



European Consortium
of the Organic-Based Fertilizer
Industry



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des JARDINS et
des ESPACES PUBLICS

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ECOFI's feedback on the European Commission's "[Fertilisers - list of animal by-products to be used without further official controls \(update\)](#)" consultation on the draft Delegated Regulation supplementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council as regards the determination of end points in the manufacturing chain of certain organic fertilisers and soil improvers

SUMMARY

On 26 September 2022, the European Commission published [for public consultation](#) a draft delegated act supplementing Reg (EC) 1069/2009 regarding the determining of end points in the manufacturing chain of certain organic fertilisers and soil improvers (Ares(2022)6618010).

While ECOFI is pleased to finally have a public draft available for discussion, we regret that more consultation did not happen upstream as the measures proposed are divorced from standard operating procedures applied by fertilising products manufacturers and their end users today. In their current form, the proposed measures would be unworkable because they are divorced from operational realities and do nothing to improve the safety of EU fertilising products. We hope that the current consultation will make it possible to correct these problems while maintaining the high levels of health and safety-based end points that are the objective.

While we **welcome the inclusion of processed manures and insect frass in Article 3** of the draft delegated act, we note the **following shortcomings**, which are explained in more detail in this document:

- The statement in Article 4(3) of the draft delegated regulation that the **derived products in Article 4 may be mixed with "any material of non-animal origin which is not listed in the catalogue of feed materials set out in the Annex to Regulation (EU) No 68/2013"** should be deleted. This is simply unworkable as every single plant micronutrient (Fertilising Products Regulation CMC 1 materials) is listed in the catalogue of feed materials as are many of the plant materials explicitly included in the Fertilising Products Regulation under Component Material Categories 2 and 6. Many organic-based fertilisers are complex mixtures of animal by-products, plant materials and -- in the case of organo-mineral fertilisers -- minerals. Indeed, the mineral fraction of fertilising products makes them less appetising to animals. In a

rapid survey of the fertilising products industry conducted in early October 2022¹ half of respondents noted that more than 75% of their products contain at least one component that is listed in the catalogue of feed materials.

- The draft delegated act **does not provide legal clarity** on whether the proposed end points could be used in all appropriate Product Function Categories of EU Fertilising Products. This could be easily corrected by adding the following sentence to Article 2(1) of the draft: "For the purposes of this regulation, certain organic fertilisers and soil improvers should be understood to include all Product Function Categories of Reg (EU) 2019/1009."
- The mitigation measures outlined in Article 4(2) and Article 4(3) of the draft delegated act should be deleted as they do not change the risk profile of the derived products themselves. These are outside of the scope of the mandate, but also of Reg (EU) 2019/1009 itself.
- The reference "or obtained through a transformation process from 1 to 6 (Annex IV Chapter III Reg. 142/2011) starting from category 3 materials, as per Annex XI Chapter II Section 1, point 1 (C)" should be added to the endpoint for hydrolysed proteins.
- Articles 3 and 4 should refer to the plants authorised under Article 24(1) subpoints (a), (b), (f), and (g) of Regulation (EU) No 1069/2009 and not only reference subpoint (f), as this reflects the way the industry operates.

Table of Contents

	Page
Introduction	2
Aspects of the draft that we support, with some suggestions for improvement	3
Aspects of the draft that should be modified	3
1. The end points are supposed to focus on essential characteristics of products, particularly safety when used as intended – therefore Article 4(2) and Article 4(3) of the draft delegated act should be deleted	4
2. The reference to the catalogue of feed materials needs to be deleted because most fertilising products containing materials derived from ABPs also contain a common component	4

¹ 45 companies responded. They are members of AEFA (Spanish national association), Afaïa (France), Artemis (Netherlands), Assofertilizzanti (Italy), Belfertil (Belgium), EBIC (European Biostimulants Industry Council), ECOFI, IVA (Germany), SPEL (Greece), and UNIFA (France). Companies were asked to include any sales that would fall under the Product Function Categories of Regulation (EU) 2019/1009 and to exclude any production that is destined for feed, cosmetics, or other non-fertilising product uses.

