Chris Thornton

De: no_reply@ec.europa.eu
Envoyé: jeudi 12 mai 2016 19:15
À: info@phosphorusplatform.eu
Objet: Nous vous remercions pour vos commentaires concernant la proposition de la Commission
Pièces jointes: ESPP comments Fertiliser Regulation 12-5-2016.pdf

Veuillez ne pas répondre à ce courriel automatique.

Madame, Monsieur,

Nous vous remercions pour vos commentaires concernant la proposition suivante de la Commission: ***COM(2016)157/F1***
Proposition de RÈGLEMENT DU PARLEMENT EUROPÉEN ET DU CONSEIL établissant les règles relatives à la mise à disposition sur le marché des fertilisants porteurs du marquage CE et modifiant les règlements (CE) nº 1069/2009 et (CE) nº 1107/2009.

Toutes les contributions reçues peuvent être publiées sur le site de la Commission européenne. Une synthèse en sera présentée au Parlement européen et au Conseil, afin de contribuer au débat législatif.

Commission européenne

Votre message:
ESPP comments on proposed EU Fertiliser Regulation revision see attached pdf

European Sustainable Phosphorus Platform
www.phosphorusplatform.eu @phosphorusfacts
34 rue Henri Wafelaerts
1060 Bruxelles, Belgium,
Secretariat: Chris Thornton +33 474 93 07 93 +33 680 72 70 75 info@phosphorusplatform.eu

ESPP comments on proposed EU Fertiliser Regulation 12th May 2016

As published 17th March 2016 at: http://ec.europa.eu/DocsRoom/documents/15949

The European Sustainable Phosphorus Platform (ESPP) is a not-for-profit association (ASBL) under Belgian law, established 2014. Its objectives are are “to promote, facilitate, contribute to and/or implement phosphorus sustainability in Europe”. In particular, ESPP’s actions include to “facilitate dialogue concerning proposals for policies, regulation and actions to further phosphorus sustainability in Europe”.

ESPP’s members/partners (see website *www.phosphorusplatform.eu*) are industry companies and federations (fertilisers, phosphorus recycling technologies, waste and water treatment, chemicals), governments/regions, national nutrient platforms, R&D institutes. The association is funded principally by its membership/partnership fees.

ESPP’s principal activities are facilitating of networking and information exchange, including where relevant input to regulatory and policy discussions, covering the full phosphorus use value chain. In particular, ESPP’s actions address the objective of recovering and recycling phosphorus.

ESPP brings together national nutrient platforms in The Netherlands, Flanders, Germany, Baltic region (BSAG) and platform projects or informal networks in the UK, Spain, Norway. ESPP works closely with relevant organisations at the global level: UNEP GPNM (Global Partnership on Nutrient Management), NAPPS (North America Phosphorus Partnership)

1) Overall position

ESPP welcomes the proposed Fertiliser Regulation (revised) text as a positive, balanced and pragmatic approach which will make an important contribution to facilitating nutrient and organic carbon recycling in Europe, and so development of the nutrient Circular Economy. In addition to directly enabling the placing on the EU market of recovered nutrient products, the new Regulation will play an important role in defining recognised standards for recycled nutrient products, so enabling investment in nutrient recycling capacity and technologies, logistics and markets.

ESPP welcomes the subsidiarity which will **enable Member States to continue to authorise use of other recycled nutrient materials in agriculture (within their territory) as "national fertilisers"** or under waste-type spreading authorisations, including appropriately treated and managed sewage sludge where Member States wish to enable this.

ESPP welcomes the proposal's flexible and open approach, based on CMCs and PFCs (authorised input materials and product specifications) and covering a wide range of products (inorganic, organic and organo-mineral fertilisers, soil improvers, liming materials, plant bio-stimulants) as appropriate to achieve the double objective of enabling technological innovation in recycling and the use of new secondary materials in the future, whilst ensuring safety in farm use and in the food chain. However, this approach leads to **complexity in definitions and possible contradictions, loopholes or omissions** between the different categories. In depth consultation on these technical issues, where consensus of concerned stakeholders can hopefully be achieved, will be important in coming months, both upstream to and in parallel to the political discussion of the proposed Regulation by Member States and Parliament.

