

EFLA workshop on the European Parliament's power to scrutinize European legislation

Introduction

This document is a summary of the European Food Law Association's (EFLA) workshop on the European Parliament's (EP) power to scrutinize European legislation. The workshop was held on March 26, 2012 in Brussels. The Conservative member of the Environment, Public Health and Food Safety committee at the European Parliament, Mrs Julie Gilring was the guest speaker.

Julie Girling is a fairly new Member of the European Parliament (MEP), having joined 3 years ago in 2009. However, she has been a very active member of the Environment, Public Health and Food Safety committee, which is responsible for issues relating to food.

It has been very interesting to see the evolution of the EP's powers and how it has actually translated in practice. The powers exercised at EU level have grown over the past decade, with increasing decision-making at executive level with the European Commission (EC) as harmonisation increases and barriers to trade are removed.

In 2006 the Regulatory procedure with scrutiny was adopted giving the European Parliament (EP) and the Council the right to block each individual EC/comitology decision on secondary legislation in the form of implementing measures, or adapt legislation to technical progress.

The EP and Council have 3 months to examine proposals and can object, in which case the European Commission cannot enact it and has to either come back with a new proposal taking into consideration the EP's comments or propose a new legislation under the co-decision procedure. This power should only be used as a safeguard and not as a way to allow the EP to systematically intervene in the implementation of legislation.

Between 2008 and late 2010, over 500 measures were considered under the regulatory procedure with scrutiny and only 3 were blocked by the EP. However, it would seem that the MEPs are increasingly exercising their right to block under the scrutiny procedure, as we observe that 3 objections have been raised from 2011 to March 2012 in the Environment, Public Health and Food Safety committee alone: Nutrient profiles: DHA claims; Nutrition claims and generic health claims. The grounds upon which an objection has been raised has been subject to debate as the proposals that are challenged deal with very technical issues and are often questioning the decisions of the entrusted scientific body of the EU, EFSA.

The following questions were raised during the workshop:

- Is there a danger that the MEPs are re-hashing old ground and going back on legislation that they have themselves brought into force?
- Is there a danger that the increasing exercise of this right jeopardises legal certainty?
- Is this process a help or hindrance in practice?

Summary of discussions

- Julie Girling explained that what is interesting about the EP is the fact that members from different Member States have different ways of working. As a UK member for instance she is accountable to her UK constituents, which is not the case for other Members of the European Parliament from different Member States.
- The EC is the only institution with the right to initiate legislation and implement delegated legislation at EU level. Given that they are not an elected body, the EP's right to scrutinize legislation is a way that interested parties can challenge its interpretation and its choice of implementation. This is especially important as more often than not interested parties are made aware of the potential impacts of legislation very late on in the process and so their only redress is through the regulatory procedure with scrutiny.
- Julie Girling raised the concerns that have been voiced in relation to the fact that the MEP's right to block legislation through the regulatory procedure with scrutiny could create legal uncertainty and is politically driven and sometimes emotionally driven. However, Julie Girling once again reminded the participants that the EP and indirectly the citizens can intervene at this stage of the process, which is important especially if the interpretation of what the Regulation intends to achieve is not being respected.
- At the time of the workshop Julie Girling explained that the scrutiny period for the piece of legislation under the health claims Regulation brought to her attention the serious problems that her constituents faced with the way that the EC were implementing a technical part of Regulation at the time. Julie Girling subsequently was trying to initiate an EP impact assessment on the implementation of the Regulation on the food sector – a new tool that MEPs can call for. It was explained that MEPs wanted this tool, as they do not always rely on the EC's impact assessments, if indeed one has been carried out, and it allows the EP to fully research the justifications for the legislation.

The participants to the workshop were invited to ask Julie Girling questions, which made for fruitful debates on the internal process and thoughts of the regulatory procedure with scrutiny.

In conclusion it was said that the regulatory procedure with scrutiny is a helpful process, which ensures that delegated legislation is implemented in line with the spirit and intent of the respective legislation.