



EUROPEAN COMMISSION

High Level Group of Independent Stakeholders on Administrative Burdens

MINUTES OF THE MEETING OF THE HLG ON 16 AND 17 APRIL 2009

Venue: Brussels, 16 April, from 15.00 to 18.30, and 17 April, from 10.00 to 16.00

Present: See presence list

Excused: 16 April: Mr. Ludewig, Mr. Mollerup; 17 April: Mr. Berger, Mr. Linschoten, Mr. Pesonen

1) Opening; adoption of agenda and minutes

The chair welcomes all members and in particular Ms. Agnes Jongerius who is replacing Mr. Mendez. He states that he is pleased that the group will continue to have a member with trade union background.

Ms. Jongerius thanks the chair for the welcome and looks forward to the cooperation in the group.

The draft agenda is adopted without modification. The chair informs members that he intends to report on activities since the last meeting on the second day in order to start the discussion on working environment right away.

The draft minutes from the last meeting are adopted in their version with comments from Mr. Hontelez (members have been provided with this document). In addition, the Chair points out that the HLG had adopted the final version of the opinion on food safety during that meeting.

2) Offline suggestions

The chair thanks Mr. Linschoten for the preparation of the opinion and mentions that Ms. Fritsch had not received the original list of proposals due to an error of the secretariat.

Mr. Linschoten mentions and regrets this, too. He thanks members for their cooperation with the preparation of the draft opinion, including bilateral talks. He presents the opinion and thanks the secretariat for the preparation. In its January meeting the group had

discussed about the procedure for dealing with offline suggestions and he had prepared a document summarising the procedure that has been distributed to members as well. Mr. Linschoten states that some proposals had been taken out of the original list for various reasons.

Ms. Fritsch would like the opinion to be postponed and would particularly like to consult stakeholders on the CE-marking issue (para. 6 in the draft).

Mr Berger suggests postponing paragraph 6 while voting on the remaining part of the opinion. He recalls that members of the group are nominated in their personal capacity and supposed to be independent, i.e. also to be in a position to adopt a view on any given issue without necessarily having consulted other stakeholders.

Ms. Fritsch insists that she is indeed independent but sees nevertheless the need for consultation.

Ms. Jongerius announces that she will contact Mr Linschoten after the meeting on para. 6, as she also had a question on that para. In addition, she mentions the problem of retention of data and states that proposals also needed to be checked against privacy issues and whether the solution was appropriate with respect to the goal.

The chair announces that the discussion on para. 6 will be postponed and calls for a vote on the remaining paragraphs. Subject to this modification the opinion is adopted by 11 votes; Ms. Fritsch votes against.

3) Working environment

The chair thanks Mr. Gibbons and Mr. Teli•ka for the preparation of the opinion and in particular the latter for having joined Mr. Gibbons on very short notice after Mr. Mendez stepped down. He explains that due to the recent replacement of Mr. Mendez it had not been possible to include Ms Jongerius in the preparation of the draft.

Mr. Gibbons presents the opinion and refers to doubts that the reporting members have about the numbers advanced by the Consortium; he recalls, however, that all figures are for him rather orders of magnitude than the result of exact science. He states that the draft was supported by the Commission with the exception of paragraphs 47 ff. The reporting members met with stakeholders and with the tripartite committee on health and safety issues at work. He explains in detail the issues related to risk assessment and explains that the proposal contained in the draft is limited to very small companies whose activities presented a low risk. He recalls that the area was in the top 10 of the most burdensome information obligations with some € 2.7 bn. of administrative burden. None of the reporting members has any intention to reduce safety or health at work, but see their role as checking on whether the burden of actually writing down the risk assessment was proportionate for all companies in all circumstances. Since the reporting members acknowledged that the situation in Member States varies, it is suggested to leave this issue to the Member States, i.e. allow Member States to exempt or not to exempt small companies where the risk is low from the requirement of producing a written risk assessment.

