MINUTES OF THE FERTILISER WORKING GROUP MEETING

29 February 2016

Participants: Representatives of competent authorities for the fertilisers Regulation of AT, BE, HR, CZ, DE, DK, EE, ES, FI, FR, GR, HU, IE, IT, LV, LT, MT, NL, PL, PT, SK, SI, SE, UK, NO, CH
Representatives from the following companies or organisations (observers): APEP, CEN, COCERAL, COPA-COGECA, EBIC, ECN, ECOFI, EEB, EFBA, EPAGMA, ESPP, EUROFEMA, EUROSLAG, EBA, Fertilizers Europe, FEAD, IMA-Europe, EFAR, IFOAM

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

1. ADOPTION OF THE DRAFT AGENDA

The COM proposed to advance point 5 of the agenda. The agenda was adopted with that change. The minutes reflect the order of the items addressed during the meeting.

2. ADOPTION OF THE DRAFT MINUTES OF THE LAST MEETING OF THE FERTILISERS WORKING GROUP ON 27 NOVEMBER 2015

An NGO clarified its views on rules for organic-based fertilisers under point 8. It explained that adding a lot of rules on fertilisers made of crop or animal residues would discourage the return of organic matter to the soil.

A revised paragraph should read as follows:

An NGO remarked that materials deriving from waste are subject to more controls than chemically-processed fertilising products and argued that when 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.

With that change, the minutes were adopted.
3. **NEW FERTILISER REGULATION: STATE OF PLAY AND NEXT STEPS**

The COM explained that the adoption of the proposal by the Commission is foreseen for the 23rd of March. The COM will not share the text with anybody before the adoption. The Members of the Expert Group were encouraged to send contribution to the stakeholder feedback that would be organised after the adoption.

The main aspects of the COM proposal were explained. The text is based on the NLF (New Legislative Framework) and covers all the fertilising products present on national markets. The proposal is based on the principle of partial harmonisation meaning that every Member States will be allowed to keep national rules on fertilisers. The proposal will therefore define the conditions under which the CE mark may be granted.

Only eligible component materials defined in Annex II could be used in the production of CE marked fertilising products. A rather cautious approach has been adopted in particular for materials deriving from waste as the proposal only covers compost and digestate but technical work has been launched together with JRC to look also at the eligibility of other materials such as struvite, biochar and ash-based products.

On safety, the COM is proposing limit values for a set of heavy metals, pathogens or organic substances where relevant. The COM services have agreed to clarify the boundaries between the Fertiliser regulation and related EU legislation. Certain plant biostimulants will be taken out of the plant protection product regulation under certain conditions. Waste reaching the conditions laid down in the future regulation would cease to be waste and animal by-products reaching an end-point in the manufacturing chain as defined in the animal by-product regulation would exit the scope of this legislation. All component materials shall be subject to REACH except those which are explicitly excluded from REACH. The COM is committed to develop methodologies that would allow following stricter risk-based approaches in the future.

The control mechanisms are customised to the level of risks that the EC fertilising products may create. In some cases, self-certification may be allowed, in other cases, the intervention of an independent body may be required.

Test methods will be necessary to check the compliance of products with the new rules and the COM has identified with the help of industry and Member States authorities a number of possible test methods. CEN will be mandated to transform the available methods into EN standards to be published in the EU OJ. In case such EN standards are not available, the proposal foresees the possibility for the COM to adopt common specifications.

The COM also announced its commitment to accompany the proposal with additional measures such as the creation of an administrative cooperation group on market surveillance. In addition, a proactive approach will be followed in order to encourage the recovery of nutrients.

The COM informed that first discussions with the Council are planned under the Dutch Presidency.

A Member State and a farmer's organisation asked what would be the fate of digestate under REACH and if the REACH registration of digestate could be conditioned to the nature of the input materials used during the composting process.

