

Draft Order establishing the criteria for the granting of end-of-waste status (EoW) for fertilising materials complying with the specifications laid down in Ministerial Implementing Order No 79/2022 of 3 February 2022 and Commission Regulation EU No 142/2011 of 25 February 2011.

Summary: Establishes the criteria for the end-of-waste status (EoW) for fertilising materials that comply with the specifications laid down in Ministerial Implementing Order No 79/2022 of 3 February 2022 and Commission Regulation (EU) No 142/2011 of 25 February 2011.

Whereas the National Energy and Climate Plan (PNEC 2030), approved by Council of Ministers Resolution No 149/2024 of 30 October 2024, highlights the potential of biomethane in the decarbonisation of various sectors of the national economy, contributing to reducing greenhouse gas emissions and mitigating climate change;

Whereas the National Strategy for Agricultural and Agro-Industrial Effluents (ENEAPAI) 2030 assigns an important role to the organic valorisation of livestock effluents, encompassing anaerobic digestion and composting, considering it an important pathway for the sustainable management of these effluents and for the reuse of resources, promoting the circular bioeconomy and improving the quality of national soils;

Whereas the Biomethane Action Plan 2024-2040 establishes an integrated and sustained strategy for the development of the biomethane market in Portugal;

Whereas boosting the energy sector is important to reduce imports of natural gas, a non-renewable resource, and to promote the circular bioeconomy, adding value to livestock effluents and their equivalents, plant biomass and other animal by-products (ABP) and derived products (DP) of categories 2 and 3 existing in various sectors, providing agro-socio-economic and environmental benefits;

Whereas anaerobic digestion is of great importance in the context of the energy transition, but also at the level of waste policy, namely by reducing the need to use the landfills for biodegradable waste material with bio-fertilising potential;

Considering that the possibility of transforming these materials into energy sources can enable economic recovery that encourages their use, contributing to reducing landfill disposal, and that biogas production for biomethane recovery can be an important lever to strengthen performance in the agricultural sector;

Considering that the General Waste Management Regime (RGGR), approved in Annex I to Decree-Law No. 102-D/2020 of 10 December 2020, provides for the application of mechanisms that allow certain materials, under specific circumstances, to be used as products, without the administrative procedures associated with waste management being applicable to them, and that these mechanisms include the end-of-waste status, which applies to certain waste that has undergone a recovery operation, including recycling, and that meets certain conditions;

Whereas it is necessary to adapt the current legislative framework, giving concrete expression to the publication of the end-of-waste criteria for fertilising materials, established by Order No 79/2022 of 3 February 2022, obtained through the recovery of

livestock effluents, plant biomass and other ABP and PD of categories 2 and 3 for green energy production, creating conditions for their reintegration as a fertilising material directly in agricultural production, as well as raw material in the production of other fertilising materials;

It is necessary to determine the rules for the implementation of a management system that demonstrates compliance with the criteria required for the declassification of digestate and compost, resulting respectively from controlled anaerobic digestion and aerobic digestion, of livestock effluents and their equivalents, plant biomass and other ABP and PD of categories 2 and 3 originating from biogas and composting units that fall within the scope of Ministerial Implementing Order No 79/2022 of 3 February 2022 laying down the regulatory standards applicable to the sustainable management of livestock effluents.

Accordingly, the Secretary of State for the Environment and the Secretary of State for Agriculture, in the exercise of the powers delegated, respectively, by Order No 9406-A/2024 of 13 August 2024 of the Minister for the Environment and Energy, published in the Official Gazette of Portugal, 2nd series, No 158, supplement, of 16 August 2024, and by Order No 6739/2024 of 22 May 2024 of the Minister for Agriculture and Fisheries, published in the Official Gazette of Portugal, 2nd series, No 115, of 17 June 2024, as amended by Order No 4113/2025 of 26 March 2025, published in the Official Gazette of Portugal, 2nd series, No 64, of 1 April 2025, and, pursuant to Article 92(2) of the General Waste Management Scheme and Article 12(1)(b) of Ministerial Implementing Order No 79/2022 of 3 February 2022, provide as follows:

- 1- This Order establishes the criteria for assigning end-of-waste status (EoW) to digestate and compost resulting from the organic recovery of livestock effluents and their equivalents and/or other animal by-products (ABP) and derived products (PD) of categories 2 and 3, whether or not associated with plant biomass, the destination of which is to constitute a fertilising material which complies with the specifications laid down in Order 79/2022 of 3 February 2022, as well as in Commission Regulation (EU) No 142/2011 of 25 February 2011, hereinafter referred to as digestate or compost.
- 2- The definitions laid down in Article 2 of Ordinance No 79/2022 of 3 February 2022 and in Article 3 of the General Waste Management Regime (RGGR), approved by Annex I to Decree-Law No 102-D/2020 of 10 December 2020, as amended, shall apply.
- 3- The following definitions apply for the purposes of this order:
 - a) 'Producer' or 'Producer of compost or digestate' means the natural or legal person who carries out or completes the recovery operations that give rise to the compost or digestate and who transfers the compost or digestate, which ceases to be waste, to another holder;
 - b) 'Holder' or 'holder of compost or digestate': the natural or legal person who has compost or digestate in their possession;
 - c) 'Consignment of digestate or compost' means a quantity of compost or digestate, organised into a batch which is intended for delivery from a

producer to another holder in one or more transport units, including containers.

- 4- All biogas and composting units that fall under the New Regime for the Exercise of Livestock Activity (NREAP) must have a title or operating licence.
- 5- The digestate and compost resulting from the organic recovery of the materials referred to in paragraph 1 shall cease to be considered waste when transferred from the producer to another holder, provided that all of the following conditions are met:
 - a) Biogas or composting units must have an operating licence or permit, as provided for in paragraph 4;
 - b) The materials resulting from organic recovery (digestate or compost) meet the criteria set out in paragraph 1 of Annex I to this Order;
 - c) The materials identified in paragraph 1 meet the criteria set out in point 2 of Annex I to this order;
 - d) The material identified in paragraph 1 has been treated in accordance with the criteria set out in paragraph 3 of Annex I to this Order;
 - e) The digestate or compost is intended for application as fertilising material for land use and agricultural recovery under the conditions laid down in Ministerial Implementing Order No 79/2022 of 3 February 2022 and Commission Regulation (EU) No 142/2011 of 25 February 2011.
- 6- The digestate or compost must not present a risk to human, animal or plant health, to safety or to the environment, without prejudice to compliance with the requirements set out in Annex I to this Order.
- 7- The producer of the digestate or compost shall implement a management system that enables compliance with the conditions referred to in paragraph 5 to be demonstrated.
- 8- The management system must include a detailed description of the recovery process which constitutes the procedures manual and should contain the following elements:
 - a) Monitoring of the quality of digestate or compost resulting from organic recovery, in accordance with point 1 of Annex I to this Order, the sampling methodology used, the physico-chemical analyses to which the samples are subject, the conformity assessment criteria, as well as the description of the packaging and storage process for products and technical files containing the information set out in point 4 of Annex III and in Annex IV to Order No 79/2022 of 3 February 2022;
 - b) Verification, for the purposes of acceptance, of the waste used as input in the recovery operation, in accordance with point 2 of Annex I of this Order, the definition of the admissibility and rejection criteria for the waste, the forms of control and records, as well as the description of the origins of the waste and the route taken from its entry until it is integrated into the treatment process, including storage;

