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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Technical Harmonisation (Dangerous Substances - Fertilisers)
N° Cion doc.:	ST 6896/23 + ADD1-ADD4 - COM (2023)98 final
Subject:	Proposal for a Regulation amending Regulation (EU) 2019/1009 as regards digital labelling of EU fertilising products - Comments by BE, DE, ES, FI, FR, IT RO

Comentarios de España tras la reunión del Consejo de 15 de marzo de 2023

Tal y como ya hemos dicho en nuestros comentarios anteriores, España apoya la idea de implementar el etiquetado digital de los productos fertilizantes UE. Después de reunir y estudiar la posición de diferentes agentes (incluidas asociaciones de agricultores y de la industria de los productos fertilizantes), nos reafirmamos en que esta iniciativa puede ayudar a un mejor mantenimiento de los cuadernos de explotación digitales y a reducir algunos de los costes de la industria.

Como parte de la Administración, somos conscientes de que los agricultores españoles son, en su mayoría, mayores de 55 años y con un acceso limitado a las nuevas tecnologías, lo que crea una barrera a la expansión del etiquetado digital. Por ello, apreciamos el esfuerzo de la Comisión para lograr un compromiso entre las dos posibilidades (una etiqueta totalmente digital o física). De hecho, es importante considerar, tal y como se hace en la propuesta de reglamento para el etiquetado digital, que hay una amplia variedad de situaciones posibles. Mientras que hay productos que se fabrican a demanda (como algunos sustratos de cultivo para invernaderos) hay otros basados en materiales con poca transformación y que se venden a granel (como muchas de las enmiendas orgánicas que los agricultores aplican en sus tierras).

1. Inclusión de más definiciones, especialmente cuando conllevan diferentes obligaciones

Los ejemplos anteriores reflejan la necesidad de definir mejor quién es el usuario final e, incluso, qué es un usuario profesional. La mayor parte del tiempo, ambos términos hacen referencia a los agricultores, quienes van a aplicar los productos fertilizantes a sus tierras o cultivos, en contraposición a los jardineros o a la gente que tiene pequeños huertos. Sin embargo, hay más posibilidades:

- Mezcladores y otros productores de productos fertilizantes,
- Agricultores/ganaderos que aplican a los inhibidores o a los purines antes de ir al suelo,
- Compañías como empresas de golf,
- Otros

Por lo tanto, insistimos en la necesidad de incluir más definiciones, como usuario final o granel (en oposición a producto empaquetado), sobre todo, considerando que las obligaciones pueden variar.

Otro ejemplo es el término “grupos vulnerables”, mencionado en los considerandos. Sin embargo, al leer el articulado no queda claro a qué se refiere ni qué adaptaciones hay que realizar.

2. Toda la información relevante debe mantenerse en la etiqueta física

Como ya hemos comentado, muchos agricultores no tienen acceso a herramientas digitales, por lo que la información relevante debería mantenerse siempre en la etiqueta física, lo que incluye la información necesaria para cumplir con requisitos legales, como los incluidos en la Directiva de Nitratos. Esto significa no sólo instrucciones relacionados con la seguridad, sino también declaraciones sobre la calidad (por ejemplo, contenido y solubilidad de los nutrientes de un fertilizante o la función declarada de un bioestimulante), incluso cuando el producto se vende a granel, en cuyo caso un folleto físico debería acompañar siempre al producto fertilizante.

3. La etiqueta digital no debería ser nunca engañosa o utilizarse con un propósito diferente del recogido en el Reglamento de fertilizantes

Dado que la etiqueta es el principal canal de comunicación entre fabricantes y usuarios finales, puede ser tentador incluir más información de la que aparece en el anexo III del Reglamento de fertilizantes. Sin embargo, el “soporte de datos” debe llevar únicamente a la información que se incluye en el reglamento, sin añadir otras afirmaciones comerciales.

Por otro lado, el operador económico no debería emplear este sistema con un fin diferente al de proporcionar al usuario final la información requerida en el Reglamento de productos fertilizantes. En particular, no debería ser una herramienta para:

- Crear una base de datos con los usuarios finales,
- Campañas comerciales,
- Ponerse en contacto con el usuario final (salvo por motivos de seguridad, como podría ser la aparición de un contaminante en el lote que se ha vendido al agricultor).

