



## EXECUTIVE SUMMARY

<b>Ministry/Proposing Body.</b>	Ministry of Agriculture, Fisheries and Food / General Secretariat for Agricultural Resources and Food Security	<b>Date</b>	19/01/2024
<b>Title of regulation.</b>	Royal Decree amending Royal Decree 1051/2022 of 27 December 2022 establishing standards for sustainable nutrition in agricultural soils		
<b>Type of memory.</b>	Normal <input type="checkbox"/> Abridged <input checked="" type="checkbox"/>		
<b>ADVISABILITY OF THE PROPOSAL</b>			
<b>Situation being regulated.</b>	Royal Decree 1051/2022 is amended in order to make various technical adjustments to it, and to improve its content.		
<b>Objectives pursued.</b>	Technical improvement and the establishment of basic standards to achieve a sustainable supply of nutrients in agricultural soils.		
<b>Main alternatives considered.</b>	Since it is a matter of amending basic regulations, it is considered that there are no alternative courses of action.		
<b>CONTENT AND LEGAL ANALYSIS</b>			
<b>Type of standard.</b>	Royal Decree.		
<b>Structure of the Standard</b>	A single article composed of 16 paragraphs.		

Reports received.	<p>Mandatory report by the Technical Secretariat-General of the Department (Article 26(5), paragraph 4, of Law 50/1997 of 27 November 1997, by the Ministry of Ecological Transition and the Demographic Challenge, and by the then Ministry of Consumer Affairs, Ministry of Health, Ministry of Economic Affairs and Digital Transformation and Ministry of Industry, Trade and Tourism, (all in accordance with Article 26(5), paragraph 1, of Law 50/1997), report by the Ministry of Territorial Policy, with regard to the constitutional order of distribution of powers (Article 26(5), paragraph 6 of Law 50/1997), prior approval of the Fourth Vice-President of the Government and Minister of Finance and Public Service (Article 26(5), paragraph 5 of Law 50/1997), regulatory quality report by the Ministry of the Presidency, Relations with Parliament and Democratic Memory (Article 26(9) of Law 50/1997).</p> <p>It will be forwarded to the European Commission in the framework of the notification procedure established by Directive (EU) 2015/1535 and forwarded to the Council of State for opinion.</p>	
Hearing procedure.	<p>Public consultation prior to the drafting of the text (Article 26(3) of Law 50/1997), consultation with the autonomous communities (Article 3(1)(k) of Law 40/2015, of 1 October 2015, on the Legal Regime of the Public Sector) and entities in the sector, and public hearing and information (Article 26(6) of Law 50/1997).</p>	
IMPACT ANALYSIS		
COMPLIANCE WITH THE ORDER OF COMPETENCES.	<p>What is the prevailing title of competence?</p> <p>Provision 13 of Article 149(1) of the Spanish Constitution, which confers on the State exclusive competence in matters of bases and coordination of the general planning of economic activity, as well as provisions 10, 16 and 23.</p>	
ECONOMIC AND BUDGETARY IMPACT.	General impact on the economy.	No significant impact
	With regard to competition	<div><input checked="" type="checkbox"/> the regulation has no significant impact on competition.</div> <div><input type="checkbox"/> the regulation has a positive impact on the competition</div> <div><input type="checkbox"/> the regulation has a negative impact on the competition.</div>

	From the point of view of administrative burden	<input type="checkbox"/> It entails a reduction in administrative burdens. Estimated quantification: _____ €. <input type="checkbox"/> It incorporates new administrative burdens. Estimated quantification: _____ € <input type="checkbox"/> It does not affect administrative burdens.
	From the point of view of budgets, the regulation: <input type="checkbox"/> Affects the General State Administration budgets to some degree. <input type="checkbox"/> Affects the budgets of other Territorial Administrations	<input type="checkbox"/> entails an expense: Estimated quantification: _____ <input type="checkbox"/> entails revenue: Estimated quantification:-----
<b>GENDER IMPACT.</b>	The regulation has the following gender impact	Negative <input type="checkbox"/> None <input checked="" type="checkbox"/> Positive <input type="checkbox"/>
<b>OTHER IMPACTS CONSIDERED.</b>	There are no impacts on the family and children, equal opportunities, non-discrimination and universal accessibility for persons with disabilities, environmental issues or climate change. Finally, it should be highlighted that in drawing up this regulation the principles set out in Market Unity Law 20/2013 of 9 December 2013 guaranteeing the market unity, including the need for and the proportionality of the regulation, were considered.	
<b>OTHER CONSIDERATIONS.</b>		

# **SUMMARY OF THE ANALYSIS OF THE REGULATORY IMPACT OF THE DRAFT ROYAL DECREE AMENDING ROYAL DECREE 1051/2022 ESTABLISHING STANDARDS FOR SUSTAINABLE NUTRITION IN AGRICULTURAL SOILS.**

## **INTRODUCTION**

This report has been produced in accordance with Article 26(3) of Government Law 50/1997 of 27 November 1997 and Royal Decree 931/2017 of 27 October 2017 governing regulatory impact analysis reports.

