



Main Office	AGEG c/o EUREGIO	Enscheder Str. 362	48599 Gronau (Germany)
Project Office	AEBR c/o BISDN	Körnerstraße 7	10785 Berlin (Germany)
AEBR Antenna in the EU	Office of Extremadura in Brussels	Av. De Cortenberg 87-89	1000 Brussels (Belgium)
AEBR Info Centre in the Balkans	Institute for International and CBC	Terazije 14/14	11000 Belgrade (Serbia)
AEBR Info Centre in Ukraine	Univ. Simon Kuznets (KhNUE)	pr. Lenina, 9a	61001 Charkiw (Ukraine)



## TEMPLATE: FINAL REPORT BY THE EXPERT

**Advice case title: Further processing and exchange of biogenic plant and animal by-products using the example of sheep's wool**

**Full official name of the advised entity: Prof. Dr. Urs Kramer**

**Name of the expert contracted for the advice case: Prof. Dr. Urs Kramer**

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### Table of content:

#### I. Executive summary

This report is based on a number of (legal) questions that have been asked by the "Euregio Zugspitze Wetterstein Karwendel" organization. Following this report, the questions can be answered as follows.

**Question 1: What is the legal situation regarding the processing of sheep's wool into fertilizer pellets in Germany? Do the specifications and requirements of the veterinary office responsible for the district of Garmisch-Partenkirchen actually correspond to the current legal situation?**

Sheep's wool can be processed into fertilizer pellets in compliance with EU regulations. Germany has not created any regulations that deviate from the European requirements.

The German veterinary offices are not authorized to make independent deviating regulations, so that the specifications of the veterinary office of the district of Garmisch-Partenkirchen – if they comply with the EU requirements (which can be assumed at the moment due to a lack of more detailed information) – comply with the applicable legal situation.

**Question 2: What requirements must be met in the other regions where such pellet presses are already in operation in Germany? How do the operators meet these requirements in order to maintain economic viability? Are there any (differing) agreements with the veterinary authorities in these regions regarding sterilization?**

Pellet press operators in other regions of Germany must also comply with the EU requirements described above. Deviating agreements with the veterinary offices cannot be made.

All the pellet press operators surveyed agree in their responses that operation is not economically viable due to these strict requirements.

**Question 3: What are the requirements set by the veterinary authorities in Austria - are they lower, higher or the same as the requirements in Germany?**

The requirements of the Austrian veterinary authorities are not publicly available. However, the same EU requirements must be observed in the absence of any deviation from them in Austrian law. An Austrian pellet press operator has confirmed the comparability of the "strict line" of the laws and requirements of the veterinary authorities in Germany and Austria.

**Question 4: What is the legal situation with regard to the cross-border exchange of biogenic materials using the example of sheep's wool and with special regard to the import and export of the fertilizer produced from it in the Bavarian-Austrian border region, taking particular account of European primary law (especially the fundamental freedoms) and, where applicable, specific secondary law? Another question raised is whether the sale of pellets that do not comply with the sterilization requirements of the competent German veterinary office is permissible and whether the free movement of goods conflicts with waste management laws.**

The European regulations on the sale of sheep's wool as fertilizer restrict the free movement of goods. However, they are justified for the protection of health. A cross-border exchange of sheep's wool is still possible anyway as long as the requirements for the transportation of wool must be observed. They are the same for everyone and are therefore not objectionable under EU law.

- II. Description of the obstacle with indication of the legal/administrative provisions causing the obstacle

1. Facts and problem definition

According to the organization "Euregio Zugspitze Wetterstein Karwendel", only the clean back wool of the sheep can be used for the production of high-quality sheep's wool products for technical processing reasons. The dirty back wool and the entire

belly wool of the sheep, which cannot be used for this purpose, must therefore currently be disposed of (amounting to multiple tons in this region alone). Alternatively, however, it could be processed into high-quality fertilizer for gardening and agricultural businesses as well as hobby gardeners. In order to be able to work the wool into the soil as effectively as possible for the purpose of fertilization, it makes sense to press it into pellet form.

A sheep's wool pellet press of this type has been in operation in Liebenau (Upper Austria) for twelve years. The resulting pellets are supplied to businesses throughout Europe, for ex-ample in Sweden, Norway, Cyprus, the Netherlands and Germany.

In Germany, there are such pellet presses in Dießen am Ammersee and in the region of Rhön, among other places. They are supplied with wool by sheep farmers from all over Ger-many. However, for sheep farmers from the district of Garmisch-Partenkirchen (6,600 sheep in Garmisch-Partenkirchen, a further 2,000 to 3,000 sheep in the neighboring Tyrolean region; the sheep are shorn twice a year), the use of these pressing plants is not profitable due to the cost of transport and processing.

That the district of Garmisch-Partenkirchen does not operate its own press is due to the fact that the specifications regarding the duration and methods of sterilization of the sheep's wool – i.e. prolonged heating with high energy input or pressure sterilization using expensive machines – made by the competent veterinary office for its further use (instead of its disposal) would be too costly and energy-intensive. The end product would then no longer be cheap enough. The required type of sterilization (the "factory wash") would also have a negative impact on its properties as a fertilizer as it would destroy important bacteria for the fertilizer.

## 2. Cross-border cooperation as possible solution?

Due to the inefficiency of further processing options, a significant quantity of the sheep's wool originating from Germany is disposed of. In the border region between Germany (Bavaria) and Austria in particular, however, cross-border cooperation could be considered to sustainably recycle the wool instead of disposing it. The animal by-products from Germany could be transported to Austria for further processing. The products manufactured in Austria, specifically the sheep's wool pellets, could then be imported back to Germany, at least in part, and sold there. This could also be done "the other way round", insofar as the regulations applicable in Germany allow Austrian sheep's wool to be brought to Germany for processing and the finished sheep's wool pellets then to be sold in Germany and Austria.

