



Council of the
European Union

Brussels, 27 February 2023
(OR. en)

Interinstitutional File:
2023/0049(COD)

6896/23
ADD 3

ENT 38
MI 144
COMPET 151
IND 75
CHIMIE 14
AGRILEG 31
ENV 182
IA 33
CODEC 270

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	27 February 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2023) 48 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Subsidiarity Grid Accompanying the document proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/1009 as regards the digital labelling of EU fertilising products

Delegations will find attached document SWD(2023) 48 final.

Encl.: SWD(2023) 48 final



EUROPEAN
COMMISSION

Brussels, 27.2.2023
SWD(2023) 48 final

COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

**proposal for a Regulation of the European Parliament and of the Council
amending Regulation (EU) 2019/1009 as regards the digital labelling of EU fertilising
products**

{COM(2023) 98 final} - {SEC(2023) 99 final} - {SWD(2023) 49 final} -
{SWD(2023) 50 final}

Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
The legislative proposal has the same legal base as Regulation (EU) 2019/1009, which it proposes to amend: Article 114 of the Treaty on the functioning of the European Union on the approximation of national rules for the establishment and well-functioning of the internal market.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
The Union's competence is shared.
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2¹:
A wide consultation has been carried out when performing the impact assessment supporting this legislative proposal. The consultation activities included an open public consultation, targeted interviews, surveys and discussions in the Commission expert group on fertilising products. The explanatory memorandum and the impact assessment (chapter 3) contain a section on the principle of subsidiarity. For more details, see question 2.2 below.
2.2 Do the explanatory memorandum and the accompanying impact assessment contain an adequate justification regarding the conformity with the principle of subsidiarity?
Yes. The justification in the explanatory memorandum reads as follows: 'The problems caused by overloaded labels of EU fertilising products have a strong cross-border dimension. Inorganic fertilisers subject to Regulation (EC) 2003/2003 are produced in a few EU Member States² and sold all over the EU. Regulation (EU) 2019/1009 aims both at maintaining these products within its scope and at encompassing new products, which have not been previously covered by harmonisation rules, thus increasing their potential on the EU market. The extensive labelling requirements laid down in Annex III to Regulation (EU) 2019/1009 have to be provided on the physical label. Part of the information requested therein is subject to frequent changes and, in accordance with the same Regulation, labels of certain products have to change before reaching the end-users (for instance, the label of a fertilising product blend will contain all the relevant information of the component EU fertilising products; so, before the blend reached the end-user, both the component EU fertilising products and the blend itself had a physical label). The Regulation is directly applicable in all Member States. In addition, the Member States have the obligation not to impede the free movement of EU fertilising products for reasons linked to their labelling. Therefore, Member States cannot adopt national measures to improve the readability of physical labels or avoid their frequent changes. Member States could adopt national rules regarding minimum standards for the digitalisation of the labels, when used on a voluntary basis and in addition to physical labels, given that this issue is not

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

² According to 2019 EUROSTAT data available at <https://ec.europa.eu/eurostat/web/structural-business-statistics/data/database>

yet covered in Regulation (EU) 2019/1009. Such an approach would unavoidably lead to different practices all over the EU and create obstacles in the functioning of the internal market. It could lead to inequalities in terms of potential cost savings and communication of information. It would also increase costs for industry to adapt to divergent digital labelling requirements in Member States. On the contrary, introducing at EU level the conditions for the digital label has the added value of harmonising the various practices. By creating a level playing field, such an initiative would improve the functioning of the internal market, while ensuring the high standard of protection required by Regulation (EU) 2019/1009. In addition, it may be decided only at EU level the information currently requested on the physical label which may be provided only digitally.

The benefit of EU action also lies in the existence of potential economies of scale in the fertilising products industry. The harmonisation of digital labelling requirements across the EU could facilitate the use of multi-lingual labels and thus support the distribution of products with the same label in more than one Member State.

Therefore, this initiative concerning the voluntary digitalisation of the EU fertilising products' labels is necessary and can efficiently tackle the problems identified.'

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

No. the objectives of this legislative proposals are improve the readability of labels of EU fertilising products and facilitate their management by economic operators. As the labelling requirements are laid down in Regulation (EU) 2019/1009, these objectives cannot be achieved by Member States alone.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

Yes. EU fertilising products are harmonised products, circulating freely in the internal market. There is no data on the market share of these products in the whole fertilising products market, given that the new rules have started applying as of 16 July 2022. As an indication, the previous harmonisation rules laid down in Regulation (EC) No 2003/2003³ have been estimated at covering around 60-70% of the whole market of inorganic fertilisers⁴. Inorganic fertilisers represent 80% of the fertilising products market in terms of turnover. The new rules have a broader scope as they cover fertilising products, and not only inorganic fertilisers. So the products covered by harmonisation rules will increase. In addition, the production of inorganic fertilisers is concentrated in just a few Member States, and they are distributed all over the EU, which implies that the move within the internal market.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty⁵ or significantly damage the interests of other Member States?

Action taken at national level would create obstacles in the free movement of EU fertilising products in the internal market. This proposal concerns products for which harmonisation rules have already been adopted.

³ Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers, OJ L 304, 21.11.2003, p. 1.

⁴ See Section 2 of the Impact Assessment accompanying the document 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, SWD/2016/064, 2016/084 (COD).

