

## Law no. 26/2016

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- **ABSTRACT**

Approving the regime governing access to administrative and environmental information and re-use of administrative documents, transposing [Directive 2003/4/EC](#) of the European Parliament and of the Council of 28 January 2003, and [Directive 2003/98/EC](#) of the European Parliament and of the Council of 17 November 2003.

- **TEXT**

Law no. 26/2016 of 22 August 2016

Approving the regime governing access to administrative and environmental information and re-use of administrative documents, transposing [Directive 2003/4/EC](#) of the European Parliament and of the Council of 28 January 2003, and [Directive 2003/98/EC](#) of the European Parliament and of the Council of 17 November 2003.

In accordance with Article 161(c) of the Constitution the Assembly of the Republic hereby decrees the following:

### CHAPTER I

#### General provisions

#### Article 1

#### Object

1 – The present Law regulates access to administrative documents and administrative information, including in environmental matters, transposing [Directive 2003/4/EC](#) of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council [Directive 90/313/EEC](#) into Portuguese internal law.

2 – The present Law also regulates the re-use of documents regarding activities undertaken by the organs, bodies and entities referred to in Article 4, transposing [Directive 2003/98/EC](#) of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, as amended by [Directive 2013/37/EU](#) of the European Parliament and of the Council of 26 June 2013, into Portuguese internal law.

3 – When access to information and named personal data documents – namely when they include health data – produced or held by the organs, bodies and entities referred to in Article 4 is undertaken by the data subject, an authorised third party or someone who demonstrates possession of a direct, personal, legitimate and constitutionally protected interest in the information, that access shall be governed by the present Law, without prejudice to the legal regime governing the protection of personal data.

4 - The present Law shall not prejudice application of the provisions set out in specific legislation, particularly with regard to:

a) The regime governing exercise of the right of citizens to be informed by the Public Administration about the progress of cases or proceedings in which they are directly interested and to know the definitive resolutions that are taken with regard to them, which shall be governed by the Code of Administrative Procedure;

b) Access to information and documents regarding internal and external security and criminal investigations, or to the preparatory process intended to determine liability for an administrative offence or financial, disciplinary or merely administrative liability, which shall be governed by specific legislation;

c) Access to notarial documents and documents regarding official registers, to civil and criminal identity and identification documents and to information and documentation included in the electoral registry, as well as access to documents that are the object of other information systems regulated by special legislation;

d) Access to information and documents subject to judicial confidentiality, fiscal secrecy, statistical confidentiality, banking confidentiality, medical confidentiality and other professional confidentialities, as well as to documents in the possession of Inspectorates-General and other entities, when they concern matters that result in financial, disciplinary or merely administrative liability, on condition that the procedure is subject to a secrecy or confidentiality regime, in accordance with the applicable law.

## Article 2

### Open administration principle

1 – Access to and re-use of administrative information shall be ensured in accordance with the other principles governing administrative activities, particularly the principles of equality, proportionality, justice, impartiality and collaboration with private individuals.

2 – The public information that is relevant to ensuring the transparency of administrative activities, particularly that related to the functioning and control of public-sector activities, shall be actively disseminated in a periodic and up-to-date manner by the respective organs, bodies and entities.

3 – When information is disseminated and when information is made available for re-use by means of the Internet, its understandability and free and universal access to it shall be ensured, as shall both the accessibility, interoperability, quality, integrity and authenticity of the published data and their identification and location.

## Article 3

### Definitions

1 – For the purposes of the present Law, the following terms shall be defined as follows:

a) “Administrative document”: any content, or part of that content, which is in the possession of or is held on behalf of the organs, bodies and entities referred to in the following Article, whether the information medium is in a written, visual, aural, electronic or other material form, particularly including those regarding;

i) Procedures for the issue of administrative acts and regulations;

ii) Public-sector recruitment procedures, including the contracts that are entered into;

iii) Budgetary and financial management of the organs, bodies and entities;

iv) Human resource management, namely that of the procedures for recruitment, assessment, exercise of disciplinary power and any modifications of the respective legal relationships.

b) “Named personal data document”: an administrative document that contains personal data, defined in accordance with the legal regime governing the protection of personal data;

c) “Open format”: a file format that is made available to the public and is re-usable regardless of the platform used, in accordance with the legal regime that regulates the adoption of open standards for information on digital media in the Public Administration;

d) “Machine-readable format”: a file format that is structured in such a way as to be possible, by means of software applications, to identify, recognise and extract specific data in and from it, including factual declarations, as well as its internal structure;

e) “Environmental information”: any information of an administrative nature, in a written, visual, aural, electronic or other material form, regarding:

i) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and areas of natural interest, including wetland areas, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction between those elements;

ii) Factors such as substances, energy, noise, radiations and waste, including radioactive waste, emissions, discharges and other releases into the environment, which affect or may affect elements of the environment referred to in the previous subparagraph;

iii) Political, legislative and administrative measures, particularly plans, programmes, environmental agreements and actions that affect or may affect elements or factors referred to in the previous subparagraphs, as well as measures or actions intended to protect them;

iv) Reports on the implementation of environmental legislation;

v) Cost-benefit analyses and other economic assessments and scenarios used within the scope of measures and activities, in environmental matters, referred to in subparagraph (iii);

vi) The state of the health, safety and security of natural persons, particularly including contamination of the food chain, living conditions, places of cultural interest and constructions, inasmuch as they are or may be affected by the state of elements referred to in subparagraph (i), or through those elements, by factors or measures referred to in subparagraphs (ii) and (iii);

f) “Formal open standard”: a standard established in written form, which details specifications regarding the requisites for ensuring software interoperability;

g) “Re-use”: use by natural or legal persons of administrative documents for commercial or non-commercial purposes other than the initial public-service purpose for which the documents were produced.

2 – The following shall not be deemed administrative documents for the purposes of the present Law:

a) Personal notes, sketches, notations, personal electronic communications and other records of a similar nature, whatever their medium may be;

b) Documents whose drawing up does not form part of administrative activities, particularly those regarding meetings of the Council of Ministers and/or meetings of Secretaries of State, as well as their preparation;

c) Documents produced within the scope of the diplomatic relations of the Portuguese State.