2) General proposal principles

i. <u>Traceability</u>

Traceability of products susceptible to contain organic contaminants from certain potentially problematic sources (or perceived as such) should be ensured. We believe that this is necessary to (a) ensure consumer confidence and (b) avoid exclusion of important nutrient recycling potential streams for this reason, in particular municipal sewage.

We propose that such **traceability should be obligatory for products containing organic material from e.g. sewage, animal manures, food waste collected from households** (either separately collected or separated by sorting) wherever the final product is susceptible to contain detectable traces of e.g. pharmaceuticals, pathogens or genetic material. Traceability is not necessary where such organics are no longer present, e.g. after chemical processing in concentrated acid or after incineration or pyrolysis and where organics are susceptible to be present. For example, traceability would be necessary for struvite recovered from sewage, but not for sewage sludge incineration ash. Inorganic contaminants are relatively easily measured and do not justify traceability.

This traceability should cover both CMCs and final products susceptible to contain organic material, even at trace levels, from the specified sources. It should be defined in coherence with Annex IV Conformity Assessment Procedures.

Such traceability is today in place for meat production, from birth and upbringing of the animal on the farm or farms, through the abattoir, to the supermarket shelf or butcher's shop. Mobile IT such as smart phones enables paperless, reliable and fast plotting. This could be adapted for organic by-products and wastes being processed to CE fertilisers.

It is ESPP's view that there is **no contradiction between such traceability and EU Fertiliser Regulation product and input material criteria, CE mark and internal market**. Indeed traceability brings important advantages to the circular economy in terms of consumer confidence, quality control, added value throughout the recycling – use chain.

In the proposed Regulation text, this traceability should **refer to Art. 6(5) – 6(7) which requires to specify on packaging or in accompanying documentation**, inter alia, "type, batch or serial number other element allowing identification". It should also be specified in Art. 18 (End of Waste status).

ii. Effectiveness as a fertiliser (or other PFC)

Effectiveness of products for the function for which they are sold is essential to ensure that the nutrient circular economy is an added value business.

Some requirements are given in the PFC criteria (minimum nutrient content, carbon content), but this does not guarantee effectiveness as a fertiliser.

Art. 42(1)(b) (definition of new PFC or CMC) specifies that newly added products must be "***sufficiently effective***" … This is the same wording as in "Whereas …" (47) and (56) - but this is not defined in the Regulation proposal.

Logically, "sufficiently effective" for a phosphorus nutrient fertiliser means plant availability of the phosphorus content. However, **ESPP would have concerns regarding the use of solubility testing methods to demonstrate plant availability of phosphorus**. Experience with struvite is that for many years, and even today, some scientists and industry actors claim that the product is "not a good fertiliser" because it is not soluble according to the testing methods they are accustomed to using. Considerable evidence and experience shows however that it is in fact an effective fertiliser for most crop/soil situations, possibly because of actions of microbes or plant roots in the soil[1]

We would therefore suggest an obligation for any phosphate fertiliser placed on the market with the CE mark to either:

- demonstrate a specified level of phosphorus solubility (to be defined) using one of the methods specified in the Labelling annex (Annex III), for example >80% water or neutral ammonium citrate solubility
- or if this is not applicable, to specify for which crops and at what soil pH the product has shown to be an effective phosphorus fertiliser, and reference demonstration trials

iii. Energy Crop Digestate (CMC4)

The definition of this criterion as written appears to deliberately encourage the growing of crops for energy uses, which raises issues about land use and **conflicts with food production**.

