



EUROPEAN COMMISSION

High Level Group of Independent Stakeholders on Administrative Burdens

OPINION OF THE HIGH LEVEL GROUP

Subject: January 2009 extension of the scope of the Action Programme – 30 additional acts

I. Background

- (1) The High Level Group of Independent Stakeholders on Administrative Burdens (HLG) was set up to advise the European Commission with regard to the Action Programme for Reducing Administrative Burdens in the European Union.¹ The aim of the Commission is to reduce administrative burdens on businesses arising from EU legislation by 25 % by 2012. In its meeting on 17 September 2009 the HLG adopted its Intermediate Report which included the opinions adopted for all 13 priority areas covering the 42 acts in scope of the Action Programme.² These sectoral opinions were based on (draft) reports received from a consortium of consultants hired by the Commission to help mapping and measuring so-called information obligations³ and on input from stakeholders.
- (2) On 28 January 2009 the Commission decided to extend the scope of the Action Programme by another 30 acts.⁴ These acts were subsequently mapped and measured. The reports have been published on the Commission's website in January 2010.⁵ From the 30 acts covered by the extension, 24 acts have undergone complete mapping and measurement to the extent possible, while 5 have undergone partial mapping and measurement due to high complexity and time constraints.⁶ One act had been, subsequently, included in the consortium's measurement.⁷

¹ Cf. Art. 2 of Commission Decision of 31 August 2007 – C(2007)4063

² Cf. HLG website on: http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/high-level-group/index_en.htm

³ Cf. http://ec.europa.eu/enterprise/policies/better-regulation/documents/ab_studies_2009_en.htm

⁴ Cf. 6. of Commission Working Document COM(2009)16 as well as its Annex 9.

⁵ See footnote 3.

⁶ This concerns the priority area Agriculture as well as the Community Customs Code.

⁷ Eighth Council Directive 79/1072/EEC on the harmonization of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in the territory of the country.

- (3) The HLG has dealt with 8 out of the 30 acts in the sectoral opinion for the priority area Tax Law (28.05.2009) and in the separate opinions following up on the initial sectoral opinions adopted for the priority areas Environment (20.05.2010) and Transport (scheduled for 08.07.2010).⁸
- (4) According to the measurement done by CEPS, the 22 acts covered by this opinion amount to a total of €9.81 bn. of administrative burdens. For 18 out of the 22 acts, the Commission has already adopted reduction measures which account for a total reduction of €4.18 bn. (43 %). It should be noted that CEPS did not measure the administrative burdens and reductions of all acts, as CEPS was not asked to perform a full measurement of the administrative burdens for all acts and, if applicable, for the reduction measures.
- (5) The HLG appointed Mr. Linschoten as coordinating reporting member for this opinion. Nevertheless, the reporting members retain the lead responsibility for their respective priority areas within part III of this opinion dealing with the individual priority areas.

II. General comments

- (6) The Commission decided to extend the Action Programme for Reducing Administrative Burdens in the EU by an additional 30 acts in January 2009 in the context of the presentation of the Third strategic review of Better Regulation in the European Union.⁹ The HLG was neither informed, nor consulted before this extension was made public. The HLG was set up in 2007 to advise the Commission with regard to the Action Programme for Reducing Administrative Burdens in the European Union. In this context, the HLG's mandate explicitly mentions that the group will suggest which additional pieces of existing legislation could be included in the EU-wide measurement exercise, as necessary.¹⁰ The HLG regrets that it has not been consulted beforehand by the Commission, as this extension touches upon the (future) work and the expertise of the Group.
- (7) The extension of the Action Programme by 30 acts covers ten priority areas: Agriculture and Agricultural Subsidies, Annual Accounts and Company Law, Environment, Financial Services, Food Safety, Pharmaceutical Legislation, Statistics, Taxation and Customs, Transport and Working Environment / Employment Relations. The HLG welcomes the extension to Custom legislation.
- (8) The HLG supports the idea that the scope of the Action Programme for Reducing Administrative Burdens in the European Union can be extended. This is highlighted

⁸ Cf. HLG opinion on Tax Law of 28 May 2009 (paragraphs 3, 9, 29), on Environment (II) of 20 May 2010 and on Transport (II) (scheduled for 8 July 2010). http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/high-level-group/index_en.htm.

⁹ COM(2009)15

¹⁰ C(2007)4063

once again by the Commission's proposal for a second extension of the Action Programme by a further 28 acts in October 2009.¹¹ In the HLG's view the European Union should take into account the entire *acquis communautaire*, in order to tackle unnecessary administrative burdens for businesses in a comprehensive manner. In addition, the HLG urges the Commission to take the issue of reducing unnecessary burdens for businesses into account whenever existing EU legislation is being reviewed, in order to ensure a systematic approach to reducing unnecessary administrative burdens where possible.