The drafting process was initiated on 28 September 2023 in conjunction with the modification of other royal decrees.

## **I. JUSTIFICATION OF THE ABBREVIATED NATURE OF THE REPORT**

The report is presented in abbreviated form since no significant impacts arise from this proposed legislation, in accordance with the provisions of Article 3 of Royal Decree 931/2017 of 27 October 2017.

This option is justified because it is a legislative provision that only seeks to modify certain specific aspects of limited scope in a royal decree in order to make various technical adjustments.

## **II. OPPORTUNENESS OF THE REGULATION.**

### Rationale

Fertilisation is an essential practice in farming, but it is not without environmental risks.

This draft regulation is intended to update and improve the bases for rational fertilisation in order to maintain or improve agricultural production while minimising environmental effects.

Today's society demands from Public Administrations the application of a policy to reduce the environmental impact of the application of fertilisers and other sources of nutrients or organic matter to agricultural soils, as soon as the level of agricultural production necessary to supply the food system is reached.

On the other hand, the European Commission also integrates environmental policy across the board into other Community policies, as reflected in the European Green Pact. Among the main tools of this pact in the agricultural sector is the "Farm to Fork" strategy, which seeks to design a fair, healthy and ecological food system. This strategy imposes very ambitious environmental objectives, including one on fertilisation and good agronomic condition of soils. It aims to reduce nutrient losses by at least half without deteriorating soil fertility.

### Analysis of alternatives.

The non-adoption of a regulatory measure is ruled out, as it is a matter of approving an amendment to the basic legislation that establishes obligations for citizens, which makes it essential to adopt it in order to achieve its aims, which requires a modification to Spanish positive law.

#### Principles of good regulation.

This regulation was drafted according to the principles of good regulation set out in Article 129 of Law 39/2015 of 1 October 2015 on the Common Administrative Procedure of Public Administrations. In accordance with the principles of necessity and effectiveness, the draft regulation is justified by the need for a better implementation of European Union standards in Spain, this regulation being the most appropriate instrument to ensure its achievement, since it is mandatory that the standard is included in a basic regulation. It also complies with the principle of proportionality and with the objective of limiting the regulation to the minimum essential to reduce regulatory intensity. The principle of legal certainty is ensured by the introduction in a general provision of new provisions consistent with the rest of the legal system. Furthermore, in application of the principle of transparency, the Autonomous Communities and entities representing the sectors concerned were consulted during the drafting of the regulation, and the public hearing and information procedure were carried out. Finally, the principle of efficiency is considered to be fulfilled as no new administrative burdens are imposed compared to the current regulation.

#### Annual Regulatory Plan

For the purposes of the provisions of Article 25(3) of Law 50/1997, of 27 November 1997, of the Government, this regulation is not found in the Annual Regulatory Plan for the year 2023 in the proposals issued by the Ministry of Agriculture, Fisheries and Food.

### **III. CONTENT AND LEGAL ANALYSIS**

#### Content.

The draft consists of a single article divided into 16 paragraphs.

In the **single article** the amendment is made to the **Royal Decree 1051/2022 of 27 December**:

The definition of compost in **Article 3(d)** is replaced in order to complete it in accordance with Royal Decree 506/2013, of 28 June 2013, on fertilising products.

**Article 4** relaxes the exceptions for which the Autonomous Communities may establish periods other than those in Annex II and, at the suggestion of the Autonomous Community of Catalonia, provides for regional regulation in vulnerable zones. Finally, it qualifies pastures that are not fertilised as exceptions to the preparation of a fertilising plan. Also, in **Article 5**, as the result of an observation made during the public consultation, the incorporation of the fertilising plan as an annex to the farm logbook is replaced by the inclusion in the logbook of the relevant data (which are specified as a result of a comment by the Valencian Community and the Sindicato Labrego Galego), so that it can be digitised and thus allow for automated control. Additionally, **Article 6** considers the regional criteria on the calculation of nutrient needs, resulting from an observation by the Autonomous Community of Catalonia, and the characteristics of the fertilising plan are completed according to the nutrient needs of each crop.