[1] Rothbaum and Rohde (1976) showed that struvite nutrient availability is enabled by aerobic microbial action in the soil: "Long-term leaching of nutrients from magnesium an1monium phosphate at various temperatures", N.Z. Journal of Experimental Agriculture 4: 405-13

Presumably, the logic for this is related to subsidy criteria for such bio-methane? However, we do not understand why the subsidy criteria for supporting the digester construction or feed-in tariffs or subsidies for the bio-methane produced should impact the valorisation of the digestate as a CE fertiliser. If the criteria for such subsidies change in the future, e.g. to include bio-methane where the part of the crop plant is used for e.g. silage production, then the Fertilisers Regulation criteria will become incoherent.

In many cases, anaerobic digestion can be operated more effectively (in terms of biogas production, digestate agronomic value, economics and logistics, waste / by-product stream recycling), e.g. energy crops with manure, agricultural plant by-products, food wastes or food industry by-products … This will be discouraged by having a separate CMC for "Energy crop digestates".

Therefore we suggest that two categories CMC4 and CMC5 (energy crop digestate and other digestate) should be merged into one "digestate" CMC.

At present, the Annex IV on Conformity Assessment Procedures (Modules A and D1) require lighter controls on CMC4 (Energy Crop Digestate).

We support that Conformity Assessment Procedures should be adapted to the type of materials used (avoid excessive control cost and constraints whilst ensuring product safety), and that this distinction be maintained within a single CMC category for digestates by **specifying lighter Annex IV procedures for digestates using only as input materials "on farm" by-products:**

- **energy crops**
- **other non processed (other than drying etc, see below) crop by-products (such as straw)**
- **manures**

This need not interfere with subsidy systems to the bio-methane production and avoids, in the Fertiliser Regulation, taking apparent position in favour of such land-use.

iv. Criteria for addition of new PFC and CMC categories

Art. 42.1 specifies that Annexes I – IV can be modified, that is in particular Annex I new PFCs and Annex II new CMCs can be added subject to three conditions:

- Likely significant trade
- Evidence of no risk
- "sufficiently effective"

This seems insufficient. Similar to End-of-Waste criteria, **the validity of a new product should be defined by a combination of four factors: input materials, process, product quality (safety) criteria (e.g. contaminants) and market** (in this case, shown utility as a fertiliser or other relevant function).

Indeed for composts (CMC3), the Annex II criteria do indeed contain criteria other than the manufacturing process (exclusion of sewage sludge as an input material), contaminants (limit on PAH16) and usability (stability criteria).

On the other hand, for some products it may not be necessary to define the production process, if the input materials and contaminant levels are clearly defined. For example, it does not really matter what process is used to produce struvite from manure liquid fraction or ammonium sulphate from manure treatment off-gases, and indeed new processes may

appear tomorrow. The product can be clearly defined (both are identified chemicals), along with purity and contaminant criteria, irrespective of production process. This would avoid hampering future process innovation.

Furthermore, we suggest that the criteria as written are not applicable as written:

- A new CMC may not itself be susceptible to any trade, but may be used close to the production site to produce a PFC which will be traded
- The risk cannot always be assessed for a CMC in abstract of its use. E.g. a high heavy metal, low grade phosphate rock or ash (posing risk) could be used to produce a purified phosphoric acid and thus high quality (safe, low contaminant) fertiliser products
- Effectiveness: what does this mean (see above) – a more precise definition is necessary. Also, a CMC may not itself be effective as a fertiliser (e.g. CMC6 Food Industry By-Products) but only after appropriate processing (e.g. composting)

We would propose to **specify separately and differently the criteria for additions to Annex I (PFC), to Annex II (CMC)** and to other annexes.

