



OPINION OF THE HIGH LEVEL GROUP

Subject: Priority Area *Financial Services*

I. Background

- (1) The High Level Group of Independent Stakeholders on Administrative Burdens (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 measures¹. Mr. Linschoten and Mr. Berger, who were appointed as reporting members for the priority area “Financial Services”, have prepared the present opinion².
- (2) The priority area “Financial Services” is one of the 13 priority areas of the Action Programme. The Consortium, hired by the Commission to map and measure the information obligations in the three legal acts of the original scope (concerning life insurance, the taking up and the pursuit of the business of credit institutions and the capital adequacy of investment firms and credit institutions)³, has estimated that the 54 information obligations and possibilities lead to **total administrative costs of € 1.4 billion and total administrative burdens of € 715 million**. The HLG notes that all Consortium figures are preliminary and can be subject to change.
- (3) The HLG highlights that the selection of the legal acts measured has been made before it was set up. Not neglecting the administrative burden and irritants of those legal acts, the HLG repeats its reserve about the selection made and its significance for the whole financial area. In the meantime, the Commission, without formal consultation of the HLG, included three additional legislative acts into the measurement⁴. Cost figures for these acts are available only in autumn

¹ Cf. to Commission Decision COM(2007)4063.

² The HLG refers to the suggestions by stakeholders related to the priority area financial services in its opinions on stakeholder suggestions of 18 September 2008 (para 14-15), 20 January 2009 (para 13-15), and 7 July 2009 (para 17-22), available at: http://ec.europa.eu/enterprise/admin-burdens-reduction/highlevel_group_en.htm.

³ Directive 2002/83/EC of 5 November 2002 concerning life assurance; Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions; Directive 2006/49/EC of 14 June 2006 on the capital adequacy of investment firms and credit institutions.

⁴ Directive 2000/46/EC of 18 September 2008 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions; Regulation (EC) No. 2560/2001 of 19 December 2001 on cross-border payments in euro; Directive 85/611/EC of 20 December 1985 on the coordination of laws,

2009. The HLG asks the Commission to take the planned revision of the financial services acquis as an opportunity to measure all legislative acts in this field or at least those having a significant impact on financial institutions.

II. General Advice on Administrative Burden Aspects of the Reaction to the Current Situation on the Financial Markets

- (4) The HLG notes that in a global context, Europe is confronted with one of the most severe financial and economic crises of the past decades. The current macro- and microeconomic regulatory system, its supervisory framework and financial companies' internal risk assessment procedures have failed to prevent this crisis. The HLG furthermore notes that the Commission intends to follow-up on the report by the High Level Group on Financial Supervision in the EU (De Larosière Report) by tabling a significant number of legislative proposals before the end of the year⁵.
- (5) The HLG is not in a position, nor does it have the mandate, to pronounce itself in detail on each of these specific proposals. However, in line with its mandate to address administrative burden reduction in this policy field, **the HLG hereby advises the Commission to adhere to a number of principles when proposing revisions of the system of regulation and supervision of financial markets and institutions:**
 - a) Before creating new (information) obligations, Commission and Member States should carefully **consider the major sources of weaknesses of the present set-up without introducing unnecessary administrative burden for enterprises**. Supervisory authorities should examine **whether a better implementation of the current rules by the supervisory authorities would sufficiently address the shortcomings**. Authorities should align their information requests to the internal procedures and the information already available in the companies.
 - b) Furthermore, they should **carefully check whether the information they gather from the current set of information obligations could be used more effectively**. In addition, they should **carefully examine whether they sufficiently insisted that enterprises properly fulfil the current obligations** before changing or adding new obligations.
 - c) Adapting to legal changes can be costly for enterprises. The Commission and Member States should therefore **refrain from changing the same rules several times within a short timeframe**. In order to assist companies that operate in several Member States with their adaptation to the legal changes, the Commission and the Member States **should aim at having the changes enter into force in all Member States on the same date (common commencement dates)**.

regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

⁵ Cf. to COM(2009)114 and COM(2009)252 for a list of measures envisaged.

- d) Authorities should aim for **coherence between different legal acts** and, where possible, should **harmonise content and format of different reporting obligations**.
 - e) New or adjusted rules should follow a **risk based approach** and should thus be lighter in areas where there is little risk. The overruling question should be whether the political aim could also be achieved with less administrative burden for enterprises, especially with regard to the relatively higher burden for SME in general.
 - f) Despite the urgency of the situation, new or significantly adjusted information obligations should be based on **public consultations with relevant stakeholders and impact assessments with full ex ante measurements of the administrative burdens based on the standard cost model**. There should be a **thorough ex-post evaluation** at an appropriately short interval.
 - g) **Modern technology, improved guidance for companies on how to comply with the rules and better cooperation between supervisory authorities** should be used to improve the effectiveness of financial oversight while in parallel reducing the administrative burden. Guidance (open norms) should not be used by supervisory bodies to introduce new restrictions for enterprises.
 - h) Independent of the organizational structure and procedures of the supervisory authorities, experience shows that enterprises being active in several Member States largely benefit from **dealing only with one supervisory body**.
- (6) **The HLG asks the Commission to keep it informed about the progress on the legislative work in the financial services area and its quantified assessments of the administrative burden impact.** It may give advice on certain aspects in a subsequent opinion.

