

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND
WINDSOR FRAMEWORK**

**COM(2023) 98 FINAL - PROPOSAL FOR A REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) 2019/1009
AS REGARDS THE DIGITAL LABELLING OF EU FERTILISING PRODUCTS**

COM(2023) 98 FINAL - ANNEXES TO THE PROPOSAL

SEC(2023) 99 FINAL - REGULATORY SCRUTINY BOARD OPINION

SWD(2023) 48 FINAL - SUBSIDIARITY GRID ACCOMPANYING THE PROPOSAL

**SWD(2023) 49 FINAL - IMPACT ASSESSMENT REPORT ACCOMPANYING THE
PROPOSAL**

**SWD(2023) 50 FINAL - COMMISSION STAFF WORKING DOCUMENT EXECUTIVE
SUMMARY OF THE IMPACT ASSESSMENT REPORT ACCOMPANYING THE
PROPOSAL**

Submitted by the Department for Environment, Food and Rural Affairs

18th October 2023

SUBJECT MATTER

1. This is a proposal of the European Parliament to amend Regulation (EU) 2019/1009 to allow fertilising products to be digitally labelled at the choice of the manufacturer, distributor or importer.
2. Regulation (EU) 2019/1009 concerns the marketing of EU fertilising products. When this regulation was brought into force, it replaced regulation (EC) 2003/2003. Regulation (EU) 2019/1009 is fully operable in Northern Ireland under the Windsor Framework.
3. Within the EU, the rules and requirements around the manufacturing and marketing of fertilisers are partially harmonised. This means that Regulation (EU) 2019/1009 operates alongside the domestic regimes in Northern Ireland (The Fertilisers Regulations (Northern Ireland) 1992 and the “UK fertiliser’ regime” under the retained version of Regulation 2003/2003 as it applies in Northern Ireland). Because of this partial harmonisation, manufacturers wanting to market fertilising products in Northern Ireland can choose to market their products under Regulation (EU) 2019/1009, or under one of the domestic regulations in operation.

4. Regulation (EU) 2019/1009 has much more extensive labelling requirements than those under Regulation (EC) 2003/2003. This is in response to concerns about newer, innovative and unknown fertilising products which can be marketed under Regulation (EU) 2019/1009, which require more stringent labelling requirements.
5. As more detailed information needs to be provided on the label, this has resulted in overcrowded labels, which means it is difficult to decipher the essential information needed by end users, and means labels needed to be updated frequently. This proposal aims to make the labels on fertilising products more accessible to users and easier to manage by economic operators.
6. Currently, under Regulation (EU) 2019/1009, all the information needed to meet the labelling requirements must be provided on a physical label. This proposal amends Regulation (EU) 2019/1009 and introduces the voluntary digitalisation of labelling of fertilising products, and gives manufacturers, importers or distributors of EU fertilising products the option to market their fertilising products with digital labels. Labelling information can be provided solely in a digital format under two scenarios: when the fertilising product is sold unpackaged, or when the fertilising product is sold to an intermediate seller, who is not the end-user of the fertilising product. The digital label must include all the information which is included in the labelling requirements as set out in Annex III to Regulation (EU) 2019/1009.
7. If a fertilising product is supplied to an end user in packaging with a digital label, certain information must still be provided on a physical label as well. This essential information includes information relating to the protection of human health and the environment, alongside the contents of the fertilising product and agronomic efficiency. The digital label must include all the information, even if some information is included in the physical label.
8. If an operator chooses to market fertilising products with a digital label, this proposal will lay down rules which must be followed which will be added into Regulation (EU) 2019/1009 such as to ensure that the digital label is accessible all over the EU, and that it can be accessed free of charge. The digital label must be made available for a period of 5 years after the fertilising product is placed on the market.
9. The Annexes set out the actual changes in wording which will be made to Regulation (EU) 2019/1009. These include alterations to the wording of the labelling requirements under Annex III of Regulation (EU) 2019/1009 so that they are now applicable to digital labelling, and minor amendments to Annex IV to bring it in line with the option to digitally label some products. The proposal also makes amendments to general (non-digital) labelling requirements.

10. This legislation when adopted will apply in Northern Ireland, as the regulation it amends (Regulation (EU) 2019/1009) is directly applicable in Northern Ireland under the Windsor Framework.

11. I apologise for the late submission of this EM. Whilst the final version of the EM was being circulated for clearances, an issue with regards to the United Kingdom Internal Market Act 2020 was identified, the complexities of which extended beyond the immediate subject matter of this EM. It was essential that a position was reached on the matter before the EM was submitted to parliament, as it impacted our analysis of any divergence between NI and GB which would occur from the introduction of this proposal.

