



**Council of the
European Union**

**Brussels, 27 April 2016
(OR. en)**

1/16

**Interinstitutional File:
2016/0084 (COD)**

**ENT 1
MI 1
AGRILEG 1
ENV 1
CHIMIE 1
IND 1
CODEC 1**

NOTE

From: General Secretariat of the Council

To: Delegations

Subject: 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

Delegations will find attached the Presidency version of the text of the proposal. At this stage, all delegations maintain a scrutiny reservation of the text.

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 EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ,

Acting in accordance with the ordinary legislative procedure,

Whereas:

PFC 1: FERTILISER

²⁴⁶A fertiliser shall be a ~~CE-marked~~ EU fertilising product the function of which is to provide aimed at providing nutrients to plants **or mushrooms**.²⁴⁷

PFC 1(A): Organic fertiliser

1. An organic fertiliser shall contain
 - organic carbon (C_{org})²⁴⁸ and
 - nutrients²⁴⁹

of solely biological origin.

Organic fertiliser may contain leonardite and lignite, but excluding **no other** material which is fossilized or embedded in geological formations.²⁵⁰

2. Contaminants must not be present in the ~~CE-marked~~ EU fertilising product by more than the following quantities:²⁵¹

²⁴⁶ SK: Should read for the purposes of this Regulation (or similar).

²⁴⁷ PT: Add "in an efficient manner".

²⁴⁸ NL/FI: Replace "organic carbon" by "organic matter". ES: Add an obligatory ratio "C/N".

²⁴⁹ PT: Use wording "other nutrients".

²⁵⁰ EL: Add: "...**except, if this material is a by-product of other, non-fertilizer related, excavation processes**". AT: Add: "In case of CMC3, CMC4 and CMC5 the maximum amount of additives as defined in Annex II, Part II may be added as input materials.". FR: Include an efficiency criterion. IT: Refer explicitly to peat.

²⁵¹ DE/AT: Contaminants and hygiene levels for all PFCs (and CMCs) should be organised in one big table in order to simplify, to harmonise across the board as far as possible and to give an overview on remaining differences. DE: Especially heavy metals limits should be identical for all IPFCs. DE: Add limit values for organic contaminants such as dioxines and PCBs maximum levels for other relevant substances should be included in the new EU fertiliser regulation, such as maximum levels for thalium (TI), perfluorinated tensides (PFT), dioxines and dl-PCB. DE proposes: Thalium (TI): 0,1 mg/kg dry matter; Perfluorinated tensides (PFT): 1,0 mg/kg dry matter; Sum of dioxines and dl-PCB: 30 ng/kg dry matter.. LT: Add contaminants from drugs, pesticides etc. HU: Add limit values for PAH, TPH, PCB, PCDD. Cion: Not necessary, as sewage sludge is not considered an organic fertiliser.

- Cadmium (Cd) 1,5 mg/kg dry matter,²⁵²
- Hexavalent chromium (Cr VI) 2 mg/kg dry matter,²⁵³
- ~~Total chromium (Cr) 100 mg/kg dry matter^{254 255}~~
- Mercury (Hg) 1 mg/kg dry matter,
- Nickel (Ni) 50 mg/kg dry matter,²⁵⁶
- Lead (Pb) 120 mg/kg dry matter²⁵⁷, and
- ~~Biuret (C₂H₅N₃O₂) 12 g/kg dry matter.~~
- Arsenic (As) 40 mg/kg dry matter
- Copper (Cu) 300 mg/kg dry matter
- Zinc (Zn) 800 mg/kg dry matter²⁵⁸

²⁵² IT/BE/PT: Suggests 3 mg/kg. HU: Suggests 2 mg. PL: Suggests 4 mg. PT: In any case, align between organic fertilisers and soil improvers. LV: Specify the test method for liquid fertilisers. Furthermore, if the phosphorus content in liquid inorganic fertilizers does not exceed 1.5% then it should not be necessary to determine their Cadmium content.

²⁵³ IT: Hexavalent chromium should be required below the detection limit. (throughout the PFCs).

²⁵⁴ In favour of "Total chromium" limit: SK/SE/HU/DK/BE/CZ/FI/PT/EL/FR. Only labelling of total chromium: Cion/DE/UK/NL/LV/LT/IT/BG/AT/RO. Other delegations flexible, if the threshold is not too strict. See also compromise suggestion on labelling in Annex IV.

²⁵⁵ CZ: Cr VI does not make sense for organic fertilisers, as it is reduced to Cr III. PL: Limit value should be higher.

²⁵⁶ AT: Level is too strict, suggests 80 mg.

