

NATIONAL COMMISSION

DATA PROTECTION

OPINION/2019/55

I. Order

The Office of the Secretary of State for Consumer Protection sent the National Data Protection Commission (CNPd), for consideration, the Draft Decree-Law that establishes the rules that must comply with the placing on the market of fertilizing materials, while ensuring , the performance in the domestic legal system of the obligations arising from Regulation (EC) No. 2003/2003 of the European Parliament and of the Council, of 13 October, on fertilizers (hereinafter the Regulation).

The request made and the opinion issued now derive from the attributions and powers of the CNPD, as the national authority for controlling the processing of personal data, conferred by subparagraph c) of paragraph 1 of article 57 and paragraph 4 of article 36 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Regulation on Data Protection - RGPD), in conjunction with the provisions of article 3 of Law no. 58/2019, of August 8th.

The assessment of the CNPD is limited to the rules that provide for or regulate the processing of personal data.

II. Of Appreciation

The draft Decree-Law submitted to an opinion (re)establishes the rules to which the placing on the market of fertilizing materials must comply, revoking Decree-Law no. internal legal framework of the obligations arising from Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October on fertilisers, directly imposing on manufacturers precise requirements that must be applied at the same time and in the same way in throughout the Community (cf. Recital 2 of the Regulation).

Rules on the identification, traceability, labeling and closure of EC fertilizer packages also flow from the Regulation, and the manufacturer is responsible for complying with them (cf. Articles 7, 8, 9, 10). , 12 and 26 of the Regulation, as well as the respective Recital 6).

AV. D. CARLOS I, 134-Io I 1200-651 LISBON I WWW.CNPd.PT [ TEL:+351 213 928 400 | FAX: +351 213 976 832

Process PAR/2019/50 1v.

The project under analysis therefore applies to fertilizers, also covering (some) (non-harmonised) fertilizing materials - cfr.

Article 2 of the project.

Essentially, the project provides for personal data processing operations: some in the context of the National Registry of Non-Harmonized Fertilizer Materials and others within the scope of the list of entities that carry out tests on the soil effectiveness of non-harmonised fertilizing materials.

It is on these treatments that the CNPD focuses next, leaving the note that it will be justified to include the hearing of the CNPD in the preamble of the diploma.

A) From the National Register of Non-Harmonized Fertilizer Materials

Non-harmonized fertilizing materials are subject to registration in the National Register of Non-Harmonized Fertilizer Materials (RNMFNH), under the responsibility of the Directorate-General for Economic Activities (DGAE), which must include information on “those responsible for placing them on the market” (article 6 of the project).

For the purposes of the aforementioned registration, the "economic operator" (whether manufacturer, importer or distributor) is obliged to submit a registration application to the DGAE, providing identification data for this purpose, which in the case of a natural person will be the name, address and tax identification number (see Article 7(3)(a) and b) and Article 3(rrr) of the project). It should be noted that the annex to this project appears in point 1.1. the list of data to be communicated, which also includes contact details (telephone, fax, email), which are still adequate and necessary for the instruction of the respective procedure. What already deserves censure from the CNPD is the use of the adverb “namely”: either the present project intends to delimit the scope of the processing of personal data - and then it is up to it to precisely determine the categories of personal data susceptible to collection - or it loses this function, with the consequence that another ground of lawfulness of the processing must be found for the processing. The CNPD recommends, therefore, the elimination of the adverb “namely”, because the list of data is intended to refer to identification and it is not clear that other identification data could be included here.

Process PAR/2019/50 | two

NATIONAL COMMISSION

- DATA PROTECTION

This act will be carried out through the ePortugal Portal, the new public services portal under the responsibility of the Agency for Administrative Modernization, I.P.,<sup>1</sup> for which prior registration is required.

It is also foreseen, in the project, that the DGAE will make available, in the end, on its website, among other information, that relating to the identification of the economic operator of each of the non-harmonised fertilizer materials registered in the register (cf. article 9. 2(f) of the project).

