

NATIONAL COMMISSION ■ ON DATA PROTECTION

OPINION/2019/63

I. Order

The Health Regulatory Entity (ERS) sent the National Data Protection Commission (CNPd), for consideration, the draft Regulation that establishes the procedure for launching, liquidating and collecting regulatory fees and contributions due to the ERS.

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 and point a) of paragraph 1 of article 6 of Law no. 58/2019, of 8 August.

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

II. appreciation

The draft Regulation in question contains some rules regarding the collection and analysis of information, which, when they concern identified or identifiable natural persons, reflect the regulation of personal data processing operations (cf. paragraphs 1) and 2) of the Article 4 of the GDPR).

In fact, as mentioned in article 4 of the aforementioned Project, the taxable person of the obligation to pay regulatory fees and contributions may correspond to a natural person.

The CNPD has nothing to object to the general content of these rules, insofar as they appeal to the principle of proportionality of data processing, whether in terms of adequacy (e.g., paragraph 2 of article 20 of the Project), whether in terms of their need for the intended purposes (e.g., articles 6 and 7, no. 1, of the Project), in compliance with the provisions of subparagraph c) of paragraph 1 of article 5. of the GDPR.

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Only a note is left on the provisions of paragraph 4 of article 23, which imposes on each taxable person the obligation to

confirm his e-mail address in the private area of SRERE (System of Registries of Regulated Establishments).

However, since, in paragraph 2 of the same article, taxable persons who are natural persons are excluded from notifications by e-mail, who are only subject to this form of notification upon their express request - in accordance with the provisions in subparagraph b) of no. 2 of article 112 of the Code of Administrative Procedure (CPA) -, it is not known for what purpose, in this specific context of the procedures for launching, liquidating and collecting regulatory fees and contributions, impose on all taxable persons the obligation to confirm an email address.

To that extent, it is recommended to change the wording of paragraph 4 of article 23 of the Project, in order to clarify the exact meaning of this provision and ensure its compatibility with the provisions of paragraph 2 of article 23. ° as well as in the CPA.

Lisbon, October 1, 2019

Filipa Calvão (President)