — has a strong crossborder aspect. This is particularly important for enforcement, where effectiveness depends on the seamless flow of information about the technical state of vehicles, the compliance history and fraud detection between different authorities in different Member States. Similarly, vehicle manufacturing is global, and action addressing the provision of data for PTI purpose by the manufacturers clearly has to be taken at the highest possible level.

“Under current rules, Member States have a lot of flexibility in the application of the Directives, allowing them notably to establish higher PTI standards. Experience show that this opportunity has not been seized by all the MS, resulting in a diversity of testing qualities across the continent. This trend can be only reversed by concerted action at EU level.

“In order to avoid falling in the trap of looking at legislative solutions only, the Commission also analysed the impacts of an intervention based purely on soft-law, or on a mixed soft and legislative approach.

“The Commission believes that some aspects of the review of the roadworthiness system should be left to the MS, who can achieve the goals in a more effective way, notably in what concerns: the organisation of roadside technical inspections, training of inspectors and the execution of supervision activities.”¹²

Aspects of the Regulation which do not comply with the principle of subsidiarity

11. The House of Commons considers that the draft Regulation on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC does not comply with either the procedural obligations imposed on the Commission by Protocol (No 2) or with the substantive principle of subsidiarity in the following respects.

i) Failure to comply with essential procedural requirements

12. Neither the explanatory memorandum nor the impact assessment contains a “detailed statement making it possible to appraise compliance with the [principle] of subsidiarity” (and proportionality), as required by Article 5 of Protocol No 2, TFEU, the contents of which are set out in paragraph 4 of this Reasoned Opinion.

13. The presumption in Article 5 TEU is that decisions should be taken as closely as possible to the EU citizen. A departure from this presumption should not be taken for

¹² SWD(2012) 207 final, page 4.

granted but justified with sufficient detail and clarity that EU citizens and their elected representatives can understand the qualitative and quantitative reasons leading to a conclusion that “a Union objective can be better achieved at union level.”¹³

14. The detailed statement should also demonstrate an awareness of the need for any burden, whether financial or administrative, falling upon the EU, national governments, regional or local authorities, economic operators and citizens, to be minimised and to be commensurate with the objective to be achieved. This analysis has not been undertaken to the extent required. At regional level for example, the Environment Committee of the Northern Ireland Assembly (see the appendix to this Reasoned Opinion) is deeply concerned about the proposal’s impact on Northern Ireland’s economy. One of the reasons given is the “unique” situation in Northern Ireland whereby vehicle testing is carried out by a government agency rather than private garages; another, in relation to the testing of agricultural vehicles, is the “relative importance” of agriculture in its economy compared to other countries.

15. At paragraph 1.3 of the impact assessment the Commission says that the subsidiarity argument has been strengthened as a consequence of the opinion of the Impact Assessment Board: “the whole part on subsidiarity has been considerably extended notably to explain where extension of EU competences is foreseen and where Member States should remain competent”.¹⁴ We were unable to locate this extended argument, and presume the Commission must be referring to the passage cited above from the summary of the impact assessment, which is far from extensive.

16. In addition, we note that the consultation did not indicate the precise content of the current proposal.

ii) Failure to comply with the principle of subsidiarity

- Necessity

17. In the House of Commons’ view, necessity is a pre-requisite both for action at EU level and for conformity with the principle of subsidiarity.

18. This view is confirmed by the Commission:

“Subsidiarity cannot be easily validated by operational criteria. The Protocol, as revised by the Lisbon Treaty, no longer mentions conformity tests, such as ‘necessity’ and ‘EU value added’. Instead it has shifted the application mode towards the procedural aspects ensuring that all key actors can have their say. The Commission has continued to use ‘necessity’ and ‘EU value-added’ tests as part of its analytical framework and recommends the other actors to do likewise.”¹⁵

19. Necessity for EU action has to be substantiated by evidence collated and assessed in an impact assessment. However, there is little reliable evidence adduced in the impact

13 Article 5 of Protocol 2.

14 SWD(2012) 206 final (PART 1), page 5.

15 See page 3 of the 2011 Report on Subsidiarity and Proportionality (footnote 4).

assessment that the enhancement and expansion of roadworthiness tests will indeed reduce the number of people killed in road accidents in the EU. The Commission states itself that the main source of empirical evidence of the link is not reliable, and that it has had to rely in the alternative on available literature:

“The CARE database, which contains an assessment of the main causes of accidents, is for the Commission the main source of empirical evidence on the link between the condition of the vehicles and road safety. However, the assessment of the causes of the accidents is mostly performed on the spot by policemen who typically don’t have the expert technical knowledge necessary to identify a technical defect. The data is therefore not fully reliable.

