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MEMO TO THE MEMBERS OF THE FERTILISERS WORKING GROUP

Subject: Setting up of ad-hoc working groups in the context of the revision of Regulation (EC) No 2003/2003

The preparation of the revision of the Fertilisers Regulation is supported by an ongoing technical study (hereinafter 'the study') that aims at collecting information on the EU fertilisers market and at developing and assessing a set of policy options in terms of their possible impacts on human health and the environment, as well as economic and social impacts. The draft final report of this study will be available by mid-November 2011.

Following a suggestion from Germany, the Fertiliser Working Group agreed in April 2011 to set up several expert working groups in order to discuss a range of technical topics that will be relevant in the preparation of the revision of the fertilisers legislation.

We therefore propose to set up the following 4 ad-hoc working groups:

1. WG 1: OVERALL STRUCTURE OF THE FUTURE PROPOSAL

An important objective of the revision is to ensure that fertilisers and related products placed on the market do not pose unacceptable risks to human health and the environment. The way in which this will be achieved and how the necessary criteria and procedures are specified will depend on the global structure of the new regulation. The Commission has required the consultant team carrying out the study to examine various policy options with regard the way in which the future Regulation could operate. The study will also identify, in cooperation with Member States and industry experts, possible safety requirements (e.g. limits on contaminants, positive or negative lists of ingredients, positive or negative lists of products...) for products placed on the EU market. The contribution of other relevant existing EU legislation to achieve the overall objectives has also to be taken into account.

The information collected through the study should be used as a basis for discussion by WG1 when giving guidance on the possible basic principles and structure of the future Regulation. In so doing, WG1 will review and integrate the outcome of the work of the other ad-hoc working groups (described further down). *Nota bene:* WG1 is not expected to develop only one possible solution, but rather to reflect on the necessary elements and structure of a legislative proposal for each of the possible options emerging from the

fertiliser study. The Commission will make the final selection when adopting its proposal.

In particular WG1 should:

- 1.1. **develop a common set of definitions for all the categories¹ of fertilising materials and additives currently placed on the European market.** Existing national legislation/standards or EN norms could be used as starting points for that purpose. Information from the survey on national fertilisers conducted as part of the study will also be useful. WG1 will reflect as well on whether detailed definitions should be included in the main body of the future Regulation, in one or several annexes, or rather in standards.
- 1.2. **develop proposals on how the necessary safety requirements and relevant mechanisms / structures for their verification should be put into practice.** These will obviously depend strongly on the nature of the various policy options, e.g. continued listing of 'fertiliser types' (as today), listing of ingredients only, working with essential requirements + standards, or solely relying on other relevant EU legislation (more information on the options that are examined in the ongoing study is available in Annex I). For each of the possible approaches, WG1 should identify the necessary scientific criteria/data requirements (building in particular on the work of WG3), who would be the actors concerned, and which procedures should be followed.

2. WG 2: NUTRIENT CONTENT, PRODUCT COMPOSITION, AND AGRONOMIC EFFICACY

WG 2 will reflect on whether and how the revised Regulation should set criteria for nutrient content and agronomic efficacy of the various product categories, where this is relevant.

WG2 should look at the following issues:

- 2.1. Is there a **need for / benefits from defining minimum nutrient content or other 'positive' minimum criteria** (i.e. products that do not primarily deliver nutrients might have to be characterised by other relevant parameters (organic matter, neutralising value...) for some of all of the products categories? If found necessary/beneficial, how could these be specified in the various policy options for the future Regulation? WG2 should also discuss the need for establishing rules on whether and how variations in nutrient content should be allowed / restricted and if there is a need to specify rules on mixing/blending different nutrients.
- 2.2. The fertilising value of a product is not only determined by the nutrient content but also by the availability of the nutrients for the crops and how these will be delivered over time. The same reasoning applies to other materials that do not deliver nutrients but modify the physical-chemical characteristics of the soils (e.g. for soil improvers; the capacity to stabilize and improve the soil structure, to correct the soil pH...). WG2 should reflect on **the need for/benefits of**

¹ Fertilisers (mineral, organic, mixed), soil improvers (mineral, organic, mixed), growing media (mineral, organic, mixed), other specific products, and possibly biostimulants

criteria for 'agronomic efficacy' and how they could be specified in the various policy options and eventually implemented where relevant.

- 2.3. WG2 should reflect on **the need for / benefits of establishing more specific rules on the detailed composition or methods of production** for the various products (e.g. limitation of starting materials, full description of production processes, requirements on production stability) and how they could be specified in the various options.
- 2.4. WG 2 should examine whether it is possible to draw up an inventory of ingredients delivering nutrients that are currently used for the manufacture of fertilisers.
- 2.5. WG2 should further reflect on **the need for / benefits of setting requirements for additives** that are added to fertilisers or related products during the manufacturing, packaging or storing stages to improve physical performance (examples: anti-caking agents, adjuvants for granulation, drying agents, wetting agents, anti-dusting agents, colorants, thickeners, dispersants), or additives that improve the agronomic efficacy (examples: humic acids, microbial preparations, growth enhancers, nitrification and urease inhibitors, chelating and complexing agents, coating agents, etc.), and how they could be specified in the various options.
- 2.6. WG 2 will have to identify **which analytical methods will be necessary** to monitor all requirements with regard to nutrient content and other relevant parameters concerning product composition, whether relevant EN standards exist or have to be newly developed (or whether national standards will have to be developed further into EN standards).

