



## EUROPEAN COMMISSION

High Level Group of Independent Stakeholders on Administrative Burdens

### OPINION OF THE HIGH LEVEL GROUP

#### Subject: Stakeholders' suggestions ('offline-consultation') – VI

#### I. Background

- (1) The High Level Group of Independent Stakeholders on Administrative Burdens (HLG) was set up to *inter alia* advise the Commission on suggestions for administrative burden reduction measures. In addition to the suggestions by consultants, via the online consultation or during local workshops with businesses in Member States, the HLG members and the Commission receive reports or letters from external stakeholders with reduction suggestions. These ideas have been labelled "offline suggestions".
- (2) Mr. Linschoten was appointed coordinating reporting member for these offline suggestions. The HLG works on these suggestions in the following way: firstly, the secretariat assesses the incoming proposals with the help of those Directorates-General of the Commission that are competent in the subject matter<sup>1</sup>. At the same time suggestions are filtered out which do not concern European legislation at all. Secondly, the group's reporting members look at suggestions in their respective priority area for which first reactions from Commission services are available. The result of this process is an opinion of the group addressed to the Commission.
- (3) The HLG calls upon the college of Commissioners and Commission services to take all necessary steps to ensure that legislative proposals are introduced in time. The HLG wishes to underline that achieving the aim of a reduction of administrative burden by 25 % by 2012 will only be feasible with as many concrete reduction measures as possible.

#### II. General comments

- (4) So far the HLG has received several hundred ideas from stakeholders. The HLG has adopted five opinions on the offline consultation in its meetings of 18 September 2008, 20 January, 16 April, 7 July and 12 November 2009<sup>2</sup>.

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<sup>1</sup> In case of a reaction of the responsible Directorates-General this is presented in the relevant paragraph.

<sup>2</sup> Cf. [http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/high-level-group/index\\_en.htm](http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/high-level-group/index_en.htm)

- (5) For most priority areas the HLG strived to integrate the offline suggestions into the respective sectoral opinions. However, where this had not been possible due to time constraints or other obstacles, the suggestions were taken up in offline opinions. Since the HLG has already delivered opinions on each priority area,<sup>3</sup> in particular suggestions received after the adoption of the respective sectoral opinions are dealt with in the offline opinions.

### III. Suggestions by Priority Area

- (6) *Priority Area Cohesion.* In suggestion 1 stakeholders complain about the verification system for the proper allocation of funds for the programming period 2007-2013 of the European Regional Development Fund laid down in Regulation (EC) No 1828/2006.<sup>4</sup> According to the stakeholders the mathematical statistical random sampling method required by Art. 17 will double the number of cases to be checked by Member States compared to the previous funding period. The Commission amended<sup>5</sup> the regulation in 2009 to allow for the use of non-statistical methods in case of a limited number of operations during this funding period. This should provide more flexibility for random statistical sampling for those operational programmes<sup>6</sup> with a limited number of beneficiaries. *The HLG is of the view that proper risk-based sampling methods can alleviate burdens on businesses. Therefore, the HLG has already called upon the Commission<sup>7</sup> to limit the audits on project level and apply a risk based approach, bearing in mind its judgement on the audit structure for projects in a specific Member State. The Group asks the Commission to review the sampling method at least for the next period to ensure the application of a risk-based approach that alleviates burdens on businesses. While checks are necessary to ensure the proper use of funds, they should be performed in the least burdensome way possible.*

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<sup>3</sup> Cf. the Intermediate Report of the HLG adopted at its 17 September meeting: [http://ec.europa.eu/enterprise/policies/better-regulation/files/180909\\_hlg\\_ab\\_\\_intermediate\\_report\\_incl\\_annexes\\_en.pdf](http://ec.europa.eu/enterprise/policies/better-regulation/files/180909_hlg_ab__intermediate_report_incl_annexes_en.pdf)

<sup>4</sup> Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund

<sup>5</sup> Commission Regulation (EC) No 846/2009 of 1 September 2009 amending Regulation (EC) No 1828/2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund

<sup>6</sup> An operational programme presents the priorities of the Member State (and/or regions) as well as the way in which it will lead its programming.

