

ESPP input to Fertilisers Expert Group Ad-Hoc Meeting of 8/12/2022 on Animal By-Products (ABPs)

The members of the EU Fertilisers Expert Group (which includes ESPP) are [consulted](#) by DG GROW (deadline Friday 2nd December 2022) on proposed amendment of the EU Fertilising Products Regulation CMC10 to allow use of certain Animal By-Products, as proposed by DG SANTE in the public consultation (closed 24/10/22 [here](#))

1) Clarification of wording of DG GROW explanatory note

In “\$1. Introduction” it is written:

“Materials derived from animal by-products may be used in the production of fertilising products placed on the market in the EU:

- *either in accordance with national rules and the EU Animal By-Products Regulation (ABPR) – current practice;*
- *or in accordance with the Fertilising Products Regulation (FPR).*

Derived products within the meaning of the ABPR may be used in the manufacture of EU fertilising products either as input materials in certain component material categories (CMCs - more precisely, CMCs 3, 5, 12, 13 and 14) or as a material belonging to CMC 10 ‘Derived products within the meaning of Regulation (EC) No 1069/2009’.

In both situations, the derived products may be used only if an end point in the manufacturing chain is determined in accordance with the ABPR. Derived products having reached the end point as determined are no longer subject to veterinary control and may circulate freely in the internal market.

As written, the “*both situations*” appears to refer to the two bullet points above (national fertiliser rules, FPR). This could be understood to suggest that a national fertiliser, containing an ABP processed using an “Alternative” processing method (that is, not processed by one of the processes specified in the proposed FPR amendment), is no longer subject to veterinary controls and may circulate freely in the internal market. It is our understanding that this interpretation would be incorrect. We therefore suggest that COM can maybe clarify the wording of this note, to avoid any confusion.

2) CMCs 3, 5 and 13, but also CMCs 12 and 14 and update of FAQ 8.26

“\$1. Introduction” refers to CMCs 3, 5 and 13 (but not to CMCs 12 and 14), but the proposed amendment in \$2 address only CMC10.

We request that DG GROW add to this note an explanation of under what conditions ABPs can be used in CMCs 3, 5, 12, 13 and 14. We would suggest that an efficient way to do this would be to propose, for consideration of the 8th December 2022 FEG ad-hoc meeting, a draft modification of the FPR “Questions and Answers” document FAQ 8.26

At present FAQ 8.26 states “*To use a derived product as a component material, in addition to having the end point determined, the derived product has also to be listed in CMC 10 in Annex II to the FPR.*” To our understanding, this is misleading, in that ABPS can also be used in CMCs 3, 5, 12, 13 and 14 subject to achieving one of the ‘future’ ABP end-points established (it is anticipated) by the amendment to the ABPRs currently ongoing.

We suggest that FAQ 8.26 be updated and modified (publication as soon as the 'future' ABPR amendment is published) to replace "*for the moment, none of these products ... have an end-point ...*" by an explanation that ABPS can be used in EU FPs under three possible conditions:

- i) The ABP is listed in CMC10 and the ABP has met the relevant end-point specified in the ABP amendment.

[Note: to ESPP's understanding, not applicable until both the ABP amendment and the proposed amendment modifying FPR CMC10 enter into force.]

- ii) The ABP is listed as a possible input to another CMC (not CMC10: certain ABPs are listed as possible inputs for CMCs 3, 5, 12, 13 and 14) AND the ABP material has met one of the end-points specified in the ABP amendment BEFORE its use as an input material to the specified CMC process.

[Note: to ESPP's understanding, applicable immediately the ABPR amendment enters into force, without requiring amendment of the FPR].

An example of (ii) is as follows: hygienised manure can be used as an input material for CMC12 "Precipitated Phosphates and Derivates" (that is, phosphates are precipitated from the hygienised manure), by application of art. 6 of this CMC. This is subject to the manure having been hygienised under the conditions specified in the ABP amendment for "Processed manure" BEFORE being used as input to the precipitation process, and also to the precipitated phosphate meeting the conditions of the FPR (CMC12) and the fertilising product containing it meeting the other conditions of the FPR (Annexes I, III, IV).