### III. Description of possible solution(s)

The issue in question is regulated at various levels of law.

#### 1. Union law

At European level, there are two regulations that deal with the processing of sheep's wool into pellets as fertilizer. One is Regulation 1069/2009 on animal by-products not intended for human consumption (the German "Animal By-products Disposal Act" is based on this; see Section 1 TierNebG). On the other hand, there is Regulation

142/2011 on the implementation of the above-mentioned Regulation.<sup>1</sup>

The second regulation in particular contains special provisions on the production of fertilizers from animal by-products, which are examined in more detail below.<sup>2</sup> A distinction must be made between processed (such as pellets) and unprocessed wool (i.e. wool as such).<sup>3</sup>

#### a) Processed wool

Art. 22 Regulation 142/2011 regulates the requirements for the placing on the market and use of organic fertilizers (their definition can be found in Art. 3 No. 22 Regulation 1069/2009). Accordingly, the requirements set out in Annex XI must be complied with for organic fertilizers.

While Chapter I regulates the requirements for unprocessed manure and derived products, Chapter II contains requirements for particular kinds of organic fertilizers. Section 1 then directly sets out the manufacturing conditions, whereby a distinction must be made according to the material category. The classification into the various categories (1-3) is based on Art. 8 of Regulation 1069/2009. Wool is therefore (No. 1 lit. c) to be regarded as Category 3 material (see Art. 10 lit. h) of Regulation 1069/2009).

In order to be able to produce organic fertilizers from sheep's wool, the wool must undergo certain processing steps in accordance with the Regulation. The following options are available:<sup>4</sup> factory washing or processing methods 1-7 (in Annex IV Chapter III). These each require elaborate and strictly specified work steps of shredding and treatment within parameters time, temperature and pressure. Explanations can be found in Annex XI Chapter II Section 1 No. 1 lit. c) VO 142/2011 and Annex IV Chapter III VO 142/2011. The fertilizer must be produced directly from the wool. Verification of method 7 requires proof of freedom from clostridia, which – according to feedback from practitioners – is most likely not easy to comply with. Whether fertilizers can be produced using one of these processing methods as well as the required effort cannot be conclusively answered by this expert opinion due to lack of technical knowledge.

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<sup>1</sup> In contrast, the EU General Fertilizer Products Regulation 2019/1009 is not applicable to the present case; cf. its Art. 1 para. 1 lit. a).

<sup>2</sup> In the absence of applicability (its para. 12 excludes animal by-products from the scope of application), Directive 2008/98 on waste is also not considered further. Moreover, there do not appear to be any rulings by the *European Court of Justice (ECJ)* in relation to this topic.

<sup>3</sup> Strictly speaking, a distinction should be made between treated and untreated wool (see Annex I to Regulation 142/2011 No. 31). However, since treated wool is to be used for the production of organic fertilizers, the unprocessed wool is used untreated and the present report is primarily concerned with the question of the use of wool as a fertilizer, the distinction between processed and unprocessed wool is more appropriate.

Of marginal importance are the requirements for the feeding of livestock with green fodder from areas on which organic fertilizers have been applied. Among other things, there is a record-keeping obligation here: Art. 5 No. 2 of Regulation 142/2011 refers to the restrictions set out in Annex II Chapter II of the Regulation if livestock are fed with green fodder from areas on which organic fertilizers have been applied. Initially, a waiting period of at least 21 days is stipulated. Reference is also made to the requirement to comply with Article 32 of Regulation 1069/2009. In addition, Annex VIII Chapter IV Section 4 of Regulation 142/2011 stipulates a recording obligation when organic fertilizers are applied to agricultural land.

<sup>4</sup> See also Annex I Regulation 142/2011 No. 31 on treated wool.

According to Annex XI Chapter II Section 1 No. 1 lit. b), an "other method" is also the production of fertilizers from animal by-products that have undergone so-called "other treatments". This method must ensure that no unacceptable risks remain (e.g. Annex I No. 31 lit. c).

Section 2 of Annex XI contains further requirements relating to organic fertilizers already produced.

The aim of the processing steps is to kill pathogens and bacteria. To this end, fertilizer manufacturers must ensure that the elimination of pathogens and bacteria has been carried out before the fertilizer is placed on the market. This is mentioned in Annex XI Chapter II Section 1 No. 5 1st indent of Regulation 142/2011. In particular, the absence of salmonella and compliance with the threshold values for enterobacteria must be ensured (Annex X Chapter I Section I Regulation 142/2011). The methods mentioned appear to ensure this; however, a case-by-case assessment may be necessary.

Manufacturers of fertilizer pellets suggested heating the raw wool at 80-85°C for three days and the pressed pellets at 60° C during interview. The pellets should then be heated to 110° C for 20 minutes.<sup>5</sup>

## b) Unprocessed wool

### a. Use of unprocessed wool as fertilizer

Sheep's wool can not only be used as fertilizer in pellet form. Raw wool is also ideal for this purpose and, in addition to its fertilizing effect, also has the advantage of keeping predators away from young plants.

Unlike sheep's wool which is pressed into pellets, the raw wool does not need to be treated and can be purchased directly "from the farmer next door".

