

Motorcycles: EC Type Approval

Research Paper 94/118

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On Thursday 24 November, the House of Commons is to debate EC docs 10904/93, 8618/94 and 8037/94. The first refers to a variety of components or characteristics of motorcycles, such as tyres, lighting, fuel tanks and noise. The other two are decisions relating to the directive on maximum speed and power of motorcycles. This latter directive is particularly controversial because of the enormous concern expressed, particularly in this country, by the motorcycle lobby about the proposals and also because it is the first occasion that the European Parliament has exerted its power under the Maastricht Treaty.

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A. Background

The EC Council of Ministers adopted on 30 June 1992 a Community directive which would require new motorcycles to be type approved in order to achieve a Single European Market for motorcycles and component manufacturers¹. The aim of the directive was to harmonise existing Member States' legislation on two and three wheeled motor vehicles. The government is in favour of achieving a single Community market in motorcycles. The directive laid down a procedural framework for the granting of whole vehicle and component type approval. It was intended that this framework directive would be followed by a series of individual directives dealing with the technical requirements for various vehicle components and characteristics affecting road safety and environmental protection. There have already been proposals for dealing with speed, brakes and lighting² and with markings, stands, masses and dimensions, hand holds, identification of controls and protective devices for such vehicles³. The first directive to be considered this week covers tyres, lighting and light signalling devices, external projections, rear view windows, measures against pollution, fuel tanks, measures against tampering, electromagnetic compatibility, permissible noise levels and the exhaust system, trailer couplings and side car attachments, safety belts and their anchorages and glazing, window screen wipers and washers and defrosting and demisting devices⁴. One of the other measures proposed relates to net engine power, maximum design speed and maximum torque and is the subject of the other two documents.

B. EC directive on certain components and characteristics of motorcycles

The directive itself is a modest document but the technical requirements relating to these various components and characteristics are contained in some 500 pages of Annex comprising 12 chapters. The directives will need to be given effect by regulations made under the *Road Traffic Act 1988*, which will be subject to the negative resolution procedure.

The Explanatory Memorandum, submitted by the Department of Transport⁵, points out that the Government is in favour of attaining a single community market in two and three wheeled vehicles and that it supported the adoption of the framework directive. The present European market in motorcycles is severely fragmented with member states having their own, differing,

¹ Dir 92/61/EEC

² Dirs 93/14, 93/92

³ Dirs 93/29, 93/30, 93/31, 93/32, 93/33, 93/34

⁴ EC draft 10904/93

⁵ 4 February 1994

standards and laws. Some sort of transitional action is essential if a single market is to be achieved. European type-approval will mean that machines approved in one member state can be registered in any other state without further inspection or approval. Production will be standardised throughout the community to provide a single EC-wide market. This principle could be seen as an opportunity for the industry and the Government is largely in favour of the proposals. It is important to note that the directives are not retrospective and do not apply to customised vehicles or to small production runs.

In drawing up the proposal, the Commission relied extensively on the requirements of regulations made by the United Nations' Economic Commission for Europe (UN ECE). In other areas, the draft directive is based on the highest of the various standards required by member states.

The most contentious part of directive 10904/93 is the chapter on anti-tampering as its provisions, as originally set out, would affect Triumph, the country's only volume motorcycle manufacturer. The provisions in Chapter 7 aim to prevent modifications to motorcycles that would increase the power of machines above the factory-set limits provided by the manufacturers. Triumph uses a modular form of construction in which there is extensive commonality of components between models, thereby achieving significant economies of scale. If commonality is prohibited on a wide scale, as prescribed by the Commission's anti-tampering proposals, Triumph's costs can be expected to rise considerably. The UK is trying to limit the provisions to machines of 125cc or less and if it succeeds, Triumph will not be affected as it produces machines above this level. However there does not seem to be much support from other member states for the UK's position.

The Commission laid particular stress on two other aspects of the proposals, namely emissions and noise. Motorcycles consume less fuel (and hence produce fewer carbon dioxide emissions) and can use unleaded petrol but their hydrocarbon emissions can be substantial. The provisions in Chapter 5 of the directive aim to establish limit values for emissions of carbon monoxide (CO), hydrocarbons (HC) and oxides of nitrogen (NO). Most motorcycles and mopeds are currently built to the limit values contained in existing UN ECE Regulations 40 and 47. A more stringent stage is proposed from 1/1/97 which the Commission felt should allow time for industry to meet the new requirements. It is anticipated that the new requirements will be met either by existing technology or by engine modifications. After-treatment systems should not be necessary. The provisions also set out the basis for a future strategy to reduce pollutant emissions.

