



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending

**Directive 76/116/EEC on the approximation of the laws of the Member States
relating to fertilizers, as regards the marketing in Austria, Finland and in Sweden of
fertilizers containing cadmium**

(presented by the Commission)

Explanatory Memorandum

Directive 76/116/EEC, the mother Directive on fertilizers, was introduced as a measure to eliminate barriers to trade in respect of controls on composition, packaging and labelling. Member States must allow the placing on the market on their territories of fertilizers included in the Annexes to this Directive, termed "EC-Fertilizers". Specifically Article 7 stipulates that, without prejudice to the provisions of other Community Directives, Member States may not on grounds of composition, identification, labelling or packaging prohibit, restrict or hinder the marketing of fertilizers marked "EC-Fertilizer" which comply with the provisions of Directive 76/116/EEC and the Annexes thereto.

In particular, Member States may not prohibit restrict or hinder the marketing of EC-Fertilizers because of their content of cadmium as a cadmium limit is not specified in Directive 76/116/EEC and the Annexes thereto.

Austria, Finland and Sweden, which for several years have restricted the marketing on their territories of fertilizers containing cadmium, negotiated derogations from Article 7 of Directive 76/116/EEC when they acceded to the EU. According to the Accession Treaties, Article 7, in so far as it concerns cadmium, will not apply to Austria, Finland and Sweden for 4 years from the date of accession i.e. until 1st January 1999. The Accession Treaties further provide that Article 7, in so far as it contains cadmium, shall be reviewed within this period according to EC procedures.

The Commission has now reached certain conclusions in the context of its review of Article 7.

With regard to the situation in the EU overall, it has been concluded that there is insufficient data available on the exposure of risk groups and on environmental conditions in Member States to judge whether or not cadmium in fertilizers presents an unacceptable risk. Further work is needed to identify data requirements, gather data, analyse the data, and come to definitive conclusions on the risks posed by cadmium in fertilizers in the EU. This means that the review will not be completed in the four years as planned but will continue for several years beyond 31st December 1998. The estimated completion date is 31st December 2001.

With regard to the specific situation in Austria, Finland and Sweden it has been concluded that questions remain to be answered about the particular risks to health and the environment posed by cadmium in fertilizers. This means that the derogations from Article 7, in so far as it concerns cadmium, should be supplemented by a further derogation from 1st January 1999 until the new date for completing the review of this Article, estimated to be 31st December 2001.

The purpose of the present Directive is to amend Article 7 so as to provide a derogation for Austria, Finland and Sweden allowing them to restrict the marketing of fertilizers because of cadmium content during the period 1st January 1999 to 31st December 2001.

Justification

A further derogation for Austria, Finland and Sweden from Article 7, in so far as it concerns cadmium, is needed for the period 1st January 1999 to 31st December 2001 to

allow for the fact that the review of Article 7 may only be completed by 31st December 2001 rather than by 31st December 1998 as foreseen by the Treaties of Accession.

Subsidiarity

The supplementary derogation from Article 7 can not be arranged by the Member States concerned on their own initiative. The only way of providing for the derogation is by a Commission proposal to the European Parliament and Council amending Article 7 of Directive 76/116/EEC.

Consultation

The Working Group on Fertilizers which includes Member State competent authorities, EFTA State Competent authorities and industry (European Fertilizer Manufacturers Association and European Fertilizer Importers Association) discussed the principle of a further derogation from Article 7 for Austria, Finland and Sweden when they met on 19th November 1997. No particular problems were raised. Furthermore, the competent authorities of Member States were consulted by fax on the text of the draft proposal.

Proposal for a Directive of the European Parliament and of the Council amending Directive 76/116/EEC on the approximation of the laws of the Member States relating to fertilizers, as regards the marketing in Austria, Finland and in Sweden of fertilizers containing cadmium

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission¹,

Having regard to the Opinion of the Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 189b of the Treaty³.

Whereas Article 69 and Annex VIII to the Act of Accession to the EU of Austria provide that Article 7 of Council Directive 76/116/EEC⁴, in so far as it concerns the cadmium content of fertilizers, shall not apply to Austria before 1 January 1999 and that these provisions be reviewed in accordance with EC procedures before 31 December 1998;

Whereas Article 84 and Annex X to the Act of Accession to the EU of Finland, provide that Article 7 of Directive 76/116/EEC, in so far as it concerns the cadmium content of fertilizers, shall not apply to Finland before 1 January 1999 and that these provisions be reviewed in accordance with EC procedures before 31 December 1998;

Whereas Article 112 and Annex XII to the Act of Accession to the EU of Sweden provide that Article 7 of Directive 76/116/EEC, in so far as it concerns the cadmium content of fertilisers, shall not apply to Sweden before 1 January 1999 and that these provisions be reviewed in accordance with EC procedures before 31 December 1998;

Whereas the said review cannot be completed by 31 December 1998 because of the absence in many Member States of the exposure data needed to evaluate the risks of cadmium in fertilizers to health and the environment and whereas the review needs to be continued by performing further work after this date;

Whereas the further work should evaluate the risks in Member States from cadmium in fertilizers to health, including to the health of vulnerable population groups, and to the environment and whereas this can only be accomplished after several years;

Whereas a risk assessment of cadmium in the framework of Council Regulation 739/93/EC⁵ has been launched and whereas the results will become available only after several years;

¹ xxx

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³ xxxx

⁴ OJ L 24, 30.1.1976, p. 21, as last amended by Council Directive 97/63, OJ L 335, 6.12.1997, p. 15

⁵ OJ L 84, 5.4.1993, p. 1

Whereas, apart from the obligation to review provided for by the Acts of Accession of Austria, of Finland and of Sweden, review of Community legislation in force can always be decided according to Community procedures, and whereas Community legislation can provide for derogations for limited periods for certain Member States because of the specificity of their situations,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The following paragraphs are added to Article 7 of Directive 76/116/EEC

“However, Austria, Finland and Sweden may prohibit the marketing on their territories of fertilizers containing cadmium at concentrations in excess of those which were fixed nationally at the date of Accession. The derogation shall apply for the period from 1 January 1999 until 31 December 2001.

The Commission shall, in consultation with Member States and interested parties, review by 31 December 2001 the need for establishing provisions at European level concerning the cadmium content of fertilizers.”

Article 2

Austria, Finland and Sweden shall adopt and publish the provisions necessary to comply with this Directive by 31 December 1998 at the latest.

Article 3

This Directive is addressed to Austria, Finland and Sweden.

For the European Parliament

For the Council

The President

The President

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