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Commissioner for Environment
Mr. Janez Potočnik
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Notification of the German Material Cycle and Waste Management Act

Dear Mr. Commissioner Potočnik,

Biogas as a multi-talent is of great importance for the production of electricity from renewable sources (DG Energy), fuel (DG Move) and also of sustainable fertilizer (DG Envi and DG Agri). Thanks to the efforts undertaken by the German government, development has been taking very great strides during the last ten years. At present, about 6,000 agricultural biogas plants with a total installed capacity of approximately 2 Gigawatt operate on the basis of energy crop and manure in Germany. These biogas plants, unlike about 800 biogas plants digesting organic waste, are not subject to the legislation on waste but are subject to a number of other requirements for approval which ensure that these plants are operated in accordance with legal environmental requirements. They produce about 80% of the biogas from agricultural sources in Europe. Therefore, Germany is taking an important leadership role. All other member states are guided by this.

From the present discussion on the notification of the German Closed Material Cycle and Waste Management Act (Draft) between the EU Commission and the German government we learn that the DG Envi, by and large, lacks an understanding of the value of converting manure into energy (biogas) and fertilizer (digestate). Let us summarise the facts in brief:

- Manure as animal by-product, has so far not been within the scope of legislation on waste because it is subject to the Animal-by-products (APB) Regulation No. 1069/2009/EC (former 1774/2002/EC). This exclusion applied irrespective of the further use of the by-products. The ABP regulation clearly states (Art. 13) that Category 2 materials shall be (e) composted or transformed into biogas...(ii) in the case of manure....following or without prior processing.
- The new European Waste Directive 2008/98/EC (WFD Art.2, paragraph 2 (b)) includes in the scope of this Directive animal by-products destined for use in a biogas plant. However, manure which is used directly as fertilizer, i.e., not by way of a biogas plant, still is legally no waste.

In its Draft of the Material Cycle and Waste Management Act of March 30, 2011, the German government came to the conclusion that manure which complies with the quality requirements of the fertilizer legislation and is intended for use as fertilizer is no waste even if it is digested in an agricultural biogas plant before being spread as fertilizer because this is not a case of discarding as intended by Article 3 paragraph 1 WFD. Or the manure at least meets the requirements of a by-product pursuant to Article 5 paragraph 1 (a) to (d) WFD. On the other hand, manure, if it does not meet the requirements of the legislation on fertilizer or is mixed with waste in a biogas plant, can definitely qualify as waste, as shown in the justification of the German draft. EBA strongly supports this view.



Manure can be used in agricultural biogas plants in the same way as „other natural non-hazardous agricultural or forestry material“ (Article 2 paragraph 1 letter f WFD). The environmentally friendly operation of agricultural biogas plants is ensured under existing European environment legislation and national law without manure being categorised as waste. Farmers operating an agricultural biogas plant for reasons of environmental and climate protection will not understand digestion of manure classifies them as waste producers. This implies an unnecessary higher amount of investment and administrative effort. It disqualifies those farmers that try to use one of Europe's largest biomass potential in order to reduce the pressure on growth of energy crops (food or fuel discussion).

Also other countries like the Czech Republic and Sweden having not yet transposed the WFD into national law are going to face the same problem. In EBA's opinion such a discrimination of manure destined for digestion against raw manure is scientifically not explicable:

- The fertilizer quality of digested manure is better than that of raw manure
- Consequently, the use of synthetic chemical fertilizer is lower
- The ammonia is easier to dose because of the improved homogeneity. Digestate is therefore less subject to pollution risk
- The risk of methane emission after digestion and storage in a covered tank is 90 % lower than with raw manure in open storage tanks
- The hygiene status of digested manure is substantially higher.
- When compared to raw manure, digestate does not create any additional risk for soil, water or air either during storage, transport nor utilisation as fertilizer
- Digestion causes less odour emission when manure is spread

Dear Mr. Commissioner Potočník, in view of the threatening issue, we request you urgently to intervene personally that manure is not turned into waste if intended to be digested in agricultural biogas plants. By including manure to be digested into the Waste Framework Directive, there is reason to fear that this excellent input material will no longer be used in biogas plants. This would be a substantial obstacle to the future development of agricultural digestion and reduces the benefits for climate, the environment and hygiene.

In case of any further questions please do not hesitate to contact us. We will be pleased to discuss the matter in a personal meeting.

Sincerely yours,

European Biogas Association
President

Dr. Arthur Wellinger

German Biogas Association
Managing Director

Dr. Claudius da Costa Gomez

A copy of this letter has been sent to your colleagues Commissioner Oettinger, Commissioner Ciolos and Commissioner Kallas