

USDA Foreign Agricultural Service

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Global Agricultural Information Network

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### **Adopting EU Framework Legislation on Cloning - How does it work**

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Cloning

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**Approved By:**

Cynthia Guven

**Prepared By:**

Hilde Brans

**Report Highlights:**

The European Commission is expected to present a proposal on animal cloning for food production in June 2013. This report explains the different stages and key actors in the development of new EU framework legislation on animal cloning for food production, from the Impact Assessment to the final phase of the ordinary legislative procedure (co-decision).

## **General Information:**

### **ADOPTING EU FRAMEWORK LEGISLATION ON CLONING – HOW DOES IT WORK?**

#### **INTRODUCTION**

In March 2011, the European Parliament and the Council failed to reach agreement on a proposed revision of the Novel Foods Regulation. After three years of negotiations, the legislative procedure (co-decision) came to an end when no compromise could be found on the introduction of mandatory labeling requirements for food produced from cloned animals and offspring (for more information see [GAIN report “EU Novel Foods Proposal failed to win Approval”](#)). As the novel foods proposal could not become law it was up to the Commission to decide on further steps. The Commission which has the exclusive right of legislative initiative announced in 2011 that it would come forward with two new proposals: one on novel foods and a separate one on animal cloning for food production. Before presenting new legislative proposals, the Commission must carry out an Impact Assessment to examine the advantages and disadvantages of possible policy options. The Impact Assessment was completed in March 2013. The Commission is expected to present the animal cloning and novel foods proposals in June 2013.

**The following explains the different stages and key actors in the development of new EU framework legislation, from the Impact Assessment to the final phase of the ordinary legislative procedure (co-decision).**

#### **IMPACT ASSESSMENT (IA)**

A formal Impact Assessment (IA) must be conducted for any major regulatory proposals. In 2012, the Commission included the drafting of a new proposal on animal cloning for food production in its Annual Work Program, as is required by EU rules. An IA must assess the economic, social and environmental impact of a legislative initiative and set out possible policy options. In the case of cloning, a [“roadmap”](#) outlining five policy options was published in February 2012. A [public consultation](#) which is also part of the IA ran from May until September 2012. The Commission is currently finalizing the IA on the use of the animal cloning technique for food production. The IA will accompany the legislative proposal on cloning for food production expected to be presented in June 2013.

## **ORDINARY LEGISLATIVE PROCEDURE (CO-DECISION)**

The standard procedure for the adoption of framework legislation (basic legal acts) is the “ordinary legislative procedure” better known as “co-decision”. Under this procedure, set out in Article 249 of the Lisbon Treaty, the European Parliament (EP) and Council (of Member State Ministers) share equal legislative powers. Both legislators have up to three readings, with a possibility to conclude at each stage, to agree on a Commission proposal. If no agreement is reached at the end of the second reading, the proposal goes to “conciliation”. If the EP and Council fail to adopt a “joint text” in conciliation, the proposal cannot become law. Such was the case in March 2011 when the EP and Council failed to reach agreement on the provisions on animal cloning in the Novel Foods proposal. The new proposal for a framework regulation on animal cloning for food production, expected to be presented in June 2013, will be subject to the ordinary legislative procedure.

A flow chart explaining the different steps of ordinary legislative procedure can be downloaded from our website at <http://www.usda-eu.org/eu-basics-questions/how-is-eu-legislation-adopted/>.

## **KEY PLAYERS IN THE ORDINARY LEGISLATIVE PROCEDURE**

### **European Commission**

The European Commission has the exclusive right of legislative initiative. DG Health & Consumers (SANCO) is responsible for drafting the legislative proposal on cloning for food production based on the outcome of the Impact Assessment.

### **European Parliament (co-legislator)**

The President of the European Parliament nominates the lead and opinion-giving committees and submits the Commission proposal to the nominated committees. The lead committee, in turn, assigns a rapporteur who is responsible for drawing up a report on the proposal and for steering the dossier through all stages of the legislative procedure. Each political group may designate a “shadow rapporteur” to follow the progress of report and, if needed, to find compromises within the committee on behalf of the group. The opinion-giving committees give an opinion - in first reading only - on those elements in the proposal relevant to them. The lead committee as well as the opinion-giving committees may propose amendments to the Commission proposal. These amendments are put to the vote in the lead committee. Once the ensuing report is adopted in the lead committee, it is placed on the agenda of the EP plenary. For the proposal on cloning, the Environment, Public Health and Food Safety (ENVI) Committee will most likely be the lead committee and Agriculture (AGRI) and Internal Market & Consumer Protection (IMCO) the opinion-giving committees.

## **Council (co-legislator) – EU Presidencies**

The Council consists of Member State representatives empowered to decide on behalf of their governments. The Council Presidency rotates between the Member States every six months. The preparatory work for formulating the Council's position is done by Member State experts within specific working groups chaired by the Presidency. The working groups report to the Committee of Permanent Representatives (Coreper) which prepares every Council decision taken at ministerial level.

