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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 16 October 2023

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Regulation (EU) 2019/1009 of the European Parliament and of the Council laying down rules on the making available on the market of EU fertilising products

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Delegations will find attached document COM(2023) 581 final.

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Encl.: COM(2023) 581 final



Brussels, 16.10.2023  
COM(2023) 581 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**on the exercise of the power to adopt delegated acts conferred on the Commission  
pursuant to Regulation (EU) 2019/1009 of the European Parliament and of the Council  
laying down rules on the making available on the market of EU fertilising products**

## **1. INTRODUCTION**

Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003<sup>1</sup> applies as of 16 July 2022.

It replaces Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers<sup>2</sup>.

Regulation (EU) 2019/1009 expands the scope of the harmonisation to new categories of fertilising products, in particular innovative products and circular products containing materials recovered from waste or by-products. It lays down agronomic efficiency and safety requirements for the CE-marking of fertilising products. Manufacturers remain free to choose it to rely on its provisions and CE-mark their fertilising products or to follow the national rules on fertilising products.

## **2. LEGAL BASIS**

Article 42 of Regulation (EU) 2019/1009 confers on the Commission the power to adopt delegated acts amending Annex I, with the exception of cadmium limit values, the definitions and elements relating to the scope of product function categories, amending Annexes II, III and IV, as well as supplementing Annex II.

As soon as the Commission adopts a delegated act, it has to notify it simultaneously to the European Parliament and to the Council. The delegated act enters into force only if no objection has been expressed by either the European Parliament or the Council within a period of three months of notification of that act or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period may be extended by three months at the initiative of the European Parliament or of the Council.

With this report, the Commission complies with the reporting requirements established in Article 44(2) of Regulation (EU) 2019/1009.

## **3. EXERCISE OF THE DELEGATION**

### **3.1 Empowerments used during the reporting period**

During the reporting period<sup>3</sup>, the Commission exercised its delegated powers by adopting the following delegated acts<sup>4</sup>:

- Commission Delegated Regulation (EU) 2021/1768 of 23 June 2021 amending, for the purpose of its adaptation to technical progress, Annexes I, II, III and IV to Regulation (EU) 2019/1009 of the European Parliament and of the Council laying down rules on the making available on the market of EU fertilising products<sup>5</sup>. This delegated Regulation was adopted based on Article 42(1) of Regulation (EU) 2019/1009, entered into force on 28 October 2021 and started applying as of 16 July 2022.

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<sup>1</sup> OJ L 170, 25.6.2019, p. 1.

<sup>2</sup> OJ L 304, 21.11.2003, p. 1.

<sup>3</sup> The cut-off date for the inclusion in this section of delegated acts adopted during the reporting period is 31 August 2023.

<sup>4</sup> The delegated acts are listed in the chronological order of their date of adoption.

<sup>5</sup> OJ L 356, 8.10.2021, p. 8.

- Commission Delegated Regulation (EU) 2021/2086 of 5 July 2021 amending Annexes II and IV to Regulation (EU) 2019/1009 of the European Parliament and of the Council for the purpose of adding precipitated phosphate salts and derivatives as a component material category in EU fertilising products<sup>6</sup>. This delegated Regulation was adopted based on Article 42(1) of Regulation (EU) 2019/1009, entered into force on 20 December 2021 and started applying as of 16 July 2022.
- Commission Delegated Regulation (EU) 2021/2087 of 6 July 2021 amending Annexes II, III and IV to Regulation (EU) 2019/1009 of the European Parliament and of the Council for the purpose of adding thermal oxidation materials and derivatives as a component material category in EU fertilising products<sup>7</sup>. This delegated Regulation was adopted based on Article 42(1) of Regulation (EU) 2019/1009, entered into force on 20 December 2021 and started applying as of 16 July 2022.
- Commission Delegated Regulation (EU) 2021/2088 of 7 July 2021 amending Annexes II, III and IV to Regulation (EU) 2019/1009 of the European Parliament and of the Council for the purpose of adding pyrolysis and gasification materials as a component material category in EU fertilising products<sup>8</sup>. This delegated Regulation was adopted based on Article 42(1) of Regulation (EU) 2019/1009, entered into force on 20 December 2021 and started applying as of 16 July 2022.
- Commission Delegated Regulation (EU) 2022/973 of 14 March 2022 supplementing Regulation (EU) 2019/1009 of the European Parliament and of the Council by laying down criteria on agronomic efficiency and safety for the use of by-products in EU fertilising products<sup>9</sup>. This delegated Regulation was adopted based on Article 42(7) of Regulation (EU) 2019/1009, entered into force on 14 July 2022 and started applying as of 16 July 2022.<sup>10</sup>
- Commission Delegated Regulation (EU) 2022/1171 of 22 March 2022 amending Annexes II, III and IV to Regulation (EU) 2019/1009 of the European Parliament and of the Council for the purpose of adding recovered high purity materials as a component material category in EU fertilising products<sup>11</sup>. This delegated Regulation was adopted based on Article 42(1) of Regulation (EU) 2019/1009, entered into force on 16 July 2022 and started applying as of 28 July 2022.
- Commission Delegated Regulation (EU) 2022/1519 of 5 May 2022 amending Regulation (EU) 2019/1009 of the European Parliament and of the Council as regards the requirements applicable to EU fertilising products containing inhibiting compounds and the post processing of digestate<sup>12</sup>. This delegated Regulation was adopted based on Article 42(1) of Regulation (EU) 2019/1009, entered into force on 3 October 2022 and started applying as of that date.
- Commission Delegated Regulation (EU) 2023/409 of 18 November 2022 amending Regulation (EU) 2019/1009 of the European Parliament and of the Council as regards the minimum content

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<sup>6</sup> OJ L 427, 30.11.2021, p. 120.

