

**FINAL DECISION REVOKING THE ALLOCATION TO EURO DA SORTE, LDA. OF  
THE RIGHT OF USE FOR ACCESS CODES AND ITS REGISTRATION AS  
PROVIDER OF MESSAGE-BASED VALUE-ADDED SERVICES**

**A - FRAMEWORK**

Euro da Sorte, Lda. (hereinafter referred to as Euro da Sorte) was registered as provider of message-based value-added services with No. ICP-ANACOM-1/2015-SVA, having been allocated codes “68954”, “68955”, “62964” and “62965”, the latter two for a continuous provision of services.

This registration covers general conditions and the detailed description of services to be provided via these four codes and constitutes an enabling title for the exercise of that activity.

The provision of message-based value-added services is governed by Decree-Law No. 177/99, of 21 May, as amended as republished by Decree-Law No. 8/2013, of 8 January (hereinafter referred to as Decree-Law No. 177/99).

According to paragraph 1 of article 12 of this statutory instrument, it is incumbent upon ANACOM to monitor whether services provided comply with access codes assigned, as well as to enforce provisions laid down in article 9-A, on conditions for the provision of the referred service.

Following a series of complaints, ANACOM carried out a set of inspection activities in March 2016, in order to verify compliance with obligations associated to the activity of provider of message-based value-added services pursued by Euro da Sorte, namely via the “68954” and “68955” access codes.

These inspection activities allowed the gathering of compelling evidence that the company had breached the conditions and limits set out under paragraph 2 a) of article 6 as well as conditions provided for in article 9-A of Decree-Law No. 177/99, by infringing general conditions and the detailed description of the service concerned, notified pursuant to paragraphs 1 and 2 of article 5 of the same statutory instrument, on the basis of which rights of use for the referred access codes had been allocated, as laid down in Registration No. ICP ANACOM–1/2015–SVA, affecting the legally protected rights and interests of users, namely their assets.

Taking the described facts under consideration, the Management Board of ANACOM determined, on 22 March 2016<sup>1</sup> - no prior hearing having taken place - the suspension of the use of the “68954” and “68955” access codes allocated to Euro da Sorte, setting a 10-day time limit for the company to adopt the following corrective measures (and to provide evidence thereof to this Authority):

1. Implementation of an automated mechanism in the operating platform/app, so as to ensure that Euro da Sorte may only order the provider of support services to send value-added messages after a confirmation has been received;
2. computer record without human intervention, in a durable medium, of all confirmation messages and orders issued to the provider of support services to send value-added messages;
3. amendment of the regulation of the *Almanaque d'Ouro* contest and of the content of value-added messages from the allocated “68955” access code, so that they cease to inform that the entry in the contest is free-of-charge;
4. Call centres of Euro da Sorte are required to provide clear and unambiguous information, in compliance with the content of the initial information message, so as to guarantee full clarification.

ANACOM further established in this Determination that where the company failed to abide by the determined measures within the time-limit imposed, the Authority would revoke the right of use for access codes, as well as the company's registration as a provider of message-based value-added services, pursuant to paragraph 3 of article 13 of the mentioned statutory instrument.

## **B - DRAFT DECISION**

Euro da Sorte was notified of the above-mentioned Determination, and on 1 April 2016 this company submitted to ANACOM its comments<sup>2</sup> on the decision and corrective measures imposed therein, claiming in brief as follows:

1. *“all value-added messages are sent solely after a confirmation from the user has been received, which is integrated in the computer platform, and later communicated to the provider of support services through an automatic process”;*

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<sup>1</sup> Cfr. Determination of 2 March 2016, notified to Euro da Sorte on the same date - pages 314 to 326.

<sup>2</sup> Cfr. pages 355 *et seq.* - communication registered as received by the ANACOM on 1 April 2016.

