EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION

7396-16
COM (2016) 157 final
7396-16 ADD 1
COM (2016) 157 final
7396-16 ADD 2
SWD(2016) 64 final
7396-16 ADD 3
SWD (2016) 64 final
7396-16 ADD 4
SWD (2016) 65 final


Submitted by the Department for Environment, Food and Rural Affairs

Signed April 2016
SUBJECT MATTER

1. On 17 March 2016 the European Commission published a draft proposal for a replacement Regulation of fertilisers that are from mined, chemically produced or inorganic materials. The intent is to replace the existing Regulation EC 2003/2003 with a framework with greater flexibility, a broader scope to cover recycled and organic materials for fertilising purposes, and which is more in line with the Circular Economy Package that was announced in the EU Communication dated 2 December (EM 14972/15 – covering a Commission Communication on an EU Action Plan for the Circular Economy). The Commission plans for Member States to implement a finalised new Regulation from 1 January 2018, and this will affect the United Kingdom. The proposal is related to the Circular Economy Package, the Single Market Strategy and Horizon 2020.

2. The proposed Regulation is based on two principles, the first being opening the internal market to organic and innovative fertiliser products, which are not in the scope of the current Regulation (EC) No. 2003/2003. The Commission is keen to harmonise conditions for the production of fertilisers sourced in line with the Commission’s Circular Economy Action Plan and enable new recycled or organic fertilisers onto the market, thus boosting investment in this sector and providing farmers with a wider choice for application onto their land. The proposed Regulation includes harmonised conditions for organic materials in its scope, with the aim of supporting the EU’s Circular Economy objectives by incentivising large-scale fertiliser production in the EU from domestic organic or secondary raw materials and reducing the EU’s reliance on phosphates required for certain fertilisers imported from outside the Union.

3. The second principle is derived from the Commission’s wish to address environmental concerns arising from contamination by EC fertilisers of soil, inland waters, sea waters and food. The new proposal seeks to introduce harmonised limits on the presence of cadmium in phosphate fertilisers, removing the market fragmentation of national cadmium limits.

4. The Commission’s document consists of the proposed regulation, five annexes detailing the criteria fertiliser products must meet in order to obtain ‘CE’ certification, two impact assessments based on the principles detailed above, and an executive summary of the impact assessments.

SCRUTINY HISTORY

5. The Parliamentary scrutiny history relevant to this proposal is contained in the attached Annex A.
MINISTERIAL RESPONSIBILITY

6. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs, Scottish Ministers, Welsh Ministers and Northern Ireland Executive Ministers.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

7. This proposal will apply to the UK as a whole, and there are issues of interest to the Devolved Administrations. They have been consulted in the preparation of this Explanatory Memorandum and will be appropriately engaged as we work closely with them throughout negotiations.

LEGAL AND PROCEDURAL ISSUES

8.

i) Legal basis

Article 114 of the Treaty on the Functioning of the European Union (TFEU) provides the legal basis for the establishment and functioning of the internal market and the approximation of provisions laid down by the law concerning health, safety, environmental protection and consumer protection taking account of new developments based on scientific facts.

ii) European Parliament Procedure

The proposal is subject to the ordinary legislative procedure under Article 294 of the TFEU.

iii) Voting procedure

Qualified majority.

iv) Impact on United Kingdom Law

This proposal contains a replacement and consolidation of the existing 2003 Regulation of the European Parliament and Council for the marketing of fertilisers. If adopted, there are existing UK domestic statutory instruments that will require replacement to ensure that this replacement EU Regulation can be fully implemented and enforced in the respective administrations by 1 January 2018.

The existing 2003 EU Regulation is implemented through an England and Wales S.I. that will require re-making before 2018. In Scotland and Northern Ireland they will also have to take similar action. Other GB and UK-wide domestic legislation covering aspects that will now be covered by the new
v) Application to Gibraltar

If adopted, the Regulation will apply to Gibraltar.

**Fundamental rights analysis**

9. No fundamental rights are affected by this proposal which aims to boost production of effective, safe and innovative organic and secondary raw material fertilisers that are more beneficial to the environment and public health and result in reduced import dependency. This is an extension of harmonisation from production of inorganic production of fertilisers that has operated successfully since the existing 2003 EC Fertiliser Regulation came into force. Product harmonisation in the approval for such fertilisers is proportionate and does not go beyond what is required for regulatory certainty. It should lead to administrative simplification.

10. The proposal mainly affects those producers of organic and secondary raw materials in line with the advertised ‘Circular Economy’ model that was announced by the EU Commission in December. There will be facilitated access to the internal market.

11. The introduction of new EU maximum levels of the heavy metal cadmium will result in some producers having to adapt production to reduce the levels of this metal, this does not engage fundamental rights as there will be no deprivation of property or discrimination with regard to UK producers. The economic impact on producers has been deemed by the EU in its impact assessment as being proportionate to the objective of preventing irrevocable soil contamination and reducing risks of cadmium in food.

