



COMMISSION EUROPÉENNE
SECRÉTARIAT GÉNÉRAL

Direction B - Prise de décision & Collégialité
SG.B.3 - Groupe des Relations Interinstitutionnelles (GRI)

Bruxelles, le 17 mars 2019

SP(2019) 240/2

(annule et remplace en partie
le document SP(2019) 240

Réunion du GRI du 15 mars 2019 Point 3.2.
--

NOTE À L'ATTENTION DES MEMBRES DU GRI

**Objet : Travaux du Parlement européen – Session plénière de mars II 2019 –
Mise à disposition sur le marché des fertilisants porteurs du marquage
CE (règlement) – rapport TURCANU**

Procédure législative ordinaire 1^{ère} lecture

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

Annexe : 1

GRI MEETING OF 15 MARCH 2019

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 vote in the plenary in March II on the European Parliament position at first reading

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 fiches: SP(2017) 528, SI(2018) 15/2, SI(2018) 169/2, SI(2018) 248, SI(2018) 320, [SI\(2018\) 522](#)

PURPOSE OF THIS FICHE

- The purpose of this fiche is to prepare the Commission's position **in view of the forthcoming vote in the Plenary in March II (25-28 March 2019) on the European Parliament's position on the Commission's proposal at first reading.**
- After intense negotiations, in the fourth political trilogue the European Parliament and the Council reached a political agreement on the Commission's proposal. The compromise goes in the same direction as the initial Commission proposal. While not as ambitious on some aspects (such as the limit values for cadmium in phosphate fertilisers), it is considered acceptable for the sake of a compromise on the whole file.
- **The Commission should therefore endorse the compromise as attached to this fiche to try to reach an agreement at first reading.**
- In addition, as part of the political compromise to avoid any reference to Nitrates Directive¹ in the Fertilising Products Regulation as agreed in previous GRI fiches, **the Commission should include in its intervention in the Plenary a statement on the ongoing work on the use of processed manure in nitrate vulnerable zones above the threshold established by the Nitrates Directive, developing criteria for safe application of recycled nutrients from manure, hereafter referred to as “end-of-manure criteria”.**
- It is proposed that the Commission endorse the line as suggested in the present fiche.

¹ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, OJ L 375, 31.12.1991, p. 1–8, hereafter "the Nitrates Directive".

1. BACKGROUND

- Please see the previous GRI fiches for this file with references:
 - i) SP(2017) 528, prepared in view of the European Parliament 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;
 - v) SI(2018) 320 prepared in view of the third political trilogue on 19 June 2018, as well as subsequent technical tripartite meetings;
 - vi) SI(2018) 522 prepared in view of the last political trilogue on 20 November 2018.

2. STATE OF PLAY OF TRILOGUE NEGOTIATIONS

- Between the endorsement of the latest GRI fiche on 13 October 2018 and the time of preparation of the current one:
 - A **fourth political trilogue** took place on **20 November 2018** and the co-legislators informally reached an agreement on the outstanding political issues (mainly the provisions related to cadmium contamination in phosphate fertilisers).
 - In a **technical tripartite meeting on 27 November 2018** with the European Parliament's IMCO Committee and the Austrian Council Presidency, the co-legislators reached an agreement on all outstanding technical issues.
 - **On 12 December 2018**, the compromise was endorsed by COREPER.
 - Since December 2018, the text was subject to linguistic changes.
 - **Both the ENVI Committee and the IMCO Committee of the European Parliament** approved the compromise text with a comfortable majority (on 21 and, respectively, 22 January 2019).
 - A **vote with debate in the European Parliament** on the position at first reading in line with paragraph (3) of Article 294 of the Treaty on the Functioning of the European Union (TFEU) is scheduled for 27 March 2019. Both the date and the organisation of a debate are provisionally set and could be subject to changes.

3. THE POLITICAL COMPROMISE – MAIN ELEMENTS

The compromise reached in the fourth political trilogue, as endorsed by COREPER and after being checked by lawyer linguists, is attached to this fiche. The text might still be subject to small linguistic changes before being submitted to vote in Plenary.

A. Cadmium in phosphate fertilisers

- The agreement found contains the following elements:
 - a single threshold value of 60 ppm, applicable as of 3 years after the entry into force of the Regulation, without any further automatic decreases;
 - voluntary "low cadmium content" labelling for fertilisers below 20 ppm;
 - a review by the Commission of the cadmium limit value in 7 years after entry into force with the objective of assessing the feasibility of a further reduction;
 - a recital recalling the possibility for more ambitious Member States to ask for derogations for maintaining or introducing lower national limits in line with Article 114 TFEU, and an operative provision maintaining the derogations already granted by the Commission from the existing Fertilisers Regulation based on Article 114 (4) TFEU (to Finland and Sweden); a recital recalling available funding possibilities for decadmiation;
 - no delegation of powers to the Commission to adopt delegated acts as regards the cadmium limit.
- More details on these issues can be found in points 3, 4 and 5 of fiche SI(2018) 522 of 13 October 2018, as well as the non-paper attached to it.

B. Other contaminant limits

- The Council and the European Parliament proposed and agreed at technical level to introduce stricter limits for some contaminants (e.g. arsenic, copper, zinc, mercury, lead). In the trilogue, these compromises reached at technical level were endorsed.
- More details on these issues can be found in point 6 of fiche SI(2018) 320 of 6 June 2018, pages 4-5.
- As regards chromium, the Council accepted the Parliament's proposed amendments to indicate the content of total chromium not on the label of the product, but in its technical documentation.

