MINUTES OF THE FERTILISER WORKING GROUP MEETING

27 November 2015

Participants:
Representatives of competent authorities for the fertilisers Regulation of AT, BE, BG, CZ, DE, DK, ES, FI, FR, LT, LU, NL, PT, SE, UK, CH, TR
Representatives from the following companies or organisations: CEN TC 223 and TC 260, COCERAL, EBIC, ECN, ECOFI, EEB, EFBA, EPAGMA, ESPP, EUROFEMA, EUROSLAG, EBA, Fertilizers Europe, FEAD, IMA-Europe, EFAR

Chair:
European Commission, DG GROW, Unit D2, Chemicals Industry

1. ADOPTION OF THE DRAFT AGENDA

The draft agenda was adopted without changes.


In relation to paragraph 5 of page 4, one Member State stated that, under the Waste Framework Directive (WFD), only waste holders are responsible for deciding whether a substance or an object is a waste or not. The Member State opposed the content of the draft minutes, which suggested that some substance or object could be considered waste by default.

According to the Member State, this interpretation of the WFD is incorrect and could create a dangerous precedent if for example a waste holder does not want to discard a substance but the Member State is of the opinion that that particular substance is a waste by default.

After internal consultation, the COM agreed with the Member State and removed the paragraph in question from the final minutes.
3. **Debriefing about the SCHER Opinions on:**

(1) **Update on the current mandate on risk assessment of calcium cyanamide**

The COM informed that SCHER published its draft final opinion\(^1\) for final comments on 6 November 2015. The draft SCHER opinion identified a risk to human health and the environment from the use of calcium cyanamide as fertiliser. The COM clarified that the intention was not to comment the draft opinion during the meeting but to wait the final SCHER opinion that is expected for mid-January.

The COM strongly encouraged the participants to have a look at that draft final opinion and to send directly comments to the SCHER secretariat. The COM also invited the Member States experts to have a look at the existing procedures for listing EC types in the current Regulation in order to give a follow-up to the conclusions of SCHER in due time.

One Member State mentioned they agree with the conclusions of SCHER that potential negative effects for humans and the environment cannot be excluded from the use of calcium cyanamide. However, the Member State highlighted that the SCHER has followed none of the existing risk assessment guidelines and has applied too small risk assessment factors. The draft SCHER conclusion should therefore be rather considered as an underestimation of the risks according to this Member State.

(2) **Future trends in soil cadmium accumulation from the use of inorganic fertilisers**

The COM reported that the draft final reported is expected for early December and will be published by SCHER on its website.

4. **Results of the Stakeholder Consultation on Analytical Methods for the Future Standardisation Mandate**

The COM explained that the preparation of the future standardisation mandate needs to start before the adoption of the proposed Regulation. As the development of analytical methods could be time-consuming, it is important to identify at an early stage which analytical methods will need to be developed or validated for new product functional categories in order to not delay the implementation of the future revised Regulation.

The COM recalled that under the New Legislative Framework, the role of harmonised standards is to give a presumption of conformity to legal requirements set out in legislation. To play that role, the reference to such standards shall be published by the COM in the EUOJ. Therefore, there will be no longer direct reference to the titles of EN standards in the draft text of the legislative proposal.

According to Article 3(6) of Regulation (EU) No 1025/2012, any national standards conflicting with harmonised standards shall be withdrawn by national standardisation bodies.

In case where still no harmonised standards exist, the COM would like to discuss with the Member States the possibility to give a legal validity to existing analytical methods that could then be used to verify the compliance of products to the future legal requirements. This approach could be particularly useful for products where a lot of standardisation work is expected or

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\(^1\) [http://ec.europa.eu/health/scientific_committees/environmental_risks/opinions/index_en.htm](http://ec.europa.eu/health/scientific_committees/environmental_risks/opinions/index_en.htm)
where CEN will not be able to cope with the innovation cycle of industry. The discussion could
start once the draft proposal is adopted by the Commission.

The COM presented several references to possible analytical methods based on data collected
from Member States and industry. For each product category covered by a future revised
Fertilisers Regulation, the proposed methods were classified as either:

1. Available and fit for purpose or
2. Not available or not fit for purpose or
3. Uncertain

The consultation shows that although a lot of analytical methods are available for the verification
of the compliance of inorganic fertilisers, liming materials, soil improvers and growing media,
substantial work is still required on organic fertilisers and plant biostimulants. The COM will
present more detailed lists of possible analytical methods at the next meeting of the Fertilisers
Working Group. That would then help the COM to draft a new standardisation mandate to CEN.
Therefore the COM strongly encouraged the Members to continue to contribute to this work by
either completing the lists or suggesting additional methods that are currently in place or in
development in the Member States.