**APPLICATION TO THE EUROPEAN ECONOMIC AREA**


**SUBSIDIARITY**

13. The proposal is proportionate and justified in accordance with both limbs of the principal of subsidiarity as set out in Article 5 of the TFEU in that its objectives cannot be sufficiently achieved by the Member States acting on their own. The proposal can be better achieved by action on the part of the EU in order to achieve the necessary harmonisation in the approvals process in order to ease access of organic and waste-based fertilisers to the EU single market, and thereby bringing such type of fertilisers on a level playing field with traditional
non-organic fertilisers that have been subject to a harmonised approval process since the 2003 EU Regulation has been in place.

14. The Commission’s objective in boosting investment in production and uptake of effective, safe and innovative fertilisers produced from organic or secondary raw materials appears to the UK to be a valid objective.

15. 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. 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 through this proposal is designed to allow the free movement of such fertilisers by establishing harmonised high quality, safety and environmental criteria.

16. The proposed Commission objective of introducing EU-wide maximum limits on the use of cadmium in fertilisers can effectively reduce such a contaminant in harmonised inorganic phosphate fertilisers to safer levels. We are of the view that it may otherwise be difficult for Member States to achieve this unilaterally.

POLICY IMPLICATIONS

17. In practice, this proposal will mean that organic fertilisers will be brought into the scope of the regulation, resulting in the harmonisation of these products across the European Union. A number of inorganic fertilisers which are currently not included in the scope of Regulation EC 2003/2003 will also be included. The proposal asserts that recycling domestic organic or secondary raw material in line with the circular economy model to use as fertiliser could reduce the EU’s dependence on phosphorus imported from outside the EU, which in turn has the potential to increase resource efficiency and create jobs in the EU by boosting investment and innovation in the circular economy.

18. It will also mean that the Commission is empowered to amend the regulation’s list of materials in the product function categories of CE-marked fertilising products, in theory creating a more sympathetic space for innovative fertilisers to be brought into scope more efficiently, allowing them to gain CE status.

19. Additionally, the proposed regulation will introduce harmonised cadmium limits for phosphate fertilisers, with the aim of minimising the negative impact of phosphate fertiliser use on the environment and on human health, contributing to a reduction of cadmium accumulation in soil. It will also remove the market fragmentation which currently exists in the form of national cadmium limits in some Member States.
20. The proposal will repeal the existing Fertilisers Regulation EC 2003/2003, but will allow already harmonised fertilisers to remain on the market subject to compliance with the new safety and quality requirements.

21. We are currently assessing in further detail the potential implications on UK businesses and transport, particularly the scale in terms of UK industry interests and how the proposal would affect the sector in economic term

CONSULTATION

22. We have discussed the draft regulations with industry leads and other experts and plan to consult external stakeholders from environmental NGOs, the agrochemical industry and the farming industry throughout the negotiation process.

23. The Devolved Administrations have been consulted for their views on the proposal. The Scottish Government is consulting with Scotland’s Rural College for further information.

IMPACT ASSESSMENT

24. The Commission has produced its own impact assessments, which economists are reviewing.

FINANCIAL IMPLICATIONS

25. The Commission’s proposal states that there will be no cost to the European Union if the proposed regulation is brought into force. Economists are evaluating the Commission’s impact assessments, which are subject to revision.

TIMETABLE

26. The proposal was published by the EU Commission on 17 March 2016 and is due for discussion for the first time at official level at a Working Party on 12 April 2015. The Commission has stated 1 January 2018 as the implementation date of the proposed regulation.

George Eustice
Minister of State for Farming, Food and the Marine Environment
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS
ANNEX A

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:


DATE EM SIGNED: 18/12/2015

SCRUTINY COMMITTEES’ RECOMMENDATIONS:

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<td>Politically important. Not cleared from scrutiny; recommended for debate in European Committee A (report no 14/5/2016)</td>
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DATE EM SIGNED: 21/7/2014

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DATE EM SIGNED: 19/06/2013

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EM NO /TITLE: 7367/13 GREEN PAPER ON A EUROPEAN STRATEGY ON PLASTIC WASTE IN THE ENVIRONMENT

DATE EM SIGNED: 21/03/2013

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EM 8310/13 ADD 1: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL BUILDING THE SINGLE MARKET FOR GREEN PRODUCTS FACILITATING BETTER INFORMATION ON THE ENVIRONMENTAL PERFORMANCE OF PRODUCTS AND ORGANISATIONS


DATE EM SIGNED – 23/4/13

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DATE EM SIGNED: 04/02/2013

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DATED – 07/12/12

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DATE EM SIGNED: 01/11/2011

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