

15/12/2021 - To the European Commission, DG GROW

EU Fertilising Products Regulation - Public Consultations open to 14th January 2022

DRAFT comments on proposed delegated acts & criteria for CMCs 11 and 15

ESPP thanks the European Commission, DG GROW and JRC, for these well prepared and constructive proposals. We particularly welcome the CMC15 proposal to widen beyond by-products (CMC11) to include certain recovered inorganic materials.

In particular, we welcome that, to our understanding, CMC15 (2b) will enable inclusion in EU-fertilisers of **recovered nitrogen salts from offgases**, such as ammonium sulphate stripped and recovered from digestates.

We also welcome that, to our understanding, CMC15 (2a) will enable inclusion of e.g. struvite recovered from treatment of discharge water from **phosphogypsum waste stacks**.

We note however that neither CMC11 nor CMC15 cover organic by-products. Some organic by-products are covered under existing CMCs (CMC2 mechanically processed plant materials, CMCS 3-5 composts and digestates, CMC6 certain listed food industry by-products). Others are not, such as from the pulp & paper industry, biofuels processing, etc.

Please find below our comments on the texts submitted to public consultation:

CMC11 art.1a – exclusions of potassium and magnesium salts

We regret that **salts of potassium and magnesium are not included in the list in CMC11 art.1a**. These are important plant nutrients. Processes to recover such salts exist but are currently developed to recover these nutrient salts from waste incineration ashes or other waste streams (so not by-products as in CMC11). Exclusion of potassium and magnesium salts closes the door to future innovation, whereas there is no reason to expect such recovered salts to contain contaminants or pose safety issues different from those already considered in CMC11 for the other comparable mineral salts.

CMC11 1b – Can the “production process” include wastes as inputs?

CMC11 1b specifies *“By-products ... which provide nutrients to plants ... are produced as an integral part of a production process that uses as input materials substances and mixtures, ...”*

We suggest that it is not clear whether this includes wastes as inputs, and we request that this be clarified in the FAQ.

We note that a “substance” is defined by REACH art. 3.1 as *“... a chemical element and its compounds in the natural state or obtained by any manufacturing process ...”*.

At present, ESPP has no examples of a production process taking waste as one of its inputs and producing a fertiliser product as a by-product but the current wording excludes future innovation and may exclude by-products which are currently used but have not been communicated.

CMC11 1b – Can the “production process” include plant materials as inputs?

CMC11 1b specifies *“By-products ... which provide nutrients to plants ... are produced as an integral part of a production process that uses as input materials substances and mixtures, ...”*

To our understanding, it is established that dead organisms and parts thereof are NOT “substances and mixtures” (based on the REACH Guidance, and clarified in the FPR [FAQ](#)). In this case, **art. 1b would appear to exclude by-products recovered from production processes using plant materials as inputs, such as paper production**

or sugar production or biofuels production, etc. Organic by-products from such processes are in any case excluded (by CMC11 art. 1a) but inorganic salts (as specified in 1a) could also be recovered from such processes.

We suggest to modify to “... *production process that uses as input materials substances and mixtures and/or plant materials*”.

CMC11 – radioactivity

ESPP has previously commented that, given the known risk of radioactivity of some mineral ore processing residues or ferrous slags, radioactivity limits should be defined for all materials in CMC11, subject to art. 3.

We understand from the Commission’s answer that radioactivity limits defined at an EU or national level under the Euratom treaty are applicable, but **we do not understand why the FPR cannot fix radioactivity limits, applicable if and only if they are more constraining than the Euratom limits.**

CMC15 art.1 – inclusion of potassium and magnesium salts

We regret that salts of potassium and magnesium are not included in the list in CMC15 art.1. These are important plant nutrients. Processes to recover such salts exist but are currently developed to recover these nutrient salts from waste incineration ashes or other waste streams (that is NOT covered by CMC15). Exclusion of potassium and magnesium salts closes the door to future innovation. Whereas there is no reason to expect such recovered salts to contain contaminants different from those already considered in CMC15 for the other comparable mineral salts.

CMC15 art. 2a – input plant materials (as above for CMC11)

As above, **we suggest to not include materials recovered from processes using plant materials as inputs**, that is “*input materials substances and mixtures*” is too restrictive and request to add “*and/or plant materials*”.

CMC15 art. 2(a)

CMC15 (2)a specifies “*The high purity material shall be recovered from waste generated from: (a) a production process that uses as input materials substances and mixtures ...*”. It is important to here clarify the meaning of “**recovered**”.

We propose the example of “spent sulphuric acid” used to attack phosphate rock to produce a mineral fertiliser such as TSP, already discussed in the FPR FAQ Q 8.13 (<https://ec.europa.eu/docsroom/documents/46391>)

For example, if spent sulphuric acid (e.g. after use of virgin sulphuric acid in metal treatment, and classified locally by the Member State as “waste”) is reacted with phosphate rock, followed by various chemical processing, to produce triple super phosphate, then it our understanding that this triple super phosphate (TSP):

- Cannot be CMC1 because it is excluded by CMC1 art. 1(c) “*substances formed from precursors which have ceased to be waste ...*”
- We ask the question: **can such spent acid be CMC15, under art. 2(a)**, subject to respecting the other criteria of CMC15? In that:
 - (i) the waste-status sulphuric acid is a “substance” as defined by REACH art. 3.1 “... *a chemical element and its compounds in the natural state or obtained by any manufacturing process ...*”: the waste sulphuric acid is obtained by the manufacturing process of metal treatment.
 - (ii) the production of the TSP corresponds to the second sub-category of “recovery” (recycling) as defined in the 2012 [Guidance to the Waste Framework Directive](#), §1.4.5

CMC15 art 2b.i – input plant materials

As above.

CMC15 art 2b.v – wording

Art.41 (3) (Definitions) of 2010/75/EU specifies “ ‘waste co-incineration plant’ means ...”

We therefore propose to add the word “plant” in CMC15 art 2b.v to read: “waste within the meaning of Article 3, point 1, of Directive 2008/98/EC, and fuels input to a waste co-incineration **plant** as defined in Directive 2010/75/EU ...”.

CMC15 art 2b.vi and 2b.vii – Animal By-Product End Point

The proposed text, unlike CMCs 3, 5, 12, 13, 14, does not require that an Animal By-Product End-Point be defined.

Pathogen limits are specified in points 7 and 8, but:

- Does this resolve the regulatory question of an Animal By-Product Regulation End Point ?
- In the absence of a definition of an ABP End-Point, is it proven that the pathogen limits in points 7 and 8 are sufficient?

CMC15 art.6, 7 and 8

We regret that art. 6 applies to points 3 – 5 only, and not to points 7 and 8.

This means that, even if it follows certainly and uncontestably from the nature of the recovery process that pathogens will not be present, it is still necessary to test for pathogens. For example: recovery of a material from a chemical process, or recovery of a material from offgas cleaning from an incinerator.

We request to add that art. 6 also applies to points 7 and 8 where the recovered material is:

- as defined in point (2a) or (2bi)
- as defined in point 2b ii, iii or iv where the offgas is from an incineration process as defined in the IED Directive and the offgas has been subject to the conditions prescribed in this Directive (850°C, 2 seconds)