

**Review of the Balance of Competences between
the United Kingdom and the European Union:
Animal Health and Welfare and Food Safety**

Submission by the Senior European Experts Group

Background

The Senior European Experts group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, a former Secretary-General of the European Commission and other former senior officials of the institutions of the EU. A list of members of the group appears in the Annex.

SEE has no party political affiliation. As an independent group, it makes briefing papers on contemporary European and EU topics available to a number of organisations interested in European issues, drawing on the extensive knowledge and experience of its members.

Several members of the group have particular expertise on agriculture and food policy issues having worked for or as the UK Representative to the EU, or in the parts of the Commission dealing with these issues or in the relevant UK departments.

General Points

Benefits of Membership

We consider the effectiveness of the single market in food and livestock products is entirely dependent upon the exercise of EU competence in animal health and welfare and food safety policy. For cross-border trade in these goods to flourish, the UK needs common, EU-wide rules that (a) give confidence to consumers that their food is safe to eat whatever its provenance, (b) prevents other countries from applying separate rules on food composition, quality and labelling and (c) ensures protection against the spread of animal diseases, especially those transmissible to humans. This could not be achieved without extensive action at Community level.

As the Defra/FSA paper makes clear, the UK's participation in the single market for food brings it major benefits, with total trade in 2011 reaching almost £39 billion. British consumers have become used to being offered a vast range and variety of quality foodstuffs from across the EU that was simply unavailable before the single market. At the same time competition from Europe has stimulated growth, innovation and export orientation amongst many farmers and UK food companies in what remains the UK's largest manufacturing industry.

This however is a policy area highly vulnerable to protectionism: history is replete with examples of countries seeking to protect their own national food cultures¹, and other examples of countries rapidly closing their borders to imports when safety problems arose in a neighbour, whilst taking disproportionately long to lift them again. Our involvement in the single market provides the mechanisms to ensure both that our consumers (and animal health)

¹ It is no surprise that the seminal *Cassis de Dijon* and *Reinheitsgebot* cases, which concerned attempts by one Member State to protect its industry from competition from imports, were both in the food sector.

are protected when food safety or disease threats develop elsewhere in the EU and that our export interests are not subjected to unjustified restrictions following incidents here.

There is widespread evidence of this latter point. For example:

- Following the BSE crisis, EU legislation was adopted in 2006 to reopen the UK's beef export markets worldwide. When one Member State (France) declined to implement this law, it was taken to the ECJ and forced to apply it. By contrast Russia only lifted its ban some 6 years later, in late 2012, and the US market is still effectively closed;
- The EU's rapid alert mechanisms ensured that the UK authorities were immediately alerted when, for example, e-coli was discovered in food in Germany in 2011 so that national, and then EU, safeguard measures could be put in place;
- The EU is itself capable of protectionist action against third country exports: thus, for example, chicken imports from the US are banned due to cleaning processes that appear to carry no health risks. As an insider, the UK is invulnerable to such action.

In respect of animal welfare, the benefits to the UK of EU competence derive from spreading good practices in an area to which the British public attaches importance, as well as helping to ensure a level playing field for our own farmers. We recall that the main protagonist for including references to animal welfare in the Treaties has been the UK itself.

However, whilst the benefits of EU competence in this area are readily apparent, it is equally clear there is scope for improvement in the detailed regulation. Opportunities to achieve this will arise in the coming years, as the Defra/FSA paper indicates. The key will be to ensure that future regulation is effective, proportionate, risk-based and outcome focused.

Questions

A) Animal health and welfare

Q1 What evidence is there that EU action on animal health and welfare benefits or disadvantages the UK? Q2 How might the UK benefit from the EU taking more or less action on animal health and welfare in future? Q3 What advantages or disadvantages might there be in the EU having exclusive competence for negotiating trade agreements with third countries?

For the reasons outlined above – ensuring consumer confidence and disease control, thriving trade and rapid action in response to emergencies within the single market – we regard EU action on animal health and welfare as largely beneficial to the UK. We would see no merit in reducing EU action in the areas critical to maintaining cross-border trade and consumer protection, though there may be scope for greater flexibility in the rules applying solely to production for local consumption. On animal welfare, given that the UK will normally want to raise welfare standards, doing this at EU level will help to safeguard our farmers' competitive position vis-à-vis those in other EU countries.

As regards external trade agreements, the evidence generally is that the UK benefits significantly from the EU's competence to negotiate with third countries, and this should in theory apply in relation to veterinary issues too. There would moreover be potential efficiency savings from having a single, rather than 27, body of negotiators on these issues. It would be essential however to ensure the Commission was given all the necessary

veterinary and scientific expertise to carry out this work effectively as it does not appear to have this currently.

Q4 How might the national interest be served by action on animal health and welfare being taken e.g. at regional or national level, in addition to or as an alternative to action at EU level?