4. Otros comentarios

Dado que la etiqueta digital puede ayudar a implementar herramientas agrícolas muy útiles como el cuaderno de explotación digital o programas de cálculo de las dosis de nutrientes, nos parece conveniente contemplar la posibilidad de que sean compatibles con este tipo de programas.

Por último, volvemos a mandar nuestros primeros comentarios a la propuesta.

Courtesy translation

Spanish comments after the Council Meeting (15/03/2023)

As we have previously stated, Spain welcomes the idea of implementing the digital labelling in EU Fertiliser products. After gathering and studying the position of different Spanish stakeholders (including farmers and fertiliser economical operators) we believe that this initiative could help to better maintain the digital farm logbook while reducing certain costs at the industry level.

As policy makers, we are aware that many Spanish farmers are more than 55 years old and with limited access to the new technologies, creating a barrier to the wider spread of digital labelling. We appreciate the efforts of the Commission to find a compromise between both possibilities (either everything digital or on a physical label). In fact, it is important to be considered, as suggested in the proposal of Regulation for the digital labelling, that there is a variety of possible situations. While certain products are made upon request (as certain growing media to be used in greenhouses) others are little transformed materials, sold in bulk, like many soil improvers that farmers will apply on their lands.

1. Inclusion of more definitions, especially when there are different obligations

The previous examples reflect the need to better define who the end user is, or even, what a professional user is. Most of the time, both refer to farmers, that are going to apply the

fertiliser product to the soil or to the plants, in opposition to gardeners or people tending their little orchards at home. However, there are many other possibilities:

- Blenders, and other plant product fertiliser manufacturers,
- Farmers that could apply inhibitors to the slurry prior to its application,
- Companies as golf facilities,
- Others

So, we insist on the need to include more definitions, especially end user and bulk (in opposition to packaged product), specially, considering that obligations may vary.

Another example is the term “vulnerable groups”, to whom there is a reference in the recitals. However, when reading the articles, it is not clear what is meant or what the adaptations should be.

2. All relevant information shall be kept on the physical label

As we have previously said, many farmers have limited access to digital tools, therefore all the relevant information should always remain on the physical label. This includes the information that they need to comply with legal provisions, such as those included on the Nitrate Directive. This will mean, not only safety instructions, but also quality declarations (i.e. nutrient content and solubility in fertilisers or declared function of a plant biostimulant), including when the product is sold in bulk, where a physical leaflet with these relevant information should always accompany the fertiliser product.

3. The digital label should not be misleading or used for different purposes than those intended in the Fertiliser Regulation

As the label is the main way of communicating between manufacturers and end users, it could be tempting to include more information to the one intended in annex III of the fertiliser regulation. Thus, the “data carrier” should only lead to the information included in the Regulation, without including any other commercial claim.

On the other hand, the economical operator should not use this device for any other purpose than to provide the final user with the information required in the Fertiliser Product Regulation. Especially, it should not be a tool for:

- Build up a database with the final users,
- Market campaigns,
- Contact the final user (unless for safety reasons, i.e. if there is a contaminant in the batch that has been sold to this farmer)

4. Other comments

As digital label could be very useful to implement valuable agronomic tools, such as the farm logbook, or programmes to calculate the nutrient doses, it would be desirable to contemplate the possibility of making them compatible with this kind of programmes.

We take the opportunity to send again our first comments.

COMMENTS FROM SPAIN ON THE DRAFT PROPOSAL ON DIGITAL LABELLING OF EU FERTILIZING PRODUCTS

GENERAL COMMENTS

1. We welcome the introduction of digital labelling for EU fertilizing products. We consider it is a useful tool to help maintain the digital notebooks that are being implemented.
2. It seems to us, however, that **all the information that is necessary for the farmer to comply with current legislation must be included in the physical label**. This includes aspects such as concentrations; solubility, if it comes from manure, etc.
3. It would be helpful to **introduce additional definitions, such as "end user" or "bulk product"**.
4. The link of this proposal with related initiatives, particularly the ESPR and its DPP, should be clearer. From our point of view, it would be interesting to track the life cycle of some raw materials (especially SANDACH (Animal By-Products Not Aimed for Human Consumption) and waste). Perhaps not linked to the label, but to the information accessible digitally by the authorities and some economic operators, when they have a legitimate interest in doing so.
5. The **obligations of accompanying documents for bulk products are missing**.
6. The EC could introduce a **list of elements that should appear on the physical label** and those that should not.

