



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Regulation on the zootechnical and genealogical conditions for trade in and imports into the Union of breeding animals and their germinal products {COM(2014) 5 final}, hereinafter “the Regulation on zootechnics”.

The Commission takes note that the Bundesrat acknowledges the importance of harmonised rules for the smooth functioning of the internal market and the free movement of animals and products but considers that it would have been sufficient to review and update the existing Directives, and that it would be necessary to reduce the number of delegated acts to the absolute minimum for the proposal to be compatible with both the principles of subsidiarity and proportionality.

The Commission notes that the proposed Regulation on zootechnics lays down the zootechnical and genealogical principles of trade in and imports into the Union of breeding animals and their germinal products at an EU level. The issues proposed for future delegated acts concern non-essential elements included in Annexes that are both technical and very detailed. Such empowerments do not only respect the provisions of the Treaty on the Functioning of the European Union (Articles 290 and 291) but also represent a continuation of the current practices.

At present such technical issues are addressed in twenty-five acts adopted by the Commission in the early 1990s on the basis of much wider empowerments granted by the Council with fewer conditions. The details of those acts are included in recitals 51 to 53 of the proposed Regulation on zootechnics. This has ensured a flexible and proportionate approach taking into account different situations across Member States and has proven to be an efficient way of regulating on non-essential elements of a basic act while respecting the principles of subsidiarity and proportionality. The provisions of more than twenty of the current Commission Decisions have remained in force without amendment and have been preserved in technical Annexes to the proposed Regulation on zootechnics. Eleven of the fifteen requested empowerments for the adoption of delegated acts in the proposed Regulation on zootechnics aim at amending those Annexes. Such modifications may be required when for example new techniques for performance testing

*Mrs Ana BLATNIK
President of the Bundesrat
Dr Karl Renner-Ring 3
A-1017 WIEN*

or genetic evaluation become available or when breeding programmes ought to comply with international conventions.

Two more extended empowerments requested in the proposed Regulation on zootechnics relate to trade in and imports into the Union of purebred breeding animals of species other than bovine, porcine, ovine, caprine and equine and are owned to the focus of the Regulation on livestock species. These two empowerments replace Council Directive 91/174/EEC which in general terms regulates trade in purebred breeding animals of all animal species not regulated in specific legislation and to which the horizontal Council Directive 94/28/EC on imports of purebred animals also applies.

According to the proposed Regulation on zootechnics, the recognition of breed societies and the approval of their breeding programmes, which are considered to be key elements of the legislation on zootechnics, would remain entirely the responsibility of Member States. For example, breed societies would be obliged to have legal personality according to national legislation and their breeding programmes would need to satisfy the competent authority of the respective Member State that the breeding objectives can be achieved.

Concerning the number of empowerments, there is no formal limit set down in the Treaty on the number of delegated or implementing powers that a Regulation may confer on the Commission. This is left to the discretion of the legislators. Instead, Articles 290 and 291 of the Treaty set out requirements that powers should be appropriately granted and used. In particular, regarding delegated acts, the delegation of power needs to be limited by the Union legislator in terms of objective, content and scope in the basic legal act. Moreover, as recently confirmed by the Court in its case C-427/12 Commission/Parliament and Council ('Biocides case') the Parliament and the Council have a margin of discretion when they decide to confer a delegated power on the Commission pursuant to Articles 290(1) TFEU or an implementing power pursuant to Article 291 (2) TFEU. Finally, it should be underlined that implementing acts are subject to an opinion of the Member States in the Standing Committee on zootechnics.

The Commission is of the opinion that the measures provided for in the proposed Regulation on zootechnics fully respect the principles of subsidiarity and proportionality, because a common set of principles and rules for breeding proposed in the Regulation would ensure the legal right of entry of breeding animals in the corresponding herd-books established by another breed society in the same or another Member State. The reasons that justified the harmonisation of these rules since the late 1970s have not changed and those principles and rules are in line with the principles governing the internal market and the free movement of goods, laid down in the Treaty. In this respect, the proposed Regulation on zootechnics would in the Commission's view not exceed what is necessary to establish the enabling environment for the implementation of approved breeding programmes by recognised breed societies and breeding operations under the effective supervision by the competent authorities.

The proposed Regulation on zootechnics would ensure the smooth functioning of the internal market in breeding animals and would, for recognised breed societies, defend

the right of establishment and provision of services anchored in the Treaty. The proposed Regulation provides a consistent approach for Member States and reduces the administrative burden as operators would not need to familiarise themselves with individual national legislations in different jurisdictions. In addition, the proposal aims at improving the clarity and consistency of the wording in order to minimise the risk of different interpretations of the provisions in individual Member States.

It should be recalled that in certain cases, cross-border activities of approved or recognised breeding organisations and breeders' associations with their headquarters in other Member States were refused on the basis of differences in the national transposition of the underlying directives. This effectively allowed breeding organisations, established in the refusing Member State, to be protected from competition. In addition, the Commission has dealt with numerous problems raised by breeders, breed societies and competent authorities because of the different interpretations by Member States of the existing legal provisions.

The provisions and technical Annexes in the proposed Regulation on zootechnics follow almost completely the tried and proven rules currently in force, preserving those provisions that have not caused problems in past decades. At the same time, the proposed Regulation on zootechnics substantially limits the scope of Union legislation on breeding animals by providing Union rules only for the breeding of livestock species.

In addition, there is a single strictly limited empowerment for adding well defined non-essential elements relating to zootechnical and genealogical rules governing the breeding of other animals and their imports from third countries. The conditions under which Union rules could be laid down in accordance with that empowerment would correspond to the current Directive 91/174/EEC. This empowerment was requested as a result of the limitation of the general scope of the proposed Regulation on zootechnics to certain livestock species only.

Before the adoption of the above proposal, the Commission adopted the proposal for a Regulation on official controls and other official activities {COM(2013) 265 final}. This proposed Regulation would exclude zootechnical matters from its scope and repeals Directives 89/608/EEC, 90/425/EEC and 91/496/EEC. The proposed Directive of the European Parliament and of the Council amending Directives 89/608/EEC, 90/425/EEC and 91/496/EEC as regards references to zootechnical legislation {COM(2014) 4 final}, reflects the scope of control rules embedded, at present, in horizontal legislation which is applicable to zootechnics. Again, the proposed Regulation on zootechnics in its chapter on official controls sets out principles for official controls, leaving it to the competent authorities to determine the frequency and content of the controls.

The Commission is furthermore of the opinion that the proposed Regulation on zootechnics would have no detrimental effect on the preservation of rare or endangered breeds and that it would place more attention on genetic diversity and the protection of valuable genetic resources than current legislation. It has always been the Commission's understanding that a preservation programme affecting livestock species and possibly supported through public funding, is best carried out by a breed society complying with

EU criteria, which can include in the target population, animals from an international gene pool.

The points made above are based on the initial proposals presented by the Commission which are currently in the legislative process involving both the European Parliament and the Council in which your government is represented.

The Commission hopes that these clarifications address the concerns raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Vytenis Andriukaitis
Member of the Commission*