



**Government Response to the House of Commons
Environment, Food and Rural Affairs Committee Report of Session 2012-13:
Desinewed Meat**

Presented to Parliament
by the Secretary of State for Health
by Command of Her Majesty

October 2012

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The Government is grateful to the Environment, Food and Rural Affairs Committee for its Fifth Report of Session 2012-13 containing its conclusions and recommendations with regard to its inquiry on Desinewed Meat.

We have carefully considered all of the recommendations made by the Committee. This document sets out the Government's response to each recommendation.

Response to conclusions and recommendations

1. The European Commission's decision to request a moratorium at extremely short notice has had devastating consequences for British producers. It is extremely disappointing that the Commission was unable, or unwilling, to provide oral evidence to this Committee. The Commission's failure to justify its actions and fulfil its duty to provide oral evidence to the National Parliament of a Member State demonstrates a worrying disregard for democratic accountability. (Paragraph 3)

The Government agrees with the view of the Committee that the European Commission decision impacts British industry. However, as a result of further discussions between the Food Standards Agency (FSA) and the Commission to clarify the scope of the moratorium, indications are that the impact has been significantly reduced. This is explained more fully under 'trade implications' later in this response.

We particularly regret that the Commission's decision to request action on the part of the UK to comply with its interpretation of the EU legislation within 5 working days, under threat of safeguard measures, was taken by the Commission at a time when productive discussions on the definition of mechanically separated meat (MSM) were ongoing between the Commission and Member States.

It should be noted that the Commission's request was for the UK to comply with their interpretation of European legislation, which applies to all Member States, not to implement a moratorium. The Government decided to meet the Commission's request by implementing a moratorium. This terminology was used to signal that the UK did not agree with the Commission's interpretation of the legislation and that we regard the position we have been forced into as being temporary and subject to further policy discussion by the Commission and Member States.

The Government's handling of events leading to the moratorium

2. The Commission's decision to request a moratorium in the absence of any scientific evidence that desinewed meat represents a food safety risk was totally disproportionate and unacceptable. We are clear that the Food Standards Agency's assessment that desinewed meat presents no risk to public health is correct, and we have no doubt that they were right to take a

science and evidence based approach to assessing risk with regard to food safety. However, we believe that their failure to anticipate that the Commission might not take the same approach is demonstrative of a lack of political awareness on the part of the FSA which must be addressed. (Paragraph 11)

The Government welcomes the view of the Committee that decisions on matters relating to food safety should be firmly grounded in a science and evidence based approach and the acknowledgement of the Committee that our interpretation of the EC legislation reflected these values and was reasonable and proportionate.

While the FSA was aware of the Commission's interpretation, there was no reason to expect the Commission to act so precipitately when the UK has always been open and transparent about UK practices and whilst discussions were ongoing with Member States in the European Commission's Food Hygiene Working Group. This Working Group, including all Member States, had been established in April 2011 to enable the Commission to fulfil the commitment it made in its Communication on MSM in 2010, namely to address the varying interpretations taken by Member States by producing guidance or to propose legislative amendments if appropriate. Discussions in the Working Group had not concluded and were still in progress at the time the Commission initiated action against the UK.

In addition, in July 2009 when the FSA was preparing its guidance on desinewed meat (DSM), the Commission was informed. The DSM process was explained and the Commission were invited to comment on draft text from the guidance regarding the identification of DSM and MSM. The Commission response re-stated their position that any loss or modification of muscle fibre structure means the product is MSM, but they did not specifically comment on the status of DSM or give any indication that the UK should not be producing it.

3. The failure to anticipate the Commission's actions meant that the Government had very little time to decide how to proceed and limited the other options (such as seeking support from like-minded Member States to challenge the Commission's interpretation) that might have been available to it. (Paragraph 12)

The Commission presented the Government with a binary choice – act as the Commission had demanded or face severe safeguard measures – and stipulated an extremely short timetable for action. Given the UK's openness with the Commission about the UK interpretation, the associated science and the ongoing Working Group discussions, Government had no reason to expect such a demand.

No other course of action was available that would have removed the prospect of safeguard measures. Safeguard measures would have been very damaging for the whole of the UK meat industry as they would have required the removal from

the market (home and abroad) of all UK mechanically separated meat (MSM), minced meat, meat products and meat preparations. The total retail value of the product that would have been affected is at least £2.9 billion¹ (not including MSM) and there would have been additional costs stemming from the impact that the safeguard measures would have had on the reputation of the UK meat industry and on market confidence.