SCRUTINY HISTORY

12. Adopted Regulation 2019/1009 was subject to scrutiny as EM 7396/16, COM (16/157). The following also reference 2019/1009: 10166/21+ ADD 1, C (2021) 4250; 10630/21 +ADD 1, C (2021) 4743; 10634/21 +Add 1, C (2021) 4751 and 10840/21 +ADD 1, C (2021) 4764.

MINISTERIAL RESPONSIBILITY

13. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

14. We contacted Scottish, Welsh and NI officials with regards to this EM to provide comments. DAERA, Scottish Government and the Welsh Government Officials confirmed they were content with the EM.

LEGAL AND PROCEDURAL ISSUES

15.

i. Legal Base

This proposal has the same legal base as Regulation (EU) 2019/1009, which is Article 114 of the Treaty on the functioning of the European Union on the approximation of national rules for the establishment and functioning of the internal market. Although the Commission is empowered to amend the Annexes to Regulation (EU) 2019/1009, all the amendments proposed in this initiative are included in this proposal in order to ease the adoption process as they are linked to each other.

ii. **Voting Procedure**

The ordinary legislative procedure applies. This involves a qualified majority council vote.

iii. **Timetable for adoption and implementation**

The proposal was adopted by the commission on 27th March 2023. In accordance with Article 44(5) of Regulation (EU) 2019/1009, as soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council. Article 44(6) of Regulation (EU) 2019/1009 provides that 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.

The adopted act is open for feedback for a period of 8 weeks until 29 May 2023.

POLICY AND LEGAL IMPLICATIONS

16. Regulation (EU) 2019/1009 is fully operable in Northern Ireland under the Windsor Framework.
17. The impact of this proposal on the application of Regulation (EU) 2019/1009 under the Windsor Framework will be minimal. The proposal gives economic operators the choice to market fertilising products with digital labels under Regulation (EU) 2019/1009. As this is just a minor amendment to Regulation (EU) 2019/1009, it will not make any significant changes to the functioning of this regulation, and so it will continue to apply as it does now under the Windsor Framework, just with economic operators now having the choice to market fertilising products with digital labels.
18. The impact of this will be extremely minimal as it is a voluntary measure, and so economic operators can choose to digitally label their products or not, and therefore if they foresee any adverse impacts they can simply choose not to.
19. Manufacturers can continue to market their product under the domestic regulations in operation in Northern Ireland, and therefore do not have to market under Regulation (EU) 2019/1009 at all, using a digital label or not. As manufacturers have a choice whether to comply with this regulation at all, and as they then have a further choice as to whether they will digitally label their products, the impact of this voluntary measure would be minor.

20. This new proposal will not lead to any significant regulatory divergence between Great Britain and Northern Ireland. The only minor regulatory divergence results from this amendment being applicable in Northern Ireland but not in Great Britain because Regulation (EU) 2019/1009 is not fully operable in GB. Under Regulation (EU) 2019/1009 in Northern Ireland, fertilising products will now be able to be marketed with a digital label. However, digital labelling of fertilising products is not permitted under either of the GB domestic regulations for the manufacturing and marketing of fertilisers (The Fertilisers Regulations 1991 or the retained version of Regulation (EC) No. 2003/2003 (the “UK fertilisers” regime)).
21. Therefore, there will be minor regulatory divergence between Great Britain and Northern Ireland results, as fertilising products will now be able to be marketed with digital labels under fertiliser regulations in Northern Ireland, but they cannot be marketed with digital labels under fertiliser regulations in Great Britain.
22. Despite there being minor regulatory divergence, the practical implications of this for the movement of fertilising products from Northern Ireland to Great Britain will be extremely minimal because of the market access principles. Under the United Kingdom Internal Market Act 2020 (UKIM), the market access principles apply to Qualifying Northern Ireland Goods (QNIIGs) that have moved from Northern Ireland to Great Britain. If a fertilising product compliant with Regulation (EU) 2019/1009 moves from NI to GB and is not covered by the exclusions under Schedule 1 of UKIM, then it would have free access to the GB market. Under this scenario, the product has access to the GB market through mutual recognition and so only needs to continue to comply with the requirements of Regulation (EU) 2019/1009 which it was originally marketed under in NI. As a result, although the digital labelling of fertilising products is not permitted under either of the GB domestic fertiliser regulations, digitally labelled fertilising products marketed under Regulation (EU) 2019/1009 may still be able to access the GB market.
23. There are some exclusions to market access. Schedule 1 of UKIM contains specific exclusions from the market access principles for fertiliser. If a product is covered by one of the exclusions then it does not benefit from mutual recognition. Therefore, if a product compliant with (EU) 2019/1009 in NI moves across to GB it may not always enjoy free access to the GB market. This will have to be assessed on a case by case basis. We do not anticipate these exemptions having a significant impact because of the small amount of NI fertiliser that accesses the GB market.
24. If an (EU) 2019/1009 compliant fertiliser from NI cannot be sold on the GB market pursuant to the exclusions, then it will need to comply with GB fertilisers legislation in order to be sold in GB. If the product was subject to labelling requirements under either of the domestic fertiliser regulations in Great Britain, this product would have to meet those labelling requirements to be sold on the GB market. As digital labelling is not currently permitted under either of the GB domestic fertiliser

regulations, meeting the labelling requirements would require the product to be marketed with a physical label.

25. This proposal would therefore result in minor practical implications for the movement of fertilising products from Northern Ireland with a view to be sold on the GB market in cases such as the above, as the label may have to be changed from a digital label to a physical label in order to meet the GB domestic regulatory requirements needed to access the GB market. However, it is worth noting the wider context that the product would have to comply with an entirely different regulation anyway to access the GB market in this scenario, having to also change the label from a digital label to a physical label would be a minor additional issue.
26. Because of these exclusions to the market access principles, situations could arise where a fertilising product could be marketed with a digital label in Northern Ireland, but the same product would not be able to be sold with a digital label in Great Britain. So, minor divergence may result from the introduction of this digital labelling provision in terms of how a fertiliser can be marketed in Northern Ireland compared to in Great Britain. Whilst this divergence results from the exceptions to the general market access principles rather than specifically from the introduction of this proposal, divergence could still arise from the implementation of this proposal.
27. This proposal will result in no practical implications for the movement of fertilising products from GB into NI. Because of the partial harmonisation of fertiliser regulations in NI, GB manufacturers can continue to freely market their fertilising products under either of the domestic regulations which continue to operate there alongside Regulation (EU) 2019/1009, entirely unimpacted by this amendment to Regulation (EU) 2019/1009.
28. The measures being implemented by this proposal will not substantially alter the way fertilisers are marketed in Northern Ireland. Therefore, there should be no impact of the proposal on Northern Ireland's participation in the UK's free trade agreements.
29. For the same reason, there will also be no impact of the proposal on Northern Ireland's participation in UK Common Frameworks.
30. There are no concerns surrounding this proposal as it will have minimal impact as it is a small amendment to a regulation which is already in operation. Therefore, there has been no engagement undertaken by the Government with the EU.
31. The UK Government recognises the potential merits of allowing information on the label to be provided in a digital format. If there is potential that some labelling information could be better provided in an electronic or digital format, this option could be explored in the future.

CONSULTATION

32. There is no planned government consultation on this proposal. No consultation has been undertaken either by the Government or the Northern Ireland Executive with stakeholders on the impact of the EU legislation, as this is only making a minor amendment to regulation which is already in place and which is operating alongside domestic regulations in Northern Ireland, and therefore it will not be necessary to consult with stakeholders.
33. A regulatory impact assessment has not been undertaken by the UK Government.
34. The European Commission has produced its own impact assessment, which considered different options for the proposal. PO2a combined with PO3 was the preferred option used to form this proposal. Reducing the information presented on the physical label would make safety information (which would still be included) more accessible, resulting in environment and human health protection. It was also noted that this could have positive social impacts, such as enhancing the readability of the physical label, and greater potential accessibility of the label in a digital format.
35. The impact assessment identified that as this proposal will be voluntary, there would be no additional cost for businesses, as businesses could avoid additional costs by choosing to continue as they are with physical labelling. This is similar to our assessment of the impacts on regulatory divergence as discussed above, as because this proposal is voluntary, the impact is likely to be extremely minimal as businesses would only choose to adopt this digital labelling system if it is beneficial to them.
36. The provision of information in a digital format could have costs for businesses, such as needing to provide information in a different format if it could not be accessed digitally, although these costs were expected to be minor. It was considered that the combined option would result in cost savings because it is less expensive to update digital labels in comparison with physical labels. Therefore, it was found that for the combined option, any costs endured would be offset by the savings made.
37. The preferred option was also found to have potential positive environmental impacts, such as less disposal of labels.

FINANCIAL IMPLICATIONS

38. There are no significant financial implications for HMG, industry or consumers. This is because this proposal introduces a voluntary measure, and therefore businesses will only choose to adopt this measure if it is financially beneficial to them.

A handwritten signature in black ink, appearing to read 'M Spencer'.

**THE RT. HON. MARK SPENCER M.P.
MINISTER OF STATE FOR FOOD, FARMING AND FISHERIES
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**