



OPINION OF THE HIGH LEVEL GROUP

Subject: Priority area *Pharmaceutical legislation*

I. Background

- (1) The High Level Group of Independent Stakeholders on Administrative Burdens (HLG) was set up inter alia to advise the Commission on suggestions for administrative burdens reduction measures coming from the Consortium¹ and from stakeholders through for example the internet consultation. The Consortium has submitted a draft report and recommendations addressing administrative costs and burdens in the priority area of "Pharmaceutical legislation".
- (2) The priority area "Pharmaceutical legislation" is one of 13 areas of European legislation investigated in the framework of the Commission's Action Programme for reducing administrative burdens in the E.U. The priority areas were selected on the basis of a 2006 pilot study and are estimated to account for a large part of the administrative burdens of EU origin. The two legal acts chosen for the Pharmaceutical Legislation priority area are expected to cover a big proportion of burdens imposed on businesses operating in the research and production activities of the Pharmaceuticals sector. This does not preclude other legal acts concerning medicines being investigated in further stages of the Action Programme. At present, the scope of the measurement covers two main topics, each covered by one of the two legal acts under scrutiny:
 1. Medicines for human use: framework Directive 2001/83/EC covers all stages of the life-cycle of medicinal products including manufacturing and importation, labelling and package leaflet, classification and distribution, pharmacovigilance², special provisions for certain products;
 2. Clinical trials: Directive 2001/20/EC defines standards for good clinical practice, i.e. a set of internationally recognised ethical and scientific quality requirements which must be observed when designing, conducting, recording and reporting clinical trials that involve the participation of human subjects.
- (3) After a scrutiny of the Consortium's report and reduction ideas, consultation with stakeholders and the input for reduction ideas from stakeholders, Mr. Linschoten and Mr. Murray, who were appointed reporting members for the priority area Pharmaceutical Legislation, have prepared the present opinion. It constitutes the HLG's advice to the Commission on administrative burden reduction in this area. Some of the out-of-scope suggestions of stakeholders will be dealt with in the coming offline opinions of the HLG.

¹ Capgemini, Deloitte, Rambøll management; assigned by the Commission to measure administrative burden based on certain EU legislation and to identify measures to reduce this burden.

² Pharmacovigilance is the process and science of monitoring the safety of medicines and taking action to reduce risks and increase benefits from medicines. It is a key public health function and rests mainly on collecting and managing data on the safety of medicines and taking action to protect public health.

II. General Comments

- (4) EU law on Pharmaceuticals is essential for the functioning of the internal market on pharmaceuticals. Even more important it sets preconditions for the creation of safe, innovative and accessible medicines within the EU. It is of the utmost importance that the confidence that European citizens have in the quality of the European medicines is not jeopardised.
- (5) The HLG stresses that a good balance needs to exist between innovation and safety. It is impossible to eliminate all risks through legislation, and this should not be the ambition.
- (6) Even though the European Commission has done a lot since 2005 to reduce burdens by simplifying Directive 2001/83/EC and its implementation, legal acts (Variations) or is under way (Pharmacovigilance proposal), the HLG is convinced that there is more room to improve the procedures relating to Pharmaceutical Legislation and to make them more business-friendly.

III. Findings and recommendations of the Consortium

- (7) The draft report of the Consortium indicates that in-scope Pharmaceutical legislation cost European businesses around €904 m. EU-wide³. The total market for pharmaceuticals is estimated at € 138 bn. ex factory and € 214 bn. at retail prices (by the Directorate General for Competition). Though this cannot be said of all the information obligations, some do generate an amount of "burden" not proportionate to the benefits.
- (8) On the basis of two Directives, a total of 37 EU Information Obligations (IOs) were identified by the Consortium. The transposition of the 37 EU IOs resulted in 1078 national IOs across the 27 Member States. The total administrative cost of these 37 IOs is estimated at a total of €920.4 m. EU-wide. Of the €920.4 m. of administrative costs, 99% (€911 m.) stem from EU requirements, whereas 1% (€8.8 m.) is due to national obligations going beyond EU requirements.
- (9) Five IOs — “Application needed for marketing authorisation”, “Notification of planned changes in the marketing authorisation”, “Submission of a periodic safety report”, “Request for authorisation to commence a clinical trial” and “Registering of detailed records of suspected adverse reactions”—alone account for €715 m. in administrative costs, representing 77.7 % of the total administrative cost caused by EU IOs. The IOs stem from Directive 2001/83/EC and Directive 2001/20/EC.
- (10) The HLG notes that the draft report of the Consortium forms a starting point for identifying reduction possibilities, but regrets that some proposals and analysis are already outdated. This is mostly the case where the new Variations Directive is concerned.