²⁵⁷ SE: Should be 60 mg/kg. HU: Lead should be 100 mg.

²⁵⁸ Presidency compromise (WK 1625/2016) to set strict limits, but with an exception where Copper and Zinc are intentionally added as micronutrients. In the latter case, the labelling provisions of Annex III concerning PFC 1 (B) and PFC 1 (C) would apply. Against this solution: IT/DK/BG/UK.

- 1 % by mass of total nitrogen (N), or
 - 1% by mass of total phosphorus pentoxide (P₂O₅), or
 - 1% by mass of total potassium oxide (K₂O) and
 - 3% by mass of total sum of nutrients .²⁸⁴
3. Organic carbon (C_{org}) shall be present in the ~~CE~~-marked-EU fertilising product by at least 5% by mass.²⁸⁵
- ~~4. Where organic nitrogen (N_{org}) is present, the ratio of organic carbon to organic nitrogen (C_{org}/N_{org}) shall be less than 20.²⁸⁶~~

PFC 1(B): Organo-mineral fertiliser

1. An organo-mineral fertiliser shall be a co-formulation²⁸⁷ of
- one or more inorganic fertilisers, as specified in PFC 1(C) below, and
 - one or more a materials²⁸⁸ containing
 - organic carbon (C_{org}) and
 - nutrients²⁸⁹
- of solely biological origin, including leonardite and lignite, but excluding other materials which are is-fossilized or embedded in geological formations.²⁹⁰

²⁸⁴ ES: Should be 4 % as for solid organic fertilisers.

²⁸⁵ AT: Suggests 2 % for organic carbon. SK/FR: Add " In liquid fertilising products designed for foliar application shall not be present in any developmental stage endo (exo) parasites of humans. " PT: Add "in fresh matter". Cion: After due reflection a reasonable limit value could not be fixed. DE: The current limit would exclude liquid digestate from the scope of the regulation.

²⁸⁶ Against deletion of this provision: ES.

²⁸⁷ PT: Define "co-formulation". Not very clear. Cion: Means that the organo-mineral fertilisers are complex organo-mineral fertilisers and not blends of organic and inorganic fertilisers.

²⁸⁸ Reworded following IT suggestion.

²⁸⁹ PT: Use "other nutrients". ES: Add a ratio "C/N".

²⁹⁰ New wording following remarks by several delegations.

2. Where one or more of the inorganic fertilisers in the co-formulation is a straight or compound solid inorganic macronutrient ammonium nitrate fertiliser of high nitrogen content, as specified in PFC 1(C)(I)(a)(i ii)(A), the ~~CE-marked~~-EU fertilising product shall not contain ~~15,75~~ **10** %²⁹¹ by mass of nitrogen (N) as a result of ammonium nitrate (NH₄NO₃).
3. Contaminants must not be present in the ~~CE-marked~~-EU fertilising product by more than the following quantities:

(a) Cadmium (Cd)

- (1) Where the ~~CE-marked~~-EU fertilising product has a total phosphorus (P) content of less than 5 % phosphorus pentoxide (P₂O₅)-equivalent by mass: 3 mg/kg²⁹² dry matter, or
- (2) Where the ~~CE-marked~~-EU fertilising product has a total phosphorus (P) content of 5 % phosphorus pentoxide (P₂O₅)-equivalent or more by mass ('phosphate fertiliser')²⁹³:
- As of [Publications office, please insert the date of application of this Regulation]: 60 mg/kg²⁹⁴ phosphorus pentoxide (P₂O₅),
 - As of [Publications office, please insert the date occurring three years after the date of application of this Regulation]: 40 mg/kg phosphorus pentoxide (P₂O₅), and²⁹⁵

²⁹¹ Reworded following PL suggestion.

²⁹² SE: Suggests 2 mg. FI/DE/SI: 1,5 mg. IE: Scrutiny reservation.

²⁹³ IT: Delete the term "phosphate fertiliser" as it is not a legal definition (throughout).

²⁹⁴ DK: Do not start higher than 48 mg/kg.

²⁹⁵ Different phasing in requested by following delegations: PL (90 => ??), PT/UK (80 => 60 => 40); ES (75 => ??); RO: (80 => ??); IT (higher than 60 => ??); BG: (60 => review clause); IE: (60 => higher than 20); FR: (60 => higher than 40 endpoint); DE (60 => endpoint with obligatory labelling of actual Cd-content); BE (?? => 40 endpoint ; and should be expressed per ha). The following delegations can accept phasing-in-as proposed by the Cion: LV/NL/LT/MT/DK/HR/CY/SK/CZ/SI/FI/EE/SE/HU/LU/AT/DE/IE. The following delegations insist on a starting point with 75 mg or higher: PL/ES/RO/UK/PT/BG. IT could accept this as well. Starting with 60, but having 20 only as labelling obligation, not as limit values (Pres suggestion from WK 1625/2016): IE/AT/DE/BE/FR/NL/IE/HR/EE. Nine delegations presented a compromise keeping the possibility for stricter national limits in WK 2071/17: DK, SE, LT, HU, FI, SI, SK, CZ, NL. To this solution, the following delegations could also give agreement: LV/AT/EL/BE.

