

(08) PR 19
27.11.2008

FEFAC's general opinion on the draft proposal for a Recasting of the Animal By-Products Regulation

(COM(2008) 345 - 2008/0110(COD))

1. Introduction

FEFAC welcomes the proposal of the EU Commission for a new Regulation on Animal By-Products as an attempt to make the rules on ABP more understandable for operators of the ABP chain and other interested parties.

In a nutshell, FEFAC welcomes:

- the approach whereby detailed technical requirements would be established through a separate EU Commission implementing regulation;
- the proposed maintenance of the ban on intra-species recycling of processed animal proteins (subject to specific implementing rules as for example for the use of processed animals from farmed fish into farmed fish);
- strongly the maintenance of the ban on the feed use of catering waste;
- the intended objective of clarification of the scope of the regulation via the introduction of the end point concept .

FEFAC is however concerned that the end point concept is not applied to uses of ABP derived products for feeding food-producing animals, thus not meeting the objectives of clarification set forth in the proposal and not taking into account the implementation of the Feed Hygiene Regulation (EC) No 183/2005. We see the establishment of an end point for feed use of ABP derived products as a prerequisite and consider that it should be defined at the gate of the first placer on the market of feed as defined in the General Food Law (EC) No 178/2002.

You will find hereafter some more detailed comments and suggestions viewed from a compound feed manufacturer perspective, with a particular focus on feed safety considerations. We would however underline that these comments may be reviewed and adapted in the light of the implementing rules which will complete the ABP legal framework at a later stage.

2. General comments

2.1. End point

We appreciate the intention to clarify the scope of the ABP legal framework, i.e. the point from which a derived product is not longer covered by the future ABP Regulation. We however regret that this concept is not applied for feed uses. Today, the absence of clarity regarding this end point has given rise to diverging interpretations at national level, in particular as regards the application of ABP rules for transport and labelling to compound feed containing ABP derived products such as whey powder or animal fats.

FEFAC position is that an end point for feed use should be established in the framework legislation. ABP derived products should be excluded from the scope of the ABP legislation as a matter of principle on the moment they fall under a legal framework providing equivalent guarantees as regards the safe use and product traceability. As regards feed uses, we consider that the end point should be the placing on the market of the derived product as feed material, i.e. after processing by a category 3 processing plant. Category 3 ABP derived products destined for feed use do fall clearly under the scope of the Regulation of the European Parliament and the Council on Feed Hygiene (EC) No 183/2005 which establishes a feed safety legal framework implementing the principles laid down in the EU General Food Law (EC) No 178/2002 and mirroring in all its key aspects the EU Regulation (EC) No 852/2004 on Hygiene of Foodstuffs (HACCP, traceability, approval / registration of feed establishments, guides to good practices, prevention of cross-contamination, etc.). Additional requirements in relation to the feed use may be imposed under other legal frameworks if need be, as is the case today with the so-called “feed-ban provisions” laid down under the EU TSE Regulation (EC) No 999/2001. We would therefore suggest withdrawing article 24(2)(b) (specific provisions on traceability and prevention of cross-contamination to be developed by comitology) and to consider these provisions in the scope of the Feed Hygiene and the TSE Regulations.

2.2. Restrictions on feed use (Article 18)

FEFAC would like to support the prolongation of the existing ban on the use of processed animal proteins from an animal species for feeding animals of the same species (so-called intra-species recycling ban). We noted in this context that the term “processed animal proteins” is no longer defined in the proposed regulation, which could give rise to diverging interpretations by chain partners and by national authorities. We would strongly recommend providing a clear legal definition for this term.

FEFAC would like to stress the absolute necessity to maintain the ban on the feed use of catering waste, considering that:

- Inadequate processing of catering waste used for pig feeding was regarded as responsible for several outbreaks of zoonoses and infectious animal diseases over the past years;
- Catering wastes are not traceable
- Catering waste may in particular contain animal proteins whose use in animal feed is presently prohibited; and may thus lead to a breach of the intra-species recycling ban

We would however question the rationale of prolonging these bans within the scope of the ABP Regulation. We do consider that the restrictions on feed use should be laid down in the so-called “negative list” of prohibited substances and products for animal feeding purpose which has been taken up in the scope of the Commission proposal COM (2008) 124 on the placing on the market and use of feed recasting existing EU rules for the marketing of feed materials and compound feed.

2.3. Approval / registration of operators (article 7)

We do welcome the objective to avoid duplication of approval procedures for those operators which would already be subject to approval under the EU Regulations on Food and Feed Hygiene (resp. Regulation (EC) No 852/2004 and 183/2005). However, the present wording for article 7(1) would extend this exemption from approval to feed businesses simply registered under Regulation (EC) No 183/2005. This means that those Category 3 ABP processing plants which place derived products on the feed market and are registered for that purpose as feed business operators under Regulation (EC) No 183/2005 could be fully exempted of any approval procedure. In our opinion this goes beyond the objectives of the proposal and we would like to insist

that any ABP processing plant processing should be subject to approval, whatever the Category of ABP it processes. In case an end point is set at the ABP processing plant gate as regards feed use of ABP derived products, we consider that the derogation laid down under article 7(1)(a)(ii) should be withdrawn. For the same reason, the provision under article 7(2) requiring any operator to be registered under the ABP Regulation should not apply to feed business operators beyond the end point, i.e. the gate of the ABP processing plant.

3. Detailed comments

- Recital (8): The prohibition laid down in article 20 of Regulation (EC) No 1774/2002 of use of material derived from an animal for feeding an animal of the same species does not apply to animal fat. This should be reflected in recital (8).
- Recital 31: considering that the ABP regulation is at an intermediate stage between food hygiene and feed hygiene regulations we would welcome a direct reference to the Feed Hygiene Regulation (EC) No 183/2005 as a further example of regulations having been issued further to the publication of the General Food Law (EC) No 178/2002 and placing primary responsibility on operators.
- Recital 36, Article 11(c) and Article 19(d): we understand that the intention of the EU Commission in Article 19(d) is to allow detoxification of Category 1 ABP referred to under article 11(c) (e.g. those ABP from animals having been subject to illegal treatment with hormones or illegal medicines) to enable such products to be reused for feed purpose after processing. We do not clearly understand the intention of the legislator for several reasons:
 - We would have expected a similar provision in article 20 for the detoxification of ABP from Category 2 referred to under article 12(c);
 - We believe that such a provision could be misleading as it is generally admitted that Category 1 ABP are not designed for feed use, at least not for food producing animals.

In our opinion, such confusion should be avoided. We would like nevertheless to stress that certain derived products may require detoxification to meet the maximum permitted levels for certain contaminants as established under Directive 2002/32/EC. The most emblematic example is the possible presence of dioxins in fish oil in excess of the maximum permitted levels. However, in our opinion, this issue is being presently addressed through a modification of the future EU legislation on the placing on the market and use of feed that would establish provisions for the transport and labelling of material designed to become a feed material but which would exceed the maximum permitted levels set up in Directive 2002/32/EC (see COM(2008) 124).