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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Regulation (EC) No 1069/2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 ('Animal by-products Regulation')

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1. INTRODUCTION

Regulation (EC) No 1069/2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 ('Animal by-products Regulation')[1] was adopted in 2009. This Regulation entered into force on 4 December 2009 and started applying from 4 March 2011.

In 2019 the Animal by-products Regulation was amended by Regulation (EU) 2019/1009[2], which introduced in Article 5(2), the legal basis for determination of an end point in the manufacturing chain of derived products for organic fertilisers and soil improvers which no longer pose any significant risk to public or animal health. Upon determination of such an end point, those organic fertilisers and soil improvers may subsequently be placed on the market without restrictions under the Animal by-products Regulation and will no longer be subject to official controls in accordance with that Regulation.

The amended Article 5(2) of the Animal by-products Regulation provides for the legal basis for determination of end points for petfood, technical products for uses outside the feed chain and organic fertilisers and soil improvers. It empowers the Commission to adopt delegated acts.

The amendment applies from 15 July 2019.

LEGAL BASIS

This report is required under Article 51a(2) of Regulation (EC) No 1069/2009. Pursuant to this provision, the power to adopt delegated acts concerning the matters listed in Article 5(2) of that Regulation is conferred on the Commission for a period of five years from 15 July 2019 and the Commission is required to prepare a report in respect of the delegated power not later than nine months before the end of the five-year period.

.Article 51a(2) Regulation (EC) No 1069/2009 lays down that the delegation of power is to be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period,

[1] Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ L 300, 14.11.2009, p. 1).

[2] Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 (OJ L 170, 25.6.2019, p. 1).

while Article 51a(3) states that the delegation of power may be revoked at any time by the European Parliament or by the Council.

2. EXERCISE OF THE DELEGATION

During the reporting period, the Commission exercised its delegated powers, by adopting the following delegated act:

- Commission Delegated Regulation (EU) 2023/1605 of 22 May 2023 supplementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council as regards the determination of end points in the manufacturing chain of certain organic fertilisers and soil improvers[3].

This Delegated Regulation establishes end points in the manufacturing chain for organic fertilisers and soil improvers manufactured in the Union beyond which they are no longer subject to the requirements laid down in Regulation (EC) No 1069/2009, provided that they are used as component materials in EU fertilising products in accordance with Regulation (EU) 2019/1009. The delegated act was adopted on 22 May 2023 and transmitted to the European Parliament and to the Council. In the absence of objection from the European Parliament or the Council, the delegated Regulation was published on 8 August 2023.

Article 5(4) of Regulation (EC) No 1069/2009 set out an obligation for the Commission in certain circumstances to determine an end point for certain derived products pursuant to Article 5(2). The Commission fulfilled the obligation laid down in Article 5(4) of that Regulation by sending a mandate to the European Food Safety Authority (EFSA). Subsequently, EFSA published a Scientific Opinion 'Inactivation of indicator microorganisms and biological hazards by standard and/or alternative processing methods in Category 2 and 3 animal by-products and derived products to be used as organic fertilisers and/or soil improvers'[4]. According to that Scientific Opinion only certain derived products listed in Article 5(4) of Regulation (EC) No 1069/2009 are eligible to reach the end point if they are used as component material in accordance with Regulation (EU) 2019/1009.

In addition, based on the empowerment provided in Article 5(2) of the Animal by-products Regulation the Commission may also determine end points in the manufacturing chain for further derived products, namely those referred to in Articles 32, 35 and 36 of Regulation (EC) No 1069/2009, which no longer pose any significant risk to public or animal health.

3. CONCLUSION

The Commission has duly delivered an obligatory delegated act based on the empowerment provided for in Article 5(2) of the Animal by-products Regulation, namely, Commission Delegated Regulation (EU) 2023/1605. The Commission considers it necessary to tacitly extend the delegation of power provided for in Article 51a(2) for a period of five years, as provided for in this Article, for determining end points for further derived products depending on future favourable assessment(s) of EFSA and for the possible need for future amendments to this delegated Regulation. The Commission invites the European Parliament and the Council to take note of this report.

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[3] Commission Delegated Regulation (EU) 2023/1605 of 22 May 2023 supplementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council as regards the determination of end points in the manufacturing chain of certain organic fertilisers and soil improvers (OJ L 198, 8.8.2023, p. 1).

[4] *EFSA Journal 2021;19(12):6932.*