As argued above, the core elements of EU activity on animal health - ensuring consumer confidence and disease control, thriving trade and rapid action in response to emergencies – are essential to the functioning of the single market in food. It follows that such activities could not be replaced by national action without major disadvantage to UK interests. There is however ample scope to supplement these core activities by national and regional action – for example in relation to the less highly transmissible and non-zoonotic diseases – which successive Governments (and the devolved administrations) have utilised.

The UK already has competence to act on animal welfare to supplement EU law, reflected in its comprehensive animal welfare legislation. It will generally be in the UK interest to persuade the EU to adopt our own standards, as we have successfully done over e.g. sow stalls and tethers where our standards were higher than in other Member States.

Q5 Does EU legislation on animal health and welfare provide the right balance between protecting animal and public health and the interests of UK businesses? Q6 Could action be undertaken differently e.g. are there ways of improving EU animal health and welfare law, for example, to focus more on required outcomes using a more evidence and risk-based approach? Would this deliver more in the national interest?

History – most dramatically the BSE crisis – shows that high standards of regulation and enforcement are in the interests of food businesses, as maintaining consumer confidence in the safety of their products is critical to their prosperity. Nevertheless, the EU has traditionally operated prescriptive and highly risk averse regimes, e.g. on slaughterhouse regulation, which can impose undue or disproportionate costs on operators. Whilst the Commission has been seeking to pursue more risk-based and outcome focused approaches recently, there is still much to be done, not least with certain other Member States and the EP, before the right balance is achieved for UK businesses and consumers alike. All that said, EU rules have in the past provided a welcome incentive to improve the hygiene and safety standards in UK slaughterhouses which were previously inadequate in a great many plants but which had proved notoriously difficult for the Government to tackle alone.

Q7 What future challenges or opportunities might we face on animal health and welfare and what impact might these have on the national interest? Q8 What impact might any future enlargement of the EU have on animal health and welfare? Q9 Are there any general points you wish to make which are not captured above?

The threat of disease outbreaks and spread is ongoing, so vigilance must be maintained. In terms of opportunities, the forthcoming Commission proposal on a new Animal Health law provides the occasion for the UK to press for a significantly improved EU legislative framework which meets our key criteria as set out above. An ongoing threat to UK interests is the continuing reluctance of at least some Member States and MEPs to embrace evidence- and risk-based policy making in this area, combined with protectionist instincts and highlighted by the debate on products from cloned animals and their descendants referred to in the Defra/FSA paper.

B) Food safety, labelling, food quality and compositional standards

Q10 What evidence is there that EU action to create the single market for food has been advantageous or disadvantageous for the UK? Q13 Is there evidence that legislating for consumer protection at the European level has been advantageous or disadvantageous to the UK national interest? Q11 What evidence is there that the national interest in terms of trade is best served by action at the EU level, national level or by action being taken at a different level, e.g. in Codex Alimentarius?

As argued above (under General Points), the creation of the single market for food has benefited UK consumers and businesses greatly. The existence of two way trade of £39 billion per annum and the immense variety of foods available to today's consumers are, in our view, compelling evidence of the value to the UK of the single market in food. Moreover, the emphasis on mutual recognition (rather than the earlier vertical compositional Directives) supported by clear labelling rules and EU-wide limits for additives and other safety-related issues is the right approach to promote innovation and competition.

In general, legislation applying to the operation of the single market needs to be made at EU level and this is especially the case for food law. The alternative of having 27 sets of rules on e.g. food composition, labelling, additives etc would be highly disadvantageous for our exporting food businesses, disruptive of the single market and expensive in terms of additional bureaucracy. The *Codex Alimentarius* is a useful forum for agreeing standards (albeit very slowly as it requires unanimity) but is not a substitute for enforceable legislation.

Q12 Has EU action in food law provided the right balance between protecting the consumer and protecting the interests and reputation of UK businesses?

As regards food safety, the comment at Q5 above applies and we repeat it: "History – most dramatically the BSE crisis – shows that high standards of regulation and enforcement are in the interests of food businesses, as maintaining consumer confidence in the safety of their products is critical to their prosperity." We are not aware that the food industry regards EU food law overall as unduly burdensome even if some elements of it (alcohol labelling for example) have required significant compromise. Indeed, their main collective interest is that there is a consistent and clear set of rules that responds to consumers' requirements and avoids barriers to intra-Community trade.

Q14 What evidence is there that the principle of science based food legislation at the European level has served the national interest well? Are there any concerns about the principle and its application? Are there any examples of where it was not followed?

Basing EU food legislation on science has been a cornerstone of UK policy under successive Governments. Such an approach ensures consumer safety, encourages innovation and (combined with appropriate labelling rules) maximises consumer choice. The UK has frequently been successful in negotiating science based EU rules, to the benefit of UK consumers and businesses. Implicit in such rules are judgements about what levels of risk are appropriate and in the main EU safety levels are (rightly) cautious. But in some areas, especially at the forefront of technological development, science has been set aside in favour of overly restrictive measures, ostensibly designed to respond to "social" considerations. Implementation of the framework legislation on GMOs in food and feed is one example (an issue causing even greater problems in the environment chapter, on which we will comment in due course). Marketing of products from cloned animals and their descendants promises to be another.