<sup>7</sup> Opinion of HLG: Administrative burden reduction; priority area Cohesion Policy of 8 July 2009

- (7) *Priority Area Food Safety*. In suggestion 2 stakeholders complain about Regulation (EC) No 854/2004.<sup>8</sup> The costs involved with the authorisations necessary for catering lead to disproportionate costs for small companies which could not be considered for an exemption while some bigger caterers such as a hospital caterer could. According to the Commission EU law does not require an approval for caterers, just a registration. Thus, only the general basic rules on food hygiene in Regulation (EC) No 852/2004 apply. Beyond that, the Member States may determine the circumstances under which an approval is necessary.<sup>9</sup> *The HLG has previously advocated the “think small first”-principle. In the HLG’s view it is important that small enterprises are not subject to the same requirements as large companies if these requirements are disproportionate and create inappropriate obstacles for their business, and if special treatment does not affect the effectiveness and credibility of the relevant EU legislation. With respect to this case, the HLG calls upon the Member States to review their respective legislation in this area based on the Think small first principle.*
- (8) *Priority Area Food Safety / Agriculture*. Suggestion 3 concerns the individual animal recording and electronic identification for sheep and goats foreseen in Regulation (EC) No 21/2004.<sup>10</sup> In the stakeholder’s view the introduction of electronic identification and the linked documentation obligations are unnecessary burdensome for the keepers and too many practical problems still exist. The Commission points out that the conclusions of recent debates in Council stress the importance on maintaining the principle of the Regulation, while reflecting on possible ways of easing the cost of the implementation of the rules. *The HLG notes that the implementation date of mandatory electronic identification (EID) for sheep and goats had already been postponed from 1 January 2008 to 1 January 2010. In principle the HLG supports the introduction of electronic identification systems, as they have a tendency to simplify processes in general. It is however essential that the implementation of the system has been tested and is user-friendly. Given the period of time that has elapsed since the agreement of the original regulation and the complaints about practical problems with the implementation, the HLG calls upon the Commission to review the regulation taking into account the costs to industry and enforcement authorities.*
- (9) *Priority Area Food Safety*. Suggestion 4 concerns labelling requirements contained in Regulation (EC) No 853/2004.<sup>11</sup> A creamery complains that they have to change the identification number by adding two additional digits. This presumably minor change entails an overhaul of more than 200 different kinds of packaging causing considerable costs. The Commission clarifies that such detailed rules on the identification mark are a national competence. *The HLG points out that sometimes presumably minor changes can lead to huge costs for businesses involved. In the HLG’s view the Member States*

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<sup>8</sup> Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption

<sup>9</sup> Article 6 (3) (a) of Regulation (EC) No 852/2004

<sup>10</sup> Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals

<sup>11</sup> Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin

*and the Commission should strive to refrain from frequent changes in labelling requirements.*

- (10) *Priority Area Food Safety.* Suggestions 5 concerns Regulation (EC) No 853/2004. The stakeholder states that they face difficulties with complying with the requirement to provide information on the food chain 24 hours before the arrival of the animals at the butchery. Exemptions from the 24 hour rule require prior authorisation by the authorities. The Commission indicates that this issue has been solved by the adoption of Commission Regulation (EC) No 1161/2009<sup>12</sup>. *The HLG welcomes the simplification of the 24-hour-rule. The HLG calls upon Member States to make use of the new flexibility provided by the regulation which applies since 1 January 2010.*
- (11) *Priority Area Food Safety.* Suggestion 6 concerned a proposal for a regulation on the protection of animals at the time of killing which has been adopted in the meantime.<sup>13</sup> Stakeholders had opposed the proposed limit of five years for the validity of certificates of competence for slaughter operations. Following discussion at the Council, the Commission accepted to delete any time limit for the validity of certificate of competence in Regulation (EC) No 1099/2009. *The HLG welcomes that the new regulation has taken suggestions by stakeholders for less administrative burdens into account. In the HLG's view the Commission should strive to avoid the introduction of new unnecessary administrative burdens at the earliest possible stage within the legislative process. Alternatives should be sought and quantified at the very beginning of the process of policy design.*
- (12) *Priority Area Food Safety.* Suggestion 7 concerns legislation on the hygiene of foodstuffs. Stakeholders complain that small enterprises such as turkey breeders (direct marketers) need to comply with the same standards as large meat-processing companies. In addition, they perceive the requirements and documentation obligations in the context of the HACCP (Hazard Analysis and Critical Control Point) as too rigorous. The Commission indicates that solutions can be found through the provisions on flexibility included in the hygiene Regulations. Such provisions have to be put forward at national level. *In the HLG's view the Commission needs to undertake a thorough assessment of the appropriate legislation with the aim to implement the Small Business Act. The HACCP should be examined to verify if exemptions or less rigorous systems could be foreseen for smaller enterprises. Likewise, the Member States should thoroughly assess their legislation with a view to make use of already existing flexibilities, in particular concerning small enterprises.*
- (13) *Priority Area Public Procurement.* In suggestion 8 stakeholders argue against the obligation of contracting authorities to draw up an annual statistical report for the European Commission on the awarded contracts. Since contracting authorities are obliged to publish all invitations to tender and contracts awarded in the Official Journal of the EU, and this information is recorded in a database at the EU Publications Office, there is no pressing need for an additional annual statistical report.

