

*Good Practice Guide for the Preparation and Revision of Regulation Affecting Economic Activity*, Government of Catalonia, Presidency Department, EADOP, Barcelona, 2010.

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Despite the initial delay in Spain in the adoption and development of a better regulation policy compared to other OECD countries, in the last few years significant advances have taken place, as pointed out in the 2010 OECD report “Better Regulation in Europe. Spain”.

In this context, the initiatives promoted by the Autonomous Communities – Spanish subnational levels of government – are also very important, since they have wide powers for the development of their own public regulatory reform policies. In fact, the first Spanish experience of the introduction of regulatory impact assessment in the legal rulemaking process took place in Catalonia, which has been a pioneer in the integration of administrative simplification policies – applied since the early 90s – in addition to its administrative burden reduction strategy.

Since 1989, the production of draft bills and regulatory provision projects in Catalonia has required an obligatory assessment consisting of the justification of the proposal, the opportuneness and the adequacy of the measures proposed in relation to the aims, an economic report in cost-benefit terms on the consequences of the implementation of the rule, and a stage of consultations with the stakeholders. These legal principles and the possibility of checking the feasibility of the procedure before its approval were the basis on which to develop the regulatory impact assessment. Nevertheless, the culture and the practice of administrative officers turned the system into a formal stage of justification of the decision taken.

Later, in 2007 the Government of Catalonia encouraged a set of improved regulation measures, departing from the institutional recognition of this

public policy as a driving force of economic growth and social welfare. In 2008, as an obligation for all projects concerning the development of economic activity, a regulatory impact report was required in which the effect of the rule was evaluated from the point of view of the simplification of steps and administrative procedures and administrative burdens. At the same time, the Directorate of Normative Quality was created as a specific unit linked to the Presidency of the Government with the purpose of encouraging a better regulatory culture and providing technical assistance to the departments of the Catalan Administration in terms of regulatory impact assessment.

The activity of this unit, whose functions are now exercised by the Directorate of Government Office, has materialized in a set of initiatives, such as the dissemination of the methodology of the “Standard Manual Cost Model” (SCM) and the production of directives and a good practice guide to facilitate the production of the regulatory impact assessments.

In Catalonia, regulatory impact assessment has as a point of reference in Decree 106/2008 of 6 May on measures for the removal of formalities and the simplification of procedures to facilitate economic activity. In Article 4.2, this regulation provides for the approval by the Government of Catalonia of a Good Practice Guide for Regulation Preparation and Revision, specifying the principles, criteria and recommendations to be followed in order to guarantee that administrative burdens which are not sufficiently justified are not established.

The Guide was approved by Government Agreement of 13 April 2010 and published afterwards in the Official Journal.<sup>1</sup> It sets out the guidelines to simplify procedures and formalities and to reduce administrative burdens. All this means is that the principal aim of the guidelines is preventing the creation of unnecessary obstacles to the development of economic activity, thereby improving the competitiveness of micro-enterprises and small- and medium-sized business. With this objective, the Guide includes principles and formulates criteria and recommendations applied to the process for the production of draft bills and regulatory provision projects promoted by the Catalan Government which can have a direct or indirect effect on economic activity. It is also applicable to the normative revision processes.

However, the Guide does not apply to the following general provisions because of their specific characteristics: the draft budget bill of the Catalan Ad-

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1 It is also available in English, and can be downloaded in Spanish or Catalan at <[http://www.gencat.cat/especial/gbp/docs/gbp\\_cas.pdf](http://www.gencat.cat/especial/gbp/docs/gbp_cas.pdf)>.

ministration; the legislative decree projects through which an amended text is approved; the decree law projects, as well as those duly justified urgent general provision projects; and the regulatory projects whose object is limited to extending the applicability of general provisions, plans or programmes.

The Good Practice Guide is structured into two essential parts. The first part contains the principles, criteria and recommendations to be followed in the legal rulemaking process. The preparation and revision of regulation with an effect on economic activity follow the same principles informing any legal rule, as well as those governing its production process. Better regulation requires the rules to adjust to the prevailing regulation or, in other words, to legality.

Specifically, the Guide establishes the following principles with the aim of facilitating the development of economic activity, competitiveness and creation of conditions for SMEs: the need for legal regulation; proportionality of the administrative intervention; think small first; participation of the social and economic agents; safeguarding the rights of citizens and the general interest; administrative rationality; and regulatory coherence.

In the section on the criteria for the preparation and revision of legal rules, the Guide establishes the guidelines for the *ex ante* and *ex post* regulatory impact assessment, and specifies the criteria and the normative contents to be assessed. Such areas are emphasized: regulation options (regulatory and non-regulatory options); regulatory simplification (reduction of regulatory texts and contents); effect of European Union law and European strategies and policies; simplification of administrative procedures and formalities (with specific measures of administrative simplification such as previous communication and/or responsible declaration system, immediate resolution procedures, front office processing with or without immediate resolution, registration *ex officio* on public registers, removal or extension of the revision deadlines); simplification or removal of formalities (for example, accumulation and reduction of formalities, non-submission of documents, non-submission of compulsory reports, or recourse to self-regulation); administrative burden reduction (with direct measures such as removal of information obligations, reduction of the frequency of information obligations, documentary simplification, and inter-administrative cooperation and collaboration mechanisms; as well as indirect measures such as the use of electronic media and telematics processing

and better information access for SMEs); resolution deadlines and administrative silence; and, finally, effects on competition.