- January-June 2013: Ireland
- July-December 2013: Lithuania
- January-June 2014: Greece
- July-December 2014: Italy
- January-June 2015: Latvia
- July-December 2015: Luxembourg

## **National Parliaments**

A new element introduced by the Lisbon Treaty is the strengthened role of the national parliaments. National parliaments now have eight weeks to scrutinize a Commission proposal for compliance with the subsidiarity principle. If one third of the national parliaments object, the European Commission has to re-examine the proposal. If the Commission decides to maintain the draft, it has to justify its position by means of a reasoned opinion. The opinions of both the Commission and national parliaments are then transmitted to the EP and the Council for consideration during the legislative procedure.

## **VOTING SYSTEMS IN THE ORDINARY LEGISLATIVE PROCEDURE**

### **Council**

The Council uses a weighted voting system with a number of votes attributed to each Member State based on the size of its population but adjusted so that smaller Member States are relatively over-represented. The Council votes by qualified majority in the ordinary legislative procedure unless otherwise specified.

Until November 2014, the current system of qualified majority will continue to exist: currently 255 out of 345 votes increasing to 260 out of 352 votes when Croatia joins the EU in July 2013. Votes must be cast by a majority of Member States and represent 62% of the EU population. To form a blocking minority, at least 91 votes (93 when Croatia joins) are needed.

<b>Distribution of votes by Member States</b>	
Germany, France, Italy, United Kingdom	29
Spain, Poland	27
Romania	14

Netherlands	13
Belgium, Czech Republic, Greece, Hungary, Portugal	12
Austria, Bulgaria, Sweden	10
Denmark, Ireland, Lithuania, Slovakia, Finland, Croatia (as of July 2013)	7
Cyprus, Estonia, Latvia, Luxembourg, Slovenia	4
Malta	3

In November 2014, the Council voting system will change from qualified majority to “double majority” which means that a legislative proposal will need the support of at least 55% of the Member States representing at least 65% of the EU population. A blocking minority will need to include at least four Member States. However, between November 2014 and March 2017, Member States may request to use the current weighted voting system rather than the new double majority system.

## European Parliament

Simple majority means the majority of MEPs taking part in the vote. Absolute majority means the majority of component members of the EP: currently 378 out of 754 votes. The Lisbon Treaty limits the number of MEPs to maximum 751. Subsequent to EP elections in 2014, 376 out of 751 votes will be needed for an absolute majority.

## ORDINARY LEGISLATIVE PROCEDURE STEP-BY-STEP

### FIRST READING

The Commission submits the legislative proposal simultaneously to the EP and the Council but the EP acts first. There are **no time limits** in the first reading phase of the ordinary legislative procedure.

## European Parliament

Within the lead committee, coordinators representing the different political groups, select a rapporteur to draft the report on the Commission proposal. The rapporteur is selected by an “auction system”. Each political group receives a number of points according to their size which they can use to bid for reports. The rapporteur prepares a draft report which is then discussed and voted on within the lead committee. Once adopted, the report goes to the EP plenary.

Acting by **simple majority**, the EP may:

- Approve the Commission proposal without amendments
- Adopt a first reading position amending the Commission proposal and forward it to the Council for first reading

The Lisbon Treaty does not explicitly allow the EP to reject a Commission proposal at first reading.

However, if a proposal as amended, fails to secure a simple majority in plenary, the President of the EP can request the Commission to withdraw its proposal. If the Commission agrees, the legislative procedure is stopped. If the Commission refuses, the proposal is referred back to the lead committee.

### **Commission**

The Lisbon Treaty also allows the Commission to alter its legislative proposal – incorporating the EP amendments – in order to facilitate an agreement.

### **Council**

The relevant working groups of Member State experts prepare a position which is then submitted to Coreper (Committee of Permanent Representatives) and adopted by the Council.

Acting by **qualified majority**, the Council may:

- Accept the EP first reading position: in this case the Council approves all the amendments introduced by the EP and a **first reading agreement** is concluded.
- Not accept the EP first reading position: in this case the Council adopts its own first reading position and returns it to the EP for a **second reading**. It is important to know that when the Council's position differs from that of the Commission, **unanimity** is required.

### **Commission**

In a Commission Communication, the European Commission explains why it supports or opposes the Council first reading position. This document together with the Council first reading position is forwarded to the EP.

## **SECOND READING**

If no agreement is reached in first reading, the proposal goes to second reading.

### **European Parliament**

In second reading a three-month time limit, extendable by one month, applies. The EP President announces the receipt of the Council first reading position in the EP plenary session. The three-month time limit starts to run on the day following receipt. The procedure for second reading in the lead committee generally follows the rules and practice of the first reading with this difference that the text to be discussed and amended is the Council first reading position and not the Commission proposal. The rapporteur drafts a “recommendation for second reading” which may include amendments adopted at first reading but not accepted by the Council, amendments to the text introduced by the Council in first reading or a compromise between the positions of the co-legislators. The lead committee adopts

the second reading recommendation by **simple majority** and puts it on the agenda of the EP plenary. The plenary takes a position on the basis of the amendments included in the lead committee's recommendation and any amendments tabled in plenary by political groups or by a minimum of 40 MEPs. The plenary adopts amendments by **absolute majority**.