Mr. Teli•ka states that he came in late and could therefore only contribute in a limited way. The draft opinion is nevertheless consensual and eventual points of disagreement were noted.

Ms. Jongerius is of the view that it is always useful to get to know the background of rules. Prior to the meeting she had distributed a document not mainly addressing the issue of administrative burden reduction, but rather health and safety at work. She admits that the costs are certainly not insignificant. However, in her view these costs represent a useful investment in the health and safety of workers. She refers to the tripartite dialogue and states that making minimal arrangement obligatory goes against traditions regarding the rules on working environment. The proposed approach would miss the broad scope of health and safety if it were only risk based; room for workers participation would be reduced. The EU legislation represents a minimum standard which should not be regarded as maximum standard at the same time. As regards para. 48 she agrees with DG EMPL's views. In general, this file should not be treated light-handedly. She expresses doubts as to the coherence of the figures advanced by the Consortium.

The chair hints at the fact that there are always at least two possible views. He refers to the Eurobarometer he quoted at the last meeting. People would generally rather see more than fewer rules, but half of them is concerned about too much bureaucracy. This antagonism was the political challenge.

Mr. Murray agrees that undertaking a complete impact assessment is not the role of the HLG, but the lack of it introduces bias. He asks which consultation took place with unions and whether there is information available in which type of enterprises accidents do actually happen most.

The chair points out that the HLG is not here to make the work of the Commission; it is up for the latter to consult extensively. The HLG does not have the resources to do so. If the HLG were to adopt an opinion presumably against the views of the trade unions, it would be up to the Commission to follow this advice or not. As regards the Consortium's work he states that independent from quality issues, the measurement is one of the most important basis for the work of the HLG.

Answering Mr. Murray's questions Mr. Gibbons refers to a number of accident statistics and informs that unions had been consulted and a meeting with the tri-partite committee took place. The unions had voiced objections on every point, while employers were in favour and Member States divided.

Mr. Linschoten agrees with the importance of investing in people and refers to para. 37, which explicitly mentions the utmost importance of health and safety at work. However, he is of the view that compliance costs are very high. Written documentation is not an investment in people, but a bad mortgage. Thus, the proposal was focusing on an overkill of compliance costs. He quotes an example of recently modified Dutch legislation as a good example. Risk needs to be given a measured answer and EU legislation should make that possible. Thus, he argues for more flexibility. Furthermore, he considers paras. 58 and 59 too detailed and proposes to replace them by a modified single paragraph.

Ms. Maij-Weggen, observer from the CoR, states that the Committee always supported health and safety legislation and did not support lowering standards. As regards gold-plating she underlines that some MS already had strong rules before the EU adopted its legislation.

Mr. Gibbons confirms having had a look at the papers from the CoR and sees some overlaps, e.g. on best practices and risk assessment.

Mr. Hontelez agrees with the emphasis on health and safety. The effectiveness of the rules has to be preserved and the European public is not interested in bringing down laws on this issue. He was disappointed about the limited consultation. He deems it impossible to vote on the draft opinion at the moment. As regards para. 18 he would like to know if the proposal risked infringing ILO obligations. The higher cost for SMEs mentioned in para. 20 is a problem inherent in size; this is why small companies want to grow bigger to be able to enjoy advantages of scale. Regarding the flexibility of working time mentioned in para. 33, he would like his objection to be taken note of. On the issue of daughter directives he is of the view that more clarity necessarily means more directives and not more flexibility on Member State level. He closes by stating that SMEs do not necessarily have better internal rules or better internal climate.

Ms. Jongerius found it impossible to come with detailed amendments because of the tight schedule. If the draft stayed like this, she would vote against it. Citizens would expect that Europe does not slim down labour law and protection of workers. The fact that lots of daughter directives are needed cannot be passed off as extra administrative burden.