“Having said that, a large body of literature is available on the causes of road accidents. Studies of vehicles involved in accidents have shown that technical defects contributed to between 3% and 19% of accidents. Empirical evidence from Germany has shown that technical defects are contributing to around 10% of accidents. For this IA, a broadly agreed and more conservative average figure of 6% responsibility of technical defects in accidents of cars is used. The defects of safety related electronic systems are estimated to contribute even more to accidents”.¹⁶

20. It adds that the available scientific data is “scarce”, before making the following assumption:

“In 2009, 35,000 fatalities on European roads have been reported. *Assuming that technical defects contribute to fatalities proportionately to their contribution to accidents, more than 2,000 fatalities per year in the European Union may be linked to technical defects of vehicles.* Based on available studies,¹⁷ between 900 and 1,100 of these could be avoided if adequate improvements to the roadworthiness testing system were put in place. The range of 900–1100 fatalities is retained in this report as an indication of the conventional (without using most costly measures) life-saving potential, of measures aimed at enhancing PTI rules.”¹⁸

21. This extrapolation is the principal premise — see recital (5) — for the imposition of onerous and costly regulatory burdens in a field of activity which had largely remained within the competence of Member States. Yet the premise is based on an *assumption*, and one the underlying methodology of which is without evidential support.

22. Furthermore, we note that recital (5) states that “there is a clear correlation between the level of road safety and the number of technical deficiencies of vehicles”. We question how there can be a “clear correlation”, given that main source of empirical evidence of the link is said not to be reliable.

16 SWD(2012) 206 final (PART 1), page 8.

17 Based on a report from 2007 (“AUTOFORE 2007”)

18 SWD(2012) 206 final (PART 1), page 9–10.

23. From the foregoing the House of Commons concludes that the Commission has failed to adduce sufficient evidence that the action it proposes is necessary to reduce fatalities in road accidents in the EU.

- *EU value-added*

24. For EU action to be justified, in this case action which includes harmonisation measures, there must be evidence of a problem that cannot be satisfactorily addressed by legislation at national or regional level. This implies that it will have a strong cross-border element.

25. We fail to understand how harmonised rules on the conduct and frequency of roadworthiness tests will have an impact on road fatalities that can only be addressed at the level of the EU. Put another way, the Commission should adduce evidence that improving the testing of cars, light trailers or even more so tractors, in one Member State will reduce road fatalities in another Member State? Without this, there is no evidence of value being added by EU regulation.

26. Whilst the impact assessment makes the point that road transport has a cross-border element, it is, importantly, in relation to enforcement, rather than to the primary objective of reducing fatalities as a consequence of better roadworthiness testing:

“Road transport — individual, passenger and particularly commercial — has a strong cross border aspect. This is particularly important for enforcement, where effectiveness depends on the seamless flow of information about the technical state of vehicles, the compliance history and fraud detection between different authorities in different Member States. Similarly, vehicle manufacturing is global, and action addressing the provision of data for PTI purpose by the manufacturers clearly has to be taken at the highest possible level.”¹⁹

27. In a similar vein, the Commission fails to demonstrate why national or regional governments are not better placed for assessing whether the roadworthiness tests are causing fatalities in accidents on their roads. The evidence in the UK appears to be strongly to the contrary. The UK Government says in its Explanatory Memorandum dated 27 July that “any benefits” of the proposal “are likely to be negligible. However, there are likely to be significant cost implications in the UK”. The Environment Committee of the Northern Ireland Assembly includes among its concerns:

- “The significant cost implications for the DVA in delivering its vehicle testing, licensing and enforcement functions as well as industry, the police and the public;
- “The negligible road safety benefit to the UK given the already high standards of road safety vs. the burden (of both cost and bureaucracy) of implementation”.