Two noise limits for motorcycles, known as stage I and II, were initially proposed in a draft directive in 1984 and subsequently adopted, with minor amendments on 18 December 1987⁶. The new stage I limits were introduced in the UK on the 1 April 1991 and the stage II limits were scheduled for introduction in 1995 and 1996 though this date was subject to review. That directive has been overtaken by the more ambitious ones the European Commission has proposed on motorcycle whole type approval. However although this replaces the current

⁶ Dir 87/56/EEC

motorcycle noise directives, it makes no difference to the noise limits as the same limits have been reproduced in the later directive. The only change is that the date for the introduction of the new limits is deferred to 1 January 1997.

The Select Committee on European Legislation reported on the document in February 1994⁷. It records that, according to one user group, the proposal will lead to motorcycles which are complex, overweight and less efficient, and the use of catalytic converters will lead to increased carbon dioxide emissions and greater fuel consumption. In the Department's view, however, the introduction of the new noise measures is likely to result in only a marginal increase in the weight of a motorcycle which will have little bearing on the overall efficiency of the machine. It also considers the fears of the user group to be equally unfounded with regard to the technology required to meet the new emissions requirements. The motor cycle industry has advised the Department that the use of complex after treatment systems such as catalytic converters will not be necessary to meet the emissions limits as currently proposed. The limits should be capable of being met either by existing engine technology or through engine modifications.⁸

The Department's conclusions on the remaining provisions are that "none is controversial" and "all can be legitimately defended".

"Of the proposals remaining provisions, none is controversial, and all can be legitimately, defended, either on road safety or related grounds, or on the basis, of harmonisation in the interests of attaining a single market. For example, the provisions relating to tyres are considered to be a primary safety item and correspond to similar provisions for cars and commercial vehicles already in UK legislation. On the other hand, there is no UK precedent for the requirements relating to trailer couplings and side-car attachments, and the Government sees no particular need for them other than on the ground of harmonisation. Conversely, the requirement for external projections is preceded by UK provisions for cars and trucks. The provisions for fuel tanks make special provision for those of plastic construction, and in doing so allow a degree of desirable flexibility between the use of plastic or metal. Rearview mirrors are another item that will become mandatory, whereas there is at present no requirement for them on motorcycles in UK national law. Nevertheless, most motorcycles already have them, and therefore the EC requirement will have little practical effect. For their part, the proposed specifications for safety glass and windscreen washers and wipers will permit the UK to continue to apply "car" requirements to vehicles such as the Reliant 3-wheeler. Only minor changes will be needed to the Road Vehicles Lighting Regulations⁵ to conform to the provisions on lighting and light-signalling devices because UK national law is

⁷ Select Committee on European Legislation, Seventh Report 1993 - 94, 9 February 1994 - HC 48-vii

⁸ Supplementary Explanatory Memorandum submitted by the Department of Transport, 15 April 1994.

already similar to the EC requirements. Finally, the provisions on electromagnetic compatibility will reduce the risk of motorcycles and 3-wheelers malfunctioning due to electromagnetic interference and limit the level of interference that they themselves produce. If specific provision had not been taken on this matter, machines would in any event have been subject to the general directive on electromagnetic compatibility⁶ which comes into full effect on 1 January 1996."

The Minister also submitted a compliance cost assessment (CCA) with its supplementary explanatory memorandum and this is reproduced in full in the appendix.

The Select Committee was not altogether convinced and remained concerned about the proposals, in particular about the cost implications to both manufacturers and consumers⁹. It was chiefly concerned at the possible effect on Triumph, although this company is likely to be chiefly affected by the proposals on maximum power and size which are also under consideration.

It is not clear exactly how this directive will be dealt with. Last month it looked as if the three controversial chapters, on emissions, noise and anti-tampering, and the chapter on electromagnetic compatibility (EMC) would be separated from the rest of the draft directive. The idea was that the first three were to be considered at a slower pace and that on EMC was to be accelerated. This month the plan seems to be that the EMC chapter will still be accelerated but that the three others will remain in this draft directive and all 11 chapters will be considered at a slower pace.

C. Directive on maximum design speed, maximum torque and maximum net engine power

The Commission proposal¹⁰ regulates the methods of measuring the maximum design speed, maximum torque and maximum net engine power of these machines.

It will:

- enable the machines to be classified according to their characteristics into the vehicle types described above, and

⁹Select Committee on European Legislation, sixteenth report 1993 -94, 27 April 1994 - HC 48 - xvi

¹⁰ 4947/92

- place a limit of 74 KW (100 bhp) on the maximum net engine power, and enable that limit to be measured.

