



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Consumer, Environmental and Health Technologies
Chemicals

Brussels, 9 November 2017

NOTE FOR THE FILE

**Subject: Fertilising Products Regulation
Report of a meeting of the Council Working Party
of 6 November 2017**

1. AMENDMENTS MADE AFTER THE LATEST COUNCIL WORKING PARTY MEETING

The Presidency ('Pcy') went through the amendments that it had made to its compromise text since the latest Council Working Party meeting. Delegations made the following comments:

1.1. Article 42 on delegated acts

SE argued in favour of a wider delegation of powers allowing the Commission to adapt the limit values in Annex I to technical progress. SE also questioned whether the Commission should be allowed to amend the conformity assessment modules in Annex IV, and whether that could jeopardise consistency with the Decision of 2008 on the New Legislative Framework for product harmonisation.

COM agreed with SE that it should be possible to adapt the limit values in Annex I to technical progress by delegated acts. Regarding the conformity assessment modules in Annex IV, COM stated that the Framework Decision of 2008 is as binding for the Commission as it is for the Legislators, and that the general structure of the conformity assessment modules would therefore in any event be respected.

1.2. CMC 2 on treatment methods for plants and plant parts

IT argued that buffering should be retained in CMC 2.

FR, by contrast, expressed support for the Pcy compromise.

1.3. CMC 3 on compost

BE argued that sewage sludge from the food industry should be included as an eligible input material for composts.

1.4. CMC 4 on fresh crop digestate

FR, BE and PT argued that CMC 4 should be extended to include plants other than those grown solely for the purpose of biogas production.

COM explained that such plants are included in CMCs 3 and 5.

1.5. Point 2(e) of part 1 of Annex III on labelling of ingredients

BE expressed the opinion that all ingredients above 1 % should be labelled, arguing that this would i.a. facilitate compliance with the Nitrates Directive.

COM defended its proposal to require labelling of ingredients only above 5 %, warning that the BE proposal would increase the regulatory burden and risk revealing commercial secrets.

1.6. Interaction with ND, WFD and APBR

BE raised a general concern over the interaction between on the one hand the Fertilising Products Regulation and on the other hand the Nitrates Directive, the Waste Framework Directive, and the Animal By-products Regulation, with special emphasis on the Nitrates Directive.

COM stated that the Regulation is not intended to affect the application of the Nitrates Directive in any way. COM furthermore repeated its explanations made in the past about the mechanisms through which the Regulation will interact with the Waste Framework Directive and the Animal By-products Regulation, and welcomed the clarifications in this respect that had been achieved in the discussions of the Council Working Party.

1.7. Detonation tests for ammonium nitrate fertilisers

HU and DE welcomed the Presidency's new draft and confirmed that it corresponded to the outcome of a recent *ad hoc* meeting between technical experts from a number of Member States.

FI declared its intention to submit some further technical suggestions in written.

1.8. Miscellaneous

CZ pointed out that labelling of nutrients as a percentage by mass on liquid fertilisers is only meaningful if the user is also aware of the density of the product.

BE pointed out that it is difficult to take an informed decision on tolerances before the analytical methods have been defined.

CZ pointed out that "water soluble P_2O_5 ", albeit *not* prone to misunderstanding on substance, is nevertheless semantically incorrect, since P_2O_5 as such is not water soluble.

2. INDUSTRIAL BY-PRODUCTS

The Presidency presented its working paper.

DE, CZ and PL welcomed the proposal in principle, albeit with scrutiny reservations for the details.

