FSA EVIDENCE TO THE BALANCE OF EUROPEAN COMPETENCE REVIEW

Report by Rod Ainsworth, Legal Director

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1 SUMMARY

1.1 The Balance of European Competences (BoC) Review is a UK Government initiative looking at the impact of European action on the UK. The review will be objective and evidence based. It will not make recommendations, but will discuss options and provide a resource for future policy development on Europe.

1.2 This paper presents (Annexe A) a draft Food Standards Agency (FSA) submission to the Government’s BoC review covering evidence on consumer protection aspects of food law.

1.3 The Board is asked to:

- **Discuss** the draft submission, and
- **Agree** the text of the submission

2 INTRODUCTION

2.1 The BoC Review is to provide an in-depth analysis of what membership of the European Union (EU) means for the UK. European action on food law is covered in two of the reports that make up the review:

- Animal Health, Welfare and Food Safety (AHWFS), and
- Health.

2.2 The FSA is responsible, together with the Department for Environment, Food and Rural Affairs, for the AHWFS report. The Department of Health is responsible for the Health report. For further background see INFO 12/12/02.

2.3 The reports will be UK Government publications. They are to be evidence based and stakeholder engagement, including a public call for evidence, has been conducted seeking views from within the UK, Europe and from third countries.

3 STRATEGIC AIMS

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1 Reference to food includes reference to feed.
3.1 The fundamental nature of the review and the wide reach of EU food law mean that this review is relevant to all FSA strategic aims.

4 DISCUSSION

4.1 In legal terms, EU competence is about whether the EU has the power to act. Competence is set out in the European Treaties. Competence for food is ‘shared’, meaning that where the EU has acted Member States (MS) cannot. As the EU has extensive food legislation there is little room for the UK or other MS to have national measures. There have been two main drivers for development of EU food law – trade and consumer protection. The EU has exclusive competence to negotiate trade agreements with third countries.

4.2 The review is not limited to considering competence in the strict legal sense. It is broader and is looking at anything that Europe does and how this impacts on the interests of the UK. This includes considering whether legislation is needed in any particular area and whether it is to the UK’s advantage that the legislation is made in the EU. The review will also address the approach taken in the EU legislation (for example is it principle-based or prescriptive) and the processes used to create the legislation (for example is the process transparent). The review is not about looking at the detail of individual pieces of legislation.

4.3 The draft evidence submission (Annexe A) focuses on consumer protection matters in line with FSA’s statutory remit.

5 IMPACT

5.1 The review will provide an informed and objective evidence base for future policy development. It will inform the wider public debate about Europe.

6 CONSULTATION AND CONSUMER ENGAGEMENT

6.1 The draft FSA submission has been informed through wide discussion with stakeholders and with FSA policy colleagues. Consumer views have been sought through the FSA Consumer Panel and via the online consumer panel. A brief summary of stakeholder and consumer views will be provided orally at the meeting.

7 LEGAL, RESOURCE/RISK IMPLICATIONS

7.1 There are no legal or resource implications directly from submitting evidence to the BoC review. It is important for balance that the FSA contributes to the review to ensure that consumer protection issues are well represented.

8 DEVOLUTION IMPLICATIONS

8.1 The UK’s relationship with Europe is a matter reserved to the UK Government and the review is a UK wide exercise. The Governments in Scotland, Wales and Northern Ireland clearly have interests and for food law they are
responsible for implementing EU legislation and associated official controls. Stakeholder engagement has taken place in all four countries of the UK.

9 CONCLUSION AND RECOMMENDATIONS

9.1 It is recommended that the Board agree evidence for submission to the BoC review. This evidence will be relevant to both the AHWFS and Health reports. The formal closing date for submission of evidence [was] 28 February so the submission needs to be made in the near future. It is expected that the AHWFS and Health reports will be published by the Government in summer 2013.

9.2 The Board is asked to:

- **Discuss** the draft submission, and
- **Agree** the text of the submission
Draft FSA submission to the UK Government’s Balance of EU Competences Review:

Food Law

1. The Food Standards Agency (FSA) was established in April 2000 as a non-Ministerial UK Government Department, operating at arm’s length from Ministers. FSA is headed by a Chair and Board, who are appointed to act in the public interest. The FSA is an independent national regulator and the central competent authority (CCA) for food and feed legislation. Section 1 of the Food Standards Act 1999 sets out that the main objective of the FSA is ‘to protect public health from risks which may arise in connection with the consumption of food ...... and otherwise to protect the interests of consumers in relation to food’. The FSA is guided by a set of core principles:

   - Putting the consumer first;
   - Openness and transparency;
   - Science and evidence based;
   - Acting independently;
   - Supporting businesses to comply with food law effectively.

