

# EUROPEAN PARLIAMENT

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**A5-0252/2003**

9 July 2003

**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

on the common position adopted by the Council with a view to the adoption of  
a regulation of the European Parliament and of the Council relating to  
fertilisers  
(12733/2/2002 – C5-0224/2003 – 2001/0212(COD))

Committee on Legal Affairs and the Internal Market

Rapporteur: Kurt Lechner

***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

At the sitting of 10 April 2002 Parliament adopted its position at first reading on the proposal for a regulation of the European Parliament and of the Council relating to fertilisers (COM(2001) 508 – 2001/0212(COD)).

At the sitting of 15 May 2003 the President of Parliament announced that the common position had been received and referred to the Committee on Legal Affairs and the Internal Market (12733/2/2002 – C5-0224/2003).

The committee had appointed Kurt Lechner rapporteur at its meeting of 21 November 2001.

It considered the common position and draft recommendation for second reading at its meetings of 21 May 2003, 10 June 2003 and 8 July 2003.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Giuseppe Gargani (chairman), Ioannis Koukiadis (vice-chairman), Kurt Lechner (rapporteur), Ulla Maija Aaltonen, Paolo Bartolozzi, Ward Beysen, Michel J.M. Dary, Bert Doorn, Francesco Fiori (for Rainer Wieland pursuant to Rule 153(2)), Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, José María Gil-Robles Gil-Delgado, Genowefa Grabowska (observer), Malcolm Harbour, Lord Inglewood, Hans Karlsson, Klaus-Heiner Lehne, Sir Neil MacCormick, Toine Manders, Manuel Medina Ortega, Anne-Marie Schaffner, Astrid Thors, Marianne L.P. Thyssen and Joachim Wuermeling.

The recommendation for second reading was tabled on 9 July 2003.

## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the common position adopted by the Council with a view to the adoption of a regulation of the European Parliament and of the Council relating to fertilisers (12733/2/2002 – C5-0224/2003 – 2001/0212(COD))**

**(Codecision procedure: second reading)**

*The European Parliament,*

- having regard to the Council common position (12733/2/2002 – C5-0224/2003),
  - having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council (COM(2001) 508<sup>2</sup> and the amended proposal COM(2002) 318)<sup>3</sup>,
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 80 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Legal Affairs and the Internal Market (A5-0252/2003),
1. Approves the common position;
  2. Notes that the act is adopted in accordance with the common position;
  3. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
  4. Instructs its Secretary-General duly to sign the act and, in agreement with the Secretary-General of the Council, to have it published in the Official Journal of the European Union;
  5. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 127, 29.5.2003, p. 160.

<sup>2</sup> OJ C 51 (E), 26.2.2002, p. 1.

<sup>3</sup> OJ C 227 (E), 24.9.2002, p. 503.

## **EXPLANATORY STATEMENT**

### **1. General comments**

The internal market in fertilisers has been completed under a series of directives, which have been amended several times.

The position in factual and legal terms is consequently very muddled.

The proposal for a regulation is thus primarily intended, as called for by ‘Simpler Legislation for the Internal Market’ (SLIM) and the Action Plan for the single market, to repeal the entire body of existing legislation and replace it with a single act. This aim is to be welcomed and the regulation serves to achieve it. The technical details and specifications are dealt with in annexes, whereas the act proper comprises 38 articles. The fact that these are clearly ordered and worded intelligibly deserves to be stressed, bearing in mind the complexity and largely technical nature of the subject matter and, indeed, other experiences with Commission proposals.

It is also worth mentioning that the quality of the act, in the version contained in the common position, has been further enhanced, for example by the headings which have been supplied for every article and other improvements and clarifications to the wording.

### **2. Applicability of the fertiliser regulation**

When a number of directives are replaced by one regulation, and this is done in the interest of ‘simpler legislation’, there is cause for misgivings.

