



COMMISSION EUROPÉENNE
SECÉTARIAT GÉNÉRAL

Direction G
SG-G-1
Affaires horizontales et GRI (Groupe des Relations Interinstitutionnelles)

Bruxelles, le 9 avril 2018

SI(2018) 169/2

Annule et remplace en partie la version /1

| |
|--|
| <p>GRI du 9 avril 2018 point 3.1.</p> |
|--|

NOTE À L'ATTENTION DE MMES MM. LES MEMBRES DU GRI

Objet: Proposition de règlement établissant les règles relatives à la mise sur le marché des fertilisants porteurs du marquage CE et modifiant les règlements (CE) n° 1069/2009 et (CE) n° 1107/2009 – 2016/0084 COD (17.03.16) – rapport TURCANU

Suite à la réunion du Groupe, Mmes et MM. les membres du GRI trouveront en annexe une fiche révisée préparée par la DG GROW sous l'autorité du cabinet de Mme BIENKOWSKA et en accord avec le cabinet de M. KATAINEN. Les annexes à la version /1 sont inchangées.

Annexe 1

**GRI MEETING OF
9 APRIL 2018**

NOTE TO THE MEMBERS OF THE GRI

Subject: **Proposal for a Regulation on the making available on the market of CE marked fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009**

The fiche is proposed to inform prepare the Commission's position in view of the upcoming political trilogue of 11 April and the follow-up technical trilogues

Ref.: COM(2016) 157; 2016/0084(COD)

Procedure: Ordinary legislative procedure

Council: Working Party on Technical Harmonisation; COREPER I

Rapporteur(s): Mihai ȚURCANU (EPP/RO), Elisabetta GARDINI (EPP/IT), Jan HUIITEMA (ALDE/NL)

Lead parliamentary committee: Internal Market and Consumer Protection (IMCO)

Associated parliamentary committees: ENVI (contaminant limits including cadmium)
AGRI

Former GRI fiche: SI(2018) 15/2

PURPOSE OF THIS FICHE

- The purpose of this fiche is to prepare the Commission's position in view of the second political trilogue on the proposed Fertilising Products Regulation scheduled for 11 April 2018 and the follow-up technical trilogues. The purpose of the trilogue is threefold: First, to arrive at a preliminary agreement on the issue of by-products within the meaning of Article 5 of Directive 2008/98/EC (hereinafter: by-products), which are others than animal by-products referred to in Regulation (EC) No 1069/2009. Second, to exchange views on the cadmium limit. Third, to come to a preliminary agreement on the elements where a consensus was found during the technical tripartite meetings on other elements of the proposal.
- The Bulgarian Presidency is aiming at a first reading agreement by June, an objective shared by the European Parliament.
- On the issue of by-products, the Council adopted a revised mandate on 16 March 2018 to allow in a generic manner by-products to be used as component materials for the production of fertilising products, provided that certain safeguards are met. The European Parliament has proposed to include by-products both in a generic manner and in the form of an exhaustive, positive list to be drawn up by the Commission. The Commission has proposed to exclude by-products from the generic category of eligible component materials due to their potential proximity to waste and the ensuing risk of waste ending up on EU agricultural soils. However, in the course of the legislative procedure, it became evident that such an exclusion would prevent many fertilisers from containing secondary raw materials that have until now been used for their

production. These fertilisers are currently sold, very useful for European agriculture, produced in line with the Circular Economy, and compatible with the existing EU legislation on fertilisers, without raising any environmental concerns in the context of implementation of the existing EU legislation. Therefore, as previously expressed in the GRI fiche for this file with reference SP(2017) 528, the Commission would favour a horizontal solution for by-products in the new Fertilising Products Regulation subject to certain safeguards for protection of health and the environment

- At this stage, the Commission should (i) welcome in principle a solution for by-products close to the Council's position, subject to subject to certain safeguards for protection of health and the environment (ii) confirm its agreement with the elements on which consensus was found at the technical level; (iii) endorse the detailed guidelines for the forthcoming technical meetings; and (iv) reserve its position on all other issues.

1. BACKGROUND

Please see the previous GRI fiches for this file with reference i) SP (2017) 528 prepared in view of the EP plenary debate and vote on the GÁLL-PELCZ report in the last September plenary session and the subsequent vote on the report and ii) SI(2018) 15/2 prepared in view of the first political trilogue of 25 January 2018.

2. STATE OF PLAY OF TRILOGUE NEGOTIATIONS

- The first trilogue took place on 25 January 2018. The co-legislators committed to agree on the proposed Fertilising Products Regulation ("the Regulation") as soon as possible and defined a mandate for technical negotiations.
- Following the first trilogue, four technical meetings have taken place on 2, 5, 6 and 9 March 2018. During these meetings, the Institutions went through the operative provisions of the Regulation, without however touching upon any of the political issues. Overall, progress has been made, and the negotiations are constructive and clarifying, albeit mostly inconclusive at this stage.
- As a result of the technical negotiations, an updated version of the 4-column document was circulated on 13 March 2018 by the IMCO Secretariat that incorporates the comments, the latest advancements and indicates in green the elements on which consensus was reached at the technical level. DG GROW circulated the document to the Inter Service Steering Group on the same day.
- In the second trilogue scheduled for 11 April 2018, the European Parliament and the Council aim at arriving at a principle agreement on the issue of by-products, exchanging views on the cadmium limit, and coming to a preliminary agreement on the elements where a consensus was found during the technical meetings on other elements of the proposal. Based on informal discussions with the European Parliament, it is expected that the proposed agreement on by-products will be very close to the position of the Council (see description under 4.2 below) and will be subject to some further refinement in the technical tripartite meetings.
- On 11 April, it is proposed that the Commission welcomes in principle a solution for by-products which is close to the Council's position as described under point 4.2 below, and agrees that some refinement is still necessary. The Commission considers that it important that the text contains the following safeguards:
 - the links to national controls under the revised Waste Framework Directive should be strengthened by requiring that the manufacturer's technical

documentation contains technical and administrative evidence that the substance or mixture is not waste, in accordance with EU waste legislation. Those controls will remain of fundamental importance, since the proposed agro-efficiency and safety criteria will have to be very general in order to apply to all by-products, in particular if – as proposed – they have to be developed by the date of application of the Regulation.

- The involvement of the notified body should be explored-
- The delegation of power to the Commission to adapt the Annexes to scientific progress should be aligned with the revised wording of the delegation of power to adapt them to technical progress.

It is also proposed that the Commission confirms its agreement with the elements on which consensus was found at the technical level, as highlighted in green in the 4-column document circulated to the Inter Service Steering Group on 13 March 2018. Finally, it is proposed that the Commission reiterates its position on the cadmium limit.

- In the forthcoming technical meetings, it is proposed that the Commission continues participating actively with technical and legal advice in accordance with the guidelines in Annex II and the considerations set out in the two previous GRI fiches referred to above. The guidelines currently leave out points on which the discussion between the institutions and between Commission services is not mature enough, but will be continuously updated in close collaboration between all the services concerned.

3. STATE OF PLAY IN THE EUROPEAN PARLIAMENT

There has been no further development in the European Parliament between the first trilogue meeting and the time of preparation of the current GRI fiche. For further information please see the GRI fiche for this file with reference SI(2018) 15/2.

On industrial by-products, the European Parliament made two mutually incoherent amendments: One where all by-products are included in the generic category of industrial chemicals, and one where the Commission is tasked with the establishment of an exhaustive positive list within one year. Should both those amendments be adopted, the exhaustive positive list would be meaningless, since manufacturers could circumvent it by complying with the requirements of the generic category of industrial chemicals instead.

4. STATE OF PLAY IN THE COUNCIL

4.1. Developments in the Council

Initially, the Council did not include any amendment on by-products. The Bulgarian Presidency however proposed to extend the original mandate with such amendments. The revised negotiation mandate was adopted in COREPER on 16 March 2018.

4.2. Proposed amendments

- In its revised mandate the Council has proposed to include chemical by-products within the meaning of Article 5 of the Waste Framework Directive in the list of eligible materials for the production of fertilising products on condition that they are registered under REACH. The Commission is requested to put together a list of agronomic efficiency and safety criteria that by-products should comply with in order to be eligible for the manufacturing of fertilising products. It appears very

difficult to establish agronomic efficiency criteria, which change on the basis of crops, soils characteristics, climatic conditions and practices adopted.

- In addition, the text foresees that applicable conformity assessment procedures for EU fertilising products containing by-products should be similar to fertilisers based on primary raw materials *i.e.* without the involvement of certification bodies.
- The most controversial issue appears to be the preference of certain Member States to include an exhaustive positive list of by-products that could be used in the manufacturing of fertilisers. In previous discussions, five MSs (CZ, SK, FR, ES, LT) submitted a joint paper requesting to include such a list, for which there was however no qualified majority. Other Member States (RO, BE, NL, HU) have also advocated different – and arguably higher – safeguards than those present in the Council's mandate.

5. RECOMMENDATION TO THE COMMISSION

- It is suggested that the GRI recommends to the Commission to adopt the position reflected in this fiche, namely: (i) welcomes in principle a solution for by-products close to the Council's position, subject to some clarification and safeguards; (ii) confirms its agreement with the elements on which consensus was found at the technical level as highlighted in green in the 4-column document circulated to the Inter Service Steering Group on 13 March 2018, (iii) endorses the detailed guidelines for the forthcoming technical meetings and; (iv) reserves its position on all other issues, including cadmium limits. On these other issues, another GRI fiche should be prepared as soon as possible, well in time to allow the Commission to position itself in the technical trilogues where these will be discussed.

6. OFFICIALS RESPONSIBLE

[REDACTED]

- Annexes
- I) Council Position on by-products
 - II) Guidelines for Commission expert advice to be given in technical tripartite meetings