Dear Chairman,

The Commission would like to thank the House of Commons for its second Opinion on the two proposals on cloning, i.e.:

1. the proposal for a Directive of the European Parliament and of the Council on the cloning of animals of the bovine, porcine, ovine, caprine and equine species kept and reproduced for farming purposes (COM(2013) 892 final) (hereafter Cloning Technique Proposal), and


The House of Commons points out that one single Impact Assessment, which is moreover only available in English, underpins two legislative proposals. This is argued to make it difficult for national Parliaments to scrutinise the subsidiarity justification.

The Commission would like to stress that both proposals relate to the same subject: cloning of animals. From a technical perspective the content of the proposals, i.e. the ban of the technique and the ban on food from clones, could thus have been presented in one proposal.

This was, however, not possible for legal reasons. The ban of the technique is justified by welfare concerns on farm animals. As a result it is based on Article 43 of the Treaty on the Functioning of the European Union (TFEU) which provides powers to adopt measures on agriculture.

Conversely the ban on the placing on the market of food from clones is justified by consumer perception and ethical concerns related to cloning. Neither Article 43 TFEU nor any other Article in the Treaties provide a specific legal basis for this justification. This is why Article 352 TFEU (the so-called flexibility clause) was the only option as legal basis of the Proposal on Food from Clones.

In addition proposals under Article 43(2) TFEU are adopted under the ordinary legislative procedure. Proposals under Article 352(1) TFEU are adopted under a special legislative procedure. One measure cannot be adopted under two different procedures. Hence it was not

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possible to propose the ban of the cloning technique and the ban on food from clones in one single instrument.

The fact that for legal procedural reasons two complementary measures had to be proposed does not diminish the value of the impact assessment. The Commission confirms that the explanatory memoranda and the executive summary of the impact assessment contain statements on subsidiarity and are translated into all official languages of the EU.

The House of Commons questions the necessity of the Proposal on Food from Clones in the absence of evidence of existing or likely divergent national legislation.

The Commission explained in its letter of 8 May 20141 that a uniform approach on the marketing of food from cloned animals is appropriate even before such trade may occur in practice, as otherwise Member States could take uncoordinated measures which would in all probability be very different from each other and thus not compatible with the proper functioning of the single market. This holds particularly because animal cloning is not prohibited in third countries and because of the negative consumer attitude in the EU towards cloning for the purpose of food production.

The Commission hopes that these clarifications address the issues raised by the House of Commons and looks forward to continuing our political dialogue in the future.

Yours faithfully,

Frans Timmermans
First Vice-President

Vytenis Andriukaitis
Member of the Commission

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1 C(2014) 3093 final.