

## ROADMAP

Title of the initiative: [Proposal for a Regulation of the European Parliament and of the Council relating to fertilisers and repealing Regulation \(EC\) No 2003/2003](#)  
Type of initiative (CWP/Catalogue/Comitology): [CWP](#)  
Lead DG: [ENTR G2](#)  
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### Initial IA screening & planning of further work

#### **A. Context and problem definition**

**(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?**

In 2003 and in accordance with the communication from the Commission to the European Parliament and the Council 'Simpler legislation for the internal market '(SLIM) and the Action Plan for the Single Market, 18 Directives on fertilisers were replaced by a single Regulation in the interest of clarity. There were no significant substantial changes.

Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003<sup>1</sup> aims to ensure the free circulation on the internal market of 'EC fertilisers' i.e. those mineral fertilisers that meet the requirements of the Regulation for their nutrient content, their safety, and the absence of adverse effects on the environment.

Regulation (EC) No 2003/2003 does not affect the so-called 'national fertilisers' placed on the market of the Member States in accordance with national legislation. Some Member States have very detailed national rules whereas others do not. Producers can choose to market a fertiliser as 'EC fertiliser' or as 'national fertiliser'.

Furthermore, there are increasing quantities of fertilisers placed on the market in the EU that are not of mineral origin, but are produced from organic waste streams, or are a combination of both, which are not covered by the current Regulation. Other products relevant as inputs for agriculture, such as soil improvers and growing media, are not at all within the scope of Regulation (EC) No 2003/2003.

Regulation (EC) No 764/2008 on mutual recognition ensures the free movement of goods on the Internal Market in the non-harmonised area through mutual recognition between Member States It obliges Member States to accept products lawfully marketed in other Member States unless the Member State of destination can demonstrate that the product poses a risk for human health or the environment.

A stronger, deeper, extended single market for all types of fertilisers, growing media and soil improvers will be fully in line with the objectives of the Europe 2020 strategy as set out in the Commission Communication COM (2010) 2020.

#### **What are the main problems identified?**

In general, Member States are reluctant to accept mutual recognition for national fertilisers, as they are not convinced that the requirements in other Member States relating to the protection of human health or the environment are equivalent to their own.

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<sup>1</sup> OJ L 304, 21.11.2003, p 1

Furthermore, both producing industries and Member States are interested in extending the scope of Regulation (EC) 2003/2003 to also cover organic fertilisers, organo-mineral fertilisers, soil improvers and growing media to achieve full harmonisation of the legislation for the entire sector.

### **Socio-economic aspects**

The intra-EU trade of fertilising materials is hindered by several technical barriers that are not always fully justified and which are difficult to overcome even with recourse to Regulation (EC) No 764/2008 on mutual recognition. There is also a potential distortion of the market as producers must continue to comply with different rules in different Member States or request mutual recognition before they can place their products on the markets of all Member States.

### **Administrative burdens**

The entry into force of Regulation (EC) No 764/2008 has not fully met the expectations of the economic operators in terms of administrative burden reduction as many Member States are reluctant to apply the mutual recognition principle to fertilisers.

Public administrations have limited human resources for dealing with requests for mutual recognition and market surveillance and would be overwhelmed by high numbers of requests for mutual recognition.

In addition, action is also needed to allow a quicker access of new products to the internal market. Current procedures in the framework of Regulation (EC) 2003/2003 to include new fertiliser types for EC fertilisers are cumbersome for producers and authorities, and delay the inclusion of new fertiliser types that are proven to be agronomical effective and harmless for the environment or human health, which leads to disadvantages for producers and farmers.

### **Environmental and human health concerns.**

In recent years, concerns about the marketing of fertilisers have moved from information to farmers about the minimum nutrient content of fertilisers to environmental concerns (e.g. presence of heavy metals in mineral fertilisers). The current provisions of Regulation (EC) No 2003/2003 are not always adequate to fully address these new concerns.

Over the years, Member States have introduced stringent rules for the control of animal diseases and pathogens in organic fertilisers, which are not identical and thus constitute barriers to mutual recognition.

There is also a risk that if Member States were faced with high numbers of demands of mutual recognition, they could not respond within the required deadlines even though they would have legitimate reasons to refuse the marketing of a certain fertiliser, thus leading to potential adverse effects to their environment.

Finally, it seems difficult to ensure an equivalent level of protection of the environment in the absence of harmonised rules covering all fertilisers, growing media and soil improvers at European level.

### **Who is affected by the new policy proposal?**

1. Manufacturers and importers of mineral fertilisers, organic fertilisers, organo-mineral fertilisers, growth media, and soil improvers.
2. National authorities in the Member States
3. Farmers, using the products mentioned above

**(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?**

The legal basis of the proposal would be Article 114 of the Treaty establishing the Functioning of the European Union, which relates to the establishment and functioning of the internal market.

The problems identified have a Community dimension because every Member State is concerned by the application of mutual recognition to fertilisers. Furthermore, there are growing quantities of organic fertilisers, organo-mineral fertilisers, growth media and soil improvers, for which currently no EU legislation exists, whilst an increasing number of Member States takes national action. This creates barriers to trade which can only be addressed by Community-level action.

