Fédération Européenne des Activités de la Dépollution et de l'Environnement
European Federation of Waste Management and Environmental Services
Europäische Föderation der Entsorgungswirtschaft

FEAD initial comments on the legislative proposal to revise the Fertilisers Regulation (COM (2016) 157 final[1] of 17 March 2016)

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General

- FEAD welcomes the extension of the scope of the Fertilisers Regulation to organic fertilisers and the Commission's attempt to create a level-playing field between organic and inorganic fertilisers. Organic fertilisers contribute to a more circular economy: for example through phosphorus recovery they reduce the need for primary raw materials and thereby also lower greenhouse gas emissions.

- The draft Regulation offers opportunities to increase end-user confidence in waste-derived fertilisers, by granting them product status and laying down EU-wide safety, quality and labelling requirements. However, to reap these benefits a number of changes are needed to the draft regulation, not least to make the nutrient requirements achievable for all product categories.

Optional harmonisation

- FEAD supports the optional harmonisation approach as a way of easing the regulatory burden for cross-border trade of organic fertilisers without damaging existing well-functioning domestic markets.

- Article 18 (End-of-waste status): It is our understanding that in line with the optional harmonisation approach, fertilisers which do not reach EU end-of-waste status could still achieve end-of-waste status at national level if this is foreseen in national legislation, even for input materials covered under the EU Regulation. However, this seems contradictory with Article 6 of the Waste Framework Directive, which only allows national end-of-waste decisions where criteria have not been set at EU level. We would like the Commission to further clarify the relation between the Fertilisers Regulation and Article 6 WFD.

Input materials

- FEAD would like to stress the need to regularly review the annexes of the future Fertilisers Regulation in order to allow the introduction of new component materials (e.g. ashes, struvite…).

- The inclusion of a variety of possible inputs (waste-derived materials) with strict limit values which can be marketed as CE fertilisers will allow the industry to explore new components and to develop new processes to achieve the set limit values, hence promoting research and innovation.

[1] Proposal for a Regulation of the European Parliament and of the Council laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009: http://ec.europa.eu/DocsRoom/documents/15949

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- Manure is not mentioned at all in the proposal. We believe that it should be included in the table under “CMC 11: Certain animal by-products” which is currently still empty.

- We are not sure if all animal by-products of category 2 should be allowed as input materials. Some of these materials may be unwanted to produce organic fertilisers or soil improvers.

- Clarification is needed on the definition of “industrial sludge”, which is excluded as input material for compost and other digestate. Is sludge from the food processing industry considered as industrial sludge, hence would this mean that sludge from the food processing industry cannot be used to produce CE fertilisers?

Safety and quality requirements

Nutrient requirements:

- Our members’ assessment is that the nutrient requirements will be hard to achieve for digestate. Liquid digestate will probably completely be excluded from the regulation as it not only does not meet the nutrient requirements for organic fertilisers, it also does not reach the proposed minimum of 40% dry matter by mass to be qualified as organic soil improver. Is it the Commission’s intention to exclude liquid digestate from the Regulation?

Organic matter:

- The proposal requires organic carbon to be present in organic fertilisers by at least 15% by mass for solid organic fertilisers and 7.5% for organic soil improvers. According to the agronomic features of these two materials, this should rather be the other way around: the main benefit of soil improvers is not as a fertiliser but to add organic matter to soil. Organic soil improvers are richer in organic carbon than organic fertilisers.

- Moreover, FEAD recommends setting a minimum organic matter requirement rather than having a minimum requirement for organic carbon. The organic matter content has been established for a long time and is sufficient.

Limit values for contaminants:

- FEAD is concerned that the lack of limit values for heavy metals at component level (the levels only apply at product level) could lead to dilution (e.g. mixing of “clean” compost with contaminated compost to achieve the limit values at product level). Whereas the reason for this is probably that in the end it is the concentration which is put on land that matters, in order to have maximum control over the material and to ensure traceability of potential contamination it is to be preferred to set limit values for heavy metals both at component and product level. The introduction of Annex II[2] is insufficiently clear on this point.

[2] *“A CE marked fertilising product shall consist solely of component materials complying with the requirements for one or more of the Component Material Categories ('CMC') listed below. The component materials, or the input materials used to produce them, shall not contain one of the substances for which maximum limit values are indicated in Annex I of this Regulation in such quantities as to jeopardise the CE marked fertilising product's compliance with one of the applicable requirements of that Annex.”*

- Chromium: FEAD would like the limit value for chromium to refer to total chromium (Cr total - limit value: 100 mg/kg dry matter) instead of to hexavalent chromium (Cr VI). Cr VI is not a stable element in the soil as the organic matter has a diminishing effect on this element. This is why in the majority of Member States Cr total is the parameter which is used.

Limit values for impurities:

- We agree with the proposed limit values but would like the text to precise the method to determine these values, which in our view should be performed by means of dry sieving. This method (which was also proposed in the JRC report of December 2013[3]) is easy to implement and inexpensive.

Process requirements:

- Our first assessment shows that the temperature-time profiles in the proposal are quite challenging. For composting, several countries apply 55° for 3 days (Netherlands, Italy, France; only Germany applies 14 days) and 60° for 3 (ECN quality label) up to 4 (Belgium) or 6 (Germany) days. Germany applies 65° for 3 days but most countries do not have a 65° requirement. We need more time to assess whether the temperature-time profiles would be feasible for our members.

