

Consultation:

Food Standards Agency's proposed approach to retained EU law for food and feed safety and hygiene

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Summary

Which? welcomes this opportunity to comment on the proposed approach to retained EU law for food and feed safety and hygiene after the UK leaves the EU. It is important that the UK and EU reach an agreement that enables continued co-operation and sharing of expertise on food and feed safety after EU exit. This includes a close working relationship with the European Food Safety Authority (EFSA).

We agree that leaving the EU requires clarification of how responsibilities currently carried out by EU bodies will be dealt with after exit. We agree that risk assessment should be the responsibility of the Food Standards Agency (FSA). It will need to increase its capacity and review its processes for independence and transparency to ensure it does this effectively. We do not however agree with the assumption that risk management responsibility should fall to Ministers. The Bovine Spongiform Encephalopathy (BSE) and horsemeat crises emphasised the need for food safety risk management to be based on independence, transparency and a consumer first approach.

Risk management should therefore also be the responsibility of the FSA in line with its existing statutory duty, but with a functional separation from its risk assessment work.

Introduction

Which? welcomes the opportunity to comment on the FSA's consultation on the proposed approach to retained EU law for food and feed safety and hygiene after the UK leaves the EU.

It is essential that there is a robust regulatory framework in place after EU exit that ensures a high level of consumer protection.

The UK's regulatory framework for food and feed safety has been closely linked to the EU for decades. It has evolved in response to various food scares and emerging risks – from BSE to the dioxins crisis and more recently, food integrity challenges highlighted by the horsemeat scare. The future regime must build on the strengths of the current approach, ensuring that the UK has a world leading system that prioritises consumer and public health protection.

As set out in the consultation document, leaving the EU raises some key questions for allocation of responsibilities post EU-exit as the UK takes back decision-making from EU institutions and authorities. This includes responsibilities for scientific advice and risk assessment, as well as risk management decisions.

There are some core principles that must underpin the UK's future approach to ensure that the lessons from the BSE crisis and horsemeat saga continue to be learned. This includes the importance of independence and transparency and the need to put consumer interests first. Risk assessments and risk management decisions will often have to be made against a backdrop of scientific uncertainty. It is essential that there is a precautionary approach that prioritises public health protection.

The Phillips Inquiry into the BSE crisis¹ made it clear among the many lessons that needed to be learned that:

- To establish credibility it is necessary to generate trust.
- Trust can only be generated by openness.
- Openness requires recognition of uncertainty, where it exists.
- The importance of precautionary measures should not be played down on the grounds that the risk is unproved.
- The public should be trusted to respond rationally to openness.
- Scientific investigation of risk should be open and transparent.
- The advice and the reasoning of advisory committees should be made public.

These principles have to be at the heart of the UK's future approach.

Sixteen years on from the BSE Inquiry, the Elliott review into the horsemeat scare² also recommended that the "*Government should ensure that the needs of consumers in relation to food safety and food crime prevention are the top priority*". He stressed that "*Industry, Government and enforcement agencies should, as a precautionary principle, always put the needs of consumers above all other considerations, and this means giving food safety and*

¹ The BSE Inquiry, Volume 1: Findings and Conclusions, Lord Phillips of Worth Matravers, October 2000.

² Elliott Review into the Integrity and Assurance of Food Supply Networks – Final Report, A National Food Crime Prevention Framework, July 2014.

food crime prevention – i.e. the deterrence of dishonest behaviour – absolute priority over other objectives”.

Codex Alimentarius, the international food standards body, also specifies in its working principles for risk analysis for food safety for application by governments³ that “*National government decisions on risk management, including sanitary measures taken, should have as their primary objective the protection of the health of consumers*”.

Comments on the proposed approach

The extent to which the UK will have on-going co-operation with EU expert bodies, such as EFSA, is currently unclear and will depend on the outcome of the negotiations. Which? considers that a deal with the EU is essential and that as part of this there need to be arrangements in place for on-going co-operation on food and feed safety matters. This includes working with EFSA and access to intelligence sharing and alert networks such as the Trade Control and Export System (TRACES) and the Rapid Alert System for Food and Feed (RASFF). But whatever the future relationship, the UK will need to significantly enhance its capacity for both risk assessment and risk management.

The FSA was set up in 2000 in response to the BSE crisis and other food scares. It was set up as an independent, Non-Ministerial Government Department with a clear remit set out in the Food Standards Act 1999: “*The main objective of the Agency in carrying out its functions is to protect public health from risks which may arise in connection with the consumption of food (including risks caused by the way in which it is produced or supplied) and otherwise to protect the interests of consumers in relation to food*”.

Risk assessment

Risk assessment is defined within the current General Food Law Regulation⁴ as the “scientifically based process consisting of four steps: hazard identification, hazard characterisation, exposure assessment and risk characterisation”.

We agree that this should be the responsibility of the FSA, working with Food Standards Scotland (FSS) in Scotland. Regardless of the relationship with EFSA after EU exit, it is likely that the FSA will have a much larger responsibility and that this will cover both advice on generic issues and risk assessment for specific regulated products.

It is essential that the FSA is able to draw on sufficient, independent, multi-disciplinary advice to be able to deliver this. The FSA will therefore need to significantly enhance its own internal scientific capability, the capacity of the scientific advisory committees that it currently has in place and develop more robust rules in order to address any issues of potential conflicts of interest and assure the independence and transparency of the process as it will have a bigger role in the safety assessment and authorisation of regulated products (eg. food additives and novel foods).

³ Working Principles for Risk Analysis for Application by Governments (Codex Alimentarius), FAO/WHO, 2007.

⁴ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

Risk management

Risk management is defined as "the process, distinct from risk assessment, of weighing policy alternatives in consultation with interested parties, considering risk assessment and other legitimate factors, and, if need be, selecting appropriate prevention and control options."

Risk communication, the third element of risk analysis, is also closely linked to this as "the interactive exchange of information and opinions throughout the risk analysis process as regards hazards and risks, risk-related factors and risk perceptions, among risk assessors, risk managers, consumers, feed and food businesses, the academic community and other interested parties, including the explanation of risk assessment findings and the basis of risk management decisions."

Under the Food Standards Act⁵, the FSA has the functions of:

- (a) developing policies (or assisting in the development by any public authority of policies) relating to matters connected with food safety or other interests of consumers in relation to food; and
- (b) providing advice, information or assistance in respect of such matters to any public authority.

In view of the importance of ensuring an independent approach and prioritising consumer interests, responsibility for risk management of food and feed safety and hygiene should also fall to the FSA after EU exit, in the context of the agreements reached on the approach to devolved matters after exit.

In line with the Food Standards Act, there should continue to be the possibility for Ministers to request the Agency to exercise its powers and it should continue to be the duty of the Agency, so far as is reasonably practicable, to comply with any such request. If a Minister felt a different approach was needed to that proposed by the FSA, this should be made explicit, along with the reasoning.

In line with Codex guidance and to ensure transparency, it will be important that the FSA ensures a functional split between its risk assessment and risk management functions.

**Which?
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⁵ Food Standards Act 1999, Section 6.