



EUROPEAN COMMISSION

High Level Group of Independent Stakeholders on Administrative Burdens

MINUTES OF THE MEETING OF THE HLG ON 10 DECEMBER 2008

Venue: Brussels, 10 December 2008, from 10.00 to 17.30

Present: See presence list

Excused: Mr. C. Mendez

1) Opening; adoption of agenda and minutes

The agenda was adopted. The discussion on the draft opinion on offline suggestions has been postponed to 20 January.

The minutes of the meeting of 22 October 2008 were adopted. Upon request by Mr. Gibbons the chair explains that he understood the discussion about rules for the financial sector in the way that existing rules seem not to have been applied effectively. However, he also maintained that new rules might be needed such as the control of hedge-funds discussed in the context of the G8 and G20 meetings.

2) Activities of the chair since the last meeting

The chair informs members about activities since the last meeting. On 6 November he met with President Barroso. The President underlined the importance of better regulation; the reduction of administrative burden is high up on the Commission's list of priorities. President Barroso was pleased with the work and supported the decisions so far taken by the HLG.

The chair mentioned in this context that the Commission would appreciate if the HLG could issue its opinions on the 13 priority areas until around June/July. Work in the second half of 2009 and in 2010 could then focus on opinions on specific cost reduction measures. To achieve that the group will have to schedule two meetings lasting two days by adding a day to the April and July meetings. He furthermore informs that the Commission is currently preparing an extension of the list of legislative acts that formed the initial package of the Action Programme.

The chair underlines his gratefulness to the Commission for including the two important proposals supported by the HLG in the Economic Recovery Plan.

On 3 November the chair met Vice-President Wallström. He underlined that the Commission is not well enough presented in debates on the national level and doesn't manage to sell its political achievements well.

On 9 December the chair met Commissioner Kovács to discuss the recent opinion on e-invoicing. The meeting went very well and Mr. Kovács reassured the chair that the formal proposal in the area of VAT should be presented very soon, most probably still in January.

Furthermore, the chair reported on very productive meetings with the Dutch government.

As regards the EP, the chair participated in discussions in the Committees of Budgetary Control and Internal Market. Expectations voiced by MEPs were extremely high, and the chair had to tone them down. He also met with ALDE, the liberal group of the EP. It was a very good debate, and MEPs asked the group to be pro-European. The chair has suggested the establishment of a committee on the reduction of administrative burdens to the MEPs.

Mr. Ludewig sees a considerable risk that the expectations to the HLG are too high. In his view the Commission is not yet systematic enough in its approach to administrative burden reduction. Raising expectations without being able to deliver is dangerous.

Mr. Linschoten supports Mr. Ludewig's approach. He thinks, however, that the HLG has to move on with its actual mandate. The gap between the mandate and the expectations should be addressed towards the end of the HLG's work.

Mr. Telička does not think that the expectations are that high, but administrative culture has not changed which he sees as the bigger problem. The HLG is free to deliver its own views and reports on horizontal issues. The outgoing Commission will not be a strong ally in this, but the incoming Commission and the new EP should be. Elements on administrative burden should be included in the next Council conclusions during the Czech presidency.

Mr. Murray shares concerns with regard to high expectations. According to him the group should look beyond the original list, but should not forget to do the work that is already ahead of it.

The chair states that he tries to tune down expectations everywhere. It was, however, not the group that raised the expectations. The task of the HLG is to look at the proposals made by the Consortium and to give advice to the Commission. He underlines that he has no intention to continue the work beyond the end of the mandate. He asks members to make clear that expectations are too high wherever they can.

Mr. Pesonen agrees that expectations are too high. The HLG is part of a process and even after having delivered its work the issues will remain on the agenda for the new EP and the next Commission. He is, however, concerned about the fact that – regarding the Health Check - the Council did not reduce any administrative burden, quite the opposite. If politics do not allow for major breakthroughs, it is important to come up with a few concrete and workable initiatives.

Mr. Potdevin sees the need to look at the net result of any legislation in view of administrative burden created. Modern technology should be used as much as possible, in particular to ensure that businesses need to provide the (same) information only once.

3) **Draft opinion on Public Procurement**

DG MARKT presents the general setup of European procurement as well as the initiatives undertaken by the Commission to reduce administrative burden in this area. (presentations have been made available to HLG members).

Mr. Teli•ka presents the draft opinion to the group. He thanks DG MARKT for the presentation and underlines that he was very pleased about the excellent cooperation with Mr. Linschoten when drafting the opinion. He presents two examples for gold-plating, one from Germany on additional certificates and the other one from Italy as regards information on subcontracting. Views on thresholds for the applicability of the EU rules on public procurement are not uniform among stakeholders. He generally proposes to "expose" views of the group to stakeholders. The thresholds have not been adjusted to inflation since the 1980s and he proposes therefore to the Commission to explore the possibilities to modify the thresholds. He underlines that many recommendations are actually addressed to Member States in equal measure given that many issues are the same, irrespective of the tender being above or below the thresholds.