- For anaerobic digestion, we believe that the requirement *"Thermophilic anaerobic digestion at 55°C during at least 24h and a hydraulic retention time of at least 20 days"* should read: *"Thermophilic anaerobic digestion at 50-55°C ~~during at least 24h~~ and an average hydraulic retention time of ~~at least~~ 20 days"*. The retention time depends on the technology used and the average time will usually be higher than 20 days but some of the material may leave the digester before 20 days. Moreover, the temperature should be at 50-55°C as thermophilic bacteria have no optimum at 55°C. It is rather a maximum than a minimum value.

- It could be problematic if it is understood by Member States that time-temperature profiles must be sustained continuously and simultaneously in all parts of each batch when it is being treated. Such strict interpretation would exclude any composting processes that use outdoor, turned windrows to sanitise the biodegradable waste.

Stability criteria:

- The demand for compost maturity depends on the end-user requirements. Some farmers seek composts which have not attained the "Rottegrad III" level to fertilise their soil. Therefore, options other than setting a minimum requirement should be considered (e.g. requiring a self-heating test as stability measure to inform the user without setting a limit value). If the Commission intended not to include so-called "fresh compost" in the Regulation, operators producing CE fertilisers should at least be allowed to process fresh and stabilised compost in the same plant (see also last remark under "Conformity assessment").

[3] End-of-waste criteria for biodegradable waste subjected to biological treatment (compost & digestate): Technical proposals (Final Report, December 2013)

Conformity assessment

Test methods:

- It is necessary to develop harmonised analytical methods to assess compliance with the set quality and safety requirements, to make sure fertilisers put on the market in different Member States can be compared on an equal basis.

- For compost and digestate, FEAD recommends to further develop the analytical methods already proposed by the Joint Research Centre in December 2013 (see above-mentioned report). All limit values laid down in the regulation should eventually be associated with analytical methods.

Administrative costs:

- The Commission's impact assessment[4] states that the proposal would imply lower administrative costs than under status quo for economic operators, but that it can be expected that the administrative costs will in certain cases be higher at the level of individual companies, in particular for producers of relatively variable materials requiring a high level of third-party involvement in the conformity assessment. If the costs of conformity assessment are higher under the new approach, this may prevent operators from opting for the EU system.

- The increased costs are not only linked to the fees which will have to be paid to a notified body to verify the compliance of products with the requirements (in case the fees are higher than what operators currently pay quality assurance bodies). Also obtaining accreditation will be very costly, as will be the proposed sampling frequency.

Role of existing quality assurance bodies:

- Furthermore, it is important to consider the role of existing quality assurance bodies which have a lot of knowledge and experience concerning highly complex biological treatment processes like composting and anaerobic digestion. What will their role be under the new system?

Plants using different inputs:

- The requirement that composting and anaerobic digestion plants shall only process the input materials as laid down in the regulation rules out a lot of the capacity to produce CE-marked fertilisers as it is common to use different inputs. FEAD would therefore prefer if this requirement referred to a "production process" or "production line" rather than to the plant as a whole.

[4] SWD(2016) 64 final: Commission Staff Working Document - Impact Assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009

Interface with other legislation

Circular Economy Package:

- Given that the draft Fertilisers Regulation only applies to separately collected bio-waste, its potential to boost the market for organic fertilisers will to a large extent depend on how the separate collection provision (requiring Member States to separately collect bio-waste *"where technically, environmentally and economically practicable and appropriate"*) in the revised Waste Framework Directive will be implemented across the EU.

- Moreover, quality standards as proposed in the draft Fertilisers Regulation are important and needed but not sufficient to stimulate demand for secondary raw materials. In line with our overall position on Circular Economy, FEAD calls on the Commission to consider additional pull measures such as promoting organic fertilisers through Green Public Procurement, ensuring fair competition between virgin and secondary raw materials by financially rewarding the benefits of recycling (i.e. reward for CO_2 reduction) and cutting the administrative burden for trading high quality secondary raw materials in the EU.

Animal By-Products Regulation:

- FEAD asks for further clarification from the Commission regarding the link between the new Fertilisers Regulation and the Regulation on Animal By-Products (Regulation (EC) No 1069/2009). The draft Fertilisers Regulation specifies that fertilisers produced from animal by-products will no longer be subject to the traceability requirements of the ABP Regulation if they reach *"a point in the manufacturing chain beyond which it no longer poses any significant risk to public or animal health (the 'end point in the manufacturing chain')"*. Which criteria will operators need to apply to ascertain that the risk is sufficiently managed and the end point is reached?

REACH Regulation:

- The new Fertilisers Regulation will be complementary to Regulation (EC) No 1907/2006 on REACH, *"which will continue to apply to chemical substances incorporated into fertilising products"*. In order to promote the marketing of digestate, FEAD calls on the Commission to exempt it from registration under REACH, in line with the existing exemption for compost.

Use of delegated acts

- The draft regulation allows the Commission to adopt delegated acts to amend the annexes. FEAD believes that the feasibility of such measures needs to be checked by experts from the Member States, who are best informed about the situation on the ground. We therefore strongly advocate for these measures to be dealt with as implementing acts, allowing a Member States experts' committee to examine and if necessary amend the Commission proposal, as was the case under the regulatory procedure with scrutiny. This will ensure better and more practicable regulation.

About FEAD

FEAD, the European Federation of Waste Management and Environmental Services, represents the European private waste management industry. FEAD's members are national waste management associations covering 18 Member States, Norway and Serbia. They have an approximate 60% share in the household waste market and handle more than 75% of industrial and commercial waste in Europe. Their combined annual turnover is approximately € 75 billion.

FEAD represents about 3,000 companies with activities in all forms of waste management. These companies employ over 320,000 people who operate around 2,400 recycling and sorting centres, 1,100 composting sites, 260 waste-to-energy plants and 900 controlled landfills. They play an important role in the determination of the best environmental option for waste management problems.