- c) Monitoring of the treatment processes and techniques described in point 3 of Annex I of this Order, and a detailed description of the process, including a description of its unit operations;
 - d) Description of the destination of the waste resulting from the compost or digestate production process;
 - e) Description of the destination of the compost or digestate produced;
 - f) Description of the methodology for the assessment of customer satisfaction, considering, in particular, the conformity of the quality of the compost or digestate;
 - g) Record-keeping of the results of the monitoring conducted under subparagraphs (a) to (c);
 - h) Review and improvement of the management system;
 - i) Staff training;
 - j) Identification of those responsible for each stage of the process and the templates for technical data sheets, labels and declaration of conformity.
- 9- The management system shall also set out the specific self-monitoring requirements established for each criterion, as set out in Annex I to this Order.
- 10- All records provided for in the Procedures Manual, including electronic waste monitoring guides (e-GAR), electronic animal effluent transport guides (EGTEP) and accompanying guides for animal by-products and derived products, the health certificates of the ABP and DP used, issued by the competent national authority, analysis reports, the quantities of waste produced and their destination, shall be kept for at least five years.
- 11- A conformity assessment body shall verify that the management system complies with the requirements provided for in paragraphs 8 and 9 of this Order.
- 12- For each consignment of digestate or compost, the producer shall issue a declaration of conformity by electronic means in accordance with the template set out in Annex II to this Order.
- 13- The digestate or compost resulting from the recovery carried out in accordance with the provisions of this order must be accompanied by the technical data sheet referred to in paragraph 8(j) and labelled in accordance with the provisions of the legislation applicable to products.
- 14- In accordance with the provisions of Article 98(1)(b) of the RGGR, the producer of the digestate or compost must complete the FER Form in the Integrated Waste Registration Map (MIRR), which is specific for the collection of data on waste that is declassified annually through the attribution of the FER.
- 15- This order shall take effect on the day following the date of its publication.

ANNEX I

Criteria applicable to digestate or compost

Criteria	Self-monitoring criteria
Point 1 Quality of digestate or compost resulting from the recovery operation	
1.1. The digestate or compost must comply with the specifications laid down in Annex III to Ministerial Implementing Order No 79/2022 of 3 February 2022, as regards the frequency of sampling, reference methods, physico-chemical and microbiological analytical determinations (provided for in Annex V to Commission Regulation (EU) No 142/2011 of 25 February 2011), as well as the assessment of the stability, phytotoxicity, presence of viable seeds and propagules of weeds and physical contaminants.	The frequency of sampling must comply with the provisions of point 2 of Annex III to Ministerial Implementing Order No 79/2022 of 3 February 2022, taking into account the quantity produced each year. The sampling methods are those published on the website of the National Institute for Agricultural and Veterinary Research (Instituto Nacional de Investigação Agrária e Veterinária), I. P. (INIAV, I. P.).
1.2. The digestate or compost must comply with the maximum permissible values for heavy metal content, pathogenic microorganisms, seeds and weed propagules set out in Annex IV to Ministerial Implementing Order No 79/2022 of 3 February and Section 3 of Chapter 3 of Annex V to Commission Regulation (EU) No 142/2011 of 25 February 2011.	The reference methods to be used are those listed on the INIAV, I. P. website. The rules for collecting samples, their packaging and shipment to laboratories are those published on the INIAV, I. P. website.
1.3. The digestate or compost must comply with the maximum permissible values for any additional parameters that have been established by the NREAP coordinating body.	The process for determining the sampling frequency and the sampling methodologies shall be documented in the management system and shall be available for audit. In addition to the quantitative characterisation, each consignment must be inspected visually ⁽¹⁾ by qualified personnel ⁽²⁾. The quantities of digestate or compost produced and the recipients shall be recorded.
Point 2 Materials used in anaerobic digestion and composting	
2.1. Only livestock effluents and their equivalents may be used as raw material, and may incorporate plant biomass and other ABP and PD of categories 2 and 3 as provided for in Ministerial Implementing Order No 79/2022 of 3 February 2022.	For acceptance purposes, all materials received must be checked [by visual inspection (3)] and the accompanying documentation must be verified by qualified personnel (4) who are trained to recognise materials that do not meet the criteria set out in this point.
2.2. The physico-chemical and microbiological analytical determinations provided for in Annex III to Ministerial Implementing Order No 79/2022 of 3 February 2022 must be carried out on livestock effluents (with possible incorporation of plant biomass) and other ABP and PD of categories 2 and 3 received. The frequency of sampling, the analytical reference methods and the sample collection methodologies must comply with the provisions of the aforementioned Order.	The eligibility criteria for the input materials shall be laid down in the procedures manual. A dated record must be kept of the quantity, origin and type of materials received, rejected and recovered. In the case of other ABP and PD, the traceability of all consignments received must be ensured by means of a register that includes the date of receipt, the place of origin of the materials from which they are shipped, the name and address of the carrier, and the classification of the material received according to the category and type