An industry federation and a representative of a standardisation body requested clarification about the types of comments that may be anticipated after the adoption and how these comments would be dealt with.
The COM answered that the debate is over at the level of the COM services. Once adopted collegially by the COM, the proposal can no longer be modified and is sent directly to the co-legislators (the Council and the EU Parliament) for amendment. Comments on the proposal may be sent to the COM – in particular during the stakeholder feedback - but the COM would not be allowed to process them and modify the text.

Digestate is formally not exempted from REACH registration but no Member State has enforced this provision. A debate is on-going inside the COM as to whether digestate could be taken out of the REACH registration requirements through a technical amendment of that legislation. Preliminary discussion took place in the expert group of Competent Authorities for REACH and CLP (CARACAL) but was not conclusive so far. A final vote on this issue is expected before the end of the year. However, this may be delayed by the on-going discussion on the clarifications of the interface between chemicals, waste and product legislation.

Although composts do not need to be registered within REACH, the COM is currently discussing whether compost should also be subject to REACH registration requirements.

4. **ADMINISTRATIVE ARRANGEMENT WITH JRC ON RECOVERY RULES FOR NEW COMPONENT MATERIAL CATEGORIES**

The COM explained that the proposal contains a clause that will allow the COM (with the support of the Member States experts) to amend the Annexes to technical progress. This should allow the inclusion of recovery rules similar to the ones already included for compost and digestate.

(a) **study on possible technical requirements**

Firstly, JRC has been mandated by DG GROW to develop technical requirements for the safe transformation of eligible input materials into struvite, biochar and ash-based products. The technical work will last until the end of 2018. JRC will be assisted by a group of experts composed of Member States, NGOs and industry representatives. A call for participation will be launched soon and will be available on the JRC website as well as on the Fertiliser webpage on Europa1. The call is open to experts other than EU national authorities. Members of the Fertilisers Working Group are invited to apply to the call.

(b) **Assessment of impacts of the proposed technical requirements**

In a second step, JRC will be mandated to assess the possible impacts of including new component materials categories within the scope of the Fertiliser Regulation based on the technical requirements developed under the first step. A description of the draft terms of reference for the future phase two project was presented and the Members of the group were invited to send comments to DG GROW until the end of April.

An industry association requested the inclusion of the assessment on job creation and farmers' incomes in the section on economic impacts.

A Member State asked whether the recovery rules can be assimilated to end of waste criteria.

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1 The call is closed since the end of May 2016. Information about the composition of the group is available here. [http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8798](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8798)
The COM replied that current analysis on the potential of phosphorus recovery suffers from a lack of information on the economic viability of existing process. This information needs to be collected to understand if changes in market structure could be expected in the future.

On the recovery rules, the COM stated that the objective is to describe the conditions under which certain waste materials could be used in fertiliser production. These conditions would be laid down in Annex II of the future Regulation. Such rules are described for compost and digestate in the COM proposal. The COM will not propose independent End of Waste criteria under the Waste Framework Directive.

The COM asked in which Member States, struvite, biochar and ash-based products are allowed in the manufacture of national fertilisers. Ten Member States replied positively. The COM concluded that JRC would have to capitalise on the experience of those Member States when proposing draft recovery rules for struvite, biochar an ash-based products.

5. RESULTS OF THE STAKEHOLDER CONSULTATION ON ANALYTICAL METHODS FOR THE FUTURE STANDARDISATION MANDATE

The COM explained the role of harmonised standards and how they will be developed.

Harmonised standards are technical means to verify the conformity of CE marked fertilising products with the safety and quality requirements laid down in the Regulation. They could also be used for market surveillance activities. They are voluntary. That means that other methods can be used for checking the compliance of products but producers would have then to demonstrate the equivalence of the methods used with the relevant harmonised standard.

The development of harmonised standards is mandated to CEN by the COM based on an opinion of the Member State Committee. Member States and industry can participate in CEN work through national standardisation bodies. COM checks whether the standards proposed by CEN corresponds to the relevant legal requirements and publish the reference to the method as harmonised standard in the EU OJ. National standardisation bodies remove any conflicting national standards.

The COM informed that Member States and the EU Parliament may dispute the publication of references to harmonised standards triggering a COM decision.

