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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Technical Harmonisation (Dangerous Substances - Fertilisers)
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Subject:	Working Party Meeting on technical Harmonisation (Dangerous Substances - Fertilisers) on 27 July 2023 - Presidency Flash

Working Party on Technical Harmonization (Fertilisers)

27 July 2023

Dear colleagues,

Welcome to the first meeting under the Spanish Presidency of the Working Party on Technical Harmonisation (Dangerous Chemicals – Fertilisers) to discuss the proposal on Digital Labelling of Fertilisers.

The meeting will take place only in the afternoon of 27 July, starting at 14:30 in the Council's Building.

During this working party meeting, the Presidency will present a compromise proposal, as set out in document ST 11824/23, and we will have the opportunity to examine it.

First, the Presidency will briefly **present their plan** with this file during the semester.

Secondly, the Presidency will **introduce the changes** made, and will explain why not all proposals by Member States have been taken on board.

Delegations will then be invited to **discuss the proposal** in two different rounds. The first one will focus on the articles with the corresponding recitals, and second one, on the annexes.

We are looking forward to seeing you on the 27th!

The Spanish Presidency team.

Annotations to the Presidency's partial compromise proposal

The Presidency has received few comments on the Commission's proposal. However, we have noticed that there are certain concerns regarding the full label digitalisation risks for the end user and for environmental safety.

The fact that digital labelling will be voluntary for the economic operators must be taken into account, and therefore, they should have a sufficient economic savings incentive to opt for it.

Table 1. Commission's proposal

USER	PACKAGING	LABELLING FORM	MAX DIGITAL %
B2B	1- Packaging 2- No packaging	Digital OR Physical	100
B2C	3- Packaging	Physical OR Digital + Physical except (*)	(*)
	4- No packaging	Digital OR Physical	100

In order to address the safety concerns, the Presidency proposes some amendments to the Commission's proposal:

1. More restrictive digitalisation conditions in Article 11a (4).

To avoid the lack of access of professional users to the necessary information in the label due to low IT skills or due to simple misunderstanding, we have tried to find a way to ensure that if the label is going to be provided in digital form only, the buyer is aware of this fact and also of the procedure to be followed to access the information.

In order to do that, scenario 4 (B2C without packaging), where following the Commission proposal, it would be possible to digitalise the label completely, has been modified introducing a new condition of having a previous written agreement between the parties. In this way, the default option for economic operators would be to provide a physical label and carry the burden for digitalising it.

It should be highlighted that this scenario refers to transactions of more than 1.000 kg of the product. Therefore, in our view, this condition does not introduce a significant burden for the economic operator.

If there is no previous agreement, the seller should keep the physical label with all the information elements except those marked with an asterisk in Annex III.

With these amendments, the four scenarios will look like in the table 2, below:

Table 2. Presidency's compromise proposal

USER	PACKAGING	WRITTEN AGREEMENT	LABELLING FORM	MAX DIGITAL %
B2B	1- Packaging	-	Digital OR Physical	100
	2- No packaging			
B2C	3- Packaging	-	Physical OR Digital + Physical except (*)	(*)
	4 -No packaging	No	Physical OR Digital + Physical except (*)	(*)
		Yes	Digital OR Physical	100

Another way for the user to be aware of the possibilities to access information, is to introduce a requirement that next to the data carrier information, it is indicated that the end-user has the right to request the provision of information by alternative means:

Alternative drafting

Annex III, part I, point 15 could be replaced by the following:

15. Where economic operators provide a digital label in accordance with Article 11a(4), the data carrier used for that digital label shall be accompanied by the following statement: "Information on the agronomic efficiency and the safe handling of the product is available online. **You can ask your supplier to provide it by other means**".

Question: Would delegations prefer to introduce the requirement of having a previous agreement, as in the Presidency's compromise proposal, or would they prefer to introduce this message next to the data carrier? Any other alternative would be also welcome.

2. Limiting the elements marked with (*) in Annex III. Following the request by some delegations, the Presidency has brought back some information to the physical label that is considered relevant for assessing the agronomic efficiency and for selecting the product at the moment of purchase. For instance, the soluble content of nutrients in fertilisers (PFC1) or Corg in organic soil improvers PFC3.

Additionally, on the declaration of peat, several delegations have expressed the views that, unless some justification is provided, peat should follow the same rules as any other ingredient. The declaration of peat on the label can be considered as a positive element for the economic operator to claim.

3. Strengthening access to information:

- New recital 3a to ensure a smooth access to information (one click approach in mind) by indicating specifically that if the information is on a web page, the user should not need to browse the site. It has been introduced in a recital to keep the technological neutrality principle of the main text.
- Article 11c(2a), introduces a requirement to have the label posted at the store. This will help buyers, especially the end users, to access information easily, but also the Market surveillance authorities, if needed.

Comments not incorporated

Finally, the Presidency would like to inform the delegations about other proposals which have been assessed, but have not been incorporated into the text, such as:

- Final user definition: It does not seem to be the right moment to establish this new definition, as it would affect the whole Regulation. Furthermore, final user is a concept already used without such definition, as in Articles 2(22), 6, 8, 9 and in the Annexes. The use of the term in Articles 6, 8, 9 makes it clear that the end-user is a different entity from the manufacturer, the importer, or the distributor, as these articles spell out obligations towards the end-user. Doubts related to this concept could be clarified in a further Commission Guidance.
- Increasing the period of 5 years that the digital label must be available: The figure of 5 years has been maintained to keep it aligned to the main Regulation. Furthermore, increasing this period would go directly against the main incentive for the economic operators to opt for digitalisation.
- Other elements in Annex III, such as “solely digital declaration of ingredients above 5%”, mainly, what it comes to the Nitrate Directive and other safety and environmental issues. However, as the Commission explained, some of these matters are already covered:
 - Nitrate Directive: The information on the N org % from manure remains without an asterisk (shall be part of the physical form when this is provided). For instance, PCF 1 A, point d (i) second dash “*minimum content of organic nitrogen N (org) followed by a description of the origin of the organic matter used*”
 - Other Animal by-products: Where the EU fertilising product contains derived products other than manure within the meaning of Regulation (EC) No 1069/2009, the following instruction shall be provided on the label: “*Farmed animals shall not be fed, either directly or by grazing, with herbage from land to which the product has been applied, unless the cutting or grazing takes place after the expiry of a waiting period of at least 21 days.*”.

In addition, the Commission Delegated Regulation 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, makes reference to the provisions in the Fertilising Products Regulation (FPR) without requesting additional labelling.

- Hazardous substances and mixtures, according to the CLP Regulation (Regulation (EC) No 1272/2008): It should be noted that information required by CLP on hazardous substances and mixtures shall be provided and eventually digitalised, according to the CLP rules.

For all the above reasons, the Presidency has opted to maintain the original Commission proposal on these points.

Other support documents for information provided by the Commission

The Presidency has asked the Commission to provide delegations with relevant information for them to better assess the proposal for digital labelling of fertilising products.

Therefore, on the Delegates Portal, delegations can find the following documents:

1. Use case scenarios: to give practical examples on how the digital labelling in the Commission proposal would work (WK 10057/2023).
2. An example of physical labelling where the information which could be provided only digitally is marked out (WK 10059/2023).
3. A document listing all the safety related information in Annex III to the FPR (WK 10060/2023).

All these documents **refer to the original proposal**, without taking into account the Presidency's amendments.