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Subject:

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NFU submission to the Balance of Competencies – Environment & Climate Change

The National Farmers' Union (NFU) welcomes the opportunity to comment on the Balance of Competencies, Environment and Climate Change consultation. The NFU represents more than 55,000 farming and growing members in England and Wales and has a significant interest in environment and climate change policy, and more specifically, how it sits alongside and impacts on agricultural production.

We agree with the Defra and DECC Call for Evidence report when it states that much of the UK's environment and climate change policy is now agreed at EU level. The EU institutions have very influential roles in initiating, shaping and reviewing environment and climate change policies.

The NFU objective is to ensure that the right framework is in place to allow our member's businesses to grow and flourish, ensuring that UK farmers can continue to make a meaningful contribution towards addressing the global challenges that society faces.

One of the biggest challenges that we foresee is in getting the EU institutions to recognise the need to balance food production and the environment and to build in an assessment of the impact of environmental policies on agricultural productivity and competitiveness.

We believe that the conditions under which our members operate must be fair. Whilst we operate on the EU common market, we seek a common, level playing field where UK farmers are able to compete on an equal footing with our European competitors, respond to market signals and increase farm competitiveness in a sustainable way.

In general, we believe that much can be done to ensure better policy development at an EU level and in particular:-

- Where rules are deemed necessary for the functioning of the common market, these should be agreed at a European level, with the flexibility to adapt to local conditions.
- Designing holistic policies or frameworks for management, rather than having prescriptive policies (i.e 'nitrates', 'drought', etc.).
- Ensuring safeguards so that any rules are implemented in an equitable way by all participants on the common market to ensure no gold plating or distortions in competition can prevail.
- Working on the basis of sound evidence and a robust science-base, rather than relying on a precautionary or hazard-based approach.
- Building in useful principles or tests such as cost-effectiveness and disproportionate cost.
- Ensuring objective evaluation of the costs and benefits of any new policy.

- Avoiding duplication between different policy areas. For example, methane is tackled by climate change policy so does not require consideration under air quality policy.
- Only considering regulation when all voluntary or industry-led methods have been shown to fail.

Advantages and disadvantages

1. What evidence is there that EU competence in the area of environment and/or climate change has:

i. benefited the UK / your sector?

Clearly, there is reassurance in a 'levelling of the playing field' and knowing that the same standards or rules should be being applied elsewhere in the EU.

In terms of specific examples, there are *elements* of EU legislation that have had particular benefits for our sector. For example, the Water Framework Directive provides for standards to vary according to circumstances to achieve the desired outcome, for cost effectiveness to be taken into account to allow the least costly solution to be used, and for the worthwhileness of the objective to be evaluated and for less stringent objectives to be set where costs are disproportionate. We believe that the cost-effectiveness and disproportionate cost tests are useful safeguards.

In addition, the Water Framework Directive also encourages public participation, and much time and effort has been expended in the UK seeking to engage stakeholders in the process of planning for improvements in water management. The NFU supports the principle of engaging stakeholders to work co-operatively in the catchments where they live and work rather than taking a top-down regulatory approach.

Overall the 2020 Climate and Energy framework with its three headline targets sent a clear message about EU climate and energy policy and set an international example. In particular, the adoption of the 2009 Renewable Energy Directive (RED), and its legally binding renewable energy targets, has resulted in significant growth in renewables deployment in most Member States.

ii. disadvantaged the UK / your sector?

Our concerns include non-scientific approaches or a poor evidence base for policy proposals and inflexible, out-dated and prescriptive legislation.

Just as an example, the Nitrates Directive is very prescriptive and inflexible, imposing high costs to agriculture, and particularly the livestock sector. Administrative costs alone borne by agriculture (in England) have been estimated to be some £19.1m (+/- 25%) in the first year (2008) of the revised programme and £7.1m per year (+/- 25%) in subsequent years¹. However, the long term trends in reducing fertiliser inputs predates NVZ implementation, most NVZ action programme measures only limit nitrate pollution by small percentages and the impact depends wholly on the local situation so a one-size fits all approach cannot deliver benefits equivalently across all areas.