- iii) The ABP is listed as a possible input to another CMC (not CMC10: certain ABPs are listed as possible inputs for CMCs 3, 5, 12, 13 and 14) AND the processing described in this other CMC enables to achieve the ABPR end-point, that is the ABP achieves the ABPR end-point DURING its FPR CMC processing.

[Note: to ESPP's understanding, applicable immediately the ABP amendment enters into force, without requiring amendment of the FPR].

An example of (iii) is as follows: raw manure can be used as an input material for CMC12 "Precipitated Phosphates and Derivates" UNDER THE CONDITION THAT the process described in CMC12 achieves the conditions specified in the ABPR amendment to reach the ABP end-point for "processed manure". For example, it is specified in CMC12 (1)(f) that the precipitated phosphates may be treated by "*steam distillation or heating solely to remove water, thermal hydrolysis ... The temperature under such processes shall not be raised above 275°C*". Thus, raw manure can be used as an input material to a CMC12 precipitation process UNDER THE CONDITION THAT the precipitated phosphate is treated such that the conditions of the ABP end-point for "processed manure" are achieved (in particular, temperature-time 70°C, 60 minutes). Also, the precipitated phosphate must meet the conditions of the FPR (CMC12) and the fertilising product containing it must meet the other conditions of the FPR (Annexes I, III, IV).

Example (iii) is applicable similarly for use of raw manure as input to CMC3 compost or CMC5 digestate, subject to the composting or digesting process respecting the relevant ABPR end-point conditions for composts and digestates.

Note: concerning (iii). The ABPR amendment specifies, for "processed manure": Section 2, points (a), (b) and (d) of Chapter 1, of Annex XI to Regulation (EU) No 142/2011. That is, THREE conditions:

- (a) come from a specified plant,
- (b) be heated to at least 70 °C for at least 60 minutes,
- and (d) undergo appropriate pathogen sampling

We request that the FPR FAQ clarify the interpretation of point (a): "*processed manure ... products from processed manure ... must come from a plant for derived products for uses outside the feed chain or from a biogas or a composting plant or from a plant for the manufacturing of organic fertilisers or soil improvers.*"

Can a raw manure processing installation which includes a phosphate precipitation unit be considered to be such a "specified plant" ?

What if the precipitated phosphate is transported from the raw manure processing installation to a different site (e.g. a mineral fertiliser industry factory) where the "*steam distillation or heating solely to remove water, thermal hydrolysis*" (as per CMC12(1)(f)) takes place ? Is this mineral fertiliser factory considered to be such a "specified plant" ?

What if compost, from a composting plant using raw manure as an input (and achieving the ABPR heat-time specifications and pathogen sampling specifications), is transported to a factory producing fertilisers? Is it acceptable that the "*composting plant*" (as specified in 142/2011, Annex XI, ch.1, sect. 2 (a)) is at a different place, or in a different Member State, from the site where the compost becomes an EU FPR product (labelling, conformity assessment) ?

3) Wording clarification of FAQ 8.26

Currently, FAQ 8.26 states "*the Commission has not been empowered under the ABPR to define end-points for organic fertilisers and soil improvers ...*"

We suggest to clarify that here this wording means OFSI as defined in the ABPR, not "Organic Fertilisers" or "Soil Improvers" as defined in the FPR.

For this, reference can be made to FAQ 1.4 which explains that the term 'OFSI' in the ABPR does not have the same meaning as "Organic Fertiliser" or "Soil Improver" in the FPR.

It is important to clarify this in FAQ 8.26 because an "Inorganic Fertiliser" and/or "Mineral Fertiliser", as defined by FPR, can be an "Organic Fertiliser [and Soil Improver]" as defined under the ABPR.