3. It is not clear whether the draft delegated act would create a legal basis for use of these materials in all appropriate Product Function Categories	4
4. The draft regulation ignores the realities of the market today, particularly for those materials listed in Article 4(1) points c) Processed Animal Protein (PAP) of Cat. 3 materials, d) Meat-and-Bone Meal of Cat. 2 materials, and f) hydrolysed proteins	5
5. Component Material Category 10 of the Fertilising Products Regulation is for component materials, not final products	7
6. The reference to Article 24(1), point (f), of Regulation (EU) No 1069/2009 is overly restrictive	7
7. The reference to 'Consultations prior to adoption' in the Explanatory Memorandum should be corrected	8
Conclusion	8
Thanks	9
About the associations co-signing this position	10

Introduction

While ECOFI is pleased to finally have a public draft available for discussion, we regret that more consultation did not happen upstream as the measures proposed are divorced from standard operating procedures applied by fertilising products manufacturers and their end users today. We hope that the current consultation will make it possible to correct these problems while maintaining the high levels of health and safety-based end points that are the objective, and we offer the suggestions below to improve the proposal.

In its current form, the draft delegated regulation would be unworkable and do nothing to improve the safety of EU fertilising products. In the section below we provide detailed comments and rationales.

Aspects of the draft that we support, with some suggestions for improvement

We welcome the inclusion of processed manures and insect frass in Article 3 of the draft delegated act.

However, we would also like to call for the **inclusion of processed guano** as well as processed manures, considering these are listed together in Annex XI, Chapter I, section 2 of Reg. EU 142/2001.

ECOFI would also like to see the **inclusion of the alternative processing methods set out in Chapter IV of Reg. EU 142/2011 for Category 2 materials**, particularly end-points for (b) biogas

digestion residues, (c) compost and (d) processed manure and processed frass as included under Article 3 of the draft Delegated Regulation.

Aspects of the draft for which we request modifications

- 1. The end points are supposed to focus on essential characteristics of products, particularly safety when used as intended – therefore Article 4(2) and Article 4(3) of the draft delegated act should be deleted**

The draft delegated act is out of scope for the mandate given in Article 5 of Regulation 1069/2009 (as amended by Article 46 of the Fertilising Products Regulation (EU) 2019/1009 (FPR)). The revised Article 5 states that:

“For derived products referred to in Articles 32 [organic fertilisers and soil improvers], 35 [pet food] and 36 [other derived products] which no longer pose any significant risk to public or animal health, an end point in the manufacturing chain may be determined, beyond which they are no longer subject to the requirements of this Regulation.

Those derived products may subsequently be placed on the market without restrictions under this Regulation and shall no longer be subject to official controls in accordance with this Regulation.”

Rather than focusing on determining manufacturing end points for safe fertilising products for their intended use, the draft delegated regulation focuses instead on preventing fraud in a completely different value chain, which is outside the scope of the mandate given in Article 5(2) of the ABPR. In fact, since the ABPR was adopted, we have no knowledge of any cases relating to fraudulent use in this context. Furthermore, since Article 5 states that derived products having reached an end point under the ABPR “may subsequently be placed on the market without restrictions under this regulation,” the imposition of the proposed mitigation measures appears contradictory, since both the packaging and dilution requirements would be “restrictions under this regulation.”

The Fertilising Products Regulation imposes labelling measures on certain types of EU Fertilising Products to avoid their being accidentally ingested by animals. Therefore **Article 4(2) and Article 4(3) of the draft delegated act should be deleted as they do not change the risk profile of the derived products themselves, are unworkable and are unnecessary for EU Fertilising Products, which are already subject measures to prevent animals from ingesting fertilising products.** To ensure safety further in this context, ECOFI is in favour of adding a clear preventative sentence to the labelling requirements under Fertilising Products Reg. EU 1009/2019 in Annex III, Part I for fertilising products which include a component material from CMC 10: “Do not use this product as animal feed. Do not mix this product with animal feed.”

- 2. The reference to the catalogue of feed materials needs to be deleted because most fertilising products containing materials derived from ABPs also contain a common component**

Article 4(3) of the draft delegated regulation states that the derived products in Article 4 may be mixed with “any material of non-animal origin which is not listed in the catalogue of feed materials set out in the Annex to Regulation (EU) No 68/2013.” This is simply unworkable as every single plant micronutrient (Fertilising Products Regulation CMC 1 materials) is listed in the catalogue of feed materials as are many of the plant materials explicitly included in the Fertilising Products Regulation under Component Material Categories 2 and 6. Examples include sunflower seed expeller, grape pulp, olive pulp, cocoa husks, and vinasse. Many organic-based fertilisers are complex mixtures of animal by-products, plant materials and -- in the case of organo-mineral fertilisers -- minerals. The mixtures allow manufacturers to achieve reliable formulations that provide the desired agronomic performance. Indeed, the mineral fraction of fertilising products makes them less appetising to animals.

