1. Approval of the agenda and the minutes of the meeting on 29.02.2016

The draft agenda was approved without changes.

Concerning the draft minutes of the last meeting, an NGO reiterated its concerns about the possibility for NGOs to follow the development of standards. The wording of the draft minutes was amended to better reflect that position.

2. Nature of the meeting

The meeting was attended only by the Members and observers of the Fertilisers Working Group listed in the Commission Registry of experts. A private company was invited to present its application for the registration of a new fertiliser type under AOB. The meeting was not web streamed.

3. List of points discussed

(a) New fertiliser Regulation: state of play

Information on new rules for the Registry of Experts groups

The COM explained the main changes brought to the COM registry of experts groups after the implementation of COM Decision C (2016) 3301. In the future, industry experts will have to be selected through a call of expression of interests. Synergies between the registry and the Transparency Register have been created and only industry associations listed in the Transparency Register will be invited to COM expert groups. Information about the associations invited and the names of their representatives are now included in the Registry.

STRUBIAS sub-group of the FWG – activity report

The COM briefly recalled that the objective of the sub-group is to prepare the possible future inclusion of new CMCs for struvite, biochar and ash-based products in Annex II of

---

1 Published in the Register of Commission Expert Groups and Other Similar Entities, code number E01320
2 http://ec.europa.eu/transparency/regexpert/
the revised Regulation. The membership of the expert group (STRUBIAS) has been established and a first meeting of the group was organised in July by JRC. STRUBIAS will provide an interim report by mid-2017 and a draft final report in October 2018. The results of work will be regularly presented to the Fertilisers Working Group. The contract with JRC will end up in November 2018.

One Member State asked whether it would be still possible to join the group. The COM explained that Member State representatives can join the group at any time as they are not subject to the call.

An industry association highlighted the importance of the cooperation between industry and JRC to come up with workable regulatory options. The COM recalled that the output products shall be safe and sufficiently effective for fertiliser production. The final results should also be compliant with the general structure of the new regulation.

**New Fertiliser Regulation**

The COM informed that the objective of the discussion is to clarify some technical points with the FWG but not to engage in a political debate which shall happen during the negotiations with the co-legislators.

The Dutch Presidency explained that its objective was mainly to identify the main points of concerns for the Member States. The Slovak Presidency mentioned that the content of the core text and the annexes have been examined in great details during its Presidency. The objective is still to reach a consensus on the legal text before the end of the year. The Maltese Presidency highlighted the expectations of the market for more safe and efficient products.

The COM explained that the IMCO Committee has been designated as lead Rapporteur for the EU Parliament. The ENVI, AGRI and INTA Committees will deliver an opinion. The timing of the legislative process in the EU Parliament is not yet totally clear but it is expected that the opinions of the Committees will be available in May/June 2017.

**Opinion of the European Economic and Social Committee**

The COM explained that the EESC adopted its final opinion in July 2016. It broadly supported the COM proposal in particular as regards the high level of ambition regarding environmental and human health protection. The EESC supports the objective of developing the internal market for organic-based fertilisers and highlighted the important contribution that sewage sludge could play in the substitution of phosphate mineral fertilisers. Finally the borderlines between plant biostimulants and plant protection products should be defined as clearly as possible.

**Results of the feedback consultation**

The COM explained that citizens and stakeholders were invited to provide feedback on the COM legislative proposal after its adoption on 17.03.2016. Results are available on the internet. Some key elements of the COM proposal like the choice of the optional harmonisation, the New Legislative Framework and the extension of the scope are
generally supported. Criticisms were raised concerning the REACH registration for substances below 10 tons, the scope of component materials categories, the applicability of the conformity assessment procedures and the proposed limits values for cadmium in phosphate mineral fertilisers. The COM highlighted that not all the problems identified are justified and politically acceptable. The COM regretted that NGOs were practically absent in this consultation process.

Opinions of national Parliaments

The COM highlighted the importance of the subsidiarity check by Member States. Five opinions have been received and the COM briefly summarised the comments made. All the comments stated that the proposal is in line with the subsidiarity principle. The respondents also recognised that the proposal will help to create a level playing field for fertilising products and that it will contribute to create a more sustainable fertiliser market in line with the Circular Economy (reduction of import dependence, CO2 emissions...). Most of them welcomed the introduction of EU wide limit values for contaminants. One national Parliament raised the issue of the interference of the COM proposal with national legislation.

The COM noted that in some cases, national Parliament and Member States opinions in the Council on limit values for cadmium are different.