- for Annex I – PFC: as currently written
- for Annex II – CMC: safety, either for use as such or for use to produce specified PFCs under specified production processes, likely significant trade either as such or after processing into a FR PFC

v. Coherence with REACH

The Fertiliser Regulation revision as proposed does not resolve issues with REACH. These should be addressed, if necessary with amendment of the REACH Regulation in parallel to the adoption of the revised Fertiliser Regulation:

- **Add "digestate" to REACH Annex V, Entry 12:** exclusion from REACH of composts, biogas AND DIGESTATES. This is coherent with the intention of REACH to not cover biological materials and with the fact that compost and biogas are already excluded. In fact, digestates can be considered to be not covered by REACH at present, but this should be specifically stated to avoid current ambiguity.

- Specify that **Art. 2(7)d of REACH ("recovered substances")** applies to any product covered by the revised Fertiliser Regulation which is not produced from virgin materials.

3) New CMC category criteria underway or to launch

DG GROW has **already contracted with JRC to prepare CMC criteria** (Annex II) for the following three additional materials categories. ESPP has prepared / is preparing concerted proposals for each of these. We hope that this work will now progress rapidly in order for these three new criteria to be ready for addition to Annex II as soon as the revised Fertiliser Regulation enters into force:

- **Recovered struvite**
- **Ash based fertilisers**
- **Biochars** (ESPP proposed criteria underway)

We underline that if JRC can complete these proposals and they can be validated by the EU Fertilisers Working Group and Member States, then, even if not legally applicable until insertion into the new Regulation, the criteria could already provide a stable and recognised basis for investment in nutrient recovery processes.

We further **propose that DG GROW launch rapidly the definition of additional CMC criteria** (Annex II) for the following categories:

i. Recovered mineral nitrogen fertilisers

"Mineral" nitrogen fertilisers extracted organic waste treatment gases (from anaerobic digester gases or other organic waste denitrification or ammonium removal gases, including in manure treatment). These are not covered by the current "virgin substances" CMC1 and there are also questions regarding animal by-product status. Such a category would enable circular economy valorisation of such recovered nitrogen (and possibly other accompanying nutrients, e.g. sulphur) and could also provide a clear and agreed basis for Member State – European Commission definitions in Nitrates Directive Action Plan "processed manure" derogations.

ii. Other inorganic recovered phosphates

Other inorganic phosphates: for example, brushite (calcium phosphate), potassium struvite (K-struvite), aluminium phosphates, iron phosphates. An important question, to ensure user confidence, is to ensure justification of both the fertiliser value (plant availability) and eco/toxicological safety of these different phosphates. A stakeholder and science-based process should be engaged to address these questions.

iii. Dried / pelletised animal manures

Animal manures processed by solid/liquid separation, drying, sanitisation and/or granulation: companies are already using thousands of tonnes of such products, either sold directly as organic fertilisers, or after adding nutrients to produce organic fertiliser products adapted for specific crop needs (e.g. COOPERL Brittany, Fertikal Flanders). This should be covered by including such products in CMC11 "Certain animal by-products" (table blank in published draft Regulation text). A definition of covered processing is needed: essentially this should cover processes which conserve the organic content of the manure (exclude thermal processes which significantly modify the nature of the organic content) and should be conform to EU Regulation 142/2011 (implementation of the Animal By-Products Regulation).

i. Sewage sludge derived products

Sewage sludge is an important potential source of nutrients and organic carbon for agricultural valorisation, with potential economic advantages for farmers, the water industry (and so tax payers) and also for the environment, both through nutrient loss reduction, carbon input to soils, and through contributing to upstream pressure to reduce contaminant input to sewage at source. **Sewage sludge derived materials should be specifically addressed**, possibly either as a CMC as such, or to develop and define quality, safety, traceability and Conformity Assessment specifications, necessary to enable sewage sludge derived products to be appropriately integrated into existing CMCs whilst ensuring safety and consumer/farmer confidence.

4) Proposed technical adjustments

ii. Definition of "non processed or mechanically processed" biological material

We would suggest to use the same definition in CMC2, CMC3(a) and CMC7. At present these diverge.