C. Date of application

- Agreement was found that the Regulation would start to apply three years after its entry into force. This period is needed to prepare the implementation of the Regulation by adopting the necessary measures at both national and EU level.

D. Scope of delegation of powers to amend Annex I

- The Commission proposed an empowerment to amend by delegated acts Annexes I-IV to the Regulation.
- The Council was not in favour of granting any empowerment for Annex I, while the European Parliament was in favour of a wider scope as regards the delegation to amend this annex, excluding only cadmium limits.

- The compromise consists in a wording that excludes from delegation both cadmium limits and any element related to the definition of product function categories or other elements which would alter the scope of the Regulation.
- More details can be found in point 6 on page 4 in fiche SI(2018) 320) of 8 June 2018.

4. PROPOSED COMMISSION POSITION

A. Endorsement of the compromise text

- The Commission's proposal on a new Fertilising Products Regulation is the **first deliverable of the Circular Economy Action Plan**. Its adoption under the mandate of the current Commission is an important achievement.
- The Regulation will introduce the New Legislative Framework² and therefore **considerably simplify the current legislative framework** for inorganic fertilisers³.
- **Once adopted, an important part of fertilisers' market not covered by the current Regulation will be harmonised** – the organic fertilisers. They cover a share of around 50% of the whole fertilisers market in EU. The new Regulation will remove significant market entry barriers for innovative organic fertilisers manufactured from biomass, animal by-products, other by-products and recovered bio-waste available in abundance in Europe. The market for those organic fertilisers currently suffers from a competitive disadvantage in relation to fertilisers from mined and fossil raw materials, since only the latter benefit from free movement on the single market by virtue of existing European product harmonisation legislation.
- **The Regulation will introduce for the first time binding limit values for contaminants in EU fertilising products**. While some of the limit values proposed by the Commission are made more stringent by co-legislators, the compromise on the cadmium limits in phosphate fertilisers is less ambitious than Commission's proposal. In the initial proposal, the Commission aimed at a gradual reduction of the limit value for cadmium down to 20 ppm, but the compromise sets the limit value at 60 ppm, without any further reduction. The compromise is a step in the right direction though, taking into consideration that the current Regulation sets no binding limit value at all.
- While the compromise deviates from Commission's proposal on some aspects, as explained in previous GRI fiches, **all these amendments are acceptable in view of obtaining an agreement** on the whole proposal.
- Therefore, **the Commission should endorse the compromise** as attached to the current fiche.

B. Statement on end-of-manure criteria

- As mentioned in fiche SI(2018) 248 on page 8, the European Parliament had proposed an amendment setting an obligation for the Commission to "submit an evaluation of the scientific data to set the agronomic and environmental criteria to define end-of-livestock-manure criteria" within 12 months after the entry into force of the Fertilising Products Regulation.

² Regulation (EC) No 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and Decision 768/2008/EC on a common framework for the marketing of products.

³ Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers, OJ L 304, 21.11.2003, p. 1–194, hereafter "the current Regulation".

- This Parliament amendment was of great concern to the Commission. Firstly, the Commission should not be bound to such strict deadlines. Secondly, it seemed to suggest that the ongoing work on end-of-manure criteria in the context of the Nitrates Directive would somehow entail a modification of the Fertilising Products Regulation, which would create a regulatory confusion.
- In line with the mandate in fiche GRI SI(2018) 248, the Commission objected to this amendment. The European Parliament negotiators finally agreed to drop it, but only on the condition that the Commission makes orally a statement in the Plenary about the ongoing work under the Nitrates Directive. The negotiators provisionally agreed on the content of the oral statement, which is to be included in the speaking points of the Commission in Plenary or, in case there is no debate, is read out by the Commission before the vote:

The Fertilising Products Regulation is part of the Circular Economy Action Plan, as it substantially contributes to the implementation of circular economy principles in the sector of nutrients for agricultural production.

In parallel, under a different work stream, the Commission is working to ensure an integrated and more sustainable management of nutrients, to reduce inefficiencies and avoid nutrients pollution which can affect human health and the environment.

Processing of manure offers possibilities for more efficient use of nutrients, from the agricultural as well as from the environmental point of view. This is why via its Joint Research Centre the Commission launched a project in 2017, which includes literature review, modelling and experimental work to define the conditions under which it does not entail additional environmental risks to replace chemical nitrate nitrogen-containing chemical fertilisers by processed manure in agricultural applications. This work is ongoing and a draft study report should be ~~finalized~~ presented in principle by the end of 2019.

As these criteria concern the use of fertilisers and not their placing on the market, they are not affected by the Fertilising Products Regulation, and not expected to affect the implementation of that Regulation. However they certainly constitute an additional and complementary action to foster an efficient and environmentally safe circular economy.

- This statement reflects factually the on-going work on end-of-manure criteria and clarifies the link with the Fertilising Products Regulation. It does not engage the Commission to take any actions beyond what it is already doing. Therefore, the Commission should make such a statement orally, as agreed with the co-legislators during the informal tripartite meetings.

5. RECOMMENDATION TO THE COMMISSION

- **It is suggested that the GRI recommends to the Commission to endorse the compromise on the proposal for a Fertilising Products Regulation as attached to this fiche in view of an agreement at first reading.**
- **In the Plenary, the Commission should also include a statement in its oral intervention or, in case there is no debate, shall ask to read it out, on the end-of-manure criteria as mentioned above.**

6. OFFICIALS RESPONSIBLE