In this regard, a simple work tool, like a table similar to the following one, could be helpful:

FUNCTIONAL CATEGORY	MANDATORY IN THE PHYSICAL LABEL
PFC 1 (a)	[N, P, K, Ca, ..., Cu, ...], N forms, P solubility, manure (% N)

SPECIFIC COMMENTS

Article 1 (1)

- the **definition of "packaging"** should be complemented with one on **"bulk fertilizing product: fertilizer not packaged in accordance with this Regulation"**

Rationale: The reason for introducing the definition of packaging is not clear, whether to limit the size of the containers or because the digital labeling option is going to be limited to products that go in containers that comply with the definition. In other words, a **"sealed container" could not be considered a packaged fertilizer product**.

- definition of "data carrier":

- editorial mistake: it should go under subparagraph **(b)**

Bulk products must come with "accompanying documents" (Fertilizing Products Regulation-art. 6.5) and **this documentation can go with a "data carrier" similar to the one that would appear on a label attached to the container.**

Article 1 (2)

(2) **Article 6** is amended as follows:

(a) in paragraph 5, the following subparagraph is added:

'The information referred to in the first subparagraph shall be provided either physically on the packaging or the accompanying document, digitally, or both.'

Where the information is provided digitally, the requirements set out for digital labels in Article 11 b and the obligations set out in Article 1 le shall apply

(b) in paragraph 6, the following subparagraph is added:

'The information referred to in the first subparagraph shall be provided physically on the packaging or the accompanying document or both physically on the packaging or the accompanying document and digitally. Where the information is provided digitally, the requirements set out for digital labels in Article 1 lb and the obligations set out in Article 11c shall apply.'

The wording is ambiguous:

- The first subparagraph of paragraph 5 refers to the obligation to identify the products.

The text allows to choose only the digital option, which implies the possibility of not making the physical document.

However, in paragraph 6 it does seem that the information should be duplicated, both in physical and digital format. Therefore, paragraph 5 is not clear.

Article 1 (4)

Article 11.a

Although the Fertilizing Products Regulation defines what an "economic operator" is, it does not **define what an "end user" is**. Given that it is a term that appears several times and entails legal obligations, it may be convenient to include a new definition of this term.

For example, what category corresponds to:

- a manufacturer that uses an EC fertilizer product to make a national fertilizer product, be considered?
- a farmer who uses an inhibitor (CFP 5) to avoid emissions in the slurry transport tank that he sells to a farmer who is the one who is going to throw it out?
- a man who uses the EC fertilizer product in his garden?

In the case of economic operators, there is no obligation to have “physical” information, as everything is allowed to be digital. In the case of end users, a part must be physical.

The importance of physical information for the end user (understood as the farmer) is to provide him with the necessary data so that he can:

- Carry out a correct fertilization work, that is, calculate the doses of nutrients, dissolve the product in water if it is used in fertigation, etc.
- Comply with environmental requirements, particularly (although not exclusively) with the Nitrates Directive, or the measures that at a national level serve to comply with the commitments acquired in the Roofs Directive

The importance of keeping this information on paper derives from the need to ensure that it reaches these users, even if there is no internet in the area or the user cannot (or does not know) access it.

In the case of end users, although there is an obligation that certain information is always on paper, there is another that is optional information -indicated with an asterisk in Annex III-. Some of this optional information (nutrient concentrations, solubility, forms of N, pH, if it is a solution or suspension, if we are dealing with livestock manure, etc.) should be kept on paper.

Article 11.b

- It is not clear how the use of digital labeling is going to be promoted if there is a choice of both options, and economic operators that use digital labeling will increase their costs, by introducing another new way of labelling. In this article it seems clear that what is mandatory is the use of a physical label for end users, but there is still the option of having only a physical label or both (duplicating them). –also valid for article 11.a-

- The requirements of the accompanying documents for bulk products are missing. Can the accompanying document follow the same instructions? What has to be on paper and what in digital format?