- As of [Publications office, please insert the date occurring twelve years after the date of application of this Regulation]: 20 mg/kg phosphorus pentoxide (P2O5),

(b) Hexavalent chromium (Cr VI)	2 mg/kg dry matter,
(ba) Total chromium (Cr)	100 mg/kg dry matter ²⁹⁶
(c) Mercury (Hg)	1 mg/kg dry matter,
(d) Nickel (Ni)	50 mg/kg dry matter, and ²⁹⁷
(e) Lead (Pb)	120 mg/kg dry matter. ²⁹⁸
(ea) Arsenic (As)	40 mg/kg dry matter
(eb) Copper (Cu)	600 mg/kg dry matter
(ec) Zinc (Zn)	1500 mg/kg dry matter ²⁹⁹
(ed) Biuret (C₂H₅N₃O₂)	12 g/kg dry matter

Furthermore, DK/HU/LT/SE/FI/SI are interested in a derogation allowing them to keep banning fertilisers that are not in conformity with their own stricter standards at least for a transitory period. Cion and Legal Services will further explore the legal possibilities for following options: Explicit derogation as such; Activation of the safeguard clause by individual countries and then court decision; User restrictions and its relationship with the free movement clause (Art. 3); Obligatory labelling of high or voluntary labelling of low cadmium content and enforcement of this requirement by market surveillance authorities.

- ²⁹⁶ Inserted following SK/IE/ ES suggestions. Situation on total chromium limit see under PFC 1 (A).
- ²⁹⁷ AT: On nickel and bacteria see identical footnotes on PFC 1 (A) (I). SK: Supports AT suggestion for bacteria (presence in sample). PL: Suggests 190 mg/kg. LT: Supports AT for need of testing method. IT: Nickel 100 mg.
- ²⁹⁸ EL: Arsenic 2 mg/kg dry matter. HU: Arsenic should be 10mg. SE: Lead should be 60 mg/kg. FI/HU/LT/SI: Lead should be 100 mg, Arsenic 25 SK: Add values for Selen. HU: Add limits on PAH, TPH, PCB, PCDD as well as for Co and Se.
- ²⁹⁹ SE: Zn should be 800 mg/kg. LT: Lower levels of Cu and Zn are better. Presidency compromise (WK 1625/2016) to set strict limits, but with an exception where Copper and Zinc are intentionally added as micronutrients. In the latter case, the labelling provisions of Annex III concerning PFC 1 (B) and PFC 1 (C) would apply. Against this solution: IT/DK/BG/UK.

PFC 1(C)(I): Inorganic macronutrient fertiliser³³²

1. An inorganic macronutrient fertiliser shall be aimed at providing plants with one or more of the following macronutrients: nitrogen (N), phosphorus (P), potassium (K), **calcium (Ca)**, magnesium (Mg), ~~calcium (Ca), sulphur (S) or sodium (Na)~~ **or sulphur (S)**.³³³
2. Contaminants must not be present in the ~~CE-marked~~ EU fertilising product by more than the following quantities:

(a) Cadmium (Cd)

(i 1) Where the ~~CE-marked~~ EU fertilising product has a total phosphorus (P) content of less than 5 % phosphorus pentoxide (P₂O₅)-equivalent by mass: 3 mg/kg dry matter³³⁴, or

(ii 2) Where the ~~CE-marked~~ EU fertilising product has a total phosphorus (P) content of 5 % phosphorus pentoxide (P₂O₅)-equivalent or more by mass ('phosphate fertiliser'):³³⁵

- As of [Publications office, please insert the date of application of this Regulation]: 60 mg/kg phosphorus pentoxide (P₂O₅),

³³¹ **FR:** Scrutiny reservation on 1% threshold and on necessity of pathogens requirements.

³³² **ES:** Keep distinction into primary, secondary and micronutrient from 2003/2003. **HU:** Keep category of meso-nutrients or secondary nutrients (Magnesium, Calcium, Sulphur, Sodium). **Cion:** Distinction would have no practical difference as we define our minimum contents. **FR:** Definitions of inorganic fertilisers and subgroups have severe repercussions on other parts of EU legislation.