The COM also explained that in the absence of harmonised standards – which is sometime time consuming to develop – the proposal foresees the possibility for producers to check compliance of their products with common specifications. In that case, the COM will identify the relevant analytical method with the support of the Member States and industry. The Regulatory Committee will be consulted through the examination procedure applicable to implementing acts. In case of positive vote, COM will adopt the common proposed method in the form of 'common specification'.

In order to not delay unnecessarily the enforcement of the new regulation, it is important to start the development of the standardisation mandate in parallel with the negotiating process. With the support of Member States and industry experts, the COM has initiated a thorough mapping of existing analytical methods currently used to verify the conformity of the fertilising products covered by the revision. In September 2016, CEN will be mandated to analyse in details the information collected by the COM and will be requested to identify the most relevant methods that could be further transformed into harmonised standards. When the COM did not succeed in identifying relevant standards, CEN would be required to explain how these gaps could be
closed. The results of the CEN assessment will be used to prepare a standardisation mandate in 2017.

One Member State and one EU standardisation body requested clarification about the role of the common specifications and how they would be published.

The COM stated that under the NLF, the preferred option would always be the use of harmonised standards. However, it remains to be seen whether CEN will be able to cope with the requests for standards that we would need. The common specifications would be mainly used as a fall back option if harmonised standards are not in place sufficiently rapidly. The approach is not common in EU legislation but is inspired by the medical devices legislation.

The common specification would be published in a self-standing regulation and would be legally binding as opposed to the harmonised standards. Once a harmonised standard would become available, the common specifications would be superseded by the harmonised standard.

A professional organisation, an NGO and two Member States asked whether the COM intended to develop product standards.

The COM recalled that standardisation is a voluntary process. Standards are used to demonstrate compliance with law. Product standards may have different objectives: defining composition and properties of a given product or help positioning premium products on the market. These objectives are not supported by the proposal. Product standards will never reached the status of harmonised standards.

However, the COM acknowledged that standards other than test standards would be required in order to verify the conformity of products to legal requirements. This might be the case for the verification of sustainable claims that would have to be explained and demonstrated based on verifiable factors. No such claim could be used for CE marked fertilising products until they can be verified. Industry would have to initiate the work and agree on a common understanding and share their expertise openly with the CEN experts and the society at large.

Concerning sustainability claims, an NGO expressed concerns about this industry process making the Ecolabel redundant. It being already hard for NGOs to make their voice heard in the Ecolabel process; how would they manage in a multitude of industry groups? How much time would the process take, what transparency?

The COM answered that Eco-label legislation should be considered as part of the more general discussion on sustainability claims for fertilising products. The Eco-label is a voluntary scheme with no legal consequences. The Fertiliser Regulation will take precedence over that legislation on the use of sustainability claims.

An industry federation explained that the COM approach would be quite similar to the approach followed in the ISO standard on sustainable biofuels which defines what criteria should be looked at when sustainable claims are made. Figures on such criteria could then be set in the Fertiliser Regulation at a later stage. In principle, the recycling industry would be in favour of such approach but expressed concerns about the availability of resources and money to carry out such work.

One Member State asked whether they could accept sustainable claims based on studies carried out by universities.
The COM replied that sustainable claims would be based on self-declaration. The authorities should verify on which basis sustainable claims are made and if sufficient information is available to verify this.

Another Member State explained that the authorities had to define in legislation what sustainable biofuels mean and asked whether a similar approach would be appropriate for sustainable claims on fertilisers.

The COM replied that the situation is different. The Fertiliser Regulation will not provide any fiscal advantage to sustainable products whereas, in the biofuel area, this could lead to tax reduction. The objective of the Fertiliser Regulation is to ensure fair competition between economic operators.

6. **DISCUSSIONS ON POSSIBLE KEY INDICATORS FOR THE EU FERTILISER MARKET**

The COM explained that the intention is to estimate the size of the fertilising product market in order to prepare our communication on the future proposal to a broader public. The COM stated that for most of the industry, quality information about market structures, investments, typical size of economic operators active in nutrient recycling, etc are not available. In public discussion, such information matters and would help the COM to better communicate.