Therefore, the application of the Guide involves the regulatory impact assessment of the measures proposed by the regulatory projects and the rules in force. The results of this assessment must be documented in the regulatory impact report, whose general characteristics, typology and contents are also described in the Good Practice Guide. This part of the Guide ends with a specific paragraph of general recommendations for the preparation and revision of legal rules.

The second part of the Good Practice Guide is more practical and consists of Annex 1 and Annex 2. Annex 1 contains an information obligation list for the identification, quantification and subsequent reduction of administrative burdens. Annex 2 explains how to reduce administrative burdens with very specific guidelines which are established based on an example of quantification, in keeping with the methodology of the Standard Cost Model (SCM).

Nevertheless, and in spite of the summarized content of the Guide, it is an instrument with a normative dimension but it is an instrument of soft law. The Guide is a first step towards the gradual development of an administrative culture which makes the ongoing assessment of the rules, administrative simplification and better regulation normal action criteria. This trend seems to be confirmed by the recent approval of Law 26/2010 of 3 August on the legal system and procedure of the public administrations of Catalonia, which introduces regulatory impact assessment in the legal rulemaking process whether or not it affects economic activity.

In other words, following this new Law, the regulatory impact report has to integrate the assessment of different kinds of impacts, which seems to have opened a new stage towards the implementation of better regulation in Catalonia and, perhaps, Spain.

The Guide creates a promising framework to consolidate the impact assessment system and to build a more ambitious approach. For the first time, it provides analytical elements and practical guidance on how to assess burden reduction and administrative simplification, with a special link to SMEs. In fact, other Autonomous Communities and even some municipalities have considered it as a best practice or referred to it when developing their own guidelines.

Despite the positive results of the application of this instrument, there is further work to do in order

to improve the effectiveness of impact assessment and to strengthen this new system. Changing regulatory practices of the administration and introducing impact analysis culture are the main difficulties. Apart from instructing officials on Better Regulation processes, it is also necessary to reinforce institutional capacities both to support and to monitor the quality of impact assessments.

*Health & Nutrition Claims – Commentary on the EU Claims Regulation*,  
edited by Andreas Meisterernst and Bernd Haber.  
Berlin: Lexxion Publisher, 2010, 433 pp.,  
€ 128.00, Hardcover.

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Andreas Meisterernst and Bernd Haber are well known not only amongst food lawyers as true experts regarding Claims Regulation (EC) No. 1924/2006. This piece of legislation is currently tormenting food business operators and their advisors all over Europe with many problems. Meisterernst and Haber published the very first commentary on the Regulation as early as 2007, a comprehensive and continuously updated loose-leaf practitioners' handbook which has quickly found its proper place in the world of German food law – as a reliable guidance to scientists and marketing specialists, a welcome assistance for lawyers and a reference work regularly quoted by the competent courts.

Since this work was written in German and thus only accessible to roughly 100 million citizens in the European Union, it almost suggested itself to make its contents available to the other 400 million Europeans, too. Hence the authors had it translated into English. One Article of the Regulation has been commented on by Christian Ballke. Charming greetings have been written by Sebastian Romero Melchor. One can only congratulate Lexxion publishers on this project, because the book is highly recommendable. At a fair price anyone can now resort to sound food law wisdom all over Europe and beyond. A quick check with booksellers reveals: There is no alternative to Meisterernst and Haber's

new Commentary within the European Union. Accordingly they have now once again set the standard which any potential competitor will have to consider.

And the standard is high! Health and nutrition claims have kept food businesses, authorities as well as food lawyers occupied for more than three years now (cf. the comprehensive list of publications in *EFFL* 2011, p. 27) and will continue to do so. The problems the Regulation has caused to food advertising seem unlimited and they are permanently increasing in practice. Where exactly is the thin line between nutrition claims on the one hand and health claims on the other? What is the difference between a health claim, which is subject to authorisation, and a reference to general, non-specific, non-health-related well-being, which is not subject to authorisation? Does an application for the authorisation of a disease risk reduction claim need to mention a disease risk reduction factor? How can one make reference to national associations of dietetic professionals?

Meisterernst and Haber deal with these questions and many more. They always have recourse to the relevant recitals of the Regulation and, if necessary, also to the original draft in order to establish the genesis of a particular stipulation. They deliberate reasons and purposes of individual clauses and refer to pertaining European food law as well as academic writing and relevant decisions by the ECJ and other competent courts. The great advantage of having these two authors commenting on this one piece of legislation is their most suitable different backgrounds. Whilst Meisterernst is an experienced legal practitioner specialising in food, European and administrative as well as unfair competition law, Haber is a food chemist working as a senior regulator for an ingredients supplier. Hence their combined and interdisciplinary perspectives and knowledge complement one another to the reader's increased benefit. The fact that the European legislation is commented on from a German perspective should not be perceived as a serious disadvantage – after all this is the country where many disputes about claims have already troubled the courts and from where the first and most recent referrals to the ECJ regarding claims originate (cf. *EFFL* 2011, pp. 58–59).

So what do you get for the € 128 purchase price? A brief, two page, unfortunately incomprehensive list of literature; 375 pages of solid and evenly balanced commentary with an emphasis on the most important practical needs; the full text of Regulation (EC)

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