

**ASSEMBLY OF THE REPUBLIC
EUROPEAN AFFAIRS COMMITTEE**

Opinion

COM(2016)157

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009

PART I – INTRODUCTION

Pursuant to Article 7 of Law No 43/2006 of 25 August 2007 on the monitoring, examination and pronouncement by the Assembly of the Republic on matters relating to the construction of the European Union, as amended by Law No 21/2012 of 17 May 2012 and the guidelines for scrutiny of European initiatives approved on 8 January 2013, the European Affairs Committee received the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 [COM (2016) 157].

In view of its subject matter, the above-mentioned initiative was sent to the Committee for Economic Affairs, Innovation and Public Works, which analysed it and unanimously approved the report annexed to and forming an integral part of this Opinion.

PART II - BACKGROUND

1 This initiative concerns the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009.

2 It should be noted that the main objective of the initiative is to boost investment in production and uptake of effective, safe, innovative fertilisers produced from organic or secondary raw materials in line with the circular economy model and the Bioeconomy Strategy, by helping those products reach a critical mass through access to the entire internal market.

More efficient recourse to such fertilisers can offer significant environmental benefits, reduced dependency on import of critical raw materials from outside the EU, as well as an increased variety of high-quality fertilising products to farmers.

3 Consequently, increased production and trade in innovative fertilisers will also diversify the fertilisers offered to farmers, potentially contributing to making food production more cost- and resource-effective.

4 In this connection, the initiative also states that the existing Fertilisers Regulation fails to address environmental concerns arising from contamination by EC-fertilisers of soil, inland waters, sea waters, and ultimately food. A well-recognised issue is the presence of cadmium in inorganic phosphate fertilisers.

In the absence of EU limit values, some Member States have imposed unilateral cadmium limits for EC-fertilisers by virtue of Article 114 TFEU, hence creating a certain market fragmentation also in the harmonised field.

5 With regard to consistency with other Union policies, the initiative supports the Commission's agenda for jobs, growth and investment, by providing the right regulatory environment for investment in the real economy.

Furthermore, the initiative states that it will support the aim to create a deeper and fairer internal market with a strengthened industrial base, by removing existing barriers to free movement of certain innovative fertilisers and facilitating market surveillance by Member States.

6 Finally, it should be noted that the Report submitted by the Committee for Economic Affairs, Innovation and Public Works, which was approved unanimously, fully reflects the content of the Proposal. Accordingly, it must be reproduced in full in order to avoid repetition of analysis and consequent redundancy.

In the light of the provisions made in the Proposal, the following must be considered:

a) **The legal basis**

Since the initiative aims to improve the functioning of the internal market for fertilising products, the legal basis is therefore Article 114 of the Treaty on the Functioning of the European Union, which is also the legal basis for the existing Fertilisers Regulation.

b) **The principle of subsidiarity**

Given that the initiative seeks to guarantee the functioning of the internal market, while at the same time ensuring that CE-marked fertilising products on the market meet requirements to provide a high level of protection of human, animal and plant health, safety and the environment – which cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level – the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. Consequently, the principle of subsidiarity is duly enforced and respected.

PART III - OPINION

In the light of the information set out above and the report of the relevant committee, the European Affairs Committee's opinion is as follows:

1 This initiative is not in breach the principle of subsidiarity, in so far as the objective pursued will be achieved more effectively by means of action at Union level.

2 This concludes the scrutiny of this initiative.

Palácio de S. Bento, 17 May 2016

(Signed)

Rapporteur

(António Ventura)

(Signed)

Chair of the Committee

Regina Bastos

PART IV - ANNEX

Report of the Committee for Economic Affairs, Innovation and Public Works

ASSEMBLY OF THE REPUBLIC

COMMITTEE FOR ECONOMIC AFFAIRS, INNOVATION AND PUBLIC WORKS

Report of the Committee for Economic Affairs, Innovation and Public Works

COM (2015) 157 - Proposal for a Regulation of the European Parliament and of the Council

Rapporteur: António Topa (Social Democratic Party – PSD)

Proposal for a Regulation of the European Parliament and of the Council laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009

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PART I – INTRODUCTION

Pursuant to Article 7(1)(2) and (3) of Law No 43/2006 of 25 August 2007 on the monitoring, examination and pronouncement by the Assembly of the Republic on matters relating to the construction of the European Union, as amended by Law No 21/2012 of 17 May 2012, in view of its subject matter, the Proposal for a Regulation of the European Parliament and of the Council laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 was sent to the Committee for Economic Affairs, Innovation and Public Works, so that it could be examined and this report could be drawn up.

