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# Position Paper

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## EDA position on the legal status of former foodstuffs for feed use

### EDA contribution to the Commission consultation on EU guidelines

#### Background information

According to **Commission Regulation (EU) No 68/2013**, 'Former foodstuffs' means foodstuffs, other than catering reflux, which were manufactured for human consumption in full compliance with the EU food law but which are no longer intended for human consumption for practical or logistical reasons or due to problems of manufacturing or packaging defects or other defects and which do not present any health risks when used as feed<sup>1</sup>. For dairy, the term refers to a broad variety of products to whey powders and left-overs from cheese production.

As specified in the **Communication on Circular Economy** (COM (2015) 614 final)<sup>2</sup>, the Commission has planned to take measures to clarify the EU legislation in order to facilitate the utilisation of former foodstuffs for animal feed, thus reducing food waste. EDA underlined the importance of circular production cycles and its long history, and examples in the dairy production chain, in a public factsheet and input to the COM consultation<sup>3</sup>.

One of the actions coming out of the COM communication is the COM work on draft **guidelines on the legal status of 'former foodstuffs' for feed use**, which will be structured in four main sections. It asks concrete cases of the interfaces food - retail – feed, information about potential knowledge gaps in the food industry or retail sector that could be addressed by communication or training, or other hurdles to open up the use of former foodstuffs as feed.

#### General remarks

The use of by-products in the dairy sector has a long history and tradition, and it part of an orientation to an always more resource efficient future of the business. Most, if not all of the materials, and resources that are utilised by the dairy sector are being used and re-used several times within the cycle, or recycled to be put to other uses. The overall circular approach in dairying not only includes aspects of the environmental dimension, but also encompasses the full respect of animal welfare<sup>4</sup> and of the social and ethical dimension.

<sup>1</sup> COMMISSION REGULATION (EU) No 68/2013 of 16 January 2013 on the Catalogue of feed materials, p.3.: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:029:0001:0064:EN:PDF>

<sup>2</sup> Communication on Circular Economy (COM (2015) 614 final): [http://europa.eu/rapid/press-release\\_IP-15-6203\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6203_en.htm)

<sup>3</sup> EDA position on a Circular Economy: [http://eda.euromilk.org/fileadmin/user\\_upload/Public\\_Documents/EDA\\_Position\\_papers\\_-\\_Fact\\_Sheets/Position\\_papers/EDA\\_statement\\_on\\_circular\\_economy\\_Oct.2015.pdf](http://eda.euromilk.org/fileadmin/user_upload/Public_Documents/EDA_Position_papers_-_Fact_Sheets/Position_papers/EDA_statement_on_circular_economy_Oct.2015.pdf)

<sup>4</sup> EDA factsheet on animal welfare: [http://eda.euromilk.org/fileadmin/user\\_upload/Public\\_Documents/EDA\\_Position\\_papers\\_-\\_Fact\\_Sheets/Sustainability/2015\\_05\\_08\\_EDA\\_statement\\_on\\_animal\\_welfare.pdf](http://eda.euromilk.org/fileadmin/user_upload/Public_Documents/EDA_Position_papers_-_Fact_Sheets/Sustainability/2015_05_08_EDA_statement_on_animal_welfare.pdf)



It is of major importance that the future guidelines of the COM on 'former foodstuffs' and their settlement in the overall picture of hygiene and animal health related laws indeed do support an increased use of animal by-products from the food sector as feed, where use as food is no longer possible, and does not negatively impact other by-products from the dairy industry. The dairy industry already regrets some inconsistencies between the different sets of legislation and would very much welcome this exercise and an opportunity to further streamline the diverse requirements.

## EDA input for each section of the Commission guidelines

1. Regarding the current legal framework and consequences for different operators in the field (food, feed, waste) and the competent authorities in the Member States, the definition of 'former foodstuffs' should be clarified, specifying that a product becomes a former foodstuff – and has to follow the regulations for feed – solely when it is decided not to be used as food anymore. Otherwise it remains covered by the food legislation.

EDA is of the opinion that the current legal framework leads to a not transparent situation because:

- Different pieces of legislation (food, feed, animal by-products) are applicable.
- Private schemes like GMP+ impose additional requirements, and enable several competent authorities and third party auditors to provide their view of the situation.

2. Regarding the detection of administrative burden, obstacles and barriers for the feed use of former food, the administrative burden for the dairy sector is high and mainly consists of:

- Registrations or approvals under different legal regimes are necessary → ABP status from hygiene perspective/question of responsibility for a feed material: risk for food manufacturers to also need to get authorisation as feed manufacturers
- Different competent authorities have to be dealt with.
- Several rounds of audits under the different legal regimes are performed.
- Transport restrictions for food, feed and animal by-products: if feed materials are further clarified as being produced as such, it is likely that a second set of trucks to transport ABPs from a dairy processing site (especially for whey powders) will have to be used. The challenge is that transport (even after cleaning) of food materials is restricted – by the food hygiene legislation – to containers/trucks separate from those containing ABPs. In practice this has proven as being an unrealistic and unjustified burden, as for example a truck transporting milk for human use would also be used to transport milk intended for feed use – the only change would be the 'intention', the product else being the same. We would welcome facilitation of this issue laying between ABP and food hygiene legislation.
- Re-labelling of former foodstuffs/animal by-products
- Application of treatments that are suitable for a situation when Foot and Mouth disease exist, in a situation where no Foot and Mouth disease exists. The requirements of the ABP regulation for milk and milk products that are put forward to prevent the spread of the Foot and Mouth disease, should only apply in crisis situations.
- Dairy products with passed durability date

In certain MS it seems to be the rule that products with passed durability dates are automatically categorised as category 2. This would be a burden, not in full alignment with the legislation. We would welcome a clarification of the COM in the guidance to allow these to be category 3 material.



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3. Regarding best practices for the safe introduction of former food into the feed chain, producing under food safety/hygiene requirements and complying with feed catalogue is already the best possible practice.

However, great improvements would derive from:

- One competent authority dealing with all aspects in a consistent way.
- No system of multiple registrations.
- Integral auditing of all aspects involved in one go.
- Simplification of the presentation of the legal requirements; e.g. technical aspects for the complete dairy chain should be presented in one easy to read document.

4. Regarding the recommendations for business operators and competent authorities, EDA suggests that all authorities involved should work on a total chain approach aiming to fulfil food and feed safety and taking into account circular economy requirements.