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

Consumer, Environmental and Health Technologies
Chemicals

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Report on the meeting of 28 September 2018 of the Technical Harmonisation Council Working Party on the proposed Fertilising Products Regulation

Executive summary:

The working party was organised by the Austrian Presidency in order to: 1. inform Member States on the outcome of this week's technical negotiations not only with the IMCO but also with the ENVI Committee that has the exclusive competence on contaminant limits, including cadmium and 2. present the Commission's non-paper on cadmium and receive Member States' preliminary views on it.

*The Presidency informed Member States that they have had very productive technical discussions with the IMCO Committee and that the European Parliament has accepted the Council's position on most open technical issues, including the title and definition of the Regulation. As regards the discussion with the ENVI Committee, the Presidency stressed that the message from the European Parliament is loud and clear: **worst case is a no deal on this Regulation**. It added that the ENVI Committee showed significant interest in the Commission's non-paper on cadmium and is considering several different options that will be discussed in the shadow rapporteurs' meeting of 9 October 2018.*

The most important point of the discussion was the Commission's non-paper on cadmium. Member States looked with interest into the different possible options included in the paper and will submit written comments by 4 October 2018. DE, CZ, BE, DK, IE, and EL appeared positive on the inclusion of a "reinforced" review clause that allows for an automatic application of a lower limit value in case that, based on legislative proposal submitted by the Commission, the European parliament and the Council fail to reach an agreement within a designated deadline.

The AT Presidency will arrange several bilateral meetings with Member States in order to better assess their positions in view of the upcoming political trilogue of 22 October 2018.

Details

A. Discussion

I. Cadmium

The Commission debriefed Member States on the findings of the latest Smolders and Romkens report¹ as regards the predicted average non-accumulation level of cadmium in the EU.

PL raised a number of questions with regards to the validity of this new report and was supported by several Member States: PT, IT, UK, BG, EL, and RO.

DK was the only one that begged to differ by stating that all new relevant information on this matter should be brought forward and thoroughly considered.

Subsequently the Commission presented several EU financial instruments that can be used for investments in decadmiation. Member States believe that the technology is not yet there and the reason for this is the high cost of such processes. They did, however, welcome the fact that the Commission is standing ready to support the Industry with decadmiation funds.

Commission non-paper on Cadmium

The Commission presented its non-paper on cadmium that lays down several different options that can be considered in order to reach a compromise on cadmium.

The Austrian presidency expressed its preference for either a feasibility safeguard or a "reinforced" review clause with the possibility of an automatic application of a lower limit value in case that, based on legislative proposal submitted by the Commission, the European parliament and the Council do not manage to reach an agreement within a designated deadline. It emphasised that at this point Member States should abstain from discussing the potential limit values and rather focus on exploring the "model" that can be used in order to reach a compromise.

DE, CZ, BE, DK, IE, and EL appeared positive on the inclusion of such a review clause.

PL was inflexible and UK stated that they could agree with a potential review clause, without the automatic application of a lower limit value in case of no agreement between the Parliament and the Council. IT supported the UK but said that it needed more time to examine the paper.

FI, PT, and HU reserved their positions but will submit written comments on the matter.

CZ, DK and SK expressed their interest in option 7 of the non-paper that includes an upper level in the Regulation but gives the possibility for interested Member States to establish a lower limit by choosing from two possible values. Fertilisers would be labelled with the relevant information and will circulate freely in all Member States that apply a limit value that is equal or higher than that. This option was brought forward by the Estonian Presidency and was discussed in the Council before reaching a general approach.

II. Chromium

During the technical meeting of 27 September 2018 with the EP ENVI Committee, the European Parliament asked that the amount of chromium total in a fertilising product is turned from a labelling requirement to a technical documentation one. This would mean that it would be available for the

¹ Prediction of changes in soil cadmium content at EU and Member State (MS) level, Paul Romkens, Wageningen University and Research, The Netherlands and Erik Smolders, KU Leuven, Belgium

controls performed by the market surveillance authorities but its concentration in the product would not be accessible information to the end user.

IT, DE, BG, PL and UK supported the European Parliament's proposal.

CZ, EL, HU, SK, DK, FI, and PT were against it.

B. AOB

UK wished farewell to the Dutch technical expert who has held a significant role on this file during the Council negotiations.

Next steps:

- 1.** Delegations to send written comments by Thursday 4 October 2018.
- 2.** EP ENVI Committee shadow rapporteurs' meeting on 9 October 2018.
- 3.** Next political trilogue provisionally scheduled for 22 October 2018.