

FEEDBACK on draft text for COMMISSION DELEGATED REGULATION (EU) .../... of XXX 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

BACKGROUND

The NWE Interreg project ReNu2Farm encourages the use of recovered nutrients on farms in the form of recycling derived fertilisers. Compost and digestates are widely accepted and used as organic fertilisers and soil improvers. The transfrontier transport and marketing of composts and digestates derived from animal by-products (ABP) is regulated by Regulations on Animal by-products (EU) 1069/2009 and (EU) 142/2011. The prerequisites of these regulations on the notifications, approval and authorization on are a barrier to transport and marketing of these products and hinder the development of a regional transfrontier market. Therefore, the supplementing Regulation for the determination of end points for ABP derived products in the manufacturing chain of organic fertilisers and soil improvers is highly welcomed.

The EU Regulations EU 1069/2009 and EU 142/2011 are complex texts which contain specific terminology and definitions and many cross-references. Because of this they are difficult to understand and interpretate, leading to confusion and discussion between the producers and authorities. The same might be said for the draft text of the supplementing Regulation which refers to specific articles and annex texts in these regulations.

FEEDBACK ON DRAFT TEXT

1. Clearly define whether the end point determination only applies to products that will be regulated under the scope of the Regulation (EU) 2019/1009 or also to products that are regulated under the national fertiliser regulations

The Regulation (EU) 2019/1009 for fertilising products established rules to the marketing of EU fertilising product. It is optional to the national regulations, which regulate the marketing of non-harmonised fertilising products.

The marketing and use of ABP as organic fertilisers and soil improvers is currently regulated at the national level by the national fertiliser regulations for non-harmonised fertilising products. At the same time the prerequisites of the EG 1069/2009 also apply to these products.

In article 1 of the draft text for the supplementing Regulation it is stated that *"This regulation will determine the end point for derived products in the manufacturing chain for organic fertilisers and soil improvers produced in the Union beyond which they are no longer subject to the requirements of Regulation (EC) No 1069/2009."*

There is however no mention or limit to the subsequent use of these derived products, and hence no prerequisite to bring the derived product under the scope of Regulation (EU) 2019/1009 for harmonised fertilising products. This seems to imply that these derived products can remain to be

regulated as organic fertiliser or soil improver under the national fertiliser regulations but without the prerequisites of the Regulation (EU) 1069/2009.

This is however not clear from the draft text for the supplementing regulation, which states that: *“Whereas: (2) Regulation (EU) 2019/1009 establishes rules for the marketing of EU fertilising products. That Regulation does not apply to derived products which are subject to the requirements of Regulation (EC) No 1069/2009 when made available on the market. Pursuant to Regulation (EU) 2019/1009, certain derived products may become, or be part of, an EU fertilising product provided that an end point in the manufacturing chain of the derived product is reached, thereby ensuring animal and public health safety. Those derived products, which have reached an end point in the manufacturing chain of certain organic fertilisers and soil improvers, will no longer be subject to the requirements of Regulation (EC) No 1069/2009 and instead come within the scope of Regulation (EU) 2019/1009”.*

Recommendation: To avoid confusion or different interpretations of the meaning of the text, it is recommended that the text of the supplementing Regulation is reworded to make it unequivocally clear whether (1) the use of the derived products with end point is limited to the use as organic fertilisers and soil improvers under the scope of the (EU 2019/1009, or, whether (2) these end point products can also be used under the scope of national fertiliser regulations. Manure-derived N-products that do not pose a risk for nitrate leaching or adverse environmental effects should be excluded from the 170 kg N ha⁻¹ limit that is posed on manure application following the Nitrate Directive.

- 2. Compost and digestates which have been transformed in approved plants using alternative parameters that were authorised by the competent authority (so called national authorised treatments) are excluded from the determination of end points, but there is no apparent reason or motivation for this exclusion. Therefore this exclusion seems unjustified**

Compost and digestates derived from the transformation of ABP can be used as organic fertiliser and soil improvers. Article 10 of the Regulation EU 142/2001 lays down requirements regarding the transformation of animal by-products and derived products into biogas and composting, referring to annex V:

Article 10

“2. The competent authority shall only approve biogas and composting plants, if they comply with the requirements laid down in Annex V.

3. The competent authority may authorise the use of alternative transformation parameters for biogas and composting plants subject to the requirements set out in Section 2 of Chapter III of Annex V.”

In Annex V Chapter II Section 2, it is clearly worded that these alternative transformation parameters should ensure an adequate reduction of biological risks:

“1. The competent authority may authorise the use of parameters other than the parameters set out in point 1 of Section 1 of Chapter I and other than the standard transformation parameters, provided that the applicant for such use demonstrates that such parameters ensure adequate reduction of biological risks. That demonstration shall include a validation, “...”.

