BDE
Bundesverband der Deutschen Entsorgungs-,
Wasser- und Rohstoffwirtschaft e.V.
Wirtschafts- und Arbeitgeberverband

BDE-comments to the

Proposal for a regulation of the European Parliament and of the Council laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009

Trilogue

BDE, the Federation of the German Waste, Water and Raw Materials Management Industry, expressly welcomes the fact that the scope of the European Fertiliser Ordinance extends to substances of organic origin. For the first time, compost and digestate thus have the opportunity to reach the end of waste by means of uniform EU regulations and to become freely tradeable in the European internal market. We also expressly welcome the choice of manufacturers to become EU fertilisers or not (optional harmonisation).

However, the proposed minimum nutrient levels for solid and liquid organic fertilisers [PFC 1 (A) (I) and (II)] exclude composts and digestates, produced from source separated biowaste from households, from this category. This means they will be categorised at most as organic soil improvers [PFC 3 (A)]. In Germany, however, these products are marketed as organic fertilisers. We regret this development and, with regard to the importance that composts and digestates from the circular economy have, this is in our opinion not justified.

It also remains incomprehensible why the reference system for nutrient contents is not the dry matter. The water content of the organic fertiliser may now decide whether the product is freely tradable or not.

For the ongoing trilogue negotiations, we have some comments on the following points. We would be pleased if you take our considerations into account and are gladly available for further inquiries:

I Demarcation between component material categories CMC 2, 3, 4 and 5

It must be excluded that biowaste which is subject to treatment obligations can be used in material categories where treatment and hygiene requirements are either non-existent or insufficient to produce a safe product.

Regarding CMC 2 in Annex II Part II:

BDE basically supports the definition proposal of the Council but suggests a supplement. The Council proposal reads as follows:

> "CMC 2: PLANTS, PLANT PARTS OR PLANT EXTRACTS
> 1. An EU fertilising product may contain plants, plant parts or plant extracts having undergone no other processing than cutting, grinding, sieving, sifting, centrifugation, pressing, drying, freeze-drying or extraction with water or supercritical CO_2 extraction."

It contains a very broad definition of materials for which there are no treatment requirements (such as compliance with certain minimum temperatures). For example, this would include green waste from parks and gardens, roadside vegetation or other plant residues that could be contaminated with plant germs. However, these materials should fall into categories CMC 3 and CMC 5.

BDE strongly recommends a clarification in CMC 2 that mechanical treatment only is not permitted for biowastes as defined by the Waste Framework Directive (2008/98 / EC) and for plant material that could be contaminated with germs.

BDE therefore proposes the following addition in No 3 (new):

„3. For the purpose of paragraph 1, the following items are excluded:
- biowaste within the meaning of Directive 2008/98/EC,
- any plant materials from agriculture and forestry, which do not fall under the definition of waste within the meaning of Directive 2008/98/EC and which are possibly infected with epidemiological relevant plant diseases or traces of mycotoxins."

Regarding CMC 4 in Annex II Part II:

The EP proposes the supplement "and plant-based bio-waste" to the title of category 4 (amendment 242). This supplement is misleading, because plant-based biowaste rather belongs to the categories CMC 3 or CMC 5. BDE rejects this EP proposal.

BDE, however, supports the proposal of the Council, which encourages the term "fresh crop digestate". According to the COM proposal, the name of the category is "Energy crop digestate", which can also be supported.

In addition to this, the following should be included under No 1: "excluding biowaste as defined by Directive 2008/98/EC". Biowaste requiring treatment clearly belongs to CMC 3 or CMC 5.

II Bacteria measurement

The Commission proposal provides that for, inter alia, organic fertilisers, soil improvers and growing media (PFC 1 (A), PFC 3 (A) and PFC 4), a certain bacteria content may not be exceeded. It is either Escherichia coli or Enterococcaceae with less than 1,000 CBU in 1 g or 1 ml of the original substance.

BDE is in favour of completely eliminating this requirement.

It makes no sense to measure and regulate such a parameter in end-products of a biological treatment of organic materials. These are applicable in the Animal By-Product Regulation (1069/2009/EC) mainly as a process parameter to cross-check the effectiveness of the sanitation step of the treatment but give no information in finalised products, due to the fact, that in

natural occurring circumstances, E. coli or Enterococcus is subject to regrowth, which is a natural process without influencing the product quality. For the final product assessment, the adequate parameter for hygiene aspects is Salmonella.

III Aflatoxin

The EP proposes that only "material without aflatoxin" may be used in waste fermentation (CMC 5) (see amendment 255).

BDE recommends following the line of the Commission and the Council and deleting the EP-requirement in Annex II Part II.