Within the three-month time limit the EP may:

- Accept the Council first reading position
- Propose amendments to the Council first reading position
- Reject the Council first reading position - in this case the proposal cannot be adopted and the legislative procedure ends.

### **Commission**

The ordinary legislative procedure requires the Commission to deliver an opinion on the EP amendments. The Commission's opinion is prepared by the Directorate-General in charge of the dossier and is in practice a written reflection of the position expressed by the Commissioner in plenary on the amendments adopted by the European Parliament, accompanied where necessary by texts reformulating the EP amendments accepted partially, in principle or subject to redrafting by the Commission.

### **Council**

The same three-month time limit, extendable by one month, applies to the Council. The time limit starts to run following formal receipt of the EP second reading position. The procedure to adopt a second reading position is similar to the procedure in first reading.

Within the three-month time limit, the Council may:

- Accept the EP second reading position – in this case a **second reading agreement** is concluded and the proposal, as amended by the EP, is adopted.
- Not accept all the amendments introduced by the EP – in this case the proposal goes to **third reading** or “conciliation”.

The Council votes by **qualified majority**. However, if the Commission gives a negative opinion on at least one EP amendment, the Council has to act **unanimously**.

### **THIRD READING OR CONCILIATION**

If the Council and EP do not come to an agreement in second reading, a “Conciliation Committee” must be convened within six weeks – extendable by two weeks – from the time of the Council's formal

decision. The Conciliation Committee consists of Member State representatives and an equal number of EP representatives as well as the relevant Commissioner. The Conciliation Committee has six weeks – extendable by two weeks – to reach agreement on a “joint text”. If the Conciliation Committee produces a “joint text”, both the EP and Council have six weeks – extendable by two weeks – to approve it. The EP votes by **simple majority**, the Council by **qualified majority**. If the Conciliation Committee does not produce a compromise or if the EP and Council fail to act within the stipulated time limit, the proposal cannot be adopted and the legislative procedure ends.

## **TRANSPARENCY**

“Trilogues” are used more and more in all stages of the ordinary legislative procedure. Trilogues are informal tripartite meetings attended by representatives of the EP, the Council and the Commission. As a general rule, trilogues involve the EP rapporteur, the chairperson of the relevant Council working group and representatives of the Commission DG in charge of the dossier. As trilogues add flexibility to the law-making process, they have become a standard part of the ordinary legislative procedure. Negotiations take place behind closed doors and as documents are not made public it is very difficult to obtain information on the different positions. The purpose of the informal trilogues is to reach agreement on a package of amendments acceptable to the EP and Council. The Commission’s opinion is very important as it will determine how the Council needs to vote. If the Commission opposes an amendment which the EP wants to adopt, the Council will have to act unanimously (instead of by qualified majority – see also the section entitled “Voting Systems in the Ordinary Legislative Procedure”) to accept the amendment introduced by the EP. Agreements reached in trilogues are informal and have to be approved by the formal procedures within each of the three institutions.

## **WHAT TO EXPECT / SHIFT IN POWER**

### **European Parliament**

It is extremely hard to predict which political group in the EP will “win” the cloning dossier (see also the section entitled “Ordinary Legislative Procedure Step-by-Step/First Reading/European Parliament”). Politically sensitive reports usually go to one of the larger political groups. The political weight of a dossier determines how many points a report is worth. Political groups may be willing to raise their bid for a report and spend more points to win politically interesting reports. However, depending on the timing of the proposal some groups may already have spent a large number of points.

Additionally, in May 2014 the EU will elect a new Parliament. If the legislative work on the dossier is not finalized before the elections, the EP may ask the Commission – at the request of the lead committee - to renew the referral to the EP. If the rapporteur is not re-elected, a new rapporteur needs to be designated.

## **Commission**

In 2014, the EP will also elect the President of the Commission and give its consent to a new college of Commissioners. Health & Consumers Protection Commissioner Tonio Borg will serve in this post for the remainder of the current term of office of the Commission (until October 31, 2014).

## **Council**

In November 2014, the voting system in the Council will change (see also the section entitled “voting systems in the ordinary legislative procedure”).

### **USEFUL LINKS**

- EU Institutions and Decision-Making Procedures: <http://www.usda-eu.org/eu-basics-questions/>
- How is EU legislation adopted: <http://www.usda-eu.org/eu-basics-questions/how-is-eu-legislation-adopted/>
- The ordinary legislative procedure step-by-step flow chart: <http://www.usda-eu.org/wp-content/uploads/2012/10/Ordinary-Legislative-Procedure-step-by-step-HB-2012-03-05.pdf>
- Ordinary legislative procedure – time limits: <http://www.usda-eu.org/wp-content/uploads/2013/01/OLP-Time-Limits-HB-Chart.pdf>
- Animal Cloning: <http://www.usda-eu.org/topics/animal-cloning/>