2. *“Euro da Sorte holds a computer record mechanism without human intervention, operating after reception of confirmations by users, as well as of orders issued to the provider of support services to send value-added messages (a part of which has already been delivered in the scope of the inspection activity)”;*
3. *“as regards point 3, Euro da Sorte requests ANACOM’s assistance in the respective drafting, or to better define the intended contents: there is no doubt, at least to Euro da Sorte, that the entry in the contest is free-of-charge, solely arising from the fact that a given person is a customer of another service or product provided by the company. No amount whatsoever is charged from the entry in the promotion contest. This has always been the real intention of the company. (...) As referred earlier, and like almost all other promotion contests in the market, when someone becomes a customer of Euro da Sorte, he/she is automatically qualified for awards drawn in the scope of the promotion contest. It should be added that the license granted by MAI (the public body with contest licensing powers) conveys this reality, which means that no “surcharge” exists, compared to services/products marketed by Euro da Sorte, Lda., nor is there any amount to be paid for the entry in the promotion contest under consideration”;*
4. *“Euro da Sorte has redrafted the basic script handed to collaborators, which is attached as Doc. No. 1, submitting it to ANACOM for consideration.”*

Euro da Sorte further declared that *“all users who received a value-added message and enjoy services with contents replied to the information message, confirming their subscription to the mentioned services”*.

Given this communication, ANACOM decided to check the referred statements which, should that be the case, would contradict part of the basis for the decision to temporarily suspend the right of use for allocated access codes, thereby affecting the determination of corrective measures and subsequent development of the process. As such, ANACOM carried out two inspection activities at the premises of Euro da Sorte on 11 and 13 April 2016.

The conclusion reached as a result of these demarches was that the company held no confirmation of the service request by users, after the information message was sent and prior to the sending of the value-added message, whereby assumptions on which the approval of Determination of 22 March 2016 by ANACOM was based remained

relevant. It was found also that the full range of corrective measures imposed in the scope of that decision had not been adopted, if any at all.

In the light of the above, ANACOM took the view that Euro da Sorte failed to implement the determined corrective measures, which was a requirement for the lifting of the temporary suspension of the right of use for allocated access codes. On the contrary, having the company failed to adopt the corrective measures to which it was bound and to fully prove that such measures had been put in place within the deadline defined for the purpose, this Authority is left with no choice - under paragraph 3 of article 13 of Decree-Law No. 177/99 - but to revoke the allocation of access codes and Euro da Sorte's registration as a provider of message-based value-added services.

Consequently, by determination of 5 May 2016, the Management Board of ANACOM approved a Draft Decision<sup>3</sup> revoking the allocation of the "68955" and "68954" access codes as well as Registration for the exercise of the activity of provider of message-based value-added services No. ICP ANACOM-1/2015-SVA.

ANACOM also approved in this Determination its intention to determine the revocation of rights of use for access codes "62964" and "62965" on the basis of the revocation of the referred registration, which is a necessary condition for the exercise of the activity of provider of message-based value-added services.

### **C - PRIOR HEARING OF THE STAKEHOLDER**

Euro da Sorte was notified, under articles 121 and 122 of the Administrative Procedure Code, to comment the draft decision within a time-limit of 10 working days. The company promptly submitted a written reply to the file, on 12 May 2016, having claimed in brief as follows:

- Further to Determination of ANACOM of 22 March 2016, Euro da Sorte presented a written reply on 1 April, informing that *"it requested the deployment of the inspection team to its premises, in order to join efforts so as to bring its market performance in line with ANACOM's guidelines"*;
- That *"subsequently to this request, and in the course of the ongoing analysis (inspection) process which had begun prior to the notification of the temporary suspension, the necessary demarches were tackled, pursuant to ANACOM's determination, and those already under way were reassessed - adjustment of*

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<sup>3</sup> Cfr. Draft Decision of 5 May 2016, notified to Euro da Sorte on the same date - pages 595 to 606.

*the computer programme; drafting of a customer contact methodology (script); restructuring of specifications/regulation of the promotion contest, etc.”;*

