

Balance of Competences

Agriculture Report: **Forestry**

Introduction

Forestry is to be considered in the Agriculture Report as part of the Government Review on the balance of competences between the United Kingdom and the European Union.

Strictly speaking, the EU has no competence in forestry. However, forestry and the forestry sector are directly affected by EU competence in many other closely related areas. This paper sets out what these effects are - and why they need to be considered as part of the review.

Government policies and priorities for woodlands and forestry have international, UK and country-level elements to them. Defra lead on international forestry policy with support from the Forestry Commission. For domestic forestry, the Forestry Commission reports to the Secretary of State for Environment and Rural Affairs for UK and England issues. Forestry in Scotland, Wales and Northern Ireland is dealt with by the respective country level administrations, however the Forestry Commission acts to coordinate forestry policy where common themes mean this is beneficial.

Forestry and the EU

Forestry remains a member state competence. The Treaty on the Functioning of the EU makes no provision for an EU common forestry policy or legislation in respect of forests or forest management. Any moves to transfer or compromise forestry competence have been rejected by member states.

However, the importance of the sector means the EU has a long history of taking a pro-active interest in forestry through cooperation. This approach is firmly based on the principal of “subsidiarity”: i.e. that action should only be taken by the EU if the objectives of any proposed action can not be sufficiently achieved by the Member States at national, regional or local level. [Article 5(3) TEU].

EU Forest Strategy

As forestry activity has many aspects to it, a significant number of EU policies and legislation where the EU does have competence are relevant to forestry. The principal policy areas are:

- Agriculture
- Environment

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- Climate Change
 - Energy
 - Plant Health
 - Trade
 - Research

Without a coherent framework to address forestry issues, a complex and fragmented approach within the EU could impact negatively on the forestry sector. The EU and its Member States have thus developed an **“EU Forest Strategy: for forests and the forest based sector”**. Recently revised, and expected to be adopted in 2014, this addresses forests and the whole forest value-chain, and it sets an agenda for forestry co-operation in the context of other sectors and pressures.

The strategy:

1. recognises member state competence;
2. is based on the principle of subsidiarity;
3. seeks areas for cooperation and joint action;
4. reaffirms the commitment to sustainable forest management; and
5. assists implementation through channelling EU Rural Development funding.

Central to the strategy is the concept of sustainable forest management as articulated by the **Forest Europe** process. (“Forest Europe” is an international ministerial agreement. It is Europe-wide, i.e. beyond the EU, and involves 46 signatory countries). One of Forest Europe’s key successes has been to define criteria and indicators for sustainable forestry.

The Disadvantages and Benefits of areas of EU-Competence that affect Forestry.

1 General Issues

The way in which the role of the EC is written into individual Regulations and Directives can identify a role for the EC which it does not have the expertise to fulfil; this is particularly the case for the parallel (shared) competency on climate change adaptation, and the Water Framework Directive for example. There is a risk that as areas of EU competency develop, they impose additional requirements on forestry policy and burdens on forestry practice in member states, in other words **“competency creep”**. Examples are given below:

Example 1. Land Use, Land Use Change and Forestry (LULUCF) negotiations (2013), and the Mechanism for Monitoring and Reporting Greenhouse Gas emissions (MMR) Regulation. The initial drafts of the Commission proposal required member states to

submit action plans for climate change mitigation and adaptation to the Commission. The Commission was to then comment on those plans with member states being required to take due account of those comments. Whilst the final reporting burden in relation to LULUCF reporting was mitigated somewhat, it is nevertheless inconsistent with the principle of subsidiarity and has the potential to add to the burden of what is already a detailed reporting process.

Example 2. The development of sustainability criteria for bio-fuels and biomass by DG Energy involved “land criteria” and other requirements. These are inconsistent with member state competence for forestry and cut across Forest Europe agreements, and the UK Forestry Standard, which defines the UK and devolved governments’ approach.

2 Agriculture – (CAP, Rural Development)

In the UK, forests and woodlands account for 13% of the land area. Apart from land under development, the majority land-use is agriculture which benefits from direct payments to farmers under Pillar I of the CAP. These payments are not applicable to forestry – and although certain forestry activities are supported to an extent, this is a small fraction of the direct subsidies and grants available to farmers for agriculture, (the forestry support is provided through Rural Development funding via Pillar II of the CAP). Moreover the way agriculture is supported tends to ignore potential gains or losses for forestry, for example “good agricultural condition” takes no account of the state of woodland and excludes environmentally valuable land use such as scrub, which can develop into woodland. Similarly, whilst the EU funds the improvement of agricultural productivity and competitiveness, comparable funding is not available for forestry. Support is also available for the “industrial” processing of agricultural products but not for forestry products - other than very small scale primary processing.