In **Article 9**, the maximum period during which piles may remain in the enclosures is extended from 5 to 10 days, in general, and up to 20 days if the stacked material has been composted or digested, therefore making the period more flexible and allowing a longer term for those materials with a minimal risk of loss of nitrogen through emissions or leaching.

In **Article 10**, on the proposal of the Autonomous Community of Catalonia, a threshold of 0.1 % ammoniacal nitrogen is established for the prohibition of the application of materials other than slurry on fresh matter, referred to in paragraph 2. It also extends to the type of material applied, among other characteristics already foreseen, the conditions under which the competent authorities of the Autonomous Communities may establish a maximum period of less than 24 hours (extended from 12 to 24 hours on a proposal from the Autonomous Community of Navarre and in line with the request of the Autonomous Community of Catalonia and The Spanish Association of Small Farmers - UPA) to bury manure and other products after their application when this is mandatory.

In order to encourage the use of the electronic logbook where it is not mandatory, **Article 12** provides for the option not to apply a method to reduce ammonia emissions when urea or urea nitrogen solutions are used provided that a digital logbook is kept. Likewise, at the proposal of EuroChem Agro Iberia, the use of fertilising products that produce less greenhouse gas emissions or reduce the risk of nitrate leaching is promoted as far as possible and, as a result of an ANFFE observation, paragraph 4 is extended to emission mitigation measures that ensure a reduction equal to 30 %, not only higher, to incorporate slow-release fertilisers into these measures. For the same purpose (promoting voluntary use of the electronic logbook) a farmer using a digital logbook is allowed to use a fertiliser recommendation program instead of a physical advisor, in **Article 20**.

In **Article 15**, technical improvements and clarifications are incorporated in the wording. One change to be noted allows the application with the crop already planted, when liquid waste is involved, establishing the conditions for the application of recoverable liquids, except sludge, which are used to provide nutrients to the crops, equating it with the application of liquid manures.

In the **single transitional provision**, the name of R1001 is corrected at the request of the Autonomous Community of Castile and León.

In **Annex II**, on the proposal of Navarre and EuroChem Agro Iberia, respectively, the exclusion period for winter cereals is modified from June to August, thus allowing basal dressings in September, and the capacity of the Autonomous Communities with regard to exclusion periods during the use of leaching mitigation techniques with products of delayed availability is clarified. In **Annex III**, at the proposal of Catalonia, the regional criteria on the calculation of nutrient needs are provided for. Also, the clarification incorporated in the article on the advantage of the farmer keeping a digital farm logbook when not obliged to do so has been carried over. **Annex IV** incorporates technical improvements in the wording by specifying that the value for arsenic refers to the total, not the inorganic arsenic, and that the values of heavy metals refer only to residues, not to fertilising products. At the proposal of Catalonia and Valencia, the limits for chromium are also incorporated.

The application of materials that have previously been treated by composting or biodigestion (solid fractions) is incorporated into **Annex V** as a new mitigation action, since these biological treatments contribute to the mitigation of climate change by reducing emissions and retaining

more carbon in the soil, and the use of acidified or urease-inhibited slurry and the use of urease inhibitors is adapted to the practical conditions of livestock holdings. It also incorporates, as a new mitigation measure for emissions produced by organic and organo-mineral products and materials, the burial of manure in the first twelve hours after its application, by means of a mouldboard plough, chisel plough, cultivator or equipment that ensures equivalent work, except in direct sowing, in conservation agriculture or in pastures, as a result of an observation by Navarre.

**Annex VIII**, regarding WWTP sludge as a material for use in the fertilisation of agricultural soils, states that it must be treated by one of the methods established by this royal decree. In addition, four new categories of material are added to the list of materials other than fertilising products and manure that can be used in the fertilisation of agricultural soils in order to clarify the list in the light of the doubts raised in the public consultation and the public hearing and information. Technical adjustments are also made to the total organic matter requirements and this is modified for composted and digested materials so that only the content of *salmonella* and *escherichia coli* must be declared.

Finally, given that farms which use modern technology may have their own, precise systems which offer individualised and detailed recommendations for each plot, or even part of a plot on the farm, **Annex IX** on good practices in the use of irrigation water in relation to fertilisation incorporates the recommendation to use soil moisture content sensors to adjust the dose and frequency of irrigation, thus extending the reference to the irrigation recommendations of the official agencies. It also updates the name of SiAR and replaces the term 'fertiliser' by the corrected term 'nutrient' in the application when crops are fertilised through localised irrigation, since there are other materials that can be dissolved in the irrigation water and applied to the soil through it.

## Legal analysis

### **Legal basis and normative status**

It is necessary to facilitate the implementation of certain technical aspects, to strengthen coherence with other sectoral regulations and to clarify unclear wording. To this end, the provisions concerning the farm logbook and the fertilising plan, and those facilitating the use of manure and organic fertilisers are amended.