- That “*the meeting of 11 April 2016 took place in the presence of the member of staff responsible for the computer system, having been discussed on the spot on this date how the VAS subscription process should be adopted (through a mechanism without human intervention), that is, the subscription confirmation would be required from the customer, the sending of the message without human intervention being processed by collaborators of Euro da Sorte. On this same date, it was reported that such process was under a stage of final design, and that a 10-day time-limit was estimated for the respective implementation. In fact, as explained by the member of staff responsible for the computer system, the process required “incorporation” with the system of operators, its implementation taking around 10 days (implementation; tests; fault analysis, etc.)”;*
- “*The inspection process still ongoing, in the course of the 2<sup>nd</sup> deployment - 13 April 2016, and having the development of the computer system taken place, the temporary reconnection of the LA was requested (Nos. 68954 and 68955), on this same day 13 April 2016 (date of the last inspection) so that changes introduced could be tested (a situation which the member of staff responsible for the computer system had informed at the inspection site, at the time of the 1<sup>st</sup> journey of the inspection team)”;*
- That “*as the inspection process remained under way (inspection files being continuously issued), the deadline under consideration was extended, under the law”;*
- That the task scheduled by ANACOM to take place on 6 April 2016 only failed to occur due the fact that the representative of the company was required to be in court that same day;
- That, even so, “*ANACOM decided to maintain the inspection process - CONTINUOUSLY REQUESTING FOR MORE ELEMENTS - on 11 and 13 April 2016”*, the company questioning why did ANACOM choose to maintain the referred inspection activity;
- That the “*computer programme that was developed and exists today does not require any human intervention from the collaborators of Euro da Sorte; the customer receives the information SMS, replying through its mobile phone to Euro da Sorte’s server; this is submitted by computer to the mobile service*

*operator without human intervention, the operator then sending the VAS message. As far as this “computer communication” is concerned, a list is automatically created including all information (free sms; reply from the customer via his/her mobile phone; record of the order issued to the operator). As such, the sole human intervention is certainly that of the customer, when he/she confirms the service. Consequently, items 1 and 2 of the determination have been fully met, and ANACOM may analyse this situation in particular, if the Authority so wishes. As referred above, it has only not been tested, due to the suspension of LA”;*

- *Due to “corrections requested (...) it does not require a high number of external collaborators, given that the system has become automatic, (...)”, there is no longer also the “need to record contacts with customers (...)”;*
- *That “there is no human mean to effectively control the operation of the company’s external collaborators as regards the telephone process, and their activity may have been not as correct or spontaneous as required. However, this situation has been remedied by nature”;*
- *As far as VAS emails and subscription are concerned, “as explained and certainly not included in the file, the referred subscription takes place in two clear moments; sending of email; reception of information message; confirmation and sending of VAS”;*
- *That “although ANACOM concludes for the non-existence of confirmation by the customer, it is a fact that it existed. It may be argued that the formula used by collaborators was not as trustworthy or straightforward as it should have been. Nevertheless, confirmations existed, although it is clear that the adopted methodology required a better framework, which the company acknowledges”;*
- *That “services of a continuous nature show a characteristic that distinguishes them from others: they are provided in the market through a specific code - 62, and the subscription remains ad aeternum, until a will to the contrary is shown by the subscriber (communication by telephone; sms; email; registered letter), to cease the continuation of the service concerned”;*
- *That in this case, the situation is different given that “at no time is there a continuous-message sending service, rather the acceptance of a multiple subscription process (1, 2, 3 or 4 messages, in a single act of expression of will). And given that subscriptions are individual, to each of these subscriptions corresponds an information message and a value-added message”;*

- That *“no promotion contest is currently running, which means that all related issues are duly brought together in the above reply, as the association between value-added services and the referred promotion contest has been duly removed”*;
- That it fails to comprehend ANACOM’s lack of understanding on *“the issue of the promotion contest, it was a “plus” granted by the company to its subscribers of value-added services”*;
- That in fact, *“as Euro da Sorte conceived the arrangement, subscribers of its value-added services would always be offered a free-of-charge possibility to be the winners of a promotion contest. There is no doubt that there was a direct difference between these two realities: the subscription of value-added services on the one hand, and on account of such subscription, an automatic qualification to a draw in a promotion contest”*;
- That *“the ongoing contest has reached an end and no further request for another promotion contest exists”*.