Such an (FPR) "Mineral Fertiliser", which is an (ABP) "Organic Fertiliser", may or may not also be an organic fertiliser, meaning authorised for use in Organic Production under Regulations 2018/848 and 2021/1165. Some companies and stakeholders seem to be confused by this.

4) FAQ clarification of rules applicable to ABPs having reached the ABP end-point

As indicated above, the COM note introduction text states: "*Derived products having reached the end point as determined are no longer subject to veterinary control and may circulate freely in the internal market.*"

ESPP requests clarification in the FAQ as to how this works.

If an ABP is processed under the conditions specified in the proposed ABPR amendment (for example raw manure is composted under the processing conditions specified in in Section 2 of Chapter I, Chapter II, and Section 1(2) and Section 3 of Chapter III of Annex V to Regulation (EU) No 142/201):

- Can this compost circulate freely in the EU, that is without its being incorporated into an EU FPR fertilising product (CMC and PFC criteria, labelling, conformity assessment), for example because it is intended to be included into an EU FPR fertilising product in a packaging plant in another country, or because it is intended to be included into a national fertiliser in a packaging plant in another country ?
- Can this compost circulate freely 'with respect to the ABPR', that is without veterinary controls, without ABPR traceability ?
- Can this compost circulate freely 'with respect to EU waste legislation", that is without waste legislation traceability and documentation ?
- If this compost is used in a national fertiliser, does the proposed ABPR amendment modify the current situation, that is will existing veterinary controls and traceability for use in national fertilisers cease to be applicable ?

5) Cat1 ABP phosphorus recycling

ESPP welcomes that DG GROW/F2 situates this ad-hoc FEG meeting in the "ever more pressing imperative of facilitating market access for effective and safe fertilisers produced from green and circular alternatives to natural gas and mined raw materials".

Meat and bone meal ash represents a circular nutrient potential of nearly 10% of mineral fertiliser phosphorus use in Europe¹. For operational and logistic reasons Cats 1 – 3 meat and bone meal are often not incinerated separately, so that the ash becomes "all Cat1". This ash offers a high level of quality (high phosphorus content, low contaminant levels). It has been and still today is used directly as a fertiliser in the UK with no safety concerns, has been also used in other Member States (e.g. large-scale disposal of Fipronil eggs in the Netherlands, incineration and ash used as fertiliser) and is subject to obligatory phosphorus recovery in Switzerland².

The EFSA Opinion of 20/10/2021 concluded 99-100% certainty³ for Cat2 and Cat3 ashes. EFSA has not to date assessed the use of Cat1 ABP ash as a fertiliser.

ESPP considers that safety of use of Cat1 ABP ash in EU fertilisers should be assessed urgently. **We suggest that, if its members so agree, the FEG note in its minutes a request to the Commission to (a) mandate rapidly EFSA to assess the safety of Cat1 ABP ash for use as fertilisers** or for the production of fertilisers or of commodity chemicals (Cat1 ABP ash from incinerators operating under IED conditions and ensuring absence of cross-contamination = no contact between input materials and output ash) and (b) prepare amendments to the ABPR and to the FPR to allow safe use of Cat1 ABP ash in EU-fertilisers (subject to EFSA conclusions).

For information: ESPP has commissioned an independent **legal Opinion concerning the possibility to use Cat.1 ABP ash in fertilisers under the Animal By-Product Regulations**, available at www.phosphorusplatform.eu/regulatory (see under "EU Fertilising Products Regulation")

¹ Based on: Van Dijk, Lesschen & Oenema "Phosphorus flows and balances of the European Union Member States." *Sci Tot Env* 2016 <https://doi.org/10.1016/j.scitotenv.2015.08.048>

² Swiss ordinance on limitation and elimination of waste 4th December 2015 in French (OLED) www.admin.ch/opc/fr/official-compilation/2015/5699.pdf and in German (Abfallverordnung, VVEA) www.admin.ch/opc/de/official-compilation/2015/5699.pdf

³ degree of scientific certainty that the specified process will achieve the required reduction of levels of the most resistant of the specified pathogens.