PART II - BACKGROUND

1 - Objective

1 This initiative concerns the Proposal for a Regulation of the European Parliament and of the Council laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and aims to address important problems that currently exist on the market and that were first identified in an ex-post evaluation of Regulation (EC) No 2003/2003 (the current Fertilisers Regulation)¹. The initiative was also identified as one of the main legislative proposals under the action plan for the circular economy².

2 The initiative under examination begins by stating that innovative fertilising products, often containing nutrients or organic matter recycled from biowaste or other secondary raw materials in line with the circular economy model, have difficulties accessing the internal market due to the existence of diverging national rules and standards.

3 It also states that the existing Fertilisers Regulation ensures free movement on the internal market of a class of harmonised products belonging to one of the product-types included in Annex I to that Regulation. Such products are eligible to be labelled 'EC-fertilisers'.

Companies wishing to market products of other types as EC-fertilisers must first obtain a new type-approval through a Commission decision amending that Annex.

Virtually all product-types currently included in the existing Fertilisers Regulation are conventional, inorganic fertilisers, typically extracted from mines or chemically produced in line with a linear economy model.

Also, the chemical processes for producing – for example, nitrogen-based fertilisers – are both energy consuming and CO₂-intensive.

4 The initiative also states that around 50 % of the fertilisers currently on the market are left out of the scope of the Regulation. This is true for a few inorganic fertilisers and for virtually all fertilisers produced from organic materials, such as animal or other agricultural by products, or recycled bio-waste from the food chain.

¹ <http://ec.europa.eu/smart-regulation/evaluation/search/download.do?documentId=4416>

² COM (2015) 614/2

5 Research, innovation and investment are currently developing rapidly, contributing to the circular economy by creating local jobs and by generating value from secondary, domestically sourced resources which would otherwise have been used directly on land or disposed as landfill waste, causing unnecessary eutrophication and greenhouse gas emissions. There is also a servitisation trend in the business, with increasing product customisation based on analysis of the soil where the fertiliser will be used.

SMEs and other enterprises throughout Europe are increasingly interested in contributing to this development. However, for customised products containing organic fertilisers, access to the internal market currently depends on mutual recognition and is therefore often hindered.

6 It should be noted that the current Fertilisers Regulation is clearly tailored for well characterised, inorganic fertilisers from primary raw materials. It lacks the robust control mechanisms and safeguards necessary for creating trust in products from inherently variable organic or secondary material sources. Furthermore, the links with existing legislation on control of animal by-products and waste are not clear.

7 As a result, fertilisers sourced in line with the circular economy remain non-harmonised.

Many Member States have detailed, national rules and standards in place for such non-harmonised fertilisers, with environmental requirements (such as heavy metal contaminant limits) that do not apply to EC-fertilisers. Furthermore, free movement between Member States through mutual recognition has proven extremely difficult.

As a result, a producer of fertilisers sourced from organic or secondary raw materials, established in one Member State and seeking to expand its market to the territory of another Member State, is often faced with administrative procedures making the market expansion prohibitively expensive.

The problem is of particular importance for producers established in Member States with a small domestic market compared to the surplus of organic, secondary raw materials of which they dispose.

8 The initiative therefore concludes that the playing field in the competition between those fertilisers sourced from domestic organic or secondary raw material in line with the circular economy model and those produced in line with a linear economy model is tilted in favour of the latter. This competition distortion hampers investment in the circular economy.

9 With regard to innovative fertilisers, the initiative states that, even for new, inorganic fertilisers from primary raw materials, the type-approval procedure is lengthy, and cannot keep up with the innovation cycle of the fertilisers sector.

It has therefore been deemed necessary to fundamentally reconsider and modernise the regulatory technique, in order to increase flexibility with regard to product requirements, while maintaining a high level of protection of human, animal, and plant health, safety and the environment.

10 The main policy objective of the initiative is therefore to incentivise large-scale fertiliser production in the EU from domestic organic or secondary raw materials in line with the circular economy model, by transforming waste into nutrients for crops. The initiative will provide a regulatory framework radically easing access to the internal market for such fertilisers, thereby

levelling their playing field with that of mined or chemical fertilisers produced in line with a linear economy model. This will contribute to the following circular economy objectives:

- It will allow valorisation of secondary raw materials, hence enabling improved use of raw materials and turning eutrophication and waste management problems into economic opportunities for public and private operators.

- It will increase resource efficiency and decrease import dependency for raw materials essential to European agriculture, in particular phosphorus.

- It will boost investment and innovation in the circular economy, hence creating jobs in the EU.

- It will contribute to relieving the fertilisers industry from its current pressure to reduce CO₂-emissions under ETS (emissions trading scheme), by allowing it to produce fertilisers from less carbon-intensive feedstock.

11 In this way, increased production and trade in innovative fertilisers will also diversify the fertilisers offered to farmers, potentially contributing to making food production more cost- and resource-effective.