⁵ https://europa.eu/european-union/about-eu/eu-in-brief_en

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
Member States could adopt national rules regarding minimum standards for the digitalisation of the labels, when used on a voluntary basis and in addition to physical labels, given that this issue is not yet covered in Regulation (EU) 2019/1009. Such an approach would unavoidably lead to different practices all over the EU and create obstacles in the functioning of the internal market. It could lead to inequalities in terms of potential cost savings and communication of information. It would also increase costs for industry to adapt to divergent digital labelling requirements in Member States. The adoption of rules at national level would have no impact on the physical labelling of EU fertilising products, which is set out in Regulation (EU) 2019/1009. Therefore, they could not improve the readability of the physical labels (which is one of the objectives of this legislative proposal).
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
The problems identified concern EU fertilising products, which are CE-marked products, moving freely in the internal market. The causes of the problems (drivers) as explained in sections 2.3.1 to 2.3.5 in the impact assessment do not vary from one Member State to another as they are directly linked to the labelling requirements included in Regulation (EU) 2019/1009 itself. The magnitude of the problem identified varies depending on the fertilising products market in each Member State and the size of its agriculture and horticulture sectors.
(e) Is the problem widespread across the EU or limited to a few Member States?
It concerns the labelling of EU fertilising products which move freely in the internal market. It is therefore relevant for all Member States.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
Member States are largely supportive for the adoption of this legislative proposal. Digitalisation is seen as a natural step forward.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
In the Commission expert group on fertilising precursors, there were divergent views as regards the introduction of the distinction between professional and non-professional users as regards the digital labelling of EU fertilising products. This distinction is not made in the proposal, because of its complexity both as regards the implementation and the market surveillance. The amount of information which may be provided only digitally also may vary from one Member State to another. The proposal is cautious in terms of information to be digitalised in case of packaged products, sold to end-users and sets out clear rules when the provision of all labelling information in a digital format only is permitted.
2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?
Yes. The proposal aims at addressing issues concerning labelling requirements already adopted at EU level.
(a) Are there clear benefits from EU level action?
Yes. The EU level action is the only one which can address the problems identified in section 2.2 in

the impact assessment, given that the labelling requirements for EU fertilising products are set out in Regulation (EU) 2019/1009.
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?
The introduction of digital labelling will lead to costs savings for fertilising products industry (see section 6.3.1 in the impact assessment). Introducing harmonisation rules for the digitalisation of the labelling requirements will avoid divergent practices and will facilitate the well-functioning of the internal market. In addition, it will create the premises for including more languages on the labels of EU fertilising products, thus facilitating their marketing in more Member States.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
For now, there are no national rules regarding the digital labelling of EU fertilising products. However, as mentioned in Section 5.1.5 of the impact assessment, the majority of manufacturers offer information online about their products, including labelling information. For the moment, as there are no rules, there are no guarantees that the information provided online is reliable and accessible.
(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?
The Member States have the possibility to regulate the placing on the market of fertilising products under their national rules. However, as regards EU fertilising products, which are harmonised products, they must not restrict their free movement for issues linked to their labelling, in accordance with Article 3(1) of Regulation (EU) 2019/1009.
(e) Will there be improved legal clarity for those having to implement the legislation?
No, this is not one of the objectives of this initiative. The existing provisions are also clear, but they are not adapted to the digital transition.
3. Proportionality: How the EU should act
3.1 Does the explanatory memorandum and the impact assessment accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?
Yes. In the explanatory memorandum it is explained that: 'The initiative does not go beyond what is necessary to achieve the objectives sought. It aims at introducing the voluntary digital labelling of EU fertilising products. The economic operators will have the choice if to provide the labelling requirements in a physical or digital label. If the digital label is used, the initiative lays down general rules to ensure a high level of protection of EU fertilising products users. As per status quo, the most important information will also be provided to end-users on the physical label, which implies that the initiative does not go any further than the current level of harmonised information requirements. In the accompanying impact assessment, policy options with various degrees of digitalisation have been assessed. The option put forward in this initiative strikes the best balance between the interests of various stakeholders. While it opens the possibility of using digital labels, it maintains on

the physical label the most important information, in response to the readiness of EU fertilising products' users to rely only on digital tools for having access to information. Following the evolution of the society, the amount of information to be provided only digitally could be further increased, which is accounted for in the empowerment laid down in this proposal.'
3.2 Based on the answers to the questions below and information available from the impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?
Given, in particular, its voluntary nature, the digital labelling rules proposed do not exceed what is necessary for achieving the objectives.
(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?
Yes. The initiative concerns the digitalisation of the labelling of EU fertilising products, within the scope of Regulation (EU) 2019/1009. The labelling requirements are already included in the Regulation and cannot be changed by Member State on their own.
(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?
The proposal of a Regulation concerns amendments to Regulation (EU) 2019/1009. This is the most direct way of introducing legally binding rules concerning the labelling requirements already laid down in that Regulation.
(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)
No. This initiative concerns EU fertilising products. Labelling requirements are laid down at EU level and Member States cannot adopt national rules concerning the labelling requirements already included in the Regulation, without restricting their free movement in the internal market.
(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
Given the limited evidence base for the costs, a full extrapolation of costs to EU level is problematic and risks providing a false picture. Maximum EU-level costs for enterprises based on stakeholder survey data would be €1.2m (ranging from €0.6m to €3.7m) for one-off costs, and €0.7m (ranging from €0.4m to €2.4m) for ongoing (annual) costs. In practice, the actual costs would most likely be less than these maximum costs, as a certain proportion of firms would choose not to provide digital labelling. It should be noted that some costs may additionally be incurred by the economic operator opting for digital labelling, in terms of providing the information by alternative means where necessary. Although such costs could not be quantified, they are expected to be marginal, given that product information would only be supplied to small portions of the target markets. In the longer term, costs would be offset by savings related to updating physical labels, avoiding double labelling and freeing space on the physical label for information in more languages. In terms of direct impacts on public authorities, despite positive aspects related to the ease of

managing and compiling online data, public authorities could require some investment in equipment and training to facilitate access to digital labels.

(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

Not relevant.