One NGO requested clarification on the reasons for no longer publishing the references to the
titles of EN standards in legislation.

The COM replied that including reference to EN standards in the Fertilisers Regulation is giving
a delegation of power to associations, companies that cannot be controlled. Under the NLF, the
suitability of harmonised standards for the verification of the conformity of products to the legal
requirement is verified before publication of those standards in the EUOJ, and the standards are
not mandatory.

5. **POSSIBLE INCLUSION OF BORON IN ANNEX XIV OF REACH**

The COM informed that a preliminary discussion on the possible inclusion of some boron salts
in Annex XIV of REACH took place at the last REACH Committee meeting in October 2015.
Boron salts are used in many different industrial applications which make the discussion very
complex. Regarding the specific use of boron in plant nutrition, the lack of alternative and its
practical implication in terms of inclusion/non-inclusion in Annex XIV was extensively
discussed.

Considering the various usages of boron and its essential importance for plant nutrition, a
decision on the possible introduction of boron in Annex XIV of REACH will have to be
carefully examined and it is expected to last a few months.

Several Member States expressed concerns about the availability of boron salts for fertiliser
production if such substances are subject to REACH authorisation which would have negative
impacts on downstream users. Although boron is classified as reprotoxic category 1B, the
negative effects can only be expected at high concentration according to one Member State.

The COM explained that workers at the Fertilisers plant can be exposed to high concentrated
product during the formulation of fertilising products. Workers protection within the fertiliser
industry is the main source of concerns for the COM. If a risk is identified, the COM will look at
mitigation measures such as reduced authorisation procedures to keep the economic impacts as
low as possible for industry and downstream users. At the same time, the COM recalled that
substitution of substance of very high concerns is strongly encouraged under REACH and promised to have a look at some similar critical cases in the course of next year. The forms under which boron is delivered to plants could for example be further investigated. One Member State commented that substitutes may well be existing, e.g. manure or compost but the quantities of manure or compost to be applied to provide the same quantity of boron as from a mineral concentrate and the availability of boron in those substitutes should be seriously considered before considering them as valid substitutes.

One industry association commented that cobalt is also under investigation for possible inclusion in Annex XIV of REACH. A clarification of the status of this file was requested. The COM confirmed that cobalt is another essential micro-nutrient that is mentioned in the internal discussion paper on how to deal with essential nutrients in the authorisation process. There is currently no discussion on cobalt within the REACH Committee.

The COM concluded by inviting volunteering Member States to submit a discussion paper on this issue to stimulate discussion within the Fertilisers Working Group and the Member States. The position paper could be posted on CIRCABC for further refinement and then submitted to the REACH Committee.

6. DEBRIEFING OF EC AND MEMBER STATES PARTICIPATION IN CONFERENCES AND WORKSHOPS ON FERTILISING MATERIALS

The COM presented a summary of finalised, on-going or future research projects on nutrients.

**P-REX**

P-REX is a European research project funded by the FP7 program and was tackling the issue of phosphorus recovery from municipal wastewater. According to P-REX, up to 25% of the yearly EU inorganic fertiliser demand could potentially be replaced by valuable fertiliser from sewage sludge. Technologies enabling phosphorus recovery from the wastewater stream have developed tremendously in the past few years and are able to overcome limitations to direct sewage sludge application on arable land.

**FERTIPLUS**

A vast quantity of organic waste is produced annually within the EU. Agriculture is the biggest contributor to the production of organic residues, followed by the forest industry, waste water treatment plants, food processing industry and municipal waste treatment plants. The vast majority of these waste streams can be further processed into valuable fertilising products. Processing can take place at ambient temperatures (biological treatment) in the presence (composting) or absence (anaerobic digestion) of oxygen; or at much higher temperatures, again in the presence (incineration, resulting in ash) or absence (pyrolysis, resulting in biochar) of oxygen.

The main purpose of FERTIPLUS Research project was to provide a tool for SME’s to determine the best strategy to produce valuable fertilising products on the basis of available feedstock and techniques. FERTIPLUS mainly focus on urban and agricultural waste including garden and park waste, municipal household waste, residues from anaerobic digestors for N and P recovery. FERTIPLUS estimated how much N and P could be made available from available biomass if properly returned to land and whether this could be realised according to regulatory safety standards currently under development.
**REFERTIL**

The key objectives of the REFERTIL project were to improve current compost treatment systems and develop zero emission biochar technologies at industrial scale for safer, better, less costly and more environmental friendly utilization of the 150 M tons of plant/animal biomass generated each year in the EU.