Mr. Illy welcomes the draft. He proposes a matrix for risk assessment; the Commission should draft a list for the kind of work where a written risk assessment was necessary. As regards computer access (para. 46), he does not agree that this is a problem.

Mr. Telicka points to his experience as a Commissioner for health and safety. His intention is not to bring down legislation; it was not the job of the HLG to do policy making. In his view written risk assessments will not necessarily make a positive difference, as these were often treated as a mechanical formality. He sees no evidence that more flexibility would harm safety or health. The ILO is seemingly not an issue. As regards the climate in SMEs he agrees with Mr. Hontelez. He suggests adding the words "unnecessary and burdensome" in relation to daughter directives.

Mr. Murray suggests postponing the opinion in view of the seemingly huge problems. As regards the written risk assessments (para. 38), he states that how else than in writing can one know whether a person cares. Liability issues can only be solved if looking at the process. The issue is one of better regulation to achieve laws that can be applied. Removing the requirement would have negative effects. Regarding stakeholders comments he misses more details as to who said this or that.

Mr. Potdevin wishes to know whether accidents on route to the workplace are covered. In his view risk documents were very useful for small enterprises. He agrees with reducing administrative burdens, but not at the expense of workers.

Mr. Goucha suggests postponing the vote.

Mr. Hontelez agrees with the postponement.

The chair proposes to postpone the vote on the opinion and asks Mr Gibbons for a summary.

Mr. Gibbons states that he understands that the issue of a more flexible approach for written documentation of risk assessment was controversial. He agrees with Mr. Teli•ka

regarding para. 40, welcomes Mr. Illy's comments on a more flexible approach based on common sense and states that a simple piece of paper (NB: the written risk assessment) does not solve the issues either. To him it was clear that in this case one size does not fit all. On this issue the Commission had received three different offline suggestions from three different Member States. In addition, the Dutch government had meanwhile written to President Barroso expressly mentioning this issue. To his knowledge work-related accidents on route were covered. He insists that the proposal is not about exemptions from risk assessments but from writing them down. In general he explains that the reporting members did not make a full consultation and suggests a subcommittee including Ms Jongerius to continue the work.

The Chair thanks Mr. Gibbons for his reaction to a number of suggestions and questions. He is against a partition of the opinion. He asks Mr. Teli•ka and Mr. Gibbons to work together with Ms. Jongerius to finalise the opinion for 28 May. He thanks everybody for the good discussion and states that the HLG is once again at the cross-roads of advocating more freedom or more regulation.

Mr. Teli•ka agrees with this proposal but sees no need for further consultation. Best efforts will be made on the basis of draft amendments.

The Chair welcomes again the nomination of Ms. Jongerius because of her expertise in the subject matter. He is content that a successor for Mr. Mendez was nominated given that there were discussions to continue with 14 members for the rest of the mandate.

4) Presentation by DG MARKT on Financial Services

The Chair invites DG MARKT to present the situation.

Mr. Girard (DG MARKT) presents the state of play and points out that the EU is in its worst financial crisis in its history; the reaction to the crisis is a test for intra-EU solidarity. The Commission had developed an ambitious recovery plan. In its communication of 4 March¹ the Commission had pointed out 5 key messages: All of systemic importance needs to be regulated (supervisory framework), gaps in European or national regulation need to be filled based on a 'safety first' approach, European investors, consumers and SMEs need to be confident about their savings, access to credit and their rights as concerns financial products, risk assessment in financial firms should be improved and pay incentives should be aligned, more effective sanctions against market wrongdoing needs to be ensured. In three areas the Commission would come up with legislative proposals: hedge funds (end of April 2009), grey / shadow markets, credit rating agencies. In his view a lot of areas were underregulated.

In view of the Chair the crisis posed an enormous opportunity for the EU. The citizens would feel that Europe had an added value for them.

