

Review into the Integrity and Assurance of Food Supply Networks

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3 October 2013

Dear Secretary of State

Review into the Integrity and Assurance of Food Supply Networks – Negotiations on the Proposed EU Regulation on Official Controls

As part of the Terms of Reference for the Review into the Integrity and Assurance of Food Supply Networks I was asked to formulate advice to you and the Secretary of State at the Department for the Environment, Food and Rural Affairs about any issues relevant to the EU regulatory framework as these emerge or are required to inform EU negotiations.

I have considered the European Commission's proposed new Regulation on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health, plant reproductive material and plant protection products. Article 14 is of particular interest as it is intended to place obligations on operators, which will include operators of food businesses¹. It is intended to establish rules about the way Competent Authorities (CAs) access computerised information management systems and any other information held by operators, and on the cooperation between operators and CAs in relation to consignments. The Article places a directly applicable EU duty on all operators to give access and to cooperate with inspectors carrying out official control activities. Operators would be required to make available all information to CAs concerning particular consignments.

¹ Food businesses include any business carrying out the activities related to any stage of production, processing and distribution of food, ranging from slaughterhouses and cutting plants to retailers, cafes and restaurants.

There is, however, no specific reference to obligations on relevant operators to share information about food fraud or adulteration related to specific consignments. This contrasts with an existing requirement under EU food law for food business operators to share information with the CA about consignments where they have identified a problem where there is a perceived risk to public health.

Food fraud is a complex issue and it is not always clear, particularly when first uncovered, whether or not a food fraud problem might also be a public health problem. This was an issue with the recent horsemeat incident which was considered a potential health risk. On that basis I believe that it is sensible and prudent to assume all food fraud may be a potential risk to public health unless proven otherwise. The question must be asked of any food business operator whose controls are lax enough to allow fraud is it likely to have taken sufficient steps to guard against a potential risk to public health.

I understand that the Food Standards Agency are leading on preparing a consultation document on the proposed Regulation and that Defra has been asked to contribute to it. In light of my advice and because there is a potential risk to public health I believe that it would be sensible for the consultation to seek views on a proposal that there should be a new obligation on operators to share information with the CA about consignments where they have identified a food fraud problem.

I also believe that it would be sensible to take the opportunity to put in place new arrangements at EU level for official laboratories undertaking authenticity testing. Currently there are legislative provisions at EU level for reference laboratories undertaking a wide range of food safety testing. But similar arrangements do not apply for authenticity. There are two kinds of reference laboratories set up by Regulation (EC) No 882/2004 on official controls, EU Reference Laboratories (EU-RL) and National Reference Laboratories (NRL). For an NRL to exist there must first of all be a EU-RL. There is no EU-RL for food authenticity. The setting up of centres of excellence for food and beverage authenticity testing would help ensure that the methods employed are fit for purpose. Benefits from this approach would include the harmonisation of methods employed to detect and quantify adulteration which we think essential for consumer protection and trade, and provision of better information to underpin prosecutions in cases of potential food fraud. I expect that establishing an EU-RL by DG Sanco is likely to be achievable without the need for any significant extra resource, since I think that a number of Member States might be willing to volunteer an existing laboratory or network. The UK may well wish to consider bidding to have the EU-RL located in a UK laboratory to help underpin the quality and authenticity of food produced in the region and to help re-establish and enhance the UK's reputation for food authenticity and integrity.

I also believe agreement should be reached at EU level around the level of substitution (cross contamination) which might trigger enforcement action. During the horsemeat incident a cut off level for substitution of 1% was set by the FSA and Defra and adopted across the EU. This appears to have been a sensible, pragmatic decision which enabled quick handling of the incident. But as the science to detect substitution and cross contamination rapidly improves, it becomes more difficult to decide what level is the result of food fraud and that which has occurred accidentally. My argument is that at 1% or less substitution no meaningful economic advantage could be gained yet it allows industry to maintain food production where lines use more than one species of meat. When I raised both of these issues with Ladislav Miko, Deputy Director General DG Sanco during a meeting in Brussels last week he was receptive to considering the setting of a tolerance limit during negotiations on the proposed new official controls Regulation. We think that



this should be encouraged, although what is acceptable to consumers will clearly vary according to the food stuffs involved. In cases where a 1% level of cross contamination may pose a risk to the consumer - e.g. allergic reactions to cow's milk present as a contaminant in goats/sheep milk or cheese - lower thresholds will have to be set based on individual risk assessments.

Addition fraud - i.e. adding a substance to food to enhance its perceived value - is more complicated. If a fraud is represented by a low level (less than 1%) addition of a substance and economic benefit can still be obtained, then a lower threshold must be implemented. The Sudan Red scandal of 2005, the biggest food recall in UK history, is an example. But in that case, the recall was based on 'any detectable levels' and much of this recall was unnecessary as no economic benefit or risk to the consumer was evident at that level of adulteration. I believe that an EU Working Group should be established to look at addition fraud on a case by case basis to allow a risk based threshold to be established and implemented EU wide.

There is one final matter with regard to the proposed new official controls Regulation. The sharing of information between the Commission and Member States during a food related incident is vital. The Rapid Alert System For Food and Feed (RASFF) is used to deal with food and feed safety incidents. Experience has shown that it is an effective and valued tool. The proposed new official controls Regulation proposes a similar but separate system to deal with food fraud and authenticity incidents. I do not see any benefits from creating a new system and I would suggest that it would be more sensible to combine food fraud and authenticity incidents within the existing RASFF mechanism. Such an approach would again reflect the fact that food fraud is complex and it is not always clear when there are also implications for food safety.

I hope this advice is helpful.

I have written in similar terms to Owen Patterson.

Yours sincerely



Professor Chris Elliott

