



Environmental Audit Committee

Oral evidence: [Action on air quality](#), HC 212

Thursday 17 July 2014

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Members present: Joan Walley (Chair), Peter Aldous, Mark Lazarowicz, Dr Matthew Offord, Dr Alan Whitehead.

Questions 88–99

Witness: **Marco Gasparinetti**, Principal Lawyer, Directorate-General for the Environment, European Commission, gave evidence.

Q88 Chair: I will simply say order order, which means that our proceedings are now officially underway. I would like to thank you, Marco Gasparinetti, for your presence. We only now have a short space of time but we believe that our inquiry into air quality is a really important one. My colleagues here have a number of focused questions and we need to leave very shortly after 12.00 pm.

Can I start by asking you what you see as the role of the European Commission in achieving good air quality and why is this something that should not be left to Member States?

Marco Gasparinetti: First, it is our job to make proposals to the Council where Member States are represented and to the European Parliament to set the right limit values, based on WHO recommendations and the serious impact assessment, because we promised we will always carry out an impact assessment of whatever we propose.

As regards air quality, limit values were agreed unanimously by Member States in 1999, and the UK was a Member State at the time. The membership was not the current 28, but those Member States that voted in 1999 gave unanimous support to these limit values, which were reviewed in 2005, as you know, and the directive I drafted and negotiated at that time just confirmed the limit values and introduced some flexibility that was requested by Member States in order to have some extra time in order to comply with the new requirements. So, first, the role of the Commission is to set the limit values for the benefit of European citizens, because we are talking about human health, and to ensure that those limits are compliant with the WHO recommendations, scientific evidence and also subject to the impact assessment that is made whenever we make a proposal. The final say is always with the Member States. There is no proposal for a directive that can come into force without a vote in the Council. In this specific case, the vote was unanimous. If you

talk about the limit values for the protection of human health, be it related to NO₂ or PM₁₀, there was unanimous support.

Then, being a directive, the implementation is left to the Member States. Every Member State has its own way of dealing with that and for sure we are not telling Member States what they should be doing city by city, agglomeration by agglomeration. They know what to do. Honestly, I think this applies also to the UK. I have absolutely no reason to believe that the UK's own expertise is less than sufficient to address the problem. There has to be, of course, the political will to take the measures because traffic affects mobility. Mobility is about the individual choice of taking a car rather than walking or taking a bike or using public transport and this is, by definition, a political choice to be made in each and every place according to the local circumstances. It is a case-by-case assessment.

On implementation, we try to have a very light touch. We do propose legislation, and if Member States agree, this legislation is compulsory in every single Member State, and implementing it is primarily the responsibility of Member States. We only step in if, for any reason, the basic or main obligations of the directive are not complied with. By definition, the main obligation of this directive is to comply with those limit values that have been laid down for protecting human life.

Q89 Chair: How successful do you feel the current EU strategy is and what barriers do you think there are to future progress?

Marco Gasparinetti: I think we have been successful on certain pollutants. I know the attention of the UK now is focused mainly on NO₂, but we did learn a lot from the UK experience on SO₂. The first Clean Air Act in Europe was made in the UK and on SO₂ we learned from your experience. We were able to achieve huge reductions, and it is not an issue anymore, with one exception that is Bulgaria. For the rest, we have 27 Member States fully complying with SO₂ limit values in all the zones and agglomerations. There are other limit values that are also complied with, carbon monoxide for instance and benzene. There are also limit values that are very similar and no Member State has had any problem in complying with them.

On NO₂ there is an issue for sure because we started to stick to the recommended values of the World Health Organisation, which is not the case for PM₁₀. On PM₁₀ we are lagging behind the US and we are lagging behind Japan and our current limit values are less demanding. That might explain why we really feel they can be achieved before 2020. For NO₂, having decided, together with the Member States, that we stick to WHO recommended values, we know that in big agglomerations such as London and Paris there is still a problem. But we would say that NO₂ is the exception rather than being the rule. So, globally speaking the new policy on air quality did deliver good results already.

Chair: I am very conscious that we have time constraints because of the late start. I am going to come straight to my colleague Mark Lazarowicz to ask some detailed questions about the current legal action.

Q90 Mark Lazarowicz: First of all, Mr Gasparinetti, can I say that the sound quality is not very good at this end, so if you have answered my question, or part of it, beforehand, my apologies. I may not have heard everything that you have said, so my apologies if that is the

case. My question is: what was the rationale behind the Commission's decision to start a legal action against the UK for breaches of nitrogen dioxide limits?

