



EUROPEAN COMMISSION

High Level Group of Independent Stakeholders on Administrative Burdens

OPINION OF THE HIGH LEVEL GROUP

Subject: 2nd Report on Administrative burden reduction in the priority area *Environment*

I. Background

- (1) The High Level Group (HLG) was set up to advise the Commission with regard to the Action Programme for Reducing Administrative Burdens in the EU, and in particular to provide advice on administrative burden reduction measures.¹ The HLG has appointed Mr. Hontelez, Mr. Ludewig and Mr. Pesonen as its reporting members for the priority area “Environment”.
- (2) Environment is one of the 13 priority areas in scope of the Action Programme which covers more than 40 pieces of legislation in these areas.² For the priority area environment, the Action Programme originally covered the following 5 pieces of legislation:
 - Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (SEVESO),
 - Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste,
 - Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (IPPC),
 - Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE), and
 - Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles.

¹ Cf. Commission Decision C(2007)4063.

² Cf. Communication from the Commission COM (2007)23 final, 2.3.

On 28 January 2009 the Commission³ published an extension of this Action Programme, with 30 additional Directives and Regulations for administrative scrutiny. Two of these are part of the EU environmental acquis communautaire:

- Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal product on the market.
 - Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer.
- (3) This second report on the priority area Environment is complementary to the report the High Level Group of Independent Stakeholders on Administrative Burdens (HLG) adopted on the 16 April 2009, which concentrated on the first five EU laws mentioned above, as well as early input from stakeholders. The second report has been compiled after a hearing that was held on the 12 April 2010 chaired by Mr. Hontelez, Member of the HLG, and also includes a response to the actions taken by the Commission with regards to the Directive on biocides and the Regulation on ozone depleting substances.
- (4) Between 19 May and 17 July 2009 the HLG launched a consultation on the administrative burdens in the EU environmental legislation. This resulted in proposals from 25 different stakeholders (see annex I). The hearing on 12 April 2010 was based on these proposals. In addition, the HLG members also looked at other proposals that had been received through other channels, including the on- and offline consultation and letters addressed to the HLG. The hearing was prepared with a non-paper⁴ that presented around a hundred proposals organized by theme, accompanied by a possible response from the European Commission's working- level and a first evaluation from the HLG rapporteurs.
- (5) Most stakeholders who contributed comments were business federations and individual businesses, but also included national and regional governments, environmental NGOs, the Committee of Regions and IMPEL⁵. During the hearing it was made clear to the stakeholders that the HLG has a limited mandate, can only look at administrative burdens that are unnecessary (or can be replaced by simpler ones) to achieve set objectives/ambitions of environmental legislation.
- (6) The proposals submitted were of varying quality, ranging from very broad complaints about the nature of environmental policies towards specific proposals relating to administrative burdens that could be removed, replaced or eased. All in all, comments were made on 28 pieces of legislation relating to environment

³ Cf. Communication from the Commission COM (2009)16 final, Annex 9

⁴ http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/high-level-group/files/abr_hlg_120410_non-paper_en.pdf

⁵ European Union Network for the Implementation and Enforcement of Environmental Law

policy. Out of these 28 acts, the HLG had already provided earlier advice on 8 acts in the first report adopted on 16 April 2009, including on some of the topics stakeholders raised for the hearing. In this report, the HLG limits itself on advising on those proposals from stakeholders it wants the Commission to act upon. Other proposals the HLG considered to be outside its mandate, not reasonable, or dealt with in the meantime. The compilation of proposal can be found in the non-paper produced for the hearing at the HLG website⁶.