IV. Possible angles for reduction measures; initiatives already started by the Commission

- (11) The HLG welcomes the work under progress in Commission services, notably in the Directorate General Enterprise and Industry, on several initiatives to increase governance and efficiency of EU Pharmaceuticals law which would contribute to the objectives of the Action Plan.
 - Maximal residue limits (2003-2009): a new Regulation of the European Parliament and of the Council would lay down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin (adoption scheduled coming spring);

³ This figure, like all those in this section, is still under review and may still change significantly.

- Variations (2006-2011): the revision of the Regulations (EC) No 1084 and 1085/2003 is an important step to a more simplified variation framework (adopted).
 - Pharmacovigilance (2008-2011): modernisation, including rationalising of periodic safety report submission. A legal proposal was adopted in December 2008 and is currently in the co-decision procedure.
- (12) The HLG approves of the further Commission projects aimed at the reduction of administrative burdens and urges the Commission in reviewing underlining legislation to take where possible a more integral approach:
- Clinical trials (2009 - 2013): An assessment of the application of the Directive 2001/20/EC
 - Veterinary medicines (2009 - 2013): Impact assessment of possible future revision of Directive 2001/82/EC
 - Evaluation of the EMEA (from 2009): with a view to optimise the functioning of the EU network

V. Advice and view of the HLG

- (13) The Commission stated in her communication on “a renewed vision for the Pharmaceutical Sector” (COM(2008) 666) the importance of completing the single market in Pharmaceuticals. The market fragmentation, caused by disparities in national pricing and reimbursement schemes and divergence in the implementation of Community legislation increases the administrative burdens of stakeholders and with that the costs of safe, innovative and accessible medicines for all. The HLG strongly recommends a more consistent approach across the EU while applying the *acquis*, as a lot of unnecessary administrative burdens stem from fragmentation, and regrets that no one-stop-shop exists for all pharmaceutical products.
- (14) An important step to reduce administrative burdens for stakeholders is to broaden the use of “automatic mutual recognition”. The HLG strongly urges the Commission to take measures to make this possible such that the availability of medicines in a true single market is improved. To enable this, the minimum quality standard of the application procedure across the EU should be ensured.⁴
- (15) The Commission should assess the possibilities for further harmonization of the application procedure, while taking account of the need for flexibility for stakeholders. Within this context the Commission should, while assessing the EMEA network, analyse all possibilities to broaden the central procedure to include all medicines, while creating a lighter EMEA regime focussing on further specialisation in Member States.
- (16) In almost all Member States the pricing and reimbursement status of a prescription medicine must be determined before launch, if funded under the social security system. Companies complain about the delays and uncertainties these procedures create. The HLG fully acknowledges that this lies within the national competence of the Member States. Nevertheless, the increasing use of health technology assessments and the widespread use of cross-border reference pricing systems can create extra administrative burdens for companies. The HLG therefore advises Member States to apply simple and swift procedures, while maintaining value for money in the health care.
- (17) Technological and scientific developments have led to an increasing variety of medical products. Because of complex definitions of ‘medicinal product’ and ‘medical device’ it is not clear for an increasing amount of products whether they should be defined as a medical device, as a medicinal product or even a consumer good. It can be very time-consuming before it is decided which legislation comitology should be applicable. The HLG recommends the Commission to assess

⁴ Mr Hontelez abstains on this paragraph.

the relevant legislation in an integrated way in order to improve the coherence between both legislations. In particular, improvements should be made on the coherence of the interpretation of the definitions of medical devices, medicinal products and consumer goods.