Neither the more specific Regulation 142/2011 nor Regulation 1069/2009 contain explicit provisions on the use of unprocessed wool. However, the permissibility of their use can be justified by an interpretation of Art. 32 of Regulation 1069/2009 on the placing on the market and use of organic fertilizers and soil improvers. The provision states that

"Organic fertilizers and soil improvers may be placed on the market and used provided they are derived from Category (...) 3 material; ...".

Unprocessed sheep's wool is a Category 3 material. However, as Article 14(d)(iv) of Regulation 1069/2009 also shows, the wording "obtained" alludes to processing. Consequently, the fact that sheep's wool does not have to be processed in order to be used as a fertilizer does not seem to have been taken into account; the raw product is already suitable as a fertilizer without any further processing. However, if processed wool is already within the scope of Category 3, then this applies "a fortiori" to unprocessed wool (regardless of the fact that the use of Category 3 materials "without

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<sup>5</sup> According to the Robert Koch Institute, *Coxiella burnetii* (the pathogen that causes Q fever) is killed at temperatures of around 72°C for 40 hours. These pathogens should therefore be destroyed using this heating method.

processing" is standardized in Art. 14 lit. l) of Regulation 1069/2009).

The Regulation continues:

"...have been manufactured in accordance with the conditions for pressure sterilization or other conditions to prevent risks to public and animal health in accordance with the requirements of Article 15 and in accordance with measures adopted pursuant to paragraph 3 of this Article;..."

The processing steps to prevent hazards do not apply to unprocessed wool. Nevertheless, unprocessed wool can also pose health risks.

According to Art. 10 lit. n) of Regulation 1069/2009, however, only wool that "does not show any signs of disease transmissible to humans or animals through this product" falls under Category 3.

Consequently, only "non-hazardous wool" may be used as an unprocessed fertilizer.

It is also necessary that "...they come from approved or registered plants or establishments and...". Therefore, this requirement must be met.

Lit. d) of the Regulation is only relevant for Category 2 material.

#### b. Transportation of unprocessed wool

Irrespective of direct marketing from the farmer to the user, Regulation 142/2011 lays down requirements for the (cross-border) transport of unprocessed wool from a farmer to a pellet press operator.

According to Art. 17 No. 1 of Regulation 142/2011, animal by-products must meet the requirements set out in Annex VIII Chapters I and II on collection, transportation and identification. In addition, records must be kept in accordance with Annex VIII Chapter IV pursuant to Art. 17 No. 2 of Regulation 142/2011.<sup>6</sup>

Annex VIII of Regulation 142/2011 standardizes further conditions for transport. Of particular relevance are the provisions for vehicles and containers in Annex VIII Chapter I Section 1, the identification, which differs depending on the explicit use (Annex VIII Chapter II), and the provisions regarding recording in Chapter VI.

Special provision also exists for the import, export or transit of untreated wool, whereby this refers to imports and exports of wool from or to third countries or transit through the EU.<sup>7</sup>

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<sup>6</sup> In the absence of a derived product (see below), labeling in accordance with Art. 17 No. 3 Regulation 142/2011 is not required.

<sup>7</sup> This is clear from the wording of Art. 25 No. 1 of Regulation 142/2011 "*Import (...) into the Union*" and from the heading in Annex XIV Chapter I to Regulation 142/2011: "*Import into and transit through the Union*". Different conditions are imposed on treated and untreated wool (cf. the definition in Annex I No. 31 to Regulation 142/2011). For the import, export and transit of wool, Art. 25 No. 2 lit. a) Regulation 142/2011 stipulates that mechanically scoured wool or wool treated with another method that ensures that the wool no longer poses an unacceptable risk is not subject to animal health conditions. As cooperation with non-European countries is currently not desired by the clients for cost reasons, this aspect was not investigated further.

According to Annex XIV Chapter II Section 1 No. 8 of Regulation 142/2011, "firm and dry packaging" is required as well as "direct transportation that excludes the transmission of pathogens ...". A veterinary certificate is not required for the import of untreated wool.

### c) Art. 3 Regulation 142/2011

At least indirectly, the above distinction regarding the requirements for processed and un-processed wool is also made clear by Article 3 of Regulation 142/2011. With reference to Annex XIII Chapter VII lit. c) of Regulation 142/2011, this defines the so-called end point for wool (inter alia). According to recital 35 of Regulation 142/2011 and recital 22 of Regulation (EC) No 1069/2009, products that have reached this end point are exempt from the controls of Regulation (EC) No 1069/2009. The reason for this is that the products no longer pose any (or only a negligible) risk once this point has been reached.

According to Annex XIII Chapter VII lit. c) of Regulation 142/2011, the endpoint for wool is reached in the following situations:

"Wool (...) which has undergone a factory wash or has been treated by any other method which ensures that no unacceptable risks remain may be placed on the market without restriction in accordance with this Regulation.

Member States may, in accordance with this Regulation, authorize the placing on the market without restriction of untreated wool (...) from establishments or plants registered in accordance with Article 23 of Regulation (EC) No 1069/2009 or approved in accordance with Article 24(1)(i) of that Regulation on their territory if they have satisfied themselves that the wool (...) does not pose unacceptable risks to public or animal health."<sup>8</sup>

## 2. National legislation from Germany

German law is of no further use in answering the above questions:

The Animal By-products Disposal Act (Tierische Nebenprodukte-Beseitigungsgesetz (TierNebG)), which serves to implement Regulation (EC) No. 1069/2009, and its own implementing regulation (Regulation on the Implementation of the Animal By-products Disposal Act – Tierische Nebenprodukte-Beseitigungsverordnung (TierNebV)) primarily regulate Category 1 and 2 products. Wool is not mentioned at all.<sup>9</sup>

The German Fertilizer Regulation (Düngemittelverordnung (DüMV)) deals with the placing on the market of fertilizers, soil additives, growing media and plant aids. According to § 2 (scope of application), the ordinance applies to the placing on the market of fertilizers that are not designated as EC fertilizers, as well as soil additives, growing media and plant aids. If the unprocessed sheep's wool or the fertilizer pellets fall under these categories - which cannot be conclusively assessed here due to a lack

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<sup>8</sup> One problem here, however, is that it remains unclear whether and where the marketing of untreated wool is regulated in Germany. Apparently there is no regulation on this. However, it is practiced.