3. CADMIUM LIMITS

3.1. Texts referred to in the cadmium limit discussion

In addition to the Commission's proposal, four texts were mentioned during the tour de table:

- 1) The Pcy proposal for this meeting ('Pcy 6/11 suggestion'), consisting of a single limit value of **60 ppm as of the date of application**, and a **labelling threshold of 20 ppm**.
- 2) A position paper of 10 MSs (CZ, DK, FI, HU, LV, LT, NL, SK, SI and SE; '10 MSs suggestion') referring to a position paper tabled in February 2017. It contained the following limit values: **60 ppm as of the date of application**, **40 ppm after 5 years** (instead of the 3 years proposed by the Commission), and **20 ppm after 16 years** (instead of the 12 years proposed by the Commission). It also contained a clause allowing MSs to **keep national limit values below 60 and 40 ppm** respectively during the transitional period down to the ultimate limit value of 20 ppm.
- 3) A position paper of Italy ('IT suggestion'), suggesting a single limit value of **60 ppm after 5 years** and no labelling threshold.
- 4) A proposal tabled by Pcy for the meeting of 6 October 2017 ('the Pcy 6/10 suggestion'), allowing MSs to choose between three limit values to be applicable in their MSs: **60 or 40 or 20 ppm**.

3.2. Result of the Tour de table¹ on the cadmium limits

IE, FR, HR, AT, BG, EL, CY, MT, EE (**9 MSs; 20,51 % population**): Supported **the Pcy 6/11 suggestion** (albeit MT with a formal scrutiny reservation), but stated (all but CY and EE) that the labelling requirements would be a problem and that **the IT suggestion** might be more interesting.

UK, IT, PL, ES, PT, RO (**6 MSs; 47,20 % population**): Could not support the Pcy 6/11 suggestion because of the immediate application of 60 ppm and the labelling requirement. Welcomed **the IT suggestion**.

SK, NL, LV, LT, DK, HU, SE, CZ, FI, SI (**10 MSs; 13,90 % population**): Could not support the Pcy 6/11 suggestion, but supported **the 10 MSs suggestion**. Made strong statements about the importance of allowing MSs to keep more ambitious national limit values, should the upper EU limit value remain 60 ppm (some delegations referring to this as national derogations, and some referring to the Pcy 6/10 suggestion).

BE (2,21 % population): Preferred **the Commission's proposal**. Could support the Pcy 6/11 suggestion only if combined with a review clause for further reductions in the future.

DE (16,06 % population): Could not support the Pcy 6/11 suggestion. Welcomed the **labelling threshold**, but requested an **ultimate limit value of 40 ppm**.

¹ N.b.: Before its Presidency, EE supported the Commission's proposal. LU was absent from the meeting, but has previously supported both the Commission's proposal and the Pcy 6/10 suggestion.

3.3. Conclusions on the cadmium limits

COM highlighted the importance of setting cadmium limit values that lead to an industrial transformation towards cleaner phosphate fertilisers, to the benefit of health, environment and innovation. It stated that this objective is supported by the compromise found in the European Parliament, but unfortunately not by the Presidency's compromise tabled for this Working Party meeting.

Pcy stated that it is time to move the file into trilogue, and noted that there appears to be broad support in the Council for a limit value of 60 ppm. It indicated that it would further work to address the concerns around the labelling requirement and the date of application.

4. NEXT STEPS

Pcy announced its intention to table the file, with a full compromise text including the cadmium limit value, for the Coreper meeting of 16-17 November. It asked delegations for their final written comments by Friday 10 November, and announced its intention to circulate the compromise text for Coreper on Monday 13 November.

This triggered some reactions by delegations stating that they would not be able to get a mandate for Coreper based on a text seen only 3 days in advance. Pcy replied that all suggested amendments in the text have been discussed at length in the Council Working Party, and that there would be no surprises in the text circulated for Coreper.

On direct questions from delegations about **which cadmium limit would be contained in the text put forward for Coreper**, and whether it would be along the lines of the Italian proposal, Pcy replied that **60 ppm** appeared to be a supportable limit value and that it would work on the timelines and the labelling requirements. DK asked whether the text could also include a **provision allowing Member States to keep more ambitious limit values**. Pcy replied that it was willing to **discuss suggestions to that effect** if they could contribute to a broader support.