Interreg North-West Europe

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ReNu2Cycle

Feedback to Call for Evidence on Circular Economy Act

The Circular Economy Act will facilitate the free movement of 'circular' products, secondary raw materials and waste. It will also increase the supply of high-quality recycled materials and stimulate demand for these materials in the EU. By tackling issues of legal uncertainty and removing single market barriers, the CEA aims to reduce burdens and ensure simplification. The main problem that the CEA seeks to address is the slow transition to circularity in the EU.

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.

The EU single market for recycled-derived fertilisers and components is fragmented, which puts burden on economic operators and prevents circularity and economies of scale from unfolding.

The **Fertilising Product Regulation (EU) 2019/1009** (**FPR**) aims to open up the internal market for organic and recycling-derived fertilising products with a view to stimulate the circular economy, decrease the loss of nutrients, and increase the independency of the EU from a geopolitical point of view. The **FPR** harmonises the criteria for certain recovered fertilising materials. It confers an explicit end-of waste for recovered EU fertiliser products with CE marking.

National regulation on recovered fertilising materials remain important, as not all recovered fertiliser materials are under the scope of the FPR, and not all recovered fertiliser products can meet all requirements of the FPR.

For both EU and national regulations, legal uncertainties and unlevel playing field exist.

We are pleased that we are given the opportunities to provide views and input on how the Circular Economy Act can be implemented with a view to boosting the internal market for recycling-derived fertilising products, ensuring that valuable materials and resources are re-introduced in the circular economy.

Waste status of recycled fertilising materials

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

An EU fertilising product with CE marking may exclusively be composed of materials belonging to one of the component material categories (CMCs). The FPR includes several CMCs for recovered fertilising materials, including struvites, ashes, composts, ammonium, phosphate and sulphate salts recovered from off-gasses, and products derived from certain animal by-products.

However, the recovered fertilising *materials* that meet all criteria of FPR- CMC remain a waste up to the moment that they are brought on the market as an EU-fertilising *product* with the CE marking. These materials may need to be further processed into a final fertilising product, and as the reprocessing plants are unevenly distributed in the EU this may require shipment to other members states. 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.

- 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 materials 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. However, not all member states recognise the recovered fertiliser materials in national law (for instance, struvite is not regulated as fertiliser in many countries). The market development of these fertilisers would require shipment to other member states.

These secondary materials face the same problem as the CMCs materials, and 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.

- Recovered fertiliser materials that are shipped for 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.

Conclusion and recommendation

- Recovered fertilising 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 can only be shipped as waste, even when they will be brought on the market as a fertiliser 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 for 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

Lack of transparency and information on implementation of waste framework directive

The waste status of the RDF materials proves to be 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.

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 uncertainty as self-declaration does not provide any assurance that this will be accepted by the national market surveyance authorities of other member states.

The legal structures and requirements on recovered fertilising materials differ, not only between countries but even at the regional or local level. Even common products such as compost and digestate are defined very differently in the MS, with very different input materials allowed.

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 (TRIS is) available, but this is incomplete and outdated and thus often irrelevant. An illustration is given for compost:

- Legally binding national legislation on compost that is mentioned in TRIS are the criteria for compost in a bylaw under the Austrian Waste Management Law, and the criteria for compost produced from biodegradable waste, digestate resulting from biofuel production, sewage sludge resulting from sewage treatment established in Estonia.
- However, the end-of waste status of compost under the Belgium regulations do not show in TRIS, as this was notified under more general regulations on waste (different for Flanders and Wallonia).

➢ In the Netherlands, the use of compost and struvite as a fertiliser or soil improver is regulated under the Fertiliser Act, but this does not confer a legal end-of-waste status on the compost and is not mentioned in TRIS at all. In fact, the Dutch government does not confer national end-of-waste declarations, but only gives a 'legal opinion' on the status of waste, end-of-waste or by-products. These do however not provide assurance to producers as this is not legally binding. A legal opinion has been given for certain production locations of struvite and compost and for certain marketing chains of the ashes of poultry manure. This will lift the requirements for involved parties on handling, storage or using waste, but does not give any guarantee that the opinion will

be followed by the local authorizing bodies or by the national authorities of other EU countries.

- A complete 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.

For the functioning of the internal market, not only transparency but also information and guidance is needed on the status of the materials and the market options in the different member states. Lack of information is especially burdensome for SME producers of recycled fertilising products. For the mutual recognition of goods, the Mutual Recognition Regulation (EU) 2019/515 requires member states to establish product contact points to provide free advice. However, these do not cover the recovered fertilising materials are not always seen as a 'good' in stead of 'waste'.

- 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.

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.
- Because of the differences in national regulations the internal market remains very fragmented.
- 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.
- Information on the market access for recovered fertiliser materials is needed, especially for SME producers.

