

The complicated road to simplification



BY LUDGER FISCHER

THERE are some sections within the EU administration that seem intent on justifying their existence by creating unnecessarily complicated regulatory procedures.

The current Council Common Position on the proposed Regulation for nutrition and health claims, which endorses the Commission's position, is a perfect example of this. By reintroducing the dreaded Article 4, on obligatory nutrition profiling, the Common Position places a completely unrealistic demand on businesses, which the majority of small businesses in the sector have neither the resources nor the know-how to comply with.

Under Article 4, any firm wishing to make a claim has to carry out in-depth analysis on every nutritional value (fat, calories, proteins, carbohydrates, salt, etc.) and to indicate the results. Quite

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apart from the fact that many small-scale producers will not have the scientific expertise to carry out such an analysis, the question of how much use it is to the average consumer must also be raised.

From a practical point of view it is not feasible for all the different and specific to be reviewed by a single European Authority. Even the managing director of EFSA (European Food Safety Authority) has admitted that the required level of analysis would be almost impossible to meet.

The insistence of the Council and the Commission on imposing these unmanageable obligations, flying in the face of the decision by the European Parliament, was strongly criticised by MEPs in a recent discussion on the Regulation in the Parliament.

Worst

Of 71 amendments made by the parliament in its first reading, 50 were completely ignored and only 11 were accepted in full. One German MEP described the current text as "one of the worst proposals, ever submitted".

The Commission officials responsible for drafting the regulation have created a completely unworkable proposal, devoid from the reality of the food sector, in which the majority of firms are small

producers. The draft is full of ambiguities. The meaning of the 'scientific data', which is required for making a claim, is very unclear. Does it mean experimental research, observational studies, textbook knowledge, meta-analysis, expert reports, monographs? Some of these studies could run for decades and would be beyond the finances of nearly all enterprises. The proposal shows an alarming naivety regarding the credibility of 'the science'. Of course claims should be scientifically substantiated, but what would be the definition of 'scientific'?

Products can only be sold, if it is possible to communicate valid benefits.

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A vast majority of small food producers will be entirely unable to comply with the approval requirements proposed. It would be nearly impossible for any SME to comply with an application procedure along the lines of that proposed because of its estimated cost, length (up to two years), unclear criteria and unpredictable outcome. There is a real risk that a number of claims, which have been in use for many years and have provided useful information to the consumer, will in practice be prohibited. Imposing the onerous obligations in the current proposal would drive many of these small producers in the food sector out of business and threaten jobs across Europe.

Scraping the proposed Article 4 on nutrition profiling is essential to ensuring that this Regulation is not an administrative abomination, which would seriously damage SMEs in the EU. Tinkering with an already poorly drafted text will only bring extra complications to the regulation.

Legislation already exists to control unscrupulous suppliers and problems arise only through a lack of enforcement. Misleading claims are already simply illegal all over Europe.

If this poorly drafted Regulation cannot be blocked, those proposals aimed at simplifying the unworkable elements of the draft, which were already approved by the parliament in first reading, must be adopted.

One MEP perfectly summed up the debate, employing a quotation from Charles de Montesquieu: "If it is not necessary to make a law then it is necessary to make NO law."

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UEAPME is apprehensive about the effects of the proposed regulation:

- 1 coupling nutrient profiling with health and nutrition claims is illogical and cannot be justified
- 2 the seven year ownership of a claim could not be enforced in practice
- 3 the proposal would seriously limit the variety of products available to consumers
- 4 the proposal would prevent consumers getting useful information.
- 5 the proposal is based on the "average consumer", so those with special needs are ignored to their disadvantage
- 6 there should be registration of claims rather than the prior authorisation as suggested
- 7 there is no allowance for emerging science
- 8 SMEs would be seriously disadvantaged

9 the EFSA approval system suggested is too cumbersome and expensive for small business

10 no impact assessment has been done

11 the proposal is contrary to the objectives of the obesity policy that the Commission is working towards

What is needed:

- A pre-notification rather than prior authorisation
- A clarification (+ optimised simplification) of the EFSA approval process
- Allowance for qualified claims based on emerging science
- Exclusion of registered trademarks from the Regulation
- No prohibition on the use Health Professional/Charity endorsements
- No prohibition of quantified weight loss claims that can be substantiated

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