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COMMISSION OF THE EUROPEAN COMMUNITIES

**GUIDANCE NOTE**

**INTERPRETATION OF REGULATION 1774/2002/EC**

**QUESTIONS ARISING FROM FVO INSPECTIONS TO MEMBER STATES  
(2004-2005)**

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## 1. SCOPE OF THE ABP REGULATION (Q1-2)

**Q1.** At which stage should processed ABP no longer be subject to Regulation 1774/2002/EC (“the ABP Regulation”) In some MS, if processed material is covered by other legislation (feed, environment, chemical, medical device, medicinal products) it is considered to be outside of the scope of the ABP Regulation.

**AI.** *Generally products that are already covered by other legislation are excluded from the scope of the ABP Regulation unless they may still present a risk to public or animal health. For instance, a finished cosmetic, medicinal product or a medical device is not covered by the Regulation as it is covered by other specific sector legislation. But the raw material of animal origin that is used for the production of a cosmetic or device is expressly covered. All ABP starting materials used in the manufacture of medicinal products are subject to an appropriate risk/ benefit balance in conformity with the Note for guidance on minimising the risk of transmitting TSE agents via human and veterinary medicinal products (OJ C 24, 21.8.2004, p. 6).*

*The purpose of the ABP Regulation is to ensure that ABP are processed or treated to a standard that minimises the risk to public or animal health. Once they have been treated in that way, there is less or no need to apply further controls. The presumption should therefore be that the Regulation ceases to apply once the ABP have been processed or treated in an approved plant. However, there are exceptions for products such as processed animal protein, rendered fats, where further treatment is not required but where the maintenance of a traceability would be necessary to ensure that the products are only used in legitimate ways.*

*Also, there may be situations where, in addition to the ABP Regulation, Community environmental legislation applies (e.g. for waste management operations covered by Directive 75/442/EEC on waste (as amended), Directive 1999/31 on landfills or Directive 2000/76 on waste incineration).*

*Although other legislation does not have the general effect of excluding ABP or processed products from the scope of the Regulation, where the other legislation sets requirements for the treatment of ABP in a way that achieves the aim of the ABP Regulation, it is in the spirit of the ABP Regulation to provide for treatment in accordance with the other legislation as an alternative.*

**Q2.** Can ABP covered by the ABP Regulation be used for food purpose? What are the lawful ways of handling and manufacturing material which, as a foodstuff, falls under the definition of “other products of animal origin”

**A2.** *ABP cannot be used for food purposes. The criteria to decide on whether to apply the rules of the ABP Regulation or Regulation 853/2004/EC are the intended **destination** of the product and its **designation** by the operator to either food or non food use.*

*“Animal By-Products” (ABP) are defined by the Article 2, paragraph 1 point a) of the ABP Regulation as follows:*

- “entire bodies or parts of animals or products of animal origin referred to in articles 4, 5, and 6 not intended for human consumption, including ova, embryos and semen.”*

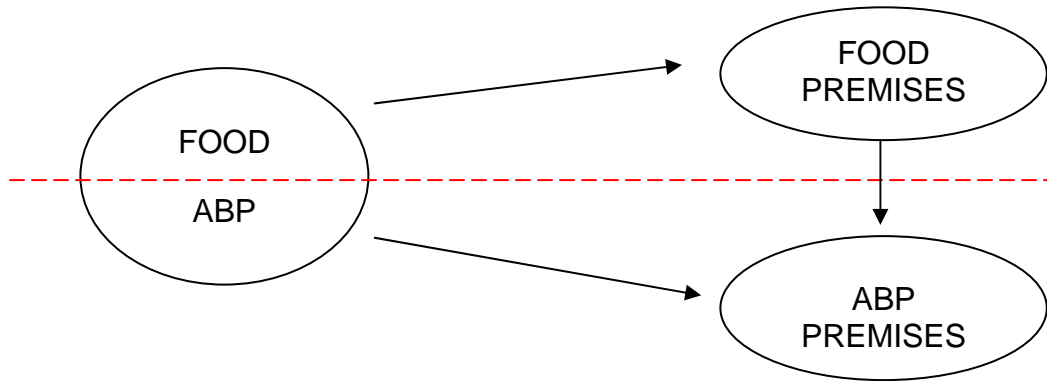
*By opposition, Annex III Section VI of Regulation (EC) No 853/2004 (until 31 December 2005: Council Directive 77/99/EEC of 21 December 1976 on health problems affecting the production and marketing of meat products) lays down health rules for the production and placing on the market of meat products of animal origin intended, after treatment, for human consumption or for the preparation of other foodstuffs.*

