



POSITION PAPER OF THE EUROPEAN FEDERATION OF BUILDING AND WOODWORKERS

On the findings of the *Stoiber Committee* on the Action Programme for reducing Administrative Burdens in the European Union, COM(2007) 23 final

INTRODUCTION:

The EUROPEAN FEDERATION OF BUILDING AND WOODWORKERS (EFBWW) has been following the activities of the High-Level Group (HLG) relating to industrial relations and occupational health and safety with interest and growing concern. We consider that European policy on occupational health and safety makes an important contribution to the basic right of European citizens whereby their health should not be violated at work. We are therefore dismayed at the inadmissible manner in which the HLG has conducted its evaluation and calculations.

What seems even worse to us, however, is the tendency for the European Commission to uncritically accept these inadmissible aspects and to incorporate them in its policy on cutting red tape and/or “better” legislation. In this way, the EU would be putting the axe to one of its most successful social policy pillars, occupational health and safety.

In order to prevent this from happening, the EFBWW has drafted the following position paper to contribute input for the critical discussion of the HLG's findings.

1 SUMMARY ASSESSMENT

(1) The EFBWW like to remind that the “Community strategy 2007 – 2012 on health and safety at work” (COM[2007]62) is stressing that better regulation by no means shall lead to diminishing of the level of protection

(2) The High Level Groups proposals to introduce exemptions for the directives relating to occupational health and safety must be rejected categorically. The proposed exemptions would in our view be a flagrant violation of the European Treaties considering that the protection of the citizen at work and the endeavour to attain a high standard of social security are regarded as binding objectives and minimum conditions.

(3) In our capacity as the European organisation representing workers in construction and woodworking, we would point out that going along with this proposal would lead to the virtual collapse of occupational health and safety in broad swathes of our sector.

(4) The methods employed by the HLG and the findings stemming from them must be rejected as inadequate and unscientific. For this reason also the proposals formulated on this basis for applying exemptions to occupational health and safety provisions must be rejected as being unsubstantiated. The judgments and findings of the HLG appear to be motivated more by ideological than scientific reasons.

(5) As a precaution, the European Commission must be warned against being tempted to accept the HLG proposals. The Commission Communication of 22 October 2009 gives cause for such fears. In this document, the Commission adheres to the approach of creating exemptions in the sphere of occupational health and safety directives¹, even though the HLG proposals ought to have been rejected once the position of the *European Trade Union Confederation*² and of the *Directorate-General for Employment*³ had been presented.

(6) This attitude by the Commission fills us with great concern and is to be criticised. While the Commission in its Communication makes the qualifying remark that the HLG proposals encountered vigorous opposition from the trade unions and discussions had to take place in the Advisory Committee, from our viewpoint this qualification is not sufficient. To be correct, the Communication on the action programme would have set out the points of criticism and designated these as valid criticisms.

2 PROPOSALS BY THE HIGH-LEVEL GROUP FALL SHORT OF THE REMIT

(7) The High-Level Group, in its eagerness, evidently did not pay due attention to checking the remit given to it by the action programme. Neither the risk assessment document referred to in Article 9 of the health and safety at work directive, nor the prior notice referred to in Article 3 (§3) of the construction sites directive, nor the health and safety plan referred to in Article 3 (§2) of the construction sites directive, nor the file listing the characteristics of the project referred to in Article 5 c) of the construction sites directive, are covered by the remit assigned by the action programme. These documents are neither Information Obligations nor "unnecessary administrative burdens" in the meaning of the action programme.

¹ **Commission Communication of 22 October 2009**, Communication from Commission to the Council and the European Parliament on costs in the EU, sectoral plans and 2009 actions, Commission of the European Communities, Brussels, 22 October 2009, COM(2009) 544 final

² **Comments of the Workers Group** on the HLG Draft Opinion relative to the Working Environment, 05.11.2009

³ *a) DG EMPL comments on 13 recommendations of Module 5-2 (received on 25 February 2009) concerning the priority area working environment included in the short-list*
b) DG Empl. Observations, Observations DG Empl. on Modules 3 & 4, 5 MARCH 2009

3 NO EXEMPTIONS FROM THE OBLIGATIONS LAID DOWN IN THE DIRECTIVES

(8) We denounce in the harshest terms any proposal to apply exemptions to certain occupational health and safety obligations or exempt certain categories of undertakings from such obligations. The exemptions would lead to a higher incidence of accidents and higher risk of diseases, not only adding to human suffering but also increasing the resulting costs.

(9) The distinction between the level of risk for different sizes of the firm is totally absurd. In the first place, firms of different sizes are generally working on the construction sites in any particular place and in cooperation with one another. Secondly, the risk in small firms is by no means lower (as proven a thousandfold in the statistics). Thirdly, such a distinction would in practice create different categories of workers -- severely violating the fundamental right of every person to physical integrity.