As these alternative parameters under section 2 have a validated adequate reduction of biological risks and will enable the compost and digestates to be brought to the market just like compost

and digestate that have been transformed by parameters under section 1 it is not clear why they should be excluded from the determination of end points.

The draft text of the Supplementing regulation does mention that the Scientific Opinion of EFSA of 2 December 2021 did not provide a risk assessment of the compost and biogas digestion residues, because those derived products have been recently assessed by EFSA with a favourable outcome. However, no reference to this assessment is given or can be found on the EFSA or CIRCABC website. Therefore, the motivation for the exclusion of the so-called national authorised treatments is lacking and seems unjustified.

It is recommended that the compost and digestates that are produced with national authorised treatments (Annex V Chapter section 2) should be added in the article 3.b and 3.c of the supplementing Regulation, or to give a motivation why these products should remain subject to the prerequisites of Regulation (EU) 1069/1009.

3. Digestate derived of manure is commonly used as an organic fertiliser. For the determination of end points only digestates that are pasteurized/hygienised with harmonised treatments should be considered. Yet this is not apparent from the draft text on biogas digestion residues.

For the determination of end points it has been stated in the expert group meetings (June 2 2022) that only harmonised treatments will apply for the determination of end points. Digestates from manure from biogas plants without pasteurisation unit are not considered for the determination of the end points.

We do not question the prerequisite on pasteurization/hygienisation for the determination of end points for digestates. We do however question the use of the section 1 of chapter I of Annex V as the legal text for the determination of the end point for digestate residues as it is complex to understand in itself due to the many cross references and secondly, it seems to allow derogations on pasteurization that clearly are not in line with the intended end point requirements.

The draft text in the Supplementary Regulation on the end point for digestates that are considered for the determination of end points is:

(b) biogas digestion residues which fulfil the requirements set out in Section 1 of Chapter I, Chapter II, and Section 1, point 1, and Section 3 of Chapter III of Annex V to Regulation (EU) No 142/2011;

Section 1 of Chapter I of Annex V of EU 142/2011 states that biogas plants must be equipped with a pasteurization/hygienisation unit.

“1.1. A biogas plant must be equipped with a pasteurisation/hygienisation unit, which cannot be bypassed for the animal by-products or derived products introduced with a maximum particle size of 12 mm before entering the unit, with:

- (a) installations for monitoring that the temperature of 70 °C is reached during the time of one hour;*
- (b) recording devices to record continuously the results of the monitoring measurements referred to in point (a); and*
- (c) an adequate system to prevent insufficient heating.”*

However, in section 1.2, derogations are made for the pasteurisation of 'safe manure' biogas plants:

“2. By way of derogation from point 1, a pasteurisation /hygienisation unit shall not be mandatory for biogas plants that transform only:”

“(d) animal by-products which may be applied to land without processing in accordance with Article 13(f) of Regulation (EC) No 1069/2009 and with this Regulation, if the competent authority does not consider them to present a risk of spreading any serious transmissible disease to humans or animals;”

The referred Article 13(f) of Regulation (EC) No 1069/2009 reads:

Article 13 Disposal and use of Category 2 material

Category 2 material shall be:

(f) applied to land without processing, in the case of manure, “ “ which the competent authority does not consider to present a risk for the spread of any serious transmissible disease;

Biogas plants using manure commonly do not have a pasteurization/hygenisation unit. The derogation on pasteurization of biogas digestion residues of 'safe' manure seems justified as the transformation does not add to the pathogen risk and it would be unreasonable to impose restrictions on the digestate that do not apply to the manure that it is derived from. The 'safe' manure and derived digestate can be used for spreading on land but not for transfrontier transport to other EU countries.

This will inevitably cause different interpretations and discussions between producers and authorities. Differences in interpretation between authorities of the different EU countries do occur may also lead to uncertainties and an unfair level playing field for producers.

We would like to request a rewording of the text article 3. From the draft text for the Supplementing Regulation it is not clear that the end point only applies to biogas digestion residues. Under the prescribed requirement in Annex V chapter II, a derogation for the pasteurisation requirements for biogas plants using 'safe manure' is granted under section 1.2.d with reference to Article 13(f) of Regulation (EC) No 1069/2009. This is however not addressed in the draft text of the Supplementing regulation. Therefore, it is not clear from the draft text that the end point for digestates that only pasteurised digestates are considered for the determination of end points.

The text should be written more clearly, without the cross-references and should not be open to different interpretations.