The COM proposed to actively build up more expertise on the sectors and called Member States to provide any information they may have on their national markets. Industry associations were invited to send similar information.

Without this information, the COM stated that some decisions may be taken that would not have been always back up with sufficient economic assessment.

7. **RESULTS OF RECENT RESEARCH STUDIES ON NUTRIENT FLOWS AND NUTRIENT RECOVERY**

This point is in relation with future works on nutrient recycling that JRC is carrying out. Two industry associations active in the recycling of nutrients were invited to present their areas of interests and provide some initial figures about the possible size of such markets.

A stakeholder involved in nutrient recovery explained that nutrient recycling has a long history and that there is still a strong interest to continue and develop new businesses in the sector as highlighted by the responses provided to the COM consultation on the circular economy carried out last year. The move to the new Fertiliser Regulation is ambitious as it aims to cover complex biological processes (such as composting and anaerobic digestion) and not only chemical products.

A number of different secondary raw materials contain a significant amount of plant nutrients. In some of these materials, nutrients are locked in complex matrices and processing is needed to extract nutrients and render them plant available. In other cases, processing is needed to generate a consistent product adapted to precise application. In nutrient flow assessment, processing routes should be carefully looked at to estimate the amount of nutrients that would come out of the process in a plant available form.

Another big challenge for the sector is to collect information from operators that are not really part of the fertiliser sector but could be interested in working with this industry if EU legislation is in place. For example, biogas producers are now looking for more opportunities to sell
processed digestate as fertiliser on top of producing biogas. These 'new' fertiliser market operators are not always fully aware of the expectations of the fertiliser industry or of farmers.

A first estimation of where phosphorus is moving about in Europe was performed by Kimo Van Dijck. The study gives also information about recovery potential for phosphorus by type of secondary materials. For example, a lot of manure already returns directly to soil but because of the concentration of animal production in certain areas, this is often not efficient use and poses environmental problems. Only processed manure can be transported. Similar challenges have been identified in other parts of the world and EU know-how could be exported.

The Donutss initiative (www.phosphorusplatform.eu/donutss) was mentioned addresses the goal to collect data that would be useful for public authorities to set recycling targets or by industry to decide to invest in new technologies.

Initial discussion shows that identification of nutrient hotspots is important information for the fertiliser industry as well as information about where the nutrients are actually going (nutrient flows). Information about the level of contamination in secondary raw materials is important because the safety of recycled product must be ensured. The level of both nutrients and organic carbon is of importance for the production of quality organic fertilisers.

The main challenge is that data is often collected in different forms, or exists but is not collated or is not collected at all because there is no legal obligation or no interest from the owner of the biomass. Awareness campaign about the FR revision should help to better inform waste holders.

The French observatory of mineral and organic nutrients set up by industry is an example of a useful tool which enables industry to take decisions about what can be recycled and where.

The COM stated that information on recycling potential is one thing but without the necessary entrepreneurial structure, supportive institution and policies, this potential may remain untapped. This calls for further reflections and discussions.

A Member State requested information on the kind of nutrients that is expected to be present in paper sewage sludge. Expertise in that Member State shows that paper sludge are often contaminated with PFOs.

The speaker explained that the paper sludge contains mainly organic carbon and a few amounts of phosphorus or nitrogen. Paper sludge may be contaminated but perhaps somebody would have an idea on how to remove the contaminants and make a nice product. This is why the idea is to monitor not only what we know but also to find out where plant nutrients and organic matter are.

Another project aimed at collecting information about existing technologies that are able to recover quality secondary materials for fertiliser production. The study looked also at the legal or technical barriers that currently hamper the emergence of other technologies and proposed possible way forward.

As underlined by the previous speaker the availability and quality of current data does only allow a rough estimate of the volume of phosphorus that could be recovered from sewage sludge. According to the speaker, 35% of the EU phosphorus demand could be covered by secondary raw materials including 19% from sewage sludge.