II. General comments on the hearing of 12 April 2010

- (7) The exercise showed that the environmental acquis of the EU is dynamic. Much of the legislation targeted is under review or recast, or has been so recently. Often, one of the objectives of such reviews/recasts is to have a critical look at the administrative burdens. The discussions at the hearing showed that many of the issues had already been discussed by the European Commission and those affected or during the co-legislation procedures.
- (8) The hearing also showed that the Commission and, in general, business stakeholders favour more harmonization and more EU standardised procedures. However, Member States and the European Parliament do not always agree, for varying reasons. The environmental field is a shared competence between the EU and its Member States, and in many cases EU environmental law sets minimum standards rather than uniform rules. This obviously creates additional administrative burdens for companies operating in more than one Member State: for example, by different definitions from country to country. The HLG respects the Member States' rights related to the subsidiarity principle. However, it should be noted that the flip-side of flexibility in Member State implementation can be additional administrative burdens as a consequence of inefficient implementation practices that are not motivated by environmental needs or ambitions.
- (9) A second issue is the (perception of) overlapping legislation, and related overlapping or double information obligations. The Commission officials present were of the view that this is kept to the minimum in the cases discussed at the hearing. However, the HLG finds that this issue needs permanent attention.
- (10) Thirdly, the hearing showed that the special treatment of SMEs is controversial even within the business sector. Stakeholders were of the opinion that exempting SMEs from information obligations would mean that the objectives of environmental legislations could be undermined or its scope reduced, or that simply costs would be transferred to bigger firms. In particular, there were concerns about thresholds that firms could respond to and artificially use to avoid legislation. There is though consensus about the need to assist SMEs in fulfilling their environmental obligations.

⁶ http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/high-level-group/files/abr_hlg_120410_non-paper_en.pdf

- (11) Fourthly, proposals were also received to reduce the scope of certain legislation as a means to reduce the administrative burden. This however might impact the objectives of legislation and therefore can only be used as a tool to reduce administrative burdens if the reduced scope will not jeopardise the political objective of the legislation.
- (12) In addition, the hearing showed concerns of stakeholders about the fees which are linked to receiving licences or permits. The exact fees are usually set by national or regional authorities and are not prescribed by EU laws. Consequently fees can considerably differ between Member States. The HLG accepts fees as a means of cost recovery for the costs for public authorities in permitting, controlling and other relevant activities. This is a consequence of the polluter pays principle. The HLG agrees that if fees go beyond this, then this needs a transparent political decision identifying this as levies or taxes.
- (13) A final general issue that appeared during the hearing concerns Impact Assessments (IA). Proper IAs ensure a consultation process and transparency. The European Parliament and Council, however, can make substantial changes in the proposals which could increase the administrative burden, without the Impact Assessments being updated.

III. General conclusions and recommendations

On the basis of the above general comments the High Level Group:

- a. *Calls upon the Commission to continue and intensify the promotion of best practices in implementation of EU environmental law with the purpose to remove additional administrative burdens due to inefficient practices. This includes the prevention of unnecessarily long delays in procedures, the promotion of electronic reporting systems, and ensuring that national and EU requirements complement and not duplicate each other.*
- b. *Calls upon the Commission to insist that fees respect the principle of cost recovery and the polluter pays principle, and that fees that go beyond such a level are explicitly recognized as levies or taxes. It also calls upon the Commission to systematically promote effective and efficient implementation and enforcement, including by looking at best practices in Member States, including with an eye to removing unnecessary administrative burdens.*
- c. *Whereas, the HLG recognises the fundamental roles of the EP and Council in the legislative process, but also that they do not systematically organize their own impact assessments, the HLG therefore encourages the Commission to inform EP and Council systematically about the expected impacts on the administrative burdens of the amendments they discuss.*

- d. *With regards to the interests of SMEs in having thresholds for information obligations, the HLG repeats its earlier position that introducing thresholds should be considered as a means to cut administrative burdens in cases where this does not affect the effectiveness and credibility of EU legislation.*
- e. *Even though some of the issues raised and proposals made by stakeholders were not directly linked to administrative burdens the HLG advises the Commission to take all stakeholders' contributions carefully into account and find adequate solutions on the underlying problems as far as they are not considered earlier.*

IV. The Directive on Waste from Electric and Electronic Equipment.

- (14) As the name says, this directive aims at reducing the environmental impact of waste from Electric and Electronic Equipment (EEE)⁷ and focuses on reduction of the waste volumes by increasing re-use and recycling. In combination with the ROHS⁸ Directive (dealing with chemicals used in EEE) it is also aiming at preventing environment and health impacts of the remaining waste.
- (15) This Directive is currently under review⁹ in first reading in Parliament and Council. In 2009, the Commission informed the HLG that the proposal it had made would reduce the estimated administrative costs for business for registration and reporting by €66 million per year. This accounts to a reduction of 57%¹⁰.
- (16) Business stakeholders appreciate the proposals made by the Commission for the recast of the existing Directive, in particular for harmonizing registration requirements and for moving towards an EU wide registration system where only a single registration is required. This would also mean that relevant companies do not need to have legal seats in each country into which their products are sold. From the side of a government however, the comment was made that interoperability of national registers in itself would need new administrative efforts on the side of Member States. So, in their view, it risks increasing the costs for the public authorities that have to ensure that 27 national registers are entirely compatible and cooperate. Also there is a concern that not all Member States would apply the WEEE requirements sufficiently strict. Therefore:

⁷ Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE)

⁸ Directive 2002/95/EC of the European Parliament and the Council of 27 January 2003 on the Restriction of the Use of Certain Hazardous Substances in electrical and electronic equipment

⁹ Proposal for a Directive of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE) COM (2008) 810 final

¹⁰ See Sectoral reduction plan COM (2009) 544 Total AB is 116 million reduction of 66 million is 57%.

- f. The HLG encourages the Commission to work with the Member States to find solutions that keep the administrative burdens at a minimum level not only for the business but also for the Member States.*
- (17) A request for a threshold for SMEs, so that SMEs bringing on the market very small quantities of EEE would not fall under this directive proved to be controversial between stakeholders. It was raised that if such a threshold would be implemented the costs would then have to be borne by the other companies in the sector or by public authorities as the waste from the EEE concerned would still have to be treated. In addition, it may be too easy to artificially split product sales volumes so as to be under the threshold.
- g. The HLG remains with its position, as expressed in its first report, that thresholds should be considered where this does not affect the effectiveness and credibility of the relevant legislation.*
- (18) A concern was expressed that, whilst better harmonised WEEE registration procedures do have the potential to reduce administrative burden, the size of these savings would depend on how in practice the harmonization of producer registration works. A particular concern relates to reimbursement schemes for registration and recycling fees. Reimbursement systems should respect the functioning of registration systems in the different Member States, and should not create new administrative burdens.
- h. The HLG calls upon the Commission to ensure that multiple payments for the management of waste related to the same product are avoided wherever possible and corrected with a minimum of administrative burden where necessary, so as to maximize the benefits of harmonization for SMEs. Reimbursement schemes, where necessary, should be optional for producers.*

V. End-of Life Vehicles Directive

- (19) This Directive dates from 2000. It aims at improving eco-design, increasing re-use of materials of which cars are composed and reducing the environmental impact of what remains as waste. The administrative costs account for €94 million, of which 95% or €89 million are classified as administrative burdens. In its first report, the HLG already expressed its support for moving to electronic registration of certificates for destruction of vehicles in the Member States.
- (20) Amongst the concerns of stakeholders were the costs related to their involvement in the revision processes of Annex II of this Directive. This Annex provides a list of exemptions for the substance ban, and is revised on a regular basis according to technical and scientific progress as is required by the directive. The stakeholders explained the number of meetings each revision entail and the related time investments from experts. They stated that each revision would cost the car-producers between 1.5 and 2 million Euro. In the last decade, three such revisions

have happened. The HLG appreciates that such revisions are needed based upon the Directive and the evolution of new technologies, etc., and that these costs are an unavoidable consequence of the right of stakeholders to be involved in decision-making.

i. The HLG advises the Commission to look into the possibility to have fixed frequencies for the revision process, as is the case with the Regulation on Hazardous Substances (ROHS).

(21) A core concern of the car-industry is the diversity of “quota calculation methods for recycling targets” between Member States. The Commission explained that three methods are allowed by the directive, but that the analysis of the national methodologies submitted with the annual data of 2008 showed that indeed many sub-methods are applied in line with the principle of subsidiarity. A working group has been set up with the participation of the Commission, Member States and industry which has prepared a guidance document with the aim to have more harmonization. The car-industry is promoting the “fixed assumption method”, which is currently being studied by the Commission and discussed with the Member States.

j. The HLG welcomes that the Commission has started to act on this issue, but encourages it to take further steps and promote harmonization of the method for measuring the targets on the basis of best practice, considering the “fixed assumption method” as a possibility, to clarify the possible additional costs for other stakeholders and also to compare them to the gains that are made.

VI. Chemicals

(22) Regarding the notification obligation of classification and labeling under the CLP¹¹ Regulation (Regulation 1272/2008) stakeholders asked for reduction of administrative burden, amongst other things by making an “I agree button” available in the IT tool for such notifications. This would be a way to add the notification of a chemical substance that is identical to an already notified one without having to enter all the information themselves.

k. The HLG considers this as a potential for reduction of administrative burdens and calls upon the Commission to see how the transparency rules can be used to apply this to the maximum.

