

To the European Commission,
- DG GROW, Fertilisers Unit
- DG SANTE, Animal By-Products

Brussels, 8th April 2026

Dear Madams, dear Sirs

We have been contacted by a company wishing to recycle phosphorus from a sterilised dairy industry residue stream (a Cat.3 Animal By Product) by recovery of a precipitated phosphate salt. The residue stream is from food quality milk and is double processed (as specified in annex X, chapter II, section 4 of 142/2011) and then additionally undergoes microfiltration.

The EU Fertilising Products Regulation (FPR) CMC12 refers to Cat2-3 Animal By-Products as possible input materials (subject to conditions) and this is clarified for the case of composted manure in the FPR FAQ v2/12/25 in Q8.35 (<https://webgate.ec.europa.eu/circabc-ewpp/d/d/workspace/SpacesStore/148ac2da-00ae-4fa8-8ed0-270bce690efe/download>).

However, unless we are mistaken this example of manure cannot be 'extrapolated' to a sterilised Cat2-3 ABP, and specifically not to a sterilised dairy by-product:

- art. 32-1(b) of the ABP Regulation 1609/2009 states that "Organic fertilisers may be placed on the market and used provided ... they have been produced in accordance with the conditions for pressure sterilisation or with other conditions"
- FPR FAQ v2/12/25 in Q8.35 refers (in the manure compost example) to Delegated Regulation 2023/1605, but this Regulation does not include an ABP End Point for sterilised Cat.3 dairy by-products.

ESPP requests that the current situation for such materials be clarified in the FPR FAQ.

If, as we fear, this sterilised dairy stream cannot be used as an input for CMC12, then this seems absurd. The processes set out in the different chapters of 142/2011 are defined to ensure safety for use as animal feed materials: except with specifically justified exceptions, surely this also provides a sufficient level of safety for use in fertilisers ? (subject to the FPR limits on CMC input materials, PFC contaminants, labelling, etc). Indeed, most of the other ABP materials addressed in 142/2011 Annex X are already included in art.4 of 2023/1605.

In this case, we request that a modification of 2023/1605 be considered to add milk, colostrum (etc.) and their derived products, as defined in and processed under the conditions in 142/2011 Annex X.

In this context, and in reference to the FPR FAQ Q8.35, we request that the FAQ clarify understanding of art.1 of 2023/1605. This article states that this Delegated Regulation defines ABP End Points for "*organic fertilisers and soil improvers ... provided that they are used as component materials in EU fertilising products*". FAQ 1.1 clarifies that "*organic*" here means OFSI in the ABP Regulations, not as in the FPR. Stakeholders have suggested that they understand this art.1 to mean that a material reaching an ABP End-Point (e.g. appropriately composted manure) can only be used directly as a CMC (not as an input for production of a CMC, e.g. input for production of a CMC12 precipitated phosphate). This could be made explicitly answered in Q8.35. To our understanding, the ABP End Point is only obtained when the material is finally incorporated into a CE-Mark fertiliser. In the example, the composted manure has not reached the ABP End-Point: if a phosphate salt is extracted from the manure, the phosphate salt could obtain the ABP End Point if incorporated into a CE-Mark product, whereas if the remaining composted manure is certified as a National Fertiliser it would remain ABP.

We remain at your disposition for any further information on these questions.

Yours sincerely

Robert Van Spingelen, President of ESPP

