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ADDENDUM TO NOTE

from:	General Secretariat of the Council
to:	Delegations
No. Cion prop.:	13700/11 - COM(2011) 525 final + 13701/11 - COM(2011) 524 final
Subject:	- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1760/2000 as regards electronic identification of bovine animals and deleting the provisions on voluntary beef labelling - Proposal for a Directive of the European Parliament and of the Council amending Council Directive 64/432/EEC as regards computer databases which are part of the surveillance networks in the Member States

Further to the meeting of the Working Party of Veterinary Experts (Animal Health) on 29 November 2011, delegations will find attached comments from the German delegation on the above issue.

I. Amendments to Regulation (EC) No 1760/2000**1. Identification****Preliminary remarks:**

Even though, as we fully recognise, the proposal is aimed at reducing bureaucracy and establishing standards for exchanging data between the Member States' electronic databases, our stance remains sceptical and cautious. These reservations apply particularly since, although we share the Commission's view that keepers of bovine animals should not face excessive financial constraints, the same argument needs also to be applied to sheep and goat keepers, whose animals were subjected to compulsory electronic identification (EID). As a result, the proposal fails to establish any coherence between these animal species.

We also consider that Regulation (EC) No 1760/2000, which is currently in force, already makes it possible, when applied in conjunction with Article 4 of Regulation (EC) No 911/2004 (or its predecessor, Regulation (EC) No 2629/97), for Member States to use other material or models for the second ear tag; indeed, Germany has made use of this possibility.

We would stress that the system for data exchange between the Member States's databases must, in any event, be operational prior to the introduction of electronic identification. There is an urgent need for further development of the BOVEX pilot project, which Germany will continue to take part in. The costs incurred by the Member States from the introduction of a data exchange system will, however, also need to be checked.

Lastly, we would maintain our reservation of 29 November 2011 regarding the question of which rules are to be adopted by means of delegated or implementing acts, so as: firstly, to facilitate all stakeholders' understanding of the new rules, and secondly, to pursue EU efforts to avoid administrative burdens. We would supplement our specific comments of 29 November 2011 on Articles 10 and 10a as follows:

We would suggest – *as in Regulation (EC) No 21/2004 (ovine and caprine animals)* – setting out the details concerning means of identification, the "bovine passport" and the holding register in a (new) Annex to the Regulation. The provisions in that Annex should be determined by means of an implementing act (as has hitherto been the case in the committee procedure); this would allow sufficient flexibility for making any amendments whilst the large number of Commission acts that are proposed would not be needed.

Detailed comments:

- Recital 15

We feel that the discussion on 29 November 2011 did not make it clear that the first sentence can only refer to the current legal situation (Regulation (EC) No 1760/2000 in conjunction with Regulation (EC) No 911/2004); the use of the words "in addition to" is indication enough that the future Regulation is not being alluded to, as in the latter text all electronic identifiers are to be official identifiers (and will not need to be used "in addition to" non-electronic identifiers). We therefore propose the following wording:

Existing wording: "Different types of electronic identifiers for ruminants, such as boluses, electronic ear tags, and injectable transponders may be used to individually identify animals in addition to the conventional ear tags provided for in Regulation (EC) No 1760/2000. It is therefore appropriate to broaden the scope of the means of identification provided for in that Regulation in order to enable the use of electronic identification."

New wording: "Different types of electronic identifiers for ruminants, such as boluses and injectable transponders, may be used to individually identify animals in addition to the conventional ear tags provided for in Regulation (EC) No 1760/2000. It is therefore appropriate to broaden the scope of the means of identification by including additional electronic identifiers."

- Recital 16

We feel that the third sentence does not convey what is required. Surely the aim is to leave it up to a Member State, rather than individual animal keepers, to make EID compulsory on its territory, where the Member State has chosen the option of voluntarily introducing EID that is provided for in the act. In addition, recital 17 and new Article 4(2), amongst others, support our interpretation.