- “Where EU fertilising products are made available on the market without packaging to end-users, they shall be accompanied by the labelling elements set out in Annex III in the following form:

(c) on a digital label; or

(d) in a leaflet accompanying the EU fertilising product. “

When the products are marketed without packaging for end users, there is a choice between a digital label and a leaflet. In this case, they are also end users, but the label or physical support (leaflet) is not mandatory.

However, in paragraph 3 of this article it does seem that the physical label is mandatory. The text is not clear.

- “(f) available for a period of 5 years from the moment the EU fertilising product is placed on the market, including in case of an insolvency, a liquidation or a cessation of activity in the Union of the economic operator that created it”

How can we ensure that the data remains accessible if there is a cessation of activity of the entity?

- “(g) Where the digital label is available in more than one language, the choice of languages shall not be dependent on the geographical location “

Paragraph 6 of article 6 of Regulation 2019/1009 indicates that the language must be understandable to end users. Therefore, this point is not clear and neither is whether it is necessary to include it in the proposal.

Article 11 c (Obligations of economic operators providing a digital label)

If the information is not available at the time of the sale and the user requests it, the economic operator has to provide it, but this is not sufficient. **If it is information, it should be mandatory that they give it to user, not only at the time of the sale, but in a reasonable time after it to ensure proper use.**

It is important to **distinguish what is information and what is advertising**. On physical labels, as there is less space, there is not much room for advertising, but on digital ones, more text can be inserted and the user could see the information not directly, but through advertising.

- Why is the modification of article 42 included? It should be a separate section (5) of art. 1 and perhaps a clear mandate should be made that, if necessary for consistency with the digital passport, an amendment could be made.

- “(2) Upon request by the end-users, or without such request where the digital label is temporarily unavailable at the time of purchase, economic operators making available on the market EU fertilising products to such end-users shall provide the information included on the digital label, by alternative means and free of charge.”

How is the information going to be provided in the event that the digital label is not available? Through a physical label?

Article 2

- Entry into force (20 days after publication) and entry into force (approximately 30 months after entry into force): the dates also apply to the accompanying documents to which the modification of article 42 refers. Are the dates sufficient for the accompanying documents as well?

ANNEXES

Annex III

Part I

- The list of ingredients should be included when they are necessary to comply with environmental measures, in particular DIR nitrates and DIR ceilings
- The CMCs are relevant information for the user, the origin of certain materials can help to know if it is necessary to pay attention to certain pollutants
- Why has the reference to peat been added?

Part II

The following contents should be mandatory on the physical label:

- Inhibitors should not be indicated on the physical label as "fertilising product with"
- in organic fertilizers: C org, water soluble nutrients, ...
- Similar in organo-mineral fertilizers
- Or in inorganic fertilizers: pH, solubility, chelates, etc.
- reactivity in the limestone amendments
- In organic amendments: the C org
- Culture substrates: it is questionable
- Similar with the inhibitors, except that they go to "farmers/slurry"
- Biostimulants: on the physical label there should be a short reference to the activity; the manufacturer can elaborate more on the digital label.
- In microbials the concentration should appear.

In view of the preparations for the next Working Party Dangerous Substances - Fertilizers on May 3rd, please find below some preliminary questions/comments coming from the capital.

1. More clarification of: "More comprehensive information on the product is available online or by a similar statement."
2. Regarding Part 1 of Annex III, it should be clarified whether a list of all ingredients, the relevant CMCs, or the products resulting from the reactions of the raw materials added to obtain the final fertilising product will be included on the digital label.

We welcome the proposal. We also consider it important that the end user understands that some of the information essential for the use of the fertilising product might be only in digital format and that they have the right to receive all the information in the physical label if they so wish. Digital labelling must also not endanger the traceability of the product.

For your consideration, we propose the following amendment:

Annex III to Regulation (EU) 2019/1009 is amended as follows:

(1) Part I is amended as follows:

(b) the following points are added:

‘12. Where the EU fertilising product contains peat **or manure**, its presence shall be indicated on the label.

Justification: the Nitrates Directive sets restrictions on the amount of nitrogen used in fertilising products containing manure, so it is important that the physical label always includes information on manure.