- (9) For the majority of the 30 acts, the Commission had already initiated reduction measures before January 2009. For 20 acts, the reduction measures had even been adopted, some as early as 2007. In the view of the HLG the measurements completed by CEPS¹² in October 2009 and January 2010 should have been used to take stock of all the information obligations for businesses stemming from these 30 acts. From there, based on the experience of stakeholders, the measurements should have given insight into possible reductions. In most cases, the Commission however approached it the other way around. Only after having initiated the reduction measures, the administrative burdens of these acts and the reduction measures respectively were quantified. The HLG regrets that this extension of the Action Programme does not give a strong new impulse to reduce the administrative burdens for businesses, but rather focuses on past reduction measures. In order to provide new momentum to the issue of reducing administrative burdens for businesses, the HLG strives to come forth with additional recommendations in part III of this opinion on how to further enhance the reduction of the administrative burdens linked to the 22 acts dealt with in this opinion.
- (10) CEPS measured the administrative burdens of most of the 30 acts and the reduction measures, if applicable. In comparison to the measurements of the initial acts of the Action Programme performed by the Consortium¹³, the methodology used by CEPS is different. To a certain extent the HLG understands why the Commission has chosen a different approach. The HLG finds it important that lessons have been learnt based on the Consortium's measurements. Nevertheless, the new methodology has important disadvantages as well. Thus, the HLG urges the Commission to look into this matter and in the future to consult the HLG before the methodology is changed. It has to be ensured that the measurement generates the information needed to reduce administrative burdens effectively and significantly.
- (11) The HLG's main criticism of the used methodology is the following:
 - (a) Stakeholders have not been consulted systematically and at the same time certain measurements were not possible because of a lack of information.

¹¹ Cf. COM(2009)544, annex F.

¹² Measurement of administrative burdens generated by Acts included in the "extension list" attached to the programme of administrative burdens, CEPS, 19 October 2009 and Measurement of administrative burdens generated by the European legislation, CEPS, 8 January 2010.

¹³ The Consortium consisted of Capgemini, Deloitte and Rambøll management.

- (b) One important aspect of the standard cost model (SCM) method is to ask the business in the interview situation if they have any ideas to how the regulation can be simplified / made easier to understand and comply with – this is quite important information that can guide further actions. That information is lost when you are not interviewing.
- (c) For some acts, only the reduction measures were quantified. Measurements are done to gain insight in possible reductions. To achieve this all information obligations should be mapped and measured. Increases in administrative burdens should be taken into account alongside reductions, in order to ensure the credibility of the data.
- (d) The SCM was not fully used. For some acts not all information obligations were quantified. Furthermore, in some cases the absence of data made an SCM measurement impossible. More time should be made available to obtain complete and reliable data. It is unacceptable that sufficient data could not be obtained. For a specific act the opportunity costs were abstracted from the quantification. This is not consistent with the SCM.
- (e) For some acts, the quantification of the information obligations was based on data from just one Member State. This is not a reliable method.
- (12) The HLG would like to underline the importance of stakeholder involvement. In order to achieve perceivable results, the experience of stakeholders (in particular businesses and public administrations) should be taken into account. Furthermore, stakeholders should be consulted while designing reduction measures and / or reviewing current legislation.
- (13) The HLG urges the Commission to evaluate CEPS' methodology and to strengthen it for future use.

III. Extensions by Priority Area

Priority Area Agriculture

- (14) For the priority area Agriculture the Action Programme has been extended by four additional regulations related to marketing standards for eggs as well as for the fruit and vegetable sector, to the common organisation of markets (Single CMO) and to support for rural development by the European Agricultural Fund for Rural Development (EAFRD).¹⁴ For all regulations reduction measures have been adopted.¹⁵

¹⁴ Commission Regulation (EC) No 2295/2003 introducing detailed rules for implementing Council Regulation (EEC) No 1907/90 on certain marketing standards for eggs; Commission Regulation (EC) No 1580/2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector as regards marketing standards; Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation); Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)