#### Article 4

##### Subjective scope of application

1 – The present Law applies to the following organs, bodies and entities:

a) Entities that exercise sovereignty and the organs and bodies of the state and the autonomous regions that form part of the Public Administration;

b) Other organs and bodies of the state and the autonomous regions, inasmuch as they exercise materially administrative functions;

c) Organs and bodies of public institutes, of independent administrative entities and of public associations and foundations;

d) Organs and bodies of public-sector enterprises;

e) Organs and bodies of local authorities, of intermunicipal entities and of any other local public associations and foundations;

f) Organs and bodies of regional, municipal, intermunicipal or metropolitan enterprises, as well as of any other local public enterprises or municipalised services;

g) Private-law associations or foundations in which the organs, bodies and entities provided for in the present paragraph exercise management control powers or directly or indirectly designate the majority of the officers on the managing or supervisory body;

h) Other entities with responsibility for managing archives of a public nature;

i) Other entities in the exercise of materially administrative functions or public powers, namely those that hold concessions for or delegations of public services.

2 – The provisions of the present Law are also applicable to documents held or drawn up by any entities that possess legal personality, have been created in order to fulfil in a specific manner needs that are in the general interest and are not industrial or commercial in nature, and with regard to which one of the following circumstances has been verified to exist:

a) The majority of the funding for the respective activity is provided by any of the entities referred to in the previous paragraph or the present paragraph;

b) The respective management is subject to a control by any of the entities referred to in the previous paragraph or the present paragraph;

c) More than half the respective managing or supervisory body is made up of members designated by any of the entities referred to in the previous paragraph or the present paragraph.

3 – Even though they no longer fall within the subjective scope of its application, the present Law shall still apply to entities that fulfilled the requisites referred to in the previous paragraphs at an earlier moment in time, with regard to the documents that correspond to that period.

4 – The provisions regarding access to environmental information also apply to:

a) Any natural person or legal person of a public or private nature that belongs to the indirect administration or management of the organs, bodies and entities referred to in the previous paragraphs and possesses responsibilities or competences, exercises public administrative functions or provides public services related to the environment, namely public-sector business entities, enterprises in which the public sector holds a stake and enterprises that hold concessions;

b) Any natural or legal person that holds or materially maintains environmental information for or on the behalf of any of the organs, bodies and entities referred to in the previous paragraphs.

## Article 5

### Right of access

1 – Everyone shall, without the need to set out any interest, have the right of access to administrative documents, comprising the rights of consultation and reproduction and to information about their existence and content.

2 – The right of access shall be implemented regardless of whether the administrative documents are incorporated into current, intermediate or definitive archives.

## Article 6

### Restrictions on the right of access

1 – Documents that contain information, knowledge of which is assessed as being capable of endangering fundamental state interests, shall be subject to prohibited access or access by authorisation, for the time that is strictly necessary, by means of a classification adopted under the regime governing state secrets or other legal regimes regarding classified information.

2 – Documents protected by copyright or related rights, particularly those in the possession of museums, libraries and archives, as well as documents that reveal secrets regarding literary, artistic, industrial or scientific property, shall be accessible, without prejudice to the applicability of restrictions resulting from the Code governing Copyright and Related Rights, the Industrial Property Code and other legislation applicable to the protection of intellectual property.

3 – Access to administrative documents involved in preparing a decision or contained in cases or proceedings that have not been concluded may be deferred until the decision is taken, the case or proceedings is or are closed or a year has passed since they were drawn up, depending on which event occurs first.

4 – Access to the content of audits, inspections, inquiries, investigations and fact-finding examinations may be deferred until the end of the time limit for bringing disciplinary proceedings.

5 – Third parties shall only have the right of access to named personal data documents:

a) If they are in possession of a written authorisation from the data subject that is explicit and specific as to both its purpose and the type of data to which the third party wishes to gain access;

b) If they provide a substantiated demonstration that they have a direct, personal legitimate and constitutionally protected interest which, after being weighed up within the framework of the principle of proportionality, all the fundamental rights at stake and the principle of open administration, is sufficiently relevant that it justifies access to the information.

6 – Third parties shall only have the right of access to administrative documents that contain commercial or industrial secrets or confidential information regarding the internal life of an enterprise if they are in possession of written authorisation from the latter or if they provide a substantiated demonstration that they have a direct, personal legitimate and constitutionally protected interest which, after being weighed up within the framework of the principle of proportionality, all the fundamental rights at stake and the principle of open administration, is sufficiently relevant that it justifies access to the information.

7 – Without prejudice to the other restrictions provided for by law, administrative documents shall be subject to prohibited access or access by authorisation, for the time that is strictly necessary in order to safeguard other legally relevant interests, by decision of the competent organ, body or entity, whenever they contain information, knowledge of which is capable of:

a) Affecting the efficacy of inspections or supervisions, including the supervision or inspection plans, methodologies and strategies;

b) Undermining the operational capacity, safety or security of facilities or personnel of the Armed Forces, the intelligence services of the Portuguese Republic, the security forces and services and the criminal police bodies, or the security of diplomatic and consular missions;  
or

c) Causing harm that is serious and hard to reverse to property or asset-related interests of third parties that are greater than the assets and interests protected by the right of access to administrative information.



8 – Administrative documents that are subject to access restrictions shall be the object of partial communication whenever it is possible to expunge the information regarding the classified matter.

## Article 7

### Access to and communication of health data

1 – Access to health information by its subject, or by third parties with the subject's consent or as laid down by law, shall occur by the intermedium of a doctor if the information subject requests it, with respect for the provisions of Law no. 12/2005 of 26 January 2005.

2 – In the event that it is impossible to determine the subject's will with regard to access, that access shall always take place with the intermediation of a doctor.

3 – In cases of access by third parties with the consent of the data subject, only the information that is expressly covered by the consent instrument must be communicated.

4 – In other cases of access by third parties, only the information that is strictly necessary in order to fulfil the direct, personal, legitimate and constitutionally protected interest which provides the grounds for the access may be transmitted.

## Article 8

### Illegitimate use of information

1 – The use or reproduction of information in breach of copyright and related rights or industrial property rights is not permitted.

2 – Named personal data documents communicated to third parties may not be used or reproduced in a manner that is incompatible with the authorisation that was granted, the grounds for access or the purpose that determined the collection or the legalising instrument, failing which there shall be liability for losses and damages and criminal liability, as laid down by law.

