

**Notification according to Article 95(4) of the EC Treaty of national legislation derogating from the provisions of a Community harmonisation measure**

(No 2001-NOTIF95.4-AU-1)

(2002/C 23/03)

(Text with EEA relevance)

1. On 16 November 2001 the Republic of Austria notified the Commission according to Article 95(4) of the Treaty establishing the European Communities that it deems it necessary to maintain national legislation deviating from the provisions of Council Directive 76/116/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to fertilisers <sup>(1)</sup>, as last amended by Directive 98/97/EC <sup>(2)</sup> of the European Parliament and of the Council of 22 December 1998 regarding the marketing in Austria, Finland and in Sweden of fertilisers containing cadmium.
2. Article 95(4) stipulates that if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.
3. The Commission shall, within six months of the notification approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction to trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.
4. The national provisions prohibit on the territory of the Republic of Austria the marketing of fertilisers containing cadmium at concentrations in excess of 75 mg/kg P<sub>2</sub>O<sub>5</sub>. This value is mentioned in Article 2, paragraph 2, of the Austrian fertiliser Regulation of 1994.
5. The 1994 Act of Accession of the Republic of Austria already granted a derogation to Austria to temporarily maintain the abovementioned national provisions. Article 69 and point 4 of Annex VIII of the Act of Accession provide that Article 7 of Directive 76/116/EEC, in so far as it concerns the cadmium content of fertilisers, shall not apply to the Republic of Austria before 1 January 1999.
6. Directive 76/116/EEC was subsequently amended by Directive 98/97/EC regarding the marketing in Austria, Finland and Sweden of fertilisers containing cadmium, allowing the Republic of Austria to prohibit the marketing on its territory of fertilisers containing cadmium at concentrations in excess of that which was fixed nationally at the date of accession. This derogation applies for the period from 1 January 1999 until 31 December 2001.
7. On 14 September 2001, the Commission adopted a proposal for a regulation of the European Parliament and Council relating to fertilisers <sup>(3)</sup> which, *inter alia*, provides for an extension of the derogation mentioned above. According to Article 33 of this proposal, Austria may prohibit the placing on the market on its territory of EC fertilisers containing cadmium at concentrations in excess of that which was fixed nationally at the date of Accession until 31 December 2004. The second paragraph of the same Article provides that the Commission shall, in consultation with Member States and interested parties, review by 30 June 2002 at the latest the need for establishing provisions at Community level concerning the cadmium content in fertilisers.
8. Austria justifies its request on grounds relating to the environment. In support of the request, Austria refers to the conclusion of the risk assessment report named 'A risk assessment for cadmium in Austria based on the recommendations of ERM' <sup>(4)</sup>, which has been available to the public since September 2001 on the Commission website at:  
  
<http://europa.eu.int/comm/enterprise/chemicals/fertilizers/riskassess/reports.htm>
9. Austria maintains that the PEC value (predicted environmental concentration) from cadmium in mineral fertilisers in Austria, exceeds the PNEC value (predicted no effect concentration) for water in most investigated regions, and that this also applies to 5 % of the 52 arable Austrian regions if bio-available values are used. In the view of the Austrian authorities, the substance is of concern and the obligation exists to take further steps with a view to reducing such environmental risk.
10. In the light of the foregoing, the Republic of Austria deems it necessary to maintain the above national provisions also after 31 December 2001 and at least until the Community has decided appropriate measures on the use of cadmium in fertilisers.
11. Possible observations on the notification thus made by Austria submitted to the Commission later than fifteen days from the date of publication of this notice may not be taken into consideration.

<sup>(1)</sup> OJ L 262, 27.9.1976, p. 201.

<sup>(2)</sup> OJ L 18, 23.1.1999, p. 60.

<sup>(3)</sup> COM(2001) 508 final.

<sup>(4)</sup> ERM is a consultant working on behalf of the Commission.

12. Further information regarding the request from the Republic of Austria can be obtained from:

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### Notification according to Article 95(4) of the EC Treaty of national legislation derogating from the provisions of a Community harmonisation measure

(No 2001-NOTIF95.4-FI-1)

(2002/C 23/04)

(Text with EEA relevance)

- On 7 December 2001 the Republic of Finland notified the Commission according to Article 95(4) of the Treaty establishing the European Communities that it deems it necessary to maintain national legislation deviating from the provisions of Council Directive 76/116/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to fertilisers <sup>(1)</sup>, as last amended by Directive 98/97/EC <sup>(2)</sup> of the European Parliament and of the Council of 22 December 1998 regarding the marketing in Austria, Finland and in Sweden of fertilisers containing cadmium.
- Article 95(4) stipulates that if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.
- The Commission shall, within six months of the notification approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction to trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.
- The national legislation of the Republic of Finland provides that agricultural and horticultural fertilisers may contain no more than 50 mg of cadmium for each kilogram of phosphorus. This value is mentioned in Section 3 of the Decision of the Ministry of Agriculture and Forestry (45/1994) of 21 January 1994.
- The 1994 Act of Accession of the Republic of Finland already granted a derogation to Finland to temporarily maintain the abovementioned national provisions. Article 84 and point 2 of Annex X of the Act of Accession provide that Article 7 of Directive 76/116/EEC, in so far as it concerns the cadmium content of fertilisers, shall not apply to the Republic of Finland before 1 January 1999.
- Directive 76/116/EEC was subsequently amended by Directive 98/97/EC regarding the marketing in Austria, Finland and Sweden of fertilisers containing cadmium, allowing the Republic of Finland to prohibit the marketing on its territory of fertilisers containing cadmium at concentrations in excess of that which was fixed nationally at the date of accession. This derogation applies for the period from 1 January 1999 until 31 December 2001.
- On 14 September 2001, the Commission adopted a proposal for a regulation of the European Parliament and Council relating to fertilisers <sup>(3)</sup> which, *inter alia*, provides for an extension of the derogation mentioned above. According to Article 33 of this proposal, Finland may prohibit the placing on the market on its territory of EC fertilisers containing cadmium at concentrations in excess of that which was fixed nationally at the date of Accession until 31 December 2004. The second paragraph of the same Article provides that the Commission shall, in consultation with Member States and interested parties, review by 30 June 2002 at the latest the need for establishing provisions at Community level concerning the cadmium content in fertilisers.

<sup>(1)</sup> OJ L 262, 27.9.1976, p. 201.

<sup>(2)</sup> OJ L 18, 23.1.1999, p. 60.

<sup>(3)</sup> COM(2001) 508 final.