The regulation has the status of royal decree, as has the provision which it modifies.

### **List of regulations repealed.**

No legislation is repealed, only the aforementioned royal decree is partially amended.

### **Entry into force**

The entry into force of the regulation is expected on the day following that of its publication in the 'Official State Gazette'.

## **IV. PREVAILING TITLE OF COMPETENCE.**

- The seventh final provision of Royal Decree 1051/2022, of 27 December 2022, establishes that the provisions of it have the character of basic regulations, under provisions 13, 16 and 23 of Article 149(1) of the Spanish Constitution, which confer on the State exclusive competence in matters of, respectively, the bases and coordination of the general planning of economic activity, bases and general coordination of health, and basic legislation on environmental protection.

In this regard, the provisions of paragraphs I to IV of the first point of the 'Criteria on the adaptation of state regulations to the constitutional order of distribution of competences' should first be recalled, approved by the Ministries of the Presidency and Public Administrations dated 9 June 2008: *'All normative initiatives promoted by the Government must identify in the First Final Provision the title of competence on which they are based, in the terms set out in Article 149(1) of the Constitution. Only regulations adopted in the exercise of the power of self-organisation and the provisions amending others in force which would have invoked the corresponding jurisdictional basis are exempted, provided that they do not alter the material scope of the amended regulation.'*

Thus, invoking the amended regulation as its basis of competence and without altering its material scope, it is not appropriate for the draft regulation to include any provision relating to titles of competence.

On the other hand, it is necessary to analyse the jurisdictional basis of the amended regulation in its prevalent nature. As regards the exclusive competence of the State in matters of bases and coordination of the general planning of economic activity, conferred by Article 149(1)(13) EC, and common to all the royal decrees modified by the proposed regulation, it should be noted that in accordance with the provisions of Article 148(1)(7) EC, the Autonomous Communities have assumed in their respective Statutes of Autonomy exclusive powers in the matters of agriculture and livestock, although specifying that this must be exercised *'in accordance with the general management of the economy'*.

In this regard, the Constitutional Court has been pointing out since Constitutional Court Decision 95/1986 (and subsequently, among others, in Constitutional Court Decisions 152/1988 of 20 July 1988 and 188/1989 of 16 November 1989) that *'the exclusive nature of the autonomous region's competence over agriculture does not preclude any state intervention in this sector. This is not only because certain matters or activities closely linked to agriculture can be subsumed under the terms of competence that article 149(1) of the Constitution entrusts to the State, but also, and above all, because ... Article 148(1)(7) of the Constitution ... preserves the powers of organisation of the economy reserved in general for the State by Article 149(1)(13) of the Constitution'* (FJ2). In addition, *'it is clear that, within this power to direct general economic activity, there are also State regulations that establish the guidelines and the general criteria for the management of specific economic sectors, as well as the provisions for specific actions or measures that are necessary to achieve the objectives proposed within the management of each sector ...'* (FJ 4).

Admitting then that the State competence of Article 149(1)(13) EC covers all the regulations and actions, whatever their nature, aimed at achieving the management purposes of the sector to which it relates (Constitutional Court Decision 34/2013 of 14 February 2013 FJ 4(b)), we have also stated that *"the possible risk that this channel will lead to a drastic reduction of the specific regional powers in economic matters requires that the constitutionality of the State measure limiting the competence assumed by an Autonomous Community as exclusive in its Statute must be assessed in each case, which implies a thorough examination of the purpose of the State regulation in accordance with its 'predominant objective', as well as its possible*



*correspondence with general interests and purposes that require unitary action throughout the State (all, Constitutional Court Decision 225/1993 of 8 July, FJ 3 (d))” (Constitutional Court Decision 143/2012 of 2 July, FJ 3)’.*

It is also worth mentioning Constitutional Court Decision 6/2014, in which the Constitutional Court, reiterating its previous doctrine, states that:

*‘(a) The first final provision of Royal Decree 405/2010 gives it the character of basic legislation, under the provisions of Article 149(1)(13) EC. This rule of jurisdiction has been the subject of an exhaustive interpretation by this Court, having laid down a case law which, in summary form, is set out, among others, in Constitutional Court Decision 77/2004 of 29 April 2004:*

*“It covers both the State regulations that establish the guidelines and the general criteria for the organisation of a particular sector and the provisions for specific actions or measures that are necessary to achieve the objectives proposed within the organisation of each sector (Constitutional Court Decisions 95/1986, of 10 July 1986, and 213/1994 of 14 July 1994) ... the State retains certain powers in those sectoral aspects of the economy that could be the subject of exclusive competence of the Autonomous Communities but which must conform to the general guidelines by which the State lays the foundations of economic planning and coordinates it.*