Marco Gasparinetti: I am delighted to reply. We did take the UK first but we are by no means going to single out the UK because all of the other Member States in the same situation have received rather similar letters. Let me be clear that it was not only the UK. The rationale was that there was a judgment of your own Supreme Court and we had complaints. We are under the obligation to investigate complaints. Whenever a citizen, or a global citizen, lodges a complaint with the European Commission we have a duty to investigate the complaint. The other reason why the UK was the first Member State to receive such a letter was the judgment of your own Supreme Court. When there is a ruling of such an important court as the Supreme Court, we cannot disregard it. In fact, your own Supreme Court declared there was a breach of EU law.

As to my personal views about that, having read also the judgment of the Court of Appeal, in a sense we had the feeling that the UK Government wanted the Commission to do something because clearly according to the Court of Appeal ruling, it was the Commission's job and people should not bother the UK courts. We think that the national courts are also entitled to implement EU law and actually they can do this job much better than anybody else because they can collect evidence on the ground, they are close to the place where facts occur. But clearly when we have a ruling of the Supreme Court saying there is a breach of EU law, it is our duty to step in and there was absolutely no alternative. If we had not done it, we would certainly be criticised and also possibly liable for not taking action.

Q91 Mark Lazarowicz: Can I be clear? I am sure you are more familiar with our Supreme Court's judgment than I am, but did our Supreme Court effectively urge or invite or suggest that the Commission should take infraction proceedings?

Marco Gasparinetti: No. This was more the case in the proceedings before the Court of Appeal where the defence of the UK Government seemed to be, "Let the Commission do it. This is not an issue for the UK courts". This is my recollection of the case, having read the ruling of the Court of Appeal. At the end of the process, the Supreme Court took a different view and it requested that the European Court of Justice deliver a preliminary ruling. I was physically there last week, on 10 July, at the hearing at the EU Court of Justice in Luxemburg. The UK Government presented its views; we presented our views. The hearings were public, I can report to you, if you are interested, about the findings or the debate we had because they are public, unlike the observations made by the parties, which are confidential, but the hearings themselves are public, so if you interested in some of the discussions we had, I am certainly glad to report them.

There is one point I would like to make. We are definitely taking the same approach with all Member States wherever there is a breach of limit values for the protection of human health. We did start infringement procedures for PM10. There are 17 cases ongoing. The UK is not concerned but there are 17 Member States who got another formal notice and then a recent opinion and they are not surprised about it. They signed up to this directive in 1999. The limit values have been known since 1999 and there is no surprise to Member States if we start infringement proceedings. This is our duty under the treaty. NO2 is not an exception.

Q92 Mark Lazarowicz: That leads me on to the next part of my question, which is in relation to the other Member States that are being taken to court by the Commission. Just to be clear, how many are currently being taken to the ECJ by the Commission? How many have legal proceedings started?

Marco Gasparinetti: The best way to discuss the process is as follows. If you consider that there are four questions raised by your own Supreme Court to the European Court of Justice, we will not go to court until we get an answer on those four questions. Basically, as you know, we started with a letter of formal notice and that is where we are with the UK. We got a reply from the UK Government and accepted that there would be a reasoned opinion, and it is only after the opinion that we would lodge an application to court. We pay the utmost respect to the courts and there are four preliminary questions raised by the UK Supreme Court. We expect the ruling of the European Court of Justice in October or November and it is only after that ruling, which may clarify certain aspects of the directive, that we may lodge an application to court against the UK or any other Member State concerning NO₂. Therefore, there is no application to the court for the time being against any Member State, there are no penalties for tomorrow morning; there is nothing like that. We are at the stage where we give every Member State a chance to present their views. The letter of formal notice just triggers the right of defence; the Member State is invited to make its own observation, that is what happened. The next stage will be a reasoned opinion and it is only after that opinion that we will go to court.

There are 17 Member States in this situation for NO₂ and there are 17 Member States in this situation for PM₁₀, one Member State for SO₂ and no Member State for any other pollutant. If I may elaborate on that, the reason might be that SO₂ mainly comes from stationary resources that are easier to control. You are familiar with that in the UK; this is mainly about stationary resources. NO₂ is mainly the result of transport emissions where you have millions of vehicles, cars, cabs, buses, heavy duties, and this application is more difficult to address. That may explain the reason why NO₂ is rated more highly.

Q93 Mark Lazarowicz: Again, just to be clear, are any of the proceedings against the other Member States on air quality issues further advanced than the position with regard to the action against the UK?