*The rules laid down in the ABP Regulation shall apply to products consisting or containing materials from animal origin when the operator no longer intends them to go for human consumption. **This choice is irreversible.** Articles 4(2), 5(2) and 6(2) of the ABP Regulation set out the permitted uses for ABP in the sense of the ABP Regulation. Food use is not one of those permitted uses*

*Once the products consisting or containing materials from animal origin are designated as non intended for human consumption, they are considered as falling within the scope of the ABP Regulation and they cannot revert to being a foodstuff and must be consigned to approved ABP premises. By contrast, the downgrading of foodstuffs to animal by-products is possible.*

*If a product consisting or containing materials from animal origin is intended for food it must be taken to food manufacturing premises or to an intermediate storage facility which must be approved and meet the relevant food hygiene conditions.*

*The following diagram illustrates how the two streams of materials should be kept separated:*



### **Labelling**

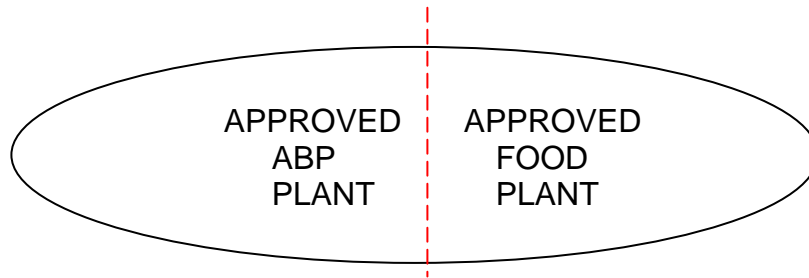
*Meat products and other products of animal origin that are intended to go into the food chain should not be labelled as ABP. Products of animal origin consisting of or containing materials of animal origin become ABP when they are no longer intended for human consumption. Labelling as ABP is clear evidence of this intention. ABP must be labelled to indicate their destination, and where products are labelled in accordance with the ABP Regulation, all the rules applicable to the destination of the by-products concerned shall apply.*

### **Co-located ABP / food premises**

*It is possible for raw materials from animal origin intended for human consumption to be consigned to a food plant situated on premises on which an ABP plant (e.g. an intermediate or storage plant) is also situated, for manufacturing “other products of animal origin”, provided the following strict conditions of separation between the two streams apply:*

- (a) the ABP plant and the food plant on the same premises must be demonstrably separate so as to prevent cross-contamination.*
- (b) food cannot under any circumstances be taken into an intermediate ABP plant and ABP cannot be taken back to a food plant;*
- (c) the ABP plant must be approved under Regulation 1774/2002 and comply with the other requirements of the Regulation;*
- (d) the food plant must be approved under food hygiene regulations and comply with food hygiene requirements;*

*The following diagram illustrates the required separation:*



*According to the relevant hygiene requirements, the production of by-products not intended for human consumption on food premises may take place only under the following conditions:*

- (a) raw materials unfit for human consumption must be stored in a separate room or separate reception*
- (b) they must be processed in separate rooms using separate installations and equipment, except where the processing takes place in completely enclosed installation or equipment used exclusively for processing by-products*
- (c) the final by-products must be stored in a separate room or facility which is labelled appropriately and must not go for human consumption.*

### ***Storage and Transport***

*In principle, it is not prohibited to store or transport ABP and food material in the same storage facilities or vehicles. However, ABP must be kept separate and identifiable during storage or transportation. They must be stored or transported sealed in new packaging or covered leak-proof containers. The food material must be stored or transported under satisfactory hygiene conditions in accordance with the food hygiene legislation.*

*Rendered animal fats, greaves and other by-products (salted or dried and/or heated stomachs, bladders, and intestines) must meet specific hygiene conditions.*

### ***The new hygiene regulations***

*The previous Community health rules on meat products and “other products of animal origin” (see above) have been replaced as from 1<sup>st</sup> January 2006 by the detailed rules set out in Regulation 853/2004/EC. Many of the new rules are similar to the previous rules (see Sections XII to XV of Annex III to the EC Regulation). Two significant changes are that establishments handling these products must be officially approved (Article 4(2)) and that the products must have an identification mark (Article 5(1)(b) and Annex II Section I). Regulation 853/2004 also imposes obligations on collection centres for raw materials used to make rendered animal fats and greaves.*

## **2. CATEGORISATION OF MATERIAL (Q3-14)**

### **2.1. Poultry (Q3-4)**

**Q3.** How are day old chickens categorised? Should they be seen as hatchery by-products (Category 3) or as fallen stock (Category 2), and should they require authorisation / supervision by the competent authorities if used for local feeding practices in accordance with Article 23?