With regard to gathering the support of other Member States, the UK had been trying to do precisely that as the discussions in the Working Group developed. However, as has been noted in oral evidence provided to the Committee by the Minister of State for Food and Farming with regard to the possibility of raising the matter in the Council of Ministers, it is highly unlikely that other Member States would have been inclined to openly join us in challenging the action the Commission required of the UK.

4. The Government must now seek to gain support from those Member States using similar meat production processes so that maximum pressure is applied to the Commission to lift the moratorium at the earliest possible opportunity. (Paragraph 13)

The Government is using its good relationships with other Member States, in particular those developed during the Working Group discussions, and is liaising with other Member States, including those to be visited by the Commission's Food and Veterinary Office (FVO) later this year. We are sharing our experiences of the FVO audit with them, including the labelling and production issues that came to the fore. We are also encouraging them to submit their own scientific research to the Commission, for consideration by the European Food Safety Authority (EFSA).

5. Lessons must be learnt from this experience and we are deeply concerned that neither the FSA nor the Minister for Public Health were able to offer any reassurance that such an incident would not happen again. We recommend that the FSA set out how it will improve its 'horizon-scanning' capabilities and what other steps it will take to ensure that there is no repeat of this unacceptable series of events. (Paragraph 15)

It is not possible for Government to offer an absolute guarantee that such an incident will not happen again. This issue essentially occurred because the Commission took precipitate action over its disagreement with the UK's interpretation of EU legislation, despite being well aware of that interpretation for a number of years. The meaning of legislation is always open to challenge by the Commission and other parties and, ultimately, such matters are for the courts to determine.

¹ Sources: Mintel, Red Meat, Market Intelligence, October 2011; Mintel, Poultry and Game Meat, Market Intelligence, July 2012; Mintel, Meat, Poultry and Fish, Market Intelligence, October 2011. This figure does not include MSM.

The fact is that the Commission were long aware of production of MSM in the UK and had been invited to come and see the process. They had given no previous indication that they would require such immediate action in response to the findings of the FVO Audit.

The FSA has already raised the issue of the prohibition on MSM production from ruminant bones contained in EU TSE legislation, in its response to a questionnaire from the Presidency of the Council of the European Union seeking views on the Commission's TSE Roadmap 2, which was published in July 2010. The FSA suggested that consideration should be given as to whether the existing legislative requirements for MSM were proportionate and valid and said that the UK would welcome clarification of the European Commission position on the definition of MSM and its position regarding desinewed meat, as the Roadmap was silent on the subject. The FSA will consider how to pursue the ruminant aspect further once EFSA has published its opinion.

The Government accepts that 'horizon scanning' must be robust and that improvements should be made where possible. The FSA has introduced new procedures to ensure the earliest possible assessment is undertaken of the risks of receiving unfavourable FVO audit reports and of the implications of such reports with full regard being given to the unprecedented action the Commission took on this occasion. However, it is not possible to plan for every contingency. When launching the Select Committee's report the Chair described the Commission's actions as irrational and wrong. It is difficult for the Government to anticipate such actions.

Trade implications

6. The Commission's demand for a moratorium in the absence of any evidence that desinewed meat presents a risk to health will lead to the unnecessary waste of thousands of tonnes of meat. The ensuing rise in price of some meat products is likely to have a particular impact on lower-income households. The Commission's actions in this regard are to be deprecated. (Paragraph 18)

The Government agrees that the result of the Commission decision means that there is an unnecessary waste of food at a time when sustainability concerns are high on the agenda. It also recognises the potential impact on lower-income households at a time of economic austerity. These are points we made strongly to the Commission.

The FSA has worked closely with industry to produce guidance for affected businesses and has minimised the impact as far as possible by clarifying with the Commission that the separation of meat by mechanical means from cooked bones and poultry wishbones does not result in a product considered to be MSM, and by confirming that this is also the case with regard to recognised cuts of poultry and

pork. In our response to the FVO audit report, the Government informed the Commission of the UK interpretation of the scope of the moratorium, which was considered satisfactory. The Government continues to consider technical issues of this nature with industry, raising them with the Commission where it is not clear whether the process described complies with the legislation. The FSA has taken a pragmatic approach to enforcement, providing advice and guidance for industry on moving to compliance.

