

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 VI

DELEGATED POWERS AND COMMITTEE PROCEDURE

Article 42

Amendments of Annexes

1 The Commission is empowered to adopt delegated acts in accordance with Article 44 amending Annex I, with the exception of cadmium limit values and the definitions, or other elements relating to the scope, of product function categories, and amending Annexes II, III and IV, for the purposes of adapting those Annexes to technical progress and of facilitating internal market access and free movement for EU fertilising products:

- a which have the potential to be the subject of significant trade on the internal market, and
- b for which there is scientific evidence that they:
 - (i) do not present a risk to human, animal or plant health, to safety or to the environment, and
 - (ii) ensure agronomic efficiency.

When adopting delegated acts which introduce new contaminant limit values in Annex I, the Commission shall take into account scientific opinions of the European Food Safety Authority, the European Chemicals Agency or the Commission's Joint Research Centre, as relevant.

Where the Commission adopts delegated acts in order to add or review component material categories so as to include materials that can be considered to be recovered waste or by-products within the meaning of Directive 2008/98/EC, those delegated acts shall explicitly exclude such materials from component material categories 1 and 11 of Annex II to this Regulation.

When adopting delegated acts under this paragraph, the Commission shall prioritise in particular animal by-products, by-products within the meaning of Directive 2008/98/EC, and recovered waste, in particular from the agricultural sector and the agro-food industry, as well as materials and products already lawfully placed on the market in one or more Member States.

2 Without undue delay after 15 July 2019, the Commission shall assess struvite, biochar and ash-based products. If that assessment concludes that the criteria in point (b) of paragraph 1 are fulfilled, the Commission shall adopt delegated acts pursuant to paragraph 1 to include those materials in Annex II.

3 The Commission may only adopt delegated acts pursuant to paragraph 1 amending Annex II to this Regulation to include in the component material categories materials that cease to be waste following a recovery operation if recovery rules in that Annex, adopted no later

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than the inclusion, ensure that the materials comply with the conditions laid down in Article 6 of Directive 2008/98/EC.

4 The Commission may only adopt delegated acts pursuant to paragraph 1 amending Annex II to add new micro-organisms or strains of micro-organisms, or additional processing methods to the component material category for such organisms after having verified which strains of the additional micro-organism fulfil the criteria in point (b) of paragraph 1, on the basis of the following data:

- a name of the micro-organism;
- b taxonomic classification of the micro-organism: genus, species, strain and procurement method;
- c scientific literature reporting about safe production, conservation and use of the micro-organism;
- d taxonomic relation to micro-organism species fulfilling the requirements for a Qualified Presumption of Safety as established by the European Food Safety Authority;
- e information on the production process, including, where relevant, processing methods such as spray drying, fluid-bed drying, static drying, centrifugation, deactivation by heat, filtration and grinding;
- f information on the identity and residue levels of residual intermediates, toxins or microbial metabolites in the component material; and
- g natural occurrence, survival and mobility in the environment.

5 The Commission may only adopt delegated acts pursuant to paragraph 1 amending Annex II to this Regulation to add derived products within the meaning of Regulation (EC) No 1069/2009 in the component material categories where an end point in the manufacturing chain has been determined in accordance with Article 5(2) of that Regulation.

The Commission shall assess such derived products with respect to relevant aspects not taken into account for the purpose of determining an end point in the manufacturing chain in accordance with Regulation (EC) No 1069/2009. If that assessment concludes that the criteria in point (b) of paragraph 1 of this Article are fulfilled, the Commission shall adopt delegated acts pursuant to paragraph 1 of this Article to include those materials in the table in component material category 10 in Part II of Annex II to this Regulation without undue delay whenever such an end point is determined.

6 By 16 July 2024, the Commission shall assess biodegradability criteria for polymers referred to in point 2 of component material category 9 in Part II of Annex II and test methods to verify compliance with those criteria and, where appropriate, shall adopt delegated acts pursuant to paragraph 1 which lay down those criteria.

Such criteria shall ensure that:

- a the polymer is capable of undergoing physical and biological decomposition in natural soil conditions and aquatic environments across the Union, so that it ultimately decomposes only into carbon dioxide, biomass and water;
- b the polymer has at least 90 % of the organic carbon converted into carbon dioxide in a maximum period of 48 months after the end of the claimed functionality period of the EU fertilising product indicated on the label, and as compared to an appropriate standard in the biodegradation test; and
- c the use of polymers does not lead to accumulation of plastics in the environment.

7 By 16 July 2022, the Commission shall adopt delegated acts in accordance with Article 44 supplementing point 3 of component material category 11 in Part II of Annex II to this Regulation by laying down criteria on agronomic efficiency and safety for the use of by-

products within the meaning of Directive 2008/98/EC in EU fertilising products. Such criteria shall reflect present product manufacturing practices, technological developments and the latest scientific evidence.

8 The Commission is empowered to adopt delegated acts in accordance with Article 44 amending Annex I, with the exception of cadmium limit values, and Annexes II, III and IV in the light of new scientific evidence. The Commission shall use this empowerment where, based on a risk assessment, an amendment proves necessary to ensure that any EU fertilising product complying with the requirements of this Regulation does not, under normal conditions of use, present a risk to human, animal, or plant health, to safety or to the environment.

Article 43

Separate delegated acts for separate component material categories

When exercising its power to adopt delegated acts pursuant to Article 42, the Commission shall adopt a separate delegated act in respect of each component material category in Annex II. Those delegated acts shall include any amendments to Annexes I, III and IV which are necessary as a consequence of amendments to Annex II.

Article 44

Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 42 shall be conferred on the Commission for a period of five years from 15 July 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3 The delegation of power referred to in Article 42 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6 A delegated act adopted pursuant to Article 42 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

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Article 45

Committee procedure

1 The Commission shall be assisted by the Committee on fertilising products. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2 Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3 Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

4 Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

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