III. Advice on Consortium Reduction Ideas

- (7) The Consortium has suggested a number of measures to reduce the burden in specific parts of the financial services acquis. The HLG points out that **the Commission's plan to reform the system of financial market regulation and supervision should not hinder its efforts to modernize and simplify aspects of the financial services acquis that are less central to solving the financial crisis**.
- (8) **The HLG regrets that the Consortium only provided five reduction proposals. The HLG furthermore notes and regrets that the suggestions presented by the Consortium add up only to a reduction of around €75 million.** Notwithstanding this limited reduction potential, the HLG stresses the importance of removing any irritants for ensuring that affected enterprises perceive a reduction of the administrative burden.
- (9) Investment firms are currently obliged to **report to the competent authorities on their compliance with the rules** with a frequency ranging between monthly and six-monthly, depending on their size (Art. 35 Directive 2006/49/EC). The Consortium suggests to **reduce the frequency of reporting to once every six months for all companies** and to harmonise the dates of reporting between

Member States. The Consortium has estimated the reduction potential at €37 million annually. The Commission believes that a mandatory reduction of the reporting frequency for all investment firms to six months would be in contradiction with ongoing initiatives in response to the crisis such as increasing capital requirements on trading book items and would not be in line with the harmonisation of the COREP reporting frequency to quarterly reporting. The Commission also expects supervisors to compensate the reduced frequency with increased specific requests for information that may outweigh the reduction in administrative burden. The HLG stresses that the reporting obligation is seen as an important irritant. The HLG therefore calls upon the Commission to assess whether the reduction and harmonization of the frequency could remove this irritant without being detrimental to the oversight of financial services institutions.

- (10) The Consortium recommends that **the use of XBRL-based COREP reporting on financial information** (Art. 35 Directive 2006/49/EC, Art. 74 Directive 2006/48/EC)⁶ **is harmonised in the EU** and that this is used as a basis for extension of XBRL reporting to other reporting requirements to and amongst supervisors. It argues that this would notably benefit financial institutions having to report in several Member States. The Consortium estimates the reduction potential at € 31 million annually⁷. The Commission supports this recommendation. The HLG advises the Commission to harmonise the use of XBRL-based COREP reporting. The HLG advises the Commission and Member States to immediately take action to facilitate the implementation of the XBRL-based approach in the financial institutions. Furthermore, the HLG calls upon the Commission to assess the possibilities of a broader use of XBRL.
- (11) Insurance undertakings are obliged to **communicate certain information to the policyholder before the conclusion of the insurance contract and keep him informed throughout the term of the contract of any changes to this information** (Art. 36 Directive 2002/83). The Consortium suggests **simplifying the provision of this information to the policy holder** by allowing insurance companies to provide non-essential information only on the company website or only upon request of the client. It furthermore suggests **clarifying the wording of the Directive with regard to the timing of the information provision and the medium of transmission of information** to the client. The Consortium estimates the reduction potential at € 6.3 million per year. The Commission points out that the suggested measure touches upon concerns of consumer protection and expresses reserves about the necessity of clarifying the wording as recommended. Stakeholders generally advocate that the **distinction between essential and non-essential information** and the lighter regime for non-essential information (only on demand, only in electronic form) is applied across the

⁶ XBRL (Extensible Business Reporting Language) is an open standard mark-up language created to exchange financial information. COREP (Common Solvency Ratio Reporting) is a reporting framework initiated by the Committee of European Banking Supervisors that aims at harmonisation of the solvency requirements reporting.

⁷ This estimate is based on savings under two specific information obligations in Directives 2006/48/EC and 2006/49/EC; the savings are calculated on the assumption that all targeted financial institutions make use of XBRL. The Consortium points at further saving potential if XBRL is used for reporting under further information obligations.

financial services acquis. The HLG advises the Commission **to make such a distinction possible, based on a clear definition, taking into account the information needed by consumers**. Furthermore, it calls upon the Commission to clarify the wording of the directive on the issues raised by the Consortium. While doing so, the HLG advises the Commission to assess and address the discrepancies as identified by stakeholders between various directives in this area⁸.

- (12) The Consortium recommends **improving the guidance given to enterprises for their applications for authorisation to take up the business of insurance** (Art. 4-9a Directive 2002/83/EC). The Consortium especially points out that clearer indication as to what documents need to be provided and as to their desired format would reduce the burden and irritation of businesses. The reduction potential estimated by the Consortium amounts to €0.3 million per year. The HLG calls upon Member States to provide the guidance needed, without creating new restrictions. The HLG also advises the Commission to disseminate best practices and to encourage convergence between Member States on the information requirements.
- (13) Insurance undertakings and credit institutions are required to inform the competent authorities of their home Member States at least once a year of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings (Art. 15(3) Directive 2002/83/EC and Art. 21(1) Directive 2006/48). The Consortium suggests that **unlisted companies are exempted from this obligation and are required to provide the notification only in the event of changes**. It estimates the annual reduction potential to €0.2 million. The HLG advises the Commission to exempt unlisted companies from the obligation as suggested by the Consortium.

Brussels, 7 July 2009

⁸ Stakeholders have identified in this regard the Payment Services Directive (2007/64/EC), the Distance Marketing of Financial Services Directive (2002/65/EC), the UCITS Directive (85/611/EC), the Insurance Mediation Directive (2002/92/EC).