- (15) Concerning marketing standards for eggs, administrative burdens of € 800 m. have been measured; the reduction measure has been calculated as reducing these burdens by € 607 m. (76 %). With regard to marketing standards in the fruit and vegetable sector, administrative burdens of € 2.198 bn. have been measured as well as measures reducing these burdens by € 974 m. (44 %). For the Single CMO the partial measurement related to certain eliminated schemes resulted in total administrative burdens of € 28 m., which have been suppressed (100 %). The reform of the EAFRD regulation has led to simplified procedures in case of non-compliance of the beneficiary of the fund with the mandatory requirements listed in the regulation (introduction of a *de minimis* threshold of € 100 for reduction or exclusion of payments, introduction of a threshold for minor non-compliances where Member States may choose not to apply any reduction). While these measures may address irritation caused by a lack of flexibility in the old system, the Standard Cost Model methodology assumes full compliance with the measured law, and thus it is not possible to quantify any impact on the administrative burdens in this respect.
- (16) *The HLG welcomes the substantial simplifications and reductions of administrative burdens introduced by the above mentioned reforms. Some figures on administrative burdens seem surprisingly high (e.g. marketing standards for eggs), which in itself provides good reasons for additional measurement efforts in order to identify further reduction potential in other areas. Given the high amount of burdens calculated for marketing standards, some further thorough analysis of these figures seems warranted.*
- (17) *The HLG notes that, according to CEPS, some figures are only indicative results due to the approach chosen (focus on main legal changes expected to have an impact on burdens) and due to the limited availability of certain data (e.g. on population regarding marketing standards in the fruit and vegetable sector). Concerning marketing standards in the fruit and vegetable sector, for instance, CEPS points out that the results should also be assessed in light of the expected increase in administrative burdens generated by the extension of the scope to distance and online contracts. In the HLG's view increases in administrative burdens should be taken into account alongside reductions, in order to ensure the credibility of the data. Furthermore, the HLG points out that some of the administrative savings created by removal of public marketing standards may be offset by the introduction of private standards.*
- (18) According to the Commission further simplification activities are planned with regard to the regulations mentioned above. Concerning rural development, for instance, the Commission intends to present a proposal during the second half of 2010 to reduce the number of Member State reports under the strategic monitoring (Article 13 of Regulation (EC) No 1698/2005) and to reduce the content of the report to a summary of the main achievements on national level. In the area of cross-compliance the Commission foresees a proposal to amend Council Regulations (EC) No 73/2009 and (EC) No 1698/2005 with regard to the issue of follow-up controls of minor

¹⁵ Commission Regulation (EC) No 589/2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 on marketing standards for eggs; Commission Regulation (EC) No 1221/2008 amending Regulation (EC) No 1580/2007; Council Regulation (EC) No 72/2009 on modifications to the Common Agricultural Policy; Council Regulation (EC) No 74/2009 amending Regulation (EC) No 1698/2005 on support for rural development by the EAFRD

infringements and of reductions / exclusions of subsidies below €100 (*de minimis* rule)¹⁶ for 2010, possibly followed by subsequent amendments of the implementing rules of these Regulations.

- (19) *Concerning marketing standards the HLG recalls its opinion on the priority area Agriculture of 5 March 2009 when the HLG recommended that the Commission undertakes an assessment of the functioning of marketing standards (including the potential for further simplification and reduction of administrative burdens) within the framework of the discussion on the Green Paper on agricultural product quality. The Green Paper on agricultural product quality was followed by a Commission Communication on agricultural product quality policy in May 2009.¹⁷ The Communication has elicited varied responses (including from the European Parliament and the Committee of the Regions¹⁸). The strategic orientations set out in the Communication will be followed by impact assessments and further stakeholder consultations on different policy options. Legislative proposals and the presentation of guidelines are expected by the end of the year. The HLG calls upon the Commission to take a close look at opportunities for reducing administrative burdens when preparing the impact assessments, legislative proposals and the respective guidelines. In particular, care must be taken to reduce, and not to increase, administrative burdens that do not provide useful information to all partners in the food chain.*
- (20) *The HLG notes that the reform for the EAFRD regulation addressed issues of irritation rather than administrative burden reduction. In the HLG's view a quantification of the administrative burdens related to Rural Development measures might provide input for future reforms in this important area, and the HLG welcomes the intention of the Commission to carry out such an assessment.*

¹⁶ Cf. Art. 24 of Regulation (EC) No 73/2009 (minor infringements) and Art. 44 (1) of Regulation (EC) No 796/2004 (*de minimis* rule).

¹⁷ COM(2009)234; with regard to marketing standards, the Communication sets out the following strategic orientations:

- **place-of-farming labelling:** appropriate labelling within marketing standards for agricultural products, while taking into account the specificities of some sectors, in particular concerning processed agricultural products;
- a **replacement of detailed marketing standards by a general basic standard** and development of the '**reserved terms**' instrument;
- the **replacement of the Traditional Specialties Guaranteed scheme** by introducing the term 'traditional product' as a reserved term defined within marketing standards

In other quality policy areas, the Commission proposes simplifications amongst others through

- the creation of a **unique register for all geographical indications** (for wines, spirits and agricultural products and foodstuffs) while preserving the specificities of each system;
- the **improvement of international protection of geographical indications** and the contribution to the development of international standards for marketing standards and organic product;
- the establishment of **non-binding guidelines** covering private and national food quality certification schemes