<sup>9</sup> Although the Implementing Regulation also contains certain regulations for Category 3 materials, these are not materials that are comparable to wool. Finally, the Bavarian Act on the Implementation of the Animal By-products Disposal Act (BayAGTierNebG) only deals with who bears the disposal obligation and is therefore not relevant here either.

of biological expertise on the aforementioned categories<sup>10</sup> - the requirements of this regulation would have to be observed, whereby especially threshold values for the components in fertilizers listed in Annex 2 are of relevance.

There are no deviations from Union law (see III. below for this possibility).

In the absence of the "fruitfulness" of German law on the questions to be clarified in this ex-pert opinion, the aforementioned European law alone remains applicable.

Furthermore, no evidence was found that a transfer of competence to the executive has taken place in Germany. This means that the veterinary authorities cannot create their own regulations and are instead bound by the European requirements.<sup>11</sup>

### 3. National legislation from other countries

Annex XIII Chapter VII lit. b) para. 2 Regulation 142/2011 offers the EU Member States the possibility to regulate or permit the placing on the market of untreated wool altogether independently or in specific cases. As seen under II. above, Germany has not made use of this option. However, a search for (deviating) regulations in other ([partly former] European) countries was also not very successful.<sup>12</sup>

#### a) Austria

As in Germany, Austria also has a federal statute, a federal regulation and a state regulation on this context. However, there are no specific regulations on the production of fertilizers from sheep's wool. In addition, there is a guideline from the Federal Ministry for companies that produce animal by-products (ABP). However, the focus is placed on pet food.

As part of the research an Austrian study from 2023 was found ("Study to analyze the market for virgin sheep's wool from Germany").<sup>13</sup> According to this study, raw sheep's wool as a Category 3 material cannot be further processed without hygienization or washing. For the production of fertilizer, the wool must be hygienized after washing. For this purpose, the wool must be heated to 70° C for more than an hour to allow further processing, e.g. into fertilizer pellets, and thus must be hygienized in a batch process. Alternatively, a steam jet process can be used, whereby the raw wool is blasted with steam at 70°C. The study points out that, due to legal requirements, it is essential that the raw wool undergoes the hygienization process for the fertilizer pellets to meet the relevant requirements and to ensure that all harmful substances, pathogens and impurities are removed from the wool.

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<sup>10</sup> Under previous legislation, fertilizers that were to be placed on the market in accordance with European law had to be labelled with the designation "EC FERTILIZER" (in capital letters). They also had to correspond to an approved fertilizer type under EC law. These were listed exhaustively in Annex I of Regulation (EC) 2003/2003. However, this regulation no longer applies today. In the general EU Fertilizer Product Regulation, there is now the "EU fertilizer product". This is a fertilizer product that is provided with a CE mark when it is made available on the market. However, this is obviously not applicable here. However, § 7 and § 9 II No. 2 DüMV also apply to EU fertilizers.

<sup>11</sup> This is also shown by the responses of the pellet press operators (see E.)

<sup>12</sup> European countries that are not listed below have, as far as can be seen, not made use of the option to deviate from the European requirements (relevant for this report).

<sup>13</sup> The study is available at <https://www.fnr.de/index.php?id=11150&fkz=2221NR074X>.



b) Great Britain

The Animal By-Products (Enforcement) (England) Regulations 2013<sup>14</sup> are intended to implement Union law:

8. the placing on the market of untreated wool and untreated hair from farms or from establishments or plants is authorised except where they present a risk of any disease communicable through those products to humans or animals.

c) Finland

The Finnish By-products Implementation Act 517/2015<sup>15</sup> makes provisions for the local con-text:

13 § Käsittelemättömän villan (...)

Käsittelemätöntä villaa, (...) saa tulla Suomessa tarpeeseen, että mainitut tuotteet tulevat suoraan maatilalta, sivutuoteasetuksen mukaan hyväksytystä tai rekisteröidystä laitoksesta taikka elintarvikelain mukaan hyvästä ksytystä laitoksesta.

This translates to:

§ 13 Unprocessed wool (...)

Unprocessed wool (...) may only be imported into Finland if the products concerned come directly from an agricultural holding, an establishment approved or registered under the By-products Regulation or an establishment recognized under the Foodstuffs Act.

d) Switzerland

An "info sheet" from the Swiss Federal Veterinary Office (FVO) on veterinary regulations for the import of animal by-products (ABP) from the EU and Norway was found.<sup>16</sup> It states:

In section 1 General provisions:

In principle, the same veterinary requirements apply to imports from the EU as for "movement" within the EU. Where these regulations leave room for interpretation, the specific requirements applicable to imports into Switzerland are described in Section 3 "Specific provisions"

Section 3 "Specific provisions" specifies:

Wool, hair, pig bristles, feathers, feather parts and down:

Imports are permitted without a commercial document in accordance with Regulation

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<sup>14</sup> <https://www.legislation.gov.uk/uksi/2013/2952/made>.

<sup>15</sup> <https://www.finlex.fi/fi/laki/alkup/2015/20150517>.

