



## SPANISH PARLIAMENT

### **REPORT 7/2016 OF THE JOINT COMMITTEE FOR THE EUROPEAN UNION OF 27 APRIL 2016 ON THE APPLICATION OF THE PRINCIPLE OF SUBSIDIARITY BY 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 (TEXT WITH EEA RELEVANCE) [COM (2016) 157 FINAL] [2016/0084 (COD)] {SWD (2016) 64 FINAL} {SWD (2016) 65 FINAL}**

#### **BACKGROUND**

- A.** The Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Lisbon Treaty of 2007 and in force since 1 December 2009, provides for a procedure by which national parliaments can monitor the compliance of EU legislative proposals with the principle of subsidiarity. This Protocol has been implemented in Spain by means of Law 24/2009 of 22 December 2009 amending Law 8/1994 of 19 May 1994. In particular, the new Articles 3(j), 5 and 6 of Law 8/1994 constitute the legal basis for this report.
- B.** 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 has been approved by the Commission and forwarded to the national parliaments, which have a period of eight weeks to determine whether the initiative is in compliance with the principle of subsidiarity. This period terminates on 12 May 2016.
- C.** On 5 April 2016 the Bureau and the spokespersons of the Joint Committee on European Affairs agreed to examine the above European legislative initiatives, appointing Senator Jesús Labrador Encinas as rapporteur, and requesting from the Government the report referred to in Article 3(j) of Law 8/1994.
- D.** A report was received from the Government stating that the proposal submitted complies with the principle of subsidiarity given that the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level.
- E.** At its meeting on 27 April 2016 the Joint Committee for the European Union approved this

## REPORT

1. - Article 5(1) of the Treaty on European Union (TEU) states that ‘the use of Union competences is governed by the principles of subsidiarity and proportionality’. In accordance with Article 5(3) of the Treaty, 'under the principle of subsidiarity [...] the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level'.

2. - The legislative proposal under analysis is based on Articles 114 and 294 of the Treaty on the Functioning of the European Union, which read as follows:

### *Article 114*

1. *Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.*

2. *Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.*

3. *The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.*

4. *If, after the adoption by the European Parliament and the Council, by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 36 or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.*

5. *Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.*

6. *The Commission undertakes to approve or reject, within six months of the notifications referred to in paragraphs 4 and 5, the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.*

*In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.*

*When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.*

7. When, pursuant to paragraph 6, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.

8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the Council.

9. By way of derogation from the procedure laid down in Articles 258 and 259, the Commission and any Member State may bring the matter directly before the Court of Justice of the European Union if it considers that another Member State is making improper use of the powers provided for in this Article.

10. The harmonisation measures referred to above shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Union control procedure.

#### Article 294

1. Where reference is made in the Treaties to the ordinary legislative procedure for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council.

#### First reading

3. The European Parliament shall adopt its position at first reading and communicate it to the Council

4. If the Council approves the European Parliament's position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament.

5. If the Council does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.

6. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

#### Second reading

7. If, within three months of such communication, the European Parliament:

a) approves the Council's position at first reading or has not taken a decision, the act concerned shall be deemed to have been adopted in the wording which corresponds to the position of the Council;

b) rejects, by a majority of its component members, the Council's position at first reading, the proposed act shall be deemed not to have been adopted;

c) proposes, by a majority of its component members, amendments to the Council's position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

8. If, within three months of receiving the European Parliament's amendments, the Council, acting by a qualified majority:

a) approves all those amendments, the act in question shall be deemed to have been adopted;

b) does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

9. *The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.*

#### *Conciliation*

10. *The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament within six weeks of its being convened, on the basis of the positions of the European Parliament and the Council at second reading.*

11. *The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.*

12. *If, within six weeks of its being convened, the Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.*

#### *Third reading*

13. *If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If they fail to do so, the proposed act shall be deemed not to have been adopted.*

14. *The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.*

#### *Special provisions*

15. *Where, in the cases provided for in the Treaties, a legislative act is submitted to the ordinary legislative procedure on the initiative of a group of Member States, on a recommendation by the European Central Bank, or at the request of the Court of Justice, paragraph 2, the second sentence of paragraph 6, and paragraph 9 shall not apply.*