An example of spectacular UK policy success based on science has been the rules on Pet Travel. When the single market was first created, there was a tension between the goal of giving travellers freedom to cross EU internal borders with their pets and our (and Ireland's) desire to keep rabies out of our territory. The initial goal of the other Member States was to give priority to the freedom of movement arguments and therefore to force us to abolish our strict quarantine arrangements. The UK was also under some internal pressure, not least from some senior diplomats, to relax the rules. But deploying scientific arguments about the rabies threat and the possibility of eradication, the UK persuaded the EC instead to embark upon a programme of eradication of rabies from its territory as a prior condition for relaxing our rules. As this programme became progressively successful in eradicating the disease, the UK introduced the Pet Travel Scheme, including pet passports and micro chipping of pets, in the late 1990s (much of which was then adopted throughout the EU). Now, with the risk of rabies being imported via pet movements reduced to insignificance, the UK's regime is harmonised with the rest of the EU based on regular vaccination, pet passports and microchips. Thus both policy objectives – protection from rabies risk and freedom for travellers with pets to cross to and from the continent with minimal difficulty² – have been achieved.

Q16 How might the UK benefit from the EU taking more or less action on food law in the future? Q17 Could action be undertaken differently e.g. are there ways of improving EU food law? Q18 What future challenges or opportunities might we face in the area of food law and what impact might these have on the national interest? Q19 Are there any general points you wish to make which are not captured in any of the other questions?

Broadly we consider the EU work on food law is in the right place and serves the UK well. The main ongoing challenge will be to continue to resist pressure for protectionist or anti-innovation measures, by insisting on maintaining a science based approach. Strengthening the quality and credibility of scientific support to the Commission and to the Member States in this area would be in the UK's interest. A further challenge may well be to ensure that food law is appropriately aligned with environmental legislation. One obvious area of major current concern is food waste, to which the EU's rules on "Best before" and "Use by" dates are a contributor.

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² Some specific rules remain to ensure dogs imported to the UK (and several other countries) are free from tapeworm

Annex

Sir Michael Arthur

Director-General Europe, FCO, 2001-3; British High Commissioner to India 2003-07; British Ambassador to Germany 2007-10.

Graham Avery

Director, European Commission, 1987–2006.

Sir Colin Budd

Chairman of the Joint Intelligence Committee 1996/97. British Ambassador the Netherlands, 2001-05.

Sir Michael Butler

British Permanent Representative to the European Communities, 1979-85.

Lord Butler of Brockwell

Secretary to the Cabinet and Head of the Home Civil Service, 1988-98.

John Cooke

Member of the UK Permanent Representation to the EC 1969-73 and 1976-77. Under-Secretary, International Trade Policy Division, DTI, 1992-96. Chairman, OECD Trade Committee 1996-97

Sir Brian Crowe

Director-General (External & Politico-Military Affairs) Council of the European Union, 1994-2002. Previously Deputy Under-Secretary for Economic Affairs, FCO.

Sir David Elliott

UK Deputy Permanent Representative to the EU 1982-91. Director-General (Internal Market), Council of the European Union, 1991-95.

Sir Michael Franklin

Deputy Director-General (Agriculture) European Commission 1973-77; Permanent Secretary, Ministry of Agriculture, Fisheries & Food, 1983-87.

Lord Hannay

UK Permanent Representative to the European Communities 1985-90 and to the United Nations, 1990-95.

Lord Jay of Ewelme

Permanent Under-Secretary of State, Foreign & Commonwealth Office, 2002-06.

Lord Kerr of Kinlochard

UK Permanent Representative to EU 1990-1995; Permanent Under-Secretary of State, Foreign & Commonwealth Office, 1997-2002.

Andy Lebrecht

UK Deputy Permanent Representative to the EU, 2008 – 2012.

Sir Emyr Jones Parry

UK Permanent Representative to NATO, 2001-03 and to the UN, New York 2003-07. Political Director and previously EU Under-Secretary at FCO. Now President of Aberystwyth University.

Sir Nigel Sheinwald

UK Permanent Representative to EU 2000-03. Prime Minister's Foreign Policy & Defence Adviser, 2003-07. British Ambassador to the United States, 2007-12.

Sir Stephen Wall

UK Permanent Representative to EU 1995-2000. Head, European Secretariat, Cabinet Office, 2000-04.

Michael Welsh

Member of the European Parliament for Central Lancashire, 1979-94.

Lord Williamson of Horton

Deputy Director-General (Agriculture) European Commission 1977-83. Cabinet Office 1983-87. Secretary-General, European Commission, 1987-97.

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