Commission Decision (EU) 2020/1184 of 17 July 2020 on the national provisions notified by Hungary pursuant to Article 114(4) of the Treaty on the Functioning of the European Union concerning the cadmium content in phosphate fertilisers (notified under document C(2020) 4862) (Only the Hungarian text is authentic)

COMMISSION DECISION (EU) 2020/1184

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(Only the Hungarian text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114(6) thereof,

Whereas:

1. FACTS AND PROCEDURE

(1) On 19 July 2019 Hungary notified the Commission, based on Article 114(4) of the Treaty on the Functioning of the European Union (TFEU), of its intention to maintain national provisions on cadmium content in phosphate fertilisers derogating from Regulation (EU) 2019/1009 of the European Parliament and of the Council[(1)].

1.1. Union Legislation

1.1.1. *Article 114(4) and (6) TFEU*

(2) Article 114, paragraphs 4 and 6 TFEU provide:

4. If, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 36, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

[…]

6 The Commission shall, within six months of the notifications referred to in paragraphs 4 […] approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2020/1184. (See end of Document for details)*

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 […] shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

1.2. **Harmonisation rules in the field of fertilising products**

1.2.1. *Regulation (EC) No 2003/2003*

(3) Regulation (EC) No 2003/2003 of the European Parliament and the Council[(2)] applies to products which are placed on the market as fertilisers designated 'EC fertilisers'. A fertiliser belonging to a type of fertilisers listed in Annex I to Regulation (EC) No 2003/2003 and complying with the conditions laid down in that Regulation may be designated 'EC fertiliser' and move freely in the internal market.

(4) Annex I to Regulation (EC) No 2003/2003 sets an exhaustive list of types of fertilisers covered by the harmonisation rules. For each type of fertiliser there are specific requirements concerning for instance nutrient content, nutrient solubility, or processing methods.

(5) Regulation (EC) No 2003/2003 applies mainly to inorganic fertilisers. Some of the types of fertilisers covered have a phosphorus content of 5 % phosphorus pentoxide (P_2O_5)-equivalent or more by mass.

(6) Article 5 of Regulation (EC) No 2003/2003 sets the principle of free circulation of EC fertilisers on the internal market, stating that Member States shall not, on grounds of composition, identification, labelling or packaging, and other provisions contained in that Regulation, prohibit, restrict or hinder the placing on the market of EC fertilisers which comply with that Regulation.

(7) That Regulation sets no limit values for contaminants in EC fertilisers. Therefore, with a few exceptions based on the Commission Decisions in application of the respective TFEU provisions[(3)], EC fertilisers with a phosphorus content of at least 5 % P_2O_5 move freely in the internal market irrespective of their cadmium content.

(8) Nevertheless, the Commission's intention to address the issue of unintentional cadmium content in mineral fertilisers was already announced in recital 15 of Regulation (EC) No 2003/2003. According to it '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'.

1.2.2. *Regulation (EU) 2019/1009*

(9) Regulation (EU) 2019/1009 sets harmonisation rules for 'EU fertilising products'. It repeals Regulation (EC) No 2003/2003 as of 16 July 2022.

(10) EU fertilising products are fertilising products which are CE marked when made available on the internal market. An EU fertilising product must meet the requirements set out in Regulation (EU) 2019/1009 for the relevant product function category ('PFC') and component material category or categories, and be labelled in accordance with the labelling requirements laid down therein. There are seven PFCs for EU fertilising products, one of which covers fertilisers.

(11) Regulation (EU) 2019/1009 covers inorganic fertilisers in a more generic manner than Annex I to Regulation (EC) No 2003/2003, subject to some general requirements concerning their quality and safety. In addition, Regulation (EU) 2019/1009 applies to organic and organo-mineral fertilisers, which are outside the material scope of Regulation (EC) No 2003/2003.

(12) Regulation (EU) 2019/1009 introduces at Union level the notion of 'phosphate fertilisers' for inorganic macronutrient fertilisers or organo-mineral fertilisers with a phosphorus content of at least 5 % P_2O_5.

(13) The Regulation sets, for the first time at Union level, limit values for contaminants in EU fertilising products. Based on point 3(a)(ii) in PFC 1(B), Organo-mineral fertiliser, and point 2(a)(ii) in PFC 1(C)(I), Inorganic macronutrient fertiliser, of Annex I to Regulation (EU) 2019/1009, the cadmium content in phosphate fertilisers must not exceed the limit value of 60 mg/kg P_2O_5.

(14) The principle of free movement is enshrined in Article 3(1) of Regulation (EU) 2019/1009, according to which Member States shall not impede, for reasons relating to composition, labelling or other aspects covered by that Regulation, the making available on the market of EU fertilising products which comply with that Regulation. However, in accordance with Article 3(2) of Regulation (EU) 2019/1009, a Member State which, on 14 July 2019, benefits from a derogation from Regulation (EC) No 2003/2003 in relation to cadmium content in fertilisers granted in accordance with Article 114(4) TFEU may continue to apply the national limit values for cadmium content in phosphate fertilisers until such time as harmonised limit values for cadmium content in phosphate fertilisers which are equal to or lower than the national limit value are applicable at Union level.