2. FSA leads on food safety policy for the UK. In Scotland, Wales and Northern Ireland we also cover food labelling and compositional standards policy. In Scotland and Northern Ireland our remit extends to nutrition policy. FSA represents the UK Government at EU negotiations when the European Commission proposes to exercise competence.

3. The FSA Board discussed the Balance of Competence review in relation to food law [at its meeting on 5 March 2013]. These are the views of the Board.

Consumer protection is paramount

4. Consumer safety is central to FSA’s work. It is estimated that each year about 1 million people in the UK suffer a foodborne illness (1 in 60 citizens), of whom 20,000 receive hospital treatment. In the UK, approximately 500 deaths a year are associated with foodborne illness. None of these figures account for the unquantifiable health impacts from chemical contaminants and biotoxins.

5. The European Union (EU) has extensive food hygiene and food safety law. The legislation firmly places the responsibility to supply safe food on food business operators. Feed hygiene law ensures that animal feed does not introduce contaminants into the human food chain. Other law controls, among other things, the use of additives, irradiation and sets limits for harmful contaminants, such as heavy metals.
6. EU food law also provides other protections to consumers. It requires clear labelling that is not misleading and that enables consumers to make informed choices. It also ensures that unsubstantiated health claims are not made and sets compositional, quality standards for certain foods where inferior standard products have been an issue.

7. The Board’s general view is that EU food law provides a comprehensive set of robust controls that protect consumer health and other interests. In principle, however, similar protections could be delivered by national, UK derived law. The question for the Balance or Competences (BoC) review is whether there is any benefit to consumers in the EU having competence rather than it being repatriated to the UK.

8. To answer this we need to consider:
   - the international trade in food; and,
   - whether the approach taken in EU legislation gives the best protection to UK consumers.

Trade

9. Food is extensively traded, both within the EU and with third countries. The value of UK food and drink exports to the EU in 2011 was £12.3\(^2\) billion, accounting for 69% of all UK food and drink based exports. For the same period the value of UK food and drink imports from the EU was £26.5 billion representing 63% of all food and drink imports in the UK. In 2011, the value of exports and imports to and from third countries was £7.2 billion and £12.1 billion respectively. Consideration of any system of food law and consumer protection has to recognise the importance of trade.

10. UK consumers have the right to expect the same level of protection from food produced in the UK and from that produced in the EU and third countries. This could be achieved through UK legislation, requiring imported food to meet UK legal standards and with extensive checking of imports. But would a national system be in consumers’ best interests? While the single European market and the use of harmonised food law across the EU is normally spoken of as a benefit to industry, it also has benefits for consumers. Free movement of food within the single market helps to keep prices down. National rules would be likely to create trade barriers, so restricting the range of foods on offer. Having common standards can also give UK consumers confidence when they travel within the EU.

11. One of the most important benefits of an EU wide system for consumers is the protection offered when things go wrong. Europe operates a system where Member States are required to share intelligence on food safety problems and work together to manage risks. This strong network offers important additional protection to consumers when incidents occur, such as the dioxin contamination that occurred in Germany in December 2010/January 2011 when fats and oils intended for use as biofuels got into animal feed. The international network, both within the EU and with third countries, is also important for identifying and evaluating emerging risks.

\(^2\) All values are at current prices (Oct 2012)
12. Harmonised EU food law also applies to imports from third countries and the UK benefits from the centralised European system where production facilities in third countries are checked for compliance by European Commission inspectors.

13. Given that food is traded globally it is worth considering whether we should simply rely on standards for food that are set at world level by the Codex Alimentarius Commission. This body develops and harmonises world-wide food standards, guidelines and codes of practice that contribute to the safety, quality and fairness of international food trade. While Codex standards are recommendations for voluntary application by Codex member countries, in many cases they form the basis for national legislation. Codex standards are respected and can impact on EU legislation through World Trade Organisation disputes. But many countries that base their national legislation on Codex standards complain that they remain locked out of lucrative export markets. Also, the pace of deciding Codex standards tends to be very slow and UK influence can be diluted compared with negotiating within the EU. Therefore, we do not recommend the reliance on Codex standards as a viable alternative to EU food law.