*It is also the case, however, that these supervisory powers cannot under any circumstances lead to a distortion in the constitutional and statutory division of competences in which the Autonomous Communities have received significant responsibilities in economic matters. As so often happens, and it is even more true in these matters connected with the existence of a single market in which all the factors of that market are strongly interrelated, the design of the constitutional text advocates a balance between the different constitutional subjects present, which must distribute powers without nullifying others and always keeping in mind the need for cooperation between them (FJ 4).” (FJ. 5 (a)). The State could thus act in very specific sectors of economic activity over which the Autonomous Communities have powers. This has been repeatedly stated by the Court in relation to many economic sectors and sub-sectors such as, among others, the agriculture and livestock sector’.*

Likewise, in Constitutional Court Decision 178/2015, the Constitutional Court, reiterating its previous doctrine, recalls that *‘Indeed, this Court said in Constitutional Court Decision 32/1983, of April 28 1983, FJ 2, that coordination “pursues the integration of the diversity of the parts or subsystems in the whole or system, avoiding contradictions and reducing dysfunctions that, if they remained, would respectively prevent or hinder the very reality of the system.” We have also pointed out (Constitutional Court Decision 194/2004, of 4 November 2004, FJ 8) that this State competence for general coordination means not only that the parts or subsystems must be coordinated, but that it is for the State to carry out the coordination, and this must be understood as the establishment of means and relationship systems that enable reciprocal information, technical homogeneity in certain aspects, and the joint action of the State and Autonomous Community authorities in the exercise of their respective powers in such a way as to achieve the integration of partial acts into the overall system.’ (FJ. 9).*

The draft is respectful of the doctrine of the Constitutional Court, which recognised in Constitutional Court Decision 79/1992 of 16 June 1992, legal basis 3, that: *‘Only on rare occasions can national legislation supplement the European Community legislation applicable to the cases we are dealing with, by reference, with substantive requirements relating to the definition of beneficiaries or to certain conditions, limits or supplements of aid.*

In these circumstances, State regulations that are not a simple transcription of the Community regulations but rather serve as a development or complement to these can only be directly applied without infringing on the powers that the Autonomous Communities of the Basque Country and Catalonia have with regard to agriculture and livestock when they are to be considered basic standards of organisation of the sector, or when the existence of a common regulation is justified for reasons related to coordination of the activities of the State and the Autonomous Communities in relation to the execution of the aid measures provided for in the applicable Community Regulations. With these exceptions, the Autonomous Communities can adopt the necessary provisions to complement this European legislation and regulate the management operations that correspond to them, within the framework of European law and state regulations of a basic or coordinative nature.

On the other hand, in cases such as those that we contemplate, the provisions of the State that establish standards destined to allow the execution of the Community Regulations in Spain and that cannot be considered basic or coordinative regulations, are supplementary to those that may be dictated by the Autonomous Communities for the same purposes within the scope of their powers. First, because it is a matter (the agricultural and livestock matter) in which there are concurrent State powers concerning general management of the sector throughout the national territory, which legitimises this state regulatory intervention, at least within a supplementary scope (Constitutional Court Decision 147/1991). Second, because, in the absence of the consequent legislative or regulatory activity of the Autonomous Communities, such supplementary State legislation may be necessary in order to ensure compliance with European secondary legislation, a role corresponding to the Cortes Generales or the Government, as the case may be (Article 93 of the Spanish Constitution, according to which it is also to be interpreted within the scope of the supplement clause in Article 149(3) of the Spanish Constitution). Third, because otherwise it could (and indeed would have) reached the absurd conclusion that, in view of the regulatory passivity of all or some Autonomous Communities, farmers and ranchers of those regions would not be able to receive the aid corresponding to them under the applicable Community regulation, a result which can never be justified by a rigid interpretation of the constitutional order of competences and that, precisely, a closure clause such as that of Article 149(3) of the Spanish Constitution helps to avoid.

## **V. DESCRIPTION OF THE PROCEDURE.**

The processing of this text followed the procedure in Article 26 of Government Law 50/1997 of 27 November 1997.