3. WG3: CONTAMINANTS, HYGIENE, AND OTHER RISKS

This working group should examine the need for setting appropriate conditions with regard to the presence of contaminants (such as heavy metals or organic pollutants), pathogens, or other risk factors. Information will become available via the ongoing study.

In particular, WG3 should:

- 3.1. draw up **a list of chemical contaminants (heavy metals and organic contaminants)** that need to be controlled in all fertilising materials. The list should be developed by building on existing EU legislation relating to the protection of ground and surface water and/or setting limit values for contaminants in foodstuffs. The inclusion of other substances should be based on evidence that the presence of the substances in fertilisers and related products can have detrimental effects on the environment or human health. The WG should also reflect on a mechanism for reviewing the list of contaminants or the specific conditions applicable to them, e.g. to add other ones.
- 3.2. **propose the appropriate way to set limits for contaminants** (for example, as a percentage related to nutrient content or to total matter 'as received', or to dry matter) or to set restrictions otherwise, and **whether and how the presence of contaminants should be mentioned on the label.**

- 3.3. **reflect on the (scientific) basis for setting limit values for contaminants** – in particular in the absence of comprehensive risk assessments.
- 3.4. **identify the products for which the control of biological contaminants (e.g. pathogens)** is necessary and describe the adequate methods of control.
- 3.5. **recommend sampling and analytical methods for the determination of contaminants or pathogens in the different fertiliser categories**, e.g. building on CEN or national standards.
- 3.6. **identify any other risks that should be addressed**, e.g. from blending of different fertiliser types, specific security concerns regarding ammonium nitrate.

4. WG4: LABELLING, ENFORCEMENT AND CONTROL

WG 4 will work on a range of horizontal topics such as:

- 4.1. **labelling requirements for each category of products** that will be covered by the future Regulation. This should include a description of compulsory markings (e.g. nutrient content and solubilities or other relevant criteria, net or gross mass, volume for fluid fertilisers, particle size, address of the manufacturer,...) and optional markings (e.g. specific directions for the use and storage of fertilisers, the commercial name of the product)
- 4.2. activities to be undertaken and **documents to be kept available by manufacturers and importers** of the various product categories to demonstrate compliance with the relevant rules. Depending on the policy option, this could also include the involvement of conformity assessment bodies.
- 4.3. particular obligations / recommendations to Member State authorities concerning **market surveillance activities** for fertilisers and related products.

The ad-hoc working groups will be composed of experts from the Member States, industry, other stakeholders (such as CEN) and the Commission. They will be co-chaired by a representative of the Commission and a Member State expert. Information exchange will be organised via specific CIRCA Groups for each WG. Working Groups are expected to meet up to three times in the period January to December 2012 – depending on work progress and need for further discussions (a tentative schedule for the meetings is contained in Annex II). WG 1 will have the role of compiling and integrating the results of the other WGs.

Working language for the ad-hoc working groups will be English. At the moment, it is not possible to make a commitment that travel expenses can be reimbursed. More detailed reflection papers to guide the work of the groups will be drawn up prior to their first meetings, building on the outcome of the study. Interim results of the ad-hoc working groups will be made available to the Fertiliser Working Group for information.

Member States and other stakeholders are invited to inform Eric Liégeois and Vincent Delvaux (e-mail: eric.liegeois@ec.europa.eu and vincent.delvaux@ec.europa.eu) by 31st of October 2011 at the latest of their interest in joining one or several ad-hoc working groups, indicating clearly the name, affiliation and e-mail address of the nominated expert(s).

The composition and potential requests for modifications in the assignments to the different groups will be presented and discussed during the next meeting of the Fertilisers Working Group which is tentatively scheduled for 1/2 December 2011.

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ANNEX I

Short description of the options examined in the fertilisers study

Option 1: the current EU legislations governing the placing on the market of fertilisers will remain unchanged (baseline option)

In this baseline option, the existing EU legislation framework would be maintained. Regulation (EC) No 2003/2003 (hereinafter the Fertilisers Regulation) would not be modified and Regulation (EC) No 764/2008 on mutual recognition will continue to apply. All existing national fertiliser laws would also continue to exist.

