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 (Text with EEA relevance)

REGULATION (EU) 2019/1009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 June 2019

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(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[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The conditions for making fertilisers available on the internal market have been partially harmonised through Regulation (EC) No 2003/2003 of the European Parliament and of the Council[(3)], which almost exclusively covers fertilisers from mined or chemically produced, inorganic materials. There is also a need to make use of recycled or organic materials for fertilising purposes. Harmonised conditions for making fertilisers made from such recycled or organic materials available on the entire internal market should be established in order to provide an important incentive for their further use. Promoting increased use of recycled nutrients would further aid the development of the circular economy and allow a more resource-efficient general use of nutrients, while reducing Union dependency on nutrients from third countries. The scope of the harmonisation should therefore be extended in order to include recycled and organic materials.

(2) Certain products are being used in combination with fertilisers for the purpose of improving nutrition efficiency, with the beneficial effect of reducing the amount of fertilisers used and hence their environmental impact. In order to facilitate their free movement on the internal market, not only fertilisers, i.e. products intended to provide plants with nutrient, but also products intended to improve plants' nutrition efficiency, should be covered by the harmonisation.

(3) Regulation (EC) No 765/2008 of the European Parliament and of the Council[4] lays down rules on the accreditation of conformity assessment bodies, provides a framework for the market surveillance of products and for controls on products from third countries, and lays down the general principles of the CE marking. That Regulation should be applicable to products covered by this Regulation in order to ensure that products benefiting from the free movement of goods within the Union fulfil requirements providing a high level of protection of public interests such as human, animal and plant health, safety and the environment.

(4) Decision No 768/2008/EC of the European Parliament and of the Council[5] lays down common principles and reference provisions intended to apply across sectoral legislation in order to provide a coherent basis for revision or recasts of that legislation. Regulation (EC) No 2003/2003 should therefore be replaced by this Regulation, drafted to the extent possible in accordance with those common principles and reference provisions.

(5) Contrary to most other product harmonisation measures in Union law, Regulation (EC) No 2003/2003 does not prevent non-harmonised fertilisers from being made available on the internal market in accordance with national law and the general free movement rules of the Treaty on the Functioning of the European Union (TFEU). In view of the very local nature of certain product markets, this possibility should remain. Compliance with harmonised rules should therefore remain optional, and should be required only for products, intended to provide plants with nutrient or improve plants' nutrition efficiency, which are CE marked when made available on the market. This Regulation should therefore not apply to products which are not CE marked when made available on the market.

(6) Different product functions warrant different product safety and quality requirements adapted to their different intended uses. EU fertilising products should therefore be divided into different product function categories, which should each be subject to specific safety and quality requirements.

(7) An EU fertilising product might have more than one of the functions described in the product function categories set out in this Regulation. Where only one of those functions is claimed, it should be sufficient for the EU fertilising product to comply with the requirements of the product function category describing that claimed function. By contrast, where more than one of those functions are claimed, the EU fertilising product should be regarded as a blend of two or more component EU fertilising products, and compliance should be required for each of the component EU fertilising products with respect to its function. A specific product function category should therefore cover such blends.

(8) A manufacturer using one or more EU fertilising products that have already been subject to a conformity assessment, by that manufacturer or another manufacturer, might wish to rely on that conformity assessment. For the purpose of reducing the administrative burden to a minimum, the resulting EU fertilising product should also be regarded as a blend of two or more component EU fertilising products, and the additional conformity

requirements for the blend should be limited to the aspects that are warranted by the blending.

(9) Different component materials warrant different process requirements and control mechanisms adapted to their different potential hazardousness and variability. Component materials for EU fertilising products should therefore be divided into different categories, which should each be subject to specific process requirements and control mechanisms. It should be possible to make available on the market an EU fertilising product composed of several component materials from various component material categories, where each material complies with the requirements of the category to which the material belongs.

(10) Contaminants in EU fertilising products, such as cadmium, could pose a risk to human, animal or plant health, to safety or to the environment as they accumulate in the environment and enter the food chain. Their content should therefore be limited in such products. Furthermore, impurities in EU fertilising products derived from bio-waste, in particular polymers but also metal and glass, should be either prevented or limited to the extent technically feasible by detection of such impurities in separately collected bio-waste before processing.

(11) Several Member States have in place national provisions limiting cadmium content in phosphate fertilisers on grounds relating to the protection of human health and of the environment. Should a Member State deem it necessary to maintain such national provisions after the adoption of harmonised limit values under this Regulation, and until those harmonised limit values are equal to or lower than the national limit values already in place, it should notify them to the Commission in accordance with Article 114(4) TFEU. Furthermore, in accordance with Article 114(5) TFEU, if a Member State deems it necessary to introduce new national provisions, such as provisions limiting cadmium content in phosphate fertilisers, based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of this Regulation, it should notify the Commission of the envisaged provisions as well as the grounds for introducing them. In either case, the Commission should verify in accordance with Article 114(6) TFEU whether or not the notified national provisions are a means of arbitrary discrimination, a disguised restriction on trade or an obstacle to the functioning of the internal market.

(12) In view of the fact that certain Member States have been granted derogations from Article 5 of Regulation (EC) No 2003/2003 in accordance with TFEU relating to cadmium content in fertilisers on the grounds, inter alia, of the protection of human health and the environment in the context of particular soil and climactic conditions prevailing in those Member States, and since the factual circumstances that led to the granting of those derogations by the Commission remain valid, those Member States should be able to continue to apply their national limit values for cadmium content until such time as harmonised limit values for cadmium content in phosphate fertilisers which are equal to or lower than those limit values are applicable at Union level.