For much of its drafting, its content was included in another draft royal decree amending various royal decrees concerning the fruit and vegetable sector, viticulture and beekeeping, and the regulation of different aspects of the exercise of agricultural activity and the management of the common agricultural policy. However, on the instruction of the Council of State, the amendment of Royal Decree 1051/2022 will continue to be processed separately, although all the following procedures were undertaken together:

Between 28 June and 12 July 2023, both included, the prior public consultation was carried out through the web portal of the Ministry of Agriculture, Fisheries and Food, as stipulated in Article 26(2) of Law 50/1997, of 27 November 1997, accredited by a certificate from the Deputy Director-General for Support and Coordination of the then General Secretariat of Agriculture and Food (Ministry of Agriculture, Fisheries and Food). It envisaged the amendment of 12 royal decrees on aspects related to the implementation of the common agricultural policy in Spain.

For efficiency and coherence, it was finally decided to divide the draft regulation into two royal decrees, the first of which preceded this one and was initially referred to as the document of the public consultation itself, which included the modification of the Royal Decrees 1045/2022, 1047/2022, 1048/2022, 1049/2022 and 1054/2022, and the second royal decree, cited in the previous paragraph.

The observations received were collected and analysed in the corresponding table.

In this regard, it should be noted that, with regard to the motion following the urgent interpellation by the Joint Parliamentary Group, on the Government's criteria for intensive and extensive livestock farming, and in particular on the problem of the elimination of slurry (file number 173/000191), approved by the plenary session of the Congress of Deputies on 16 February 2023, it is considered that the exceptions granted to livestock farms already included in the text constitute a balanced solution between the necessary protection of extensive livestock farming and the objectives of this Royal Decree (maintenance of agricultural productivity and minimisation of damage to the environment). In addition, the current amendment on the one hand clarifies that non-fertilised pastures are exempted from drawing up a fertilising plan and presents several amendments aimed at facilitating the use of organic manures and fertilisers.

The joint drafting process was initiated on 28 September 2023.

The procedure for a public hearing has been carried out, in accordance with Article 26(6) of Law 50/1997, of 27 November 1997, and the consultation of the Autonomous Communities and cities of Ceuta and Melilla, based on the general duty of cooperation between Public Administrations imposed by Article 3(1)(k) of Law 40/2015 of 1 October 2015 on the Legal Regime of the Public Sector, and the entities representing the interests of the sectors affected by the draft regulation, seeking the opinion of the most representative professional agricultural organisations (ASAJA, COAG, UPA, Unión de Uniones de Agricultores y Ganaderos, and Cooperativas Agroalimentarias), in accordance with Article 26(6) of Law 50/1997 of 27 November 1997.

All these procedures are accredited by the receipt of the draft and the issuance of observations within the scheduled deadline, from 29 September to 20 October, both inclusive, and by the certificate signed by the Deputy Director-General for Support and Coordination dated 3/11/2023.

The observations received have been collected and analysed.

The following reports were also received:

- Report dated 10 October 2023 from the Technical Secretariat of the Ministry of Health (Article 26(5), paragraph 1, of Law 50/1997 of 27 November 1997), without observations.
- Report of the then Ministry of Territorial Policy dated 11 October 2023, on the adaptation of the draft regulation to the order of constitutional distribution of competences (Article 26(5) paragraph 6 of Law 50/1997 of 27 November 1997), whose formal observations have been taken into account regarding the mention, in the introductory part of the text and in this report, of compliance with the consultation procedure with the Autonomous Communities and the revision of the content of section IV on the titles of competence that legitimise the regulatory changes made and the incorporation into them of the 10th rule of Article 149(1) EC in the corresponding section of the MAIN and in its executive index.

- Report dated 17 October 2023 from the Technical General Secretariat of the then Ministry of Economic Affairs and Digital Transformation (Article 26(5), paragraph 1, of Law 50/1997 of 27 November), without observations.

- Report dated 19 October 2023 from the Technical General Secretariat of the then Ministry of Industry, Trade and Tourism (Article 26(5), paragraph 1, of Law 50/1997 of 27 November 1997) whose observations on the text and report have been taken into account.

- Report dated 6 November 2023 from the Technical General Secretariat of the Ministry for the Ecological Transition and Demographic Challenge (Article 26(5), paragraph 1, of Law 50/1997 of 27 November 1997). The proposed new wording for the first paragraph of Annex IX of Royal Decree **1051/2022** has been incorporated into the draft text, clarifying that moisture sensors are a useful tool to know the state of the soil, but cannot be included as an additional option to the two options currently in force on advisory recommendations (in the same paragraph, the name SiAR is corrected, this being the correct version). However, it is considered preferable to maintain the current wording of the draft with regard to the following proposals:

- The proposal to retain the wording of Article 5(a) of Royal Decree 1051/2022 is not supported, eliminating the mention of relevant data because it is imprecise and limiting, since it is not effective to attach a file with the fertilising plan, in addition to not being able to use the data for control purposes. Alternative wording is proposed including the specific data to be entered.