The company concludes that *“it is willing today to operate according to the wishes and understanding of ANACOM”*, given that:

- *“the computer programme is already developed, as set out above, that is, it allows only the subscription of value-added services through the confirmation of the subscriber, without any intervention on the part of Euro da Sorte, Lda”*;
- *“Euro da Sorte, Lda., does not intervene either directly or indirectly in the subscription process, through its collaborators”*;
- *“subscribers decide whether they wish to subscribe the service, in a free and clear way, through confirmation on their mobile phone”*;
- *“from this moment on, the subscription operates regardless of the action of collaborators or of a script”*;
- *“various exterior stimuli shall be maintained, in addition to the bundled sending of information messages”*;
- *“The contest regulation provided for its conclusion by the end of April 2016, and for this reason it is no longer subject to discussion”*;
- *“as of today, any VAS subscription process does not relate directly to any ongoing promotion contest, and for this reason issues on the script or action of*

*collaborators of Euro da Sorte are dealt with by nature, as this is not prevented by documents established so far*".

Finally, Euro da Sorte requests that ANACOM:

- a) Meets the "*current situation*" and does not issue "*an act devoid of content*", taking into account that the intended measure "*has no subject-matter*", as measures imposed have been duly adopted and nothing hampers the maintenance of Euro da Sorte's activity;
- b) In the light of the general principle of collaboration in good faith, decides "*not to maintain inspection activities*" and carries out "*a real, effective and simple assessment of the method currently adopted*" on 16 May 2016;
- c) Repeals the temporary suspension still in effect, and issues a determination ordering the opening of the LA concerned, as well as the maintenance of the company's registration.

#### **D - ANACOM'S POSITION**

ANACOM cannot accept arguments put forward, nor grant any of the requests submitted, in the light of the actual scenario. In fact:

1. It is true that Euro da Sorte, on 1 April 2016, in the scope of the assessment on the determined suspension, requested the deployment of ANACOM's inspectors to its premises. However, the grounds invoked for the deployment did not concern the coordination of efforts between this Authority and Euro da Sorte "*so as to bring its market performance in line with ANACOM's guidelines*", as it declares. Euro da Sorte alleged at the time not only that the sending of value-added messages had always been preceded by the confirmation, on the part of the user, of the service request, but also that several of the corrective measures that had been determined were already in place, the verification of these situations having been requested.

The inspection activities that were performed after this assessment (on 11 and 13 April) were thus intended to check these statements on the part of Euro da Sorte, in particular the one regarding the confirmation by users prior to the sending of value-added messages. It was incumbent on ANACOM to establish, in the light of the report presented by Euro da Sorte, whether the main basis for the temporary suspension of the right of use for access codes was correct. The Authority thus requested additional elements - call lists and recordings - that could prove the alleged confirmations.



These demarches, which were performed on account of claims made by the stakeholder, as well as elements collected, only confirmed the evidence that had led to the suspension, contradicting all allegations made by Euro da Sorte, notwithstanding the fact that, even in its last assessment, it continued to declare that confirmations on the part of users as to the request of the service existed. As such, ANACOM's understanding as to the facts and the respective legal framework remains the same.

**2.** For this purpose, ANACOM sought to implement corrective measures by the established deadline - 6 April. However, due to unwillingness of the company for the purpose, the demarche only took place on 11 April and continued on 13 April.

ANACOM's journeys to Euro da Sorte's premises are not to be interpreted as an extension of the deadline established in the Determination of 22 March 2016 for the adoption and demonstration of corrective measures, nor had they any suspensive effect - on this issue also ANACOM fails to agree with the stakeholder's view. Anyway, this extension was never requested by the company.

As stated earlier, ANACOM aimed to confirm or reject one of the assumptions for the suspension of the use of access codes; and, on the other hand, in the light of the date on which demarches took place (11 and 13 April, that is, after expiry of the established deadline) to verify whether imposed corrective measures had been adopted, as alleged by the company - within the established deadline, that is, by 6 April 2016.

It should be stressed that the maximum period allowed by paragraph 1 of article 13 of Decree-Law No. 177/99, ten working days, had been granted for the adoption of the necessary corrective measures.

**3.** Euro da Sorte implicitly admits that on 6 April not all corrective measures had been implemented. Moreover, in contrast to what was claimed, not even on 13 April 2016 was the company able to demonstrate to this Authority that such measures had been implemented.

Euro da Sorte now declares that on 11 April 2016 ANACOM's inspectors discussed with the member of staff responsible for the computer system "*how the VAS subscription process should be adopted*", that such process was "*under a stage of final design*" and that a "*10-day time-limit was estimated for the respective implementation*". However, the company informed only that it was endeavouring to "*implement an automatic mechanism in the company's app platform*", which was never described, not even being alleged the date foreseen for the respective conclusion, let alone being demonstrated that such mechanism complied with the determination.