Marco Gasparinetti: Again, if we speak about PM₁₀, we already have four court rulings and there are 17 Member States at a further stage of procedure, which might be, depending on the case, a reasoned opinion or other steps, depending on the Member State. The UK is not concerned again. What we did for PM₁₀, which has the very same legal status as the NO₂ requirement, will be done for NO₂. There is equality of treatment. There is no reason to think that we will proceed in a different way. Both limit values have been established for the protection of human health with the very same piece of legislation agreed by Member States and we will enforce both. This is our duty. What we did for PM₁₀ will be done for NO₂. There are 17 Member States concerned with NO₂; these are not the same as for PM₁₀. SO₂ is the UK's concern only but for NO₂ there are Member States where there are two different proceedings, one for PM₁₀ and one for NO₂, which is worse for the citizens concerned when they are exposed to the levels of pollution that exceed the limit values.

Q94 Mark Lazarowicz: Changing the subject a little, it has been suggested that the EU is partly to blame itself for the rise in NO₂ emissions because of a failure of current vehicle

standards tests to measure emissions in the real world. To what extent has a past emphasis on diesel vehicles to combat greenhouse gas emissions actually contributed to the problem in the first place?

Marco Gasparinetti: Absolutely. That is a very fair point and we fully take part of the blame, if I may say, concerning diesel passenger cars. It is a part of the problem because when the Euro 5 standards were laid down, they were done in the traditional way. Now, think of the road traffic in the UK 50 years ago. When you were driving your car, it was a pleasure, at cruise speed cars do not emit as much as they do in a congested area. When you are driving in a typical agglomeration nowadays with millions of vehicles in the streets, it is stop and go, stop and go, stop and go, and the very same cars will emit much more than they would on the motorway at cruise speed when you drive on holidays and you are not in the middle of a traffic jam. In September this year already we are fixing the problem whereby Euro 6, which is the new standard, will reflect the real traffic conditions. Of course, the real traffic conditions depend on the congestion.

So we take the blame but Member States should also understand that part of the problem is the mobility policy that they have or have not introduced. If there are millions of cars in the same street, they will not give the same emissions as the very same cars driving in normal conditions. In London there is a congestion charge. This has created social revenues for public authorities and we are confident that these revenues can be used also to improve public transport. We are talking about passenger cars, but looking at your own source apportionment, which is excellent because the UK has a long-standing tradition in environmental issues, you are probably one of the best countries in the world. Looking at your own source apportionment, the main sources of emissions in the most polluted areas in London are buses and taxis. This is public transport.

Q95 Chair: Can I follow up that last question? You mentioned the Euro VI standard. Some bus operators have said to me that their fuel costs will increase because of complying with that standard. How much is your own department linking in with other European departments, transport and business? How does your directorate link in with other DCs in order to get a joined-up approach?

Marco Gasparinetti: Absolutely. Thank you very much. I am sorry to interrupt you going through this question because it is a very good question. We have very close co-operation with other departments. Euro V, Euro VI and the like are established by another department, which is not the environmental department for which I work. They are responsible for drawing up these standards in close co-operation with us and they are closely concerned when we set limit values for air quality because they know that transport is part of the problem.

I cannot make comments on this fuel issue because I am not an expert on fuel. As I told you, there is an impact assessment made on legislation, including Euro VI. I am not aware of this problem, I would just like to underline that as regards heavy duties, the problem has been fixed already and the right standards are already in place. The only leftover, if I may call it that, is the Euro 6 standard for diesel passenger cars. The Commission recognised this in the new air quality strategy which was adopted on 18 December 2013. It is not petrol cars, therefore Member States have leverage. If you incentivise diesel cars by taxing diesel cars less than the others, taxing diesel fuel less than petrol, of course you are also part of this equation. You can find a very clear statement about it. Euro 6 needs to be

improved for Member States to be more comfortable with the limit values we have laid down. We accept this may take some time and we did not “jump” to infringement procedures. For NO₂, the limit values entered into force on 1 January 2010. We are in 2014. We did not jump into infringements and the UK was already breaching these limit values in 2010, 2011 and 2012. So I would not say we have jumped into this. Going to court is really the last resort for us.

Chair: I am going to bring in my colleague Dr Whitehead on one very specific point about a witness we have had from Client Earth.

Q96 Dr Whitehead: The Commission introduced a new package of measures on air quality in December 2013. One particular witness to our inquiry has concluded that those particular measures in fact enable emission ceilings to be either ignored or Member States able to emit more than they are currently allowed under current EU legislation because a number of the targets in those new measures, particularly for 2020, have effectively already been achieved across the EU. How would you react to that?