The speaker also emphasized the importance of a more holistic approach for nutrient recycling. It will be important to combine energy and resource efficiency to avoid disruptions in our
climate change mitigation efforts. As example, the quantitative relevance of the three macronutrients N, P and K was illustrated, clearly indicating, that nitrogen recovery will have a much larger impact on GHG emissions compared to P and K, if used to substitute the reactive nitrogen obtained by Haber-Bosch. There are already technical solutions in development or even demonstrated – the so-called nutrient recovery cascades.

Around 40% of the sewage sludge produced in the EU is directly recycled into agricultural land but the situation vary very much across the EU. However, the amount of unprocessed sludge applied to land is constantly decreasing because of concerns regarding odour nuisance and the possible soil contamination. The speaker stated that the most risky contaminants should be identified and risk mitigation measures should apply to them.

The main challenge today is therefore to recover nutrients (mainly N and P) from sludge and other relevant sources and valorise them into safe and quality fertilising products. Current markets have been analysed and for example part of the nutrients used in some organo-mineral fertiliser formulations are originated from sludge.

**Struvite** – a by-product of waste water treatment plant – is also recovered in NP mineral fertiliser production. Today already 20 EU waste water treatment plants are producing around 8000 tons of struvite per year. The objective is to double this capacity in 5 years.

However, big amounts of phosphorus remain untapped as solid sludge treatment requires more energy and chemical treatments to get rid of contaminants and increase the nutrient availability to the plants. Various pilot scale projects are in place. The main challenge is to find a balance between recovery rates and treatment costs. Some fertiliser companies have already demonstrated that treated solid sludge provides suitable alternatives to fossil phosphorus sources. Some efforts are also made to combine the recovery of phosphorus with other types of nutrients such as nitrogen.

The speaker concluded that in order to create new value-chain, multi-sectorial and public authorities' cooperation is needed. The creation of a level playing field for recycled materials is only the first step. Moreover, given that investments in nutrient recycling might be costly, operators would only invest in technologies that exist. To facilitate market penetration of new processes, public money should be injected into first demonstration projects to facilitate the emergence of market references.

A Member State indicated its willingness to remove technical barriers for the recovery of phosphorus from ashes provided that the plant availability of the final product is demonstrated.

The COM underlined that nutrient recovery is a complex matter that covers safety and agronomic issues. Strong cooperation between public authorities, waste holder and the fertiliser industry would be required to solve the challenges ahead. The COM confirmed its commitment to play a leading role as confirmed by the project on struvite, biochar and ash-based products.

8. **AOB**

After the recent attacks in Brussels, the COM wanted to raise awareness about the necessity to correctly implement the reporting obligations of the Regulation on precursors to explosives. DG

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2 An important source of phosphorus and nitrogen

3 The recyclates were compared to triplesuperphosphate
HOME has recently informed DG GROW that some Member States have not always correctly implemented the rules of the Regulation that apply to AN based fertilisers.

In the context of the preparation of the 9th ATP and the possible inclusion of organo-mineral fertilisers in the scope of the current Regulation, a Member State wanted clarification about the level of risks that could be expected from organo-mineral fertilisers containing AN based fertilisers and if such products could be misused for making home-made explosives.

A fertiliser association explained that other types of nitrogen fertilisers are also misused for explosive production. A voluntary assurance scheme has been put in place by this federation and its members are requested to report on suspicious transactions about all types of nitrogen fertilisers.

Two industry associations answered that to the best of his knowledge, AN fertilisers are not used in organo-mineral fertiliser production. One of the reasons is the heat produced during the extrusion process would make the entire product sensitive to detonation. Another explanation is that organo-mineral fertilisers aim at releasing slowly nutrients to the plants which is contrary to the objective of AN fertilisers. Finally other sources of nitrogen are available and AN fertilisers are not really needed

The Member State asking for clarification thanked the industry for the feedback but still argued that it might be opportune to restrict the presence of AN fertilisers as nitrogen inputs for OM fertilisers to address irresponsible behaviour.