Mr Telicka would like to know how the regulation will affect businesses. Sometimes more regulation could be better regulation. What he had understood from the report was that

¹ COM(2009)114 final: Driving European recovery

concerning supervision the Commission would follow the De Larosière report. He asks whether there was any temptation to go beyond that report. In addition, he enquires about plans for summit meetings with Russia and China etc.

Mr. Girard points out that President Barroso had clarified that the Commission will be more ambitious than the report, inter alia by implementing a quicker timetable, not just steps. Nevertheless, there was a difficult balance between different Member States. The European Union was in a continuous dialogue with Russia and China.

Mr. Linschoten would like to know if and why new legislation was really needed? The national central banks still had competences; they just needed to enforce them.

Mr. Berger agrees with Mr. Linschoten, and states that EU legislation would either represent a substitute for national legislation or the other way round.

Mr. Girard refers to improved standards and the importance of including non-Euro-zone-members. The influence on the international level had to be taken into account.

5) Report of the Chairman on activities since the last HLG meeting

After having welcomed members the Chair reports on the jury discussion for the Best Idea Award (the press release had been distributed to members), his letter to Prime-Minister Topolanek as well as contacts with and reactions from the UK, DE and FR government. He also mentions that the Council conclusions of mid-March included a call upon the Commission to table proposals for all priority areas before the end of its mandate. The HLG's offline proposals had also been sent to Commissioners by President Barroso and Vice-President Verheugen. The Chair also announced his intention to talk with the Italian government.

Mr. Murray asks whether the final result of the jury will be debated in the HLG.

The Chair explains that the jury decision was final and will not be debated in the HLG.

Mr. Gibbons adds that jury members felt free to choose from the 20 short-listed ideas regardless of preliminary assessments from Commission officials. The jury had decided to choose three different kinds of suggestions from three different countries.

The Chair expresses his happiness that suggestions from Austria, Germany and Sweden had been nominated and, reacting upon a request by Mr. Illy, states that the secretariat will inform members about the state-of-play of the award. Almost 500 suggestions were an impressive number, although some also included a certain kind of frustration with the national level.

6) Environment

The Chair thanks the reporting members and invites Mr. Hontelez to present the draft opinion. The draft opinion did not represent a huge reduction potential, but it was important to note that it was only a first opinion which would be supplemented after

consultation with stakeholders. He also mentions a meeting with a construction company complaining about too many regulations.

Mr. Hontelez thanks Mr Pesonen and Mr Ludewig for their contributions, refers to some minor corrections in the text and clarifies the numbers quoted. Five pieces of legislation were included in the scope of the Action Programme; whether these acts represented 80 % of the burden was not proven. He points to the high number of stakeholder suggestions for this priority area and states that stakeholders often did not distinguish between administrative burdens and compliance costs. Mr. Ludewig and he had agreed on a meeting with stakeholders which had not been possible within the short time for the preparation of the opinion. That was why the opinion so far only included suggestions by the Consortium and the Commission. He had received suggestions by the Dutch government two days before the meeting which had been too late to integrate them. Likewise, the suggestions received by the Committee of the Regions would also been taken up for the second opinion. The Commission had already acted on three out of five legislative acts. With respect to the five acts in scope, he was confident that the EU would reach the 25 % reduction target; however, for the acts beyond those five acts, there was not enough information available.

Mr. Ludewig thanks Mr. Hontelez and criticises the lack of full measurement; he points out that the group has to be careful with figures and states that wide consultation is important to get new and different ideas, so that a comprehensive approach could be ensured.

The Chair, although he agrees in principle with Mr. Ludewig, states that the methodological problems cannot be solved. The HLG cannot be held responsible for problems in that respect. What the HLG does is to give advice on the basis of the information it receives from the Commission, the Consortium and stakeholders and the experience of its members. The methodological debate will probably have to be held but not here and now.

Mr. Teli•ka shares the doubts about figures but supports the recommendations that are based on members' experience. He would feel more comfortable, if he knew that in future the whole scope of EU law would be covered, as the non-measured acquis (assumed to represent 20 % of the administrative burdens) would still cover billions of € He would be prepared to cooperate on a short report as a testament of the group.