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<sup>12</sup> Commission Regulation (EC) No 1161/2009 of 30 November 2009 amending Annex II to Regulation (EC) No 853/2004 of the European Parliament and of the Council as regards food chain Information to be provided to food business operators operating slaughterhouses

<sup>13</sup> COM(2008)533; Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing

Should there be a need for more data than appear in the notices, the model of notices could be adjusted. In the Commission's view the statistical reports provided by Member States represent a valuable complement to data available via the Commission's Official Journal/TED database, since they permit verification and completion of information published on the Official Journal and provide information on procurement procedures not subject to publication obligations (e.g. below threshold procurement). In addition, several Member States have already established portals or other mechanisms for gathering data centrally which allow them to meet the reporting obligations at lower / zero cost to individual contracting authorities. *The HLG notes that the stakeholder's suggestion concerns burdens for public authorities, not for businesses. The HLG stresses that this case seems to concern a request for information which is already available through other channels. In similar cases concerning businesses, the HLG recommended that the Commission examines the possibility of eliminating the request for duplicated information (in this case the annual report).*

- (14) *Priority Area Statistics.* Suggestion 9 concerns Regulation (EC) No 2150/2002 on waste statistics. The regulation requires businesses to provide detailed records on waste produced in 48 different waste categories. According to the stakeholders the survey creates unnecessary burdens on businesses, as the only purpose was gathering statistics on waste which has been generated. Companies are selected according to the number of staff they employ; exemptions are not foreseen. The Commission points out that the Regulation requires that enterprises of less than 10 employees shall be excluded from the survey, unless they contribute significantly to the generation of waste. In addition, the Regulation does not stipulate that all enterprises of 10 employees and more have to undergo surveys as the data can be collected from other sources.<sup>14</sup> *The HLG acknowledges the need for information on generated waste. However, the Group supports the stakeholder's request that a careful check should be carried out to determine whether this survey on the production of waste can be excluded from the EU Waste Statistics Regulation. In case the Commission still sees a need for the survey, the HLG calls upon the Commission to study alternative ways for reducing the burdens on businesses such as the possibility of further exempting certain companies and / or further reducing the number of waste categories as well as the extent of the information that needs to be provided. Furthermore, the HLG underlines that, if data is already available from other sources, businesses should not be approached for the same information twice (only-once-principle).*
- (15) *Priority Area Statistics.* In suggestion 10 stakeholders complain about the fact that enterprises still have to deliver data to different government institutions. They call for further automation of the data collection. The Commission and the Member States are currently discussing the Commission's strategy to build a modern and integrated statistical system<sup>15</sup>. The reduction of administrative burden being a dynamic process, the strategy focuses on the promotion of statistical tools and methods that make it easier to meet statistical obligations. Its aim is to improve the efficiency of the production process of statistics. In the Commission's view Member States are key actors in the successful implementation of the strategy. *The HLG recalls the*

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<sup>14</sup> see Article 3 (1) indent 1 to 4 of Regulation (EC) No 2150/2002

<sup>15</sup> COM(2009)404; Communication on the production method of EU statistics: a vision for the next decade

*importance of the only-once-principle<sup>16</sup>, i.e. businesses should be required to deliver the same information only once. The HLG calls upon the Member States to implement this principle in general as well as in the area of statistics in particular. In this context the automation of data collection plays an essential role; the HLG has repeatedly stressed the burden reduction potential offered by promoting e-enabling and e-government solutions, if applied correctly.*

