

I. Order

1. The Office of the Secretary of State for the Presidency of the Council of Ministers submitted to the National Data Protection Commission (hereinafter CNPD), for an opinion, the draft Decree-Law that establishes the rules to which the placing on the market of fertilizing materials and revokes Decree-Law No. 103/2015, of 15 June.

2. The CNPD issues an opinion within the scope of its attributions and competences as an independent administrative authority with powers of authority to control the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57, in conjunction with subparagraph b) of paragraph 3 of article 58, and with paragraph 4 of article 36, all of Regulation (EU) 2015/679, of 27 April 2016 - General Regulation on Data Protection (hereinafter GDPR), in conjunction with the provisions of article 3, paragraph 2 of article 4, and paragraph a) of paragraph 1 of article 6, all of Law n° 58 /2019, of 8 August, which enforces the GDPR in the domestic legal order.

II. Analysis

3. The draft Decree-Law (hereinafter the Draft) establishes the rules that the placing on the market of fertilizing materials must obey and ensures the execution in the domestic legal order of the obligations arising from Regulation (EC) No. 2003/2003, of the European Parliament and of the Council of 13 October 2003 on fertilisers.

4. The CNPD has already commented on a first version of this draft Decree-Law in its Opinion No. 128/2021, approved at the session of September 21, 2021, so it closely follows the pronouncement made previously, noting that if the changes have been introduced in the meantime.

5. Under the terms of the preamble, after five years of application of Decree-Law No. 103/2015, of 15 June, which regulates these matters, it became necessary to adapt its annexes to technical and scientific progress, namely the obligation that any inclusion of new designations of the type in its Annex I must be done through a legislative amendment to the Decree-Law, of

which it is an integral part.

6. Thus, given the need to add new types of non-harmonized fertilizing materials to Annex I of Decree-Law No. 103/2015, of 15 June, several changes are also introduced redefining the legal framework applicable to fertilizing materials .

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7. The preamble now adds that this Project also approves the implementing rules necessary for compliance, in the domestic legal order, with Regulation (EU) 2019/1009, of the European Parliament and of the Council, of 5 June 2019.

8. Thus, in Article 1 of the Draft, a subparagraph b) is added, including in its object to carry out the obligations arising from Regulation (EU) 2019/1009, of the European Parliament and of the Council, of 5 June 2019 laying down rules on the making available on the market of EU fertilizing products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003, with effect from July 16, 2022.

9. In turn, paragraph 1 of article 2 of the Project now extends the scope of application to fertilizing products, in accordance with the provisions of Regulation (EU) 2019/1009. It should be noted that a new paragraph www) is now added to Article 3 concerning the definition of 'EU fertilizing product - fertilizing product that complies with the requirements of Regulation (EC) No 2019/10009.

10. Under the terms of article 6, non-harmonized fertilizer materials are subject to registration in the National Register of Non-Harmonized Fertilizer Materials, with the Directorate General for Economic Activities (DGAE) being the competent national authority to carry out the registration.

11. With regard to the right to the protection of personal data, point b) of no. name, address and tax number of the economic operator legally established in the European Economic Area or Turkey, and carried out through the ePortugal Portal. It should be noted that, under the terms of paragraph 14 of this article, documents submitted through the ePortugal portal must be signed using qualified electronic signatures, including those of the Citizen Card and Digital Mobile Key, with the possibility of

using the Certification System of Professional Attributes or others on the European List of Trust Services.

12. On the other hand, point f) of paragraph 2 of article 9 stipulates that the DGAE makes available on its website information on non-harmonised fertilizer materials existing in the national market, including the name of the economic operator. Article 17(1)(e) also, for the purpose of traceability of fertilizing materials, provides that the economic operator must keep a record of its origin, including the identification and address of the economic operator, and the record must be available for the purposes of control and supervision by the authorities.

13. The new version of the Project introduces a chapter dedicated to the notification of conformity assessment bodies, with the Portuguese Quality Institute, I.P, the notifying authority.

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14. The supervision of the provisions of the Project is the responsibility of ASAE, without prejudice to the powers assigned by law to other authorities (cfr. Article 30 of the Project).

15. As for the administrative offense regime provided for in article 31 of the Project, amendments are introduced and the failure by the manufacturer, the authorized representative, the importer and the distributor to comply with the duties provided for in articles 6 to 9 constitutes a very serious economic infraction. °, respectively, of Regulation (EU) 2019/1009 as well as non-compliance with the provisions of Articles 10 to 12 of Regulation (EU) 2019/1009.

16. Finally, in point 1.1 of the Annex (Instructions for modifying the list of types of non-harmonized fertilizer materials - general information) for the inclusion of a new type of non-harmonized fertilizer material or modification of the current list of any of the groups provided for in Ordinance referred to in paragraph 2 of article 4, the interested party must submit a technical file containing information that allows “to identify the applicant with regard to: name, address, postal code, Country, Member State of reference, telephone, email address, fax and TIN’.

17. From the above, it follows that DGAE is responsible for processing data resulting from the application of the diploma under analysis. The data collected are adequate and limited to what is necessary in view of the purposes for which they are processed, complying with the principles relating to the processing of personal data provided for in article 5 of the GDPR, in particular the principle of lawfulness and data minimization.

18. Thus, the analysis of the draft Decree-Law does not raise new questions from the point of view of the protection of personal data.

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