<sup>7</sup> OJ L 427, 30.11.2021, p. 130.

<sup>8</sup> OJ L 427, 30.11.2021, p. 140.

<sup>9</sup> OJ L 167, 24.6.2022, p. 29.

<sup>10</sup> In Case T-560/22, *Fachverband Eisenhüttenschlacken v Commission*, pending before the General Court, the applicant requests the annulment of a provision of this delegated Regulation; one of the pleas is an alleged exceedance or misuse of the delegation of powers in Article 42(7) of Regulation (EU) 2019/1009. The Commission considers this plea as unfounded.

<sup>11</sup> OJ L 183, 8.7.2022, p. 2

<sup>12</sup> OJ L 236, 13.9.2022, p. 5.

of calcium oxide in straight solid inorganic macronutrient fertilisers<sup>13</sup>. This delegated Regulation was adopted based on Article 42(1) of Regulation (EU) 2019/1009, entered into force on 16 March 2023 and started applying as of that date.

The Commission notified each of these delegated acts simultaneously to the European Parliament and to the Council, in accordance with Article 44(5) of Regulation (EU) 2019/1009. The European Parliament and the Council did not extend the objection period referred to in Article 44(6) of Regulation (EU) 2019/1009 in relation to any of these acts. Neither the European Parliament nor the Council objected to any of the above acts.

The adoption of these delegated acts facilitated the trade with renewable bio-based fertilising products containing innovative materials out of organic waste (e.g. livestock manure, waste water, sludge, municipal waste), thus contributing to the objectives of the Farm to Fork Strategy<sup>14</sup>.

### **3.2 Empowerment not used during the reporting period**

The empowerment in Article 42(8) of Regulation (EU) 2019/1009 was not used during the reporting period. In accordance with this Article, the Commission is empowered to adopt delegated acts in the light of new scientific evidence. The Commission is currently assessing new scientific evidence regarding the use of phosphonates as plant biostimulants. No decision has been taken yet on the adoption of a delegated act given the possible implications on maximum residues limits in food and feed. New scientific developments may require a delegated act pursuant to Article 42(8). Therefore, this empowerment is still needed.

### **3.3 Future developments**

The Commission is currently assessing various adaptations to technical progress of Regulation (EU) 2019/1009, to provide new opportunities for the circular economy in this sector. In particular, work is ongoing on possible delegated Regulations based on Article 42(1), in the conditions laid down in paragraphs (4), (5) and (6) of the same Article. More precisely:

- Article 42(4) - microorganisms

The Commission is currently assessing certain microorganisms to determine if they are safe and therefore could be included within the scope of the harmonisation rules, in accordance with Article 42(1) and (4) of Regulation (EU) 2019/1009.

- Article 42(5) - products derived from animal by-products

The Commission adopted Delegated Regulation (EU) 2023/1605 of 22 May 2023 supplementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council as regards the determination of end points in the manufacturing chain of certain organic fertilisers and soil improvers<sup>15</sup>. The Commission is currently assessing those derived products with respect to relevant aspects not taken into account for the purpose of determining an end point in the manufacturing chain, in the conditions laid down in Article 42(5). A first delegated act concerning processed manure is to be adopted by the end of 2023.

- Article 42(6) - biodegradability criteria for certain polymers

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<sup>13</sup> OJ L 59, 24.2.2023, p. 1.

<sup>14</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system. COM/2020/381 final, 20.5.2020

<sup>15</sup> OJ L 198, 8.8.2023, p. 1.

The Commission is currently assessing the possibility of laying down biodegradability criteria for polymers referred to in point 2 of component material category 9 in Part II of Annex II of Regulation (EU) 2019/1009 and test methods to verify compliance with those criteria.

#### **4. CONCLUSION**

By relying on the empowerments in Regulation (EU) 2019/1009, the Commission facilitated the trade of fertilising products in the internal market and promoted green and circular alternatives to fertilisers produced out of natural gas or other mined materials. This is of particular importance to ensure the availability and affordability of fertilisers<sup>16</sup>.

The Commission sees the need for an extension of the delegation of powers provided for in Article 42 of Regulation (EU) 2019/1009 for a period of five years, in accordance with Article 44(2).

This will be particularly important to provide the necessary flexibility in the legal framework to complement and adjust it regularly to the latest technical progress and scientific developments.

The Commission invites the European Parliament and the Council to take note of this report.

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<sup>16</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 9 November 2022, Ensuring availability and affordability of fertilisers, COM/2022/590.