*In such cases, the European Parliament and the Council shall communicate the proposed act to the Commission with their positions at first and second readings. The European Parliament or the Council may request the opinion of the Commission throughout the procedure, which the Commission may also deliver on its own initiative. It may also, if it deems it necessary, take part in the Conciliation Committee in accordance with paragraph 11.'*

**3.** - 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 (the 'proposed Regulation') aims to address the problems faced on the European market in relation to innovative fertilising products, often containing nutrients or organic matter recycled from biowaste or other secondary raw materials, which have difficulties accessing the internal market due to the existence of diverging national rules.

These products contribute to the circular economy, creating jobs and generating value added from secondary, domestically sourced resources.

The existing Fertilisers Regulation ensures free movement of harmonised products, but its material scope includes conventional, inorganic fertilisers, one of the main constituents of which is phosphate rock, 90% of which comes from outside the EU and contains cadmium, to the point where some Member States have imposed unilateral cadmium limits by virtue of Article 114 TFEU.

The objective of the initiative is to incentivise large scale fertiliser production in the EU from domestic organic materials in line with the circular economy model, by transforming waste into nutrients for crops, so that there is a regulatory framework guaranteeing access to the internal market, thereby levelling the playing field of these fertilisers with that of mined or chemical fertilisers, making it possible to use secondary raw materials, reduce dependency on imported raw materials, boost investment and innovation and reduce the CO<sub>2</sub> emissions produced by the existing fertiliser industry.

**4.** - The proposal is consistent with the current provisions in this area, and already harmonised fertilisers may remain on the market and circulate freely as CE marked fertilisers subject to compliance with new safety and quality requirements.

It is also consistent with other Union policies, in that it supports the Commission's agenda for jobs, growth and investment, creates a level playing field for all fertilising products and facilitates recourse to domestic secondary raw materials. Furthermore, the initiative creates a deeper single market strategy by harmonising the rules which the Member States regard as essential for protecting the food chain and the environment, eliminating the barriers introduced by diverging national rules.

**5.** - Looking at subsidiarity in particular, the legal basis for the proposal – improving the functioning of the internal market for fertilising products – is Article 114 TFEU and the annual fertilisers regulation.

The existing barriers to the free movement of those products, due to diverging, national regulatory frameworks, cannot be removed through Member States' unilateral actions and only action by the EU can ensure the free movement of such fertilisers by establishing harmonised high-quality, safety and environmental criteria.

Furthermore, while most inorganic fertilisers are harmonised, it will only be possible to achieve the second objective of reducing cadmium contamination of soil and food by setting EU-wide maximum limits that lead to safer levels.

**6.** - Where proportionality is concerned, this initiative does not go beyond what is necessary for providing the regulatory certainty required to incentivise large-scale investment in the circular economy by facilitating access to the internal market, decreasing the workload of the national authorities' registration or authorisation systems for fertilisers when they are replaced by EU-wide control mechanisms, and offering farmers more product variety and the general public better protection against contamination of soil, water and food.

Furthermore, where cadmium contamination of soil and food is concerned, the economic impacts of setting maximum levels are deemed proportionate to the objectives pursued.

Lastly, the regulatory technique chosen, unlike most product harmonisation measures in European legislation, affords flexibility when placing the new fertilisers on the market without compromising on safety and quality, leaving the Member States free to allow non-harmonised fertilisers on their domestic markets in line with national legislation, without depriving those

economic operators seeking international markets of the possibility to opt for a harmonised regulatory framework. This avoids the mutual recognition mechanism which operators and the Member States do not find appropriate.

The form of a Regulation is deemed the most appropriate for harmonisation in a field of such complexity and potential impact on the food chain and the environment as borne out by the fact that the existing legislation also has the form of a Regulation.

## CONCLUSION

**For the reasons set out above, the Joint Committee for the European Union is of the opinion that 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 complies with the principle of subsidiarity set out in the current Treaty on European Union.**