Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (Text with EEA relevance)

REGULATION (EC) No 2003/2003 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 October 2003

relating to fertilisers

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the Opinion of the European Economic and Social Committee[(2)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) Council Directive 76/116/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to fertilisers[(4)], Council Directive 80/876/EEC of 15 July 1980 on the approximation of the laws of the Member States relating to straight ammonium nitrate fertilisers of high nitrogen content[(5)], Commission Directive 87/94/EEC of 8 December 1986 on the approximation of the laws of the Member States relating to procedures for the control of characteristics of, limits for and resistance to detonation of straight ammonium nitrate fertilisers of high nitrogen content[(6)], and Commission Directive 77/535/EEC of 22 June 1977 on the approximation of the laws of the Member States relating to methods of sampling and analysis for fertilisers[(7)], have been substantially amended several times. In accordance with the communication from the Commission to the European Parliament and the Council 'Simpler legislation for the internal market' (SLIM) and the Action Plan for the Single Market those Directives should be repealed and replaced by a single legal instrument, in the interests of clarity.

(2) The Community legislation on fertilisers is very technical in its content. A Regulation is therefore the most appropriate legal instrument, as it imposes directly on manufacturers precise requirements to be applied at the same time and in the same manner throughout the Community.

(3) In each Member State fertilisers must display certain technical characteristics laid down by mandatory provisions. These provisions, concerning more particularly the composition and definition types of fertilisers, the designations of these types, their identification and their packaging, differ from one Member State to another. By their disparity they hinder trade within the Community and should therefore be harmonised.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EC) No 2003/2003 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) Since the objective of the proposed action, namely to ensure the internal market in fertilisers, cannot be sufficiently achieved by the Member States if there are no common technical criteria and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.

(5) It is necessary to determine at Community level the designation, definition and composition of certain fertilisers (EC fertilisers).

(6) Community rules on the identification, traceability and labelling of EC fertilisers and on the closure of the packages should also be laid down.

(7) A procedure should be established at Community level to be followed in cases where a Member State deems it necessary to restrict the placing on the market of EC fertilisers.

(8) The production of fertilisers is subject to varying degrees of fluctuation due to manufacturing techniques or basic materials. Sampling and analytical procedures may also contain variations. It is therefore necessary to authorise tolerances on the declared nutrient contents. In the interest of the agricultural user, it is advisable to keep these tolerances within narrow limits.

(9) Official controls on the compliance of EC fertilisers with requirements of this Regulation concerning quality and composition should be carried out by laboratories that are approved by the Member States and notified to the Commission.

(10) Ammonium nitrate is the essential ingredient of a variety of products, some of which are intended for use as fertilisers and others as explosives. It is necessary, having regard to the particular nature of ammonium nitrate fertilisers of high nitrogen content and to the consequent requirements regarding public safety, health and protection of workers, to lay down additional Community rules for EC fertilisers of this type.

(11) Certain of those products could be hazardous and could in certain instances be used for purposes other than those for which they were intended. This could well endanger the security of persons and property. Manufacturers should therefore be obliged to take appropriate steps to avoid such use, and in particular to ensure the traceability of such fertilisers.

(12) In the interest of public safety, it is particularly important to determine at Community level the characteristics and properties distinguishing ammonium nitrate EC fertilisers of high nitrogen content from varieties of ammonium nitrate used in the manufacture of products used as explosives.

(13) Ammonium nitrate EC fertilisers of high nitrogen content should conform to certain characteristics to ensure that they are harmless. Manufacturers should ensure that all high nitrogen content ammonium nitrate fertilisers have passed a test of resistance to detonation before those fertilisers are placed on the market.

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(14) It is necessary to establish rules on the methods of the closed thermal cycles even if these methods may not necessarily simulate all conditions arising during transport and storage.

(15) Fertilisers can be contaminated by substances that can potentially pose a risk to human and animal health and the environment. Further to the opinion of the Scientific Committee on Toxicity, Ecotoxicity and the Environment (SCTEE), the Commission intends to address the issue of unintentional cadmium content in mineral fertilisers and will, where appropriate, draw up a proposal for a Regulation, which it intends to present to the European Parliament and the Council. Where appropriate, a similar review will be undertaken for other contaminants.

(16) It is appropriate to establish a procedure, to be observed by any manufacturer or its representative that wishes to include a new type of fertiliser in Annex I in order to use the marking ‘EC fertiliser’.

(17) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(8)].