The Chair relates that the Commission itself is not convinced of all the results which was why services were working closely and intensively with the Consortium to make the results more reliable. The experience of the HLG could provide further input for the next Commission as well.

Mr Hontelez points to the mandate of the HLG. If stakeholders come up with suggestions, figures were important. He would be interested to know whether the Commission will continue its measurements with the Consortium.

The Chair points to different ways of future measurements and burden reduction. In his view the next Commission should keep the reduction of administrative burdens as a high priority. The mistrust the Commission was facing was often not justified. The acquis needed to be checked on a continuous basis, which was a permanent task for all legislative organs.

Mr. Illy shares the doubts regarding the figures which were surprisingly low. As regards the subject matter he points, by example, to rules on scrap metal which is treated as waste, although it was a prime ingredient for steel production. To follow the rules on waste for scrap was very complex for steel producers. He states that the burden perceived in this area is much higher than the measurements would indicate. He sees the main reason for high costs in the long procedures.

The Chair agrees that perception is a problem in relation to administrative burden in general. In this respect para. 10 was important.

According to Ms Pons the acts that were selected as representing 80 % of the administrative burdens may *a posteriori* not represent quite as much. That is why more acts have already been added to the Action Programme. The Standard Cost Model (SCM) is by no means a perfect model; nevertheless, it is used globally, and in this exercise applied to the EU-27 for the first time. It will be improved in the process. It was difficult to compare the results from and with the Member States, as they do not use the SCM in exactly the same way. Nevertheless, major progress has been made. The Commission has been working intensively on the evaluation of the figures. Reducing administrative burdens remains high on the agenda. The HLG has been very useful, since it has instigated a new dynamism not only within the Commission, but also for other institutions.

Mr. Mollerup agrees with the opinion and suggests a horizontal paper for the future. In his view it should be clarified in the legislative procedure that better regulation was the whole idea of making legislation.

According to Mr. Hontelez the HLG has to be clear that administrative cost of environmental legislation is not 700 million in total. Cost in general is generated by compliance and delays of procedure.

Mr. Gibbons would like to know more about the two-step-process taken for this opinion and the state of the current document. He sees the figures as very problematic, as the presentation by DG Environment included different numbers, e.g. € 2.7 bn. for waste shipment. He would welcome clarifications on that. Furthermore he suggests including certain points on the IPPC, REACH, SEVESO and biocide directives as well as the need to improve guidance which was not mentioned in this draft.

Mr. Ludewig reports on baseline results in Germany that show a factor of 4 to 1 of what is measured for Germany on the national and on the EU level. In his view Germany was a good indicator that it was a fundamental mistake to arbitrarily select acts. A dialogue with stakeholders on what they want to reduce could help in this respect.

Mr. Hontelez underlines that stakeholders should see the results as soon as possible and clarifies that the status of the current draft which would not need to be confirmed by stakeholder consultation. He had not included the € 2.7 bn. for waste shipment as the underlying assumptions seemed unrealistic.

Mr. Teli•ka points out that the draft included large figures on what the Commission had already done and a rather low figure for additional recommendations. Listening to DG ENV he had the impression that they thought everything was already done, while he was not convinced about that. He would like to know who had been consulted for this opinion and who was to be consulted for the second one.

Mr. Hontelez replied that the reporting members worked with the directorates-general as well as with the Consortium and took written input into account. Both of them had felt that this was not sufficient, that was why they suggested the current approach.

The Consortium points out that they had only measured administrative costs for businesses, while other studies had also taken cost for public authorities or compliance costs into account. The scope of the project was limited to the acts in scope. The Consortium was working on improving the database.

The chair invites members to cast their votes. The draft opinion is adopted unanimously. The Chair suggests performing a measurement on the eventual costs of not having EU legislation, but 27 different legislative systems. It was important to communicate positively on the activities of the EU.