<sup>16</sup> Cf. <https://www.blv.admin.ch/blv/de/home/import-und-export/import/importe-aus-der-eu/tierische-nebenprodukte-aus-der-eu.html>. Available under "Trade document".

(EU) 142/2011:

Wool that has been industrially washed, as well as feathers, feather parts and down that have been industrially washed or treated with hot steam at a temperature of 100°C for at least 30 minutes.

e) Sweden

According to a document from the Swedish Environmental Protection Agency, a hygienization method that deviates from the regulation can be used for the anaerobic digestion of animal by-products such as wool under certain conditions.<sup>17</sup> However, whether this is applicable to the hygienization of by-products before they are processed into fertilizers remains un-clear.

The corresponding text on p. 3/7 reads:

Det är möjligt att använda sig av andra hygieniseringsmetoder. Dessa metoder måste dock först valideras enligt de särskilda krav som framgår av lagstiftningen. Kan det säkerställas att de krav som förordningen ställer uppfylls kan Jordbruksverket godkänna metoden. Jordbruksverket har godkänt en termofil rötning som innebär att minst 52 oC hålls i minst 10 timmar vid materialets rötning i reaktorn, samt att den hydrauliska uppehållstiden i reaktorn är minst 7 dygn. Till detta kan, beroende på anläggningens utformning och förutsättningar, tillkomma ytterligare villkor för hur denna process ska gå till och hur den ska säkerställas.

Translated, this means:

It is possible to use other sanitization methods. However, these methods must first be validated in accordance with the specific requirements laid down in the legislation. If it can be ensured that the requirements of the regulation are met, the Swedish Board of Agriculture can approve the method. The Swedish Board of Agriculture has approved thermophilic digestion, which means that a temperature of at least 52°C is maintained for at least ten hours during the digestion of the material in the reactor and that the hydraulic retention time in the reactor is at least seven days. Depending on the design and conditions of the plant, further conditions may be added as to how this process is to be carried out and guaranteed.

f) Italy (Lombardy)

Of interest is the 57th motion for a resolution of the Agriculture, Mountains, Forestry and Parks Council Committee of March 17, 2022, titled "Promoting and supporting the restoration of the sheep's wool industry in Lombardy".<sup>18</sup> It states:

Tutto ciò premesso:

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<sup>17</sup> <https://jordbruksverket.se/download/18.16c992c517644f0089398dab/1685446982064/Rotning-av-animaliska-biprodukter-tga.pdf>.

<sup>18</sup>

[https://consiglio.regione.lombardia.it/wps/RLCRLServiceIntegrator/jsp/geasi/AllegatoGEASI.jsp?fileName=RIS-57-testo-presentato.pdf&url=/alfresco/service/api/node/content/workspace/SpacesStore/05795bda-14ea-463c-9753-f0c79d1a0595/RIS\\_57?attach=true](https://consiglio.regione.lombardia.it/wps/RLCRLServiceIntegrator/jsp/geasi/AllegatoGEASI.jsp?fileName=RIS-57-testo-presentato.pdf&url=/alfresco/service/api/node/content/workspace/SpacesStore/05795bda-14ea-463c-9753-f0c79d1a0595/RIS_57?attach=true).

VISTO l'articolo 38, comma 2, del Regolamento generale;

## IMPEGNA IL PRESIDENTE E LA GIUNTA REGIONALE

1. a costituire un gruppo di lavoro di cui faranno parte una delegazione della VIII Commissione consiliare ed eventualmente delle altre Commissioni consiliari interessate, nonché gli stakeholder e gli enti pubblici e privati coinvolti, al fine di predisporre un progetto per la creazione della filiera della lana della pecora in Lombardia;
2. a reperire le risorse necessarie al fine di sostenere l'avvio della filiera della lana di pecora in Lombardia;
3. a rappresentare al Governo l'opportunità di classificare la lana, sotto il profilo fiscale, quale prodotto agricolo;
4. ad avviare un confronto collaborativo con le Giunte delle Regioni e delle Province autonome interessate, al fine di individuare le ragioni che hanno determinato che in Italia settentrionale ancora non si sia sviluppata una filiera della lana di pecora;
5. a procedere ad una ricognizione delle filiere locali attualmente operative sul territorio lombardo e a sostenerle all'interno dei bandi e delle misure regionali, quale base su cui incardinare una successiva progettazione della filiera della lana a livello regionale;
6. ad attivarsi, presso le opportune sedi istituzionali, per modificare il regolamento (CE) n. 1069/2009 che regola la definizione di lana quale "materiale di categoria 3" e dunque assimilata a rifiuto speciale, in modo da semplificare le procedure e permettere l'immissione sul mercato della lana, dopo il lavaggio, senza restrizioni.

This translates to (emphasis added by the reviewer):

## WHEREAS

HAVING REGARD TO Rule 38(2) of the General Rules of Procedure;

## THE PRESIDENT AND THE REGIONAL GOVERNMENT ARE COMMITTED TO

1. setting up a working group composed of a delegation from the 8th Council Commission and, if necessary, the other Council Commissions concerned, as well as the stakeholders and public and private bodies involved, to prepare a project for the creation of the sheep's wool supply chain in Lombardy;
2. finding the necessary means to support the development of the supply chain for sheep's wool in Lombardy;
3. lobbying the government to classify wool as an agricultural product for tax purposes;
4. initiating a joint discussion with the councils of the regions and autonomous provinces concerned in order to identify the reasons why a sheep's wool industry has not yet developed in northern Italy;
5. making an inventory of the local supply chains currently existing in Lombardy and to

support them in the context of the regional calls for proposals and actions in order to provide a basis for the subsequent design of the wool supply chain at regional level;

**6. taking action in the relevant institutional bodies to amend Regulation (EC) No 1069/2009, which regulates the definition of wool as a 'Category 3 material' and thus as hazardous waste, in order to simplify procedures and allow wool to be placed on the market without restrictions after washing.**

It was not possible to find out whether anything has been done in Lombardy since then in relation to this motion for a resolution or whether Italy has already begun the attempt to amend Regulation (EC) No. 1069/2009. In any case, according to the research, Italy, like most other European countries, has not enacted any laws or regulations that deviate from the EU requirements.