**BIOREFINE**

An increasing demand for nutrients by the food industry causes a rapid depletion of natural resources. On the other hand, there is a surplus of nutrients present in waste streams leading to environmental pollution. It is thus necessary to maximize nutrient cycles and move to a more sustainable resource management. The Biorefine project aims to minimize residue flows from the agro- and bio-industry and economically valorize minerals recovered from these residues. At the same time, the project supports the Biorefine Cluster Europe which aims to gather the fertiliser industry, research institutes and policy makers with regards to the development and market implementation of technologies concerning bio-gas, bio-refinery and nutrient recovery.

The COM mentioned that the four projects have identified ready-to-use technologies that SMEs could apply to recover valuable nutrients from biomass. The projects have helped the Commission to identify technology providers as candidate for application to the EU investment plan\(^2\) for jobs and growth.

Beyond the technological development the REFERTIL project will provide a strong policy support to JRC in the preparation of EU recovery rules for biochar and the possible recognition of such product as organic fertiliser or organic soil improver under a revised fertiliser regulation.

Some of the projects have analyzed also the current market barriers that lead to several policy recommendations for further public administration support to the development of the market for recovered nutrients.

The COM also reported on two on-going and future studies in relation with plant nutrition and the circular economy:

**BIOFECTOR**

BIOFECTOR is an interdisciplinary research project that aims to develop novel approaches for agricultural use of plant biostimulants so as to integrate them in new fertilisation strategies. The objective of the study is to examine which external factors can affect the reproducibility of plant biostimulant effects and performances which is so far understood as the main limitation for larger plant biostimulant application in agriculture. The study will for the first time study the effect of plant biostimulants on targeted crops in various field conditions across Europe.

**DONUTSS**

\(^2\) http://ec.europa.eu/priorities/jobs-growth-investment/plan/index_en.htm
The need for improved knowledge of phosphorus flows was the first conclusion of the European Commission Consultative Communication on the Sustainable Use of Phosphorus (Staff Working Document SWD(2014)263final): “In terms of ascertaining the extent of phosphorus supply and demand, … the replies pointed to a need to increase the knowledge base”.

DONUTSS (Data on Nutrients to Support Stewardship) aims to identify what data is needed by decision makers (agriculture, industry, investors waste sector and policy makers) on nutrient stocks and flows, and define how to make this data available to key actors.

Through DONUTSS, the European Sustainable Phosphorus Platform aims to support policy decisions and to evaluate their implementation, to develop product stewardship indicators, to monitor how far the circular economy objectives are achieved and how to improve existing national policies. This action targets phosphorus (P), potassium (K), possibly other nutrients (e.g. N, Mg, Ca …).

The COM concluded by indicating that the abovementioned studies give us a glimpse of the possible future structural changes in the EU fertiliser market.

7. RESULTS OF STAKEHOLDER CONSULTATION ON THE CIRCULAR ECONOMY WITH RESPECT TO NUTRIENT RECOVERY

The COM presented the results of a survey on the expectations expressed by stakeholders concerning the future EU strategy on the circular economy. Among the various contributions received on the development of markets for secondary raw materials:

(1) 30% of the 1281 respondents identified nutrients as 'secondary materials' that the EU should target in priority

(2) In total, 54% of the respondents cited bio-nutrients or phosphorus in their response to all questions

This interest for the recycling of nutrients is explained by the importance of reducing the dependency of the EU towards imports of raw materials from non-EU countries and also by the potential contribution to the reduction of CO₂ emissions from the fertilisers sector. As a lot of technologies exist already, implementation of EU requirements on alternatives to existing products should be rapidly enforced which would illustrate how the Circular Economy could work in practice. In order to increase the share of renewable fertilising products in the future, the survey has identified a number of key actions that need to be addressed in the future:

(1) Efforts should continue to be put on the improvement of the quality of recycled materials

(2) Action should be taken to improve information about the quality of recycled nutrients

(3) Separate collection of waste streams should be better implemented to improve the quality and safety of input materials subject to recycling and hence the quality and safety of the end-products

(4) A general ban of the landfilling of waste will help materialising the COM Circular Economy objectives. Some preliminary actions involving several leading regions in the EU will help to disseminate good recycling practices across the EU.
The COM expressed its satisfaction with the results of the survey as it confirms that including the revision under the Circular Economy package would be the most convenient approach to create a level playing field for all types of fertilising products. The decision implies that not only existing trade barriers will be removed but that a shift towards the development of more sustainable products can be expected. Contributions from stakeholders in the context of this survey were welcome.