¹⁸ European Parliament: 25.03.2010 P7-TA(2010)0088; Committee of the Regions

- (21) *The HLG welcomes the extension of the Rolling Simplification Action Plan by the Directorate-General for Agriculture and Rural Development also taking up stakeholders' suggestions on rural development measures previously discussed by the HLG.*¹⁹

Priority Area Annual Accounts / Company Law

- (22) The 2009 extension of the scope of the Action Programme concerns one act for the priority area Annual Accounts / Company Law, i.e. Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE). No reduction measures have been adopted so far.
- (23) The administrative burdens measured for this regulation amount to €5.2 m. CEPS also performed a calculation of administrative burdens under the assumption that annually 33,000 SE will be registered in the future with a better SE regime (as opposed to the reference status of 250 SE at the time of measurement). In that case, the administrative burdens would amount to €689 m.
- (24) The regulation foresees an evaluation by the Commission based on the experience gained with the new company form. The Commission report on the application of the SE regulation is planned to be published in November 2010. As a factual basis for the report an external study has been prepared, and a public consultation was launched on 23 March 2010.²⁰
- (25) With regard to the figures on the current situation, the Internal Market and Services Directorate-General points out that the information obligations related to the setting up of an SE only concern new-born SE, not all SE; thus the figures concerned should be slightly lower, while the figures on the other information obligations should further increase with time due to the constant increase in the number of SE.
- (26) *The HLG welcomes that the SE Statute was chosen for measurement before any reduction measure had been adopted. Thus, the CEPS measurement can provide a valuable basis and useful input for the upcoming reform project, inter alia by identifying the most burdensome obligations for businesses when it comes to administrative burdens. The HLG encourages the Commission to perform more forward-looking measurements such as this one rather than measurements of past achievements.*
- (27) *The HLG notes that the public consultation on the SE Statute asks participants for providing examples of practical problems encountered by businesses in the course of setting up or running an SE. In the HLG's view the responses to this question should be compared to the measurement results, in order to check and consolidate the measurement results and identify the most important burdens for businesses, taking account, inter alia, of the irritation factor of particular burdens.*

¹⁹ Cf. Commission Staff Working Document SEC(2009)1601 of 16.11.2009

²⁰ All documents are published on http://ec.europa.eu/internal_market/company/se/index_en.htm

- (28) *Concerning the figures, the HLG points out that the small number of existing SE hampers the task of providing reliable figures for administrative costs and burdens. Furthermore, in the HLG's view some assumptions in the report would merit more extensive explanations, for instance the assumption that with a better SE regime 5 % of newborn public and private limited liability companies would choose to register as SE.*
- (29) *The overall burden of € 5.2 m. measured for this regulation seems to be rather low. Nevertheless, it is important to note that taking into account the small number of SE, the administrative burdens per company for individual information obligations (e.g. the report on a conversion) are remarkably high.*
- (30) *In light of the potentially significant burdens any future reform should also take the aspect of reducing administrative burdens for SE into account. In this context it should be thoroughly checked which information is truly indispensable. Some of the information requirements in the SE Statute for example require reports justifying and explaining decisions whereas a simple requirement to explain should be sufficient. Without prejudice to the information needs of shareholders, employees, creditors etc., the scope to reduce the number of specific reports or the potential for merging reports should be studied. In addition, burdens associated with publication of information and requirements for meetings should be tackled, since many of these requirements can be reduced or amended to take advantage of the web for publication or the use of other electronic means; also meetings may not have to be face to face, especially when they are not intended for consultation or negotiation, and could be completed virtually. Taking into account the considerable costs associated with the use of independent experts, the HLG is of the view that there are likely to be savings to be made in the context of the respective information obligations.*
- (31) *In a number of Member States there is a requirement to publicise company information in national and regional newspapers. The HLG urges acceptance in Parliament and Member States of a relaxation in the current requirements of publishing company information in newspapers.²¹*
- (32) *Moreover, the HLG emphasises the "think small first" principle. The SE is designed for large companies, while more than 99 % of all businesses are SMEs. In line with the Small Business Act the HLG therefore supports the initiative for a European Private Company explicitly designed for small businesses (societas privata Europaea) and urges the Commission to continue its efforts to accomplish such an alternative. Taking into account the experience with the SE statute and its ongoing review, the SPE statute should be designed in the least burdensome way, in order to unfold the full potential for reducing burdens for SMEs operating across borders.*
- (33) *The HLG encourages the Commission to incorporate the ideas for administrative burden reduction in paragraph 30 above in its forthcoming review of the SE Statute.*