## Article 9

### Person responsible for access

Each organ, body or entity referred to in Article 4(1) must designate a person with responsibility for compliance with the provisions of the present Law, who shall namely be

responsible for organising and promoting the obligations to actively disseminate information that are binding on the organ, body or entity, supervising the procedural details of requests for access and re-use and establishing the articulation needed for the Commission for Access to Administrative Documents, hereinafter referred to as CADA, to exercise its competences.

## Article 10

### Active dissemination of information

1 – The organs, bodies and entities to which the present Law applies shall publicise the following on their websites in a periodic and updated manner, at least once every six months:

a) The administrative documents, data or lists that provide inventories thereof which they deem fit to make freely available for access and re-use in accordance with the present Law, without prejudice to the legal regime governing the protection of personal data;

b) The electronic address, place and times for in-person consultation, and the model request form or other appropriate means to, at or by which requests for access to and re-use of the information and documents covered by the present Law can be submitted;

c) The information, knowledge of which is relevant in order to ensure the transparency of the activity related to their functioning, to include at least the following:

i) Activity plans, budgets, activity reports and accounts, social balance sheet and other, similar management instruments;

ii) The composition of their management and supervisory bodies, an organisational chart or another internal organisational model;

iii) All the documents, particularly internal normative orders, circulars and guidelines, which include strategic frameworks for administrative activities;

iv) A list of all the documents that include a generalising interpretation of positive rights or a generic description of administrative procedure, with particular mention of their title, subject matter, date, source and the location where they can be consulted.

d) The rules and conditions governing re-use of information that are applicable in each case.

2 – The administrative information that is available on the websites referred to in the previous paragraph shall be indexed in the online public information search system, in

accordance with Article 49 of Executive Law no. 135/99 of 22 April 1999, as amended by Executive Laws nos. 29/2000 of 13 March 2000, 72-A/2010 of 18 June 2010, and 73/2014 of 13 May 2014.

3 – The information referred to in the present Article must be made available in open format and in such a way as to allow access to the contents in an unconditioned manner, with emphasis on making it available in machine-readable formats that allow its subsequent automatized treatment.

4 – The administrative information referred to in paragraph (1)(c) must remain available for two years, or in the case of local authorities for the period of time corresponding to the duration of each term of office or for at least two years if that term is shorter, or for the period of time that is adequate in order to ensure the satisfactory dissemination of its contents if that is greater.

5 – The active dissemination of information must make provision for respect for the restrictions on access provided for in the present Law, and partial dissemination must always occur whenever it is possible to expunge the information regarding the classified matter.

6 – Application of the provisions of the present Article, except for those of paragraph (1)(c), shall be optional for parishes with less than ten thousand electors.

## Article 11

### Active dissemination of information regarding the environment

1 – The organs, bodies and entities to which the present Law applies shall collect and organise the environmental information within the scope of their responsibilities, shall ensure its dissemination to the public in a systematic and periodic manner, namely in electronic form, and must ensure its progressive availability in databases that are easily accessible by means of the Internet.

2 – The information to which the present Article refers must be updated at least once every six months, and must at least include:

a) Texts of international treaties, agreements or conventions and the Portuguese and European legislation on or related to the environment;

b) Policies, plans and programmes regarding the environment;

- c) Reports on the implementation of the instruments referred to in the previous subparagraphs;
- d) A national report on the state of the environment, in accordance with the following paragraph;
- e) Data or summaries of the data resulting from the control of the activities that affect or may affect the environment;
- f) Licences and authorisations with significant impact on the environment, agreements on the environment, or reference to the place where such information can be requested or obtained;
- g) Environmental impact studies and risk assessments regarding environmental elements mentioned in Article 3(1)(e)(i), or reference to the place where such information can be requested or obtained.

3 – The member of the Government with responsibility for the environmental area shall be responsible for annually drawing up and publishing the national report on the state of the environment, which shall include information on the quality of the environment and the pressures exercised on it.

4 – The competent public-sector organs, bodies and entities must ensure that in cases of imminent threat to human health or the environment caused by human action or natural phenomena, all the environmental information which enables the endangered populations to take measures to avoid or reduce the harm derived from that threat must be immediately disseminated.

## CHAPTER II

Exercise of the right of access to and re-use of administrative documents

### SECTION I

Right of access

Article 12

Requests for access

1 – Access to administrative documents must be requested in writing, by means of a request that contains the items which are essential in order to identify the applicant, particularly the applicant's name, personal or corporate identity details, contact details and signature.

2 – The entities must make the model access request form available on their website.

3 – Entities to which a request is made may also accept verbal requests, and must do so in cases in which the law expressly requires it.

4 – Lodging a complaint with CADA in accordance with the present Law shall presuppose the existence of a written request for access, or at least the written formalisation of the denial of a verbal request.

5 – The organs, bodies and entities to which the present Law applies are required to provide assistance to the public with the identification of desired documents and data, namely informing them about the manner in which their archives and records are organised and used, and publishing on their website the manner, means, place and times, if applicable, in, by and at which the request for access can be submitted.

6 – If a request is insufficiently precise, within a time limit of five days counting from its reception the entity to which it was made must indicate the shortcoming to the applicant and invite them to overcome it within a time limit set for the purpose, and must seek to assist them with its formulation, particularly by supplying information about the use of its archives and records.

## Article 13

### Form of access

1 – Access to administrative documents shall occur by the following means, in accordance with the applicant's preference:

a) Consultation, to be free of charge and undertaken electronically or in person at the departments or services that hold them;

b) Reproduction by photocopy or any technical means, particularly visual, aural or electronic;

c) Certificate.

2 – Documents shall be transmitted in an intelligible form and in such a way as to rigorously match the content of the record.

3 – When there is a danger that reproduction may damage a document, the applicant may, at their own expense and under the direction of the department or service that holds the document, make arrangements for a manual copy or reproduction by another means that does not prejudice its conservation.

4 – Whenever possible and on condition that the means in question is appropriate to the intelligibility and reliability of their content, computerised documents shall be sent by any means of electronic data transmission, and in such a way as to rigorously match the content of the record.

5 – The entity to which a request is made may restrict itself to indicating the exact location of the requested document on the Internet, save if the applicant demonstrates that it is impossible to use that form of access.