4. Conflict of the requirements with European (primary) law

Finally, it is to be assessed whether the requirements described, particularly for sheep's wool, conflict with European primary law, especially with the fundamental European freedoms. According to Art. 34 of the Treaty on the Functioning of the European Union (TFEU), the free movement of goods is guaranteed. Sheep's wool is a tradable product with a certain economic value – despite its frequent disposal as waste – and is therefore a good.<sup>19</sup> The requirements for its treatment amount to a "measure having equivalent effect" in the dogmatics of restrictions developed by the ECJ.<sup>20</sup> They therefore interfere with the free movement of goods. However, this restriction serves to protect the health within the meaning of Art. 36 TFEU and is therefore - as long as the restriction is not disproportionate (which is not apparent without further evidence despite the high costs involved) - ultimately justified.<sup>21</sup>

A cross-border exchange of sheep's wool is possible anyway. However, certain requirements for the transportation of wool must be observed. Since the same requirements for the processing of wool into sheep's wool fertilizer pellets must be observed in Germany and Austria, it is also possible to sell the pellets in Germany, so that Art. 34 TFEU is not further restricted here and there is no overall infringement of primary Union law.

5. Conclusion on legal research

Legal research at European and German level as well as in other European countries shows that the strict requirements of European Union law are not objectionable and are generally also applicable in national law. The deviations made in this respect by individual states are not relevant to the issues dealt with in this report. However, an attempt to deviate from the strict requirements in Austria and Germany (which is possible under Union law) should be considered. Sound arguments would have to be sought for this.

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<sup>19</sup> On the concept of goods, see *Kotzur/Schiefelbein*, in: Geiger/Khan/Kotzur/Kirchmair TFEU Art. 28 para. 16 et seq.

<sup>20</sup> On the concept of "measure having equivalent effect" developed by the so-called "Dassonville case law", see *Kotzur/Schiefelbein*, in: Geiger/Khan/Kotzur/Kirchmair TFEU Art. 34 para. 8 et seq.

<sup>21</sup> For justification, see *Kotzur/Schiefelbein*, in: Geiger/Khan/Kotzur/Kirchmair TFEU Art. 36 para. 3, 8 et seq.

## 6. Answers from various pellet mill operators

The questions listed under I. were sent to various pellet press operators as part of the re-research with a request for answers. The answers clearly show that the pellet press operators advise against purchasing and operating their own press. The requirements set by the EU are far too high and production is not profitable in terms of price.

In the following, the answers are presented in bullet point form and without reference to the responding pellet press operator due to the need for data protection:

- To process sheep's wool, the wool is heated to 80° C for one hour by a press operator. This prevents the spread of animal diseases as prescribed by the authorities. A press with the necessary attachments costs around €120,000.
- An Austrian press operator reports: As in Germany, the processing and marketing of sheep's wool is strictly regulated in Austria. Untreated sheep's wool may not be placed on the market in order to prevent animal diseases. The supervisory authority is the AGES (Agency for Food Safety), which, with the help of the district administrative authority, carries out inspections of fertilizer producers. Controls include entry in a central register, annual inspections of production sites and continuous inspections of sales outlets. It is not clear how often the inspections are carried out. The pellet press operator has already been inspected twice in three years of operation. In compliance with all regulations and taking into account the "completely escalating" costs for the machines and buildings, the processing of sheep's wool into fertilizer pellets as a single product is no longer a lucrative business for them. It is simply necessary to create year-round production, which is only possible with major investments. The pellet press operator has therefore now switched to working with potential competitors without committing antitrust violations. This is intended as an alternative to acquiring their own production plant. In the context of contract processing, i.e. as a "one-stop store provider", the pellet press operator acts as both producer and distributor and thus covers the legal aspects. Both the design of the packaging as a product with regional sheep's wool and the entire sales revenue remain in the hands of their customers. There is therefore no investment risk for the costumers; they have the opportunity to start immediately; there is already a ready-made legal "setup" and customers are advised and supported in the start-up phase.
- In another case from Germany, there is also no agreement with the veterinary. The general EU regulations must be complied with. Fertilizer may only be produced from animal by-products, such as sheep's wool as a Category 3 material, with official approval. The pellet press operator had to build a new production hall to obtain approval to operate the press, as the building already has to meet considerable requirements. In their opinion, pellet press production will probably never become economical and profitable. From to-day's perspective and due to the inflationary price trend, the pellet press operator would advise against making such an investment. They also warn against underestimating the ongoing expenses due to the very high wear and tear and the maintenance required.
- Another pellet press operator also warns against operating your own pellet press. The competition from abroad is far too big and their products too cheap. They themselves cross-subsidizes pellet pressing because operating the plant

alone is no longer profitable.