12 The initiative also states that the existing Fertilisers Regulation fails to address environmental concerns arising from contamination by EC-fertilisers of soil, inland waters, sea waters, and ultimately food. A well-recognised issue is the presence of cadmium in inorganic phosphate fertilisers. In the absence of EU limit values, some Member States have imposed unilateral cadmium limits for EC-fertilisers by virtue of Article 114 TFEU, hence creating a certain market fragmentation also in the harmonised field.

13 Accordingly, the second policy objective of the initiative is aimed at addressing this issue and introducing harmonised cadmium limits for phosphate fertilisers. The setting of such limit values, aiming at minimising the negative impact of fertiliser use on the environment and on human health, will contribute to a reduction of cadmium accumulation in soil and of cadmium contamination of food and water. It will also remove the market fragmentation to which the concern currently gives rise in the form of national cadmium limits in some Member States.

14 According to the initiative, the proposed Regulation will repeal the existing Fertilisers Regulation, but allow already harmonised fertilisers to remain on the market subject to compliance with the new safety and quality requirements, and the European Commission will assist and monitor Member States' implementation of the Regulation. It will also analyse the need for guidance, standards or schemes proving sustainability of fertilising products, thus allowing sustainability claims on the product labels.

15 With regard to consistency with other Union policies, the initiative supports the Commission's agenda for jobs, growth and investment, by providing the right regulatory environment for investment in the real economy.

Furthermore, it also indicates that it will support the aim to create a deeper and fairer internal market with a strengthened industrial base, by removing existing barriers to free movement of certain innovative fertilisers and facilitating market surveillance by Member States.

2 Relevant issues

Legal basis

Since the initiative aims to improve the functioning of the internal market for fertilising products, the legal basis is therefore Article 114 of the Treaty on the Functioning of the European Union, which is also the legal basis for the existing Fertilisers Regulation.

3 The principle of subsidiarity

The first objective of the initiative is to boost investment in production and uptake of effective, safe, innovative fertilisers produced from organic or secondary raw materials in line with the circular economy model and the Bioeconomy strategy, by helping those products reach a critical mass through access to the entire internal market.

More efficient recourse to such fertilisers can offer significant environmental benefits, reduced dependency on import of critical raw materials from outside of the EU, as well as an increased variety of high-quality fertilising products to farmers.

The existing barriers to the free movement of such products, in the form of diverging, national regulatory frameworks, cannot be removed through Member States' unilateral actions.

In particular, mutual recognition in this field has proven exceptionally difficult, and becomes an increasingly important obstacle as the interest in producing and trading high-quality fertilisers from organic or secondary raw materials tends to increase.

EU action, on the other hand, could ensure the free movement of such fertilisers by establishing harmonised high-quality, safety and environmental criteria.

The second objective is to address cadmium contamination of soil and food through fertiliser use.

Since most of the fertilisers from which the concern originates (i.e., inorganic phosphate fertilisers) are already harmonised, Member States cannot achieve this objective unilaterally.

EU-wide maximum limits, on the other hand, can effectively reduce contaminants in harmonised fertilisers to safer levels.

Consequently, given that the initiative seeks to guarantee the functioning of the internal market, while at the same time ensuring that CE-marked fertilising products on the market meet requirements to provide a high level of protection of human, animal and plant health, safety and the environment – which cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level – the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

The principle of subsidiarity is therefore duly enforced and respected.

4 - The principle of proportionality

Since the proposal aims to boost investment in production of effective, safe, innovative fertilisers produced from organic or secondary raw materials in line with the circular economy model, with the

related benefits for environmental impact, reduced import dependency, and increased variability of high-quality products on offer, the initiative does not therefore go beyond what is necessary for providing the regulatory certainty required to incentivise large-scale investment in the circular economy.

In accordance with the principle of proportionality enshrined in Article 5 of the Treaty on the European Union, this initiative does not go beyond what is necessary in order to achieve that objective.

PART III - CONCLUSIONS

In view of the above, the Committee for Economic Affairs, Innovation and Public Works concludes that:

1. This initiative is not breach of the principle of subsidiarity, in so far as the objective pursued will be achieved more effectively by means of action at Union level;
2. Our analysis of this initiative has not revealed any issues that require additional examination;
3. The Committee for Economic Affairs, Innovation and Public Works considers its examination of this initiative to be complete. Pursuant to Law No 43/2006 of 25 August 2006, as amended by Law No 21/2012 of 17 May 2012, this Opinion must be forwarded to the European Affairs Committee for the appropriate purposes.

Palácio de S. Bento, 26 April 2016

(Signature)
Rapporteur
António Topa

(Signature)
Chair of the Committee
Hélder Amaral