A positive opinion is expressed on the digital labeling of fertilizers, as a guarantee of traceability of information regarding the qualitative and quantitative characteristics of the fertilizer, as well as its use by the operator/user. Among the proposed options, option PO3 is considered to be the one currently most capable of guaranteeing an effective implementation of digital labeling with limited economic impacts as i) it is applicable to specific market segments, ii) it guarantees significant benefits in terms of transparency of labels, especially for products sold in bulk.

It is also recognized the opportunity to maintain the most relevant information for the characterization and use of a fertilizer also on the paper label, in order to guarantee all operators/users access to the salient information, even in the absence of tools digital.

In this regard we would like to share with you two technical observations:

- article 2: referring to point 10 bis) it would be appropriate to add the unit of measurement in liters (e.g. 1000 L);
- article 11 quater par. 2 reads as follows: "At the request of end-users, or in the absence of such a request if the digital label is temporarily unavailable at the time of purchase, economic operators who make EU fertilising products available on the market for these users deliver the information included in the digital label by alternative means and free of charge". This requirement should be better detailed, as it would require the development of ad hoc measures that are not practicable from a purely operational point of view.

BELGIAN COMMENTS ON THE PROPOSED REGULATION ON DIGITAL LABELLING OF EU FERTILISING PRODUCTS

ANNEX I

ANNEX I (1) (b)

- FPR: ANNEX III. PART I. 12

Belgium requires the deletion of this point concerning “Peat”.

If the other raw materials are not mentioned, there is no reason to mention the presence of peat. The mere mention of this raw material does not give any relevant agronomic value. This is not related to digital labelling. Indicating the presence of peat and not indicating the other raw materials leads to an unacceptable market distortion for manufacturers.

ANNEX I (1) (b)

- FPR: ANNEX III. PART I. 13

No distinction should be made between packages up to 1000 kg and EU fertilising products without packaging. The same sentence must be added to the leaflet accompanying EU fertilising products without packaging.

ANNEX I (2) (b)

- FPR: ANNEX III. PART II. ‘PFC 1(A): ORGANIC FERTILISER’

This change means that the indication of the Corg/N ratio is optional.

Corg/N ratio gives information on the rapidity of action of the fertiliser. If this ratio is less than 10, the fertiliser will act quickly.

This information should be indicated on the label.

ANNEX I (2) (e) ii)

- FPR: ANNEX III. PART II ‘PFC 1(C)(I)(A): SOLID INORGANIC MACRONUTRIENT FERTILISER’

NB – numbering and reformulation

There is a point a) and a point b) that give information on the claims to indicate. The proposal includes a point “-a” and a point “-aa”. This is confusing.

Proposal for reformulation

For coated solid inorganic macronutrient fertilisers, the following shall be indicated:

- (i) the name of the coating agents;
- (ii) the percentage of fertiliser coated by each coating agent;*

and followed by:

- (a) for polymer coated solid inorganic macronutrient fertilisers, the following marking: ‘The rate of nutrient releases can vary according to the temperature of the substrate. An adjustment of fertilisation may be necessary’; and
- (b) for sulphur (S) coated solid inorganic macronutrient fertilisers and sulphur (S)/polymer coated solid inorganic macronutrient fertilisers, the following marking: ‘The rate of nutrient release can vary according to the temperature of the substrate and the biological activity. An adjustment of fertilisation may be necessary’.

NB - in French

“-a) le nom des agents *de revêtement*” should be replaced by “-a) le nom des agents *d’enrobage*”

ANNEX I (2) (f)

– FPR: ANNEX III. PART II. ‘PFC 1(C)(I)(B): LIQUID INORGANIC MACRONUTRIENT FERTILISER’

The indication of the type of formulation (suspension or solution) may be important when the product is mixed into the spray tank by the farmer.

This information should be indicated on the label.

ANNEX I (2) (k)

– FPR: ANNEX III. PART II. ‘PFC 3(A): ORGANIC SOIL IMPROVER’

This amendment means that the indication of the organic carbon (C_{org}) content and the C_{org}/N ratio is optional.

The agronomic value of the organic soil improver is derived from these 2 parameters. This information must be indicated on the label.

The declaration of electrical conductivity may be optional on the label.

ORGANIC CARBON CONTENT (C_{ORG})

To ensure the fertility of an agricultural soil, a sufficient organic carbon content (C_{org}) is necessary. The organic carbon content (C_{org}) of the product gives an indication of the rate/ha to be applied to maintain soil fertility. A product with a high organic carbon (C_{org}) content is applied in smaller quantities.

THE C_{ORG}/N RATIO

The C_{org}/N ratio gives information on how fast the fertiliser works. For an organic soil improver, the ideal ratio is 10. If this ratio is higher than 20, the product may be phytotoxic to the crop.

Soil bacteria need nitrogen to convert the organic carbon in the product into stable organic carbon. If the C_{org}/N ratio is high, the nitrogen consumed by the bacteria is no longer available to the crop. The plant may be stunted in its growth or die in extreme cases.

ANNEX I (2) (l)

– FPR: ANNEX III. PART II. ‘PFC 4: GROWING MEDIUM’

This amendment means that the indication of the pH is optional. This information must be indicated on the label.

The pH is important agronomic information for growing media. Each plant needs a specific pH to express its growth potential.

In fact, it would be more logical to indicate a pH range on the label rather than a value. Indeed, each plant needs to grow within a pH range: 'alkaline plant' versus 'acid plant'.

ANNEX I (2) (m)

– FPR: ANNEX III. PART II. 'PFC 5: INHIBITOR'

Point 3.b - This amendment means that the information needed by the farmer is optional. This information must be indicated on the label.

The minimum and maximum recommended concentration of inhibiting compound(s) mixed with a fertiliser prior to its use is important information for the farmer. This type of product must be mixed safely. Consultation of the digital label is not recommended at this stage.

ANNEX I (2) (n)

– FPR: ANNEX III. PART II. 'PFC 6: PLANT BIOSIMULANT'

Application method(s) and effect claimed for each target plant must be indicated on the label.

APPLICATION METHOD(S)

The method of application influences the effectiveness of the product.

EFFECT CLAIMED FOR EACH TARGET PLANT

Plant biostimulants do not contain nutrients. The effectiveness of the product is indicated in the claims. The user makes his choice based on the claims.

ANNEX I (2) (o)

– FPR: ANNEX III. PART II. 'PFC 6(A): MICROBIAL PLANT BIOSIMULANT'

The content of micro-organisms allows products to be compared with each other. This information should be indicated on the label.

ANNEX I (2) (p)

– FPR: ANNEX III. PART II. 'PFC 7: FERTILISING PRODUCT BLEND'

This change means that the plant biostimulante content is optional. This information should be indicated on the label.

The plant biostimulant content makes it possible to compare products.

BELGIAN COMMENTS ON THE PROPOSED REGULATION ON DIGITAL LABELLING OF EU FERTILISING PRODUCTS

GENERAL POSITION ON THE PROJECT OF REGULATION

Belgium supports the project of regulation on the digital labelling.

ARTICLE 1(1)

– FPR: ARTICLE 2 - DEFINITION

A definition of "end-user" should be added. The use of this term without a definition causes problems for the application of Regulation 1069/2009 on animal by-products: farmer? Amateur? ...? In the same context, Belgium asks for a clear distinction between "economic operator" and "end-user". Does the farmer falls into the category of "economic operator"?

ARTICLE 1(4)

- FPR: ARTICLE 11A.4

In Article 11a 4, it is stated that for unpackaged products the information may be provided with a digital label or in a leaflet. Belgium can't agree with this formulation.

The rules of Article 11a 3 EU fertilising products in a packaging intended for the end user must be identical for EU fertilising products without packaging. Specifically, a leaflet must always be sent with EU fertilising products without packaging.

PROPOSITION FOR MODIFICATION :

"Where EU fertilising products are made available on the market without packaging to end-users, they shall be accompanied by the labelling elements set out in Annex III in the following form:

- (a) in a leaflet accompanying the EU fertilising product.*
- (b) on a digital label and duplicated on a leaflet accompanying the EU fertilising product*

By way of derogation from point b, the labelling elements marked with an asterisk in Annex III do not have to be duplicated on the a leaflet accompanying the EU fertilising product."

ARGUMENT

Here is a concrete case where the definition of "end-user" is important.

If the farmer falls under definition of "end-user" it should be noted that that the average age of farmers is high.

Some farmers may not be comfortable with the use of digital labels. Recital 4) of the project highlights the problem of vulnerable groups due to lack of digital literacy.

The farmer must have quick access to essential information on the analytical composition of the product he has just purchased. It should therefore be provided in the form of a leaflet. Lack of information on the composition of the product can lead to soil pollution and consequently to financial penalties for farmers.

ARTICLE 1(4)

- FPR: ARTICLE 11B.1

Belgium requests to add article 6 (5) and article 8(3) in the information on the digital label.

PROPOSITION FOR MODIFICATION:

1. *the digital label shall include:*
 - a) *the information required pursuant to Article 6(5), Article 6(6) and article 8(3);*

ARGUMENT:

Addition of Article 6(5) of the FPR is necessary to ensure the traceability of products. The rapid modification of digital labelling allows for rapid adaptation of traceability information.

Addition of Article 8(3) of the FPR is necessary to ensure that importers are subject to the same rules as manufacturers.

Paris, le 19 avril 2023

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires sur la proposition de règlement du Parlement européen et du Conseil modifiant le règlement (UE) n°2019/1009 en ce qui concerne l'étiquetage numérique des fertilisants UE

Réf. : ST 6896/23

Tout d'abord, les autorités françaises remercient la Commission européenne pour la proposition de règlement européen relatif à l'étiquetage numérique. Si les autorités françaises approuvent cette volonté de simplification des étiquetages afin d'en améliorer la lisibilité, elles tiennent à attirer l'attention de la Commission sur certains points, qui d'ailleurs ressortent de l'enquête menée sur l'étiquetage numérique :

- La difficulté d'accès à l'information : l'accès au réseau n'est pas uniforme sur tout le territoire de l'Union européenne et tous les consommateurs ne sont pas en mesure de recourir aux outils numériques,
- Le support physique reste le format préférentiel pour les acheteurs (utilisateurs professionnels et non professionnels) pour accéder aux informations d'où l'importance de continuer à faire figurer les informations essentielles du produit sur l'étiquette physique avant l'acte d'achat.

Ainsi, pour les raisons exposées ci-dessus, les autorités françaises considèrent que toutes les mentions d'étiquetage ne peuvent pas faire l'objet d'une mise à disposition sous forme numérique. Comme exprimé à plusieurs reprises lors de la consultation sur la digitalisation de l'étiquetage, les autorités françaises considèrent indispensable de conserver sur l'étiquette physique les informations « essentielles » sur les produits c'est-à-dire des informations primordiales pour l'achat d'un produit en toute connaissance de cause. Les autorités françaises considèrent aujourd'hui les informations suivantes comme essentielles pour les fertilisants UE :

- la dénomination du fertilisant ;
- la quantité ;
- les instructions d'emploi (culture cible, dose d'emploi, dose maximale), restrictions d'usage et modalités de stockage ;
- les mentions spécifiques liées aux risques présentés par certains ingrédients contenus dans les fertilisants (par exemple « dangereux pour les animaux en cas d'ingestion » pour les produits contenant de la ricine ou « les micro-organismes sont susceptibles de provoquer des réactions de sensibilisation » pour les biostimulants microbiens) ;

- La liste des ingrédients ;
- les caractéristiques agronomiques imposées par la réglementation telles que la teneur des éléments fertilisants.

→ **étiquetage numérique pour le vrac**

Les autorités françaises s'opposent à la proposition d'autoriser la fourniture des éléments d'étiquetage uniquement sous format numérique pour le vrac. Les produits vendus en vrac à des utilisateurs finaux devraient être soumis aux mêmes règles concernant l'étiquetage numérique que pour les produits emballés. Comme pour les produits emballés, les informations essentielles doivent être conservées sur un étiquetage physique, à savoir le document d'accompagnement.

→ **Informations de l'annexe III pouvant être fournies uniquement sous format numérique**

Les autorités françaises s'opposent à la fourniture uniquement sous format numérique des éléments d'étiquetage suivants qu'elles considèrent être des informations essentielles sur les produits :

- La liste des ingrédients
- Les caractéristiques agronomiques

→ **Informations sur les coordonnées du responsable de la mise sur le marché et traçabilité du fertilisants**

Les coordonnées du fabricant et le cas échéant de l'importateur (articles 6 et articles 8 du règlement (UE) n°2019/1009) ainsi que les éléments de traçabilité du produit (numéro de lot) sont des éléments indispensables pour la gestion des non conformités et des alertes par les professionnels mais également par les autorités compétentes. Ces informations doivent être accessibles le plus rapidement possible c'est-à-dire sans avoir à utiliser un objet connecté. Ainsi, ces informations devraient être fournies sur l'étiquetage physique.