Mr. Linschoten would like to know why DG MARKT is of the view that enterprises are better off above the thresholds. He deplores the inflexibility of the legislative framework as regards the thresholds. He questions the overall usefulness of this legislation and is joined in this by Mr. Ludewig.

Mr. Hontelez points out that the average costs for enterprises that tender on a regular basis will be lower. He would like to know the cost of the direct data exchange, and doubts whether a central authority is a good idea. He wonders whether increasing the thresholds will reduce the admin burden, as the national rules also come with administrative burdens, maybe even more. He finally questions why reports by the Consortium are not made public so far.

Mr. Mollerup takes up Mr Murray's question on how many cross-border tenders are attributed, i.e. how many enterprises have won a tender in another Member State than the one where they are based. In general, enterprises have the perception that costs for public procurement is too high.

Ms. Fritsch informs that Swedish businesses are not in favour of raising thresholds, mainly because SMEs account for over 90% of European businesses for which it would not be good to raise thresholds. She finds it difficult to understand the area without having seen the report and the presentation beforehand.

Ms. Maij-Weggen reports that the CoR is in favour of changing the thresholds and supports also the use of IT technology. She presents a paper to members and DG MARKT (has been made available to members).

Mr. Ludewig enquires about EU influence below the thresholds. He would like to have information on the impact of this influence. He recalls that the political objective is to ensure that competition works in this area. The HLG has to see whether these objectives

are met with the rules in place. He also joins Mr. Hontelez that stakeholders should be involved.

Mr. Gibbons agrees with the general direction of the discussion. He sees no difference between a private and a public purchaser insofar as both require value for money. In general, procurement rules are too complicated. He supports the various elements presented by DG MARKT. It is important to add that purchasing procedures should be streamlined.

Mr. Illy thinks that the opinion is well prepared. He underlines in particular the only once principle. He suggests linking the thresholds to de minimis rules on support for enterprises.

The chair adds that SMEs would like thresholds simply to disappear.

Mr. Nootboom, DG MARKT, gives information on a series of questions raised during the discussion:

He informs members that SMEs win 64 % of contracts offered under European contracts (while in the US the quota was only 50 % despite a preferential system), and that this would amount to 42 % of the value of the contracts. All contracts are published on the respective website (800-1,000 per day). On average there were 5 bids per tender; in general, the price would tend to be lower with a higher number of bidders involved. Concerning cross-border tenders, only 3 % of the contracts were awarded to companies based exclusively in another Member State; however, 30 % of the contracts were awarded to companies based in another Member State, which have a branch in the respective Member State.

Furthermore, he points out that the Commission's communication on public procurement issues below the thresholds referred to the three main principles from the EC Treaty that still applied (fair competition, non-discrimination, transparency). The Communication elaborates these principles, but does not impose any obligations.

The chair thanks Mr. Nootboom for the answers. He states that SMEs are nevertheless not in favour of these rules.

Mr. Telicka refers to timing issues. He furthermore underlines that the increase of thresholds is not necessarily good or bad and that different experiences in the Member States had to be taken into account. It is important to ask the Commission to explore and assess, not to propose new thresholds without having assessed the consequences.

Mr. Linschoten reiterates his personal opinion that it would be best to abolish the European procurement rules. Nevertheless, he sees the draft as a good compromise.

The draft opinion is adopted unanimously after paragraphs 14, 17 and 21 have been adapted (members have been provided with the final version).

4) General debate

The chair introduces the subject by referring to the various issues raised in his working document. He underlines that the aim of the discussion is not to come to firm conclusions but to continue to shape the views of the group on important issues.

Mr. Berger is of the view that recommendations need to be more detailed and also more pragmatic. The HLG should find a way to ensure the implementation of suggestions. The group should brainstorm on this issue. He would also like the HLG to define a few (more) areas of interest. He advocates a net target as the only way to achieve real reductions. This would mean a closer cooperation between the Impact Assessment Board and the HLG. He furthermore is of the view that the HLG's communication needs to be beefed up. The HLG needs to raise awareness in Member States (other than Germany). He also wishes to involve stakeholders. In referring to Mr. Potdevin's view that increased use of IT could help he adds that processes need to be looked at first, means have to be found for streamlined processes. The HLG should ask for a sort of compliance system as regards administrative burden reduction. In addition, the HLG should get an influence on how the Consortium works.

