Food law, European Food Authority, and food safety

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According to Regulation (EC) N° 178/2002, the Commission is to publish a report stating its position on the advisability and feasibility of presenting a legislative proposal establishing fees for European Food Safety Authority (EFSA) three years after its creation.

The report looks at EFSA’s experience in managing its workload since its creation and tales into account the views expressed by the Member States and other stakeholders.

The processing of applications has significantly increased in EFSA’s overall workload since the end of 2006.The share of budget required for handling applications in 2010 represents 31% of EFSA's budget, compared to 20% in 2007. These developments should be taken into account when envisaging the establishment of fees for EFSA.

Although the majority of Member States are not, in principle, against a fee system designed to pay for a service provided to those who require it, and most of them consider it is a public responsibility. They point out, however, that in the specific case of the EFSA, the introduction of a fee system is complex because of: i) the difficulty of identifying the beneficiaries of generic authorisations and ii) the instability of EFSA’ s budget end the risk of inefficiency of a fee system.

Most representatives of the actors of the food chain expressed reservations regarding the advisability of establishing fees. These concerns relate in particular to: i) the need to guarantee EFSA’s independence; the need for public funding of the EFSA, iii) the need for consistency with the better regulation approach.

EFSA's Management Board did not express a position in favour of or against the establishment of fees. The source of the funding may not be an issue provided that a certain number of conditions, particularly in relation to the independence and accountability of EFSA are covered by the legislators.

Most of the comments provided by Member States and stakeholders acknowledged that, in principle, fees are a useful tool for good governance. Four options emerge from stakeholders’ contributions:

1) flat-rate fee for all applicants for authorisation;

2) graduated fees for all applicants for authorisation;

3) graduated fees for applicants who are authorisation holders;

4) maintain the existing system without fees.

In view of these considerations, the Commission considers that more reflection is needed on the range of options to be considered and that it is not possible to draw any definitive conclusions at this stage. This will be done in the course of an impact assessment.

Without pre-empting the outcome of such an assessment, the option of graduated fees for applicants who are authorisation holders (option 3) should in any cases be given further consideration. In this context, the issue of enhanced services for applicants will also have to be explored.

The introduction of fees for EFSA could, in particular, be considered in the following sectors where the authorisation in all cases, or in some specific cases, is issued to a specific holder and is not generic:

- authorisation of genetically modified organisms (cultivation);
- authorisation of genetically modified food and feed;
- authorisation of feed additives issued to a specific holder;
- authorisation of claims issued to a specific holder;
- authorisation of novel foods issued to a specific holder;
- positive listing of active substances eligible for authorisation as plant protection products;
- authorisation of smoke flavourings.

The assessment will also look at other EU policy areas as well as practices of other EU regulatory agencies. Each potential candidate sector will have to be assessed in detail in order to identify the economic and budgetary impact of the various scenarios of fees on enterprises (including SMEs).

The Commission considers that it is also essential to assess the impact that a fee-system would have on EFSA's overall functioning and efficiency, in particular: i) the various options for providing a more professional service to applicants, ii) the impact on the sharing of work with national agencies/bodies, iii) the balance between the interests of a more efficient service and the preservation of general interest objectives, iv) the perception of EFSA's independence, and v) the impact on the overall sustainability of EFSA's functioning.