The reference to the catalogue of feed materials therefore needs to be deleted as it will render the definition of end points pointless since virtually no product containing these derived materials could meet this requirement.

Moreover, the mitigation measures included in this draft are **more stringent than for feed materials** in terms of mixing with other components or packaging. There is no obligation to mix feed materials with repellent components for humans or to pack in small packages, so it seems overly burdensome to apply this to fertilising products and animals.

A rapid survey of the fertilising products industry conducted in early October 2022² half of respondents noted that more than 75% of their products contain at least one component that is listed in the catalogue of feed materials. Only two companies stated that none of their products contain materials in common with the list of feed materials.

3. It is not clear whether the draft delegated act would create a legal basis for use of these materials in all appropriate Product Function Categories

The draft delegated act does not provide legal clarity on whether the proposed end points could be used in all appropriate Product Function Categories of EU Fertilising Products. This could be easily corrected by adding the following sentence to Article 2(1) of the draft: “For the purposes of this regulation, certain organic fertilisers and soil improvers should be understood to include all relevant Product Function Categories of Reg (EU) 2019/1009.”

2 45 companies responded. They are members of AEFA (Spanish national association), Afaïa (France), Artemis (Netherlands), Assofertilizzanti (Italy), Belfertil (Belgium), EBIC (European Biostimulants Industry Council), ECOFI, IVA (Germany), SPEL (Greece), and UNIFA (France). Companies were asked to include any sales that would fall under the Product Function Categories of Regulation (EU) 2019/1009 and to exclude any production that is destined for feed, cosmetics, or other non-fertilising product uses.

4. The draft regulation ignores the realities of the market today, particularly for those materials listed in Article 4(1) points c) Processed Animal Protein (PAP) of Cat. 3 materials, d) Meat-and-Bone Meal of Cat. 2 materials, and f) hydrolysed proteins

PAPs of Cat. 3 materials

The rapid survey of the fertilising products industry conducted in early October 2022 indicates that 55% of respondents producing PAPs currently deliver 50% or more of the PAPs they sell in either tanker trucks or other bulk forms like big bags and container tanks. This represents about 100 000 tonnes delivered by tanker truck and 13 000 tonnes delivered in other forms of bulk (container tanks, big bags, etc.) annually. Respondents reported delivering about 17 500 tonnes in small packs, making up roughly only 15% of sales; however, it should be noted that many of the small pack sales are still dependent on bulk deliveries upstream. 50% of respondents producing PAPs indicated that over 75% of their PAPs are destined for agricultural uses, not horticultural or amateur ones.

Meat-and-bone Meal of Cat. 2 materials

The rapid survey of the fertilising products industry conducted in early October 2022 indicates that 50% of respondents producing meat-and-bone meal currently deliver 75% or more of the meat-and-bone meal they sell in tanker trucks or other bulk forms like big bags and container tanks. This represents about 288 000 tonnes delivered by tanker truck and 350 000 tonnes delivered in other forms of bulk (container tanks, big bags, etc.) annually. Respondents reported delivering about 58 500 tonnes in small packs, making it less than 10% of reported sales; however, it should be noted that many of the small pack sales are still dependent on bulk deliveries upstream. Over 50% of respondents indicated that more than 75% of their sales of meat-and-bone meal are used in agricultural field applications and not in horticulture or amateur uses.

Hydrolysed proteins, including the treatment processes in Annex XI of Reg. (EU) 142/2011

Considering that the aim of the draft Delegated act is to determine end points in the manufacturing chain of certain organic fertilisers and soil improvers and that the conditions for the production of certain organic fertilisers and soil improvers, currently widely used for the production of hydrolysed proteins for fertilisers, are set out in Annex XI to Reg. (EU) 142/2011, **is therefore essential, to mention the following reference:**

“hydrolysed protein which fulfils the specific requirements for hydrolysed protein set out in Section 5, point D, of Chapter II of Annex X to Regulation (EU) No 142/2011 2011 or obtained through a transformation process from 1 to 6 (Annex IV Chapter III Reg. 142/2011) starting from category 3 materials, as per Annex XI Chapter II Section 1, point 1 (c).

Non-proteinaceous hydrolysates should also be considered to have reached an end point.