²¹ COM(2008)194

Priority Area Financial Services

- (34) For the priority area Financial Services the Action Programme has been extended by three additional acts dealing with electronic money, cross-border payments in euro and collective investments in transferable securities.²² Reduction measures have been adopted for all three acts.²³
- (35) Concerning the Electronic Money Directive (EMD), administrative burdens of € 2.47 m. have been measured as well as measures reducing these burdens by € 2.41 m. (98 %). With regard to cross-border payments, administrative burdens of € 13.43 m. have been measured; the reduction measure has been calculated as reducing these burdens by € 6.71 m. (50 %). For the directive related to collective investments in transferable securities (UCITS), administrative burdens of € 225 m. have been measured; according to the respective impact assessment the reform reduces these burdens by € 45 m. (20 %).
- (36) *The HLG finds that the measurement of the administrative burdens of the EMD and the Cross Border Payments Regulation done by CEPS gives a reasonable indication of the costs and possible reduction. However, the HLG finds that the measurement of the impact of these two amended acts is open to improvement. CEPS did not consult stakeholders to verify the assumptions and measurements of the information obligations. For various information obligations CEPS concludes without a clear justification that the administrative burdens are negligible. In some cases CEPS concludes that calculations could not be made. The HLG pleads that at least the activities a company has to undergo to fulfil the information obligation should be described in these cases.*
- (37) *The UCITS Directive is the most substantial act in the extension of this priority area. CEPS delivered an acceptable measurement of the directive. The HLG regrets however that the IO that obliges management or investment companies to regularly communicate the types of derivative instruments to the competent authorities has not been measured. According to the Commission²⁴ the reduction measure, which has already been adopted, reduces the administrative burdens by € 45 m. (20 %). The HLG regrets that the Impact Assessment²⁵ of this proposal and the underlying available documents do not give enough information to verify the quantification of the*

²² Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions ('Electronic Money Directive'); Regulation (EC) No 2560/2001 of the European Parliament and the Council on cross-border payments in euro; Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities

²³ Directive 2009/110/EC of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions; Regulation (EC) No 924/2009 of the European Parliament and of the Council on cross-border payments in the Community; Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS IV)

²⁴ The sectoral reduction plan on financial services in annex C of the Communication of the European Commission of 22 October - COM (2009) 544

²⁵ SEC (2008) 2263

reduction of the administrative burdens. The HLG urges the Commission and the Impact Assessment Board to make sure that these important measures will, in the future, be quantified thoroughly. The HLG asks the Commission to make sure that during the important technical discussions that are taking place on this directive no additional burdens will be put on the companies.

- (38) *The publication of a prospectus and an annual / semi-annual report has been required for management / investment companies since the introduction of the UCITS Directive in 1985. In 2009, the UCITS Directive introduced a highly simplified type of prospectus (replacing the Simplified Prospectus): the Key Investor Information (KII). The HLG is pleased with the initiatives of the Commission to simplify the prospectus obligation further in UCITS IV²⁶. The HLG would like to underline the possibility to lift the requirement to publish a full prospectus. This information should however be easily accessible via internet. The future KII would then serve as the standard prospectus available on paper in which a reference is made that more information is available on the internet. The possibility to provide the investor with additional information on paper than present in KII should be left to the company itself. Furthermore, Member States are urged to limit additional demands on the national level that prospectuses have to comply with.*
- (39) *The UCITS IV directive furthermore states that a company must make public the issue, sale and repurchase or redemption price of its unit every time it issues, sells, repurchases or redeems them, and at least twice a month. The HLG proposes to look into the possibility of placing this information under the responsibility of the Stock Exchange operator as they already have this information in hand.*

Priority Area Food Safety

- (40) For the priority area Food Safety the Action Programme has been extended by five acts related to border inspection posts for veterinary checks between the EU and Switzerland, health rules on animal by-products not intended for human consumption, circulation of feed materials, food additives authorised for use in foodstuffs intended

²⁶ See above footnote 22.

for human consumption and veterinary checks in intra-Community trade.²⁷ Reduction measures have been adopted for all five acts.²⁸

- (41) Concerning the Decision on border inspection posts between the EU and Switzerland, the administrative burdens amounting to €1.26 m. have been completely abolished (100 %). With regard to the health rules on animal by-products, administrative burdens of €135 m. have been measured; the reduction measure has been calculated as reducing these burdens by €21.75 m. (16 %). In the context of the circulation of feed materials, administrative burdens of €7.4 m. have been measured as well as measures reducing these burdens by €2 m. (27 %). Concerning the directive on food additives, administrative burdens of €1.7 m. have been measured as well as measures reducing these burdens by €83,000 (5 %). With respect to veterinary checks in intra-Community trade, administrative burdens of €3.5 m. have been measured. In this context the Commission has prepared new guidance dealing with exemptions from inspections at border inspection posts in cases where relevant inspections took place before.
- (42) *The HLG welcomes the simplifications and reductions of administrative burdens introduced by the above mentioned reforms. Some figures on administrative burdens are relatively small (e.g. labelling of food additives), which can be explained by the fact that the main purpose of the reform was to improve consumer information, not to reduce administrative burdens.*
- (43) *The HLG notes that some figures can only be considered as indicative results due to the approach chosen (extrapolation from a small number of national database figures, or by analogy with other legal acts) or due to the limited availability of certain data (e.g. Regulation 1774/2002 on animal by-products.).*
- (44) *The HLG regrets that the Directorate-General for Health and Consumers provided the HLG with rather limited information on the adopted reduction measures rather late.*

