

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

Ref. 17-692

10 March 2017

SUBCOMMITTEE I ON THE FREE MOVEMENT OF GOODS

EEA EFTA Comment

on 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

1. INTRODUCTION

1. The EEA EFTA States have studied with great interest the proposal for a regulation on the making available on the market of CE marked fertilising products (COM(2016) 157), a key initiative under the European Commission's Circular Economy Package adopted in December 2015.
2. Whereas the European Commission's efforts to strengthen the internal market for fertilisers are welcomed, the EEA EFTA States have concerns regarding certain elements of the proposal and, therefore, welcome the opportunity to submit their comments.
3. These comments are given without prejudice to further observations.

2. CONTAMINANTS AND THE PRECAUTIONARY PRINCIPLE

4. The proposal envisages the establishment of maximum values for one organic contaminant only, namely for polyaromatic hydrocarbons ("PAHs"), c.f. Part II of Annex II. However, there are numerous other organic contaminants which may potentially be present in a fertilising product. Such contaminants might not be of concern if such products are used only once, and in a limited area, but may well present a risk if used more extensively and repeatedly over several years.
5. As there is currently inadequate scientific data on the effects of many of the relevant organic contaminants, the application of the precautionary principle will be an indispensable tool for the market surveillance authorities.

6. Taking that into account, the EEA EFTA States call for **a clear statement in the Regulation’s preamble (No. 8) and in Article 37 that market surveillance authorities may apply the precautionary principle** according to Regulation (EC) No 178/2002 Article 7 when assessing whether a fertilising product represents an unacceptable risk. It should also be stated in the proposal that the specific risk related to extensive or repeated use should be taken into account.

3. NATIONAL RESTRICTIONS ON USE

7. It is reasonable that specific conditions and rules for the use and application of fertilisers, based on the product’s heavy metals content, is regulated at Member State level. National restrictions on use, based on the immediate or potential long-term effects due to repeated application, should not be considered to be technical barriers to trade. Such restrictions may be based on nutrient content, heavy metal content or content of other contaminants.
8. Among the situations where such national restrictions are reasonable are high levels of contaminants in the soil, in the product or in sensitive water bodies. Regarding Norway specifically, a comparison can be made between the maximum levels suggested in the Regulation and earlier risk assessments taking into account the application of organic fertilising products over a span of one hundred years. Those risk assessments suggest that the maximum values for heavy metals set out in the proposal are too high, unless coupled with restrictions on use¹².
9. Moreover, it would be challenging to set appropriate risk-based restrictions on use when there is no requirement to provide information on the heavy metal content on the label.
10. The EEA EFTA States would therefore welcome **a clarification in the Regulation that it does not preclude national restrictions on use.**

4. MAXIMUM VALUES FOR COPPER, ZINC AND CADMIUM

11. The EEA EFTA States are particularly concerned that the proposal does not set maximum values for copper and zinc, which could lead to adverse consequences. Repeated use of products containing high levels of zinc and copper may adversely impact organisms and the food chain, as well as posing a threat to human health³. Copper and zinc also have consequences for antibiotic resistance⁴. The EEA EFTA States have noted that maximum values for copper and zinc have been suggested during the legislative process, but find that **the suggested maximum values in the proposal are far too high.**

¹ Norwegian Scientific Committee for Food Safety. *Zinc and Copper in Pig and Poultry Production — Fate and Effects in the Food Chain and the Environment*; Norwegian Food Safety Authority: Oslo, Norway, 2014: <http://www.vkm.no/dav/e06b487e66.pdf>

² Eriksen et al. / VKM (Norwegian Scientific Committee for Food Safety) “Risk assessment of contaminants in sewage sludge applied on Norwegian soils”, 20 August 2009: <http://www.vkm.no/dav/2ae7f1b4e3.pdf>

³ See footnote 2.

⁴ See footnote 2.

12. Some of the raw materials, which are allowed according to the proposal, have very high levels of zinc and copper, which again increases the probability of high levels of such heavy metals in the fertilising products. The fact that the labelling requirement only applies when there are relatively high levels of copper or zinc in the product, amplifies this concern. An increase of these metals in susceptible soil is likely to occur also when using fertilising products containing levels which are lower than those triggering a labelling requirement. The EEA EFTA States suggest introducing **labelling requirements at a level of 50 and 150 mg/kg dry matter for copper and zinc respectively.**
13. Concerning cadmium levels in mineral fertilisers, the proposal envisages a scheduled decrease over a 12-year period during which the limits would move from 60 mg/kg P₂O₅ to 20 mg/kg P₂O₅. It is important to keep the scheduled decrease in maximum levels for cadmium to be able to reduce the dietary exposure.
14. Iceland and Norway figure among several countries that have been allowed to derogate from these limits. It is the opinion of the EEA EFTA States that **countries which already have in place a derogation should be able to keep it**, rather than being obliged to increase the levels during the interim period.

5. NUTRIENTS AND LABELLING

15. Under the current legal framework, fertilisers may be labelled either based on the oxide form or on the elemental form. However, the proposal only allows for labelling on the oxide form.
16. Several EU countries, as well as Iceland and Norway, require nutrients to be labelled in elemental form. Requiring labelling in oxide form will be very costly due to the necessity of educating users and producers, modifications to relevant computer software and fertiliser calculators as well as changes to guidance documents. There would be a risk that uninformed farmers suffer yield losses due to inadequate levels of nutrients applied. Moreover, it would be highly confusing to have one regulation requiring labelling on the oxide level while other regulations applicable to the same user refer to the elemental form, such as regulations on pollution, soil sampling and feed.
17. It is the view of the EEA EFTA States that this important concern related to additional costs was not sufficiently addressed in the European Commission's Impact Assessment, although it did include one example of the additional costs that may arise. Translation of labels is already a requirement, so that changing from oxide form to elemental form would not represent any additional burden to economic operators.
18. On this basis, the EEA EFTA States consider the proposed changes on labelling to be overly restrictive and unnecessarily costly, and therefore **call for the current system of alternative labelling to be kept.**

6. RAW MATERIALS

19. The EEA EFTA States are concerned that in the proposed Component Material Category “CMC 2”, **no requirement for hygienisation** of the relevant materials is foreseen. This concern relates to both plant health and invasive alien species.
 20. It is the understanding of the EEA EFTA States that sludge (manure) from fish farming is included in CMC 3 and CMC 5 (1). If not, it should be added to the list of allowed raw materials. Furthermore, plant based feed-materials that are not used or surplus do not seem to be included in the list of allowed raw materials. Such feed is today often delivered to compost or biogas plants and should be added to the list.
-