Some advantages and disadvantages of this option have already been analysed in the ex-post evaluation of the current legislation (More information on: http://ec.europa.eu/enterprise/sectors/chemicals/files/fertilizers/final_report_2010_en.pdf)

Option 2: repeal of the EU legislation on fertilisers and reliance on existing other EU legislation (REACH, Animal by-products Regulation, the Sewage Sludge Directive...) - Deregulation

Under the REACH Regulation, manufacturers and importers of fertilisers must register the substances contained in their products including also information on impurities above 0.1% at particular deadlines, depending on the quantities they manufacture or import. As part of the registrations for substances placed on the market in quantities above 10 tons/year, companies must submit a chemical safety report. The report must demonstrate that the use of the substances in fertilisers - taking into account impurities above 0.1% - is innocuous to human health and the environment in its intended applications, and must also provide instructions on safe handling, storage etc. Details of the requirements for chemical safety reports are given in Annexes I and VI to XI of REACH. Member States and/or ECHA have the possibility to select registration dossiers for fertilisers for further in-depth evaluation, which would also allow addressing specifically certain contaminants (e.g. heavy metals) that might not be included directly in the chemical safety report as their concentration in fertilisers is well below the limit of 0.1% mentioned above.

Organic fertilisers made up of certain wastes, animal and plant by-products could be regulated under existing and forthcoming EU legislation: for example, Council Directive 86/278/EEC regulates the use of sewage sludge in agriculture to prevent harmful effects on soil, vegetation, animal and humans and Regulation (EC) No 1774/2002 laying down health rules as regards animal by-products which have to be kept out of the food chain for sanitary reasons but can be reused in agriculture if the products comply with the strict hygiene rules of that Regulation. However, it is possible that not all organic fertiliser types currently on the market can be covered by the existing EU legislative framework.

Lastly, no information on the agronomic effectiveness would be provided so that any innocuous substance could be sold as a fertiliser, whether of significant agronomic benefit or not. However, it can be expected that the users – in particular farmers – will be capable of selecting products that do actually bring benefits, in particular if they get support from agricultural advisory services.

Regardless of whether or not this option will be chosen, the future study will in any case examine relationships and potential synergies with relevant and forthcoming legislations.

Option 3: voluntary commitment by industry

On top of the current regulatory framework for fertilising materials (Regulation (EC) No 2003/2003, Regulation (EC) no 764/2008, national fertiliser laws), fertiliser manufacturers and importers could agree to voluntarily establish quality procedures and standards for all fertilisers, including also on the presence of contaminants and / or infections materials based on good manufacturing practices, self-control activities, certification schemes etc.

Several attempts in this sense have been organised in the past (e.g. EPAGMA for growing media, French quality guidelines for organo-mineral fertilisers, development of CEN standards) but have been met with limited interest or scepticism by Member States authorities. Where such agreement exists, it is often limited to the trade of national fertilisers.

Option 4: harmonisation of the fertilisers market using the format of the current Regulation

Under this option, all technical details such as minimum nutrient content, description of manufacturing procedures would be fully described in an Annex of 'fertiliser types' in the legal proposal. Maximum limit values for contaminants and specific technical requirements for additives would also be introduced.

In the light of the experience with the current Regulation, it will probably be necessary to develop clearer procedures (data requirements and deadlines) for the approval of new fertiliser types.

There are two sub-options: either regulating all different fertiliser categories (mineral, organic, organo-mineral, soil improvers, growing media) in one Regulation, or developing separate Regulations for one or each of the different categories.

Option 5: harmonisation of the fertiliser market listing authorised ingredients and additives

As variant to option 4, this option would avoid a detailed description of fertiliser types but would list in an Annex permitted ingredients and additives that could be allowed in the manufacture of fertilisers. Limit values for contaminants and other specific technical details would also be described, whilst further details could be developed in EN standards.

There would still be a need to regularly adapt the list of authorised ingredients and additives to technical progress (based on technical dossiers and evaluation by authorities), but overall flexibility would be higher than in option 4.

Again, there are two sub-options: either regulating all different fertiliser categories (mineral, organic, organo-mineral, soil improvers, growing media) in one Regulation, or developing separate Regulations for one or each of the different categories.

Option 6: harmonisation of the fertilisers market using the 'New Approach'

In this option the future Regulation would specify general essential requirements with regard to safety, agronomic and other specific technical issues (as appropriate) for the placing on the internal market of safe and efficient fertilisers or additives. All further details – if necessary also individual types – would be developed in EN standards.

There would be no more listing of ingredients or types in an Annex of the Regulation and hence no more need for frequent adaptations to technical progress.

Option 7: harmonisation of the fertilisers market by using the most appropriate option for each fertilising material categories pending their intrinsic characteristics.

It is also conceivable that for different categories of fertilisers, different options could be chosen, e.g. option 6 for growing media, but rather option 5 for organic fertilisers.

ANNEX II

Provisional schedule for the meetings of the ad hoc working-groups

1st Round:

WG 1: 16.01.2012

WG 2: 17.01.2012

WG 3: 18.01.2012

WG 4: 13.02.2012

2nd Round:

WG 2: 26.03.2012

WG 3: 23.04.2012

WG 1 and WG 4: 18.06.2012

3rd Round:

WG 1 and WG 3: 17.09.2012

WG 2: 15.10.2012

WG 4: 16.10.2012

WG 1: 12.11.2012