**A3.** *Dead day old chicken are considered as Category 2 materials (Article 5(1)(e). Because of the health risk attached to them, “dead-in-shell” chicks should also be regarded as category 2 material.*

*However, where day old chicken have been killed for commercial reasons (e.g. in selective breeding where male or female day old chicken are killed), these can be considered, in the absence of health hazards, to be category 3 material (Article 6.1(j)), and may be used in feeds.*

*In addition, dead day old chicken may be used for local feeding practices (e.g. for feeding to reptiles, birds of prey, etc.) in accordance with the requirements set by Article 23.*

**Q4.** How are poultry having undergone ante-mortem and post-mortem inspections, but rejected for reasons other than health (e.g. quality and/ or commercial) reasons categorised?

**A4.** *Poultry rejected following successful post-mortem inspection for quality and/ or commercial reasons, are considered as Category 3 materials (Article 6 (1) (b)) provided they are properly slaughtered, in accordance with the hygiene requirements applicable to slaughter.*

## 2.2. Fish (Q5)

**Q5.** Are fish killed for disease control purposes (for example due to IHN, VHS or ISA) to be considered as Category 2 material?

**A5.** *First of all, fish which have died on the farm (often called “mortalities”) are considered Category 2 material.*

*In principle, fish killed for disease control purposes (in accordance with Community aquaculture legislation) are considered as Category 2 material, cf. Article 5 (1) (e.). The derogation in Article 23 (2) (b) (i) for feeding certain animals with Category 2 material is not applicable to animals killed for disease control purposes.*

*In practice, and in accordance with Community legislation, such fish may in the course of disease control operations be harvested for human consumption, as IHN, VHS and ISA are diseases not harmful to humans. The fresh by-products from plants manufacturing such fish products for human consumption are considered as Category 3 material in accordance with Article 6 (1) (i).*

*However, even if by-products of fish slaughtered for human consumption infected with IHN, VHS or ISA are to be considered for hygiene purposes as Category 3 materials, such fish and its by-products may present an animal health risk to other fish species and shall not be used in feed for fish.*

## 2.3. Catering waste (Q6-8)

**Q6.** Does catering waste from means of transport operating internationally include catering waste from any plane coming from a third country, including those that return to the EU and those making a first stop-over in the EU before arriving at the final destination?

**A6.** *This is clearly the intention and the consequence of the legislation, in view of its objectives.*

*Waste food from means of transport embarking from a third country to a Member State is considered as Category 1 catering waste. Similarly, waste food from means of transport embarking from a Member State to a third country and returning to a Member State either directly or via another Member State, after unloading and loading merchandise in a third country must be considered as Category 1 catering waste. The catering company which is responsible for disposal of this waste is required to know where the plane originated and whether it involved third countries.*

*Only waste food from means of transport operating exclusively within the EU Member States (nationally or between Member States) can be considered as Category 3.*

**Q7.** Ship suppliers may supply vessels with product not complying with EU requirements for the crew and passengers outside costal areas (Article 13 (3) of Directive 97/78/EC). Does the resulting catering waste have to be considered as international catering waste if such a vessel operates within or between Member States and crossing international waters?

**A7.** *The catering waste from such a vessel is, chiefly for animal health reasons, to be considered as Category 1 international catering waste. Such catering waste from non-conforming food cannot be considered as equivalent in health risk terms to catering waste from food which complies with EU requirements.*

*In the case of in-transit facilities, the operators must carry out deliveries directly on board the means of sea transport or to a specially approved warehouse in the port of destination, provided that measures are taken to ensure that the products concerned under no circumstances leave the port zone for another destination. The transport of products from the warehouse of origin to the port of destination must be carried out under customs supervision in accordance with procedure T1 as laid down in Regulation (EEC) No 2913/92 and be accompanied by a veterinary certificate formulated in accordance with the procedure set out (see also Guidance on applying the new Animal By-Products Regulation, paragraph 35).*

**Q8.** Regarding catering waste from international means of transport, is it allowed that a selection is made between products of animal origin and vegetable products? For instance can marmalade, biscuits from such means be selected and used for charity?