(13) In order to facilitate the compliance of phosphate fertilisers with the requirements of this Regulation and to boost innovation, sufficient incentives should be provided for the development of relevant technologies, particularly decadmiation technology, and for the management of cadmium-rich hazardous waste in the form of relevant financial resources such as those available under Horizon Europe, the Circular Economy Finance Support Platform or through the European Investment Bank. Those incentives should target cadmium removal solutions that will be economically viable on an industrial scale and allow appropriate treatment of the waste generated.

(14) An EU fertilising product complying with the requirements of this Regulation should be allowed to move freely on the internal market. Where one or more of the component materials is a derived product within the meaning of Regulation (EC) No 1069/2009 of the European Parliament and of the Council[(6)], but has reached a point in the manufacturing chain beyond which it no longer poses any significant risk to human, animal or plant health, to safety or to the environment (the 'end point in the manufacturing chain'), to continue subjecting the product to the provisions of that Regulation would represent an unnecessary administrative burden. Such fertilising products should therefore be excluded from the requirements of that Regulation. Regulation (EC) No 1069/2009 should therefore be amended accordingly.

(15) For each component material category which includes derived products within the meaning of Regulation (EC) No 1069/2009, the end point in the manufacturing chain should be determined in accordance with the procedures laid down in that Regulation. Where such an end point is reached before the EU fertilising product is placed on the market but after the manufacturing process regulated under this Regulation has started, the process requirements of both Regulation (EC) No 1069/2009 and this Regulation should apply cumulatively to EU fertilising products, which means application of the stricter requirement in case both Regulations regulate the same parameter.

(16) Derived products within the meaning of Regulation (EC) No 1069/2009 which are already placed on the market and used in the Union as organic fertilisers and soil improvers in accordance with that Regulation constitute promising raw materials for the production of innovative fertilising products in a circular economy. As soon as an end point in the manufacturing chain has been determined for the respective derived product, the EU fertilising products containing such derived products in accordance with this Regulation should be granted free movement on the internal market without being subject to the requirements of Regulation (EC) No 1069/2009. For this purpose, the Commission should, without undue delay, carry out a first assessment to check whether an end point in the manufacturing chain can be determined.

(17) In the event of risks to public or animal health from fertilising products derived from animal by-products, recourse to safeguard measures in accordance with Regulation (EC) No 178/2002 of the European Parliament and of the Council[(7)] should be possible, as is the case for other categories of products derived from animal by-products.

(18) The making available on the market of an animal by-product or a derived product within the meaning of Regulation (EC) No 1069/2009 for which no end point in the manufacturing chain has been determined, or for which the determined end point has

not been reached at the time of making available on the market, is subject to the requirements of that Regulation. Therefore, it would be misleading to provide for the product's CE marking under this Regulation. Any product containing or consisting of such an animal by-product or derived product should therefore be excluded from the scope of this Regulation. Untreated animal by-products should not be subject to this Regulation.

(19) For certain recovered wastes, such as struvite, biochar and ash-based products, within the meaning of Directive 2008/98/EC of the European Parliament and of the Council[(8)], a market demand for their use as fertilising products has been identified. Furthermore, certain requirements are necessary for the waste used as input in the recovery operation and for the treatment processes and techniques, as well as for fertilising products resulting from the recovery operation, in order to ensure that the use of those fertilising products does not lead to overall adverse environmental or human health impacts. For EU fertilising products, those requirements should be laid down in this Regulation. Therefore, as of the moment of compliance with all the requirements of this Regulation, such products should cease to be regarded as waste within the meaning of Directive 2008/98/EC, and it should, therefore, be possible for fertilising products containing or consisting of such recovered waste materials to access the internal market. To ensure legal certainty, take advantage of technical developments, and further stimulate the incentive among producers to make more use of valuable waste streams, the scientific analyses and the setting of recovery requirements at Union level for such products should start immediately after the entry into force of this Regulation. Accordingly, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of defining, without unnecessary delay, larger or additional categories of component materials eligible for use in the production of EU fertilising products.

(20) Certain by-products within the meaning of Directive 2008/98/EC are currently used by manufacturers as components of fertilising products or can be expected to be used in future emerging markets. For such components, specific requirements should be laid down in a separate component material category in Annex II to this Regulation.

(21) Certain substances and mixtures, commonly referred to as inhibitors, improve the nutrient release pattern of a nutrient in a fertiliser by delaying or stopping the activity of specific groups of micro-organisms or enzymes. For inhibitors made available on the market with the intention of them being added to fertilising products, the manufacturer should be responsible for ensuring that those inhibitors fulfil certain efficacy criteria. Therefore, those inhibitors should be considered as EU fertilising products under this Regulation. Furthermore, EU fertilising products containing such inhibitors should be subject to certain efficacy, safety and environmental criteria. Such inhibitors should therefore also be regulated as component materials for EU fertilising products.

(22) Certain substances, mixtures and micro-organisms, referred to as plant biostimulants, are not as such inputs of nutrients, but nevertheless stimulate plants' natural nutrition processes. Where such products aim solely at improving the plants' nutrient use efficiency, tolerance to abiotic stress, quality traits or increasing the availability of