(15) In addition, by 16 July 2026, the Commission has an obligation to review the limit values for cadmium content in phosphate fertilisers, with a view to assess the feasibility of reducing these limit values to a lower appropriate level. The Commission has to take into account environmental factors, in particular in the context of soil and climatic conditions, health factors, as well as socioeconomic factors, including considerations of security of supply.

1.2.3. *Optional regime*

(16) The EU market for fertilising products is only partly harmonised.

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2020/1184. (See end of Document for details)*

(17) Regulation (EC) No 2003/2003 aims to ensure the free circulation on the internal market of EC fertilisers. However, it does not affect the so-called 'national fertilisers' placed on the market of the Member States in accordance with national legislation. Producers can choose to market fertiliser as 'EC fertiliser' or as 'national fertiliser'.

(18) Regulation (EU) 2019/1009 maintains unchanged the optional regime. Thus, it ensures the free movement in the internal market of EU fertilising products and continues to allow the placing on the market of national fertilising products. The choice remains with the manufacturer.

(19) Based on both Regulation (EC) No 2003/2003 and Regulation (EU) 2019/1009, Member States must not impede the making available on the market of compliant EC fertilisers and, respectively, EU fertilising products, for reasons relating to, inter alia, cadmium content.

(20) However, Member States may maintain or introduce any limit values deemed appropriate for contaminants in national fertilising products, which are outside the scope of Regulation (EU) 2019/1009. Every Member State is concerned to a greater or lesser extent by the threat that accumulation of cadmium poses to the long-term sustainability of crop production. The majority of Member States have already introduced rules limiting the cadmium content in national fertilising products with the objective of reducing emissions of cadmium in the environment and thereby the exposure of humans to cadmium. This Decision does not refer to this type of rules.

(21) Thus, Union harmonisation rules coexist with the national provisions applicable to fertilising products.

1.3. National provisions notified

(22) The national provisions notified by Hungary ('the notified national provisions') are contained in the Hungarian Minister for Agriculture and Rural Development Decree No 36/2006 of 18 May 2006 on the authorisation, storage, marketing and use of fertilising products. Decree No 36/2006 contains certain conditions. In particular, Point 1.2 of Annex 3 to the Decree sets a national limit value of 20 mg/kg P_2O_5 for cadmium. This limit value applies to three categories of national fertilisers: phosphoric fertilisers, NPK fertilisers and NPK + micronutrient fertilisers irrespective of their content of P_2O_5. In its letter dated 27 September 2019, Hungary confirmed that that limit value is not applicable to EC fertilisers.

(23) Hungary has specified in its notification and the additional information submitted to the Commission that it intends to apply the above mentioned limit value to inorganic and organo-mineral fertilisers covered by Regulation (EU) 2019/1009 and made available on the market in Hungary. In particular, if approved, the notified national provisions will only apply as a derogation from the provisions on phosphate fertilisers in point 3(a)(ii) PFC 1(B) and point 2(a)(ii) PFC 1(C)(I) of Part II of Annex I to Regulation (EU) 2019/1009. These provisions concern inorganic and organo-mineral fertilisers

with a total phosphorus content that is equal or more than 5 % phosphorus pentoxide (P_2O_5) equivalent by mass.

(24) Regarding the various conditions of Decree No 36/2006 other than the cadmium limits, Hungary has confirmed that, those other conditions are not to be considered as notified national provisions derogating from Regulation (EU) 2019/1009 to be approved by the Commission, as it has no intention to derogate from that Regulation beyond the limit value for cadmium.

1.4. **Procedure**

(25) At the time of the adoption of Regulation (EU) 2019/1009, Hungary along with Slovakia and the Czech Republic signed a political declaration expressing their regret as regards the low ambition of the final compromise on the cadmium limit value in phosphate fertilisers, and already indicating their support for national derogations from it based on Article 114(4) TFEU.

(26) By letter of 17 July 2019, registered on 19 July 2019, Hungary notified the Commission of its intention to maintain national provisions on cadmium content in phosphate fertilisers derogating from Regulation (EU) 2019/1009. According to Article 114(4) read in conjunction with Article 36 TFEU, Hungary's justification is based on grounds of major needs relating to the long-term protection of the soil and the resulting protection of human health and the protection of the environment.

(27) By letter of 26 July 2019, the Commission acknowledged receipt of the notification and informed the Hungarian authorities that the six-month period for its examination according to Article 114(6) TFEU started on 20 July 2019.

(28) In support of their notification based on Article 114(4) TFEU, the Hungarian authorities sent by letters dated 27 September 2019 and 15 October 2019 additional information to the Commission. That information provides clarifications as regards the material scope of the national provisions that Hungary seeks to maintain, as well as detailed data on the fertilisers market in Hungary.

(29) Further, the Commission published a notice regarding the notification in the *Official Journal of the European Union*[(4)] in order to inform interested parties of Hungary's intention to maintain its national provisions, as well as the grounds invoked to support the request. By letter of 19 November 2019, the Commission also informed the other Member States on the notification and gave them the opportunity to submit comments thereon within 30 days.

(30) The Commission received comments within this deadline from two Member States, namely: Latvia and the Czech Republic. Latvia stated that it did not object to the intention of Hungary to maintain national provisions derogating from the provisions of Regulation (EU) 2019/1009 in relation to cadmium limit value of phosphate fertilisers. The Czech Republic mentioned that it does not have any comments as regards the notification. No comments were received following the publication of the notice in the Official Journal.