8. **Comment on a Roadmap for a Revision of the Fertilisers Regulation**

The COM explained that the roadmap on the revision of the Fertilisers Regulation was published by the COM mid-October 2015 and is open for comments until mid-January 2016. Several comments were directly sent to the service responsible for the revision but the COM encouraged stakeholder to use the IT tool developed by the Secretariat General to send their comments.


The COM informed that a draft text was submitted to inter-service consultation end November. The COM regretted that a draft text had leaked soon after the beginning of this consultation and informed that the COM services will not engage into discussions with stakeholders until the College has taken a final position on the draft. Interested stakeholders may have an opportunity to comment the draft legislative text after its adoption by the College.

One Member State regretted that a copy of the draft text is not available for early comments before the text is sent to the Council. Several others expressed concerns about the safety and quality of products deriving from waste and animal by-products. Such products may effectively contribute to the Circular Economy but may prove ineffective or harmful for the environment if not correctly processed. Another Member State called for the implementation of traceability systems for the control of organic fertilising products.

The COM informed that a Circular Economy action plan - published on 2.12.2015 - refers to the preparation of the revised Fertiliser Regulation.


The aim of the revision is to create a level playing field for all types of fertilising products without giving a preference to particular product groups. The COM is aware that organic based fertilising products can contain a significant amount of contaminants if not correctly controlled. The proposal would therefore exclude input materials that are not considered as sufficiently safe to enter into the composition of fertilising products. Compulsory sorting of waste would be applied where needed in order to reduce as far as possible the presence of contaminants in final products. Finally, the production chain of such products would have to be regularly monitored by external auditors to ensure that safe production conditions are constantly maintained.

A Member State suggested waiting the adoption of the revised Fertilisers Regulation before introducing organic-based products in the current Regulation. The COM explained that it is its duty to give practical solutions to remove technical barriers wherever possible under the current regulation. However, it will be verified whether the new type could comply with the future requirements of a revised fertiliser regulation.

The COM briefly shared with the group the architecture of the draft legislative proposal. The draft contains:
– a list of component material categories i.e. materials that could be used in the production of fertilisers if the conditions laid down in one of the annexes of the draft are fulfilled. Only the listed materials could be used for the production of CE marked fertilising products.

– a list of product function categories that clarifies the scope of the proposal. Each category is characterised by a set of safety and quality requirements laid down in one of the Annex to a future regulation.

– an annex laying down the labelling requirements for each product function categories

– different conformity assessment procedures ranging from self-certification to third party certification with external control based on the New Legislative Framework (NLF)

The COM also informed that Member States will be allowed to continue to regulate national fertilising products as it is already the case with the current regulation. In accordance with the NLF, harmonised EN standards will give a presumption of conformity to the requirements of the legislation.

Several Member States noted they were pleased with the proposed approach. It could help to continue to control the type of materials entering the composition of fertilising products. The Members also noticed that the products regulated under the current regulation will be taken over in the revision but that much more categories are to be expected. The revision will also introduce rules for blends of different product categories in order to allow the industry to better respond to crops' needs.

An NGO remarked that materials deriving from waste are subject to more controls than chemically-processed fertilising products and argued that that if incoming materials are only plant or animal-based there should be less concern about their environmental safety. The risk is that too many rules and complications may discourage the return of compost and organic matter to soil, something we wish to encourage. The COM replied that such materials may also contain a significant amount of pathogens and organic substances if not properly treated. The characteristics of each component material category need to be carefully examined and the choice of the conformity assessment procedure will be made on the basis of the risks that such materials could entail.

At the request of an industry association, the COM clarified that the legislative proposal is expected to be adopted in spring 2016.

9. STATE OF PLAY ON THE PREPARATION OF A DRAFT 9TH ATP

The COM briefly explained the content of a draft that was presented to the Regulatory Committee in the afternoon of 27 November. The comments made by the Member states during the spring consultation were addressed. The COM repeated that only fertiliser types covered by the future proposal will be included in Annex I to the Fertilisers Regulation. Organic fertilisers will remain out of the scope of the current Regulation as well as waste-derived products because the current regulation does not provide for the necessary control procedure to ensure that the material constantly meet the legal requirements.
An industry organisation welcomed the proposal for the inclusion of organo-mineral fertilisers in the scope of the current Regulation but regretted that this proposal was not extended to other types of organo-mineral fertilisers. Additionally, the proposed minimum nutrient requirements should be set sufficiently low to allow a larger part of the existing organo-mineral fertilisers to apply for the EC fertilisers marking.