- (16) *Priority Area Tax Law/VAT.* Suggestion 11 concerns tax ID numbers. Stakeholders state that customers coming from other Member States have to deliver their tax ID number, so that no VAT is calculated. The supplier then has to review the tax ID number and get a written confirmation from a national tax authority. Since in some cases the information is not available online, the process may be considerably delayed. The Commission points out that an online validation system of checking VAT numbers already exists on the Commission's website.<sup>17</sup> Moreover, this has been enhanced in 2009 to allow the taxable person checking the validity of his customer's VAT number to provide his own VAT identification number which can then provide evidence that a check has been made on a given date. *The HLG welcomes the service offered by the Commission to check tax-ID numbers electronically. The HLG observes, however, that some Member States have implemented on-line systems to automate traders' access to the information while others have administrative units that answer traders' inquiries made by phone, mail or fax. The Group calls upon the Commission and Member States to inform businesses at all levels that these services are available. Furthermore, the Group calls upon the remaining Member States to introduce on-line systems as soon as possible.*
- (17) *Out of scope (Machinery).* Suggestion 12 concerns provisions contained in the machinery directive.<sup>18</sup> Stakeholders have difficulties in understanding certain provisions and ask for guidance on their interpretation. The Commission indicates that guidance on the interpretation and practical application of these provisions has been given in the Guide to application of the Machinery Directive 2006/42/EC published on EUROPA.<sup>19</sup> The Guide is currently available in English. It will be completed and translated during 2010. *The HLG stresses the need for proper guidance which allows the addressees of legislation to understand what is required from them. The HLG therefore welcomes the production of guidance by the Commission and calls upon the Commission to provide the respective translation of the guidance as soon as possible. The HLG is of the view that guidance of new legislation should be available to enterprises as soon as possible, and in any case the guidance should allow enterprises sufficient time to get accustomed to the new legislation before they actually have to start complying with new or changed obligations.*
- (18) *Out of scope (directories for certain EU legislation).* In suggestion 13 stakeholders complain about the complexity and the lack of readability of certain EU legal acts.

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<sup>16</sup> cf. Opinion of the HLG: Administrative Burden Reduction; priority area Statistics of 7 July 2009

<sup>17</sup> [http://ec.europa.eu/taxation\\_customs/vies/lang.do?fromWhichPage=vieshome&selectedLanguage=EN](http://ec.europa.eu/taxation_customs/vies/lang.do?fromWhichPage=vieshome&selectedLanguage=EN)

<sup>18</sup> Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery

<sup>19</sup> [http://ec.europa.eu/enterprise/sectors/mechanical/files/machinery/guide\\_application\\_directive\\_2006-42-ec-1st\\_edit\\_\\_12-2009\\_en.pdf](http://ec.europa.eu/enterprise/sectors/mechanical/files/machinery/guide_application_directive_2006-42-ec-1st_edit__12-2009_en.pdf)

They quote the example of Regulation (EC) No 1272/2008<sup>20</sup> which is about 1350 pages long and does not include any directory. They suggest an obligatory directory for legislation exceeding a certain threshold (e.g. page number) or adding chapter numbers etc on each page. The Commission points out that the readability and accessibility of legal texts has been enhanced by electronic access on EUR-Lex and on the EU Official Journal. *The HLG is of the opinion that some legal acts do not relate to the business processes. The HLG emphasises the importance of better and more accessible regulation for businesses, because businesses need to be able to understand what is required from them. The HLG supports the suggestion to provide more user-friendly legislation. Furthermore, the HLG stresses that when the Commission provides information via Internet, this should be easy to retrieve and accessible by businesses.*

#### **IV. Conclusions**

- (19) *The HLG takes note of the suggestions made by stakeholders and encourages the Commission to take a proactive approach, as specified in the HLG's conclusions on the suggestions above. The HLG would appreciate to be informed about the steps taken by the Commission to address stakeholders' concerns.*
- (20) *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.*
- (21) *The HLG welcomes the active involvement of stakeholders with proposals for the reduction of administrative burdens. The HLG is of the opinion that many suggestions reviewed by the HLG prove that stakeholders have a vital role to play in the process of making European legislation less burdensome for businesses. The suggestions made by stakeholders should be taken as an incentive for new initiatives as well as an opportunity for the Commission to broaden existing initiatives to reduce red tape.*
- (22) *The HLG signals that some of the stakeholder suggestions dealt with in this opinion fall outside the scope of the Action Programme. Sometimes proposals refer to administrative burdens in legislation that is not measured, or refer to other costs that are not included in the definition of administrative burdens. In the view of the HLG Smart Regulation requires a mindset where all these efforts of stakeholders are seriously taken into consideration, and it asks the Commission to ensure an adequate follow-up.*
- (23) *The HLG is aware that for meeting the reduction target of 25 % it is crucial to keep the process going. Therefore, the HLG would appreciate more information from the Commission on the further proceedings of the stakeholders' suggestions including the selected suggestions and the HLG's conclusions on these.*

Brussels, 28 January 2010

#### **Annex A: Overview of the suggestions**

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<sup>20</sup> Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures