



Brussels, 19 March 2014

ENTR/F2

MINUTES OF THE FERTILISER WORKING GROUP MEETING

2nd December 2013

Participants: AT, BE, BG, CZ, DK, EE, FI FR, DE, HU, HR, IT, LV, LU, NL, PL, PT, RO, SK, ES, UK,NO, CH

Representatives from the following companies or organisations:
AEFA,AIF, AIC, AlzChem, Assofertilizzanti, BASF, BELFORM,
BMS micornutrients, CEN, Compo, EBA, EBIC, EFBA, EEB,
Elkem, Eurofema, Fertilizers Europe, Fertinagro, IMA, IVA, Koch
fertilizerNeudorff, Sadepan, UNIFA, VK P.

Chair: European commission, DG Enterprise & Industry, Unit F2,
Chemicals Industry,

1. ADOPTION OF THE DRAFT AGENDA

Under AOB, **one Member State** ('MS') requested information about the status of the substance DMPP under the draft 8th ATP.

The draft agenda was subsequently adopted.

2. ADOPTION OF THE DRAFT MINUTES OF THE LAST MEETING OF THE FERTILISERS WORKING GROUP ON 06.05.2013

COM indicated that three comments were received on the draft minutes. At the request of the manufacturer of cyanamide, the difference between cyanamide and calcium cyanamide was reviewed in point 6.

Industry commented that they would like the future regulation to focus on heavy metals flow.

One MS clarified the regulatory context on nitrophenolate in their national legislation. Another recalled that they would prefer to see both frameworks (PPP and fertilisers)

applied to products which might be both PPP and fertilisers. On page 11, the draft minutes should read “authorised as PPP AND follow the labelling rules of fertilisers”.

One MS clarified its position about the possibility to mix different categories of products in particular as regard the possible impact on the environment and human health and the agronomic benefits of such mixtures.

One MS commented that an EU farmer organisation expressed a favourable opinion on the inclusion of raw manure in the scope of the revised Fertilisers Regulation in the frame of the Technical Working Groups organised in 2012.

COM had a general request that comments should be made earlier and in written form.

Based on these amendments, the minutes were adopted.

3. DISCUSSION ON POSSIBLE REVISION OF EXISTING TYPE SPECIFICATION JUSTIFIED BY RISK MITIGATION MEASURES

a) REACH dossier: restriction of use concerning 5 cobalt salts

COM recalled that the subject of the potential impact of a restriction concerning 5 cobalt salts on the fertilisers industry had already been introduced at the last Fertilisers Working Group meeting. ECHA analysed the use of 5 cobalt salts and concluded on about 7 or 8 different uses. The 5 cobalt salts have been classified as CMR 1B (carcinogen through inhalation). Cobalt hydroxide was not included in the study by ECHA and was not classified under CLP. Under COM mandate, ECHA looked at the form under which the 5 cobalt salts were used and whether farmers and users were exposed to cobalt salts dust under normal conditions of use. According to an EU federation of industry, only hydroxide cobalt salts are used for fertilisers. However two MS indicated that sulphate and chloride salts are used in liquid forms. ECHA also investigated biogas production. One federation of industry reported use of cobalt salts in solid and liquid forms. When used in solid forms, cobalt salts are packed in biodegradable plastic to limit inhalation.

COM presented the possible regulatory options envisaged at ECHA. Cobalt salts were recommended by ECHA for inclusion in Annex XIV of REACH (authorisation). In that case, cobalt salts could only be used when an authorisation is granted. COM then described the restriction option. To choose between options, it is important to have an overview of the various uses made of cobalt salts. Therefore COM wanted to gather other MS experience on the use of cobalt salts: what is it used for, how is it used and in which form?

Some MS indicated that some use of cobalt salts had been reported, always in very small quantities and mixed with other fertilisers; mainly cobalt nitrate, cobalt sulphate and cobalt chloride. Member states were generally opposed to the elimination of cobalt salts in fertilisers.

An industry federation reported that use of solid and liquid forms of cobalt salts had been identified, either in sealed bags, containers or added to digestate through dosing pumps to prevent workers' exposure.

MS exchanged views on whether cobalt salts should be considered a fertiliser and regulated under the Fertilisers Regulation.

One MS clarified that cobalt sulphate was an important substance. However, it is not considered as a plant nutrient but as a substance having a beneficial effect on animal nutrition. Cobalt is needed in very small quantities and is added to fertilisers to provide the right amount of cobalt to bacteria fixing nitrogen for leguminous plants. The current definition of fertilisers posed problem, therefore additives should be included in the new framework.

One MS indicated to have an organic fertiliser made of chicken manure with added cobalt sulphate which use was recommended by the veterinary institute for grazing lands where sheep are kept. It is seen as necessary for sheep feeding purposes.

An industry representative indicated that there is scientific literature showing that cobalt is not only beneficial to animals but also to plants (e.g. soy beans).

One MS reminded that cobalt is a key material in the metabolism of vitamin B12 which is essential for microorganism growth and animal/human health. The limited use reported should nonetheless be seen as crucial for plant, animal and human nutrition and the intake thereof should be monitored.

One MS pointed out that the Fertilisers Regulations defined fertilisers as substances used for feeding the plant which is not the case of cobalt. Cobalt salts should be looked at in the light of the animal feed regulation, but that it would not be appropriate as cobalt salts needed to be brought in very small quantities which could only be achieved through fertilisers. The same debate had been held on selenium which is now referenced in the animal feed regulation.

The view was shared among **MS** that the best suitable framework for cobalt salts was as fertilisers but that this did not mean that cobalt salts were plant nutrients. The new regulation was seen as a way to solve these definitions issues.

COM remarked the cobalt salts had an entry in the Fertilisers Regulation, and that they were being used in **MS** in fertilisers. It further confirmed that **DG SANCO** planned to regulate the use of cobalt salts as animal feed, which would create an exception under **REACH**. It summed up that the difficulty of the situation arose because cobalt salts were added to fertilisers to improve animal nutrition. The two regulatory frameworks should be coordinated in order to regulate these substances without creating overlaps.

The concern of the safety of workers could be addressed through the specific legislation rather than under REACH.

b) Presence of perchlorate in nitrogen fertilisers

COM explained the general context of this agenda item. A significant amount of perchlorates in fruits and vegetables had been detected in Germany during a survey conducted during August 2012 and June 2013. This triggered a RASSF (Rapid Alert System for Food and Feed) notification by Germany. This alert pointed to fertilisers listed under entry 2.b of Part A.1 of Annex I to the Fertilisers Regulation ('Entry 2.b Fertilisers') as being the source of the contamination but other sources of contamination are also possible. In June 2013 the German Institute for risk assessment (Bfr - Bundesinstitut für Risikobewertung) issued a safety assessment of perchlorate¹ in foods.

EFSA was asked by the European Commission to evaluate both acute and chronic health effects of perchlorates. Member States were requested to monitor the occurrence of perchlorates in fruits and vegetables to improve and implement information and identify sources of contamination

A provisional approach was put in place until the availability of the EFSA opinion foreseen for December 2013: the Standing Committee of the Food Chain and Animal Health in its document "Statement as regards the presence of perchlorates in foods" had provided reference values for different crops in order to guarantee consumer protection while maintaining the internal market for food.

COM indicated that the EFSA opinion should be available at the beginning of January 2014. This opinion would be the basis for any action at EU level to set a limit for perchlorate in fruit and vegetables. An action at EU level was justified as different measures in MS would lead to a distortion of the single market.

COM asked whether MS representatives and stakeholders considered that actions should be taken and if so how they should be prioritised.

An EU industry federation reminded that the expert committee of the WHO concluded the absence of acute risk from perchlorate in 2011. According to the federation, the DE risk assessment Institute had compared short term intake data with the Provisional Maximum Tolerable Daily Intake (PMTDI) for repeated exposure. While welcoming the provisional safety level in food, the federation was of the opinion that EFSA would not find any acute risk from perchlorates in food. The federation's members were said to only commercialise products containing less than 100 ppm of perchlorate while Entry 2.b Fertilisers could contain up to 2000 ppm. The federation launched an

¹ <http://www.bfr.bund.de/cm/349/health-assessment-of-perchlorate-residues-in-foods.pdf>

agronomic test in summer 2013 to be completed in early 2014 with the early results that 100ppm of perchlorates complied with the temporary limit set at EU level.

The federation shared its concern that there was no method validated at EU level for measuring level of perchlorates in fertilisers and asked whether CEN could be tasked to develop such method.

National federations shared these conclusions.

One MS shared the findings of a recent national survey on perchlorates in cucumber and tomatoes. Fertiliser samples had been analysed and 18 different products were found with more than 1 mg/ kg. Fertilisers were not the only source of perchlorates, the disinfection of irrigation systems was also identified as a source.

One other MS had a study carried out on perchlorate in baby food. None had been found. The study also found that most of the time perchlorate in food was found in non-edible parts of fruits and vegetables. It also agreed that there was a need for a validated method at EU level for analysing level of perchlorates in fertilisers. It planned to carry out a national study on perchlorates in products grown in green houses, as well as on fertilisers possibly containing perchlorates. Without a validated method, these tests would be difficult to put in place.

One MS had analysis on fertilisers carried out which results would be circulated to show other MS the two methods used.

National industries pointed to other sources of perchlorates. They reported significant levels of perchlorates in arable soils as a result of contamination by explosives used during the Second World War, as well as irrigation systems and potassium nitrate. Further, they underlined that the transfer of perchlorates from soil to plant had not clearly been demonstrated.

COM recalled that until EFSA's opinion becomes available, there would be no EU action. Until then, MS had to ensure their obligations in relation with this issue and use the EU alert system as applicable.

COM concluded that the provisional measures taken at EU level were sufficient to ensure that the population was not exposed to unsafe limits of perchlorates via the food chain. If Entry 2.b Fertilisers had been identified as a source of the contamination, other sources needed to be explored (potassium nitrate ...). A method should be developed quickly by CEN in order to allow the determination of the perchlorate content in various nitrogen fertiliser types.

- c) Follow-up on the consultation of the Commission's scientific Committee on Health and Environmental Risks (SCHER) for its opinion on the use of calcium cyanamide as fertiliser

COM indicated that SCHER had accepted the Commission's mandate and organised the work plan. Several questions were raised by the SCHER working group and addressed by

the company. Data from the biocides and pesticides file as well as from the drug dossier concerning cyanamide were provided by the company (which used to be producing cyanamide as well). A final report should be submitted by SCHER by the end of February 2014. The report should clarify whether risks for human health or to the environment could be expected from the use of calcium cyanamide as fertiliser. The SCHER opinion could be discussed at the next meeting of the Fertilisers Working Group.

One MS wondered on the extent of the discussion at SCHER: in particular on whether lithium had been discussed.

COM confirmed that lithium had not been discussed.

4. FAQs ON REGULATION 2003/2003

- a) Clarification of the wording of Tables B.1.2, B.2.2 and B.3.2 of Annex I relating to the use of several urea derivatives in the composition of NPK fertilisers

COM indicated that a fertiliser company had requested some clarification about the wording of Tables B.1.2, B.2.2 and B.3.2 that specify that NPK fertilisers could contain urea formaldehyde **or** isobutylidene diurea **or** crotonylidene diurea as sources of nitrogen. The Fertilisers Working Group was invited to discuss on whether 'OR' means that:

- 1) a cumulative presence of the 3 compounds is allowed in NPK fertilisers
- 2) only individual presence of the 3 compounds in NPK fertilisers is permissible.

One MS reacted and considered that "or" should be understood as inclusive and the presence of these three substances in combination should be allowed in complex fertilisers. This conclusion that the combination of all three substances should be allowed was vastly shared among Member States; and it was agreed that a change in the wording would be welcomed in the future.

Some MS agreed that as a minimum measure the FAQ should be amended to clarify the interpretation but that if possible, the wording of Tables B.1.2, B.2.2 and B.3.2 of Annex I should also be changed in the future via a new ATP.

National industry underlined that times had changed since the regulation was drafted as at the time there was no mean to determine the presence of each of these additives as single components.

COM concluded that all representatives and stakeholders seemed to be in favour of a large interpretation of the meaning of "or".

Some industry representatives and MS shared their concerns that this interpretation should not be used as a precedent to interpret all similar texts in the same way.

COM indicated the FAQ could be precise enough to limit its scope to the item discussed only.

One national industry recalled that Tables B.1.2, B2.2 and B3.2 specify that at least $\frac{1}{4}$ of the declared content of total nitrogen must derive from CDU, IBDU and UF.

- b) Discussion about the interpretation of Article 19.2.II for the declaration of P in NPK fertilisers

COM introduced this item by indicating that authorities from one MS had recently been confronted with producers declaring differently the total phosphorus content in NPK fertilisers. Although declaring the same amount of P, one of the two products was found to be less efficient in the specific national conditions but cheaper than the other one. COM recalled that according to the Fertilisers Regulation, phosphorus had to be declared in relation with its solubility in water (if $> 2\%$); and in neutral ammonium citrate (if water-soluble $< 2\%$) or in neutral ammonium citrate and in water (if water-soluble $> 2\%$). COM shared its interpretation that P content for type B.1.1.1 could not be declared as the sum of the phosphorus soluble in neutral ammonium citrate and in water plus the content soluble in mineral acid only.

As farmers need to be informed of the quality of the products bought, the Fertilisers Working Group was asked to clarify their understanding on how the number indicating the P content in NPK fertiliser type designation should be declared in accordance with the requirements of Table B.1.1.1 and Article 19(2)(ii).

One MS suggested that in the new Regulation the soluble content should be labelled together with the neutral ammonium citrate content and the total content for more readability.

An EU industry federation agreed the interpretation presented by the COM that the content soluble in mineral acid only should not be declared.

One national industry underlined that Article 19 and 2 of the Regulation indicated that the primary nutrient content should be labelled. It concurred with the explanation outlined by COM. However it underlined that the current regulation did not give the possibility to indicate what the P declared referred to. The wording of the regulation referring to 'mineral acid only' was seen as a confusing factor as it did not require declaring the P without that soluble in mineral acid only. It shared a proposal to declare the P soluble in mineral acid only and the P soluble in NAC and water.

COM clarified that Table B.1.1.1 specifies that the solubility in mineral acids only cannot exceed 2% and cannot be declared. The forms of solubility that can be declared are also clearly specified.

COM asked clarification from representatives on whether the interpretation shared by the COM was considered acceptable.

One MS disagreed with that interpretation. The current Regulation allows having max 2% P₂O₅ soluble in mineral acid only. As an example it would be acceptable to have 13% soluble in water and NAC in a product declaring 15% total phosphorus. Otherwise the text of the Regulation indicating that a maximum of 2% of P soluble in mineral acid is allowed would make no sense.

COM took good note of this different approach and concluded that the discussion would resume on the day after at the meeting the Regulatory Committee on Fertilisers.

5. PROPOSALS FOR NEW ANNEX I ENTRIES:

- a) Follow-up of the application for the registration of one chelating agent

COM recalled that this issue had already been discussed at the last meeting of the Fertilisers Working Group. The applicant had been invited to answer some additional questions on the product.

The applicant reviewed the questions raised by Member States after the last meeting and provided answers to each of them.

One MS had asked for information on dose rates. The applicant answered that it had been based on recommended application rate for a ferric chelating agent (60 iron mg/litre). This was prepared for the chelating agent and applied at different dosages with concentration ranging from 61 to 91 mg/litre to prevent iron chlorosis.

The applicant informed that validated standardised test method should be available for the determination of [S,S']-EDDS to differentiate between the different enantiomers of the chelating agent. They had successfully applied to the DIN secretariat to include a new item in the work programme of CEN/WG 5 (chelating agents). A question was raised on whether a specific method should be developed. The applicant indicated that they were internally testing various test methods and that once a suitable method was found, ring test would start, most probably in September 2014. The EN standard should be available 2 years later.

One MS had asked for a risk assessment based on a draft Guidance document for assessing ecological risk of novel substances in EC fertilisers. It indicated to be satisfied with the information they got as it showed that the chelating agent was very unlikely to harm the environment.

One national industry commented that after some tests had been carried out, it was showed that after using the chelating agent, there was a greater concentration of iron within the plant but expressed doubt to recommend the leaf application of a product which was degraded within 12 hours of sun exposure.

The applicant replied that they had done trials in greenhouses and that it had been found that foliar treatment was enough to cure iron chlorosis and underlined that the intention was that their product would be marketed for the hobby sector and not professionals.

One stakeholder remarked that solely because it was hobby gardening and foliar treatment were not reasons enough to assume nothing would be transmitted to the soil.

The applicant clarified that its trial tests had shown that only less than 1% of the applied solution reached the ground and that the chelating agent was highly biodegradable.

One MS raised some concerns about the toxicological profile of the chelating agent for crops sensitive to iron and manganese imbalances.

The applicant answered that because of the bio and photo-degradation of the substance, it was rather unlikely that micronutrients like Zn and Mn will be accumulated in the treated plants.

COM concluded that the dossier could proceed via comitology for the next ATP.

- b) Discussion on the application for the registration of a liming material from industrial processes in section G.3 of Annex I

COM presented the item by indicating that this liming material was a by-product of the silicon metallurgy where quartz (the source of silicon) was melted with calcium oxide in order to remove impurities, in particular boron. The applicant requested registration in Table G.3 of Annex I of Regulation (EC) No 2003/2003.

The applicant presented its product indicating that it was a new class of liming material: a calcium silicate with strong neutralising value similar to calcium carbonate (lime stone), but where carbonate had been changed to silicate. The applicant clarified that it was not linked to the steel and iron industry. It indicated that it was manufactured from slag melting process (10 thousand tonnes p.a. approx.), used to remove boron from silicon into the slag phase which made it a high purity application. The applicant insisted that there was no trace element in the end product.

The product was presented to be manufactured from a clean slag melting process. The proposed inclusion in the Fertilisers Regulation would be similar to that of lime stone. This was how it was proposed to CEN/TC260.

The applicant clarified that the product did not contain any organic constituent, fibres, or crystalline silica. The applicant added that the material had been registered under REACH and was not classified according to CLP.

The applicant indicated that they had run trials in green houses and in fields. They recalled that members of the WG had access to the results as part of the dossier that had been sent to them prior to the meeting.

Some MS made the point that the product should not be included under its trade name but as a calcium silicate which would serve as a type designation. One MS remarked that other silicate limes had been excluded in other past cases and should be authorised also (Thomas slag).

Some MS asked for clarification on the production process to have an overlook of the possible contaminants. They wondered whether other manufacturers producing those same by-products would have similar trace element profile. They made the point, shared by COM, that the type production should be specific enough for other similar products to have the same trace element profile but wide enough for other products to gain access to the market.

A national industry representative confirmed that the product at issue was being used in other countries; and that the product was solely a new production way of a known material. According to this representative, it was possible to come up with a generic description of the product (calcium silicate type).