Confirmation of the scope of the moratorium has been welcomed by industry. It means that some products can continue to be considered as 'meat preparations' and therefore meat for food labelling purposes. This has gone a long way to mitigate the impact of the moratorium, particularly in relation to DSM produced from meat from poultry wishbones. By way of example, we have information from the industry that the initial estimated impact of £2.5 million and £3.5 million for two businesses producing non-ruminant DSM from poultry wishbone has not been realised.

In their evidence to the Committee the BMPA stated that the financial impact on industry could have been as much as £200m but there was no robust evidence available to support this figure. Using information received from industry, the FSA's initial estimate was that the impact could have been around £70 million per year. The FSA subsequently increased this figure to £130m per year to take account of further information on pre-moratorium production volumes provided by the industry. However, with poultry wishbones and recognised cuts of poultry and pork not in scope of the moratorium, the FSA now estimate a significantly reduced total cost to industry of approximately £63m per year, a reduction in impact of £67m per year from the worst case scenario.

It should be noted that the industry is still adjusting while reformulation and relabelling is ongoing and that the estimated impact is likely to be subject to continuing change. The impact on the UK meat industry was recently reported by the Meat Trades Journal on 3 August 2012 to be £25m to £30m. The FSA continues to work closely with industry with a view to gaining a more accurate picture of the financial impact of the moratorium.

7. We find it impossible to reconcile the pace and severity of the Commission's disproportionate action towards the UK with its seemingly relaxed approach to inspection and enforcement in other Member States. The Government must press the Commission to bring forward the Food and Veterinary Office visits to other Member States so that UK producers are not disadvantaged even further. (Paragraph 19)

FVO visits, which audit the performance of the Competent Authorities of a Member State in carrying out official controls to ensure compliance with EU food law, are run to a pre-announced programme and the exact timings are agreed between the Member State and the FVO. The MSM missions to Italy, Germany, France and the

Netherlands will take place between September and November. Further MSM missions to other Member States will take place next year, as will a follow-up audit in the UK, which is normal when the FVO identifies issues during an audit.

Individual Member States have no influence on the precise timing of FVO audits to other Member States. However, the UK Government agrees that it is surprising that the audits related to the production in MSM in other Member States have not followed more quickly, particularly in light of the evidence supplied by the FSA to the Commission regarding possible mislabelling of material in other Member States. The FSA has repeatedly pressed the Commission on the importance of ensuring a level playing field across the EC and has provided information on potentially mislabelled material (see recommendation 8).

8. The Agriculture Minister's evidence suggested that it was inevitable that wrongly labelled or unlawful meat products would be imported into the UK to replace UK-produced desinewed meat. This is totally unacceptable at a time when domestic producers have paid such a heavy price for compliance with the Commission's request. In its response to this report the Government must set out what steps it is taking to proactively identify and prevent such imports from taking place. (Paragraph 21)

The Government cannot routinely detain items moving in 'free circulation' within the European single market, as this contravenes the principles of the single market. The FSA continues to work closely with industry to identify potentially mislabelled material and is passing information provided by the industry on such material to the Commission. The Commission has been investigating such reports and is actively seeking information from the relevant Member States' Competent Authorities.

It is, however, ultimately the responsibility of businesses to satisfy themselves as to the provenance of the products they import and use in their production processes and to ensure that there is not a market in the UK for wrongly labelled or unlawful meat products from other Member States. It is the Commission's position that the product of mechanical separation from flesh bearing bone after boning is MSM, so any such products arriving in the UK should be regarded as MSM by the UK businesses importing them.

Governance and communication

9. As a non ministerial government department, it is particularly important that the FSA ensures that Defra officials and, where appropriate, Ministers, are actively engaged in issues which may have broader implications for the food industry. In view of the possible trade implications of a challenge to the UK's interpretation of the Food Hygiene Regulations, Defra officials should be closely involved in ongoing negotiations with the Commission from an early stage. Defra Ministers should have been made aware, following the

FVO's visit in March, that they had serious concerns about the use of desinewed meat. We recommend that the Government set out in its response to this report how it will improve communication between the FSA and other Government Departments across the UK. We further recommend that the Government set out how, whilst ensuring its independence, the FSA's accountability to Parliament can be improved, including MPs' ability to question the FSA. (Paragraph 25)

FSA, Defra and Department of Health (DH) officials, together with their counterparts in the devolved countries, have a good working relationship on a day to day basis, including around the arrangement and conduct of FVO audits. In particular, DH, Defra and FSA officials from Wales, Scotland and Northern Ireland, attend the FSA's Current and Future Meat Controls Stakeholder Group (CFMC) which meets regularly to discuss strategic and policy matters relating to meat hygiene with key meat industry representative bodies.