**A8.** *Of course if an item is still intended for human consumption in accordance with relevant EU legislation, it is not yet a by-product under the ABP Regulation until such a point when it is decided that the item is no longer intended for human consumption. In principle non-animal waste food, which has not come into contact with animal products should have been excluded from the scope of the ABP Regulation. In practice, however, reliable separation systems would have been needed. This proved to be difficult to achieve.*

## 2.4. Milk (Q9)

**Q9.** Should milk containing levels of antibiotics above the authorised maximum Residue Levels (MRLs) be considered as Category 2 material? In some Member States it is common practice to dilute such raw milk with whey in order to reduce the level of residues under the detection limit before sending it for feeding to farmed animals. Is this practice allowed?

**A9.** *Milk containing level of antibiotic residues above the authorised MRL as laid down by Community legislation is classified as Category 2 (see Article 5(1)(c). Dilution of a product intended for food or feed to lower the level of residues or contamination below the authorised MRL is against the objectives of the Regulation.*

## 2.5. Former foodstuffs (Q 10-11)

**Q10.** At retail level, former foodstuffs sometimes contain raw materials (mainly bones, trimmings). Unless raw materials are collected separately, landfill cannot be used as a way of disposal. Can meat trimmings and bones from retailers such as supermarkets or butchers be considered as former foodstuffs or rather parts of slaughtered animals fit for human consumption?

**A10.** *The Regulation prohibits direct landfill of unprocessed materials. Raw meat/trimmings, raw fish, etc cannot be considered to be former foodstuff for the purpose of the derogation. Hence, efforts must be made to ensure that former foodstuffs are not mixed with raw meat, fish, etc. and that meat trimmings and bones are removed from former foodstuffs which are to be sent to landfill.*

**Q11.** How should the samples taken from food of animal origin for physical checks at border inspection posts be categorised? Could it be seen as former foodstuffs?

**A11.** *Food samples are normally not intended for human consumption, so they are covered by the scope of the ABP Regulation.*

*The status will depend on the individual circumstances. If they derive from food that is fit for human consumption according to EU legislation, they may be classified as Category 3 and may fall under the sub-categories in Article 6 of the ABP Regulation. If they derive from raw meat, they should be considered in the same way as animal by-products without prejudice to the derogation in Article 23. But if they do not comply with the EU veterinary requirements for import, they may be category 2 (Article 5(1)(d) or (g) or category 1 depending on the outcome of the sampling and the nature of the risk they carry. Laboratories and border inspection posts, which carry out testing, must have protocols for disposing of all material they handle.*

## **2.6. Hides (Q12)**

**Q12.** Hides and skins removed from fallen stock (other than hides and skins of animals suspected of being infected or confirmed to be infected by a TSE, as well as other than hides or skins of other animals killed in the context of TSE eradication measures) are considered Category 3 (Art 6 (1)(k)), but cannot be used in feed. However it is difficult to distinguish them after the salt treatment from hides fit for human consumption or hides intended for feed. Annex II to the ABP Regulation does not require any supplementary information on the origin of such hides, and often the person in charge of dispatch is not aware of the intended use at destination. Doesn't this pose a risk?

**A12.** *Hides intended for the production of gelatine or collagen for human consumption are not ABP in the sense of the Regulation, and must be handled in accordance with the relevant food legislation. Commission Decisions 1999/724 and 2003/721/EC [(as from 1 January 2006: Annex III Sections XIV and XV of Regulation (EC) No 853/2004)] require material which is intended for the production of gelatine and collagen for human consumption to be handled, stored and processed in a way that ensures it is kept separate from material which is not intended for human consumption.*

*In addition, a commercial document must accompany the raw material from its source to the gelatine or collagen plant, and that document must state that the material is intended for the production of gelatine or collagen for human consumption (see Q 2 in relation to “other products of animal origin”).*

*Recently adopted Community food hygiene legislation provides more clarification. In addition, the recently adopted commercial document under the ABP Regulation has helped to solve the issue (see paragraph 5, Annex II, Chapter X of the ABP Regulation).*

*It is assumed that, where hides and skins are intended for use in feed or pet food, it is the responsibility of the manufacturer of the feed or pet food to ensure that they source only permitted hides and skins and that the slaughterhouse and haulier identify the hides and skins appropriately.*

### **3. APPROVAL OF ESTABLISHMENTS (Q13-19)**

**Q13.** Should each establishment in which unprocessed ABP accrue be approved as an intermediate plant when it separates and stores ABP until dispatch (e.g. slaughterhouse, milk processing plant, catering plant at an airport collecting international catering waste)?

**A13.** *No, an approved food establishment (e.g. slaughterhouse, cutting plant, cold store or milk processing plant or catering facility) does not have to be approved under the ABP Regulation for generating, separating and temporarily storing ABP, as this is an inevitable result of its food activities. But if the establishment engages in a variety of activities comprising importation, collection, sorting, cutting, chilling, freezing into blocks, intermediate storage and dispatching of ABP then it must be approved as an intermediate plant under Article 10 of the ABP Regulation.*

*The purpose of an ABP approval is to indicate that the plant is permitted to receive the relevant category of ABP and will store, handle or treat it to the required standard. To require approval of all premises of origin would mean, for example, that each farm on which an animal died would need approval, as would all food manufacturers and retailers. This would be extremely costly but would not necessarily result in additional benefit for public or animal health. Aviation companies which carry out on-board recuperation of catering waste and hand on the waste for treatment as category 1 material (in case it originates from means of transport operating internationally) do not need an approval under the Regulation if they do not carry out the treatment themselves. Under article 4 (1) (e), only catering waste from these means of transport is classified as category 1 material, so according to the purpose of the provision, the mere on-board collection does not require an approval.*

**Q14.** In some MS the same approval number is used under EU food legislation and under the ABP Regulation. For instance a cutting plant which also handles in a room Category 3 material or a fat processing plant with separate lines for fat fit for human consumption and for feed. Is this in line with Article 26(4) of the ABP Regulation?

**A14.** *Article 26(4) of the ABP Regulation requires that an official number be assigned to each plant, which identifies the plant with respect to the nature of its activities. Generally, food plants producing products such as rendered fat, egg products, etc that already meet the food processing, hygiene and operation standards should not be required to be re-approved under the ABP Regulation. Recent amendments have clarified the issue in relation to rendered fat and egg product plants. It is intended to clarify the issue further in relation to other products (gelatine etc). The general approach would be that the requirements necessary for approval under the ABP Regulation may also be fulfilled by meeting the standards set by hygiene legislation. Therefore, an approval under ABP legislation might still be necessary for traceability reasons, while not imposing any additional burden on the operators, thus resembling a registration in substance. However, a separate approval number is not necessary, as long as the attribution of the same number to both food- and ABP-related activities does not impede traceability.*

**Q15.** The documents accompanying ABP must specify the approval numbers of the receiver, and "if appropriate" the plant of origin. What do the terms "if appropriate" imply?

**A15.** *"If appropriate" means that if the plant of origin holds an approval number pursuant to requirements in Community law, this number shall be provided to enhance the traceability of the ABPs. This approval number may be delivered pursuant to the ABP regulation if the plant of origin is a plant regulated by the ABP regulation, pursuant to Regulation 853/2004 if it is handling food products of animal origin, or pursuant to Regulation 183/2005 if it is handling feed (in which case it may also be a registration number). Where the approval of a food producing plant is not required and this plant hold no corresponding number, it may dispatch its ABPs without providing such a number on the accompanying documents. So "if appropriate" should be understood as "where relevant".*

**Q16.** Must a rendering plant approved as a Category 1 or 2 processing plant be also approved as an intermediate plant in order to remove hides from fallen stock and to store/send them to another plant? This seems to be a typical activity of rendering plants.

**A16.** *Yes, a rendering plant which also engages in activities referred to in Chapter II Point B of Annex III must be approved also as intermediate plant. Processing and intermediate operations are two distinct operations, albeit they may be on the same site, there should be two approvals. However, such activities (of removal, etc. of hides from fallen stock) can only be done in a Category 2 intermediate plant (see Guidance on applying the new Animal By-Products Regulation, paragraph 20).*

**Q17.** Can a milk-processing establishment (food) also be approved as an ABP processing establishment? If so, shouldn't at least the processing lines of milk powder for human consumption be physically separated from processing of milk replacer for farmed animals (containing milk powder and pre-mixtures)?

**A17.** *If an establishment processes milk to food grade standards (operating under Directive 92/46/EC [as from 1 January 2006: Regulation (EC) No 852/2004 in conjunction with Annex III Section IX of Regulation (EC) No 853/2004]), it would already fulfil the processing standards of Chapter V(2) of Annex VII to the ABP Regulation and can be approved accordingly (if it is not approved under Regulation (EC) No 183/2005 on feed hygiene) without the need for a separate ABP approval number. In that case, no separation of processing lines is necessary.*

*Similar provisions already exist for egg products (see Annex, VII, chapter 10) and for rendered fats (see Annex VII, chapter IV, paragraph 1).*

*If however an establishment processes both food grade milk and ingredients unfit for human consumption, separate approval as well as separation of processing lines is required.*

**Q18.** From Article 23(4) of the ABP Regulation it is unclear if a collection centre or user requires both an authorisation and a registration?

**A18.** *The wording implies that an authorisation and a registration are both required.*

**Q19.** Do establishments authorised under Regulation (EC) No 999/2001 (TSE Regulation) for the use of derogated products of animal origin for the production of feed (e.g. fish meal, di/tri-calcium phosphate, hydrolysed proteins) need to be authorised under the ABP Regulation?

**A19.** *Only the establishments which process ABP to produce such derogated products must be approved under Article 17 of the ABP Regulation. Downstream establishments other than storage plants, such as feed mills or home compounders using such products to produce feed need only be authorised or registered, respectively under Annex IV to the TSE Regulation.*

#### 4. MARKING AND IDENTIFICATION (Q20)

**Q20.** Articles 4 and 5 of the ABP Regulation require after processing material of Category 1 and 2 that the resulting material should be permanently marked with dye, where technically possible with smell. Since the validation of the markers is underway, should it be considered that in the interim only the marking of SRM is required under the TSE Regulation?

**A20.** *Annex XI Part A (11) to the TSE Regulation requires SRM to be stained with a dye or be marked as appropriate. The ABP Regulation contains the general requirement for the marking of ABP (category 1 materials including SRM, category 2 and category 3 materials) that are intended for disposal (incineration, landfill, etc). Therefore, marking is compulsory in all these cases.*

*However, at present the ABP Regulation does not yet specify the type of dye or marker to be used. [This is still being investigated and will be validated by the Joint Research Centre (JRC) in the near future. Pending the JRC validation outcome, Member States may decide on the appropriate dye or marker to use (decision on the “how”, not the “if”).]*

#### 5. PROCESSING OF MATERIAL (Q21-28)

##### 5.1. Catering waste (Q21-22)

**Q21.** In some Member States, catering waste and ABP from small butcher shops and other small food establishments are collected together with household waste and sent for landfill, biogas or composting plants. For the Category 3 material from butchers, direct landfill is not accepted. As regards the treatment in biogas and composting plants, could the heating be as low as 40 degrees and the particle size 10 times bigger than specified in the Regulation? Is this acceptable under the provisions of Annex VI Chapter II C to the ABP Regulation?

**A21.** *Concerning ABP from butcher shops and other small food establishments, Regulations (EC) No 809/2003 and 810/2003, as amended by Regulation (EC) No 12/2005, provide that national rules may apply in relation to composting and biogas transformation until 31 December 2005 for “old” premises and facilities which have already been in operation on 1 November 2002, provided that inter alia the national rules guarantee the overall reduction of pathogens and comply with the hygiene requirements set out in Chapter II(B) of Annex VI of the ABP Regulation. If national rules guarantee that this overall reduction of pathogens is achieved with heating at 40 degrees and a particle size of 120 mm, this is acceptable under the above-mentioned Regulation.*

*Article 6 (2) (g) of the ABP Regulation allows the application of national rules for the transformation of catering waste in a biogas or composting plant as long as harmonised rules have not been adopted. As such rules have not been laid down, Member States may allow treatment parameters such as 40 degrees and 120 mm particle size under their responsibility.*

*On the basis of an opinion adopted by the European Food Safety Authority in September 2005, Annex VI Chapter II has been amended (Regulation (EC) No 208/2006 of 7 February 1006, OJ L 36, 8.8.2006, p. 25). This amendment foresees authorisation of other process parameters following a validation procedure for the treatment of ABP in biogas or composting plants. Once this text applies, Member States may authorise treatment parameters such as 40 degrees/ 120 mm of they have been successfully validated.*

**Q22.** Is it permitted to use catering waste not originating from means of transport operating internationally as starting material for the production of processed animal protein or rendered fats to be used for animal nutrition purposes?

**A22.** *No, according to Annex VII, Chapter I, B (4), only Category 3 material listed under Article 6 (1) points (a) to (j) may be used as starting material. Therefore, catering waste not originating from international means of transport, which is listed under Article 6 (1) (l), may not be used.*

*(NB: In Germany and Austria, transitional measures expiring 31 October 2006 still allow for the use of catering waste for the production of pig feed under controlled conditions.)*

## **5.2. Former foodstuffs (Q23-24)**

**Q23.** It seems that some former foodstuffs are commonly sent in the original package (yoghurt, UHT milk etc.) directly for landfill. Can it be considered as already processed or should it be sent in any case to an ABP processing plant before landfill?

**A23.** *Current transitional measures under Regulation 813/2003 (Article 1(3)) allow MS to authorise national rules for the collection, transport and disposal by landfill of such former foodstuffs provided they are not mixed with unprocessed material of animal origin referred to in Articles 4 and 5 and points (a) to (e) and points (g) to (k) of Article 6(1)(raw meat, fish, etc.) which must be processed before landfill (see Guidance on applying the new Animal By-products Regulation of April 2004 , paragraph 37, cf. now also Regulation (EC)No 197/2006 of 2 February 2006, OJ L 32, 4.2.2006, p.13).*

*The question whether packaging materials of non-animal origin may be sent with former foodstuffs to landfill is not covered by the ABP Regulation, but by environmental legislation.*

**Q24.** Is it permitted under Article 23 (2) (b) (ii) to use catering waste for feeding or for producing processed animal proteins or rendered fats from former foodstuffs if the packaging material has not been removed?

**A24.** *No, this packaging material has to be removed (cf. Commission Decision 2004/217/EC of 1 March 2004 adopting a list of materials whose circulation or use for animal nutrition purposes is prohibited).*

### 5.3. Milk (Q25-26)

**Q25.** Does the derogation to the principle that raw materials have to be processed in an approved ABP processing plant before they are used as feed for farmed animals, adopted under Regulation No. 79/2005 implementing the ABP Regulation also apply to unprocessed milk-returns from a dairy plant to a farm?

**A25.** *Yes, the derogation apply to raw milk returned from a dairy plant approved in accordance with Article 10 of Directive 92/46 to a farm. However, it does not apply to liquid milk and colostrum disposed of or used on the farm of origin.*

**Q26.** What are the restrictions for applying milk containing levels of antibiotics residues above the authorised MRL to land?

**A26.** *According to Article 22 (1) (c), the application to pastureland of organic fertilisers and soil improvers other than manure is prohibited. The competent authority may authorise the application of manure to land and the application of digestive tract content, milk and colostrum to non-pasture land in particular if it does not consider them to be a risk of spreading any serious transmissible disease (cf. Art. 5 (2) (e)). Implementing rules for the prohibition to apply organic fertilizers and soil improvers to land will be laid down in accordance with Article 22 (2).*

### 5.4. Hides (Q27)

**Q27.** Can hides and skins intended for production of gelatine for human consumption, hides and skins intended for production of petfood and hides and skins from fallen stock intended for leather production be stored and processed in the same premises? If so, what are the applicable requirements?

**A27.** *If hides/skins not in conformity with food legislation are to be stored and/or processed in the same premises as food hides/skins in conformity, the two streams of materials must be segregated throughout the period of receipt, storage, processing and dispatch. (See previously Annex II, Chapter 4, Part A II (8)(d) of Directive 92/118/EEC, as amended, by Commission Decision 1999/724/EC as regards gelatine - as from 1 January 2006: Annex III Section XIV Chapter I 5 (c) of Regulation 853/2004. Similar provisions apply for collagen (previously Annex II Chapter 4, Part B III (4) (as amended by the collagen Decision 2003/721/EC, as from 1 January 2006: Annex III Section XV Chapter I 5 (c) of Regulation 853/2004). This means that the same plant has to be approved under food and ABP legislation, in that case, only one approval number is necessary.*

## **5.5. Tallow (Q28)**

**Q28.** Is there a standard test for measuring the filter size that may be used during validation/ authorisation to ascertain compliance with the requirement for 0.15% of insoluble impurities?

**A28.** *The Regulation does not specify the type of test that may be used to ascertain the efficacy of filtration. Member States may use any national or international accredited test as long as it proves that the 0.15% impurity requirement is respected.*

## **6. GENERAL QUESTIONS (Q29-32)**

### **6.1. Derogation for Cat 2 material (Q29)**

**Q29.** Annex XI Part A (5)(c) to the TSE Regulation provides for a transitional derogation for the removal of SRM at the place where maggots are fed. In practice, in some cases the whole carcasses containing Category 1 and 2 materials are being fed to maggots, and the remaining SRM bones sent to a Category 1 processing plant after feeding the maggots. Is this acceptable?

**A29.** *Under the ABP Regulation only Category 2 and 3 can be fed to maggots (see Article 23). Under these circumstances, the remainder after feeding would be Category 2. SRM must have been removed at a Category 2 intermediate plant before feeding, and the removed SRM must be disposed of in accordance with Article 4(2) of the ABP Regulation (see Guidance on applying the new Animal By-products Regulation, paragraph 20). The feeding to maggots of carcasses containing SRM is not allowed.*

## 6.2. Use of Meat-and-bone meal (MBM) as fertilizer (Q30)

**Q30.** According to Article 20(2) of the ABP Regulation the requirements for placing organic fertilizers on the market may be laid down. Actually MBM from Category 2 and 3 materials may be used as organic fertilizer. In some Member States, it may be directly sold to farms as fertilizer. This could pose a risk for cross-contamination of feeds on-farm. In the TSE Regulation restrictions are foreseen for the use of processed animal proteins in feeds. But neither the ABP nor the TSE Regulations contains restrictions for the use of organic fertilizers on ruminant farms. Doesn't this pose a risk to animals?

**A30.** *The Guidance on Applying the Animal By-products Regulation of April 2004, paragraph 10, provides detailed explanation on the use of organic fertiliser, which must not be applied to pastureland (Article 22(1)(c) of the ABP Regulation). Practices that might have the effect of weakening of the total feed ban are certainly not in line with the spirit of the TSE Regulation. But the TSE Regulation does not prohibit the mere presence of fertiliser on farms. It is intended to lay down, pursuant to Article 22 (2) of the ABP Regulation, implementing measures in line with EFSA opinion; including labelling and traceability provisions ensuring that the risk to ruminant animals is minimised when applying organic fertiliser to land in a holding where farmed animals are present (cf. now Regulation (EC) No 181/2006 of 1 February 2006, OJ L 29, 2.2.2006, p. 31). It is further intended to lay down provisions in the TSE Regulation to ensure that the current feed ban rules remain fully effective in the light of these new implementing measures to the ABP Regulation.*

## 6.3. Cleaning and disinfection (Q31)

**Q31.** In certain Articles it is mentioned that adequate cleaning and disinfecting facilities for trucks should be available. When this is not the case, is a contract with neighbouring facilities acceptable and/or is it allowed that vehicles are cleaned and disinfected at any approved washing station?

**A31.** *As a general rule all establishments approved under the ABP Regulation must have adequate facilities for cleansing and disinfecting the containers, vehicles, etc. This general rule, in addition to common good practices, should be applied in intermediate plants, storage plants, incineration plants, rendering plants, biogas/composting plants, petfood plants, technical plants and collection centres (see Annexes III(I)(2) & (III)(3), Annex V(I)(2), Annex VI(II)((1)(b) & (2)(b), Annex IX(3)(a)(i)). From the wording and spirit of the relevant provisions, it becomes clear that establishments should have own facilities in order to prevent the spreading of risks that might possibly arise from the use of off-site facilities.*

*However, there may be a very small number of cases, where it is genuinely impossible for the facilities to be provided on site. In these cases, it can be understandable for the competent authority to allow alternative conditions where adjacent facilities could be used. However, such alternative conditions should remain the exception and the intention of the Regulation is certainly not to encourage the use of facilities whose location increases the risks intended to be contained.*

#### **6.4. Import or export of or trade in material for research purposes (Q32)**

**Q32.** What are the requirements for the importation, trade or export of animal by-products intended for research purposes?

**A32.** *Under Article 23 (1) (a), Member States' competent authorities may authorise the use of animal by-products of all categories for research purposes. However, there are no specific provisions laid down by Community law, and the sanitary conditions remain therefore within the competence of the Member States, which must however be in line with the basic principles and rules established by Community law .*

*Taken in conjunction, the provisions of Art. 23 (1) (a) of the ABP Regulation, Article 1(2)(c) of the TSE Regulation and Article 16(1)(e) and (f) of the veterinary checks Directive 97/78/EC imply that national rules may apply to the importation or exportation of animal by-products that are intended for research purposes. This is in line with the spirit of Community legislation.*