In relation to this point, concerning the availability on an open network of personal data of the economic operator, that is, the manufacturer and the distributor within the meaning of article 2, point rrr), of the project, the CNPD has reservations, not only because of application of the principle of proportionality ('data minimisation') provided for in Article 5(1)(c) of the GDPR, as well as the impact it may have on the person's life.

From the perspective of the CNPD, in order to assess the adequacy and necessity of the data, it is important to distinguish the purpose that the publication aims to achieve from the purposes pursued by the registration, as well as by the communication of data to administrative authorities with supervisory powers. In these last two cases, the need for the economic operator's identification data is indisputable (cf. Article 8 of the Regulation and also Articles 17, 22, 23 and 26, all of the project).

The same can no longer be said for the data processing operation "availability on the internet".

Indeed, according to recitals 11, 12, 13 and 15 of the Regulation that justifies this legislation, the purpose underlying the entire process of authorisation, introduction and traceability on the market of fertilizers and fertilizing materials will be to ensure the public safety, health, the environment and the protection of workers. For such purposes, it is not necessary to make known to each and every person, through the availability on the website, the identification of the economic operator. Although the importance of monitoring the use of these fertilizing materials by members of society can be perceived, it can be carried out without knowing the identification of the economic operator.

<sup>1</sup><https://eportugal.gov.pt/sobre>

AV. D. CARLOS I, 134 - 1º | 1200-651 LIS BOA | WWW.CNPD.pt | TEL: +351 213 928 400 ! FAX: +351 213 976 832

Process PAR/2019/50 2v.

Even the provisions of article 49 of Decree-Law No. 135/99, of 22 April, as amended by Decree-Law No. 73/2014, of 13 May<sup>2</sup>, for which the Article 9(3) of the proposal refers, only allows advertising on DGAE websites indexed to «public information» which, by its nature and under the terms of the law, can be made available to the public, without further imposition of its disclosure, nor the suitability and necessity of it

On these grounds, the CNPD suggests revising the wording of paragraph 3 of article 9 of the project, restricting the information

to be publicized to all the elements mentioned in subparagraphs a) to e), therefore, excluding of subparagraph f).

B) From the «list of entities» that carry out efficacy trials

In the present proposal under analysis, the legislator also determines the creation of a list of entities that carry out tests on the soil effectiveness of non-harmonised fertilizer materials, as well as making it available on the ePortugal, from the National Institute for Agricultural and Veterinary Research, I.P. (INIAV, I.P.) - cf. article 20).

Assuming that any of these entities has the nature of a natural person or that their nature leads them to a name or other personal data within the meaning of article 4, point 1), of the GDPR, we will be dealing with a processing of personal data. To that extent, both treatments are subject to the GDPR and do not give rise to any further reservations.

### III. Of the Conclusions

Thus, based on the above grounds, the CNPD recommends:

1. Elimination of the adverb “namely” from point 1.1. the Annex to the Project, where the identification data of economic operators are listed, due to the need for precision in the legal definition of the universe of personal data subject to processing; two

Which, under the terms of its article 50, 'takes precedence over any general provisions relating to the various services and bodies of the Public Administration'.

Process PAR/2019/50 3

NATIONAL COMMISSION

OF DATA PROTECTION

2. The revision of paragraph 3 of article 9 of the project, restricting the information to be publicized to all the elements referred to in subparagraphs a) to e), therefore, excluding subparagraph f), otherwise of violation of subparagraph c) of paragraph 1 of article 5 of the RGPD, as it is not necessary to provide the identification of economic operators on the internet, given the purpose of registration.

Lisbon, September 17, 2019

Filipa Calvão (President)

AV. D. CARLOS I, 134 - 1o | 1200-651 LISBON | WWW.CNPD.PT | TEL:+351 213 928 400 | FAX:+351 213 976 832