²⁷ Commission Decision 2001/881/EC drawing up a list of border inspection posts agreed for veterinary checks on animals and animal products from third countries and updating the detailed rules concerning the checks to be carried out by the experts of the Commission; Regulation (EC) No 1774/2002 laying down health rules concerning animal by-products not intended for human consumption; Council Directive 96/25/EC of 29 April 1996 on the circulation of feed materials (and Council Directive 82/471/EEC of 30 June 1982 concerning certain products used in animal nutrition); Council Directive 89/107/EEC of 21 December 1988 on the approximation of laws of the Member States concerning food additives authorised for use in foodstuffs intended for human consumption and Regulation (EC) No 2232/96 of the European Parliament and of the Council of 28 October 1996 laying down a Community procedure for flavouring substances used or intended for use in or on foodstuffs; Council Directive 89/662/EEC concerning veterinary checks in intra-Community trade and Council Directive 90/425/EEC concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products

²⁸ Commission Decision 2008/807/EC as amended by Commission Decision 2009/38/EC; Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption; Regulation (EC) No 767/2009 of the European Parliament and of the Council on the placing on the market and use of feed; Regulation (EC) No 1331/2008 of the European Parliament and of the Council establishing a common authorisation procedure for food additives, food enzymes and food flavourings; guidance document SANCO/10473/2009: http://ec.europa.eu/food/animal/bips/docs/Trade_Checks_Final_Guidance_en.pdf

- (45) *Considering that the Food Safety sectoral reduction plan relies heavily on a single measure which is still "under preparation" (satellite tracking of animal transport), it seems necessary to ask that additional measurement efforts be conducted in order to identify further reduction potential in other sectors of this priority area.*

Priority Area Pharmaceutical Legislation

- (46) The 2009 extension of the scope of the Action Programme concerns one act for the priority area Pharmaceutical Legislation, i.e. Directive 2001/82/EC of the European Parliament and of the Council on the Community code relating to veterinary medicinal products. In this context only a minor reduction measure has been adopted so far.²⁹
- (47) The administrative burdens measured for this directive amount to € 64.63 m.³⁰ The above mentioned minor reduction measure has been calculated as reducing these burdens by €66,000.
- (48) On 13 April 2010 the Commission started a public consultation on how to put in place a simpler legal framework, safeguarding public and animal health while increasing the competitiveness of companies.³¹ The consultation is intended to provide input for a review of the legal framework which is *inter alia* aimed at decreasing administrative burden.
- (49) *The quantification done by CEPS gives an indication of the level of administrative burdens and possible reduction. Nevertheless, the HLG believes that CEPS could have been more precise in the quantification of certain information obligations and reduction measures. The HLG regrets that CEPS was unable to quantify one reduction measure using the SCM.*
- (50) *The HLG welcomes the public consultation process started by the Commission. In the HLG's view the responses to this consultation, in particular to the issue of administrative burdens, should be compared to the measurement results by CEPS, in order to check and consolidate the measurement results and identify the most important burdens for businesses.*

²⁹ Regulation (EC) No 470/2009 of the European Parliament and of the Council laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council

³⁰ This includes €205,700 measured for Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin

³¹ Cf. <http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=vetframework>

Priority Area Statistics

- (51) For the priority area Statistics the Action Programme has been extended by five acts related to information society, short term statistics, tourism, carriage of goods by road and carriage of goods and passengers by sea.³² For the first two acts and the last act reduction measures have already been adopted,³³ for the acts related to tourism and carriage of goods by road reduction measures have recently been proposed by the Commission or are under preparation.
- (52) Concerning the statistics on information society, administrative burdens of €14.8 m. have been measured as well as measures reducing these burdens by €3.7 m. (25 %). *The CEPS measurement appears to give a fair picture of the administrative burden and of the reductions already obtained. Taking note of the reduction in the number of questions from 70 to 64 that businesses have to answer following the implementation of Commission Regulation (EC) No 847/2007, the HLG urges the Commission to further reduce the size of the questionnaires businesses have to complete regarding the information society to the necessary minimum in order to further reduce the administrative burden deriving from this regulation. To the extent the increased use of administrative data collected for other purposes could replace data collected via surveys this should be pursued. In the framework of the Programme for the Modernisation of European Enterprise and Trade Statistics (MEETS) activities are ongoing / planned to make better and more intensive use of available sources that might lead to a further reduction of the burden on enterprises.*
- (53) With regard to the short term statistics³⁴, administrative burdens of €136 m. have been measured; the reduction measure has been calculated as reducing these burdens by €65 m. (48 %). *This appears to be a fair assessment by CEPS that is in line with the estimates provided by Eurostat to the HLG for its opinion on Statistics dated 7 July 2009. Council Regulation (EC) No 1158/2005 is one of those measures that prescribe which data Member States have to provide in order to comply with the regulation, but not how the data is collected nationally. The HLG urges the sharing of best practice between Member States in this area with the Commission acting as facilitator. Some Member States succeed in reusing existing national data thereby reducing the burden on businesses. The HLG favours the reuse of statistical data to the largest extent possible. The HLG therefore urges the Commission to strengthen this work within the framework of MEETS, so that processes of identification, development and sharing of*

