

NATIONAL DATA PROTECTION COMMISSION

Regulation No. 310/2020

Summary: Value of fees for the consideration and decision of requests to the National Commission of Data Protection.

The National Data Protection Commission (CNPd), under the terms and for the purposes of paragraph 3 of article 16 of Law No. 43/2004, of 18 August, amended and republished by Law No. 58/2019, of 8 de Agosto, which regulates its organization and functioning, makes public the fees, approved under paragraph 2 of article 21 of the same law.

March 3, 2020. — The President of the CNPD, Filipa Calvão.

Explanatory memorandum

The National Data Protection Commission (CNPd) is the independent administrative entity, with legal personality governed by public law and powers of authority for control and supervision compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 December April 2016, concerning the protection of individuals with regard to the processing of data of personal data and the free movement of such data and which repeals Directive 95/46/EC — Regulation General on Data Protection (RGPD) — and Law No. 58/2019, of 8 August.

Pursuant to the provisions of subparagraph a) of paragraph 2 of article 20 of Law n.º 43/2004, of 18 August, amended and republished by Law no. 58/2019, of 8 August, the product of the fees charged.

According to lines a) to d) of paragraph 1 of article 21 of Law no. 43/2004, of 18 August, amended and republished by Law n.º 58/2019, of 8 August, the CNPD may charge fees for the accretion

dictation and certification, by prior consultation, by issuing authorizations and by codes of conduct.

In fact, the CNPD has, under the terms of paragraph 1 of article 41 of the RGPD, powers of accretion.

dictation of bodies for the supervision of codes of conduct, according to criteria determined by them mined (see paragraph 3 of the same article), which will have to be submitted to the European Protection Committee of Data for consistency control purposes.

It also has, by virtue of paragraph 5 of article 42 and paragraph f) of paragraph 3 of article 58, both from the GDPR, to approve the data protection certification criteria to be applied by the accreditation applicant bodies.

It is also up to the CNPD to assess requests for prior consultation, under the terms of paragraph 1 of the article Article 36 and Article 58(3)(a) of the GDPR.

It is also responsible for approving codes of conduct, in accordance with the provisions of no. Article 40 and Article 58(3)(d) of the GDPR.

Finally, the CNPD has authorizing powers in the cases provided for in paragraphs a) and b) of paragraph 3 of article 46 and in article 47, pursuant to paragraphs h) to j) of paragraph 3 of article 58 of the GDPR, as well as in other cases specifically provided for in national legislation.

In accordance with the provisions of paragraph 2 of article 21 of Law n.º 43/2004, of 18 August, as amended and republished by Law no. 58/2019, of 8 August, the amount of fees is set by regulation issued by the National Data Protection Commission, which must be proportionate to the complexity order and the service provided.

The value of fees is calculated by reference to the value of the legally fixed unit of account for legal proceedings, taking into account the administrative costs resulting from the opening and processing mitigation of the procedure and, especially, the complexity of the tasks that the analysis of each type of order requires.

Considering that the processing of data subject to prior consultation and authorization may have very different degrees of complexity, with consequences for the complexity of the service

assessment and decision on them, the CNPD considers it appropriate and necessary to provide for the power to specifically fix a supplementary fee in the procedures for issuing decisions on those treatments, in accordance with the principles of proportionality and equality.

Thus, pursuant to paragraph 2 of article 21 of Law n.º 43/2004, of 18 August, amended and 58/2019, of 8 August, the CNPD approves the:

Regulation of fees of the National Data Protection Commission

CHAPTER I

Rates System

Article 1

fees

1 — The payment of a fee for the appraisal service of the following requirements is due addressed to the National Data Protection Commission (CNPD):

- a) Accreditation of a body for the supervision of codes of conduct;
 - b) Approval of the certification criteria related to data protection presented by the
 - c) Consideration of an impact study on data protection in the context of a request for con-accreditation body;
- previous sulta;
- d) Consideration and approval of codes of conduct;
 - e) Authorization of a data processing operation, in the cases provided for by the Regulation (EU) 2016/679, of 27 April 2016, and in the others provided for in national legislation.

2 — The amount of the fee to be paid for the services provided for in the previous number is, considering the

administrative costs and the complexity of evaluating different types of requests, the following:

Accreditation — 9 units of account

Certification — 6 units of account

Previous Inquiry — 12 units of account

Code of Conduct — 9 units of account

Authorization — 6 account units

3 — The value of the procedural unit of account, for the purposes of setting the rates, refers to the December 31 of the year preceding the year in which payment is due.

Article 2

supplementary fee

1 — The CNPD may increase the rate provided for in paragraph 2 of the previous article in the procedures for prior consultation provided for in paragraph 1 of article 36 of the GDPR and in the authorization procedures for processing of personal data provided for in points a) and b) of paragraph 3 of article 46 and in article 47, pursuant to subparagraphs h) to j) of paragraph 3 of article 58 of the GDPR, as well as in other cases of authorization specifically provided for in national legislation.

2 — The decision to set this rate, duly based on the high degree of completeness,

The specificity of the data processing to be assessed, is taken at the end of the instruction of the procedure and always before the performance of the requested act, the applicant being notified thereof, followed by the procedure provided for in paragraph 6 of article 4.

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Article 3

Fee payment waiver

PART B

The CNPD may exempt, in whole or in part, from the payment of a fee the applicant who demonstrate proven economic insufficiency.

CHAPTER II

procedures

Article 4

Fee payment methods

1 — In the case of an application submitted electronically, in the form available for this purpose on the CNPD website, the payment of the fee provided for in article 1 of the present regulation is carried out within a maximum period of 3 (three) business days from the date of submission of the electronic form.

2 — In the situation described in the previous number, a code will be issued for payment of the fee, payment being made by bank transfer or through the electronic banking system, in favor of the National Data Protection Commission.

3 — At the time of payment, the payment code provided by the CNPD in the time of form submission.

4 — Whenever the CNPD does not provide an electronic form for this purpose, the application can be sent by email to geral@cnpd.pt or be presented in paper support, directly at the CNPD services or sent by post.

5 — In the cases provided for in the previous number, the payment of the fee must be made, in accordance with the provided for in paragraph 2, within 10 (ten) days from the date of communication by the CNPD of the payment code.

6 — After the notification referred to in paragraph 2 of article 2, the applicant has 10 (ten) working days to proceed with the payment thereof, under the terms defined in the previous number.

Article 5

Consequences of not paying a fee

Failure to pay a fee under the terms set out in the previous article determines the extinction of the

procedure and the filing of the process.

Article 6

fee refund

1 — If the controller has made any payment without indicating the reference code, in situations where it is required, may request the return of the amount paid within 30 (thirty) days, upon delivery of proof of payment, under penalty of loss of that amount in favor of the CNPD.

2 — In case the entity requests the return under the terms of the previous number, the CNPD refund 90% of the fee paid to the applicant, retaining the remaining 10% as administrative expenses.

3 — In the event of a return request under the terms of the previous number, the CNPD processes the return within 30 (thirty) days.

4 — The provisions of numbers 2 and 3 also apply to cases of withdrawal of the request, promptly declared before the CNPD, provided that the declaration is communicated before the practice of any instructional act within the scope of the respective procedure.

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CHAPTER III

Final dispositions

Article 7

Revocation

This regulation revokes Deliberation no. 50/2011, which approves the fee regulation of the CNPD, published in the Diário da República, Series II, of January 7, 2011.

Article 8

Implementation

This regulation enters into force on the day following its publication.

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