	specified in Regulation (EC) No 1069/2009 of the European Parliament and of the Council. If these materials have undergone prior treatment, the type of treatment they underwent, the facility that carried out the treatment, and the respective NCV. Where applicable, a record shall be kept of consignments and their commercial documents or health certificates for ABP or PD received, without prejudice to other mandatory records, in accordance with Regulation (EU) No 1069/2009 of the European Parliament and of the Council and Commission Regulation (EU) No 142/2011. Livestock effluents with possible incorporation of biomass or which are subject to prior treatment must be identified as to the percentage of their constituents. The type of raw material used in the manufacture of each batch of digestate or compost must be recorded, with an indication of the percentage by mass corresponding to each of the components.
Point 3 Organic recovery processes and techniques	
3.1. Processing shall be carried out in accordance with the provisions of Commission Regulation (EU) No 142/2011, in particular as regards the requirements for premises, hygiene requirements and processing parameters specified in Chapters I, II and III of Annex V to that Regulation.	A self-monitoring system should be established to verify that the treatment parameters are being met (process temperature monitoring records as a function of time, residence times, etc.). In accordance with Articles 28 and 29 of Regulation (EU) No 1069/2009 of the European Parliament and of the Council, internal controls shall be established and implemented and a permanent written procedure or procedures based on the principles of hazard analysis and critical control points (HACCP principles) shall be maintained in order to verify the compliance of the establishment or plant with that Regulation.
3.2. Digestate or compost shall be kept separate from input materials and stored in accordance with the provisions of Annex IX and Chapter II of Annex XI to Commission Regulation (EU) No 142/2011.	
3.3. The digestate and compost must be obtained through anaerobic digestion and composting, respectively.	

(¹) Inspection of all parts of each shipment, by means of human senses or non-specialised equipment.

(²) Personnel qualified, through experience or training, to monitor and evaluate the properties of the input materials.

(³) Inspection of all parts of each shipment, by means of human senses or non-specialised equipment.

(⁴) Personnel qualified, through experience or training, to monitor and evaluate the properties of the input materials.

ANNEX II

Declaration of Conformity to the end-of-waste status criteria referred to in paragraph 12

1 - Producer of the digestate and/or compost:

Name:

Tax ID number (NIF):

Address:

Contact person:

Phone:

E-mail address:

2 - Standards and technical specifications.

2.1 - A standard or technical specification to which the digestate or compound supplied conforms;

2.2 - If applicable, main additional technical specifications set by the customer (composition, type, properties, etc.);

3 - The consignment of the digestate or compost complies with the standard(s) or technical specification(s) referred to in Point 2 to this Annex.

4 - Quantity of the consignment in kilogram or litre:

5 - The producer of the digestate or compost shall apply a management system in accordance with paragraph 7 of this Order, which has been verified by an accredited body in accordance with paragraph 11.

6 - The consignment of digestate or compost meets the criteria referred to in paragraph 3 of this Order.

7 - The material in this consignment is intended exclusively for direct use for land uses and under the conditions laid down in Ministerial Implementing Order No 79/2022 of 3 February 2015 and Commission Regulation (EU) No 142/2011, by (please indicate to whom it is intended).

8 - Declaration of the producer of the digestate or compost:

I certify that the information provided above is complete and correct:

Name:

Date:

Signed: