COMMISSION EUROPÉENNE
SECRÉTARIAT GÉNÉRAL

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

Bruxelles, le 7 juin 2018

SI(2018) 320

GRI du 8 juin 2018
point 3.1.

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**

Mmes et MM. les membres du GRI trouveront en annexe une fiche préparée par la DG GROW sous l'autorité du cabinet de Mme BIENKOWSKA et en accord avec le cabinet de M. KATAINEN.

Annexe 1

GRI MEETING OF 8 JUNE 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 prepare the Commission's position in view of the forthcoming political trilogues and technical tripartite meetings

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 HUITEMA (ALDE/NL)

Lead parliamentary committee: Internal Market and Consumer Protection (IMCO)
Associated parliamentary committees: ENVI (contaminant limits including cadmium)
AGRI

Former GRI fiches: SP(2017) 528, SI(2018) 15/2, SI(2018) 169/2, SI(2018) 248

PURPOSE OF THIS FICHE

- The purpose of this fiche is to prepare the Commission's position in view of the third political trilogue foreseen on 19 June and forthcoming technical tripartite meetings.
- At this stage, the Commission should (i) while defending its proposal on cadmium limit values in phosphate fertilisers, seek to facilitate a compromise between the two co-legislators on that issue which preserves the objectives of the Commission's proposal along the lines set out in this note; (ii) seek to facilitate a compromise on contaminants other than cadmium which is as close as possible to the Commission's proposal; and (iii) defend its original proposal and thus oppose the European Parliament proposal to include biodegradable mulch films in the scope of the Fertilising Products Regulation;
- It is suggested to the GRI to endorse the line as suggested in the present fiche.

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 24 October 2017;
  - ii) SI(2018) 15/2, prepared in view of the first political trilogue on 25 January 2018;
  - iii) SI(2018) 169/2, prepared in view of the second political trilogue on 11 April 2018.
  - iv) SI(2018) 248, prepared in order to prepare the Commission's position in view of the forthcoming political trilogues and technical tripartite meetings.

2. STATE OF PLAY OF TRILOGUE NEGOTIATIONS

- Between the endorsement of the latest GRI fiche and the time of preparation of the current one, four technical tripartite meetings have taken place, which resulted in partial agreements between the co-legislators on all the operative provisions, Annex I which sets out the requirements applying to the final products, and delegation of powers. The result is indicated in the 4-column document attached to this fiche. It is proposed that the Commission should accept all the compromises highlighted in green in the 4-column document.

3. STATE OF PLAY IN THE EUROPEAN PARLIAMENT

At the time of drafting this fiche, internal discussions are on-going in the European Parliament on a possible compromise deal with the Council for the trilogue meeting scheduled for 19 June on the entire Regulation, including the limit values for cadmium in phosphate fertilisers. It is very unlikely that such a compromise deal – if obtained – would contain a cadmium limit deviating from the Council's position, since the Bulgarian Presidency has not made any attempts to get a mandate for a position closer to that of the European Parliament on that issue.

4. STATE OF PLAY IN THE COUNCIL

A Council Working Party meeting at attaché level was held on 4 June to discuss possible compromises on a number of technical points, biodegradable mulch films, and delegated acts. On the inclusion of biodegradable mulch films, some Member States objected (CZ, NL, ES, DE, BE, FR, SK, IE), some indicated flexibility (FI, PL, EL, RO, MT), and only three indicated explicit support (IT, UK, DK). On delegated acts, the discussion was very inconclusive, and delegations were asked to react in written by 8 June. Limit values for cadmium in phosphate fertilisers were not on the agenda of the meeting, but many Member States nevertheless took the floor to reiterate their positions on that issue.

5. CADMIUM LIMIT VALUES IN PHOSPHATE FERTILISERS

- The latest political trilogue of 19 April 2018 reaffirmed the important divergences between the positions of the co-legislators on cadmium limit values for phosphate fertilisers: Whereas the Parliament is closely aligned with the Commission's proposal to progressively reduce cadmium limits from 60-40-20 ppm, the Council has proposed a single limit value of 60 ppm without further reductions.
- The co-legislators continue to show very little flexibility on the matter, and the institution showing the least flexibility is the Council, which has the position farthest from the Commission. There exists therefore a tangible risk that the file will reach stalemate. This would furthermore imply that harmonised phosphate fertilisers would be allowed to continue moving freely on the single market subject to current EU rules, which means allowing those fertilisers to contain unlimited amounts of cadmium despite the on-going cadmium accumulation in European agricultural soils.
- In order to avoid being overtaken by events, the Commission should therefore – while defending the justifications of its own proposal, which remain valid and have been reinforced by new scientific evidence – remain true to its role as facilitator in the trilogue negotiations and aim at facilitating a constructive dialogue between the European Parliament and the Council in order to achieve a compromise which is as close as possible to the Commission's own position, and which at the very least contains a legally binding limit value, with flexibility on the application time, that

can be expected to meaningfully reduce the current pace of cadmium pollution of European soils by phosphate fertilisers. Several elements could be explored in order to satisfy both sides. Examples to be considered, jointly or in isolation, are the following:

In order to address the concerns related to costs

- Flexibility as regards the timing of the application of 60, 40 and 20 mg Cd limit value could be considered to allow the industry to adapt.
- The application of 20 mg Cd limit value could be conditioned by a mandatory feasibility reporting by the Commission, and an obligation for the Commission to postpone the reduction if appropriate for reasons of feasibility.
- The intention at Union level to support decadmiation technologies and innovation could be announced in a recital or in a joint Declaration or Commission declaration.

In order to address the concerns related to protection of health and the environment

- the legal limit value could be complemented by a labelling threshold at *e.g.* 20 ppm;
- Member States which on the date of application of the initial harmonised limit already apply a cadmium limit on *non-CE marked* phosphate fertilisers which is below the harmonised limit could be allowed to apply those limits to *CE marked* phosphate fertilisers until the harmonised limits are equal or lower (as already proposed by the European Parliament).

6. LIMIT VALUES FOR CONTAMINANTS OTHER THAN CADMIUM

- The Commission's proposed limit values other than for cadmium in phosphate fertilisers are largely based on existing limit values in Member States. Those, in turn, reflect best industrial practice, in combination with the general objective of keeping soil contamination with toxic substances to a minimum. The limit values are thus generally *not* based on any proven excessive exposure from fertilisers to man or the environment (as opposed to cadmium from phosphate fertilisers, where an exposure near or above tolerable limits has been established).
- The European Parliament and the Council propose to make a number of those limit values for heavy metals (e.g. Arsenic, Copper, Zinc, Mercury, Lead) more stringent, and to add some new. While some of the proposed stricter limit values for heavy metals in fertilizers might fall within the range of some national limit values already in place today, the amendments are not however supported by either economic impact assessments or scientific evidence.
- Furthermore, the main representatives of the European industries for both conventional and organic fertilisers have adopted a joint statement expressing their concerns that this would "pose significant obstacles to nutrient recycling or to the use of certain natural feedstocks as raw materials". If true (which can only be verified if a new impact assessment is performed), and in the absence of scientific evidence for a need for lower limits than those proposed by the Commission, that would highly contradict not only the objectives of the Circular Economy but also that of this Regulation which aims at opening the internal market to innovative organic and waste-based fertilisers and assuring a level playing field with the traditional ones.

- **The Commission should therefore seek to facilitate a compromise which contains contaminant limits as close as possible to those proposed by the Commission based on its impact assessment and expert consultations, since those limit values support the aim to reduce the contamination of agricultural soils while opening the single market for recovered nutrients. The Commission should also insist on a delegation of powers which will allow the Commission to make the limit values more stringent at a later stage**, if justified by technical progress or new scientific evidence and supported by an impact assessment.

7. PLASTIC MULCHES

- The European Parliament proposes to allow biodegradable plastic mulches to be CE marked. The minimum biodegradability performance proposed by the Parliament is conversion into carbon dioxide of 90% of the organic carbon within maximum 24 months. A number of Member States are opposed to the Parliament's amendment because they do not believe that plastic mulches (biodegradable or not) should belong to the category of fertilising products (FR, NL, CZ, ES, BE), and only Italy, Denmark and the United Kingdom have expressed support for it.

- Conventional plastic mulches are currently extensively used in crop production as a soil improver, to protect the soil's structure, reduce loss of humidity, and accelerate the vegetation status of crops. They also help supressing weed growth, which allows farmers to reduce the use of chemical herbicides in line with the objective of using herbicides and other pesticides more sustainably. Most plastic mulches on the market today would however *not* comply with the biodegradability criteria proposed by the European Parliament. Consequently, non-biodegradable plastic mulches currently contribute quite significantly to plastic leakage and accumulation in the environment, since it is often not recycled.

- The Commission's proposal does not include biodegradable (or other) plastic mulches in the portfolio of products eligible for CE marking under the Fertilising Products Regulation. The decision was based on a precautionary approach and in line with the Circular Economy Action plan that envisaged work on the Plastics Strategy to develop a coherent approach on plastics biodegradability. At the time of adoption of the Commission's proposal, the Plastics Strategy had not yet been adopted, and there was not yet any standard recognised at EU level which could guarantee that compliant plastic mulches are biodegradable enough to prevent accumulation of plastics in the environment, in particular the aquatic environment.

    - In its recently adopted Plastics Strategy Communication, the Commission recalls that the increasing market shares of plastics with biodegradable properties, which have been designed in response to the high level of plastic leakage into our environment, bring new opportunities as well as risks. The Commission commits in the communication to establishing a clear regulatory framework for biodegradable plastics. It commits to proposing harmonised rules for defining biodegradable plastics, to developing lifecycle assessment to identify the conditions under which the use of biodegradable plastics is beneficial, and to considering measures for stimulating innovation and drive market developments in the right direction after identification of applications with clear environmental benefits.

- Since the Commission adopted its Fertilising Products Regulation proposal, the European Committee for Standardization (CEN) has adopted the European standard EN 2018:17033 (ratified on 13 November 2017 and made available on 24 January 2018) on "Plastic- Biodegradable mulch films for use in agriculture and horticulture", which specifies the requirements for biodegradable plastic films to be used for mulch applications in agriculture and horticulture, which can serve to demonstrate biodegradability of plastics mulches. The CEN standard specification considers a polymer to be completely biodegradable if at least 90% (absolute or relative to cellulose) of the organic carbon present in the polymer is converted to carbon dioxide within a period of maximum 2 years in lab conditions. The remaining 10% is metabolised in the body of microorganisms, so that actually 100% of the biodegradable plastic is transformed in carbon dioxide, water and biomass.

- Several recent scientific studies including two financed by EU funds overseen by DG RTD, performing experiments both in laboratory conditions, in some real-life soil conditions, and in conditions close to the natural aquatic environment have demonstrated the actual biodegradability performance of certain, mainly bio-based, polymers used as plastic mulches, with transformation of 90% of their carbon into carbon dioxide. While the tests in natural aquatic environment show that some biodegradation processes continue in some aquatic environments, the scientific studies have concluded that "the biodegradation is still difficult to predict in the marine environment" and that "a solid testing scheme for the biodegradation of plastics in the marine environment does not exist". The standard itself does not provide specific criteria for marine biodegradability. According to the experiments performed, depending on natural conditions and the abundance of microorganisms in the different tested ecosystems, the time for complete biodegradation may vary between 2 and 24 months. The biodegradation process is similar to that of naturally occurring substances, such as cellulose. Furthermore, due to the nature of the polymers and the respective biodegradation process they follow, the remaining 10% is metabolised in the body of microorganisms, so that actually 100% of the biodegradable plastic is transformed in carbon dioxide, water and biomass. If full biodegradation is achieved in sufficient timespans it could address concern of leaving microplastics in the soil environment. However, this standard does not reflect "real-life natural environmental conditions", because the ideal conditions (constant 25°C over 24 months) that the mulch is tested against do not exist across the EU's geographical areas.

- Furthermore, this standard does not sufficiently address concerns on other adverse impacts on the environment, e.g. earthworms, as a result of plastic mulch use in soil as it absorbs contaminants.

- The standard EN 2018:17033 has been recognised by France, which has just announced a national ban on non-biodegradable fragmentable plastic mulches, and stated that the mulches complying with the standard are considered as biodegradable and hence allowed on the French market.

- By opening the single market for such biodegradable plastic mulches, the Fertilising Products Regulation would boost investment in biodegradable

mulches, and therefore promote the substitution of the conventional, non-biodegradable plastic mulches which currently have some 95 % of the market (and which none of the Institutions have suggested to include in the scope of the Regulation). However inclusion of plastic mulches in the Regulation should be done only after the scientific and technical progress allows the development of criteria across the Union, including the marine environment. This would be consistent with the Commission's Plastics Strategy commitment to proposing harmonised rules for defining biodegradable plastics and to stimulating innovation and drive market developments in the right direction after identification of applications with clear environmental benefits It would also imply the Commission taking leadership of the development of biodegradability requirements for plastic mulches, rather than merely observing various developments in individual Member States which lead to fragmentation of the internal market, alteration of the playing field between national farmers, and different levels of environmental protection in different Member States.

The Commission should therefore defend its original proposal and oppose the European Parliament proposal to include biodegradable mulch in the scope of the Regulation.

8. RECOMMENDATION TO THE COMMISSION

- It is suggested that the GRI recommends to the Commission to adopt the position reflected in this fiche, namely (i) on cadmium limit values in phosphate fertilisers, while defending its proposal seek to facilitate a compromise between the two co-legislators which contains a legally binding limit value that can be expected to meaningfully reduce the current pace of cadmium pollution of European soils by phosphate fertilisers;(ii) seek to facilitate a compromise on limit values for contaminants other than cadmium which is as close as possible to the Commission's proposal; and (iii) defend its original proposal and oppose the European Parliament's proposal to include biodegradable mulch films in the scope of the Regulation.

9. OFFICIALS RESPONSIBLE

[redacted]

Annex: 4-column document