Proposal: Delete the third sentence.

- Recital 19a:

We repeat our view that the provision on recognition that the electronic databases are fully operational should be re-inserted; in that regard, please see our position of 30 September 2011 concerning the same paragraph.

- On point (3) – Article 4:

Paragraph 1, third subparagraph:

The proposed provision, whereby bovine animals born before 1998 and identified on the basis of the *lege artis* procedures in force at the time are from now on to be excluded from intra-EU trade, is unenforceable and **not in line with EU law**. Such animals must continue to be allowed to be the subject of intra-EU trade.

Insert:

Article 4 should have an additional provision on **retagging** of bovine animals, establishing that the code to be used for the replacement means of identification will be the same as for an identifier that has been lost or has become illegible. We assume that appropriate specifications concerning the type and code of the replacement means of identification used will be included.

Further comments:

– The question remains as to whether Member States that have already used Article 4 of Regulation (EC) No 911/2004 to allow an exception for the second ear tag (i.e. with the first conventional and the second electronic) will be able to continue that system or will have to relinquish that exception. To allow keepers of bovine animals to retain this option we would advocate keeping the system.

– To facilitate a clearer understanding of the provisions on means of identification, it would be very helpful for the **type of identifier actually to be specified in a (new) Annex to the Regulation**. In that regard, please see the last paragraph of our preliminary remarks.

– We also think an addition is necessary to the effect that Member States must communicate to each other and to the Commission the respective models of the means of identification used in their territory and the Commission must make those models publicly available (see Article 4(8) of Regulation (EC) No 21/2004).

- On point (4) - Article 4a(1):

We feel it would in practice be very difficult to monitor two different time periods for the application of the means of identification. In that connection we would point out the importance of identification when conducting cross compliance controls. We would suggest that the 60-day period be specified.

- Article 4b(1), third subparagraph:

We think clarification is needed as to what is meant by "veterinary checks" (see first subparagraph). We assume that this can only mean "import checks".

- Article 4c(2), last subparagraph:

The reference to the third subparagraph of Article 4(1) is confusing and does not make things clearer; the reference is not necessary, either, as the bovine animals in question, that is those born before 1 January 1998, were identified on the basis of the provisions in force at the time and do not, therefore, need re-identifying and are unrestrictedly the subject of intra-EU trade. We would therefore suggest a straightforward deletion of that reference.

It remains unclear, however, which of the two intra-EU trade identification numbers is now needed for the database entry; this needs urgent clarification.

There also needs to be an explanation, at least in the recitals, of how intra-EU trading of a bovine animal with EID will actually operate:

What happens where a bovine animal that has been marked in a Member State without EID is to be brought from there to another Member State with EID: does it keep both non-electronic tags and then undergo electronic identification in the recipient Member State? Such an animal could end up with 3 ear tags (2 "old" non-electronic ear tags plus one electronic ear tag or electronic bolus). If such a bovine animal is brought back to the Member State of origin, all three means of identification will be kept; if one of those identifiers is lost or no longer serves its purpose, there is no need for any retagging as the animal will still have two identifiers (e.g. a non-electronic ear tag and an electronic bolus)?

- On point (5) – Article 5 and on point (6) – Article 6

Even though we support the aim of providing an electronically retrievable bovine passport in future, and thereby marked simplification can be achieved, we believe that there is first an urgent need to continue the work begun on the BOVEX pilot project and to bring it to a satisfactory conclusion. The considerations at the time, *and which are still applicable*, did after all focus on the development of a standardised format for data exchange between the Member States, using a platform which has yet to be established. In that regard, we would refer to our preliminary remarks. There is a need for clarification of the workflow as regards ensuring quality in data exchange, in particular the issue of whether BOVEX should store data on bovine animals/keepers of bovine animals, or whether data should be deleted and then re-entered when animals are not dispatched or when the recipient Member State is changed at short notice.

