Interreg North-West Europe

Co-funded by the European Union

ReNu2Cycle

Input to the consultation on the green-listing of certain waste

The new Waste Shipments Regulation sets out digitalised procedures to facilitate and better track the shipments of waste within the EU. This should make it easier **to ship waste for recycling within the EU.** The circulation of waste for recycling and preparing for re-use between Member States is key for the EU's **transition to a circular economy** and **the security of supply of raw materials.**

The EU is frontrunner is the development of innovative solutions for the circular economy. As such, the European Commission funds EU Research projects under the Horizon 2020 and the Interreg programmes to improve and implement innovative solutions for nutrient recovery.

The NWE interreg project ReNu2Cycle aims to encourage the uptake of recycling-derived fertiliser products in the European market. The project has a strong policy evaluation and advocacy component. With this Input we aim to contribute to the circular economy through the facilitation of an EU wide market for Recycled-Derived Fertiliser products.

We are pleased that we are invited to provide views and input on how the Waste Shipment Regulation can be implemented with a view to boosting the internal market for waste in the EU, notably to incentivize that waste is diverted from disposal, such as landfilling, and is destined to recycling with the aim to ensuring that valuable materials and resources are re-introduced in the circular economy.

The Waste Shipment Regulation introduces measures to modernize the legal framework on waste shipments, by digitalizing procedures, streamlining the shipment procedures to “pre-consented facilities” and allowing for clarifying which waste is green-listed.

Harmonisation of the FPR and the Waste Shipment Regulation by the green-listing of materials that are shipped between EU countries with the intention to be used as components for EU fertiliser products is a necessary step to open the EU internal market for recovered nutrients and organic sources.

Materials to be green-listed for the recovery of nutrients are materials that are to be used as a fertiliser or a component for fertiliser under the FPR or under the national regulation of the member state of destination.

Enabling the EU market entry for organic and recycling-derived products will stimulate the circular economy, decrease the loss of nutrients, and increase the independency of the EU from a geopolitical point of view.

WASTE STATUS OF RECOVERED MATERIALS UNDER THE EU-FPR AND NATIONAL LAW

The EU Fertilising Product Regulation 2019/1009 confers an explicit end-of waste for recycling-derived EU fertiliser products with CE marking. A fertilising product compliant to the FPR may exclusively be composed of materials belonging to one of the component material categories (CMCs). The FPR includes several CMCs for secondary raw materials, including struvites, ashes, composts, products derived from animal by-products with an end-point, and ammonium, phosphate and sulphate salts recovered from off-gasses.

The FPR introduces conformity assessment obligations for producers. Four conformity assessment modules are described with varying degree of control be in proportion to the level of risk involved and the level of safety required for the different PFC products and CMC materials.

Secondary raw materials that meet all criteria of CMC-FPR remain a waste up to the moment that they are brought on the market as an EU-fertilising product with the CE marking. The waste status of these CMC materials involves an administrative, logistic and financial hurdle that significantly hampers the uptake of the RDF materials as component materials in the fertiliser market chain. The final processes of the

Harmonisation of the FPR and the Waste Shipment Regulation by the green-listing of CMC materials that are shipped between EU countries with the intention to be used as for EU fertiliser products is a necessary step to open the EU internal market for recovered nutrients and organic sources.

The scope of the FPR does not cover all secondary raw materials that can be brought to the market as a fertilisers or soil improvers. Therefore, at the national level, the marketing and use of these composts as an organic fertiliser or soil improver remain regulated by national fertiliser and / or waste regulations to stimulate the circulate economy at national level. This optional harmonisation was done with the view to enable the market entry of materials not under the scope of the FPR.

These secondary materials should also be eligible for green-listing. The materials can be used as components for further processing into fertiliser products, or brought on the market as a fertiliser under national law and complies with the relevant national criteria.

Conclusion and recommendation

- Recovered raw materials that meet all criteria of a CMC under the FPR are still considered as a waste product. The end-of waste status only applies from the moment that the materials are brought on the market as (part of) an EU-fertilising product with the CE- marking.
- Recovered raw materials or recovered fertiliser products that are brought to the market under the national regulations often have to be shipped as waste, even when they will be brought on the market as a fertilier product.
- The waste status involves an administrative, logistic and financial hurdle that significantly hampers the uptake of the recovered materials as component materials in the fertiliser market chain.
    - Harmonisation of the FPR and the Waste shipment Regulation by green-listing waste materials that comply with the criteria of the FPR-CMC's and that are shipped to installations for production of fertilisers and soil improvers is necessary.
    - Recovered fertiliser materials that are shipped use as fertilising products or for recycling into fertiliser products should be green-listed, on condition that they comply with the criteria and prerequisites of the national regulations on fertiliser products.

WASTE STATUS OF RECOVERED FERTILISER MATERIALS UNDER NATIONAL LAW

The waste status of the RDF materials proves to be even more problematic because of the differences in national interpretations of the waste, end-of-waste, and by-product status in the different EU countries. Recycling-derived fertilising products are treated inconsistently in the national legislations of member states within NW Europe. These different status of product or waste pose problems when sending shipments to other countries.

Many EU countries do not confer a national end-of-waste status at all, so that producers do have no other option then the 'self-declaration of EoW' with legal insurity as it does not provide any assurance that this will be accepted by the national market surveyance authorities.

The legal structures and requirements on recovered fertilising materials differ, not only between countries but even at the regional or local level. The use of the 24 national languages in the EU and specific terminologies further complicates the understanding of the national rules. A database of the transposition of the EU Waste Framework Directive into national regulations is available, but this is incomplete and outdated and thus often irrelevant.

Conclusions and recommendations

- Stakeholders are faced with the complexity and diversity at the national level of regulations, requirements and status of the waste or waste-derived products in the EU different countries. Because of these differences there is no level playing field for the producers in different EU countries.
- Transparency on the national legislative frameworks for recovered fertilising products will provide insight in the regulatory options for the legislation of certain fertilising products, a more efficient implementation and could contribute to the creation of a level playing field. This will also be useful for policy makers, market surveyance authorities and other decision makers and certification institutions.
    - A database of the transposition of the provisions of the Waste Framework Directive into national law should be updated and maintained. This should preferably provide a link to the relevant pieces of law, and should be a format that can be easily translated automatically.
    - The updating and completing of the database should be mandatory for the Member states.
    - National contact points for information on marketing of recovered materials should be established. For the Mutual recognitions of goods, all members states have established contact points. The scope of these contact points could be broadened to include recovered materials or waste destined for fertiliser products.

MATERIAL DEFINITIONS IN EU LAW ARE UNCLEAR AND TRANSPOSED VERY DIVERSE

Definitions of terms and the interpretation thereof differ widely between the EU member States.

- Bio-waste is defined under the Waste Framework Directive as "*means biodegradable garden and park waste, food and kitchen waste from households, restaurants, caterers and retail premises and comparable waste from food processing plants*". The mention of 'comparable waste from food processing plants' can be interpretated in different ways, and the different EU countries have interpretated and defined this is different

ways in their waste and fertiliser regulations. For instance, several member states have transposed this into national law as meaning any sludges from the agrifood industry, while other member states have more narrow interpretations.

- Unambiguous definition of biowaste, and what constitutes 'comparable waste' is needed to create a level playing field for producers in different countries. This definition needs to be put forward by DG-ENV. This can be done in the form a FAQ document or a Guidance document.
- The guidance document of the Waste Framework Directive should be updated, as this is outdated (2009).

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