- With regard to retaining piles for a maximum of 5 days in Article 9(2)(g), it should be specified that more time is needed to carry out the work for reasons of logistics, machinery and personnel. In fact, several Autonomous Communities and associations ask for much longer deadlines with this justification.

It should be borne in mind that in the application of sewage sludge, for example, they face a serious problem of storage of this waste which aggravates this situation. In the case of manure, the problem is not storage since sectoral regulations provide for minimum storage conditions (so that it is possible to wait for the best agronomic moment to apply it).

On the other hand, in order to prevent this extension from having a negative impact on ammonia emissions, conditions are imposed that limit them.

As for the request to waterproof the land, it is impracticable since it is the plot itself on which it will later be extended.

In addition, the rest of the article (which is not modified) maintains other limiting conditions, such as moisture of the material, quantities, references to infiltration, etc.

- In the observation about Article 12(3), the Ministry for Ecological Transition and the Demographic Challenge does not consider it appropriate to include a third option in relation to the extension of measures to reduce the impact of the application of urea or nitrogen solutions, it proposes that the current wording be retained. Indeed, it could be used as the only mitigation measure. There is no quantified reduction in the guidance document included in paragraph 4, but accounting for the actual contributions that are made can contribute to reducing the consumption of fertilisers. This measure is included to encourage the use of the electronic logbook when it is not mandatory.
- The proposal by the Ministry for Ecological Transition and the Demographic Challenge for compliance with advisory obligations through a fertilisation advisor's report, as reflected in the first paragraph of Part III of Annex III, is not supported. The regulation states that either an advisor is used or a recommendation program is used with the digital logbook. In both cases, these obligations are fulfilled, which was the intention of the initial wording. There is no need for a report. The advisor prepares the fertilising plan and it must be documented. Documentation is to be defined by ministerial order.

- The proposal for the incorporation of heavy metals from fertilising products in Part A of Annex IV cannot be accepted. The ban on applying fertilising products that exceed heavy metal limits is maintained (in fact if it is a 'fertilising product' it can no longer have high values of heavy metals). What is removed here is not that prohibition but the inclusion of the data in the logbook. The farmer does not know this data because it is not shown on the label.

- Prior approval by the then Minister of Finance and Public Service dated 14 December 2023 in accordance with Article 26(5) paragraph 5 of Law 50/1997, of 27 November 1997, whose observations on the text have been taken into account, although the characterisation as a technical improvement of the new amendment of Article 4 of Royal Decree 906/2022, is reflected in this report and not in the preamble in order to preserve the balance of its content.

The Technical General Secretariat of the Department has also been requested to report, in accordance with Article 26(5), paragraph 4, of Law 50/1997 of 27 November 1997, as has the then titled Ministry of Consumer Affairs, in accordance with Article 26(5), paragraph 1, of Law 50/1997 of 27 November 1997 and Article 26(9) of Law 50/1997 of 27 November 1997, regulatory quality report of the then Ministry of the Presidency, Relations with Parliament and Democratic Memory.

All the previous procedures are taken as reproduced, given the identity of the object and procedures, being resumed at this point with their dispatch to the European services.

The text will be subject to the information procedure in the field of technical standards and regulations provided for in Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on information society services.

Finally, the mandatory opinion of the Council of State will be obtained, in application of Article 22(2) of Organic Law 3/1980, of 22 April 1980.

## **VI. IMPACT ANALYSIS.**

### **6.1 ECONOMIC AND BUDGETARY IMPACT**

#### **6.1.a) Economic and budgetary impact.**

The project does not have a general impact on the economy, as it involves technical adjustments in the implementation of regulations. In any case, it facilitates the implementation of the measures by making certain practical provisions more flexible for the farmer.

The impact of the proposal on the general budgets of the State is nil, since it does not imply modification of either expenditure or public revenue.

For all public administrations, the actions will be taken with existing staff and resources, without the measures included in this royal decree implying an increase in allocations, remuneration or other staff costs. The costs of the actions for the public administrations will be the usual in the management and control of support.

Therefore, the implementation of the draft royal decree does not imply an increase in public expenditure or a decrease in public revenue, so its budgetary impact is zero.

### **6.1.b) Effects on competition in the market**

The regulation is neutral, and does not produce fragmentation effects in the market, as it is a technical standard for fertilisation.

It can also be classified as neutral for the purposes of exploiting economies of scale, since it affects all the sectors involved (farmers and livestock farmers), without affecting competition.

### **6.1.c) Impact on market unity**

In drafting this regulation, account has been taken of the principles contained in Law 20/2013, of 9 December 2013, on the guarantee of market unity, including the necessity and proportionality of the regulation, which is limited to what is stipulated in European Union legislation or in the needs identified for its better implementation and application in Spain.