6 – The entity to which a request is made is not under a duty to create or adapt documents in order to fulfil the request, or the obligation to supply extracts from documents, in cases in which that would involve a disproportionate effort that goes beyond the latter's simple handling.

## Article 14

### Reproduction costs

1 – Access by the means provided for in paragraph (1)(b) and (c) of the previous Article shall occur in the shape of a single copy, subject to payment by the applicant of a fixed fee, which must comply with the following principles:

a) It shall be equivalent to the sum of the proportional costs of the use of machines and tools for the collection, production and reproduction of the document, along with the costs of the materials used and the service provided, and may not exceed the average market price for an equivalent service;

b) In the case of the issue of a certificate, when the document that is made available constitutes the material result of an administrative activity for which fees or charges are due, a reasonable amount may be added to the costs referred to in the previous subparagraph,

bearing in mind the direct and indirect costs of the investments and the good quality of the service, in accordance with the applicable legislation;

c) When applicable and required by law, the costs of anonymising the documents, and the postage charges when the documents are sent by post, may be added to the fees that are charged;

d) In cases of reproduction by electronic means, particularly transmission by e-mail, no fee shall be due.

2 – In the light of the provisions of the previous paragraph and after consulting CADA and the national associations that represent local authorities, the Government and the Regional Governments must set the fees to be charged for reproductions of and certificates regarding administrative documents.

3 – Entities with autonomous powers to levy taxation may not set fees that exceed the amounts set in accordance with the previous paragraph by more than one hundred percent, and the aforesaid amounts shall apply until such time as specific price lists are published.

4 – The organs, bodies and entities to which the present Law applies must publish a list of the fees they charge for reproductions of and certificates regarding administrative documents, as well as information on applicable exemptions, reductions and dispensations from and in payments, on their website and display it in a place that is accessible to the public.

5 – Non-governmental environmental and equivalent organisations, defined in accordance with the applicable legislation, shall enjoy a fifty per cent reduction in the payment of any fees due for access to environmental information.

6 – Beneficiaries of legal aid that is recognised as such by law shall enjoy exemption from any fees due for access to administrative information that is needed for the preparation of the proceedings with regard to which they have been granted the respective aid.

7 – Victims of domestic violence and the respective representative associations that are qualified as such by law shall enjoy exemption from any fees due for access to administrative information that is needed for the preparation of applications for administrative protection or judicial action intended to avoid or prosecute acts of domestic violence undertaken against them or their members.

## Article 15

### Response to requests for access

1 – Within a time limit of ten days, the entity to which a request for access to an administrative document has been addressed must:

- a) Communicate the date, place and manner on and in which consultation can be undertaken, if requested;
- b) Issue the reproduction or certificate that has been requested;
- c) Communicate in writing the reasons for wholly or partially refusing access to the document, as well as what guarantees are available to the applicant in terms of the ability to bring an administrative or litigious appeal against that decision, namely by lodging a complaint with CADA and by issuing a judicial summons to the entity to which the request was made;
- d) Inform that it does not possess the document, and if it knows which entity does hold it, send the request to the latter and inform the applicant accordingly;
- e) Set out any doubts it has about the decision it is required to take to CADA, in order for the latter entity to issue an opinion.

2 – In the case of subparagraph (e) of the previous paragraph, the entity to which the request was made must inform the applicant and send CADA a copy of the request and of all the information and documents that contribute to its appropriate treatment.

3 – Entities are not obliged to fulfil requests which, given their repetitive and systematic nature or the number of documents requested, are manifestly abusive, without prejudice to the applicant's right of complaint.

4 – In exceptional cases, if the volume or complexity of the information justify it, the time limit referred to in paragraph (1) may be extended up to a maximum of two months, and the applicant must be informed of that fact along with an indication of the respective grounds within a time limit of ten days.

## Article 16

### Right of complaint



1 – Within a time limit of twenty days and in cases of the absence of a response by the end of the time limit provided for in the previous Article, denial, partial fulfilment of a request or another decision restricting access to administrative documents, applicants may lodge a complaint with CADA.

2 – Lodging a complaint shall interrupt the time limit for applying for a judicial summons to provide information, consult files or issue certificates.

3 – Save in cases of summary rejection, CADA must invite the entity to which the request was made to respond to complaints within a time limit of ten days.

4 – Both in the case of a complaint and in that of the consultation provided for in Article 15(1)(e), CADA shall have a time limit of forty days in which to draw up the corresponding report in which the situation is considered, and send it with the due conclusions to all the interested parties.

5 – Within a time limit of ten days following receipt of the report referred to in the previous paragraph, the entity to which the request was made shall communicate its final substantiated decision to the applicant.

6 – Interested parties may challenge both decisions, and the absence of any decision by the end of the time limit referred to in the previous paragraph, before the administrative courts, and the rules of the Code of Procedure of the Administrative Courts are applicable to the summons process referred to in paragraph (2), *mutatis mutandis*.

## SECTION II

### Right of access to environmental information

#### Article 17

### Right of access to environmental information

The organs, bodies and entities to which the present Law applies shall ensure the right of access to environmental information in accordance with the previous Section, and must also:

a) Make available to the public free of charge lists with the names of all the organs, bodies and entities that hold environmental information, preferably on a single website that centralises the respective websites on which the information is accessible, and the name of the person with responsibility for access in accordance with Article 9;

- b) Create and maintain appropriate facilities for the consultation of information, providing support to the public in the exercise of the right of access;
- c) Adopt procedures that ensure the standardisation of environmental information, in such a way as to ensure information that is exact, up-to-date and comparable;
- d) When they supply the environmental information referred to in Article 3(1)(e)(i) and (ii), indicate where, when it is available, information can be found and obtained on the measurement procedures used to collect that information, including the analytical, sampling and prior sample-treatment methods, or a reference to the standardised procedure used to collect information.

## Article 18

### Denial of requests for access

1 – Requests for access to environmental information may be denied when the requested administrative document neither is nor should be in the possession of the organ, body or entity to which the request was made, but if that organ, body or entity knows the information is held by another entity, it must directly and immediately send the request to the latter and inform the applicant thereof.