(23) Several cases of overlapping legislation were brought up, such as between REACH and ROHS, REACH and the End-of-Life-Vehicles Directive. The Commission has presented REACH as an overall legislation (providing essential information about the characteristics of a chemical) while the others are focused on specific uses. The Commission also noted that questions of duplication and as

¹¹ Classification, Labelling and Packaging of substances and mixtures

to which legislation takes precedence will be solved on a case by case basis as the legislation is agreed and then implemented. Stakeholders however complain about potential double costs if chemicals fall under REACH plus another piece of legislation.

- l. The HLG calls upon the Commission to consider how overlaps can be reduced, for example by making REACH requirement dependent on how much information for decision-making more specific pieces of legislation already provide.*

VII. Waste Incineration

- (24) The current waste incineration legislation is going to be absorbed in the new Industry Emissions Directive. Stakeholders made various proposals to reduce the administrative burden for smaller installations. The Commission underlined that with regards to the health and environmental risks of pollution produced by waste incinerators size does not matter. However, reduced monitoring requirements could be possible depending on the nature of waste being incinerated and the type of the plant, and that this had been explored in the context of an Impact Assessment, and could be revisited as necessary. The Commission confirmed that such a possibility has been integrated in the draft directive pending adoption, subject to the demonstration that this would not entail in any case increased emissions from incinerators.

- m. The HLG encourages the Commission to indeed seek administrative burdens reduction for small waste incineration installation while fully respecting the objective of the regulation with regards to health and environment protection.*

VIII. Extension of the scope of the Action Programme

Biocides

- (25) On 12 June 2009, the European Commission adopted a proposal for a Regulation concerning the placing on the market and use of biocidal products (COM(2009)267). The proposed Regulation will repeal and replace the current Directive 98/8/EC concerning the placing of biocidal products on the market. The Commission proposal entails measures that would reduce the administrative burden for business, e.g. the facilitation of product authorizations, the improvement and strengthening of mutual recognition, the implementation of a community authorization for certain categories of products, improvements in data sharing and the reformulation of the system for low risk biocidal products.

- (26) The Commission asked CEPS¹² to make an independent calculation of the costs and administrative burdens of the current Directive and of the impacts on these from the new Regulation. CEPS's calculations were broadly similar to the estimations the Commission had presented in the accompanying Impact Assessment. CEPS finally assessed the administrative burdens to be reduced with 24%, or some €68.2 million per year. If the Commission had not increased the scope, the savings could have been an extra €1.1 million per year.
- (27) The HLG however did receive, for the abovementioned hearing several suggestions. These suggestions included full centralization of biocides registration (independent or integrated with REACH), reductions of data requirements, exemptions for SME's, reductions of fees, company specific approvals. Several of these issues have been dealt with in part II above. The Commission explained that full harmonization would not be possible for capacity reasons and not desirable, given that Member States require a certain level of manoeuvring taking specific situations into account.

m. The HLG appreciates the proposals from the Commission as on target with the general objective of reducing administrative burdens with 25%.

Ozone Depletion

- (28) In 2008, the Commission presented a recast of the Regulation (EC) No 2037/2000 on substances that deplete the ozone layer. The proposal¹³ adopted by Council and Parliament on 16 September 2009¹⁴ entails amongst others the simplification of the legislation, to streamline reporting, to update the exemption regime and to update the provisions dealing with inspections. On the other hand, it proposes new labelling requirements to improve enforcement of the regulation. According to the Commission this proposal would lead to administrative burden reduction of €0.5 million per year.
- (29) CEPS has done an independent measurement of the administrative burden of the existing regulation and the reductions that would be caused by the recast. CEPS calculated that the reduction would be € 636,000 or 23.7%. Without the new labeling requirement savings would be €2.000 more.
- (30) Stakeholders asked for less frequent reporting (from 1 year to 3 years). The Commission regards this as a potential risk for more violations of the legislation.

¹² http://ec.europa.eu/enterprise/policies/better-regulation/documents/ab_studies_2009_en.htm

¹³ COM (2008) 505

¹⁴ Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer

- n. *The HLG appreciates the proposals from the Commission as on target with the general objective of reducing administrative burdens with 25% and asks the Commission to further investigate if the frequency for reporting can be reduced without jeopardizing the achievement of the political objective to protect the environment.*

Brussels, 20 May 2010