³² Regulation (EC) No 808/2004 of the European Parliament and of the Council concerning Community statistics on the information society; Council Regulation (EC) No 1165/98 concerning short-term statistics (STS); Council Directive 95/57/EC on the collection of statistical information in the field of tourism; Council Regulation (EC) No 1172/98 on statistical returns in respect of the carriage of goods by road; Council Directive 95/64/EC on statistical returns in respect of carriage of goods and passengers by sea (recast by Directive 2009/42/EC)

³³ Commission Regulation (EC) No 847/2007 of 18 July 2007 implementing Regulation (EC) No 808/2004; Regulation (EC) No 1158/2005 of the EP and of Council concerning short-term statistics; Commission Decision of 14 April 2010 amending Directive 2009/42/EC of the European Parliament and of the Council on statistical returns in respect of carriage of goods and passengers by sea (2010/216/EU)

³⁴ Cf. the opinion of the HLG on the Priority Area Statistics dated 7 July 2009; http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/high-level-group/index_en.htm

already existing good practices can increase the efficiency of data collection and processing in future.

- (54) For the statistics regarding tourism administrative burdens of € 8.6 m. have been measured, for the carriage of goods by road €4.1 m. and for the carriage of goods and passengers by sea € 6.7 m. In the meantime the Commission adopted a Decision amending the directive on statistical returns in respect of carriage of goods and passengers by sea. In addition, a proposal for a regulation concerning European Statistics on tourism³⁵ has been adopted by the Commission which could reduce burdens by almost €1.3 m. (15 %) according to a preliminary estimation by Eurostat. *Nevertheless, the HLG encourages the Commission to address the fundamental question of whether such statistics serve a purpose the benefits of which outweigh the burden of data collection on businesses.*

Priority Area Tax Law / Customs

- (55) Apart from the act already dealt with by the HLG in the opinion on Tax Law of 28 May 2009, the 2009 extension of the scope of the Action Programme concerns one other act for this priority area, i.e. the Community Customs Code.³⁶ The Customs Code has been reformed, and the Modernised Customs Code³⁷ entails a rationalisation of the legal framework with fewer procedures, greater standardisation of customs rules and their implementation, a simplification of customs procedures (“centralised customs clearance”), the interoperability of national customs systems and a computerisation of all declarations and data exchange.
- (56) For the Community Customs Code, the partial measurement showed administrative burdens of € 6.16 bn.; according to the measurement by CEPS the Modernised Customs Code will reduce these burdens by €2.43 bn. (39 %).
- (57) *The measurement undertaken by CEPS appears to be coherent. Both the high rate of reduction and the absolute sum are indicators of a successful reduction exercise. The reduction measure as such is ambitious and focuses on the right problems, that is the more than 175 million annual customs declarations. However, the HLG invites Commission services to have a closer look at the implication of the new Code for SMEs. The Modernised Customs Code and its implementing provisions seem complex and do not seem to take sufficiently note of the size of enterprises involved. This can lead to disproportionate burden for SMEs. The HLG pleads for greater respect of the needs of SMEs that represent the vast majority of European enterprises. The HLG regrets that no reduction has been attempted concerning the information obligation*

³⁵ Cf. COM(2010) 117 final.

³⁶ Community Customs Code (CC) Council Regulation (EEC) No 2913/92 establishing the Community Customs Code

³⁷ Regulation (EC) No 450/2008 of the European Parliament and of the Council laying down the Community Customs Code (Modernised Customs Code); cf. http://ec.europa.eu/taxation_customs/customs/procedural_aspects/general/community_code/index_en.htm

"keeping records of customs documents". The experience made with e-invoicing shows that a considerable amount of administrative burden is imposed by record keeping.