The chair notes that these suggestions are ambitious, but that first the HLG will have to fulfil its role within the mandate.

Ms. Fritsch advocates the extension of the Action Programme to include all legislative acts within the priority areas reviewed, beyond the few selected legislative acts. From the selected acts it was not possible to conclude on administrative burdens in acts not covered. In particular, she refers to the Working Time Directive. Some of the priority areas are also not well-defined and they should be integrated into each other. Customs should be included in the Programme. Measurements need to be harmonised in view of variations of the Standard Cost Model being used. A net target is needed to stop the inflation of administrative burdens. Impact assessments should be used for each new piece of legislation. After some time of implementation, administrative burden reduction measures should be reviewed. As regards the cooperation of the Impact Assessment Board and the HLG, she doubts that there is a real cooperation at the moment. HLG opinions should make clear that it is expected that administrative burden issues are addressed in the later process. On the issue of fast track procedures she is of the view that Member States need to be involved as much as stakeholders. The HLG should deal with all suggestions received from stakeholders. She is of the view that the extension of the work to include administrative burden reduction work to citizens should not be done by this HLG.

The chair shares the view that public debate is needed, in particular within the Member States, eventually including MEPs.

Mr. Murray points out that work will be difficult because the reports are not yet finalised. He does not worry too much about the figures as long as the order of magnitude is right. On the net target he states that nobody is able to state how much administrative burden is unnecessary. It is therefore not possible to say whether the 25% need to be adjusted and in which direction. A net reduction is not useful because if burden is unnecessary it should be done away with in any case whilst necessary new burden, i.e. new political initiatives could not wait till something else has been reduced. He worries about too much influence of industry. He advocates, also in relation to public procurement, not to forget the internal market issue and the need to reduce the tendency of national and regional authorities of local protectionism. As regards the extension, he is in general in favour. As regards

interplay between the Impact Assessment Board and HLG, he thinks that both have different tasks.

The chair recalls that the discussion should focus on the central issues. The HLG has an important albeit simple economic task in relation to the reduction target of 25%. Behind that lies the idea that there is in general too much bureaucracy. He underlines again the need to do something for the SMEs and refers to the fact that the smaller the undertaking the bigger the relative administrative burden. The HLG has to focus on smaller undertakings, in particular concerning the areas taxation, employment and statistics. All discussions beyond that will not help the HLG to achieve its goal.

Mr. Hontelez points out that reduction of administrative burdens is not an end in itself but a means to an end. In this context, the discussion of a net target would mean tying the hands of the Commission. It was necessary to look at each piece of legislation, old and new, on its own merit. He underlines again that he is concerned that the reports are not finalised and published. The final summary of the report must include all priority areas.

Mr. Teli•ka agrees with the chair that the HLG cannot deal with all the issues discussed. Many reports came too late, but the HLG has to base itself on them as they are. The group will also have to follow up its suggestions through the legislative process; in his view the whole work should be fast track. As regards the net target he also sees certain difficulties.

The chair recalls that it is the Commission which is addressing the issue and he praises these efforts, in particular from President Barroso and Vice-President Verheugen. It is essential what the HLG makes out of its mandate. He also recalls the fact that the Commission is firmly opposed to a net target. The group's success is, however, shown by the fact that the economic recovery package of the Commission integrates two main suggestions made by the group.

Mr. Ludewig recalls that all governments have a tendency to justify their activities rather than criticising them. Many people think that laws are not drafted well enough. The HLG has to show that there are positive results from this exercise. The politicians fix the objectives and it is the HLG's job to question whether the way to achieve these objectives is the right way. How can legislation be improved (ex ante and ex post)? The HLG should look into as many reduction suggestions as possible. He underlines the need to concentrate the work in one body. He also supports the publication of the reports. With regard to the results of the measurement, the order of magnitude was particularly important. Companies have to get the feeling that something has changed, and in this respect irritants were very important. From 10,000 information obligations in Germany only 750 were substantial as regards time needed to comply with them. The huge figures of individual information obligations would often relate to a big case number.

Mr. Potdevin shares the view of the chair that VAT, employment and statistics are the most important areas. VAT is important, because it represents most of the receipts of the state, employment, since the agreement of the social partners was necessary and statistics, because it concerns everybody.

Mr. Mollerup is of the view that regulation should be construed to benefit the majority of the enterprises. The 25 % target was important, since experience in the Member States showed that what gets measured, gets done. He stressed that the HLG would not achieve

its target by focusing on VAT alone. An essential issue is the inter-institutional cooperation with a view to reducing administrative burdens.