In addition, EU water quality standards can have substantial resource (economic cost and carbon) implications. In the case of EU drinking water standards, many of these are longstanding and they also include some rigorous compliance regimes (e.g. must never be exceeded). However some of these standards present no toxicological or scientific basis (e.g. pesticides), and others are purely aesthetic (e.g. colour). Standards and compliance regimes should be selected to be cost effective in delivering

¹ ECONOMICS REPORT FOR NIT18 NVZ ACTION PROGRAMME IMPACT ASSESSMENT.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82410/20111220nitrates-directive-consult-evid3.pdf

the various objectives which society seeks to achieve. It may be that substantial financial savings and reductions in carbon emissions could be achieved whilst maintaining appropriate levels of protection.

Another example of inflexible legislation is the Habitats Directive. It does not take account for or recognise that climate change will impact on and change habitats. So, Member States are disadvantaged in that they still have to ensure compliance to protect habitats and species within designated areas, even although climate change may be causing these areas to alter or for species to move.

In addition, although the principles of cost-effectiveness and disproportionate costs are clear and well established principles across areas of EU environment legislation, such as the Water Framework Directive, these principles do not appear to be considered by the Habitats Directive, unless there are Imperative Reasons of Overriding Public Interest (IROPI). This notable absence means that habitat protection almost always wins out against any business or economic consideration. We believe that greater consideration of the economic case for development or the cost-effectiveness of measures to protect habitats is needed.

The Industrial Emissions Directive (formerly the Integrated Pollution Prevention and Control Directive) was borne out of the Integrated Pollution Control legislation, aimed at large industrial sectors such as chemicals plants and the energy sector. But, during negotiations on the draft Directive, pig and poultry units were brought in within the scope of the legislation. Fundamentally, we believe that the Directive provisions are more suited to industrial process sectors rather than livestock units, run by, more often than not, single farming businesses. The costs of compliance to the pig and poultry sectors include meeting best practice environmental standards, permit applications and on-going annual regulator fees.

The proposed amendment to the 10% target for renewable energy in the transport sector is already causing a hiatus in fuel processing investment. Imposing retrospective quotas rather than voluntary ambitions for advanced non-food biofuel feedstocks may have the perverse effect of reducing EU influence in the global biofuels market.

Where should decisions be made?

2. Considering specific examples, how might the national interest be better served if decisions:

i. currently made at EU level were instead made at a national, regional or international level? (What measures, if any, would be needed in the absence of EU legislation?)

Some specific examples include:-

- An overarching policy on soils should definitely be addressed at a Member State level, particularly since so many other legal mechanisms exist at an EU level to protect soils such as CAP cross compliance, Water Framework Directive, and agri-environment schemes. Instead, we believe that farmers should be supported through carefully targeted advice and information, voluntary action and a greater emphasis on monitoring and research.
- Greenhouse gas emissions are not just a local or national problem so it has to be tackled as a cross border and wider international issue.
- The UK has its own national legislation to address flooding which helps tackle our own particular issues and goes further than the EU Floods Directive. The EU Directive provides little benefit to the UK, but is costly to implement and duplicates efforts.

ii. currently made at another level were instead made at EU level?

As stated in answer to Question 2i above, reducing greenhouse gas emissions will require a global or international solution.

Internal market and economic growth

3. To what extent do you consider EU environmental standards necessary for the proper functioning of the internal market?

As we indicated in response to Question 1, clearly, there is reassurance in a 'levelling of the playing field' and knowing that the same standards or rules should be being applied elsewhere in the EU. However, where rules are deemed necessary for the functioning of the common market, these should be agreed at a European level with the flexibility to adapt to local conditions.