#### IV. A full list of all legal provisions relevant to the case

##### Union law

- Regulation (EC) No. 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules concerning animal by-products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (animal by-products Regulation), OJ L 300/1, 14.11.2009, p. 1-33
  - o The German „Animal By-Products Disposal Act“ is based on this, see, Section 1 TierNebG
  - o Art. 3 No. 22 regulation 1069/2009
  - o Art. 8 No. 1 lit. c) regulation 1069/2009
  - o Art. 10 lit. d) regulation 1069/2009
  - o Art. 10 lit. h regulation 1069/2009
  - o Art. 10 lit. n) regulation 1069/2009
  - o Art. 14 lit. d) iv) regulation 1069/2009
  - o Art. 14 lit. l) regulation 1069/2009
  - o Art. 32 regulation 1069/2009
  - o Recital 22 of regulation 1069/2009
- Commission Regulation (EU) No 142/2011 of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules concerning animal by-products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and goods exempted from veterinary checks at the border in accordance with that Directive (Text with EEA relevance), OJ L 54, 26.02.2011, p. 1-254
  - o Art. 3 regulation 142/2011
  - o Art. 5 No. 2 VO 142/2011
  - o Art. 17 No. 1 regulation 142/2011
    - Annex VIII Chapter I and II of regulation 142/2011
  - o Art. 17 No. 2 regulation 142/2011
    - Annex VIII Chapter IV of regulation 142/2011
  - o Art. 17 No. 3 regulation 142/2011
  - o Art. 22 regulation 142/2011 (Art. 3 No. 22 regulation 1069/2009)
  - o Art. 25 No. 1 regulation 142/2011
  - o Art. 25 No. 2 lit. a)
  - o Annex IV of regulation 142/2011
    - Chapter III
      - Explanations in Annex XI Chapter II section 1 No. 1 lit. c) regulation 142/2011 and Annex IV Chapter III regulation 142/2011
  - o Annex VIII of regulation 142/2011
    - Chapter I
      - section 1
    - Chapter II
    - Chapter IV
      - section 4

- Annex X of regulation 142/2011
  - Chapter I
    - section I
- Annex XI of regulation 142/2011
  - Chapter I
  - Chapter II
    - Section 1
      - categories (1-3) (results from Art. 8 No. 1 lit. c) regulation 1069/2009, Art. 10 lit. h) regulation 1069/2009)
      - No. 1 lit b) regulation 142/2011
        - Example: Annex I No. 31 lit. c) regulation 142/2011
      - No. 1 lit. c) regulation 142/2011
      - No. 5 first indent regulation 142/2011
        - In particular: Annex X Chapter I section I regulation 142/2011
    - Section 2
- Annex XIII of regulation 142/2011
  - Chapter VII
    - Lit. c)
- Annex XIV of regulation 142/2011
  - Chapter I
  - Chapter II
    - Section 1
      - No. 8
  - Recital 35 of regulation 142/2011
- Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilizers (Text with EEA relevance), OJ L 304, 21.11.2003, p. 1-194
  - Annex I
- Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules for the making available on the market of EU fertilizer products, amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 (Text with EEA relevance), OJ L 170, 25.06.2019, p. 1-114 (is not applicable to the present case; cf. its Art. 1 para. 1 lit. a)
- Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (Text with EEA relevance), OJ L 312, 22.11.2008, p. 3-30

#### European (primary) law

Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326 of 26.10.2012

Signed on December 13, 2007 and entered into force on December 1, 2009

- Art. 34 AEUV
- Art. 36 AEUV

#### National legislation from Germany

- TierNebG: Animal By-products Disposal Act of January 25, 2004 (Federal Law Gazette I p. 82), last amended by Article 2 (18) of the Act of December 20, 2022 (Federal Law Gazette I p. 2752)
- TierNebV: Animal By-products Disposal Ordinance of July 27, 2006 (Federal Law Gazette I p. 1735), last amended by Article 3 of the Act of December 4, 2018 (Federal Law Gazette I p. 2254)
- DüMV: Ordinance on the Marketing of Fertilizers, Soil Additives, Cultivation Substrates and Plant Aids of 5 December 2012 (Federal Law Gazette I p. 2482), last amended by Article 1 of the Ordinance of 2 October 2019 (Federal Law Gazette I p. 1414)
  - o § 2 DüMV
  - o § 7 DüMV
  - o § 9 II No. 2 DüMV
  - o Annex 2

#### National legislation from other countries

##### Austria:

- ABP
- Study to analyze the market for virgin sheep's wool from Germany

##### Great Britain:

- Ordinance on animal by-products (enforcement) November 18, 2013, No. 2952

##### Finland:

- By-Products Implementation Act 517/2015, 01.07.2015
  - o § 13

##### Switzerland:

- „Info sheet“ from the Swiss Federal Veterinary Office (FVO)

##### Sweden

- document from the Swedish Environmental Protection Agency

##### Italy (Lombardy)

- 57th motion for a resolution of the Agriculture, Mountains, Forestry and Parks Council Committee of March 17, 2022, titled "Promoting and supporting the restoration of the sheep's wool industry in Lombardy"

#### V. Other relevant aspects to this case if relevant

Following the report, we received a number of questions from the client. These are answered as follows:

Question 1): One possible way could be to market unprocessed wool as fertilizer. It would be very good if the wool no longer had to be further treated for this purpose and if we had arguments in the report to propose this solution to the veterinary office as legal. The statement “Consequently, only ‘non-hazardous wool’ may be used as an unprocessed fertilizer” (p. 6) is not very meaningful. A sheep farmer is unlikely to be



able to do anything with it if he is told that he may only hand in non-hazardous wool for wool collection.

Answer: According to Art. 10 lit. n) Regulation 1069/2009, wool is non-hazardous if it “shows no signs of disease communicable to humans or animals through this product”. We cannot legally determine in general terms when this is the case. Instead, this must be determined depending on the circumstances of the individual case, taking into account, for example, the hygiene conditions on the respective farm/stable, contamination with harmful substances, medical treatment of the animals, etc. The veterinary office will be responsible for checking that there is no risk and for granting approval.