The rapid survey of the fertilising products industry conducted in early October 2022 indicates that 38% of respondents currently deliver 75% of more of the hydrolysed proteins they sell in either tanker trucks (usually for uses as intermediates by other producers) or other bulk forms like big bags and container tanks. This represents about 23,000 tonnes delivered by tanker truck and 115,000 tonnes delivered in other forms of bulk (container tanks, big bags, etc.) annually. Respondents reported delivering about 150,000 tonnes in small packs, making it roughly half of reported sales; however, it should be noted that many of the small pack sales are dependent on bulk deliveries upstream. Only 40% of producers of hydrolysed proteins reported that they have no sales as intermediates; in contrast, 18% of respondents indicated that more than 75% of their sales of hydrolysed proteins are as intermediates. Two-thirds of respondents indicated that more than 75% of their sales of hydrolysed proteins are used in agricultural field applications and not in horticulture or amateur uses.

Where hydrolysed proteins are sold in small packages, ten out of seventeen respondents said that more than half of these products are sold in concentrations of 50% or greater, with more than a third of the products being above 75% concentration (100% concentration was not an option).

Finally, ECOFI also notes that a number of other relevant materials listed in the ABPR are missing, and call for these to be included in a future delegated regulation amending CMC 10 of Reg 1009/2019:

- The following materials of Category 2 are missing in the list in Article 4(1):
 - Bone meals of Category 2 materials
 - Processed Animal proteins of Category 2 materials
 - Blood products of Category 2 materials

5. Component Material Category 10 of the Fertilising Products Regulation is for component materials, not final products

Article 5 of Regulation 1069/2009 (as amended by Article 46 of the Fertilising Products Regulation (EU) 2019/1009 (FPR)) gives a mandate to define end points in order to allow derived materials from animal by-products to be included as component materials in EU Fertilising Products. Since these component materials may well be combined with other component materials, the **end points cannot be dependent on end-user packaging as that is logically incoherent with the concept of a component material**. It is also difficult to see how such measures could be implemented. In order to achieve conformity assessment, the FPR requires companies to demonstrate to a Notified Body that their product meets all the requirements for an EU Fertilising Product. If the EU Fertilising Product contains a component material under CMC 10, the company must demonstrate that the CMC 10 material has already reached the end point: but that is impossible since the product cannot be packaged until after receiving conformity assessment.

6. The reference to Article 24(1), point (f), of Regulation (EU) No 1069/2009 is overly restrictive

Articles 3 and 4 should refer to plants authorised under Article 24(1) subpoints (a), (b), (f), and (g) of Regulation (EU) No 1069/2009, and not only point (f). A rapid survey of the fertilising products industry conducted in early October 2022 indicates that only 25% of the respondents are authorised to process animal by-products under a different sub-paragraph other than point f. The activities of the others are authorised under Article 24(1), point (f), of Regulation (EU) No 1069/2009 more generally. This is because it is economically more interesting for an operator to have a “higher level” authorisation that allows them to sell their products into more than one value chain. For example, while it is forbidden for a fertilising product grade hydrolysate to be sold into the feed chain, there is no safety reason for preventing a feed-quality hydrolysate from being incorporated into a fertilising product since no contamination could result from this operation.

This is especially relevant for hydrolysed proteins, where many companies that carry out hydrolysis under the conditions in the Animal By-Product Regulation do not sell fertilising products for end use: they sell intermediates that are packaged as fertilising products by a different company. Therefore, the fertiliser plant is downstream from where the hydrolysis is conducted. The end point should be dependent on the technical process applied, since that is what determines if the material can be safely used in fertilising products.

To ensure optimal resource use, the general hierarchy of food-chain recycling is:

- products should be re-used as food if possible (according to safety and quality parameters);
- if not, incorporated into feed if possible;
- if not, incorporated into fertilising products if possible;
- if not, incinerated (and then possibly incorporated into fertilising products, depending on the technical quality of the material).

7. The reference to ‘Consultations prior to adoption’ in the Explanatory Memorandum should be corrected

Under point 2. ‘Consultations prior to the adoption of the act’, the Explanatory Memorandum of the draft delegated regulation describes the feedback from stakeholders at the 7 June 2022 meeting of the Animal Health Advisory Group as being “largely supportive” of this delegated regulation. ECOFI was a participant in this meeting, and contests the description of this meeting as being “largely supportive” of the adoption of this Delegated Regulation. Stakeholders did express support for the definition of end points in general so that materials derived from animal by-products can be incorporated into EU Fertilising Products under Regulation (EU) 2019/1009. However, we were given very little information and were not shown the draft delegated regulation – therefore it would have been impossible to express support for the draft as we did not yet know what it would contain. Secondly, a number of questions went unanswered and a number of frustrations with the process were voiced during

this meeting. **Therefore, ECOFI deems it disingenuous to describe the meeting in this way in this draft Delegated Regulation and would contest this statement.**

Furthermore, when the end points and risk mitigation measures were described to stakeholders and competent authorities at the 14-15 July meeting of the Commission Expert Group on Fertilising Products, both stakeholders and Member States were vocal that the proposals were not aligned with the functioning of the market or fertilising products.