Marco Gasparinetti: First of all, this proposal is currently being discussed by the Council and European Parliament, and therefore Member States and the Parliament can improve it if they think that the evidence you are producing is well-founded, then they will not oppose amending our proposal. The 2020 deadlines have been proposed in order to be fully in line with our international commitments and not to create an extra problem for the Member States. That was the criteria. We created in Gothenburg, national emission ceilings for these pollutants and the 2020 deadline in this proposal for the directive is just reflecting our international commitments without creating extra powers. That was the philosophy. Of course Member States and the Parliament can change it. The Commission’s proposal is a proposal and then the Council will vote and they will decide whether this proposal is going to move or not. We are talking about emission ceilings and we would like to stress that this is not about NO₂ limit values.

Emission ceilings represent the total emissions you emit. If you are working in the middle of the ocean what you emit may travel and the trans-boundary pollution may bring it somewhere else. This is why we have both national emission ceilings and limit values to be complied with in each zone and agglomeration. If you are upwind or downwind, what you emit may go somewhere else. For certain pollutants, certainly not for NO₂, I must stress, but for other pollutants it is the case. So it is a different discussion, but of course the emission ceilings directive should contribute to also achieving the limit values for the protection of human health, in particular the gas ozone. Ozone has no limit values precisely because it is extremely difficult to tackle, there are many ozone precursors and any emission ceilings directive should help in achieving the targets for ozone pollution. There are also new ceilings for ammonia, and I think you have heard the fact that agriculture is playing a big role. It was difficult in the past to convince certain Member States to address ammonia, which is mainly emitted by agriculture. Now we are taking steps in that direction. This is for international emission ceilings. That is another target for later on, where we do improve the targets, but for 2020 the decision from the Commission at least was to stick to our international commitments.

Q97 Dr Whitehead: The 2025 targets are advisory only and will therefore not be in any way binding on Member States.

Marco Gasparinetti: We are confident that the Member States and the Parliament can improve this proposal and if something is to be clarified it can be done in the Council and the Parliament, but I would not be comfortable speaking about it today. We just started recently discussions with the Council at a very premier stage. We have a new European Parliament, as you know, and the new European Parliament will certainly have strong views about it.

Chair: I am afraid we have time for just one more question and I am going to turn now to my other colleague, Peter Aldous.

Q98 Peter Aldous: Good afternoon, Mr Gasparinetti. Just one final question: what more do you believe that the European Union could be doing to support measures within Member States to combat air pollution? I am particularly interested in the work that you are doing with the motor industry.

Marco Gasparinetti: We must be careful not to overdo it because when we overdo it we have political parties in several Member States who would say, “This is not your business; Brussels should stay out of it”, but of course we also have duties. On Euro 6, we have committed to improving the test cycle procedures so that the standards will reflect the real world conditions. It is our job because EU standards can only be harmonised at EU level. There is also the leverage of EU funding. We have always been glad and even delighted to support Member States who may need financial support in order to improve air quality. We do it mainly in those new Member States where air pollution was certainly a huge issue, where it was not only about NO₂ but also PM₁₀ and SO₂, but every Member State is eligible for funding. It is not only about setting the rules, it is also about sharing experience and good practice. We have a forum where most European cities exchange experience about tackling air pollution and we are confident that it is also about soft law. It is not only about legislating.

Q99 Peter Aldous: Just looking at the motor industry, what work is the Commission doing to promote the development of clean fuel cars and also to try to reduce air pollution from both tyre and brake wear?

Chair: They are very important detailed questions.

Marco Gasparinetti: I apologise, I am afraid that, as I promised, I may not be able to take this questions for the simple reason that it is another department. This is something, unfortunately, which should be addressed. If you have the chance to have another hearing you could question the relevant department.

Chair: Once again, I apologise for the technical difficulties we had in making the connection.

Marco Gasparinetti: I feel I should apologise. I am really grateful for this opportunity you gave us.

Chair: If we cannot do it now through the video link, there are further follow-up questions that we have, particularly in relation to other departments and particularly on this issue of particulate and motor vehicle construction and use regulations. Our officials may need to write to you, perhaps for you to liaise with colleagues in other directorates to be able to respond to some detailed questions.

Marco Gasparinetti: Absolutely, we would be grateful and it is very timely because in September we will reach the crucial stage of discussions and we feel that the UK has been very fair in the process of discussing your standards. You are not protecting a specific car manufacturer and we feel that the UK can play a very positive role in this discussion and help us in setting the standards at the right level, so we are really grateful. If you decide to give follow-up to this and if there are any questions I can follow up with other departments, I am absolutely open and I would welcome that opportunity.

Chair: That would be very helpful indeed. I hope that you will follow our inquiry with interest and we hope to be in touch, but for now many thanks and we are very grateful to you for making the time available today.

Marco Gasparinetti: Thanks to you too.