The company claims also that on 13 April 2016, “*the development of the computer system*” had already “*taken place*”, having been requested from ANACOM “*the temporary reconnection of the LA (Nos. 68954 and 68955)*”, for testing purposes.

It must be referred here that the request was submitted to ANACOM on that date, but concerning only the “68955” access code, not the “68954”<sup>4</sup> code, which shows unfamiliarity with the technical aspects of the mechanism to be implemented and with the need to test the system by resorting also to the “68954” code, without which it would be impossible to comply with the compulsory step related to the sending of the information message, this record being associated to the subsequent confirmation (if any) of the service request by the user.

On the other hand, on 13 April 2016 - date on which the company refers that the computer development allegedly was to be tested was already completed - the member of staff responsible for the computer system informed the manager of Euro da Sorte that it estimated that “*the period of time required to develop the integration of MO services*” was 10 working days, tests included<sup>5</sup>.

This proves that by that date - well beyond the 10-day time limit set for the purpose - the corrective measures determined on 22 March 2016 had not been adopted at computer level, at least all of them, not even for testing purposes, involving: (i) the implementation of an automated mechanism in the operating platform/app, so as to ensure that Euro da Sorte could only order the provider of support services to send value-added messages after a confirmation was received; and (ii) a computer record without human intervention, in a durable medium, of all confirmation messages and orders issued to the provider of support services to send value-added messages.

As such, the rejection of the suspension lifting request for testing purposes was fully justified, given that it was untimely<sup>6</sup>. In fact, even if the technical design of the measures had been concluded on 13 April, it would have taken place after the deadline established for implementation.

In addition, as far as remaining corrective measures imposed are concerned, it must be stressed that the Contest regulation, the amendment of which had been imposed, was not modified at the company’s website, nor did Euro da Sorte prove that it had requested its amendment before the Secretary General of the Ministry of Internal Administration. It was not even alleged that the content of value-added messages to be

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<sup>4</sup> Cfr. page 406.

<sup>5</sup> Cfr. page 463.

<sup>6</sup> Cfr. Pages 587 *et seq.*

sent from the “68955” code had been amended, to cease to inform that the entry in the contest was free-of-charge.

Lastly, it should be noted that the company only submitted one script to ANACOM, on 1 April 2016, which allegedly had been redrafted but which, on the contrary, was always used in calls made by the company’s telephone operators, as results from the inspection action dated 11 April.

4. Euro da Sorte now alleges that the computer programme has been developed and that it only allows the subscription of value-added services after a confirmation by the user has been given, with no human intervention on the part of the company, which allows the automatic creation of a list “*including all information (free sms; reply from the customer via his/her own mobile phone; record of the sending to the operator).*”

The company declares also that the promotion contest under consideration is now over, and that in its opinion there is no reason to prevent the lifting of the right of use for allocated access codes or the maintenance of its registration as provider of message-based value-added services.

However, these arguments may not be accepted, in the light of facts described and of the legal framework arising from Decree-Law No. 177/99.

The truth is that Euro da Sorte, as a company registered as provider of message-based value-added services, failed to use allocated access codes in compliance with conditions and limits set out under paragraph 2 a) of article 6 as well as conditions provided for in article 9-A of Decree-Law No. 177/99.

The provision of the type of service<sup>7</sup> described by Euro da Sorte, when the company requested the allocation of access codes, requires that providers send to the customer, at no cost, a clear and unambiguous message, including the identification of the service provider, the nature of the service to be provided, the total price due and a request for *confirmation* of the service demand, under paragraph 1 of the referred article 9-A. The absence of reply to this confirmation request, under paragraph 3, implies the absence of a contract.

As the referred provisions were breached, by virtue of paragraph 1 of article 13 of the same statutory instrument, ANACOM was required to suspend the use of access codes

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<sup>7</sup> Except where paragraph 5 of article 9-A is concerned, which however does not apply to Euro da Sorte, given that the service provided by the latter always involved the transmission of contents.

allocated to the service provider, indicating the necessary remedies, establishing a time limit not exceeding 10 days for the purpose of - as the Authority actually did.