(18) Member States should lay down penalties in respect of infringements of the provisions of this Regulation. They may provide that a manufacturer which infringes Article 27 can be fined an amount equivalent to ten times the market value of the shipment that fails to comply.

(19) Directives 76/116/EEC, 77/535/EEC, 80/876/EEC and 87/94/EEC should be repealed,

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

CHAPTER I

Scope and definitions

Article 1

Scope

This Regulation shall apply to products which are placed on the market as fertilisers designated ‘EC fertiliser’.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EC) No 2003/2003 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

(a) 'Fertiliser' means material, the main function of which is to provide nutrients for plants.

(b) 'Primary nutrient' means the elements nitrogen, phosphorus and potassium only.

(c) 'Secondary nutrient' means the elements calcium, magnesium, sodium and sulphur.

(d) 'Micro-nutrients' means the elements boron, cobalt, copper, iron, manganese, molybdenum and zinc, essential for plant growth in quantities that are small compared with those of primary and secondary nutrients.

(e) 'Inorganic fertiliser' means a fertiliser in which the declared nutrients are in the form of minerals obtained by extraction or by physical and/or chemical industrial processes. Calcium cyanamide, urea and its condensation and association products, and fertilisers containing chelated or complexed micro-nutrients may, by convention, be classed as inorganic fertilisers.

(f) 'Chelated micro-nutrient' means a micro-nutrient that is held by one of the organic molecules listed in section E.3.1 of Annex I.

(g) 'Complexed micro-nutrient' means a micro-nutrient that is held by one of the molecules listed in section E.3.2 of Annex I.

(h) 'Type of fertilisers' means fertilisers with a common type designation as indicated in Annex I.

(i) 'Straight fertiliser' means a nitrogenous, phosphatic or potassic fertiliser having a declarable content of only one of the primary nutrients.

(j) 'Compound fertiliser' means a fertiliser having a declarable content of at least two of the primary nutrients and obtained chemically or by blending or by a combination of both.

(k) 'Complex fertiliser' means a compound fertiliser, obtained by chemical reaction, by solution, or in its solid state by granulation, having a declarable content of at least two of the primary nutrients. In its solid state each granule contains all the nutrients in their declared composition.

(l) 'Blended fertiliser' means a fertiliser obtained by dry mixing of several fertilisers, with no chemical reaction.

(m) 'Foliar fertiliser' means a fertiliser suitable for application to and nutrient uptake by the foliage of a crop.

(n) 'Fluid fertiliser' means a fertiliser in suspension or solution.

(o) 'Solution fertiliser' means a fluid fertiliser that is free of solid particles.

(p) 'Suspension fertiliser' means a two-phase fertiliser in which solid particles are maintained in suspension in the liquid phase.

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(q) 'Declaration' means a statement of the amount of nutrients, including their forms and solubility, guaranteed within specified tolerances.

(r) 'Declared content' means the content of an element, or its oxide, which, in accordance with Community legislation, is given on a label of an EC fertiliser or on the relevant accompanying document.

(s) 'Tolerance' means the permitted deviation of the measured value of a nutrient content from its declared value.

(t) 'European Standard' means CEN (European Committee for Standardisation) standards, which have been officially recognised by the Community and whose reference has been published in the *Official Journal of the European Communities*.

(u) 'Package' means a sealable receptacle used to hold, protect, handle, and distribute fertilisers and holding not more than 1 000 kg.

(v) 'Bulk' means a fertiliser not packaged as prescribed by this Regulation.

(w) 'Placing on the market' means the supply of fertiliser, whether in return for payment or free of charge, or storage for the purpose of supply. Importation of a fertiliser into the customs territory of the European Community shall be deemed to constitute placing on the market.

(x) 'Manufacturer' means the natural or legal person responsible for placing a fertiliser on the market; in particular a producer, an importer, a packager working for its own account, or any person changing the characteristics of a fertiliser, shall be deemed to be a manufacturer. However, a distributor who does not change the characteristics of the fertiliser shall not be deemed to be a manufacturer.

CHAPTER II

Placing on the market

Article 3

EC Fertiliser

A fertiliser belonging to a type of fertilisers listed in Annex I and complying with the conditions laid down in this Regulation, may be designated 'EC fertiliser'.

The designation 'EC fertiliser' shall not be used for a fertiliser which does not comply with this Regulation.

Article 4

Establishment within the Community

The manufacturer shall be established within the Community and shall be responsible for the conformity of the 'EC fertiliser' with the provisions of this Regulation.