One MS mentioned that the issue was the lack of provisions on contaminants which could hopefully be tackled through the revised Fertilisers Regulation. The quantities of contaminants were presented to be very small. However, the description should not be tailored for one particular producer.

The applicant indicated that their product had already been produced in the past but that this production had stopped after it failed to compete with similar natural liming materials. It left it to the WG to decide upon the name the product should be registered under.

The applicant further clarified that the presented product derived from silicon pure enough to create solar cells. The critical phase was the liquid-liquid extraction at more than 1500° to remove the trace elements from the silicon into the slag phase.

COM wondered whether the low level of trace elements could be guaranteed and reproduced, and how. The technology must be replicable and publicly available. COM mentioned that CEN could be contacted in that regard. There should be no legal back-up of technologies of proprietary nature, and ensuring the respect of safeguards for new fertiliser types should be closely looked into.

The applicant clarified that their product was indeed a by-product with a very low level of boron. From a generic standpoint, it was agreed that the limits for trace elements should also be used for this class of material, and that the name could be changed to remove the specificity of their material.

One MS warned against repeating the mistake made for calcium oxide, where each specific product had been listed instead of a generic group. Calcium silicate should be a group and column 3 would give the opportunity to indicate these specific production processes.

COM argued in favour of also including contaminant content thresholds.

One MS commented that the applicant had produced all requested documents and that the WG should not send the wrong signals in not agreeing on calcium silicate.

The applicant clarified that it could agree with a type listing under calcium silicate even if this would open the possibility of products marketed with heavy metal contents. However, the applicant was confident that their product could get an agreement whatever the chosen way as it was very pure.

COM concluded that the Fertilisers Regulation procedure should be followed. The questions raised on the category to be created, and the implications for the market and safety were quite serious as the type is open to other producers. The product could alternatively be placed on the market as a national fertiliser, as it was easier and would facilitate innovation for the time being. **COM** concluded that the dossier was not mature enough to be decided upon and some aspects needed reconsideration such as how specific the inclusion should be on the production method and the extent to which thresholds should be provided for. This should also serve as a case study for the new Fertilisers Regulation so that such products would be easier to market.

6. INFORMATION ABOUT THE CURRENT STATUS OF THE REVISION OF THE FERTILISERS REGULATION

COM indicated that the objective was to improve the current Fertilisers Regulation; and in particular to simplify procedures to avoid detailed technical discussions in FWG meetings.

Further, **COM** underlined that the revised regulation would aim at removing trade barriers and establishing a level playing field in the sector through the harmonization of safety standards, reduction of administrative burden on MS, COM and industry. This would facilitate the marketing of innovative products with emphasis on safety and increase of information for end-users.

The last discussion of the Working Group in May 2013 had been very useful for shaping the future proposal. Categories to be addressed in the future regulation had been agreed on and even if there were on-going discussions on the figures, there was a consensus on the need for limits on heavy metals and other contaminants.

COM underlined that the New Approach would not apply to plant biostimulants (PB) and agronomic fertiliser additives (AA) where a case-by-case approach might be more appropriate. Further, **COM** indicated that regulating PB and AA in a separate way through an EU registry would enable balancing innovation with safety concerns.

COM suggested that as regards safety concerns, a negative list of substances should be set up for materials identified as potential source of food contamination (e.g. different sources of waste or industrial by-products).

COM underlined that the future regulation would end type listing (positive listing of authorised substances/products). The same objective would be achieved in a more flexible manner through standardisation instruments.

COM however listed some points on which no agreement had been found yet, and in particular the maximum limit values for heavy metals. These limit values would reflect the most appropriate balance between what could be managed by the industry while addressing the risks. **COM** agreed that it would be important to propose a mechanism to review the values in view of new scientific evidence.