Thus, these two principal land use activities have very different levels of financial support and the disparity of funding has led to a number of issues for forestry in the UK.

Disadvantages:

- **High land prices**, supported by farming subsidies, mean that forestry is priced out of the market.
- **Current levels of farm payments**, mean that forestry policies to expand the woodland area are frustrated by farmers, who are extremely reluctant to forgo payments by turning agricultural land into woodland (although eligibility for direct payment support is retained for a short period following planting).
- The high levels of support offered to farmers tend to mean that they specialise in agriculture and as a result there has been an historic **lack of integration** or

synergy between the two land uses, (except on traditional estates, where agricultural subsidy forms a smaller proportion of overall income, and capital growth is a more significant driver).

- Because any forestry support comes via the CAP Rural Development Regulation, it is **not primarily focussed on forestry** and the needs of the sector.

Benefits:

- Measures are available to support forestry activities through the Rural Development Regulation. To a degree, these can be tailored to meet UK needs, such as support for the environmental aspects of sustainable forest management and continued forest expansion.

3 State aids

Judgements of the European Court have determined that any support to the forestry sector from public sources is "State Aid". (State Aid rules apply to the EU as part of international trade agreements to promote free trade and competition.) This is not the case with agriculture - where support is effectively exempt. As a result, forestry support is subject either to the General Block Exemption Regulation (GEBR) or a bureaucratic approval process known as notification. In contrast to agriculture, **this effectively limits the extent to which member states can offer forestry support**. This limit is the stated intervention level, (i.e. grant level) mandated by the Rural Development Regulation (RDR). (There is however, an exemption for support at a small scale, known as *de minimis* aid, that can be used to support businesses up to a certain cash limit.)

Although the State aid Modernisation process, currently in progress, is likely to lead to an extension of the Agricultural Block Exemption to include forestry, the current proposal is that this will only apply to forestry support that is within the context of a Rural Development Programme.

Disadvantages:

- The ability to support the forestry sector, through public funding, to deliver UK or country level priorities is severely **constrained by the blanket application of EU State aid rules**; for example, when assisting local communities to acquire forest land for community management, and other UK or country level priorities.
- Any support, although in accordance with State aid guidelines, requires a lengthy **bureaucratic process** to confirm that this is the case, even if it is part of an approved Rural Development Programme.

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- Even with the proposed extension to the Agricultural Block Exemption there will still be a need to notify any schemes or individual support out-with a Rural Development Programme.

4 Environment – (nature conservation, water, biodiversity)

As a major land use, forestry is directly affected by EU competence on the environment in a number of ways. The EU Directives on habitats, species and birds, together with Natura 2000 sites are a consideration in many areas of forestry and forest related activity. The EIA regulations also require detailed assessment of forestry proposals and forestry EIAs have been a significant proportion of those completed since the regulations came into effect. Whilst it is the case that the UK has its own wildlife legislation and designations, (and this protection would probably have been extended irrespective of the EU), the EU competence in the environment has been the major driver.

Paradoxically, the better our commercial forests are managed for wildlife the more constraints they will be required to observe as wildlife prospers. This has the potential to inhibit forest management practices, and to create perverse effects; for example avoiding forest operations in the nesting season of scheduled birds may lead to forest harvesting having to take place during times that are less practical and which may have adverse effects on other aspects of the environment such as water quality, leading to an overall decline in the quality of the habitat.

The Water Framework Directive has a major influence on how forestry is managed in relation to water catchments, particularly as forestry is often a major land-use. The relationship is informed by River Basin Management Plans (a requirement under the above EU Directive.) In addition the EU Floods Directive which will require local flood risk management plans which will also have a bearing on forestry.

