

I. Order

1. The Office of the Minister of Agriculture and Food asked the National Data Protection Commission (CNPD) to issue an opinion on the draft Ordinance that aims to approve the rules for implementing Article 6 of Regulation (EC) No. 852/ 2004 of the Parliament and of the Council, of 29 April, regarding the notification to the competent authority, through registration, of economic operators in the food sector, within the meaning of Article 3(2) of Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January, namely those who produce unprocessed foodstuffs of animal origin. This draft Ordinance also aims to define the rules specifically applicable to the registration of fruit and vegetable operators and importers, in accordance with the 10th of Implementing Regulation (EU) No. 543/2011, of the Commission, of 7 June 2011 , in the fruit and vegetables and processed fruit and vegetables sectors.

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, subparagraph b) of Article 58(3) and Article 36(4), all of Regulation (EU) 2016/679, of 27 April 2016 - General Data Protection Regulation (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 No. 58/2019, of 8 of August, which implements the GDPR in the domestic legal order.

II. Analysis

3. Regulation (EC) No 852/2004 of the Parliament and of the Council, of 29 April, on the hygiene of foodstuffs, establishes in Article 6(2) that business operators in the sector foodstuffs notify the competent authority of all establishments under their control that are engaged in any of the stages of production, processing and distribution of foodstuffs with a view to registering each establishment, including having to notify any significant change in activities and any possible closure of the

establishment.

4. Pursuant to the preamble, "as Regulation (EC) No. 852/2004 of the Parliament and of the Council of 29 April also applies to the primary agricultural production of foodstuffs of non-animal origin and this activity is not currently subject to any specific registration regime, it is important to establish, in the national legislative framework, the rules applicable to the registration of establishments engaged in the primary agricultural production of foodstuffs of non-animal origin."

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5. In turn, the matters that Regulation (EC) No. 852/2004 of the Parliament and of the Council of 29 April provides for them to be regulated by national rules, under the terms of article 11 of Decree-Law no. 113/2006, of 12 June, which is now implemented.

6. Therefore, this draft order approves the rules for implementing Article 6 of Regulation (EC) No. 852/2004 of the Parliament and of the Council, of 29 April, regarding notification to the competent authority, through registration, of economic operators in the food sector, within the meaning of Article 3(2) of Regulation (EC) No 178/2002 of the European Parliament and of the Council, of 28 January, namely of those who produce foodstuffs of unprocessed non-animal origin.

7. The project also updates and consolidates the rules applicable to the registration of fruit and vegetable operators, covered by the scope of application of Implementing Regulation (EU) No. 543/2011, of the Commission, of 7 June 2011.

8. Under the terms of paragraph 1 of article 3, farmers and fruit and vegetable operators, at the beginning of their activity, are obliged to register on the IFADAP, I.P. Portal, being obliged to keep the data entered correct and updated. , pursuant to articles 4 and 13 of Ordinance No. 58/2017, of 6 February, within a maximum period of 30 days from the date of the amendment.

9. The registration of the identification of the farmer or fruit and vegetable operator is carried out on the IFAP I.P Portal,

through the beneficiary identification form (IB). - Article 4(1).

10. For registration, the portal provides the visitor with a login page, located at <https://www.ifap.pt/sianin>. Here the visitor has access to the portal and the creation of a record.

11. In order to create the register, it is necessary to insert the Tax Identification Number (NIF) and the NIFAP. The page provides a "Beneficiary Registration Manual on the IFAP Portal" (manual) dated March 17, 2020, in pdf format, which can be consulted by following the respective link. It is recalled that the NIF is an identification number of citizens for tax purposes, not including the collection of this personal data for the purposes of registering economic operators in the food sector, in violation of the principle of data minimization, recognized in paragraph c) of Article 5(1) of the GDPR.

12. To obtain the NIFAP identification number, the farmer or fruit and vegetable operator must be identified as a beneficiary with IFAP "by registering in the IFAP information system". This is "[...] carried out in person [...]" by completing the beneficiary identification form (IB), in one of the

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entities listed on the portal. Once the registration is completed, you are assigned the NIFAP that "allows you to identify] in the IFAP".

13. According to the manual, after submitting the NIF and NIFAP on the user registration page, the site loads information about the beneficiary, which includes personal data NIF, name, mailing address, contact telephone and fax number, and email if appear in the form IB. If the email appears in the form, confirmation is requested. For forms that do not include an email address, entering one is mandatory. The email address is used for sending the username and password.

14. After submitting the registration request, the user receives in his email a message with the username and the information that "[a] «Keyword» (password) will be sent to him immediately, to your e-mail, in case it has been validated in your contacts of the Beneficiary Identification form (IB), otherwise, it will be sent by letter within 7 days after this registration".

15. There are two ways to enter the reserved area of the portal: username and password; Citizen Card/Digital Mobile Key. The analysis of the Beneficiary Registration Manual on the IFAP Portal shows that the portal complies with the usual practices in

terms of information security.

16. Finally, a note on article 5 of the Project which states that IFADAP, I.P., DGAV, the Regional Directorates of Agriculture and Fisheries and ASAE are jointly responsible for the processing of personal data under article 26. ° of the GDPR.

17. This presupposes the existence of an agreement that duly reflects the respective roles and relationships of the joint controllers in relation to the data subjects. The CNPD therefore suggests that the content of the article be amended in order to contain an express reference to the existence of an agreement between the various controllers that enshrines their respective responsibilities for compliance with the RGPD.

III. Conclusion

18. The analysis of the Draft Ordinance does not raise new questions from the point of view of the protection of personal data. It is only recommended to reformulate article 5 in order to contemplate the existence of an agreement between IFADAP, I.P., DGAV, the Regional Directorates of Agriculture and Fisheries and ASAE that enshrines the respective responsibilities for compliance with the GDPR.

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Lisbon, September 15, 2022

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