2 – When a request refers to an ongoing procedure, the entity shall send it to the entity that is coordinating the process, which shall inform the applicant of the foreseeable amount of time it will take to conclude, as well as of the legal provisions regarding access to the information that are laid down in the respective procedure.

3 – When a request refers to information that is contained in internal communications between entities or contemplates access to named personal data documents, it shall only be approved in cases in which the public interest underlying the disclosure of the information prevails, and in any case, when the request touches on information regarding emissions into the environment.

4 – Besides the provisions of the previous paragraphs, requests for access to administrative documents that contain environmental information may only be denied in the following cases:

- a) When the request is manifestly abusive or uses erroneous or incomplete documents or data as a reference;

b) When it is not possible to overcome the type of shortcoming referred to in Article 12(6);

c) When disclosure of that information prejudices:

i) The secrecy or confidentiality of the process or the information, when that secrecy or confidentiality is provided for by law, particularly in cases of banking confidentiality, statistical confidentiality or fiscal secrecy;

ii) International relations, public security or national defence;

iii) Judicial confidentiality, the confidentiality applicable to administrative offence, disciplinary, financial or merely administrative proceedings, on condition that it is provided for by law, or access to justice and its proper functioning;

iv) The secrecy or confidentiality of commercial or industrial information, whenever the law provides for that secrecy or confidentiality in order to protect a legitimate economic interest, as well as the public interest in statistical, fiscal and banking secrecy or confidentiality;

v) Copyright or related rights and industrial property rights;

vi) The interests or protection of someone who has voluntarily supplied information without being legally obliged to do so at the time or later, except if that person has authorised the disclosure of that information;

vii) The protection of the environment to which the information refers, particularly the location of protected species.

5 – The grounds for denial and respective protected interests must be interpreted in a restrictive manner in the face of the public interest underlying the disclosure of the information, and those referred to in subparagraphs (i), (iv), (vi) and (vii) of the previous paragraph may not be invoked when the request touches on information regarding emissions into the environment.

6 – The requested environmental information must be made partially available whenever it is possible to expunge the information that constituted the grounds for the denial.

### SECTION III

On the re-use of documents

Article 19

## General principles

1 – Administrative documents to which access is authorised in accordance with the present Law may be re-used.

2 – The provisions of the present Section shall not prejudice the use of texts of conventions, laws, regulations, administrative or judicial reports or decisions and reports by or decisions of any organs, bodies or entities of the state or the Public Administration, or the use of official translations of those texts.

3 – The provisions of the present Section are not applicable to documents held or drawn up by:

a) Public-service broadcasting enterprises, their subsidiaries and other entities that fulfil public-service broadcasting functions;

b) Education and research establishments, including organisations created with a view to the transfer of research results, schools and higher education institutions, with the exception of the respective libraries;

c) Public or private legal persons that devote themselves to the provision of cultural services and activities, except libraries, museums and archives.

4 – The exchange of administrative documents between the organs, bodies and entities referred to in Article 4, exclusively within the scope of the performance of their functions and of the public-interest goals which it is their responsibility to pursue, shall not constitute re-use.

5 – Save with the agreement of the entity that holds them, whoever re-uses administrative documents may not alter the information set out in them, must not allow their meaning to be corrupted, and must always mention the sources, as well as the date on which the information was last updated.

6 – Documents shall be made available in the format or language in which they already exist, and if appropriate, in formats that are open and machine-readable, with the respective metadata, and both must respect open formal standards.

7 – The provisions of the previous paragraph must be complied with as far as possible, and do not imply a duty on the part of the holding entity to create or adapt documents or supply

extracts in cases in which this involves a disproportionate effort that goes beyond their simple handling.

## Article 20

### Excluded documents

The following may not be the object of re-use:

- a) Documents drawn up in the exercise of an activity involving the private management of the entity in question;
- b) Documents whose copyright or related rights belong to third parties or whose reproduction, dissemination or use may constitute practices of unfair competition;
- c) Named personal data documents, save in cases of authorisation by the subject, a legal provision that expressly provides for it or when the personal data can be anonymised without possibility of reversal, and in the latter case, within the scope of the authorisation that is granted and in accordance with Article 23(1), there must be provision for special security measures intended to protect the sensitive data, in accordance with the legal regime governing the protection of personal data;
- d) Parts of documents that only contain logos, crests and insignia.

## Article 21

### Requests for re-use

1 – The re-use of documents made available by means of the Internet shall not be subject to authorisation by the entity that holds them, except when there is indication to the contrary or if it is clear to any recipient that the document is protected by copyright or related rights.

2 – In the remaining cases, the re-use of documents shall be subject to authorisation by the entity that holds them, further to a request made by the applicant, and the provisions of Article 12 shall apply.

3 – When the re-use of documents is intended for educational or research and development purposes, the applicant shall expressly indicate this.

## Article 22

## Response to requests for re-use

1 – Within a time limit of ten days, the entity to which a request for the re-use of a document is made must:

a) Authorise the re-use of the document, indicating what, if any, conditions or licences are applicable, in accordance with the following Article; or

b) Indicate the reasons for the full or partial denial of the re-use of the document, as well as what guarantees are available to the applicant of the ability to bring an administrative or litigious appeal against that decision, namely by lodging a complaint with CADA and issuing a judicial summons to the entity to which the request was made.

2 – Requests for re-use of a document may only be denied on the grounds that it would be in breach of legal provisions, namely of any of the provisions of the present Law regarding the right of access and re-use, or when the organ, body or entity is no longer under an obligation to draw up, hold or store the information.

3 – When entitlement to copyright or related rights to the document constitutes the grounds for denial of the desired re-use, the duty to indicate the reasons for denial shall include the duty to indicate the natural or legal person that holds it or them, or alternatively to indicate the licencing entity that provided the document or allowed its use.

4 – The indications referred to in the previous paragraph shall not be obligatory if the entity to which the request was made is a library, including libraries of higher education institutions, a museum or an archive.

5 – In cases of extensive or complex requests, the time limit provided for in paragraph (1) may be extended once for the same length of time, and the applicant must be informed of that fact along with an indication of the respective grounds within a time limit of at most five days.

## Article 23

### Conditions regarding re-use

1 – Authorisations granted in accordance with the previous Article may be subordinated to fulfilment of certain conditions regarding re-use, particularly those imposed by open licences that are available online, which grant broader re-use rights without technological, financial or geographic restrictions, and are based on open data formats.