Cadmium: COM factsheet + SE opinion

A factsheet on cadmium was posted on CIRCABC. The objective of the note was to broaden the common understanding of the Council and MEPs on the issue of cadmium. The arguments supporting the introduction of limit value for cadmium are described but the note gives information on the likely socio-economic impacts and provides also an analysis of the WTO compatibility of the proposal. The COM recognised that stakeholders could have different views on the note. The FWG was invited to give feedback on any factual errors or any important failure of the note.

One MS requested comprehensive information on decadmiation technologies.

The COM replied that decadmiation is not an issue for the 60 and 40 ppm ppm limit value as these limits could be reached by blending available phosphate rock resources or by substituting conventional fertilisers by products derived from the recycling of biomass. The problem is with the cadmium concentrations below 40 ppm for which decadmiation technology would be necessary. The Impact Assessment Report for Cadmium (hereinafter referred as to "IAR Cd") has identified mainly two possible decadmiation technologies. One of them has reached the pilot scale and is a potential candidate for industrial upscaling. Investment cost and operational costs are detailed in the IAR Cd for this technology. The COM has several times asked industry to give feedback on the stage of development of such technologies and their related costs but so far without success. The operational costs will increase as the limit value decreases.

An industry association confirmed that it has recently joined the SPIRE EU technology platform to increase the visibility of the technological needs in this area. The COM explained that the intention of the platform is to collect peer-reviewed information on the most promising decadmiation technologies and their related costs at industrial level. These platforms are able to assess the technological maturity of existing technologies for the production of fertilisers. A demonstration project would follow to demonstrate the feasibility of the project at industrial scale thus reducing the risks for the banks.

A Member State enquires about a recent paper presented at the EU Parliament by Pr Smolders.
The COM confirmed that Pr Smolders presented orally the results of its study on the non-accumulation level of cadmium in EU soils at a workshop organised by the IMCO Committee on 20 October 2016. The initial report of Pr Smolders was slightly updated after that the Scientific Committee on Health and Environmental Risks (SCHER) delivered its opinion on the first report on 4 December 2015. The non-accumulation level is now estimated to be between 70 and 75 ppm. Pr Smolders have also been requested by the services of the EU Parliament to provide an in-depth analysis of the limit values proposed by the COM. The report has however not yet been published by the EU Parliament.

SE informed that new scientific studies published after 2010 indicate strong associations between the current exposure of the population to cadmium and increased risks of osteoporosis and cardio-vascular diseases. Those risks can appear at even a lower level of exposure than previously recommended for kidney toxicity.

In a recent report from the Swedish Chemicals Agency, it was calculated that the socio-economic cost of fractures caused by cadmium in food amounts to approximately 4.2 billion SEK (approx. 400 million Euros) per year in Sweden.

Mineral phosphate fertilisers remain the only source of cadmium that has not been addressed so far although this source is closely associated with food production.

The COM proposed to peer-review the data collected by Sweden as well as similar data that other Member States may have on cadmium or other heavy metals in order to prepare for a systematic and harmonised approach to evaluate such data at EU level. This should help the COM to assess the scientific evidence provided by Member States to request the adoption of stricter national measures than those established in the future EU legislation on fertilising products.

An industry association asked whether other factsheets on other heavy metals will be issued. The COM replied that a factsheet on chromium is in preparation. The problem is however slightly different compared to cadmium as for example no trade issue with third countries partners can be expected.

Requirements for polymers under CMC 9

The COM explained that the presence of microplastics in fertilising products is a new debate. When such plastics are used in fertiliser production, they should not lead to an accumulation in the soils and should be fully biodegradable after a certain period. The COM has therefore proposed a biodegradability criterion for coating and water retention polymers that has been challenged by industry. The COM has proactively invited the industry to clarify which part of the proposal may be acceptable, which part needs further improvement and what could be then the appropriate solutions. CEN will be associated in the discussion with industry as it has initiated a programme on the biodegradability of plastics.

The COM also explained that polymers covered by CMC 9 are fully biodegradable. The FWG was invited to share any existing national standards on polymers covered by CMC9.

A Member State asked whether there is a relation between the biodegradability criteria and polymers present as impurities in fertilising products. The COM replied that the basis for setting a limit value for plastic in compost and digestate was the JRC study carried in 2014. The limit value was even further decreased as they were thought to be not sufficiently ambitious.
REACH registration of digestates

The COM explained that, if Annex V of the REACH Regulation is interpreted as not excluding digestates from REACH registration, that registration obligation is largely ignored. Should registration of digestates within REACH be imposed, their use in fertilising products would be seriously undermined. The COM is therefore considering an amendment to point 12 of Annex V to REACH to exclude digesate from the registration requirement. The amendment should be discussed at the expert group which advises the European Commission and ECHA on questions related to REACH and CLP (CARACAL). The amendment could be submitted to a vote of the REACH Committee later in 2017.

Activities related to fertilisers quality improvements under H2020 and BBI-JU

In order to support the objectives of the revision, the COM has initiated several research activities under H2020 notably under the societal challenge number 2 (SC2) which aims at secure sustainable food production in Europe. As fertilisers are fully part of the food production chain, the concept of sustainable fertiliser production was inserted in the scoping paper for the upcoming call for projects under SC2. If interest can be found within the research community, research projects on alternative secondary raw materials as well as projects supporting innovative techniques of "detoxification" of primary and secondary raw materials (notably regarding cadmium) could be launched in 2017.

Secondly, a public private partnership called BBI_JU has been established in order to support the development of the bio-based economy with the objective to reduce the carbon footprint of our activities. The COM explained that the new work programme of the BBI-JU for 2017 will include several topics of interest for fertilisers in view of possible future call for projects:

- identification of potential, new CMCs deriving from bio-based products
- review of polymers that could meet the proposed criteria of CMC10
- demonstration of the agronomic efficacy of plant biostimulants in field conditions

The COM alerted the FWG that those plans for actions will not emerge if they are not strongly supported by the Member States, hence the need for the Fertilisers regulatory community to connect with their research fellows to attract their interest in the upcoming call for projects. The Research community will not support these actions on a voluntary basis as they will not lead to long-term research programmes.

An industry association requested clarification on how to proceed to include new CMCs or modify existing CMCs. For the COM, there is an interest in broadening the scope of the future regulation provided that some principles are respected i.e. that it can be demonstrated that the CMCs are safe and efficient for fertiliser production and that there is an EU market. The fact that some CMCs exist in national market does not mean that they can be acceptable for others.

An industry association commented on Article 42 of the proposal which defines the conditions under which the COM can amend the annexes of the future regulation. Some additional work is necessary to clarify whether the condition on significant trade applies to PFCs or CMCs or both. For the association, there might be an interest to move around secondary raw materials from one Member State to a centralised processing place in another Member State to produce fertiliser. In that case, the raw material should not be considered as being traded.
The COM shown openness to considering this point if proposed by the Council or the Parliament, but clearly opposed the inclusion in Annex II of secondary raw materials of only local relevance.

**Microbial plant biostimulants: way forward**

The COM informed that the inclusion of plant biostimulants has generated a lot of debates in the Council WP. At this stage, the COM will not support the extension of the list for microbial plant biostimulants but mentioned that it would stand ready to look at a candidate list provided that certain conditions are met:

- the interested Member States or industry associations should establish the candidate list that are not in conflict with the PPPR
- the list shall be peer-reviewed by EFSA or a sub-group of the FWG or both

The FWG should agree on the candidate lists and on the procedural aspects (who should look into it: EFSA or a dedicated sub-group of the FWG) so that the COM could swiftly amend the list soon after the entry into force of the revised Fertiliser Regulation.

An industry association called to not establish a positive list but to introduce selection criteria as for other CMCs. The approach would require the development of product standards that would contain information on how the strain should be characterised and how the safety and environmental aspects should be evaluated. The results of the evaluation made in accordance with the standard should then be submitted to notified bodies for evaluation. The approach would ensure that the data generated to verify the compliance of the product with the standard would not fall into the public domain.

The COM recalled that this option was examined but was finally rejected as it would lead to empower standardisation bodies to elaborate legal requirements on the characteristics and safety of microbial plant biostimulants. The COM also recognised that the chosen regulatory approach is not adapted to leading edge products which would have been better addressed by an authorisation system. The option of the authorisation system was however considered too costly and then also abandoned. The COM showed openness to discuss the possible extension of the list if the procedure for such extension is agreed among Member States.

One Member State still expressed a preference for the objective criteria option as described by the industry association. Otherwise, there is a risk that some efficient products already on the market will have to be removed. If the option of a positive list is preferred, microbials should at least be identified at strain level to clearly separate the strains that have recognised plant protection products properties from those exhibiting only fertilising products properties (e.g. Trichoderma).

The COM repeated that no microbial plant biostimulant will be shut out of the market as there is no EU wide market for such product yet. Today, plant biostimulant falls under the scope of the plant protection product regulation (PPPR) and nothing prevent companies to continue to apply for an authorisation under the PPPR. By creating a plant biostimulant category, the intention was to simplify the EU market access for commodity plant biostimulants that are considered safe. The burden of proof will lie with the COM. The suggestion made by the industry association would require a more profound modification of the scope of the PPPR which is not supported by the COM and probably by most of the Member States.

Another Member State asked clarification about the mission of the sub-group.

The COM answered that the objective should be to identify possible candidates for inclusion in the list of CMC 7 taking into account the legal requirements for plant biostimulants. The list could be established and analysed by a sub-group of the FWG.
call for expression of interest will have to be prepared in order to select the members of the sub-group. Member States representatives will not be covered by the call as they are de facto members of any sub-group if they found an interest to attend.

The secretariat of that sub-group should be run in cooperation with EFSA, ECHA, DG SANTE services.

The group will then have to come up with reports containing candidate strains to extend the list under CMC 7. The report will have to be explained to other COM services and the FWG. The report will serve as a basis for the preparation of a delegated act (after clearance by a scientific body).

**Development of end-points for derived animal by-products**

The competent service of the COM explained that the objective of Regulation (EC) 1069/2009 on animal by-products (ABPR) is to protect animal and public health. Some animal by-products are of interest for the production of organic fertilisers and Article 32 sets general sanitary rules for the placing on the market and use of such products. Technical requirements on how to process the animal by-product to meet these general sanitary requirements are laid down in the Annexes of Commission Regulation (EU) No 142/2011 (ABP-IR).

With reference to existing requirement, organic fertilisers based on animal by-products should stay subject to the control of the ABPR until its final use.

In order to simplify the use of animal by-products in organic fertiliser, it is proposed to define an end-point in the manufacturing chain of organic fertilisers from which the ABPR will stop to apply and the rules of the FR would start to apply. So far, such end point was never developed for fertiliser production as some animal by-product initially destined to the production of fertilisers could finally be used to feed animals. The main challenge would therefore be to ensure that animal by-product destined to the production of CE marked fertilisers are sufficiently safe to leave the control of the ABPR.

Member States competent authorities on animal by-products have the necessary experience to identify such animal by-product and the transformation process thereof. In case of doubt, EFSA will be consulted for its opinion on risks mitigation measures that would be required to define the end point.

The COM added that only materials having reached the end point will be allowed for the production of CE-marked fertilising products. This link will clarify the bordelines and will provide legal certainty for further site inspection and control of cross-border trade. The same situation occurs for plant biostimulants or waste-derived products. The inclusion of such materials within the scope of the fertiliser regulation needs to be based on legal procedures that would entail legal certainty.

Three industry associations recalled the importance of such materials for fertiliser production and requested clarification on the following questions:

- Article 32 makes only references to organic fertilisers and soil improvers. What about organo-mineral fertilisers that can also be made of animal by-products,
- Can manure be recognised as mixing component to make fertiliser unpalatable for domestic animals?
- Is there no other method than setting end-points? For example, there are provisions in the ABPR that exempt products packaged in volume lower than 25 kg from the sanitary rules of the ABPR.
would it be possible to extend the list of authorised processing techniques to non-
harmonised transformation processes. This would apply mainly to processed
manure.

The COM clarified that end points will be described for CMCs that could then be used in
various fertilising products and not only for organic fertilisers and soil improvers.

The competent service of the COM added that manure cannot be considered as a mixing
component that would make the final product unpalatable for animals. JRC has been
mandated to designate such component and results are expected for spring 2017. The 25
kg fertiliser bag derogation will continue to apply for national and CE marked fertilisers.

Other hygiene standards than those covered by the current ABP-IR could be proposed by
industry and the competent national authorities to EFSA. If the transformation process is
accepted, this could then be included in the list of end points for fertiliser production.

Screening exercise of available standards

The COM asked CEN to debrief about the status of the work for the preparation of the
future standardisation mandate. CEN explained that a lot of work still needs to be done to
identify the appropriate test methods for plant biostimulants, organic fertilisers and soil
improvers whereas for the other categories, most of the test methods already exist as EN
standards that could then be transformed into harmonised standards.

The COM explained that a draft standardisation mandate will be issued in the course of
2017 based the ongoing screening exercise on available standards. No product standard
will be supported by the EU mandate.

Information on the creation of the AdCo group on fertilisers

The COM informed that an expert group on market surveillance has been created in order
to help Member States to exchange information on non-compliant products. The group
should also help to identify best practices in market surveillance, reduce diverging
practices, allow a better allocation of resources, discuss the role of notified bodies... A
first meeting will be organised on 11.11.2016 and will be attended by 19 competent
authorities. The COM also called for possible candidates to chair the group. This person
should come up with a work programme for the months to come and should report on
progress made to the FWG.

AOB: short presentation of an application for the registration of Ca IDHA

The COM explained that new product types not fulfilling the future provision will not be
considered. The COM proposed to proceed into two steps:

1. to consult the FWG for its opinion
2. if considered useful by the FWG, to consult the Regulatory Committee on fertilisers
   for a formal opinion on the application

A company presented the application which aims at introducing a new type of fertiliser
containing calcium as an alternative to other calcium fertilisers such as calcium sulphate,
calcium chloride or calcium formate. The CalDFlA chelate is a combination of a chelating
agent – IDHA, authorised for use in EC fertilisers by Commission Regulation (EU) No
137/2011 of 16 February 2011 and calcium being a secondary nutrient component as per art.
registered within REACH. The substance has not been identified as being hazardous for
human health and the environment and is fully biodegradable in 28 days. The presence of
IDHA and calcium can be determined by existing analytical methods. The agronomic objective of Ca IDHA is to combat apple bitter pit. A strong reduction of brown spots on apples can be observed with a lower amount of Ca IDHA compared to other Ca fertilisers.

The COM informed that this substance would fall within CMC 1. As the main function of the substance would be to improve the quality traits, it should be marketed as plant biostimulant. In that case, the conformity assessment module B+C would apply. If the nutritional effects of the substance are emphasized, CaIDHA could be marketed as mineral fertiliser and module A would apply. The COM recalled that plant biostimulant claims are not covered by the current Regulation. The proximity with the plant protection product legislation should also be clarified.

A Member State requested clarification about the content in heavy metals. The company replied that the main source of heavy metals would be the calcium mineral ore, but was unable to provide clear data.

Another Member State argued that this chelate is most likely much more expensive than simple calcium salts that can achieve the same objective. The company replied that the pH of CaCl$_2$ solution is low which may cause burning of plant leaves. Ca IDHA has a neutral pH.

The COM requested more information about the market size and above all whether this innovation is protected by a patent that would prevent other manufacturers to use the entry. The annexes of the current Fertiliser Regulation should not be used to back up monopolistic situation. The company did not show any concrete figure on the market size for IDHA but a Member State delegation informed that some national companies are also marketing the same product. An industry association suggested including other calcium chelate such as Ca EDTA which is used for the same purpose in many Member States.

An NGO asked whether the substance could be used in organic farming. The company replied that the substance is chemically synthesised and is therefore not allowed in organic farming.

AOB

An NGO argued that the stringent limit values that are being discussed for compost and digestate in the Council do not talk in favour of promoting the use of alternatives to mineral fertilisers. The COM replied that efforts have been to open the scope of the Fertiliser Regulation to such alternatives but that risks to human health and the environment should be addressed irrespectively of the origin of the fertilising product.

3. Conclusions/recommendations/opinions

On plant biostimulants, the COM proposed to draft a mandate for a sub-group on microbial plant biostimulants. The industry members of the sub-group will be selected based on a call for the expression of interest. The draft mandate will be shared to the group for comments.

4. Next steps

The Members of the Fertilisers Working Group were invited to have a look at the information contained in the Registry and to inform the COM of any error found in the Registry.

The FWG should share any technical or scientific information it may have on the assessment of the biodegradability of polymer coatings.

The Member States competent authorities should liaise with their colleagues responsible for the EU research programme and ask them to strongly support any initiative or call for projects helping the future implementation of the revised Fertilisers Regulation.
The company should better describe the market size for Ca IDHa and show that the description of the entry is sufficiently open to allow competition in the single market.

5. **Next meeting**

The next meeting of the FWG is planned on 13 February 2017.

6. **List of participants**

Representatives of competent authorities for the fertilisers Regulation of BG, CZ, DE, DK, EE, ES, FI, FR, HU, HR, IE, IT, LT, LU, LU, NL, PL, PT, RO, SK, SE, UK, MT, CH, NO.

Representatives from the following companies or organisations (observers): CEN TC 223 and TC 260, COCERAL, Copa – Cogeca, EBIC, ECN, ECOS, ECOFI, EEB, EFBA, EPAGMA, ESPP, EUROFEMA, EUROSLAG, EBA, Fertilizers Europe, FEAD, IMA-Europe, IFOAM EU, PPC ADOB.

Chair: European Commission, DG GROW, Unit D2, Chemicals Industry