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- 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.

No clarity on Material definitions in EU law

Definitions of terms and the interpretation thereof differ widely between the EU member States. This creates an unlevel playing field between operators in the different MS, a fragmented market for these materials, and legal uncertainty when shipped between member states.

This can be shown for several materials with large volumes and significant nutrient recovery potential:

- Bio-waste is defined under the **Waste Framework Directive (WFD)** 2008/98/EC 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 different EU countries have defined this is different ways in their regulations on waste and fertilisers. For instance, several member states have transposed this into national law with the inclusion of sludges from the food and feed industry, while other member states have more narrow interpretations.
- Source-seperated human excreta are not defined explicitly under the **Urban Waste Water Treatment Directive (UWWTD)** 91/271/EEC and Sewage sludge directive. It is subject of continuing debate whether these excreta are under the scope of the UWWTD, included in the definition of domestic wastewaters in the UWWTD, or not under the scope of the UWWTD at all. This legal uncertainty on the status of these materials hampers the implementation of innovative source-separative sanitation systems and the recovery of the nutrients thereof.

Legislators are responsible for the correct interpretation of definitions and provisions. This does not only mean that the regulations and directions should be worded correctly, but also that there is sufficient guidance on the interpretations. The FPR has an extensive and regularly updated FAQ document, several Guidance documents and a contact point. These seem to be missing on other legislations.

- The EC-DG -ENV has provided a "Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste". This is however seriously outdated (2009) and does not address current issues. There is no direct contact point for questions on the WFD.
- No Guidance document for UWWTD has been found. There is no direct contact point for questions on the UWWTD.
    - Unambiguous guidance on the definitions of biowaste (and what constitutes 'comparable waste') and human excreta and (sewage) sludge are needed to create a level playing field and legal certainly for producers in different countries.
    - The guidance document of the Waste Framework Directive should be updated, as this is outdated (2009).
    - Guidance documents, a 'living FAQ document and contact points for the different pieces of law would help producers, but also national authorities and market surveyance authorities in correct understanding and implementation of definitions and provisions.

Material definitions in EU law non-harmonised

The FPR is linked to other pieces of EU law. However, the definitions in these laws are not completely harmonised, or are not clear. This makes the functioning of the FPR dependant on the interpretation of other pieces of law, and the willingness of other DG to provide feedback, clarity and interpretations. This is complicated by the different definitions that are used in the EU law for common terms.

- Organic fertiliser. This is defined as a PFC 1A product in the FPR: *a product the function of which is to provide nutrients to plants or mushrooms, and which contains organic carbon and nutrients of solely biological origen*. In the ABP-R this is defined as: *'organic fertiliser' and 'soil improver' means materials of animal origin used to maintain or improve plant nutrition and the physical and chemical properties and biological activities of soils, either separately or together; they may include manure, non-mineralised guano, digestive tract content, compost and digestion residues*;.
- Manure and processed manure are regulated under the ABP-R as *manure 'means any excrement and/or urine of farmed animals other than farmed fish, with or without litter'.*

Under the ABP-R a processed manure is a manure treated with one of the sanitation methods mentioned in the Annex IV. A manure-derived product is a product obtained from one or more treatments, transformations or steps of processing of manure. Under the Nitrate Directive manure is defined as '*waste products excreted by livestock or a mixture of litter and waste products excreted by livestock, even in processed form;'.* The term processed form indicates that all materials that derive from, or are produced with manure are to be considered manure till the final end use (in effect spread on land).

- Sludge is defined in the UWWTD. Sewage sludge is defined in the Sewage sludge directive as:
  - (i) residual sludge from sewage plants treating domestic or urban waste waters and from *other sewage plants treating waste waters of a composition similar to domestic and urban waste waters;*
  - (ii) residual sludge from septic tanks and other similar installations for the treatment of sewage;
  - (iii*) residual sludge from sewage plants other than those referred to in (i) and (ii);*

  As there is no definition of 'sewage plants', it is unclear if this refers to plants that treat urban waste waters, or if plants that treat other wastewaters (from example food industry or the paper and pulp industry) are also seen as sewage plants.
  The inclusion of "waste waters of a composition similar to domestic and urban waste waters" under the point (i) is also the cause of much discussion. The member states have transposed the definition very differently in their national regulations for sludge, including or excluding waste waters from the food industry.

  - Harmonisation of definitions is needed to create a level playing field and legal certainty for producers in different countries.

This Feedback is partly based on the report Legislation on recycling-derived fertilising products: changes, chances and challenges; update 2025. Outcome of the NWE interreg project ReNu2Farm (2023), updated within the NWE interreg project ReNu2Cycle (2025). ‘

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