2 – The re-use of documents may also be subject to payment by the applicant of fees set by the entities in accordance with the provisions of the following paragraphs.

3 – Without prejudice to the provisions of Article 15 of the Code of Administrative Procedure, the re-use of documents shall be free of charge when they are made available:

- a) By means of the Internet, in accordance with Articles 10 and 11; or
- b) For educational or research and development purposes.

4 – Fees charged for re-use shall be limited to the marginal costs incurred in relation to the collection, production, reproduction and dissemination of the respective document, and when applicable may include the cost of anonymising the documents and the postage charges when the documents are sent by post.

5 – When the document that is made available constitutes the material result of an administrative activity for which fees or charges are due, a reasonable amount may be added to the costs referred to in the previous subparagraph, bearing in mind the direct and indirect costs of the investments and the good quality of the service, in accordance with the applicable legislation.

6 – When the document that has been requested is incorporated into a library, to include libraries of higher education institutions, a museum or an archive, fees shall also include the costs of preserving the documents and of the assignment of rights, and a reasonable amount may be added to them in the light of the direct and indirect costs of the investments and the good quality of the service, in accordance with the applicable legislation.

7 – When setting the fees to be charged in accordance with the previous paragraphs, the entity to which the request was made must base itself on the costs during the normal accounting period, calculated in accordance with the applicable accounting principles.

8 – Neither the conditions regarding re-use, nor the fees that are charged must unnecessarily restrict the possibilities of re-use, and the entity to which the request was made may not by that means discriminate between equivalent categories of re-use or limit competition, but may, however, reduce fees for re-use requested by for-profit or not-for-profit entities or exempt them from fees, on condition that they are acting in pursuit of purposes and activities that are of recognised social interest.

## Publicity

1 – Conditions regarding re-use and applicable fees, including the amounts payable, the time limit and method for paying them and any reductions or exemptions that are provided for, shall be preestablished and publicised, whenever possible by electronic means, and both the basis for calculating the chargeable amounts and the means of recourse available to the applicant in cases in which re-use of a document is denied must be indicated.

2 – The organs, bodies and entities to which the present Law applies must publish a list of the fees they charge for reproductions of and certificates regarding administrative documents, as well as information on applicable exemptions, reductions and dispensations from and in payment, on their website and display them in a place that is accessible to the public.

3 – In cases in which the relative unavailability, nature or complexity of the information whose re-use has been requested determines the imposition of fees that are not predetermined, the entity to which the request was made shall inform the applicant in advance of the factors that are taken into account in the calculation of the chargeable amounts.

4 – When the applicable fees have not been set, predetermined or published, and for as long as this does not occur, re-use shall be deemed free of charge.

## Article 25

### Prohibition on exclusive agreements

1 – Entry into exclusive agreements for the re-use of documents is prohibited, except in cases in which the exclusive right concerns the digitalisation of cultural resources and cases in which the formation of an exclusive right is necessary for the provision of a public-interest service.

2 – Both the exclusive agreements entered into under the previous paragraph and the grounds for them must be transparent and must be publicised, whenever possible by electronic means.

3 – The reasons underlying the formation of an exclusive right must be the object of periodic scrutiny, to be undertaken at least once every three years, except in the case of exclusive agreements regarding the digitalisation of cultural resources, with regard to which the



exclusive period must not as a rule exceed ten years, and the aforesaid scrutiny must be undertaken in the eleventh year, and every seven years thereafter if applicable.

4 – In cases in which an exclusive right to the digitalisation of cultural resources exists, the respective agreement shall necessarily provide for a copy of the digitalised cultural resources to be made available to the public entity in question free of charge, and that copy must be available for re-use at the end of the exclusive period.

## Article 26

### Summons regarding the re-use of documents

When a request for re-use formulated in accordance with the present Section is wholly or partially denied, the interested party may lodge a complaint with CADA in accordance with Article 16, and the corresponding provisions of the latter shall apply to the application for the issue of a summons in relation to the entity to which the request for authorisation of re-use was made, which may be submitted to the competent administrative court in accordance with the Code of Procedure of the Administrative Courts.

## Article 27

### Dissemination of documents available for re-use

1 – Entities covered by the provisions of the present Section must make updated lists of the documents that are available for re-use available on their website.

2 – Whenever possible, provision must be made for inventories of the most important documents, together with the accessible related metadata, and it must be possible to undertake a multilingual search of documents and data.

3 – The information provided for in the previous paragraphs must be organised on a website of decentralised inventories, with a view to facilitating searches for documents and data that are available for re-use.

4 – Application of the provisions of the present Article shall be optional for parishes with less than ten thousand electors.

## CHAPTER III

### Commission for Access to Administrative Documents

## Article 28

### Nature

1 – CADA is an independent administrative entity that operates under the aegis of the Assembly of the Republic and is responsible for making every effort to ensure compliance with the provisions of the present Law.

2 – CADA shall dispose of an annual budget, the allocation for which shall be included in the budget of the Assembly of the Republic.

## Article 29

### Composition

1 – CADA shall be made up of the following members:

a) A Justice of the Supreme Administrative Court, to be designated by the Supreme Council of the Administrative and Fiscal Courts, who shall chair it;

b) Two Members of the Assembly of the Republic, to be elected by the Assembly, one on the proposal of the parliamentary group of the largest party supporting the Government, and the other on the proposal of the largest opposition party;

c) A Professor of Law designated by the President of the Assembly of the Republic;

d) Two prominent individuals designated by the Government;

e) One prominent individual designated by each of the Regional Governments;

f) A prominent individual designated by the National Association of Portuguese Municipalities;

g) A lawyer designated by the Bar Association;

h) A member designated by the National Data Protection Authority from among its ordinary members.

2 – Full members shall be substituted for by an alternate member designated by the same entity.

3 – The members of CADA shall be installed before the President of the Assembly of the Republic within the ten days following publication of their appointment in Series 1 of *Diário da República*.

4 – Without prejudice to the provisions of the following paragraph, full members' terms of office shall be three years, and shall only end when the new members are installed.

5 – The Assembly of the Republic shall elect the members referred to in subparagraph (b) at the beginning of each legislature and for the duration thereof.