COMENTS AND POSITION OF THE FRENCH AUTHORITIES

First of all, the French authorities thank the European Commission for the proposal for a regulation of the European Parliament and the Council amending Regulation (UE) 2019/1009 as regards the digital labelling of EU fertilising products. While the French authorities support the objective to simplify product labelling in order to improve readability of the labels, they would like to draw the Commission's attention to certain points, which were also highlighted by the survey conducted on digital labelling:

- The difficulty in accessing digital information: access to the network is not uniform throughout the European Union and not all consumers are able to use digital tools,
- The physical label is the preferred format for buyers (professional and non-professional users) to access information, hence the importance of continuing to provide the essential product information on the physical label before the act of purchase.

Thus, for the reasons set out above, the French authorities consider that not all labelling information can be made available in digital form. As expressed on several occasions during the consultation of the digital labelling study, the French authorities consider that "essential" information on products, i.e. information that is essential for the purchase of a product in full knowledge should remain on the label physically. The French authorities consider the following information to be essential information for EU fertilisers:

- the designation of the fertiliser
- the quantity;
- instructions for use (target crop, rate of use, maximum rate), restrictions on use and storage conditions;
- specific indications related to the risks presented by certain ingredients contained in the fertiliser (e.g. "dangerous for animals if swallowed" for products containing ricin or "micro-organisms may cause sensitisation reactions" for microbial biostimulants);
- List of ingredients;
- agronomic characteristics requested by the regulation such as the content of nutrients

→ **Digital labelling for bulk**

The French authorities are opposed to the proposal to allow the provision of labelling information only by digital means for bulk. Products sold in bulk to end users should be subject to the same rules on digital labelling as for packaged products. As for packaged products, the essential information must be kept on a physical label, namely the accompanying document.

→ **Annex III information that can only be provided in digital format**

The French authorities are opposed to the proposal allowing the provision only digitally of the following labelling information, which they consider to be essential product information:

- The list of ingredients
- Agronomic characteristics

→ **Information on the contact details of the person responsible for placing the fertiliser on the market and its traceability**

The contact details of the manufacturer and, if applicable, the importer (Articles 6 and 8 of Regulation (EU) No 2019/1009) as well as the product traceability information (batch number) are essential for the management of non-conformities and risks by professionals but also by the competent authorities. This information must be available immediately (as quickly as possible) i.e. without having to use a connected object. Thus, this information should be provided on the physical label.

Comments from Germany on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/1009 EU Fertilising Products Regulation

Germany has a scrutiny reservation on the entire proposal.

From the German government's point of view, the Commission's proposal is interesting with regard to the envisaged options for the digital labelling of EU fertiliser products and contains approaches worthy of discussion. The benefits of the planned regulation cannot be assessed at this stage of discussion, especially from the point of view of simplifying the provision of information.

At the present time, questions have arisen which have also been raised with us by our federal states:

- According to the newly introduced Article 11b No. 3 letter e), the digital label shall be available online for five years; this regulation shall also apply in case of insolvency. However, a legal entity ceases to exist after insolvency and cannot fulfil such obligations. How can the EU Commission ensure that information is kept available in such cases?
- Would it therefore be conceivable for the digital identification to be kept on a server of the EU Commission for a defined minimum period in a format specified by the EU Commission?
- The information linked - e.g. behind a QR code - can be adapted by economic operators at any time. How is it ensured that the digital labels or digitally provided information can also be assigned to the respective batch of the product placed on the market (version protection, protection against subsequent modification, etc.)?
- Voluntary digital labelling can only be supported if the use of the option by manufacturers does not lead to a lowering of the level of protection for the environment and consumers.
- For us, it is very important overall that essential content required to ensure consumer protection, such as the name, address of the manufacturer, sales description, intended use, batch, application/storage and hazard information, remain physically linked to the product.

- The information essential for the proper use of a fertiliser product must always be comprehensible and easily available to end users.