- (18) It is essential that new EU regulation does not undo the efforts already made by the Commission and the Council by creating new unnecessary burdens. The package proposed by the Commission on 10 of December 2008⁵ reduces on the one hand administrative burdens, but can increase them as well, as is the case for the parallel import of medicines.
- (19) The HLG stresses the need for an actual level playing field of national competent authorities in the application procedure. The difference in quality leads to an unbalanced workload. Some national competent authorities (NCAS) do not take up the role of Reference Member State, in case of a decentralised procedure or mutual recognition procedure which will make the burden for other NCAS higher leading inter alia to longer waiting time. The HLG urges the Commission to take measures to ensure a European standard of quality of all national competent authorities across the EU.
- (20) The Commission has already acknowledged the need for a review of the Clinical trials directive. The HLG underlines the importance of an efficient clinical trial mechanism, taking account of the growing international dimension in which companies operate. It should not be that even within one Member State different requirements exist for a multi-centre trial. On the long run approval by a single European competent authority and a single European ethic committee should be made possible to permit initiation of a multinational trial across the whole of the EEA, including a swift procedure of the assessment of the suitability of the site of the study. The HLG urges the Commission to assess this possibility in the short run. Meanwhile the coordination on the national level should be improved based on the Dutch model in those Member States that still have a decentralised approach⁶. At the same time the HLG urges the Commission to assist Member States in the standardisation of the process leading to one format and one type of procedure.
- (21) There is a need for further guidance amongst stakeholders to ensure consistency within Member States in the classification of substantial and non-substantial amendments within the Clinical trial directive. The HLG urges the Commission to give a clear definition of “substantial”. This will yield a possible administrative burden reduction of €1 m.
- (22) The HLG strongly advises the Commission to pursue its efforts to disseminate e-government, so that Member States can make life easier for businesses by facilitating storage and communication of data required by administrations. The following recommendations naturally require further in-depth examination of their feasibility, their costs and benefits.
- Enable electronic submission of documents and data for marketing authorisation in all Member States based on the same ICT standards and procedures (administrative burden reduction of €49.5 m.).
 - Enable one electronic submission of request for authorisation to commence a clinical trial, instead of submitting it to the competent authority and all local ethics committees concerned (administrative burden reduction of €6.8 m.).
 - The Commission in co-operation with EMEA has developed various IT systems (Eudravigilance, EudraCT, EudraLink) to enhance the exchange of information between Member States which should reduce duplications in the demand for information. The HLG urges all

⁵ COM(2008) 662, 664, 665, 666, 668.

⁶ Improvement of the coordination between central/national and regional ethic committees will amount to a reduction of approximately €10 m.

Member States to make optimal use of these systems. The Commission should take measures to increase the confidence of Member States in these systems.⁷

- (23) The HLG urges the Commission to provide a harmonized legal basis for electronic signatures to facilitate electronic submissions to competent authorities and ethic committees in case of the clinical trial procedure, and to market authorities in case of licensing of drugs.
- (24) Many stakeholders complain about the different procedures and information requests within the National Procedures for market authorisation. The HLG advises the Commission to standardise requirements for national procedures with due respect to the national competence. This will allow for a reduction of administrative burdens of €132.000.
- (25) The Consortium recommended the creation of a central repository to centralise several procedures, with possible administrative burden reduction of €118.5 m. The Consortium is at the moment in the process of redrafting this recommendation which makes it too early for the HLG to take a stand.⁸
- (26) The HLG endorses the recommendation made by the Consortium to move to a risk based approach for determining frequency and content of safety reports. This will allow for an administrative burden reduction of €20.4 m.⁹
- (27) For the Mutual Recognition Procedure and the Decentralised Procedure, companies have to submit a safety report to all Member States concerned. The Reference Member State is the only state that has to evaluate the safety report. The HLG urges the Commission to enable single reporting. It should be enough that only the Reference Member State receives the report (administrative burden reduction of €5.1 m.).

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⁷ This recommendation amounts for just Eudravigilance to a possible reduction of 1.4 m. Euros. In the ideal situation, i.e. a good functioning of Eudravigilance, a market authorisation holder only needs to submit a report of suspected serious reaction once.

⁸ The opinion will be updated after the Consortium has tabled the final version of this recommendation and after an examination of this recommendation by the HLG.

⁹ Mr Hontelez abstains on this paragraph.