COM also clarified that the links to other regulatory frameworks (REACH, Waste Framework Directive, EoW criteria for compost and digestate, policies encouraging the recycling of waste, the sustainable use of phosphorus...) would need to be addressed in the future proposal.

COM underlined that the timing of the adoption of the revised text would be influenced by the upcoming Parliamentary elections. **COM** indicated that it was preparing for submitting the impact assessment to the Impact Assessment Board in January 2014. The Board will release an opinion on the general quality of the report. In the event that the Board delivers a favourable opinion, the legislative proposal would be ready mid-2014. The ordinary legislative procedure would be launched only once the new Commission would have taken office. It might take up to 2 years between the adoption of the proposal by **COM** and the adoption of the text by the Parliament and the Council. Until then, Annex I entries stay in place. Member states should bear in mind that new national legislation will be checked thoroughly by the Commission services.

COM shared its personal view that under the revised fertilisers regulation, a product such as the liming material presented deriving from an industrial by-product would have to submit a dossier to a notified body for certification. Similarly, all waste-derived fertilising materials would be subject to this third party certification so that it could be demonstrated that the product complies with the essential requirements spelt out in the legislation (safety requirements: maximum limits for heavy metals; tests on trace elements; and quality requirements: neutralising value of liming materials...). The product would not have to be listed in a positive list.

COM invited all representatives to share their views and questions on the New Approach, while the provisions on plant biostimulants and agronomic fertiliser additives which would not be regulated under the New Approach would be discussed the day after.

One MS voiced its support to the system of certification as it was already applying this system to national fertilisers which did not fit in a positive list. It wondered which bodies would serve as certification bodies.

COM indicated that the system was already in place for example for explosives, lifts and machinery, where MS decided which bodies they notified. This was working well where state-run bodies had been appointed but had proved a bit more problematic with some private institutions. The procedure to notify accredited bodies was somewhat lighter than that for bodies which were not accredited. Conflicts of interest should be avoided. Notified bodies should not be linked to producers or market surveillance bodies.

One MS sought clarification on the moment when notification should happen. It disagreed to abandon positive lists indicating the raw materials and substances allowed in fertilising materials.

COM answered that the positive list issue was semantic above all. A lot of the content of positive lists would be taken on board as part of the essential requirements, which could only be modified with the agreement of the Member States at the Council. A mandate would be given to CEN to further elaborate harmonised standards that would provide producers and market surveillance authorities with a presumption of conformity with the essential requirements. At the request of industry, CEN could develop harmonised standards compiling positive lists of types known to comply with the essential

requirements. On the other hand a negative list would be included in the text of the future Regulation itself in order to further refine which substances may not be used.

A national industry representative asked who would draw up and manage the negative list.

COM answered that the negative list would be part of the revised regulation with a mechanism put in place to revise the list. The notified bodies would not be responsible for the list. The producer of a fertiliser would certify it against the essential requirements in the case of self-certification and third party certification in more difficult cases (products derived from waste streams ...). Whenever a dossier would be rejected by a notified body, the information would circulate among all other notified bodies to avoid that the dossier would be dealt with differently somewhere else. **COM** underlined that under other New Approach legislation, there was a Forum of notified bodies, where interpretations and procedures are discussed and another forum for market surveillance authorities, the so-called ADCO group.

One MS insisted that the borders between self-certification and notified body certification should be clearly outlined, and gave the example of its national system as a model.

COM clarified that what proved to work at national level (positive lists) could not be replicated at EU level where ad-hoc decisions could not be integrated without sacrificing the functioning of the internal market.

One MS indicated that it relied strongly on self-certification. General consumer protection law complemented this approach. It should be recognised that other legislation was in place as a safety net.

Another MS commented that self-certification was nothing new as across the EU, each country with positive lists get the manufacturers to decide whether their product complies with the list. It doubted whether the New Approach Regulation would make things better for MS, and that it would be only easier for COM. CEN and other bodies would have to be involved.