The UK government was content with the proposal in so far as it catered for the UK classification of machines into vehicles types. Indeed it regarded the directive as a whole as an opportunity for British industry. European type-approval will mean that machines approved in one Member State can be registered in any other without further inspection or approvals, thereby creating a single market for such machines. The Government consider this an opportunity very much to be welcomed. However, as regards the proposed restriction on maximum net engine power, the statistical evidence in support of the provision was not in the Government's view conclusive. It understood and shared other Member States' concerns about irresponsible behaviour and excessive speeds by some motorcyclists but did not believe the 74KW power limit was the right answer since the contention that high-powered machines constitute a greater accident risk was not supported by statistical evidence. Consequently the UK attempted to delete the power limit from the measure, but did not receive support from any other Member State. The UK had hoped that other Member States would have been prepared to accept a compromise whereby the draft directive as a whole would go forward, including the power limit, but with the flexibility for member states to exempt vehicles registered in their country from the requirement at national level. In the end other states were willing to agree only to a five year derogation, which was subject to review.

The EC Council of Ministers adopted a common position along these lines at their meeting on 14 June 1993. The UK abstained on the vote. The following was agreed:

- (i) that there would be a 74KW (100 bhp) limit for motorcycles registered in the Community after 31 December 1994;
- (ii) that individual Member States would have the right to a five year derogation from the main rule, commencing 1 January 1995. If a Member State made use of the derogation manufacturers would be able to sell bikes up to 94KW (125 bhp) in a derogation State until 31 December 1999. The UK was likely to be the only Member State to make use of the derogation provision.

In the negotiations the UK Government did not want a bhp limit attached to the derogation provision. But it was pointed out that there was already a gentleman's agreement in the UK with the International Motorcycle Manufacturers Association which effectively meant that motorcycles over 125 bhp had not been sold in the UK for several years, and thus the UK had to give in.

- (iii) In 1998 the Commission is to review the safety record of the high powered motorcycles. The results of the review will be used to determine whether the right of derogation should be extended beyond 1999. A UK official said in the context of the review that it was not clear whether the onus of proof was on the Commission to show positively that high powered motorcycles are dangerous or on the UK to show that they are not dangerous.

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- (iv) that after 1994, EC Member States will be allowed to outlaw the re-registration of high powered motorcycles. Banning re-registration effectively will limit the market for high powered motorcycles to the UK since foreigners living in a country where there is a prohibition on re-registration will not want to buy a bike in the UK, which they cannot then take back home, re-register and so use in their own native country.

Although high powered machines may not be marketed in countries which do not exercise the right of derogation, there is apparently nothing to stop such high powered machines being driven on the roads of non-derogation Member States.

The proposal went to the European Parliament where, on 27 October 1993, the Parliament passed by an absolute majority (262 votes to 76) a motion giving notice of its intention to reject the common position adopted by the Council. The introduction of the Maastricht Treaty on 1 November and the subsequent importance given to subsidiarity, meant that some proposals had to be reconsidered. This included EC draft 4947/92 on maximum engine size. Its journey through the European Parliament started again and another debate was held. Once again, the Parliament confirmed its view by passing a similar motion (300 votes to 24) on 9 February.

At this point, the procedure becomes very complex. The Council of Ministers convened a conciliation meeting under article 198b of the Treaty, as amended by Maastricht. The Council considered its position and decided, with the UK abstaining, to continue with the proposal. The European Parliament tried to throw out the proposal on 20 April but failed to secure the necessary absolute majority, but on 4 May, it did vote 10 amendments to the common position, nine of which involved the 74KW power limit and one, amendment 6, concerned "comitology"¹¹. Before the Council could act on these amendments, the Commission had to give its view. On 18 July 1994, it opposed the European Parliament's amendments¹². The effect of this negative response was that the Council now had to act unanimously if it wished to adopt the amendments. This it could not do and on 27 July it declined to approve the amendments. As a result, the Conciliation Committee was convened. If no acceptable compromise is reached, the measure will fall although it is not clear exactly what the mechanism will be as this is the first time this procedure has been used.

The situation is further complicated by the passing of amendment 6 on comitology by the European Parliament. Like other Member States, the UK is opposed to this. The amendment is intended to place the European Parliament in the position of joint legislator, comparable with that of the Council, with regard to the adaption of the directive to technical progress. There is a serious argument that the inability of the Parliament to scrutinise delegated legislation is a serious gap in its democratic role but it is felt by both the Government and the Select Committee that a technical directive of the present kind is not an appropriate forum

¹¹EC draft 8037/94

¹² EC draft 8618/94

for the debate. The amendment would allow the European Parliament to scrutinise delegated legislation in this particular case.

It is still far from clear what is likely to happen to this directive. The conciliation committee had six weeks to approve a joint text. Rather surprisingly the Council agreed the nine amendments on power but none of the members, including the UK, will support the amendment on comitology. A two week extension has been agreed for the committee to try to come to some agreement on this. If the conciliation committee still fail to approve a joint text, the Council will presumably confirm its position, that is not to accept amendment 6, and the European Parliament will defeat the whole measure. The fate of the measure should be settled by the end of the year.

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