28. Harmonised measures might be justified if, for example, the Commission proposed that cars registered in one Member State could be tested in another. But free movement of

¹⁹ SWD(2012) 206 final (PART 1), page 22.

vehicles is not an objective of this proposal: Article 4(1) makes plain that a vehicle can only be tested in the Member State where it was registered.

Conclusion

29. In conclusion, the House of Commons considers that the one-size-fits-all approach proposed by the Commission is neither justified at a supranational level nor appropriate to national circumstances of vehicle testing.

Appendix: excerpts from the letter from the Chairperson of the Committee for the Environment, Northern Ireland Assembly, dated 11 October.

The Northern Ireland Assembly Committee for the Environment considered the above proposals on 13 September 2012 and asked the Northern Ireland Department for the Environment (DOE) to comment on the implications of the proposals on the Driver and Vehicle Agency (DVA) in Northern Ireland

The Committee considered DOE's response at its meeting on 4 October 2012 and is deeply concerned about the implications for testing, enforcement and licensing of vehicles by DVA and for the impact on Northern Ireland's economy.

The Assembly Committee has concerns primarily based upon:

- The unique situation in Northern Ireland whereby vehicle testing is carried out by a government agency — the Driver & Vehicle Agency (DVA), rather than private garages
- The significant cost implications for the DVA in delivering its vehicle testing, licensing and enforcement functions as well as industry, the police and the public
- The negligible road safety benefit to the UK given the already high standards of road safety vs. the burden (of both cost and bureaucracy) of implementation
- Disproportionate impact on Northern Ireland given the high numbers of SMEs in Northern Ireland
- Disproportionate impact on Northern Ireland given the relative importance of agriculture
- Requirement for parts to be replaced with like parts for the life of the vehicle (the Department of the Environment has indicated that this would require, for instance, the same brand of tyres throughout a vehicle's life)
- Additional requirements for tester training and annual retraining of testers including training the police to the required standards for testing

- Setting up of a new trailer registration and deregistration scheme.

The Committee considered the options available and feels that rather than pursuing a reasoned opinion, the best way to address these concerns would be that the European Commission's endeavours to promote road safety should take the form of directive rather than regulations. This would allow for flexibility for Member States and their devolved regions to tailor their road safety actions according to need rather than incurring cost for negligible return.

Formal minutes

Wednesday 17 October 2012

Members present:

Mr William Cash, in the Chair

James Clappison

Michael Connarty

Julie Elliott

Chris Heaton-Harris

Kelvin Hopkins

Chris Kelly

Henry Smith

The Committee deliberated.

Draft Report (*Periodic Roadworthiness tests for motor vehicles and their trailers: Reasoned Opinion*), proposed by the Chair, brought up and read.

Motion made, and Question proposed, That the Chair's draft Report be read a second time, paragraph by paragraph.—(*The Chair.*)

Paragraphs 1.1 to 1.14 read and agreed to.

Paragraphs (now paragraphs 1.15 and 1.16) brought up, read a second time, and agreed to.

Paragraph 1.15 (now 1.17) read and agreed to.

Annex agreed to.

Resolved, That this be the Fifteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

The Committee further deliberated.

[Adjourned till Wednesday 24 October at 2.00 p.m.]

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

Mr William Cash MP (*Conservative, Stone*) (Chair)
Mr James Clappison MP (*Conservative, Hertsmere*)
Michael Connarty MP (*Labour, Linlithgow and East Falkirk*)
Jim Dobbin MP (*Labour/Co-op, Heywood and Middleton*)
Julie Elliott MP (*Labour, Sunderland Central*)
Tim Farron MP (*Liberal Democrat, Westmorland and Lonsdale*)
Nia Griffith MP (*Labour, Llanelli*)
Chris Heaton-Harris MP (*Conservative, Daventry*)
Kelvin Hopkins MP (*Labour, Luton North*)
Chris Kelly MP (*Conservative, Dudley South*)
Penny Mordaunt MP (*Conservative, Portsmouth North*)
Sandra Osborne MP (*Labour, Ayr, Carrick and Cumnock*)
Stephen Phillips MP (*Conservative, Sleaford and North Hykeham*)
Jacob Rees-Mogg MP (*Conservative, North East Somerset*)
Henry Smith MP (*Conservative, Crawley*)
Ian Swales MP (*Liberal Democrat, Redcar*)