Question 2): On p. 7 it says “Wool (...) which has undergone a factory wash or has been treated by another method which ensures that no unacceptable risks remain may be placed on the market without restriction in accordance with this Regulation.” Does this mean that sterilization measures are also mandatory for the sale of untreated sheep's wool as fertilizer?

Answer: No, it does not mean that. We have only indirectly referred to Article 3 of Regulation 142/2011 to show that the “non-hazardousness” of the wool product is also required here. However, the standard or the entire regulation is not applicable to the present case. It is applicable to the situation where wool is further processed into other products, such as clothing, toys and sheep's wool carpets. There are therefore inevitably processing steps that must also ensure the “harmlessness” of the sheep's wool or the end product.

Question 3): It would be good if in the overall analysis it could be summarized again what treatment would be required in total for the raw wool in order to be able to commercialize it unpressed and untreated as a fertilizer.

Answer: We are not able to give a legal answer to this question, see already question 1.

Question 4): How and where would the sheep farmers supplying the wool be “registered” (this is mentioned as a condition)?

Answer: Registration of sheep farmers/farms is necessary in order to be able to trace the origin of the wool and thus check/verify the safety of the wool. There are no specific legal requirements for registration. As the veterinary authorities are responsible for checking that the wool is safe, registration with them is the most practical option. How registration is handled in the specific region cannot be explained due to a lack of generalized legal requirements.

Question 5): According to our understanding of your expert opinion, there are in principle no legal or administrative provisions preventing cross-border trade in fertilizers made from sheep's wool - this is of course a very positive result. Instead, the “legal obstacle” essentially consists of understanding the complex legal framework.

This is not a typical b-solutions case, as the project is basically intended to solve legal problems caused by divergent legal or administrative systems in the Member States. In this case, we would therefore like to ask you to supplement your proposed solutions with possible practical or strategic approaches that could help the applicants to implement cross-border trade in fertilizers made from sheep's wool. For example, would it be useful to set up an information point to understand the requirements of EU regulations and be able to implement them in practice? How could coordination between the responsible German and Austrian authorities be improved? Would it be helpful to sign a (bilateral) treaty that could form a legal basis for the trade? Further input from you in this regard would be a useful input for the applicants and the entire b-solutions format.

Answer: The problem with the legal framework for the sale of untreated sheep's wool or sheep's wool pellets is, as the research results show, not primarily that sheep's wool farmers are confronted with standards that set too high requirements for the sheep's wool, which unreasonably restrict the sheep's wool farmers. After all, the requirement is "just" that the wool must not cause any risk to human or animal health, which is not unreasonable in view of the protected goods.

The problem is rather the complexity of the requirements placed on the use/processing of sheep's wool, which the distributor has to collect from a wide variety of legal sources and in some cases can only be understood with legal skill.

It is urgently necessary to make this "jungle of standards" manageable in order to ensure that the meaningful and necessary regulations understandable and applicable even for non-legally experienced sheep's wool farmers.

A compilation of the relevant points in the form of an information document could be considered. The following points should be included:

- What information must be reported to which authority?
- What checks are conducted by the veterinary office?
- What requirements must the distributor/company/wool fulfill in order to pass the inspection by the veterinary office?
- Which conditions must be fulfilled for the sheep's wool to be safe for use as fertilizer? (Example-) limit values should be given here.
- What options do sheep's wool farmers have to make the wool non-hazardous? The regulated and alternative hygienization methods should be listed here (see the letter from the Swedish Environmental Protection Agency included in the report as an example)
- Possibly: Compilation of the expected cost items together with a realistic cost estimate
- Possibly: Compilation of all/some sheep wool fertilizer producers to enable an exchange or mutual advice and support

According to our research, there is no such document in Germany. Although information is provided by the veterinary offices, it is not generally possible to determine whether it is standardized and, above all, whether it complies with legal requirements due to a lack of publications.

This document should be published on the website of the responsible federal ministry

in order to ensure standardized application of the law throughout Germany and distributed to the responsible veterinary offices. In this way, information gaps and “solo actions” by various veterinary offices could be avoided. If required, the veterinary offices can issue this letter to the sheep wool farmers.

It would also be possible to set up an official information office. This should be established at federal level in order to create uniform regulations. Whether this is necessary in addition to the provision of information documents or whether the veterinary offices can take care of “individual case problems” would remain a question of practice.

In order to coordinate and improve the distribution of sheep's wool between Germany and Austria, consideration should be given to setting up an exchange between the relevant authorities. In order to enable a nationwide distribution of wool, the exchange should take place at federal level. We do not think that a contractual regulation in this regard is (currently) necessary. It is questionable what such a bilateral agreement should contain, as the same legal regulations apply in Germany and Austria. It would be conceivable to “jointly” or similarly deviate from the European regulations within the permissible framework (Annex XIII Chapter VII lit. b) para. 2 Regulation 142/2011). However, we do not consider this to be absolutely necessary either, as the EU requirements are reasonable and necessary with regard to risk containment, as already explained at the beginning, and it is only/primarily the comprehensibility for the sheep's wool farmers as the addressees of the regulations that fails.

From our legal point of view, it is not possible to judge which specific requirements are to be placed on the “harmlessness” of the wool and whether the sheep's wool farmers can determine this themselves (in biological terms) or whether they are dependent on the support/inspection of the veterinary office for this and this probably depends on the circumstances of the individual case/the individual farmer.

## VI. References and Appendix/Appendices if any

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