In case of failure to comply with measures imposed within the deadline, it follows from paragraph 3 of article same article 13 that this Authority must revoke the allocation of access codes, as well as the service provider's registration. The legislator left ANACOM no degree of discretion - this is a binding power, where, in case the assumptions described in the provision are met, this Authority is required to carry out the referred revocations.

As such, the fact that no contest is currently running and that Euro da Sorte alleges that all measures still with practical purpose have been fulfilled, is irrelevant for the decision to be adopted (as well as for other allegations made by the stakeholder, referred earlier): it may not be ignored that the deadline established for bringing the company's activity in line with the law, and for demonstrating this to ANACOM, expired on 6 April 2016.

Accordingly, considering the facts already described, the failure to abide by conditions imposed by ANACOM may not have a different consequence that that which was established in Draft Decision of 5 May 2016.

Any deployment to the stakeholder's premises thus becomes pointless, the request submitted for this purpose being therefore rejected.

5. Lastly, it must be clarified that a "*multiple subscription*" service, as described by the stakeholder - that is, a service where a single confirmation for subscription purposes originates the sending of more than one value-added message - must be barred at no cost, and may only be activated, generically or selectively, after a written request has been made by the subscriber, by virtue of paragraph 3a) of article 45 of Law No. 5/2004, of 10 February, as amended by Law No. 42/2013 of 3 July. Moreover, the information message sent by Euro da Sorte<sup>8</sup> referred only the price of a value-added message, not clarifying that this price would be charged for each message sent, or the number of messages that could be sent. Range 68 is not appropriate for a service provided in this fashion, as it is only intended for the provision of services which

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<sup>8</sup> "EURO DA SORTE concursos, LDA, Almanaque d Ouro SVA por apenas 2,99€ + IVA Conf. Serv. + info 68955 e 210497700, [WWW.eurodasorte.pt](http://WWW.eurodasorte.pt)" ("EURO DA SORTE concursos, LDA, Almanaque d Ouro VAS for only 2,99€ + VAT Serv. Conf. + info 68955 and 210497700, [WWW.eurodasorte.pt](http://WWW.eurodasorte.pt) ").

fall outside codes 61, 62<sup>9</sup> and 69 (the latter two of which must be barred by default, as referred earlier).

## **E. CONCLUSION**

Having Euro da Sorte, Lda. failed to comply with the Determination of the Management Board of ANACOM of 22 March 2016 within the deadline established, without prejudice to the relevant breach procedure and pursuant to paragraph 3 of article 13 of Decree-Law No. 177/99, the allocation of the “68955” and “68954” access codes and the registration for the exercise of the activity of provider of message-based value-added services with No. ICP ANACOM 1/2015 SVA are hereby revoked, being rejected the requests submitted by the stakeholder in its comments.

The revocation of rights of use for the “62964” and “62965” access codes held by the stakeholder is also determined, also pursuant to paragraph 3 of article 13 of Decree-Law No. 177/99, on the basis of the revocation of its registration, which under article 3 is a necessary condition for the exercise of the activity of provider of message-based value-added services.

Let it be notified.

Let it be published at this Authority’s website, under paragraph 5 of article 13 of Decree-Law No. 177/99, of 21 May, and having the notification taken place, let it be communicated to the provider of support services, MEO – Serviços de Comunicações e Multimédia, S.A., as well as to NOS – Comunicações, S.A., and VODAFONE PORTUGAL – Comunicações Pessoais, S.A..

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<sup>9</sup> Range intended for the provision of “Message-Based Value Added Services that imply the sending of more than one message or the regular or continuous sending of messages, with value added per message” (Cfr. National Numbering Plan, available at <http://www.anacom.pt/pnn/pnnNiveis.do?channel=&jscript=on&languageId=0&ssl=false&dataInicioDia=dd&dataInicioMes=mm&dataInicioAno=yyyy&dataFimDia=dd&dataFimMes=mm&dataFimAno=yyyy&assunto=Introduzir+qualquer+c%F3digo%2C+designa%27%E3o+de+servi%27o+ou+entidade&estado=&indicativo=0&localidade=0&niveisSelected=17> ).