Disadvantages:

- Forestry practitioners and forestry regulators have been required to fulfil a number of **regulatory requirements**, such as the EIA regulations and compliance with environmental Directives. This has contributed to the burden on the sector, especially as the scope for flexibility in their implementation has not always been clear. An additional burden relates to requirements in forest planning for biodiversity reporting (target 3b).
- **Forestry activity has been constrained** in a number of ways and sometimes EU legislation has appeared heavy handed in relation to the potential risks when set against the known benefits of well managed forests.
- **Forestry expansion has been curtailed**, by the protection of certain habitats, for example peat-land, where EU protection – which takes account of the wider EU

context - may be more stringent than the consensus that could be achieved domestically at either a UK or country level. In a largely deforested country like the UK, this presents a significant hurdle to the governments' policy for reforestation.

- **Deforestation has occurred** to a limited but locally-important extent to re-instate habitats considered to be of EU importance / significance, such as lowland heaths.

Benefits:

- The protection of **important habitats and species** has been strengthened.
- **A regional (EU wide) perspective** has been facilitated to better coordinate conservation and environmental activity across administrative borders.
- Some of the **environmental non-market benefits of forestry** have come to the fore and been supported by EU and other funding streams.
- Impetus has been given to the **protection of water quality** and mechanisms to deliver this, such as river-basin management plans. This is helping to emphasise forestry as part of the solution - rather than continuing to be perceived as part of the problem.

5 Climate Change – (emissions trading, adaptation, mitigation, land use change (LULUCF) and carbon accounting)

Domestic forestry is particularly affected by EU competency in the area of climate change. The main impacts relate to the Renewable Energy Directive, LULUCF, meeting EU carbon targets post 2020; Regulations on the monitoring and reporting greenhouse gas emissions, and climate change adaptation.

Disadvantages

- The focus of national and EU-level climate change policy on the EU-Emissions Trading Scheme (EU ETS) has limited the development of carbon markets in non traded sectors not covered by the ETS. In the case of forestry, there has been significant interest in developing domestic carbon markets to fund woodland expansion in the UK. However the EU-ETS has not, thus far, recognised contributions from domestic projects as an alternative mechanism for achieving emissions reductions. Consequently, this **effectively restricts the applicability of carbon credits from domestic forestry projects** in Member States thereby preventing the benefit that such linkage could potentially bring from being realised.

Benefits

- EU-level negotiating in international climate change agreements under the United Nations Framework Convention on Climate Change has clearly been more effective than individual Member States acting independently. There are also likely to have been significant cost savings.
- Although somewhat discredited due to recent issues of over-supply of allowances, the EU-ETS has become established as the world's largest carbon market; this would not have been possible without EU-level action.
- Regarding climate change adaptation, EU-level parallel competency has been critical in raising the issue across member states, sharing best practice and facilitating pan-European monitoring and information exchange.
- EU competency in Climate Change has raised the importance of forestry as a mechanism to sequester carbon and mitigate the effects and also as a source of renewable energy. The Forestry Commission's Woodland Carbon Code (WCC) has led to a voluntary mechanism that acknowledges the role of woodland creation projects in reducing net greenhouse gas emissions from business, while contributing to the UK's emissions reduction targets.

6 Energy - covering wood-fuel, biomass, sustainability criteria, renewables.

Wood is a vital source of sustainable energy in the light of concerns over dwindling and increasingly expensive fossil fuels and the impacts of carbon emissions on climate change. In recent years, the energy market for wood has been revolutionised and hugely expanded and there have been great advances in wood burning technology. Supporting this, the EU Renewable Energy Directive stipulates that member states must deliver 20% renewable energy by 2020 and in many countries, including the UK, a large proportion of this will be met through wood. In order to ensure this is achieved, subsidies will be paid to energy and heat producers however they will be conditional on meeting certain criteria. Domestically, this expanding market has the potential to bring neglected woods back into economic management to the benefit of both the rural economy and biodiversity.

Disadvantages

- The criteria for sustainability stipulated by the EU have not yet been finalised, but draft versions would impose new criteria which cut across the existing international consensus upon which the UK approach (the UK Forestry Standard) is based and could impose additional burdens on forest owners.

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- The impetus behind wood for fuel could threaten the over-exploitation of some resources at the expense of biodiversity, carbon stocks and site productivity; however the UK Forestry Standard is in place to ensure this does not happen.
 - Some in the timber processing sector are concerned that incentives for wood energy will mean that supplies will be diverted from wood using industries and prices will rise; particularly for the poorer grades of wood material that has been available at low prices in the past.

