



COMMISSION EUROPÉENNE
SECRETARIAT GÉNÉRAL

Direction G

SG-G-1

Affaires horizontales et GRI (Groupe des Relations Interinstitutionnelles)

Bruxelles, le 20 janvier 2018

SI(2018) 15/2

Annule et remplace en partie la version /1

<p>GRI du 19 janvier 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. L'annexe à la version /1 est inchangée.

Annexe 1

**GRI MEETING OF
19 January 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 the Commission in view of the first trilogue

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

Procedure: Ordinary legislative procedure

Council: Working Party on Technical Harmonisation; COREPER II

Rapporteur(s): Mihai ȚURCANU (EPP/RO), Elisabetta GARDINI (EPP/IT)

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

Associated parliamentary committees: ENVI (Cadmium limits)
AGRI, INTA

Former GRI fiche: SP(2017) 528

PURPOSE OF THIS FICHE

- The purpose of this fiche is to inform the Commission in view of the first trilogue on the proposed Fertilising Products Regulation scheduled for 25 January 2018.
- The purpose of the trilogue is to set the scene for the negotiations, to agree on the political issues to be negotiated and to mandate technical level trilogues for all other elements of the proposal. Among the political issues there are: cadmium limits, delegation of powers, and industrial by-products.
- The Bulgarian Presidency is aiming at a first reading agreement by June. This objective is shared by the European Parliament.
- Politically, the limit values for cadmium in phosphate fertilisers are the most sensitive issue. The negotiating positions of the two co-legislators were difficult to agree within the respective institutions, and are now very far apart. Whereas the Parliament is closely aligned with the Commission's proposal, the Council has suggested a much less ambitious limit and granted selective derogations to certain more ambitious Member States, a selectivity which appears legally doubtful.
- At this stage, the Commission should reserve its position and expressed its support to the objective of working towards a first-reading agreement.

1. BACKGROUND

Please see the former GRI fiche for this file with reference SP (2017) 528 which was prepared in view of the EP plenary debate on the GÁLL-PELCZ report in the last September plenary session and the subsequent vote on the report. The Commission's position on the sensitive amendments adopted by the Parliamentary Committees in that fiche is not altered by the current GRI fiche.

2. STATE OF PLAY OF TRILOGUE NEGOTIATIONS

- The first trilogue is scheduled for 25 January 2018. The purpose of the meeting is for the co-legislators to present their negotiating positions and to define a mandate for technical negotiations. The mandate would be broad, and by default cover all amendments except those explicitly confined to the political level. The lead Committee IMCO has drawn up a list of those political amendments, included in a background note attached to this fiche. They are all related to one of three matters: cadmium limit on phosphate fertilisers, delegation of powers to the Commission and industrial by-products.¹
- It is proposed that the Commission welcome the mandates to enter into technical trilogues, and commit to its active and constructive participation. The Commission should also support the intention to first address less contentious issues in the discussions.
- The "four-column document" is to be produced by the Council in the course of January 2018. On that basis a new GRI fiche will be prepared in view of the trilogue negotiations.

3. STATE OF PLAY IN THE EUROPEAN PARLIAMENT

3.1. Developments in the European Parliament

The European Parliament voted a negotiation mandate in Plenary on 24 October 2017, and referred the matter back to the lead Committee IMCO for interinstitutional negotiations.

3.2. Proposed amendments

- Several amendments that the Commission services had identified as being very problematic in the IMCO report were finally rejected in Plenary. The most important amendments that remain in the negotiation mandate relate to delegation of powers, industrial by-products, plastic mulches, biodegradability criteria for plastic in fertilisers, and cadmium.

On cadmium, the Parliament has retained the Commission's proposed limit values of 60-40-20 ppm, but extended the transitional period and introduced a type of feasibility safeguard clause.²

- On all these points, the Commission's concern expressed in the GRI fiche SP(2017)528/1 remain valid, to the extent that the amendments were carried over from the IMCO report to the Parliament's report.

¹ Exclusion from the component material category for chemicals of all industrial by-products, an exclusion seen as very problematic by large parts of the chemicals- and fertilisers industry.

² A reporting obligation for the Commission, and an empowerment for it to postpone the applicability of the limit value of 20 ppm in case it has evidence that the supply of fertilisers to the EU would otherwise be seriously jeopardised.

- On all EP amendments, it is proposed that the Commission reserves its position at this stage.

4. STATE OF PLAY IN THE COUNCIL

4.1. Developments in the Council

The Council adopted its negotiation mandate in Coreper on 20 December 2017. The key outstanding issue was the cadmium limit in phosphate fertilisers, for which a blocking minority was avoided by granting selective derogations to certain Member States. Eight Member States did not support the mandate due to its lack of ambition on the cadmium limit: BE, DK, CZ, HU, LT, LV, SI and SK.

4.2. Proposed amendments

- The most politically sensitive amendment included in the Council's negotiation mandate is the **cadmium limit**. The Council has proposed a single limit value of 60 ppm without further reductions, and selectively granted a possibility of imposing lower limit values nationally to those three Member States that currently benefit from free-movement-derogations granted by the Commission based on the Treaty (*i.e.* AT, FI, SE). The preliminary legal analysis of the Commission services casts some doubt about the legality of the selective treatment. It is suggested that the Commission highlights that a single cadmium limit value of 60 ppm falls short of the objective of a progressive reduction of cadmium contamination of phosphate fertilisers in the EU, and therefore will not significantly contribute to cleaner soils and cleaner European agricultural products.
 - (1) Other amendments of potential concern to the Commission refer to the restrictions in the **delegation of powers**, the **delayed applicability** of a number of provisions, and **biodegradability criteria** for plastics in fertilisers. On these, it is suggested that the Commission reserves its position.
- On all other Council amendments, it is proposed that the Commission reserves its position at this stage.

4.3. Prospects in Council

The prospects of arriving at a favourable position in the Council are rather good, given that the proposed Regulation is broadly welcomed by all Member States. Nevertheless, negotiations are expected to be difficult on cadmium, where the Member States' positions are rather polarised. This could become a critical point during the negotiations.

5. RECOMMENDATION TO THE COMMISSION

- It is suggested that the GRI recommends to the Commission to reserve its position at this stage, express its support to the objective of working towards a first-reading agreement and welcome a swift start of technical trilogues.

6. OFFICIALS RESPONSIBLE



Annex: IMCO secretariat background note