COM answered that the emphasis of the proposal would be to come up with a lean procedure easily workable for all stakeholders (COM, MS, producers) but also that things might change during the co-decision. MS have the power to agree on an easy procedure.

A European industry federation shared its worry that notified bodies would have to deal with difficult cases, and it should be ensured that cases would be dealt with in a harmonised way throughout the EU.

COM answered that the notified bodies would have to be helped to share information, to make decisions smoothly. It should also be borne in mind that notified bodies would be involved only for a limited range of products.

One MS shared its experience on personal protection equipment which is subject to a New Approach Directive. Competent authorities there still have many dossiers to deal with and many non-compliant cases. Essential requirements must be clearly and precisely defined.

COM underlined that public authorities need to focus on the definition of essential requirements and on the negative list. After that, there was no need to interact with the market. There will be extensive discussions with MS on the definition and specification of the essential requirements. However COM insisted that only if there would be good reasons to believe that operators could not be trusted, public authorities should intervene.

One stakeholder shared its concern that such products should be monitored through market surveillance. Fertilising materials go into soil. Discussions on contaminants and adverse effects would often happen too late.

COM underlined that there was no lack of horizontal legislation on soil or on the use of fertilisers. The current Fertilisers Regulation could not be seen as a primarily environmental legislation. COM would like to go forward with a proposal including a negative list and safeguards for all fertilisers at EU level. COM expressed its wish to end the current situation where stricter national laws are bypassed by EC fertilisers with no maximum limits for Cd or else. On top of the general safeguards, there would be additional specific safeguards (e.g. End of Waste criteria for biodegradable waste). COM underlined the need for striking a fair balance between the environment, market, farmer, consumers, and free movement of goods. The aim should be to agree on a general framework that allows flexibility to achieve all this, and then discuss the borderline cases. The use of fertilisers would still be regulated at national level.

One MS wondered on whether a transitional period was envisaged as it seemed that many standards needed to be developed and that it would most probably take time.

COM replied that standards would refer to test methods, and not to product types. A new mandate would be given to CEN as soon as the regulation would be sufficiently stable in the legislative process. Sufficient transitional periods will be granted. As regards national regulations, a standstill period would apply once the COM proposal would be on the table.

A national industry representative agreed with the COM that the framework should be as simple as possible which would not leave too much room for diverging or difficult interpretation. Essential requirements should be regarded as of utmost importance. It was mentioned as key to have a regulation indicating which contaminants should not be present. It was recalled that REACH already provides for a safety assessment of substances that are used as fertiliser (tox, eco/tox studies).

One MS shared its view that in relation with the standstill period, national authorities should be cautious. National provisions will have to be set aside, in particular rules making reference to fertiliser quality.

COM clarified that the new regulation would entail a total harmonisation of the fertiliser market across the EU. Self-certification will be the rule. The essential requirements will be extensively discussed within the next WG to strike a fair balance between market and safety.

One MS mentioned that products containing ABP were put outside the scope of the new regulation on market surveillance. It wondered whether this would be dealt with within the Fertilisers Regulation.

COM replied that if gaps were to be identified, it can be discussed whether it will be possible for the Fertilisers Regulation to fill in these gaps.

COM concluded that working group members should send their feedback on definitions, procedures, and the role of competent authorities, certification bodies and information exchange soon. Together with these collected views, **COM** would present a more detailed outline of the coverage of these aspects in the future Regulation in early 2014.

7. AOB

One MS asked whether DMPP had been included in a draft 8th ATP and when this was expected to be published.

COM indicated that the draft ATP had been sent for inter-service consultation. Once the inter-service consultation would be done, the WTO would have to be consulted for comments from third parties. The Commission Regulation was expected to be published after the summer break 2014.

Another MS indicated that their national agency had assessed the risk of DMPP. This MS indicated it would not oppose the inclusion of DMPP in the 8th ATP.

Next meeting: 17 March 2014