Conclusion

In conclusion, in order to get the balance right between ensuring health and safety in ways that will not disrupt the operation of existing markets and will allow the Fertilising Products Regulation to fulfil its aim to enable the placing of safe organic-based fertilising products on the Single Market, the following changes are needed to the draft delegated act defining fertilising product end points for derived products from animal by-products:

- ✓ The reference to the catalogue of feed materials needs to be deleted.
- ✓ The mitigation measures outlined in Article 4(2) and Article 4(3) of the draft delegated act should be deleted in their entirety as they do not change the risk profile of the derived products themselves, are unworkable, and do not reflect the realities of the market.
- ✓ The reference “or obtained through a transformation process from 1 to 6 (Annex IV Chapter III Reg. 142/2011) starting from category 3 materials, as per Annex XI Chapter II Section 1, point 1 (C)” should be added to the endpoint for hydrolysed proteins.
- ✓ Articles 3 and 4 should refer to plants authorised under Article 24(1) subpoints (a), (b), (f), and (g) of Regulation (EU) No 1069/2009, not only a reference to point (f).

Thanks

We would like to thank all the associations, National and European, who contributed to the survey collection and input to this paper.

45 companies responded. They are members of AEFA (Spanish national association), Afaïa (France), Artemis (Netherlands), Assofertilizzanti (Italy), Belfertil (Belgium), EBIC (European Biostimulants Industry Council), ECOFI, IVA (Germany), SPEL (Greece), and UNIFA (France). Companies were asked to include any sales that would fall under the Product Function Categories of Regulation (EU) 2019/1009 and to exclude any production that is destined for feed, cosmetics, or other non-fertilising product uses.



24/10/2022 | Feedback on draft delegated act for ABP end points

About the associations co-signing this position



The European Consortium of the Organic-Based Fertiliser Industry (ECOFI) represents European producers of organic fertilisers, organo-mineral fertilisers, and organic soil improvers. ECOFI membership is open to European producers in the sector whose production fully ensures the upstream traceability and the origin of raw material components.

For more information about this topic, please contact Jessica Fitch (jessica@prospero.ag | +32495316244).



Costituita nel 1985, Assofertilizzanti - Associazione nazionale produttori di fertilizzanti - è una delle 17 Associazioni di Federchimica - Federazione Nazionale dell'Industria Chimica - che tutela e rappresenta tutte le realtà produttive del settore dei fertilizzanti. Per perseguire questo scopo raggruppa i principali operatori del settore dei fertilizzanti, con un fatturato complessivo di circa un miliardo di euro, pari a oltre il 90% dell'intero mercato nazionale.

Per maggiori informazioni su questo tema, si prega di contattare Lorenzo Faregna (l.faregna@federchimica.it | +390234565218)



Organisation professionnelle, l'UNIFA a pour mission l'expression collective des besoins et positions de ses membres. Elle produit également les statistiques officielles de livraisons d'engrais pour le compte de l'Etat.

Si vous avez encore des questions sur le contenu de la position, merci de contacter Florence Catrycke (fcatrycke@unifa.fr | +336 26 03 49 01).



Le représentant pour la France des entreprises fournissant les matières fertilisantes et intrants innovants des cultures végétales durables. Syndicat professionnel des acteurs de la filière des supports de culture, paillages, amendements organiques, engrais organiques et organo-minéraux et biostimulants.

Si vous avez encore des questions sur le contenu de la position, merci de contacter Laurent Largent (laurent.largent@afaia.fr | +33 2 41 20 19 09).



24/10/2022 | Feedback on draft delegated act for ABP end points



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L'UPJ est l'association professionnelle de référence de l'univers du jardin et des espaces publics en France. Elle rassemble les fabricants de produits de protection des plantes (dont le biocontrôle), d'engrais, de supports de culture (terreaux), d'amendements, de biostimulants et de produits d'hygiène publique de qualité pour les jardiniers et professionnels des espaces publics.

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