### **6.1.d) Analysis of impact on administrative burden.**

'Administrative burden' refers to all administrative tasks to be carried out by businesses and individuals to meet the obligations under the regulation.

As regards possible creation of such burdens by the draft, Article 2(1)(e) of Royal Decree 931/2017 of 27 October 2017 governing regulatory impact analysis reports requires the text of this document to include 'identification and measurement of said administrative burden'.

Consequently, an analysis of the impact of the proposal is carried out to estimate its economic quantification by means of 'Simplified method of measuring administrative burdens', after which it is considered that no new administrative burdens are imposed as a direct result of the implementation of the project.

### **6.1.e) SME Test**

The agricultural sector in Spain is characterised by a marked duality: on the one hand, it consists of a large number of small farms of very small size (78.5 % of farms have less than 10 hectares and they account for only 11.2 % of the utilised agricultural area – UAA). Whereas, at the other extreme, a small group of large holdings absorbs most of the useful area (farms of more than 50 hectares account for 6.0 % by number but more than 67.8 % of the UAA).

It has, therefore, certain characteristics that make it different from any other economic sector. As significant elements we can highlight its business fabric mainly composed of SMEs and MicroSMEs and the great diversity of agricultural, livestock and forestry activities, as well as others resulting from these, with the subsequent multiplicity of tasks (FPRL, 2012 and UGT-Aragón, 2010).

## **6.2. GENDER IMPACT**

The purpose of gender impact reports is to analyse and assess the potential results of adopting the regulation from a perspective of suppressing inequalities and the regulation's contribution towards achieving the objectives of equal opportunities and equal treatment between women and men based on baseline indicators, expected results and the expected impact. The gender impact report is a basic tool for obtaining information on the social reality, from a gender

perspective, for the general public as a whole that will be affected by the regulation in order to identify and assess the different results that the seemingly neutral regulatory provisions could have for women and men; Ultimately, to perceive the possible inequalities and the possible effects that the proposed regulation may have on both sexes.

With regard to the gender impact analysis of this project, in accordance with the provisions of article 19 of Organic Law 3/2007, of 22 March 2007, for effective equality between women and men, and Article 26(3)(f) of Law 50/1997 of 27 November 1997, we must start from the fact that the regulations aim to modify sustainable nutrition standards for agricultural soils in Spain.

Consequently, the draft does not establish actions that have positive or negative gender impacts.

Ultimately, for the purposes of Article 26(3)(f) of Law 50/1997 of 27 November of the Government and Article 19 of Organic Law 3/2007 of 22 March on effective equality between women and men, the draft has no gender impact.

## **6.5. OTHER IMPACTS**

### **6.5.a) *Environmental impact***

The draft is favourable in terms of mitigation and adaptation to climate change.

### **6.5.b) *Equality and accessibility***

There are no impacts with regard to equal opportunities, non-discrimination or universal access for persons with disabilities.

### **6.5.c) *Family, childhood and adolescence.***

Nor does it have any impact on childhood and adolescence, as required by Article 22(d) of Organic Law 1/1996, of 15 January 1996, on the legal protection of minors, nor on the family, in accordance with the tenth additional provision of Law 40/2003, of 18 November 2003, on the protection of large families, as it is a technical regulation in the field of support for the Common Agricultural Policy.

## **6.6. Climate change impact.**

The impact of this draft regulation for the purposes referred to in Article 26(3)(h) of Law 50/1997, of 27 November 1997, in terms of mitigation and adaptation to climate change, is favourable, since it modifies a royal decree that promotes the reduction of greenhouse gas emissions, as well as the role of soils as carbon sinks in mitigation, by facilitating the use of manure and other organic materials and, on the other hand, the proposed actions and measures also translate into greater adaptation and resilience to the impacts of climate change.

## **6.7. OTHER IMPACTS.**

The draft has no impact on the use of electronic media or services of the digital administration that could have an impact on citizens or the Administration.

## **EX-POST EVALUATION**

In accordance with the provisions of Article 28(2) of the Law on Government, Articles 2(5) and 3 of Royal Decree 286/2017 of 24 March 2017 regulating the Annual Regulatory Plan and the Annual Report on Regulatory Evaluation of the General State Administration and establishing the Regulatory Planning and Evaluation Board, and Article 2(j) of Royal Decree 931/2017 of 27 October 2017, and in accordance with the content of the proposed 2021 Annual Regulatory Plan, the regulation is not among those subject to evaluation as none of the legally provided cases which would make this evaluation mandatory apply.

Madrid, 19 January 2024