



Belfertil

comments for the EU TRIS notification 2023/0468/BE

25 October 2023

TRIS ref [2023/0468/BE](#) notification: 27 July 2023 & end of stand-still 30 October 2023

Topic: Draft Decree of the Flemish Government amending the VLAREME of 28 October 2016 concerning the declaration and register for fertilisers and fertilisation

Summary:

- We welcome the TRIS-notification of this amendment, though we take note that none of the preceding texts was submitted to this mandatory EU notification.
- The way this proposal is notified ignores the legal provisions under TRIS, especially in its legal obligation to provide a properly elaborated impact assessment as highlighted by the ECJ.
- We refer to our previous contribution made under the previous TRIS notification ([2020/0715/B](#)) as there are no fundamental changes in it. The previous notification was not commented by the EU Commission but was annulled by the Belgian Council of State on the 24th of April 2023, hence the second attempt to pass the bill.
- Flanders is a production and trading hub, the majority of the mineral fertilizer is not intended for use on Flemish soil and has no impact of its' use on Flemish water quality
- The data (*retrospectively: illegally as the system was annulled by the Council of State*) collected so far by the Flemish Competent Authorities support the disproportionality of the system, both in its extent (*import/transit/export*) and in its frequency.
 - o Only 10 percent of registered "*last mile sales*" is directly connected with use within 48 hours by the Flemish farmers,
 - o There is an application barrage period of fertilizers in Flanders from November 1st till January 15th, with for many other mineral fertilizers from 1 September till mid-February.
- Belfertil and its members are not opposing an adequate and proportionate registration system, which exist already under the form of an annual notification.

Comments

Legal:

- (1) The present notification is only reflecting the latest amendments of the aforementioned Decree. However nor the Decree itself nor its preceding amendments were notified under TRIS. The present notification is only a result of an advice of the Belgian Council of State considering that this Decree and its amendments qualifies as a Technical Regulation in the sense of the TRIS directive.
- (2) Directive (EU) 2015/1535) SINGLE MARKET TRANSPARENCY DIRECTIVE - A guide to the procedure for the provision of information in the field of technical

regulations and of rules on Information Society services

[EN/03/97/25820000.W00 \(OTHER\) \(europa.eu\)](#) (consulted on 16 aug 2023)

CHAPTER II: THE PROCEDURE APPLICABLE TO TECHNICAL REGULATIONS

"2.3. Additional documentation. Conversely, the Directive provides for an obligation for Member States with regard to draft technical regulations designed to limit the marketing or use of a chemical substance, preparation or product for reasons of public health, the protection of consumers or the environment (c.f. fourth subparagraph of Article 5(1)). For such drafts Member States must provide a summary of or references to all the relevant facts available on the chemical substance, preparation or product concerned and any known substitute, the foreseeable effects of the measure, and the results of the risk analysis. In this respect, the Directive specifies that the analysis must be carried out in accordance with the general principles laid down in the REACH Regulation⁷³"

(⁷³: Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency (OJ L 396, 30.12.2006, p. 1)).

A recent ruling of the ECJ (C-658/21, more precisely « Point 44 ») re-stipulated the required procedures & elements related to an adequately elaborated impact assessment for chemicals to be added to the TRIS notification. This part is absent or not visible in the notification.

We would welcome a completeness check of the notification eventually providing the submitters time to correct this aspect within the ongoing (*by extending the stand still period*) or by means of a renewed TRIS submission upon completion of the above mentioned requirement. As stipulated in the REACH provisions the companies concerned should be involved in this adequately elaborated impact analysis, especially on those draft provisions having a potential impact on the free trade in the Union of CE marked fertilizers under the FPR.

Content wise

We refer to our previous contribution under 2020/0715/B submission to DG Grow for more detailed arguments.

This is supported by the Manure Report 2022ⁱ of the Flemish Competent Authorities and a stakeholder meeting discussion on this report: only 10% of the last mile deliveries are connected with an application within 48 hours. This clearly shows the lack of utility and performance of the system as a means to facilitate the work of the inspection services. For phosphorus less than 5% of the applied P originates from mineral P in Flanders. In addition, the application of liquid mineral fertilizers even complicates the control in the field, which is often based on visual inspection.

Combining all this percentages (*fraction not used on Flemish soil and hence not linked to Flemish water quality*) x (*fraction of useful registrations for inspection*) x (*fraction of mineral fertilizers that is controllable by current inspection practice*), it is easy to note that it renders the whole exercise disproportionate and dysfunctional. It gives no return on investment for industry and administration alike. Only discrimination and risk on disproportionate fines.

ⁱ https://www.vlm.be/nl/SiteCollectionDocuments/Mestbank/Algemeen/Mestrapport_2022.pdf