In addition, we do not consider it appropriate either for the provision on recognition of the full operability of a Member State's computerised database to be removed and not replaced; in our view, all hitherto unapproved databases would be placed at a disadvantage.

- On point (6) – Article 6(c):

Deletion of the final relative clause:

We do not consider necessary the addition concerning the return of a bovine passport to the competent authority of the dispatching Member State. On the one hand, this constitutes a considerable administrative burden. On the other, we believe that the tracing of bovine animals is assured and their life cycle is "complete" when the databases of the dispatching and recipient Member States store the data of the dispatched bovine animal. Accordingly, we propose the straightforward deletion of the proposed addition.

Addition concerning export:

As regards the current proposal there is a **gap in the legislation in respect of cases where bovine animals are exported to third countries and the exporter applies for export refunds**. On the one hand, the submission and processing of bovine passports during export clearance demonstrates the origin of the bovine animals to the customs authority, which is important for the export refund procedure that regularly ensues. On the other hand, however, proof is also furnished of the whereabouts of the bovine animals, as the bovine passport is returned to the exporter with the relevant customs stamp after clearance. We therefore believe that there is an urgent need to supplement **the existing proposal with the wording of the current Article 6(5) "In the case of animals exported to third countries, the passport shall be surrendered by the last keeper to the competent authority at the place where the animal is exported"**.

- **On point (7) - Article 7(c), paragraph 5:**

In our view, the condition "access to the computerised database" should be deleted as keepers who do not have access to the database are placed at a disadvantage; these keepers notify changes in their herds through an agency mandated by the competent authority which, in turn, records the information in the computerised database. Accordingly, we propose the following wording (by analogy with Council Regulation (EC) No 21/2004 Article 5(4)):

"..., the register of information required shall be optional in any Member State where a central computerised database already contains such information."

- **On point (9) – Article 10 and point (10) – Article 10a:**

We refer to our preliminary remarks and uphold the reservation; with regard to Article 10(d) "the minimum levels of official controls to be carried out in accordance with Article 22" (in conjunction with recital 22), we would add the following:

In our view the inclusion of a provision on official controls (irrespective of the issue "delegated act" or "implementing act") is inappropriate, since negotiations are currently being conducted at Commission level on new provisions for Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. If the field of animal health is still to be covered by that Regulation, duplicate provisions on the implementation of official controls cannot be justified.

- On point (18) – Article 22(b):

Irrespective of our preliminary remarks on delegated acts, the indeterminate period of time provided for in paragraph 2 of Article 22(b) should be limited to 5 years (time limit for authorisation). It is not clear why there should be a departure from the time limit principle here.

2. Labelling of Beef Products

- On point (15) – Article 19:

The fundamental legal definitions, as set out in part in Article 19, should be defined in the basic legislation. The definition of minced beef in (a), for instance, is an essential provision as it determines what is covered by the exceptions listed in Article 14. The procedure on the approval of labelling conditions in (e) is also essential and should be set out in the basic legislation. Implementing acts should be provided for the remaining points (b), (c) and (d).

We would rule out delegated acts altogether here.

- On point (18) – Article 22b:

The indeterminate period of time provided for in Article 22(b) paragraph 2 should be limited to 5 years (time limit for authorisation). It is not clear why there should be a departure from the time limit principle here.

- On points (17) and (19) – Articles 22 and 23:

In the current draft, the committee procedure provided for in Article 23(2) is not envisaged for the labelling of beef because of the current wording of Article 22(1). As in the case of Article 22(4), the implementing acts under Article 22(1) should also be adopted following the committee procedure in Article 23(2). It is not clear why different rules should be applied here.

II. Amendments to Directive 64/432/EEC

- In our opinion, the proposed information on the name and address of the animal keeper may be deleted, as this information is now provided by the proposed registration number.
- As the Commission has not yet submitted an assessment of follow-up costs, we would request that the Commission be asked to make such an assessment.