Risk-based legislation
14. We strongly support risk-based legislation as the most proportionate and targeted approach to food safety. It protects the consumer while minimising burdens on business. When working in Europe the FSA pays particular attention to providing scientific evidence and encouraging a risk-based approach. Risk-based law also gives consumers confidence, which is in turn good for industry.

15. Most EU food law is risk-based, but there are some areas, such as in relation to meat controls, that are not. We recognise that for meat the direction of travel in the EU is towards risk-based controls. We need to ensure that any developments take full account of the current EU wide incident involving horse meat, once the facts have been fully established and considered.

16. The European Food Safety Authority (EFSA) is an important and respected body offering independent and transparent, scientific risk assessment advice. We strongly support the centralisation of risk assessment within EFSA.

17. Decisions about risk management are never based on scientific evidence and risk alone. Risk perception, acceptability and other societal concerns will also inform the consideration. It is apparent that these issues inform the views of different Member States and EU institutions to different degrees. This can lead to decisions that are not as risk-based as we would wish.

Principle/outcome-based versus prescriptive legislation
18. Prescriptive legislation can give certainty, although it can stifle innovation. Principle-based (or outcome-based) legislation allows flexibility and puts the onus on business. Businesses should be best placed to know the risks involved, so principles-based legislation can offer strong consumer protection. Each approach has its place and is normally used appropriately in EU food law.
19. It is in consumers’ interests that businesses thrive and consumers benefit from innovation. As well as considerations about principle versus prescription, the pace at which legislation is made can be an important factor. By changing the legislative process, new additives can now be approved more quickly but with no loss of consumer protection. Revised novel foods legislation should have facilitated greater innovation, including enabling traditional foods from outside the EU to be approved more easily, but the proposal failed to reach agreement. We look forward to the EU returning to that issue.

Flexibility
20. Some EU food law has inbuilt flexibility and this can be to the UK’s advantage. For example, the new EU food information legislation allows national rules for loose food (ie food that is not pre-packed). There is a requirement that consumers be informed about allergens in loose foods, but Member States are free to decide how this is delivered. This flexibility allows innovative approaches to meeting consumer needs, including the possibility of restaurants etc displaying signs prompting customers to ask staff about allergy information.

Official Controls
21. It is important for consumer protection that appropriate, risk-based official controls are in place. EU legislation provides a framework for official controls, such as inspections or approvals, which Member States carry out to verify businesses’ compliance with EU agri-food legislation. The rules are harmonised in order to afford EU citizens a high level of human, animal and plant health and facilitate the functioning of the internal market. The legislation is expected to be reviewed shortly with the aims of simplifying and clarifying the legal framework and to address issues relating to the financing of official controls. The most controversial aspect is likely to be the intention to significantly increase the number of controls with mandatory charges on industry. There is concern about the direction of travel in relation to charging.

22. The Food and Veterinary Office (FVO) has a role in official controls. They audit Member States’ application of official controls. We do not always agree with their interpretation of certain requirements, but recognise the importance of their role and the positive impact FVO has on both consumer protection and the functioning of the single market.

23. The FVO also has an important role protecting consumers in relation to food imported from third countries. FVO assesses whether the standards required by third country food authorities are equivalent to those in the EU. They have an ongoing programme to visit and audit a sample of suppliers in that country. This allows FVO to assess the level of confidence in the competent food authority in the third country. If this work was not done at the EU level, the UK would need to do it.

Future challenges
24. Enlargement has clear benefits for business in extending the number of potential customers. It also expands the availability of food within the single market. Enlargement candidates have to meet EU food law requirements. Where food processing plants, dairies and abattoirs fail to meet the standards these are normally shut down prior to accession, although derogations can be given to allow
continued sale on the local market while they improve standards. This protects consumers in the UK. The European TAIEX programme (Technical, Assistance and Information Exchange) is important to help candidate countries to meet EU requirements.

Summary

25. There are good reasons to believe that the EU having competence in food law is beneficial to UK consumers. It recognises that food is widely traded. EU food law is robust and in the main risk-based and proportionate. Were competence to be repatriated to the UK it is unlikely that the national legislation that we would have to put in place would be significantly different to existing EU food law.