Mr. Linschoten states that the crucial issue was that there is no agenda for administrative burden whilst there is an agenda for every individual problem. He acknowledges that the 25% target was set at will, but without a target there would be no achievements at all. Administrative burden reduction needs the right management tools. Measurement is one of these tools and results need to be public. The offline suggestions show that there are administrative burdens beyond the 13 priority areas. The work of the Impact Assessment Board in the Commission is too dependent on the persons involved at the moment, and the positive results that are achieved at the moment cannot be guaranteed in the future.

In Mr. Gibbons' view looking only at the stock and then adding many new burdens with the flow would destroy credibility. Thus, he believes the current focus of the HLG could be expanded in the future. Most regulations have been put in place in the past without a look at cost issues. As most politicians come to Brussels to regulate, a body like the HLG is useful to check that administrative burdens are not forgotten. He advocates a net target, although chances of an adoption were very slim indeed. The HLG's work and the work of the Impact Assessment Board should be aligned. He underlines that while it was always right to minimise administrative burdens, it was not always right to choose the option with the least administrative burdens, as this solution might not always be the most efficient overall. This was a problem for the work of the HLG and its limited mandate. As regards the need for fast track procedures, the HLG has to follow up on its suggestions. An inter-institutional agreement is needed to speed up simplification.

Mr. Murray clarifies that he agrees with Mr. Ludewig on the target to reduce administrative burdens. He is, however, opposed to a commitment by the EU that the EU could not increase administrative burdens without reducing burdens elsewhere at the same time.

Mr. Illy reports on his fruitless contacts with both national Italian newspapers and the industry association to show that the interest in the subject is limited; public opinion was at the most indifferent. He is of the view that contacts between the HLG, the Commission and the Consortium could be improved. The HLG's work could be better aligned with the Commission's Working Programme for 2009. He thanks the chair for having revived his idea of the decalogue for better regulation. This was one way of advocating permanent results and inspiring action of the EP, the Commission and the Council in the future. It would be good to have a comprehensive paper which includes the already existing principles such as the one-stop-shop, the only-once principle etc.

Ms. Klingbeil refers to the discussion between the chair and President Barroso. The Commission has established the HLG and the Impact Assessment Board; the Commission has and will continue to have a high interest in their good functioning. The President himself has selected the members of the Impact Assessment Board, and is interested in keeping up the board's independence. She recalls that impact assessment is much more than calculating administrative burden. She insists further that a net target would mean limiting the political margin of the Commission.

The chair thanks Ms Klingbeil for these clarifications and underlines that he sees the work of the Impact Assessment Board very positive. However, he was concerned that the quality of its work is too dependent on its current members. He underlines that he has full

trust in Mr. Italianer and his colleagues. Nevertheless, the actual structure would not guarantee independence if current members were to leave, and he insinuates that the future structure could involve independent members. As regards net target he suggests that transparency and clear and systematic presentation of the costs related to administrative burdens in all significant proposals adopted by the Commission would already to a large extent do the trick without formalising the net effect of the work.

Upon request by the chair Ms. Pons confirms discussions on the extension of the scope of the Action Programme both beyond the 41 acts and the 13 priority areas.

5) Reports and outlook

Mr. Philippart, programme manager, reports that a third round of extrapolation will be finalised by January 2009. The ranking of areas had already changed after the second round of extrapolation; the Commission had received positive feedback on the new data. The Commission will publish the reports once they have been agreed upon. The work on the reduction recommendations had already started. Nevertheless, services needed to look at these ideas first. Thus, the work could not be finalised before the HLG's January meeting. However, it should be available for the March meeting. The Commission intends to put the reports and the database in the public domain in spring 2009.

Upon request by the chair Mr. Philippart clarifies that the third round refers to the acts already within the scope of the Action programme. As regards the proposed extension to further legislative acts, the quantification will be done faster and more efficiently, because the work will be based on the results of the measurements already undertaken. Mr. Philippart informs further that the reports already included information on the most irritating information obligations, and that these data would be taken into account when discussing reduction recommendations.

The chair thanks for this clarification and insists on the importance of helping SMEs. He notes with interest that according to the consortium the cost of gold-plating is actually rather low. He furthermore mentions that some countries (Spain, Italy and France) seem to have rather high costs compared to others (UK and Germany).

Mr. Philippart explains that the Commission is verifying and checking the figures, in particular regarding gold-plating. In addition, the Commission has hired an independent think tank in order to evaluate the initial assumption that the legislation selected for measurement in the 13 priority areas actually accounts for 80 % of the administrative burdens of EU origin.

6) AOB

The chair informs members that the April and July meetings will last two days in view of the time table and the amount of work still to be done.

He wishes all the members and their families all the best for Christmas and the New Year.

Adopted by the HLG in Brussels on 20 January 2009