The issues around desinewed meat were raised by FSA with Defra officials as part of the scrutiny process which took place after the Commission had issued its Communication in 2010. Defra officials also contributed to the Explanatory Memorandum (EM), signed by Parliamentary Under Secretary for Public Health, Anne Milton, that was submitted to the scrutiny committees. The devolved administrations were also consulted on the EM.

The issues were also discussed at CFMC after the Commission Communication was published and in the period leading up to the FVO mission. Defra and DH officials, together with colleagues in the devolved countries, were also made aware shortly after the FVO mission that the inspectors had raised certain issues in the concluding meeting, although the nature of the Commission response was at that time neither known nor expected.

In line with the FSA's policy of 'no surprises', UK Ministers were alerted to the Commission's stance on this matter as soon as this was known by the FSA.

In light of EFRA's views and those stemming from the recent capability review of the FSA, the FSA is actively considering how current arrangements for working collaboratively with other government departments may be improved. This will be addressed in the FSA's capability review which will be published later this year.

With regard to its accountability, the FSA reports to Parliament through UK Health Ministers, mirroring the accountability arrangements for other non-ministerial departments. It should also be noted that there are sound and well-documented historical reasons for the food safety regulator to be independent. As with other senior Whitehall officials in Ministerial departments, MPs can also call the FSA Chair and officials to account via parliamentary questions and select committees.

Next Steps

10. Whilst the Commission's actions may already have irreparably damaged parts of the British meat industry, the Government should make every possible effort to persuade the Commission to reverse its decision. (Paragraph 26)

The Government continues to press the Commission on its interpretation of the existing EU Regulations, including pushing for the EFSA mandate to be agreed and submitted as soon as possible, providing scientific research to inform EFSA's deliberations and encouraging other Member States who are known to share the UK position to do likewise.

Once the EFSA opinion has been published, which the Commission advised in their written evidence to the Committee would be by the end of 2012, but will now be by the end of March 2013, the UK will press the Commission to re-open discussions on the definition of MSM at Working Group level as soon as possible. This will restart the process unilaterally abandoned by the Commission in April 2012 to review policy with regard to DSM and the Commission's interpretation of the existing regulations.

11. Should the opinion of the European Food Safety Authority support the UK's position on desinewed meat the Government should seriously consider taking legal action against the Commission unless the moratorium is immediately lifted. (Paragraph 27)

There is an established process to be followed before the Commission reaches a final view with regard to varying the policy and interpretation of associated legislation on DSM and MSM. Once EFSA delivers its opinion, the Commission will then discuss the matter with Member States. The Government expects that the discussions will also be informed by the findings of the forthcoming FVO missions on MSM to other Member States. If the Commission considers that an amendment to the legislation is an appropriate way forward, it will put forward proposals. The UK will work actively with the Commission and Member States to shape any future proposals.

It should be noted that, should the EFSA opinion support the UK position, the action the Commission might propose would be either to revise legislation or clarify the meaning of legislation.

With regard to pursuing legal action against the Commission, the Government will reflect on legal advice regarding the prospects for such action and will consider the outcome of ongoing litigation, which will have a bearing on the matter.

Conclusion

12. Our examination of the chain of events which led to the moratorium has highlighted the heavy-handed and disproportionate nature of the Commission's actions but has also exposed serious flaws in the handling of this issue by the FSA, Defra, and the Department of Health. It is, of course, our producers who are paying the price for these mistakes. (Paragraph 28)

The Government agrees that the consequences of the Commission's precipitate decision have been serious for UK industry and the FSA have worked hard to mitigate the impact. However, the Government considers that there was no alternative course of action available that would have removed the prospect of highly damaging safeguard measures and that it therefore handled the matter appropriately in the circumstances.

The FSA, Defra and Department of Health continue to work closely together on this issue. The FSA is continuing to: build on its existing relations with other Member States to foster support for the UK view, which will be important once EFSA has delivered its opinion; press the Commission on this matter, particularly with regard to ensuring that there is a level playing field for businesses across the European market; and work closely with industry, particularly on specific complex technical issues that they have raised, to manage and minimise the effects of the UK's compliance with the demands of the Commission as far as this is possible.



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