6 – Terms of office shall be renewable twice.

## Article 30

### Competences

1 – CADA has the following competences:

- a) To draw up its internal regulations, to be published in Series 2 of *Diário da República*;
- b) To consider complaints that are lodged with it in accordance with Articles 16 and 26;
- c) To issue opinions on access to administrative documents, in accordance with Article 15(1)(e);
- d) At the request of the entity to which the request was made or the interested party, to issue opinions on the communication of documents between Public Administration departments, services and bodies, unless a danger of the interconnection of data is foreseen, in which case the question shall be submitted to the National Data Protection Authority for consideration;
- e) To pronounce itself on the system for registering and classifying documents;
- f) On its own initiative or at the request of the Assembly of the Republic, the Government or the organs, bodies and entities referred to in Article 4, to issue opinions on the application of the present Law, as well as on the drawing up and application of complementary legislative acts;
- g) To draw up an annual report on the application of the present Law and its own activities, to be sent to the Assembly of the Republic for publication and consideration and to the Prime Minister;

h) To draw up a report once every three years on the availability for re-use of public-sector information and on the conditions under which it is made available, in particular with regard to fees due for the re-use of documents that exceed the marginal costs, as well as on the practices regarding means of appeal, which must be sent to the Assembly of the Republic for publication and consideration, and to the Prime Minister with a view to its being sent to the European Commission;

i) To contribute to the clarification and dissemination of the different means of access to administrative documents within the scope of the principle of open administration;

j) To issue deliberations on the imposition of administrative fines in the administrative-offence proceedings provided for in the present Law.

2 – Draft opinions and deliberations shall be drawn up by the members of CADA, with the support of the technical services.

3 – Opinions shall be published in accordance with the internal regulations.

## Article 31

### Cooperation of the Administration

1 – All the senior officials, staff and agents of the organs, bodies and entities to which the present Law applies shall be under a duty to cooperate with CADA, failing which they shall be subject to disciplinary or other forms of liability, as laid down by law.

2 – For the purposes of the previous paragraph, all the information that is relevant to knowledge of the questions submitted to CADA within the scope of its competences must be communicated.

## Article 32

### Statute governing members of CADA

1 – Citizens who are not in full possession of their civic and political rights may not be members of CADA.

2 – Members of CADA have the following duties:

a) To exercise the office with impartiality, rigor and independence;

b) To actively and assiduously participate in CADA's work.

3 – Members of CADA may not be prejudiced in terms of the stability of their employment, their professional career, namely promotions to which they become entitled in the meantime, competitive public appointment processes in which they are candidates, or the social security regime of which they are beneficiaries on the date on which their term of office begins.

4 – Members of CADA enjoy security of tenure, and their functions may not cease before the end of their term of office, save in the following cases:

a) Death;

b) Physical impossibility that is permanent or is expected to last beyond the date on which the term of office ends;

c) Resignation;

d) Loss of office.

5 – Resignations shall take effect upon the submission of the respective written declaration to the President of CADA and shall be published in Series 2 of *Diário da República*.

6 – Members of CADA who become subject to a disqualification or incompatibility provided for by law, or who miss three consecutive or six non-consecutive meetings in the same calendar year without justified reason, shall lose their office.

7 – Loss of office shall be the object of a deliberation to be published in Series 2 of *Diário da República*.

## Article 33

### Remuneratory statute

1 – The President shall receive the remuneration and other benefits to which he is entitled as a Justice of the Supreme Administrative Court, as well as a monthly representation allowance equal to twenty per cent of the respective base salary.

2 – With the exception of the President, all the members may exercise their office in accumulation with other functions and shall receive an allowance equal to twenty-five per cent of the amount of index one hundred on the pay scale applicable to senior public servants.

3 – With the exception of the President, all the members shall receive an allowance equal to five per cent of the amount of index one hundred on the pay scale applicable to senior public servants for each CADA session in which they participate.

4 – All the members are entitled to an expense allowance and to the reimbursement of expenses regarding transport and telecommunications in accordance with the rules applicable to the position of Director-General.

5 – In the case of the travel of the prominent individuals designated by the Regional Governments, the expense allowance shall be processed in accordance with the current regime applicable in the respective regional administrations.

#### Article 34

##### Competences of the President

1 – Within the framework of the guidelines issued by CADA and with the ability to delegate to the Secretary, the President shall exercise the competences which the law attributes to the position of head of an autonomous body in relation to matters regarding personnel, financial, asset and administrative management.

2 – CADA may delegate to the President powers to consider and decide with regard to:

- a) Complaints that are manifestly groundless or are lodged outside the applicable time limits;
- b) Complaints that are withdrawn;
- c) Cases of supervening lack of utility;
- d) Complaints about questions which CADA has already repeatedly considered in a uniform manner.

#### Article 35

##### Support services

CADA shall dispose of its own technical and administrative support services, to be provided for in organic regulations that shall be approved in a specific legislative act.

#### Article 36

##### Judicial challenges

1 – Challenges against CADA deliberations shall take the form of a claim, to be lodged within a time limit of ten days counting from the respective notification.

2 – In the face of such a claim, CADA may modify or revoke its decision, whereupon it shall notify the accused persons of the new final deliberation.

3 – In cases in which it maintains its earlier deliberation, CADA shall send the claim to the representative of the Public Prosecutors' Office at the Lisbon Judicial District Administrative Court within a time limit of ten days.

#### Article 37

##### Judicial proceedings

1 – CADA shall be responsible for sending all the information that is necessary and relevant to the proceedings to the Public Prosecutors' Office, so that the latter can conclude the report and submit it to the judge.

2 – If neither the defence, nor the Public Prosecutors' Office nor CADA opposes it, the judge may decide the question in accordance with the present Law by means of a simple order.

3 – If there is a hearing, the respective formalities shall be reduced to the indispensable minimum, testimony shall not be recorded, and no more than three witnesses shall be heard in relation to each alleged administrative offence.

4 – The judge shall always have the competence to arbitrate in relation to compensation for whoever deems that they are entitled to it.

5 – The judge's final decision shall be subject to appeal per saltum to the Supreme Administrative Court, which shall decide by right.