At present, the text of CMC2 appears to exclude plant materials which have undergone heating. For example, olive waste (not covered in CMC6 Food Industry By-Products, as written) is covered in CMC2 for "cold extraction" of oil, but not if oil is further extracted under heat and pressure.

The definition should in all three cases include: **washing with water, freezing, drying, grinding, centrifuging and filtration, solid/liquid separation, heating and sanitation (to temperatures not susceptible to destroy or pyrolyse organic carbon), pickling, salting, smoking or other non-chemical food conservation processes**

iii. Specification of concentrations as "dry mass"

It seems unclear in some of the Product Function Categories criteria whether nutrient and organic carbon % are expressed as "dry matter" or % of wet weight (e.g. for N and organic carbon in both liquid and solid organic fertilisers) and in PFC1(B)I.2 and PFC1(B)II.2 and PFC3.

Water content of recovered or organic-containing materials can vary over time (progressive drying) or with raw materials used. **Therefore, we suggest that in all cases nutrient, carbon and contaminant levels are expressed as dry weight**.

It should also be specified that **"dry weight" should be assessed without drying at high temperatures susceptible to drive off the water-of-crystallisation** from certain inorganic salts (e.g. 56°C for struvite)

iv. Definition of and organic content of PFC inorganic fertilisers PFC1(C)

As we read the current proposal text, this will allow (in some cases) up to 15% organic carbon in "inorganic fertilisers". For example, PFC 1(C)1a (solid inorganic macro-nutrient fertiliser) is defined as any product which is not an "organic" fertiliser (that is organic C < 15%) and is not a "co-formulation (that is, not based on an inorganic fertiliser as defined in PFC1(B), that is not an "organo-mineral").

To avoid this, **we suggest that "inorganic fertilisers" have a positive and quantitative definition**, for example:

- **At least 80% content of identified inorganic phosphate**, nitrogen and/or potassium salts (% dry weight)
- Less than 2% organic carbon (TOC dry weight).

These proposed limit values should be discussed with concerned industries and stakeholders.

The definitions of organic and organo-minerals PFC1(A) and PFC1(B) may then have to be adjusted to **avoid "loopholes" resulting in exclusions** of certain recovered nutrient products.

v. Food industry by-products / wastes

Food industry by-products and food and beverage production wastes should be admitted as input materials for CMC5 Other Digestates and CMC3 Composts

vi. Non-nutrient polymers in CMC10

The general exclusion of polymers in CMC1 should refer to the footnote (8) = link to CMC1 definition.

CMC10 (polymers) should authorise, in addition to nutrient and coating polymers and subject to the same biodegradability criteria:

- **Bio-polymers**: biologically extracted polymer such as: cellulose, lignin, DNA …
- Use of small doses (to be defined) of **polymers for granulation, binding, for solid/liquid separation, flocculation or similar physical processing or product formulation** steps.

vii. Coherence and pertinence of contaminant limits

"Inorganic fertilisers" produced by recovery processes may contain pharmaceuticals, even if they contain 'zero' organics[2]. To ensure safety and confidence, we suggest to **apply the same limits for pharmaceuticals, pathogens, biuret, other organic contaminants, to PFC1(C) as to PFC1(A) and PFC1(B).**

On the other hand, to avoid unnecessary costs and administrative constraints, it should be specified that if a producer can justify that a given contaminant is not susceptible to be present, because of the input materials used and/or processing, then **testing should not be required** (e.g. biuret for digestates, plastics or macroscopic impurities in digestates or composts made only from manures, organics in ashes, pharmaceuticals and pathogens in mineral fertilisers produced from mineral sources by acid or thermal processes …).

This can be linked to traceability of products containing certain input materials, see our proposals above.

[2] See : SCOPE Newsletter n° 96, Kemacheevakul et al. "Occurrence of micro-organic pollutants on phosphorus recovery from urine", Water Science & Technology, 66.10, 2012 *http://www.iwaponline.com/wst/06610/2194/066102194.pdf*