When Parliament gave the proposal its first reading, the rapporteur took the view that this way of proceeding was acceptable in the specific case concerned because it would make for clarity and comprehensibility. The change in the legal status of the measure, from a directive to a regulation, is relatively unimportant in this case because, logically, even under a directive, the latitude afforded to Member States would have to remain within very narrow bounds. Parliament has supported that view.

### **3. Exclusion of fertilisers containing cadmium**

As far as substantive and political considerations are concerned, the first point to discuss is cadmium, which poses a serious problem for the single market and the environment.

No Community rules have been laid down to date and the regulation has likewise omitted to do so.

An exception was made for Finland, Sweden, and Austria whereby their national limit values continued to apply until 31 December 2001.

In its initial proposal the Commission resolved this matter by extending the exceptional permission under Article 33.

At first reading the rapporteur criticised this approach on procedural grounds – the period of validity of the exceptions had already expired on 31 December 2001.

As a result of his criticism, the first version of Article 33 has been deleted from the common position, and the Commission has instead laid down an exceptional arrangement to apply until 31 December 2005 under three decisions adopted on 15 and 24 May 2002 on the basis of Articles 95(4) and (6) and 30 of the EC Treaty (see Article 15 of the regulation).

The rapporteur considers it acceptable to employ such a method but at the same time regrets that this key issue, which was originally supposed to have been settled by 31 December 2001, is still outstanding.

On the other hand, he notes and welcomes the fact that progress is clearly being made in the review and the procedure, as can also be inferred from the explanatory memorandums to the above-mentioned Commission decisions, which indicate that, once the Scientific Committee for Toxicity, Ecotoxicity and the Environment has delivered the necessary opinion, the Commission will draw up a proposal for a regulation on unintentional cadmium content in mineral fertilisers.

In its recital 15 the Council, moreover, raises the problem of unintentional cadmium content and in that connection draws attention to the Commission's right of initiative.

It can now be assumed that rules governing cadmium will be laid down within a reasonable time frame. The rapporteur therefore feels that the wording of the common position should be allowed to stand, so as not to delay the legislative procedure.

If need be, if an inordinate delay occurs, Parliament should take the initiative by adopting a motion for a resolution.

#### **4. Amendment concerning iron chelate**

Through its first-reading Amendment 3 Parliament introduced a specific change relating to one particular product, iron chelate.

The Council has agreed to Parliament's decision from first reading and the Commission has accepted this.

#### **5. Assessment of the common position**

The Council, however, has made other changes in its common position to improve the act both technically and linguistically.

It maintains that they are necessary on account of advances in scientific and technical knowledge, not least where risks are concerned (cf. Article 27 of the regulation on the detonation resistance test).

The rapporteur considers these changes to be plausible.

As regards the procedure, there would be nothing to prevent Parliament from adopting its own amendments to the Council's new additions to the act.

To alter recast texts admittedly does not accord with SLIM. On the other hand, the object of the exercise surely does not imply that when changes have been made solely for reasons of

legal clarity, improvements intended purely to allow for scientific and technical progress have to be ruled out. The fact that acts are adopted by a proper legislative procedure supports this argument.

## **6. Conclusion**

The rapporteur would like to make some suggestions of his own regarding the principles to be observed when considering the procedure dealt with in this report. The regulation is a single act encompassing the rules on manufacture and use laid down in the 18 directives governing the use of fertilisers. The resulting wealth of technical and scientific detail is such that Parliament cannot meaningfully discuss each and every point.

Parliament should therefore confine itself to the basic texts underlying the regulation and assess all other aspects according to their plausibility.

In this case the fundamental part of the act gives no cause for objection. Article 14 sets out the general requirements for authorisation of fertilisers. The technical details are covered in the annexes. If those technical details have been approved by the Commission, the Commission's experts, and all the Member States, Parliament ought not to withhold its approval.

The rapporteur therefore also considers it acceptable in this specific case for adaptations to future developments to be dealt with by the 'comitology' procedure (regulatory committee).

He accordingly recommends that the common position be approved unchanged.