

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)

## CHAPTER V

### UNION MARKET SURVEILLANCE, CONTROL OF EU FERTILISING PRODUCTS ENTERING THE UNION MARKET AND UNION SAFEGUARD PROCEDURE

#### *Article 37*

#### **Union market surveillance and control of EU fertilising products entering the Union market**

Articles 16 to 29 of Regulation (EC) No 765/2008 shall apply to EU fertilising products.

#### *Article 38*

#### **Procedure at national level for dealing with EU fertilising products presenting a risk**

1 Where the market surveillance authorities of one Member State have sufficient reason to believe that an EU fertilising product presents a risk to human, animal or plant health, to safety or to the environment, they shall carry out an evaluation in relation to the EU fertilising product concerned covering all relevant requirements laid down in this Regulation. The relevant economic operators shall cooperate as necessary with the market surveillance authorities for that purpose.

Where, in the course of the evaluation referred to in the first subparagraph, the market surveillance authorities find that the EU fertilising product does not comply with the requirements laid down in this Regulation, they shall without delay require the relevant economic operator to take all appropriate corrective action, within a reasonable period prescribed by the market surveillance authorities and commensurate with the nature of the risk, to bring the EU fertilising product into compliance with those requirements, to withdraw the EU fertilising product from the market or to recall it.

The market surveillance authorities shall inform the relevant notified body accordingly.

Article 21 of Regulation (EC) No 765/2008 shall apply to the measures referred to in the second subparagraph of this paragraph.

2 Where the market surveillance authorities consider that non-compliance is not restricted to their national territory, they shall inform the Commission and the other Member States of the results of the evaluation and of the actions which they have required the economic operator to take.

3 The economic operator shall ensure that all appropriate corrective action is taken in respect of all the EU fertilising products concerned that the economic operator has made available on the market throughout the Union.

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4 Where the relevant economic operator does not take adequate corrective action within the period referred to in the second subparagraph of paragraph 1, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the EU fertilising product being made available on their national market, to withdraw the EU fertilising product from that market or to recall it.

The market surveillance authorities shall inform the Commission and the other Member States, without delay, of those measures.

5 The information referred to in the second subparagraph of paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant EU fertilising product, the origin of that EU fertilising product, the nature of the non-compliance alleged and the risk involved, the nature and duration of the national measures taken and the arguments put forward by the relevant economic operator. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to any of the following:

- a failure of the EU fertilising product to meet the requirements set out in Annex I, II or III;
- b shortcomings in the harmonised standards referred to in Article 13;
- c shortcomings in the common specifications referred to in Article 14.

6 Member States other than the Member State initiating the procedure under this Article shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the EU fertilising product concerned, and, in the event of disagreement with the adopted national measure, of their objections.

7 Where, within three months of receipt of the information referred to in the second subparagraph of paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed justified.

8 Member States shall ensure that appropriate restrictive measures, such as withdrawal of the EU fertilising product from the market, are taken without delay in respect of the EU fertilising product concerned.

9 Obligations of the market surveillance authorities under this Article shall be without prejudice to the possibility for Member States to regulate fertilising products which are not EU fertilising products.

### *Article 39*

#### **Union safeguard procedure**

1 Where, on completion of the procedure set out in Article 38(3) and (4), objections are raised against a measure taken by a Member State, or where the Commission considers a national measure to be contrary to Union law, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measure. On the basis of the results of that evaluation, the Commission shall adopt an implementing act in the form of a decision determining whether the national measure is justified or not.

If the national measure is considered justified, the decision shall order all Member States to take the necessary measures to ensure that the non-compliant EU fertilising product is withdrawn from their market, and to inform the Commission accordingly.

If the national measure is considered unjustified, the decision shall order the Member State concerned to withdraw that measure.

The Commission shall address its decision to all Member States and shall immediately communicate it to them and the relevant economic operator or operators.

2 Where the national measure is considered justified and the non-compliance of the EU fertilising product is attributed to shortcomings in the harmonised standards referred to in point (b) of Article 38(5) of this Regulation, the Commission shall apply the procedure provided for in Article 11 of Regulation (EU) No 1025/2012.

3 Where the national measure is considered justified and the non-compliance of the EU fertilising product is attributed to shortcomings in the common specifications referred to in point (c) of Article 38(5), the Commission shall, without delay, adopt implementing acts amending or repealing the common specifications concerned.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 45(3).

#### *Article 40*

### **Compliant EU fertilising products which present a risk**

1 Where, having carried out an evaluation under Article 38(1), a Member State finds that although an EU fertilising product is in compliance with this Regulation it presents a risk to human, animal or plant health, to safety or to the environment, it shall without delay require the relevant economic operator to take all appropriate measures, within a reasonable period prescribed by the market surveillance authority and commensurate with the nature of the risk, to ensure that the EU fertilising product concerned, when made available on the market, no longer presents that risk, to withdraw the EU fertilising product from the market or to recall it.

2 The economic operator shall ensure that corrective action is taken in respect of all the EU fertilising products concerned that the economic operator has made available on the market throughout the Union.

3 The Member State shall immediately inform the Commission and the other Member States. That information shall include all available details, in particular the data necessary for the identification of the EU fertilising product concerned, the origin and the supply chain of that EU fertilising product, the nature of the risk involved and the nature and duration of the national measures taken.

4 The Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measures taken. On the basis of the results of that evaluation, the Commission shall adopt an implementing act in the form of a decision determining whether the national measure is justified or not, and where necessary, ordering appropriate measures.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 45(3).

On duly justified imperative grounds of urgency relating to the protection of human, animal or plant health, safety or the environment, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 45(4).

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5 The Commission shall address its decision to all Member States and shall immediately communicate it to them and the relevant economic operator or operators.

#### *Article 41*

#### **Formal non-compliance**

1 Without prejudice to Article 38, where a Member State makes one of the following findings with regard to an EU fertilising product, it shall require the relevant economic operator to put an end to the non-compliance concerned:

- a the CE marking has been affixed in violation of Article 30 of Regulation (EC) No 765/2008 or of Article 18 of this Regulation;
- b the identification number of the notified body has been affixed in violation of Article 18 or has not been affixed, where required by Article 18;
- c the EU declaration of conformity has not been drawn up or has not been drawn up correctly;
- d the technical documentation is either not available or not complete;
- e the information referred to in Article 6(6) or Article 8(3) is absent, false or incomplete;
- f any other administrative requirement provided for in Article 6 or Article 8 is not fulfilled.

2 Where the non-compliance referred to in paragraph 1 persists, the Member State concerned shall take all appropriate measures to restrict or prohibit the EU fertilising product being made available on the market or ensure that it is recalled or withdrawn from the market.

Obligations of Member States in this respect shall be without prejudice to the possibility for them to regulate fertilising products which are not EU fertilising products.

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