## **B. Objectives of EU initiative**

**What are the main policy objectives?**

The main policy objectives are:

- To cover the broad range of products that are currently only subject to national legislation, including organic fertilisers, organo-mineral fertilisers, growing media and soil improvers.
- To reduce the administrative burden for authorities (Member State and the Commission) and for industry in the technical adaptation of the current harmonised legislation.
- To simplify the rules and accelerate procedures to allow for new nutrient combinations/delivery forms from different origins to be able to come to the market more quickly and in line with the agricultural needs in different regions of the EU
- To guarantee the safety of fertilisers placed on the market with regard to human health and the environment (in particular content of natural impurities, contaminants and pathogens).
- To ensure that farmers can rely on the agronomic efficacy of the product bought.

**Do the objectives imply developing EU policy in new areas or in areas of strategic importance?**

No

## **C. Options**

**(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered?**

**(iii) Would any legislative initiatives go beyond routine up-date of existing legislation?**

Presently, no full set of policy options have been identified by the Commission as a study which will support the preparation of the IA report is also intended to develop and analyse such policy options. At this early stage, possible options range from 'no action', over 'voluntary action' by industry for all or part of the products, to legislation of various levels of stringency and various levels of details.

The outcome will probably lead to significant changes in the European fertiliser legislation that go beyond routine up-dates: extension of the scope and important modifications of the requirements and procedures compared to the current legislation.

**Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?**

The action proposed will cut across policy areas such as environment, agriculture or health protection. The proposal will seek to create coherence with objectives of other existing or planned

European legislations, for example concerning controlling risks of spreading animal or plant diseases<sup>2</sup>, risks of sewage sludge applications on agricultural land<sup>3</sup>, and the forthcoming proposal on bio-wastes.

#### **Explain how the options respect the proportionality principle**

All the options will be analysed with regard to proportionality of the regulatory options taking into account the scientific and technical knowledge available and the socio-economic and environmental impacts they would cause

### **D. Initial assessment of impacts**

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

It is too early at this stage to describe likely impacts of options other than the 'no action' option, because the preparatory work is not yet advanced enough. In the 'no action' option, manufacturers of mineral fertilisers will have to continue to face a partially fragmented internal market, whilst having to comply with burdensome requirements to get new fertiliser types listed in Annex I of the Regulation. Those producing organic fertilisers, organo-mineral fertilisers, growing media and soil improvers will face a multitude of different national rules. The level of protection of human health and the environment will continue to be different among the Member States. Industry and authorities will continue to face administrative burdens linked to mutual recognition.

**Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?**

No

**Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?**

The proposal intends to simplify the procedures for allowing the marketing of fertilisers compared to today, including new fertiliser types, growing media and soil improvers, and reduce administrative burdens on companies and authorities. This will also facilitate trade with third countries.

### **E. Planning of further impact assessment work**

**When will the impact assessment work start?**

The work on the impact assessment will commence with a study which will support the Commission in the preparation of the different policy options. The study will start in January 2011 and should last around 11 months. In parallel, the Commission will conduct broad consultations with all stakeholders.

**(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further**

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<sup>2</sup> Regulation (EC) No 1774/2002 laying down health rules concerning animal by-products not intended for human consumption (OJ L 273, 10.10.2002, p 1-95) and Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread into the Community (OJ L 169, 10.07.2000, p 1-112).

<sup>3</sup> Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture. (OJ L 181, 4.07.1986, p. 6)

**information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when? (v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?**

As this stage no comprehensive study on the issues posed by the application of the mutual recognition principle to fertilisers has been conducted. Subject to the availability of funds an ex-post evaluation of the functioning of the current legislation could be conducted first. Several Member States have already introduced national legislation on organic fertilisers, organo-mineral fertilisers, growth media and soil improvers, for which they might have conducted preparatory studies. This information would have to be collected.

The diversity of potential raw materials, many of which are wastes or by-products from other industrial processes, and which carry risks related to the spread of animal and plant diseases, need to be examined carefully.

Economic data need to be confirmed in particular as regards SMEs.

The preparation of the IA report will be carried out with the direct support from an external contractor which should be appointed at the end of 2010 to carry out a study which should include the following tasks:

- A review of existing national fertiliser laws/ standards which are not within the scope of Regulation (EC) No 2003/2003.
- Assisting and advising the Commission in establishing essential safety requirements for a full harmonisation of the legislations on mineral and organic fertilisers and growing media (including raw materials and final products).
- Formulating different policy options in co-operation with the Commission services by which the goals of a revised EU legislation could be achieved.
- Evaluating the technical feasibility, enforceability, and the economic and social impacts of the policy options on the manufacturing sector in particular on SMEs.
- Assessing relations and possible synergies with relevant existing and forthcoming EU legislation, e.g. the proposal on bio-wastes.

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**Which stakeholders & experts have been/will be consulted, how and at what stage?**

In September 2009, a workshop on the future of the European legislation on fertilisers was organised by the French Ministries on agriculture and fisheries and on economy, finance and industry. A majority of the 300 attendees from 20 Member States and the European fertiliser industry supported the development of an EU harmonised legislation covering mineral and organic fertilisers and growing media.

In the future, the findings of the abovementioned study will be discussed during meetings of the Commission Working Group of the competent authorities from the Member States for fertilisers. Those meetings are attended by representatives of the Member States and various industry and fertilisers trade associations such as Fertilizers Europe, EFBA (European Fertilisers Blenders Association) and EFIA (European Fertiliser Import Association). Farmers and consumers organisations as well as NGO's will be invited to participate in a stakeholder meeting to comment on the results of the study. A specific SME consultation will be conducted, and if found useful, also a public internet consultation; as well as specific workshops on particular topics, if found necessary.