Benefits

- The advent of these new markets, particularly for lower value forest produce that might otherwise be uneconomic to harvest, has provided a major boost to UK forestry. It is starting to have an impact at many levels, so both large scale forestry operations and the management of small woods have benefited and will continue to do so.
- As the economics of forestry improve, it is likely to provide more incentive for owners to undertake new planting and woodland expansion

7 Plant Health –protection against the introduction of harmful organisms to the EU and the internal movement of plants and plant products within the EU, the marketing of seed and forest reproductive materials

Our trees and forests are remarkably resilient to attack from pests and diseases. However, over the last decade there has been an increase in the rate at which new threats have appeared in the UK - a trend which is in common with other plant pests. The problem is closely associated with an increase in global trade which has created the routes for pests to arrive and become established. The European Community operates to a common plant health regime which is designed to facilitate the safe trade in plants and plant products from other parts of the world. The controls on trade within the Community are less stringent and it is affected by marketing and trade legislation (see below) which applies equally in each member state.

There is EU competence in the area of forest reproductive material marketing regulations. The EU regimes for plant health and the marketing of forest reproductive material are currently under review. The proposals for the new regulations revise and update the current regime and seek to address and simplify the action on future threats.

Disadvantages

- As an island nation we can differ in our approach to certain pest and disease threats to other parts of Europe. Sometimes the requirement for free trade within the EU **conflicts with our need to control movement of certain plants and**

plants products to prevent the entry of pests which may already be established elsewhere in the Community. The Plant Passporting system does not currently provide adequate protection from most pests and diseases once they become established in the EU.

- Individual **countries have to survey for diseases which are irrelevant to their own national biosecurity**. And the EU regime requires inspection on low-risk controlled trades - instead of high-risk uncontrolled trades particularly for imported commodities.
- Processes to change legislation or review regimes can be unacceptably slow. And in emergency situations, it is sometimes challenging to reach agreement to rapid action in response to new threats. The need to consult 28 member states inevitably means that **decisions take longer than in the case of action at a national level**.
- The size and value of the forest sector is lower than agriculture and the priorities for agricultural crops can be very different to those for forestry. The EU imposes a single regime for all plants and propagating material, this means that forestry priorities and interests can be subsumed unless forceful representations are made.
- The risks of inadvertently introducing pests into Europe would be greatly reduced if all member states would rigorously operate to a common regime for import and subsequent movement of material. Uneven operation of the regime by Member States leads to unacceptable movement of pests and disease into and within the Community. It also leads to inconsistent messages being given to businesses and trade.

Benefits

- There is a **benefit in free trade of forest products** with no border controls between the member states, and as a trading block the EU is in a stronger negotiating position with respect to phytosanitary measures with third countries.
- The advantages associated with common import controls also apply to the measures which apply to intra community movement of materials. It is much more efficient to have a shared understanding of the measures which are required for movement of material between countries than it is to have disparate regulation.
- The capacity to respond to emergency situations is better achieved by drawing down on the combined resources available to all member states than it is to operate in isolation. The principle of solidarity is that member states will share in

their support to responses to outbreaks of EU priority pests and this has been of great benefit to the forestry sector elsewhere in Europe.

- The EU has created more opportunity for joined up research under the Framework programmes and schemes. These have enabled larger and longer term projects than any single country could afford. (The Euphresco ERANET project is a key example.)

8 Trade –imports of timber into the EU, Illegal timber and due diligence

As an EU competence, the effects on trade for domestic forestry can be divided into those that affect the EU internal single market and those that affect the UK through the EU's trade relationship with the rest of the world.

The EU single market promotes a common approach and as part of the initiatives to tackle illegal logging the EU Timber Regulation was introduced in March 2013. This requires anyone placing timber in the EU market to ensure that processes are in place to ensure the timber has been legally obtained. This applies to domestic timber and thus has impacts for the forestry sector.

Disadvantages

- UK domestic controls on imported materials have been curtailed by the free market and this increases the risks of introducing pests and diseases for domestic forestry. (See above)
- The EU Timber Regulation has imposed additional duties and burdens, (however these have been minimised through existing UK Forestry Standard regulatory mechanisms.)

Benefits

- Forestry-related goods can move across the EU with the minimum of restrictions.
- The EUTR will help combat illegal logging work to reduce un-fair competition, and promote responsible forest management worldwide.

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