



Brussels, 18 November 2014

Note to the Members of the Working Group on Animal By-Products and the Members of the Fertiliser Working Group

This document has been drafted by the Commission Unit responsible for fertilisers, in consultation with the Commission Unit responsible for animal by-products, with the aim of consulting Working Group experts on animal by-products and fertilisers. It reflects the current views of the Commission's experts on those matters, and does not bind the Commission, or prejudice any formal decision to be taken by it.

Subject: fertiliser made from animal by-products under the revised fertiliser regulation

1. BACKGROUND

DG ENTR is working on a revision of Regulation (EC) No 2003/2003 on fertilisers (hereinafter the Fertilisers Regulation – FR), with the intention to extend the scope of the current Regulation to organic based materials, in particular fertilising products deriving from animal by-products.

The EU fertiliser market is currently partly harmonised. Fertilisers other than EC fertilisers can be placed on the market under national rules, but often have difficulties to freely circulate on the market. The objective of the revision would be to create an internal market for fertilising products across the EU. The legal basis would be Article 114 of the Treaty on the functioning of the European Union (TFEU), which regulates the legislative procedure for adopting rules relating to the internal market and the free circulation of harmonised products in the EU, ensuring a high level of safety and protection of health, environment and consumers.

Animal by-products, in particular processed derived products, are largely used in the manufacture of fertilising products and could be further used as a potential replacement of inorganic fertiliser for which the EU is dependent. The recovery of such materials for use in fertilising products should be encouraged.

Regulation (EC) No 1069/2009 (ABPR) lays down health rules for animal by-products and derived products in order to prevent and minimise risks of outbreak of animal diseases arising from those products. It classifies those products into specific categories which reflect the level of such risks and provides for requirements on their safe use, or disposal, placing on the market, import, transit and export etc. The legal basis is

Article 152(4)(b) of the Treaty establishing the European Community (currently Article 168(4)(b) TFEU).

Commission Regulation (EU) No 142/2011 (ABP-IR) lays down implementing rules for Regulation (EC) No 1069/2009 including requirements for the placing on the market of organic fertilisers and soil improvers.

New technologies have widened the possible use of animal by-products for the manufacture of fertilisers. However the use of certain technologies might pose health risks that must be minimised in particular for harmonised products that would be free to circulate within the EU.

The competent units of DG ENTR and DG SANCO are currently discussing the conditions under which certain products regarded as derived products under the ABPR could be safely used in the production of fertilising products. The objective of this note is to present the legal option that is envisaged for the revision of the Fertilisers Regulation.

2. INTERNAL TRADE BARRIERS

The ABPR and ABP-IR list several harmonised processing methods or transformation parameters that ensure that the risks inherent to the use of animal by-products in the manufacture of fertiliser are minimized. However, the ABPR gives also some flexibility to Member States to accept national processing methods subject to validation by national competent authority. According to the rules of the ABPR, the resulting product can only be marketed within the Member State where these methods have been authorised¹ and consequently harmonisation of such products is not possible.

As it would be extremely costly for producers operating under national rules to comply with the harmonised standard or alternative transformation parameters of the Animal By-Products regulation, the scope of a future fertiliser regulation will be limited to products that can meet the harmonised transformation methods described in the ABPR, therefore leaving the possibility to Member States to continue to regulate national products.

Another example of internal trade barrier for fertiliser deriving from animal by-products is the trade between the Member States of unprocessed manure which is subject to stringent conditions under the ABPR. The dispatch of unprocessed manure between the MS is strictly regulated and has to be authorised by the Member State of destination and should be reported in the TRACES database.

According to the definition from Point 22 of Article 3 of ABPR, organic fertilisers and soil improvers (OFSI) may include unprocessed manure. Due to the high risk for spreading of diseases through this raw material and pursuant to the strict requirements from Section 1 Chapter 1 of Annex XI to ABP-IR, the trade of unprocessed manure and consequently of OFSI containing unprocessed manure is subject to stringent conditions that make the trade of such materials very difficult.

Consequently, the scope of the Commission proposal should be limited to derived products obtained from animal by-products in accordance with the harmonised processing or transformation methods laid down in the ABPR and in ABP-IR. The

¹ See for example Section 2 of Chapter III of Annex V of the ABP-IR

conditions under which such derived products could leave the veterinary controls would have to be defined in the ABP-IR. A recent revision of the ABP-IR has provided such criteria for operators handling and distributing organic fertilisers or soil improvers exclusively in ready to sell retail packaging of not more than 50 kg in weight for uses outside of the feed and food chain.

Further, such rules have been recently laid down in Commission Regulation (EU) No 592/2014 in order to provide for the possibility that combustion residues of animal by-products used as a source of energy can be used in the manufacture of fertilisers.

In addition, in a future amendment to the Annexes of the ABP-IR, growing media with less than 5% in volume of products derived from animal by-products of categories 2 and 3 other than processed manure and growing media with 50% in volume of processed manure would no longer be subject to veterinary controls.

3. CRITERIA FOR THE SELECTION OF DERIVED PRODUCTS

DG ENTR and DG SANCO have identified three criteria to determine which derived products within the meaning of the ABPR could be safely used in the production of fertilisers. These criteria are as follows:

- Only processed animal by-products can be used in fertiliser production for trade across the EU
- A reduction of the content of animal pathogens as laid down in the ABP-legislation
- The final product is rendered unpalatable for animals

4. CONCLUSIONS AND SERVICE AGREEMENT REACHED

A revised fertiliser regulation would be similar to other product regulations, and therefore not have the necessary emergency procedures to tackle the dissemination of animal diseases in the event of sanitary crisis via the use of fertilisers. The controls of the effectiveness of the transformation procedure followed by the operator and of the pathogen content in derived products suitable for fertiliser production should therefore remain within the scope of the ABPR.

The two Units agreed to work on the following approach:

- (a) The COM proposal would include an amendment to Article 5 of the ABPR which would allow the Commission to determine an end point in the manufacturing chain within the meaning of that Article for certain derived products which constitute or are incorporated in fertilising products within the meaning of the new Fertilisers Regulation. After having reached this end point, derived products processed following the harmonised transformation parameters and reaching the sanitary conditions defined in the ABP-IR would no longer be subject to official controls under the ABPR. The end points should be defined as the point in the manufacturing of the product where:

- It has been certified by a commercial document/ health certificate referred to in Article 21 of the ABPR that the derived products no longer pose any significant risk to public or animal health, and
 - The derived products constitute or are incorporated into fertilising products as defined in the future regulation on fertilisers which have passed the conformity assessment provided for by that regulation.
- (b) The fertilising products that could not reach the end points mentioned above would still be subject to the ABPR, the ABP-IR and to national measures as regard the requirements for their placing on the market.

In the event of risks to public or animal health following the marketing of CE marked fertilisers deriving from animal by-products, Articles 53 and 54 of Regulation (EC) No 178/2002 concerning emergency measures should apply.

- (c) The relevant sanitary conditions should be described in the ABP-IR.