- (58) *The HLG consequently encourages the Commission to look into the possibility of introducing a limited version of "Authorised Economic Operator (AEO)" for businesses that regularly have to deal with customs, but only for specific products or countries. It should be considered to create a "fast track" to assist smaller businesses importing or exporting one or a few products regularly. The normal process of granting AEO status seems too complex and out of reach, especially for SMEs. This SME-version of the AEO could be adapted to the special needs of the operators.*
- (59) *The HLG acknowledges that the adoption of the Modernised Customs Code has already been an important step forward in reducing administrative burdens in this area and encourages the Commission to proceed with its work on its implementation, including continued consultation with stakeholders. In this respect, the HLG strongly encourages the Commission to pursue its dialogue with business stakeholders (Trade Contact Group). Practical measures to reduce administrative burden should be considered at all stages of the implementation process and may not necessarily require amendments of the Modernised Customs Code before its implementation. In general, the HLG would like to underline the importance of legal certainty and stability to reduce the costs of traders.*

Priority Area Working Environment / Employment Relations

- (60) For the priority area Working Environment / Employment Relations the Action Programme has been extended by two directives concerning the European Works Council and the protection of workers from the risks related to exposure to carcinogens or mutagens at work.³⁸ For the first directive a reduction measure has already been adopted.³⁹
- (61) Concerning the European Works Council (EWC) Directive, administrative burdens of €311,000 have been measured; the reduction measure has been calculated as reducing these burdens by €18,000 (6 %). With regard to the second directive, CEPS states that the consortium's measurement of the framework directive 89/391/EEC already covered most of the respective administrative burdens, since this directive is only specifying and adapting the content (including the information obligations) of the framework directive. According to the CEPS report it was not possible to disentangle the costs of complying with carcinogen-specific information obligations and the costs of complying with the framework provisions on health and safety on the basis of the available data on measurement results for the framework directive.

³⁸ Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees; Directive 2004/37/EC on the protection on workers from the risks related to exposure to carcinogens or mutagens at work

³⁹ Directive 2009/38/EC of the European Parliament and of the Council on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees

- (62) According to the Commission the introduction of the new EWC Directive has solved a number of problems with the practical application of the old Directives. As such, the modifications introduced by Directive 2009/38/EC combined with exchange of good practice and guideline documents (issued Oct 2009) are expected to bring greater legal clarity as to the functioning of EWCs. This will lead to a reduction in the administrative burden for businesses related to familiarizing with the legislation. As stated in Article 15 of Directive 2009/38/EC, a Commission report on the implementation of the Directive, making appropriate proposals where necessary, is foreseen no later than 5 June 2016.
- (63) The directive on the protection of workers from the risks related to exposure to carcinogens and mutagens at work is currently under review which includes an evaluation on whether risk assessments and notifications can be improved. The on-going review work envisages the inclusion of new substances for which there is sufficient scientific evidence allowing the Commission to establish new limit values. An impact study is under preparation, following which it will be possible to substantiate any review proposals. In this context, if any proposals are put forward, the Commission will strive to avoid any unnecessary administrative burdens on companies. It is, however, still premature to anticipate any outcome since the measures are not yet defined.
- (64) *The HLG acknowledges that CEPS has completed a satisfactory mapping of the duties in the carcinogens and mutagens directive against those in the Framework Directive. At the same time, the HLG notes that, due to problems in deciding the percentage of the working population exposed to carcinogens and mutagens and subject to Chemical Agents Directive (CAD), CEPS was unable to estimate the administrative burdens.*
- (65) *Concerning the above mentioned estimates, the HLG points out that national administrations, such as the UK Health and Safety Executive, might be able to provide further estimates of the numbers of workers potentially exposed to some carcinogens, albeit this would probably not cover detailed information about the distribution of those actually exposed at different levels for each carcinogen. However, the scope for administrative savings in this context may be limited. Nevertheless, the HLG points out that any addition to the directive to include other carcinogenic / mutagenic chemicals should be thoroughly examined in order to avoid any additional unnecessary administrative burdens.*

IV. Conclusions

- (66) *The HLG stresses the importance of common efforts to reduce administrative burdens for businesses. These efforts must be extended and intensified both on the European and the national level, in order to reach the target of reducing red tape in a sustainable manner.*
- (67) *While the HLG appreciates that all reductions and simplifications must take account of the underlying objectives of the legal acts in question, the HLG wishes to underline that reducing unnecessary administrative burdens is essential to ensure that the acts are actually delivering these objectives.*

- (68) *The HLG finds it important that lessons have been learnt based on the Consortium's measurements. Nevertheless, the new methodology has important disadvantages. The HLG urges therefore the Commission to look into the new approach before this methodology is used as a standard for future extensions using the recommendations made in Part II of this opinion.*
- (69) *The HLG sees additional reduction potential concerning some of the acts in scope of this opinion and calls upon the Commission to take a proactive approach as specified in the HLG's conclusions on the individual priority areas above.*

Brussels, 20 May 2010

Annex: table with overview