

## FEEDBACK on the COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX amending and correcting Implementing Regulation (EU) 2021/1165 authorising certain products and substances for use in organic production and establishing their lists

### 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 throughout Europe. Struvite is a relatively new mineral fertiliser product that was only on the market in some countries of the EU. Since 16 July 2022, these products are also allowed as a component for the production of EU fertilising products under Regulation EU 2019/1009.

These products do fit within the general principle of organic production as stated in article 6 (c) the recycling of waste and by-products of plant and animal origin as input in plant and livestock production (EU 2018/865). We welcome the inclusion of these products in the Regulation (EU) 2021/1165 authorising certain products and substances for use in organic production and establishing their list.

Herewith we offer the feedback from the NWE Interreg project ReNu2Farm, where we work closely together with stakeholders and other interested parties.

### 1. ON THE WORDING OF COMPOSTED AND FERMENTED BIO-WASTE

The table in Annex II to Implementing Regulation (EU) 2021/1165 is amended as follows:

(1) the entry for 'Composted or fermented mixture of household waste' is replaced by the following:

<i>Composted or fermented bio-waste:</i>	<i>product obtained from source separated bio-waste as defined in Article 3(4) of Directive 2008/98/EC of the European Parliament and of the Council*, which has been submitted to composting or to anaerobic <b>fermentation</b> for biogas production</i>
--	---

**We propose to change the wording to:**

<i>Composted or digested bio-waste:</i>	<i>product obtained from source separated bio-waste as defined in Article 3(4) of Directive 2008/98/EC of the European Parliament and of the Council*, which has been submitted to composting or to anaerobic <b>digestion</b> for biogas production</i>
---	--

**Considerations:**

- The use of the wording fermentation is confusing, as this is mostly referring to the fermentation process (conversion of sugar to ethanal) and not to **the conversion of biomass to biogas, which is generally referred to as digestion.**
- This would also **be in line with the wording as used in the horizontal EU regulations,** EU 2019/1009 on the marketing of EU fertilising products and the regulations EG 1069/2009 and EG 142/2011 on Animal By products. These regulations use the word digestion for the anaerobic conversion of biomass to biogas, and digestate as the outcome product.

**2. ON THE INCLUSION OF STRUVITE AND PRECIPITATED PHOSPHATE SALTS**

*The table in Annex II to Implementing Regulation (EU) 2021/1165 is amended as follows:*

*(2) the following entries are added:*

Recovered struvite and precipitated phosphate salts	products must meet the requirements laid down in Regulation (EU) 2019/1009  animal manure as source material cannot have factory farming origin
---	---

**We propose to change this to**

Recovered struvite and precipitated phosphate salts	products must meet the requirements laid down in Regulation (EU) 2019/1009 <b>for EU fertilising products with CE marking;</b>  <b>or</b> <b>products must meet the requirements laid down in national regulations on the marketing and use of recovered struvite and precipitate phosphate salts.</b>  animal manure as source material cannot have factory farming origin
---	--

**Considerations:**

- It should be clear from the description what the requirements are. In the Regulation (EU) 2019/1009 recovered struvite and precipitated phosphate salts are included as a **component (component material category CMC 12) for EU fertilising products.** To be allowed on the internal EU market under the scope of the EU 2019/1009 the struvite and precipitated phosphate salts belonging to CMC 12 would also have to meet **all the requirements** of the EU 2019/1009. This would include the requirements of the product

category (PFC) is belongs to, labelling, conformity assessment including certification from Notified Body and marking with CE marking.

- Recovered struvite and precipitated phosphate salts that are not brought to the market as an EU fertilising product under EU 2019/1009 can **only be brought to the market and used by compliance with the national regulations** on struvite and precipitated phosphate salts. The EU 2019/1009 and the national fertilising product regulations are facultative: producers may choose for either. National regulations of The Netherlands, Germany and Belgium have already included recovered struvite and precipitated phosphate salts in their national regulations.
- These national regulations have set requirements and criteria safeguarding the agronomical value and the environmental safety and risks for the health of humans, animals and plants. Farmers should be able to rely on the safety of the products that are regulated at the national level. National regulations often have stricter criteria on contaminations in fertilising products compared to criteria in EU regulations. It would **seem unnecessary to additionally superimpose the requirements of the EU 2019/1009 on EU fertilising products or on the CMC 12** to products already admitted by the national regulations.
- Producers most often opt for the national regulations as the costs for the conformity assessment and certification for the EU 2019/1009 are too high compared to the cost of operating a local facility.
- Setting additional requirements from EU 2019/1009 on the national regulated products will put the biological farmers at a disadvantage. Since they cannot check themselves that the national regulated struvite products will indeed also comply with the additional requirements (EU 2019/1009) as set out in amended the list of authorised products & substances **these products will remain unavailable to them.**

### 3. DEFINING FACTORY FARMING

**In addition**, we suggest to clarify the meaning of factory farming. As there is no definition of factory farming in the Regulations EU 2018/848, EU 2021/265, EG 1069/2009, EU 142/2011 this will be open to interpretation and discussion. As a consequence, the opportunities to use a certain manure derived product will not be the same for farmers throughout the EU but will depend on the interpretation of the national authorities.

### 4. ON WORDING FOR FERTILISING PRODUCTS THAT MAY BE USED

In general, we support the comments of the ESPP on the wording of Annex II of Regulation 2021/1165 which states: *"Fertilisers, soil conditioners and nutrients(1) listed in this Annex may be used in organic production, provided that they are compliant with - the relevant Union AND national legislations on fertilising products ..."*. This suggests that a material may only be used if it is authorised under BOTH national AND EU fertilising products regulations.

We assume that this is not what is intended, and that in fact materials may be used if **they are lawfully made available as a fertilising product by complying with :**

- the EU Fertilising Products Regulation 2019/1009, **OR**
- the relevant NATIONAL fertilising products regulation, **OR**
- if they are authorised as such under national waste or equivalent regulations,
- **AND where applicable:** Union legislation on animal by-products, in particular Regulation (EC) No 1069/2009 and Regulation (EU) No 142/2011, in particular Annexes V and XI **and** the national implementation measures for these regulations;

#### **Considerations:**

- The EU regulation 2019/1009 only regulated **the marketing** of EU fertilising products, but **not the use** of these products which are regulated at the national level.
- **EU 2019/1009 explicitly excludes animal by-products regulated by Regulation (EC) 1069/2009 from its scope.** Therefore, it is impossible for products to comply with both regulations.
- EU 2019/1009 is restricted to fertilising products with a significant EU market perspective. Products with only a **regional importance are to be regulated within the national fertilising product regulations.** The EU regulations 2019/1009 and the national fertiliser regulations are **facultative**, and therefore it would be illogical to demand that products should be compliant with both EU **AND** national regulations.
- It should be noted that the national regulations will often be most **important for the regulation of circular fertilising products** at the local or regional level.
- The use of recycled-derived fertilisers such as compost or digestate from biogas production is often **regulated by the national implementation regulations of the EU waste framework directive.** The use of these products is not always incorporated in the fertiliser regulations, but should therefore not be excluded.

NWE Interreg project ReNu2Farm, drafted November 21 2022, L. van Schöll NMI

Contact details: [Laura.vanscholl@nmi-agro.nl](mailto:Laura.vanscholl@nmi-agro.nl) +31 6 52002193