What is critically important is that there are safeguards to ensure that any rules or standards are implemented in an equitable way by all participants on the common market to ensure no gold-plating distortions in competition can prevail. Gold-plating results from a cautious approach to implementation in Member States, resulting in more draconian legislation and the common market can be undermined by Member States introducing different levels of environmental protection to gain a market advantage.

In addition, the use of the 'polluter pays principle' directly impacts on the costs of production. If there was a greater consistency in approach in terms of how Member States applied this principle this would result in a more consistent impact or effect on the costs of production.

4. To what extent does EU legislation on the environment and climate change provide the right balance between protecting the environment and the wider UK economic interest?

Careful consideration needs to be given in our view, to delivering a 'fit for purpose' policies at an EU level which takes a perspective beyond that simply of environmental protection but also recognises other environmental and economic dimensions, and of course, the impact on such policies on agricultural productivity and competitiveness.

Current legislation

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

i. focused on outcomes (results)?

We firmly believe that regulation must be based on outcomes rather than process. Generally, 'older' legislation, such as the Nitrates Directive, is prescriptive, inflexible and often seeks to set the means by which objectives should be pursued. However, 'newer' legislation, such as the 'Framework' Directives, whilst still ambitious, are generally less prescriptive, have a more subtle approach and leave more to subsidiarity.

ii. based on an assessment of risk and scientific evidence?

We do have concerns that there can be an inclination towards a precautionary approach rather than an evidence-based one (and a hazard-based one instead of a risk-based one) at an EU level.

Examples include the EU Plant Protection Products Regulation, which lays down rules for the placing of plant protection products on the market. This regulation introduced hazard cut off criteria which lowers the threshold of tolerance for active toxicity, rather than adopting a risk based approach. The implications for agriculture are that this leads to further restrictions on vital crop protection products, important for securing crop yield and quality.

The precautionary principle basically requires authorities to act to avoid the possibility of environmental damage in situations where the scientific evidence is inconclusive. We have had experience of the precautionary principle being invoked because a farmer has not been able to prove that his water abstractions are not having an impact on a nearby habitat (protected under the Habitats Directive).

Without a huge body of evidence, it is almost impossible for an individual farmer to prove a negative - that his abstraction is not having a negative impact. This has resulted in his abstraction licence renewal being delayed or only temporarily renewed, causing great uncertainty and cost to his business.

Similarly, we have found that an action that requires an active intervention that may have a limited, short term detrimental impact, but result in long term benefits to the designation of a site may be prevented using the precautionary principle. This can be particularly challenging in relation to the water environment where for instance fallen trees, bank slips or rubbish may need to be removed to reduce the risk of flooding. However, such active intervention may cause short term damage to the watercourse and as such may be prevented at worst or made overly bureaucratic.

The EU Eel Regulation is another piece of legislation that inclines towards a precautionary approach. A decline in eels over recent years has prompted requirements for, primarily, hydromorphological measures to remove or prevent barriers to migration. Yet the causes of the decline in eel populations since the mid-1980s remains poorly understood.

Our view is that institutions at an EU level should work on the basis of sound evidence and a robust science-base, rather than rely on a precautionary or hazard-based approach.

Doing things differently

6. How could the EU's current competence for the environment be used more effectively? (e.g. better ways of developing proposals and/or impact assessments, greater recognition of national circumstances, alternatives to legislation for protecting/improving the environment?)

A number of things can be done, including:-

- Where rules are deemed necessary for the functioning of the common market, these should be agreed at a European level, with the flexibility to adapt to local conditions.
- Designing holistic policies or frameworks for management, rather than having prescriptive policies (i.e 'nitrates', 'drought', etc.).
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- Avoiding duplication between different policy areas. For example, methane is tackled by climate change policy so does not require consideration under air quality policy.
- Only considering regulation when all voluntary or industry-led methods have been shown to fail.