#### CHAPTER IV

##### Regime governing sanctions

#### Article 38

##### Undue access to named personal data

1 – Whosoever, with the intention to unduly access named personal data, falsely declares or attests to an organ, body or entity referred to in Article 4(1) that they possess a direct,

personal, legitimate and constitutionally protected interest which justifies access to the desired information or documents shall be punished by a prison term of up to one year or a penal fine.

2 – Attempts are punishable.

## Article 39

### Administrative offences

1 – Natural or legal persons who engage in the following commit an administrative offence that shall be punishable by an administrative fine:

- a) Re-use of public-sector documents without authorisation from the competent entity;
- b) Re-use of public-sector documents without fulfilment of the conditions regarding re-use established in Article 23(1);
- c) Re-use of public-sector documents without having paid the amount provided for in Article 23(2).

2 – The infractions provided for in subparagraphs (a) and (c) of the previous paragraph shall be punishable by the following administrative fines:

- a) In the case of a natural person, a minimum of (euros) three hundred and a maximum of (euros) three thousand five hundred;
- b) In the case of a legal person, a minimum of (euros) two thousand five hundred and a maximum of (euros) twenty-five thousand.

3 – The infraction provided for in paragraph (1)(b) shall be punishable by the following administrative fines:

- a) In the case of a natural person, a minimum of (euros) one hundred and fifty and a maximum of (euros) one thousand seven hundred and fifty;
- b) In the case of a legal person, a minimum of (euros) one thousand two hundred and fifty and a maximum of (euros) twelve thousand five hundred.

4 - Attempts are punishable.

## Article 40



## Imposition of administrative fines

1 – The competence to prepare the details of administrative-offence proceedings pertains to the Public Administration departments and services that detected the infraction, and this may be completed by CADA's support services.

2 – The competence to impose administrative fines pertains exclusively to CADA and the respective deliberation shall constitute sufficient executive title in cases in which it is not challenged within the legal time limit.

## Article 41

### Destination of revenue received

The amount of the sums that are collected as a result of the imposition of administrative fines shall revert as follows:

- a) Forty per cent to CADA;
- b) Forty per cent to the state;
- c) Twenty per cent to the entity that was harmed by commission of the infraction.

## Article 42

### Failure to fulfil a duty

Whenever an administrative offence results from a failure to fulfil a duty, imposition of the sanction and payment of the administrative fine shall not dispense the offender from fulfilling it, if that is still possible.

## CHAPTER V

### Legislative amendments

## Article 43

### Amendment to CADA's Organic Regulations

Article 3 of CADA's Organic Regulations, as approved in annexe to Law no. 10/2012 of 29 February 2012, henceforth reads as follows:

“Article 3

[...]

1 - ...

2 - ...

3 - ...

4 – The provisions of Article 26 of Executive Law no. 545/99 of 14 December 1999, as amended by Executive Law no. 181/2015 of 16 September 2015, shall be applicable to the senior legal technical specialists referred to in paragraph (1) for as long as they perform functions at CADA.

5 – The other staff to whom paragraph (1) refers shall receive the remuneration that corresponds to the remuneratory position immediately above their existing one in the respective category or career structure.”

Article 44

Amendment to Executive Law no. 16/93 of 23 January 1993

Article 17 of Executive Law no. 16/93 of 23 January 1993 (Establishing the general regime governing archives and archival heritage assets), as amended by Laws nos. 14/94 of 11 May 1994 and 107/2001 of 8 September 2001, henceforth reads as follows:

“Article 17

[...]

1 – Access to the documentation conserved in public archives is guaranteed, save for the limitations derived from imperatives regarding the conservation of the items, and the restrictions derived from the general and special legislation governing access to administrative documents shall apply.

2 – Documents that include named personal data shall be accessible:

a) On condition that thirty years have passed since the death of the persons whom the documents concern; or

b) In the event that the date of death is unknown, forty years after the date of the documents, but not until ten years have passed since the moment at which the death became known.

3 – In the event that no shorter time limit is defined by law, data that are legally defined as sensitive and concern legal persons shall be communicable thirty years after the date on which the legal person ceased to exist.

4 - ...”

#### Article 45

Amendment to Law no. 12/2005 of 26 January 2005

Article 3 of Law no. 12/2005 of 26 January 2005 (Personal genetic information and health information) henceforth reads as follows:

“Article 3

[...]

1 - ...

2 - ...

3 – Access to health information by its subject, or by third parties with the subject’s consent or as laid down by law, shall occur by the intermedium of a doctor with appropriate qualifications if the information subject requests it.

4 – In the event that it is impossible to determine the subject’s will with regard to access, that access shall always take place with the intermediation of a doctor.”

#### CHAPTER VI

Final and transitional provisions

#### Article 46

Transitional provisions

1 – Existing exclusive agreements that do not respect the provisions of Article 25(1) of the present Law shall lapse at the end of the respective contract, or in any case on 18 July 2043.

2 – The provisions of Article 25 of the present Law shall not prejudice the lapse of exclusive agreements that has already occurred.

3 – Parishes with less than ten thousand electors shall dispose of a transitional adaptation period until 1 May 2017 in order to ensure the publicising of the information provided for in Article 10(1)(c).

4 – The terms of office of members of CADA that predate the entry into force of the present Law, as well as the terms of office that are in effect at the moment when its entry into force occurs, shall not count for the purposes of the application of the restriction on terms of office provided for in Article 29(6).

#### Article 47

##### Revocatory norm

The following are hereby repealed:

a) Law no. 19/2006 of 12 June 2006, as amended by Executive Law no. 214-G/2015 of 2 October 2015;

b) Law no. 46/2007 of 24 August 2007, as amended by Executive Law no. 214-G/2015 of 2 October 2015.

#### Article 48

##### Entry into force and application of the Law in time

1 – Without prejudice to the provisions of the following paragraphs, the present Law shall enter into force on the first day of the second month following its publication.

2 – Article 43 of the present Law shall enter into force on 1 January 2017.

3 – The provisions of Article 29 apply to the appointment of members of CADA that occurs in 2016.

Passed on 20 July 2016.

The President of the Assembly of the Republic, Eduardo Ferro Rodrigues.

Enacted on 9 August 2016.

Let it be published.

The President of the Republic, Marcelo Rebelo de Sousa.

Countersigned on 10 August 2016.

The Prime Minister, António Luís Santos da Costa.