³³³ **PT:** All sodium containing products should be in a special category PFC 7. **BG:** Definition is not clear, can the PFC 1 C 1 contain micronutrients? Is the definition consistent with Annex III?

³³⁴ **SE:** Suggests 2 mg/kg. **FI/BE:** 1,5 mg. **HU:** Should be lower than 3 mg. **CZ:** Refer to fresh matter, not dry matter. **Cion:** Would have little impact on having to fulfill the limit values.

³³⁵ **IE:** Reservation on the links to phosphate. **IE/PT:** Suggest to start at 80 mg/kg and reduce to 60 mg/kg within three years. **DK:** Do not start above 48mg/kg.

- As of [Publications office, please insert the date occurring three years after the date of application of this Regulation]: 40 mg/kg phosphorus pentoxide (P2O5), and³³⁶
- As of [Publications office, please insert the date occurring twelve years after the date of application of this Regulation]: 20 mg/kg phosphorus pentoxide (P2O5),

(b) Hexavalent chromium (Cr VI) 2 mg/kg dry matter,³³⁷

~~(ba) Total chromium (Cr) 100 mg/kg dry matter³³⁸~~

(c) Mercury (Hg) 12 mg/kg dry matter,³³⁹

(d) Nickel (Ni) 100-120 mg/kg dry matter,³⁴⁰

(e) Lead (Pb) 120-150 mg/kg dry matter,³⁴¹

(f) Arsenic (As) 40-60 mg/kg dry matter,³⁴²

~~(fa) Copper (Cu) 600 mg/kg dry matter~~

~~(fb) Zinc (Zn) 1500 mg/kg dry matter³⁴³~~

³³⁶ BE: Phasing-in of stricter limits should not go below 40 mg/kg. UK: Phasing in until 80 mg/kg is no problem, stronger reductions have to be scientifically evaluated further, no final position yet. PL: Do not go below 90mg/kg.. AT: 40 mg/kg is too ambitious. IT/AT/BG/IE: Do not go beyond 60 mg/kg(ES: 75 mg/kg. Within five years do a review, but without fixing a new limit at this stage.)HU: Keep end-point 20mg.

³³⁷ LT: Hexavalent chromium should be 1 mg.

³³⁸ ES: Suggests 300mg. Situation on total chromium limit see under PFC 1 (A).

³³⁹ FI: Mercury 1 mg, Nickel 100. Lead 100, Arsenic 25. IT: In general contaminant limits for inorganic fertilisers are too high.

³⁴⁰ PL: Suggests 190 mg/kg. SK/DE/HU: Suggests 50 mg/kg. LT: 60 mg.

³⁴¹ SE: Lead should be 60 mg. DE: Lead 120 mg/kg. HU/LT: Lead 100 mg.

³⁴² EL: Suggests 90 mg (Nickel), 120 mg (Lead), 6 mg (Arsenic). DE: Arsenic 40mg. HU/SK: Arsenic 10mg. SE/SK: Include value for total chrome (50mg, SE, 100 mg SK). FI/AT/HU: Add selenium. Cion: For the moment we do not have clear limit values for Selenium.

³⁴³ PL/EL: No need for Cu and Zn values in the inorganic macronutrient fertilisers. BE: Higher limits for Cu and Zn would be preferable. DK: Against deletion. Cu and Zn are nutrients for the micronutrient type only, not in general. SE: Zn should be 1000 mg/kg. Presidency compromise (WK 1625/2016) to set strict limits, but with an exception where Copper and Zinc are intentionally added as micronutrients. In the latter case, the labelling provisions of Annex III concerning PFC 1 (B) and PFC 1 (C) would apply. Against this solution: IT/DK/BG/UK.

- (g) Biuret (C₂H₅N₃O₂)³⁴⁴ 12 g/kg dry matter, and
- (h) Perchlorate (ClO₄⁻) 50 mg/kg dry matter.³⁴⁵

³⁴⁴ CZ/PT/PL/FR/EE: There is no need for a biuret limit value in inorganic fertilisers. Delete or restrict it to cases, where urea is added to the product. Cion: It does not harm, as manufacturers in general do not have to verify the limit value when it is obvious that biuret cannot be contained, no need to single out every case for every contaminant. EE: Would synthetic urea qualify as organic or inorganic fertiliser ?

³⁴⁵ UK: Reservation on the perchlorate limit value. PT: The requirement should be restricted to sodium nitrate based fertilisers. PL/BE/DE: There is no analytical method to secure the limit value. Cion: Flexible on the limit value, but a method is being developed right now.