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

We agree with the Defra & DECC Call for Evidence paper which states that 'Much of the UK's environment and climate change policy is now agreed at EU level'. There is a significant portfolio of environmental and climate change legislation that has been developed at an EU level over the past number of years. Perhaps the discussion should not be about whether more action on environment and climate change is needed at an EU level but whether collectively Member States should spend more time making sure that the governance at an EU level is right and the current policies and legislation are, become or remain 'fit for purpose'.

ii. Less action on the environment/climate change?

See our answer to Question 7i above.

8. Are there any alternative approaches the UK could take to the way it implements EU Directives on the environment and climate change?

Member States need to recognise that their role in implementation can also significantly influence the businesses' experience of EU policies. Mechanisms, such as Framework Directives, can give some flexibility and leeway for interpretation by Member States, so governments must recognise that they can also significantly influence how policies can be implemented at a farm business level. So, the responsibility for the cost, experience and impact of EU policies on farm businesses does not fully rest with the EU institutions. All too often it is over precautionary gold-plating of EU legislation, such as Directives, that has placed barriers on business competitiveness.

As already stated, the adoption of the 2009 Renewable Energy Directive (RED), and its legally binding renewable energy targets, have resulted in significant growth in renewables deployment in most Member States. Strong signals that post-2020 renewables targets will be ambitious and challenging are needed now, to ensure success not only in the following decade, but also in the present one. Therefore the European Parliament call for a mandatory 2030 renewable energy target of at least 30% was welcome. However, the UK government's position supports a 2030 GHG emissions target alone. This inconsistency will discourage future UK investment. We would advise that robust, relevant and local evidence must be available to support the implementation of any EU policy. Often, we have gaps in our knowledge or data which can make stakeholder discussions on implementation more difficult. To support this, the UK needs to ensure that it has a good and robust monitoring and research programmes. The provision of relevant, timely and robust data and information in order to allow farmers and growers to make informed decisions at a local level is absolutely key.

In addition, we also believe that the UK should only consider the introduction of regulation (where there is the option to choose policy mechanisms at a Member State level) when all industry-led methods have been shown to fail.

9. a. What advantages or disadvantages might there be in the EU having a greater or lesser role in negotiating and entering into agreements internationally or with third countries?

Only the EU and a few other countries have committed to a second period under the Kyoto Protocol. Leading by example can be successful when that leadership has a critical mass like the EU, but it is important that this is not at the expense of the European industry and businesses.

b. How important is it for the UK to be part of "Team EU" at the UNFCCC?

As we indicated in our response to Question 2, greenhouse gas emissions are not just a local or national problem so it has to be tackled as a cross border and wider international issue. It is difficult to see how the UK alone could provide the international leadership necessary to pursue the goal of keeping global temperature increase below 2°C, especially as current UK policy on renewable energy is inconsistent.

Future challenges and opportunities

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

One of the biggest challenges is getting the EU institutions to recognise the need to balance food production and the environment and to build in an assessment of the impact of environmental policies on agricultural productivity and competitiveness.

An additional and significant challenge will be climate change. The frequency and intensity of extreme weather events and seasonal variation in rainfall patterns are expected to be diverse, with parts of the EU being affected in different ways, and the impact on biodiversity, water quality or other natural resources largely unknown.

b. Going forward what do you see as the right balance between actions taken at international, EU, UK, and industry level to address these challenges and opportunities?

The key principle or test that should be applied in order to determine whether action is needed at an EU level is whether rules are deemed necessary for the functioning of the common market. If rules are deemed necessary, these should be agreed at a European level but with the added caveat that flexibility must be allowed for Member States to adapt to local conditions.

As we have indicated previously, regulation should only be considered when all voluntary or industry-led methods have been shown to fail.

c. What would be the costs and benefits to the UK of addressing these future challenges at an EU level?

Although it is hard to estimate the costs of these challenges, the benefits to the UK should be that agriculture is more profitable and progressive.

Anything else?

11. Are there any general points you wish to make which are not captured in any of the questions above?

We attach the NFU's overarching response to the Balance of Competencies programme (2013_PS022 consultation response Balance of Competencies General v2.docx).