7) Visit of Mr Grethen, European Court of Auditors

The Chair welcomes Mr. Henri Grethen, member of the European Court of Auditors (ECA), and his staff.

Mr. Grethen introduces the work of the ECA in relation to impact assessments.

Mr. Weber, head of Mr. Grethen's private office, continues the presentation (members have been provided with a copy).

Mr. Grethen invites the chair to nominate members of the HLG for participation in a focus group that would discuss the technical draft of the report on 8 to 10 July. Members would have to sign a confidentiality declaration.

The Chair thanks for the presentation and invitation. He suggests nominating members at the May meeting.

Upon request by the Chair Mr. Grethen explains how the ECA is organised. In addition he points out that the quality of the impact assessments accompanying legislative proposals had increased dramatically since the Impact Assessment Board (IAB) started its work. However, follow-up at a later stage in the European Parliament and Council was not always carried out in a consistent way.

The Chair adds that Mr. Italianer (Dep. Secretary-General of the Commission and Chair of the IAB) had informed the group that 1/3 of the impact assessments (IA) needed to be resubmitted with modifications by the responsible directorates-general.

Mr. Murray is of the view that social and environmental organisations ought to be included in the focus group meeting. It is missing from IAs how enforceable a rule is in reality; this would be for him an essential quality criterion.

For Mr. Mollerup it is also important how early in the process the impact assessment is made. In principle the impact should be assessed throughout the process, i.e. also when the proposal is discussed in Council and EP.

Mr. Hontelez cautions and warns about overdoing impact assessments. He also felt that Ex-post evaluation is important as there is a tendency in ex-ante assessments to exaggerate costs but cost is often somewhat exaggerated and so these assumptions should be checked after a certain time.

Mr. Grethen, upon request by Mr. Gibbons, explains how members of the ECA are nominated and gives details about how reports from the ECA are being dealt with. He suggests transmitting a list of who was invited to the focus group meeting so far.

According to Mr. Weber there are several questions that are at the core of the problem such as looking at the stock of legislation versus looking at new legislation, the use of the Standard Cost Model, timing and the follow-up through EP and Council, the latter being the single biggest problem. As regards consultations in general he points out that the design of a consultation has to be carefully considered. In some cases, targeted consultations or public hearings could be more appropriate than consultations open to anybody.

Concerning the follow-up of opinions of the IAB, Mr. Watson (Commission, SG) points out that all these opinions become publicly available after the adoption of the act concerned. This ensures transparency. In case an IA needs to be resubmitted, the IAB would issue a second opinion on the resubmitted version. A finalised / modified IA should take comments of the IAB fully on board, but the inter-service consultation mechanism to which the SG is part makes it possible to enforce the acceptance of IAB views if necessary.

Mr. Illy thanks for these explanations and advocates a holistic approach. He asks whether the ECA will give guidelines to the Commission.

Mr. Mollerup underlines that the benefits and feasibility of legislative proposals have to be pointed out clearly. He enquires whether there has been any case where the IA had gone “too far”?

The Chair joins him in this by stressing that every act has in principle a specific goal. The justification is however not always clear after some time.

Mr. Grethen underlines that the ECA has no political role; it draws conclusions, but does not decide.

Mr. Weber adds to this that nothing in this context is really neutral. The work the ECA undertakes is not academic work. He answers positively to the issuing of guidelines.

Mr. Murray is of the view that consultation mechanisms and impact assessments are technical processes, not political ones. After the IA it is up to politicians to decide.

The Chair is confident that the 25 % reduction target can be reached. He asks the Secretariat to provide an overview of what has been achieved / suggested so far. Meanwhile the HLG was considered as a positive contributor or at least as a necessary evil. It was important to change the culture of law-making.

The Chair thanks Mr. Grethen and his staff for the presentation and all for the lively debate.

Adopted by the HLG in Brussels on 28 May 2009