(10) Exemptions from the obligations would incur higher costs which would have to be borne by the firms and by the member states. Any serious comparison of the "*savings*" made would take these new costs into account. The HLG has clearly failed to do so. It has also failed to give any thought to the costs associated with introducing this so-called "*Simplification by better Regulation*".⁴

(11) The proposed exemptions from the documentation obligations referred to in Directive 89/391 give particular cause for criticism. In this case the High-Level Group goes about its business in an especially brutal fashion. Accordingly, it proposes, of all things, that the Commission "*exempt very small firms*". This measure would not only affect -- as the HLG would have us believe -- a small proportion of the workforce, but in fact well over half the workers of Europe. The implementation of this proposal would actually concern 80% of all European firms, as so-called micro enterprises (= firms with fewer than 10 workers) in Europe.⁵ The overwhelming majority of all workers in Europe would be discriminated against with this proposal and only a small minority of workers would benefit from full cover by the European health and safety at work directives.

(12) Workers in the construction industry would be particularly hard hit by the proposed exemption rules. According to the latest figures, 39.1% of all fatal accidents due to falls occur in enterprises with fewer than 10 workers. As many as 36% of all fatal accidents due to falls are in the construction sector. The health risks in this industry are also particularly high.⁶

(13) Were the proposed exemptions to go through, in our view this would constitute a flagrant violation of the European Treaties as the protection of the citizen at work and the endeavour to attain a high standard of social security are regarded as binding objectives. And indeed this is considered a basic right of the individual worker and not dependent on the size of the enterprise or a presumed difference in the level of risk.

⁴ This finding has already been made by the Directorate-General for Employment: *DG Empl. Observations, Observations DG Empl. On Modules 3 & 4, 5 MARCH 2009*

⁵ *Eurostat Database*, supplemented by OECD Economic Outlook

⁶ *Causes and circumstances of accidents at work in the EU*, European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, F4 unit, Manuscript completed in November 2008", page 38

(14) In our capacity as the European organisation representing workers in construction and woodworking, we would point out that implementing this proposal would lead to a virtual collapse of occupational health and safety provisions in broad swathes of our sector.

4 METHODS OF THE HIGH-LEVEL GROUP: UNSCIENTIFIC AND LACKING ALL CREDIBILITY

(15) The HLG is using data from too small a sample of countries (six), which are, moreover, unrepresentative, and then extrapolates the data obtained in this manner to all the 27 member states.⁷ This procedure is seriously flawed, as it ignores the fact that member states have a wide scope for discretion when implementing European directives at national level, which they apply according to national circumstances. Extrapolations distort the results. The survey would therefore need to be conducted again using different methods and separate calculations made in all member states.

(16) Already the striking change in orders of magnitude between the individual reports gives rise to doubts about the reliability of the figures referred to by the High-Level Group. For instance, between the last and the previous report by the High-Level Group, the relative share of the administrative burdens associated with the methods of raising turnover tax is for no apparent reason reduced from the previous figure of €106 billion to a current figure of €80 billion. This "trick" has the effect of pushing up the relative share of the other types of burden, such as occupational health and safety.

(17) Moreover, we find it questionable that savings should be sought of all places in the area of occupational health and safety, given that other policy areas make up around 97% of all administrative burdens, while occupational health and safety represents a mere 3%. In view of this wide gap between the actual proportions it would have made much more sense for an impartial "critic of red tape" to look for ways of making savings in the major cost categories rather than, of all places, in an area which represents an almost invisible proportion of overall costs.

(18) We share the opinion, furthermore, of the DG Employment when it says that anyone examining EU legislation on occupational health and safety with a view to simplifying and reducing the administrative costs must take into account the efforts made in recent times, particularly in the sphere of working conditions. Examples given are the Directives from the year 2007, namely Directive 2007/30/EC amending Directive 89/391/EEC as well as Directives 83/477/EEC, 91/383/EEC, 92/29/EEC and 94/33/EC. These Directives were adopted with the aim of reducing the amount of reporting by the member states. From a previous figure of 500 national reports, in future only 27 will still be required.⁸ Why has the HLG made no reference to this whatsoever?

⁷ *DG Empl. Observations, Observations DG Empl. On Modules 3 & 4, 5 MARCH 2009*

⁸ *DG Empl. Observations, Observations DG Empl. On Modules 3 & 4, 5 MARCH 2009*

5 APPEAL TO THE EUROPEAN COMMISSION

(19) We are calling on the European Commission not to dismantle existing occupational health and safety provisions in Europe, or to allow the member states to take such action. It must not be allowed to create or make provision for exemption rules in EU directives in this area, either for particular categories of risk or particular categories of firm. The EU directives on occupational health and safety must remain minimum requirements.

(20) It remains beyond dispute that the overwhelming majority of the workforce is working in small and medium-sized enterprises. And the fact is that health and safety risks are particularly high in this category of enterprise. No exemptions can therefore be allowed in this type of firm in particular, rather health and safety measures must be applied resolutely. For this purpose, small firms need specific support. The proposed exemptions contribute precisely nothing to this aim. They would bring about the virtual destruction of the whole edifice of protection provided by the European directives on health and safety at work.