Dissenting Opinion

This is a dissenting opinion from four members of the HLG with a background in advocacy for workers, for public health, for the environment and for consumers.

We fully support the importance of a constant effort to reduce burdens on business that are unnecessary, outdated, or more burdensome than is necessary to achieve their underlying purpose, and we have worked closely with our colleagues within the group to identify such burdens. A large number of opinions were approved unanimously, or very nearly unanimously, over the years.

A number of recommendations in the Final Report of the Group however go further and have a clear deregulatory purpose, which we oppose. These particular recommendations were among the most contentious issues discussed in the Group over many years and never achieved unanimous support.

Any attempt to review administrative burdens must start with an understanding of why there are administrative burdens in the first place. The Report acknowledges but in a passing way the need for EU laws to build the internal market but in general the report seems to us to take an unrelievedly negative and therefore unbalanced view of regulation and associated administrative burdens.

Food labelling, instructions for using medicines, environmental labelling, obligations to disclose the cost of financial services or to inform workers of their rights are all "administrative burdens" within the meaning of the task given to the group, but there is little acknowledgement in the Report of the positive aspects of such "burdens".

The Report accepts that a common market needs common standards and that "*in many instances, EU legislation harmonizes or replaces different rules in each of the 28 Member States, making national markets mutually and equally accessible and reducing administrative costs overall to realize a fully functional internal market..*" This is a key point that needs further stress. Common rules can decrease the burden for business operating in different Member States.

Administrative burdens can affect different businesses in different ways. For some companies, a particular administrative "burden" is a "passport" to the single market enabling them to market their goods or services in another member state. For those for whom operating cross border is not a realistic option, they may see only a burden without a corresponding benefit. Inevitably, the latter group will tend to be the more vociferous on the subject.

Building the common market is however only one of a number of legitimate reasons for the EU to regulate.

In the following comments on the final recommendations we consider each recommendation together with its corresponding explanatory note.

Recommendations 1 and 2

We strongly oppose the recommendations to set a net target for reducing regulatory costs or to offset new burdens by removing existing ones – also called "one in one out" in its extreme form. If an existing burden is unnecessary, out-dated or useless it should be removed or replaced. If it is still serving a useful purpose it should not be removed, merely because there is a new and necessary proposal in another area.

Targets to reduce the overall regulatory costs of existing measures are even more problematic. Setting an arbitrary limit is shortsighted as it unnecessarily reduces the range of tools available for addressing new as well as unresolved problems. It is not possible to decide in advance, and without supporting evidence, what proportion of burdens might be found on examination to be worth removing. In certain areas, too, pre-set targets would directly and diametrically contradict the 'polluters pays principle', which requires external costs to be internalized by a polluter and therefore by definition increases regulatory costs.

It is wrong also to focus on the costs of an EU measure without taking full account of the benefits in social or other terms, and including the fact that it may replace up to 28 different national measures.

Recommendation 3

We oppose the recommendation that the Commission should release draft impact assessments (and draft texts) for public consultation before submitting a proposal to the co-legislators. Although this proposal may seem to improve transparency, an additional consultation step on draft impact assessments and draft texts risks delaying the decision making process and leading to a situation of 'paralysis by analysis'. Commission Proposals that will go through a co-decision process will be subject to sufficient public scrutiny. However, Commission proposals that will not go through the normal co-decision process and that will remain unavailable to the public, such as mandates for trade negotiations, would benefit from improved transparency in the preparation stage.

There is of course room for improvement in the process of public consultation on EU policy making. One problem is that stakeholders rarely see in good time the arguments and submissions made by other stakeholders. We propose that all submissions on matters of public policy made to the Commission (and other institutions) should be published immediately, subject to limited and narrowly defined exceptions for reasons of personal privacy and genuine commercial confidentiality.

Recommendation 4

All legislative proposals should take proper account of the enormous economic and social importance of SMEs but a stress on exemption first for such a significant proportion of the EU economy is the wrong approach, and would deprive policy making of much of its effectiveness. Furthermore, exemptions, of any sector, leave the field free to member states to legislate at national level and may facilitate protectionist tendencies, as experience has shown, given the absence of EU law in the area in question. For those SMEs relieved by a particular exemption there will be others who find it operates to exclude them from cross-border markets. Finally, the

widespread existing use of exemptions and exceptions under EU legislation is itself a major contributing factor to regulatory complexity.

We also question the proposal to strengthen the "competitiveness test" of EU legislation. Competitiveness is already, and rightly, one of the many factors to be taken into account when considering legislation, but it is for political decision makers to decide how much relative weight to assign to one factor rather than another. We consider the proposal to strengthen the competitiveness test, put forward here without supporting evidence, to be a political, or politicised, proposition that falls outside the remit of the HLG and should not have been included in the report.

Recommendation 7

The proposal, in the annotation, that the Commission must place greater emphasis on alternatives to regulation is a political value-judgement. Furthermore, it takes little account of the evidence that alternatives to regulation are often a failure when applied to up to 28 different member states with widely varying legal and institutional systems and traditions.

Taken as a whole the recommendation has little substance, except perhaps as an implied criticism, without supporting evidence, that the EU institutions do not focus on the more important issues.

Recommendation 8

We oppose the proposal to establish a new body to scrutinise the impact assessments of the Commission's proposals, and to "assess the evidence base for and the costs and benefits of" amendments proposed by the Council and Parliament. Even apart from fundamental questions of governance, composition, selection of members and legitimacy that are not answered here, there is a significant risk that such a body would be cumbersome, unworkable, provide no added value and even in a worst case scenario become a source of additional administrative burden.

Recommendation 9

We also oppose the proposal to set up yet another new institution such as an ombudsman to deal with complaints about "red tape" – and nor should such a function be added to the tasks of the existing Ombudsman. From our experience in this group, the complaints that arrived during the various consultations, 'offline and online', were often of a highly technical nature, not necessarily related to an EU rule or even requiring EU action to be resolved. They could be processed and addressed through existing systems of policy evaluation and at any rate in a less formal manner than setting up a new institution.

Other Points

The experience of national institutions at national level is often cited in support of a number of recommendations that we oppose. We cannot accept the implied claims that what works or does not work in certain Member States should or could simply be replicated in the specific institutional and decision-making structure of the EU.

We do not oppose the other recommendations, apart from those mentioned above but would comment as follows:

> While we accept the thrust of Recommendation 5 (improving measurement and evaluation of existing laws) the recommendation is so extensive and wide-ranging that it would potentially require an army of consultants, public servants and other resources.
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> We agree with Recommendation 6 that the Commission should do more to (try to) improve public understanding of the EU in all its dimensions but this is not the task only of the Commission, which is too often scapegoated by Member States and other institutions. Member States in particular must do much more to foster public understanding and support for the work of the EU and to counteract prejudices that damage the perception of the EU institutions and their activities.
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> If laws are to be made they should of course be made as quickly as possible, as urged in Recommendation 10, but the recommendation rightly notes that consultation and the democratic process should not be sacrificed to speed. Some practices to speed up decision-making, such as premature informal trilogues behind closed doors, are not the models to follow here.
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> We agree with Recommendation 11 that member states should make it clear which part of implementing measures go beyond the requirements of EU legislation, but the use of the term "gold-plating" is pejorative.
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> As for member states setting targets, our remarks on targets at EU level apply also to targets at national level.

Monika Kosinska

Jim Murray

Heidi Rønne Møller

Nina Renshaw, who did not participate in the meeting of the HLG on 24 July 2014, fully supports the dissenting opinion of Jim Murray, Monika Kosinska and Heidi Rønne Møller.