Aflatoxins are fungi that can cause problems in agriculture, however, limited to mouldy animal feed. To suggest a requirement for an analysis of the presence of this fungus for every input material into fermentation processes, is disproportionate and logistically a challenge. Specifically, how timely should a reactor dosing take place after the (batch-wise?) analysis? Without an on-site laboratory, this requirement would not be feasible. In Germany there is no such requirement. Before such a decision is taken, it should first be plausibly demonstrated that there are sufficient reasons to introduce this non-targeted requirement. Otherwise, it could cause more harm than good.

IV Animal by-products in CMC 3 and CMC 5

It remains unclear to what extent animal by-products are permitted as input materials for the component material categories CMC 3 and 5 (see Annex II Part II respectively CMC 3 and CMC 5 No 1 (b), 1 (c)).

While on the one hand the Commission generally allows animal by-product (cat. 2 and 3), according to the EP and Council, on the other hand, animal by-products (cat. 2 and 3) must be transformed into products that have reached an end-point in the production chain. Does that mean that only treated animal by-products would be acceptable sources for a composting or a fermentation process? Furthermore, it is unclear in the parliamentary proposal why composts (CMC 3) have different requirements than those for digestates (CMC 5).

From our point of view, the most conclusive proposal remains the one by the European Commission.

V Stability criteria for composts and digestates

For composts and digestates, certain stability criteria must be met (see Annex II Part II CMC 3 No 6 and CMC 5 No 7). With the exception of the rotting degree, these are not yet known in Germany or they are not applied.

BDE asks to take into account that farmers are very keen to use organic fertilisers that are still biologically active and thus stimulate soil life and plant growth. The higher structural content in less rotted material also leads to improved soil aeration. The main sales route for composts and digestate is agriculture (composts approx. 60%, digestates nearly 100%)[1], so that too stringent stability parameters would not meet market demand.

For CMC 3, the EP proposal should be supported: maximum oxygen uptake rate of 50 mmol O_2 per kilogram of organic material per hour.

For CMC 5, the proposal from the Commission and the Council should be adopted: oxygen uptake rate as in CMC 3 (maximum 50 mmol, which also serves to harmonise requirements) and residual biogas potential of up to 0.45 litres of biogas per gram of volatile solids.

VI Composition of organic soil improvers

Annex I Part II PFC 3 (A) No 1 specifies what organic soil improvers may consist of. The proposals for the minimal content of material of biological origin vary from 15 percent (EP), to 95 percent (Council) or even 100 percent (COM).

It is our impression that neither proposal fully fits the nature of soil improvers. This is because even substances of biological origin (e. g. potting soil attached to plants, egg shells, etc.) contain inert parts. This means that the percentage of the source material that is of biological origin is never 100 percent and likely almost never 95 percent. This would have to be added to the definition. A suggestion, based on the Council proposal, because it also takes into account the additives, which can make up to 5 percent by weight, is as follows (supplement is marked in bold):

> „1. An organic soil improver shall consist of material, 95% of which is of solely biological origin, **not taking into account unavoidable inert attachments or components, and** including leonardite, and lignite, but excluding other materials, which are fossilized or embedded in geological formations."

VII Plastic impurities

In total, not more than 0.5 percent impurities of glass, metal and plastic greater than 2 mm may be present in compost and digestate, see Annex II Part II No 4 (for CMC 3) and No 5 (for CMC 5). The Council proposal adds that the individual substances glass, metal or plastic must not exceed 0.3 percent. Plastics should be further reduced to a maximum of 0.25 percent after 5 (COM and EP proposal) or 10 years (Council proposal).

[1] See H&K volume 1/2017, p. 3-6, download available at www.kompost.de (in German).

For the acceptance of organic fertilisers from the circular economy, strict requirements regarding impurities are indispensable. BDE therefore supports any attempt to pursue ambitious targets for the reduction of impurities, especially if the product is freely tradable in the internal market.

Also in Germany, a limit of 0.5 % (including waste paper and cardboard) applies to the sum of impurities above 2 mm. However, two different control parameters are used to measure compliance with this value. These address the problem of plastic films, which are very light and - hidden in a sum parameter – could quickly lead to a large contamination, despite compliance with legal requirements. Consequently, the foils and non-degraded plastics (e. g. from compostable bags) must comply with a limit of 0.1 percent in Germany and the remaining impurities (waste paper, cardboard, glass, metals and rigid plastics greater than 2 mm) have a limit of 0.4 percent. The requirements at national and European level are therefore not directly comparable.

However, using the quality protocols of the "Bundesgütegemeinschaft Kompost e.V.", it can be stated that quality assured composts and digestates in Germany could also meet the European product targets.

BDE supports the council proposal to limit the individual substances of glass, metals or plastics to 0.3 percent of the dry matter, but cannot understand why the target value for plastics of 0.25 percent should be met only in 10 years. The COM and EP proposals of 5 years should be taken up here.

Furthermore, BDE suggests making a differentiation between films and rigid plastics since a product containing 0.3 percent by weight of films, which would comply with the statutory requirements, is certainly not a marketable product and should not be freely traded across Europe.

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