

Law No 26/2016

of 22 August 2016

Approves the rules on 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, and Directive 2003/98/EC of the European Parliament and of the Council of 17 November.

The Assembly of the Republic decrees the following in accordance with Article 161(c) of the Constitution:

CHAPTER I

General provisions

Article 1

Subject matter

1 – This Law shall govern access to administrative documents and administrative information, including in environmental matters, transposing into the national legal system 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.

2 – This Law shall also govern the re-use of documents relating to activities carried out by the bodies and entities referred to in Article 4, transposing into the national legal system 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.

3 – Access to information and documents which identify persons, particularly when they include health data, produced and held by the entities referred to in Article 4, by the data subject, by a third party authorised by the data subject or by any party that can show it has a direct, personal, legitimate and constitutionally protected interest in the information, shall be regulated by this Law, without prejudice to the legal provisions on the protection of personal data.

4 – This Law shall be without prejudice to the application of the provisions of specific legislation, specifically with regard to:

- a) The rules governing exercise of the right of citizens to be informed by the Public Administration of the progress of cases in which they have a direct interest and to hear the final decisions taken concerning them, which is governed by the Administrative Procedure Code;
- b) Access to information and documents relating to internal and external security and criminal investigation, or to investigations aimed at assessing liability for administrative offences, financial, disciplinary or purely administrative liability, which is governed by specific legislation;

- c) Access to notarial and registry documents, civil and criminal identification documents and information and documentation contained in the electoral census, as well as access to documents from other information systems regulated by special legislation;
- d) Access to information and documents covered by judicial secrecy, fiscal secrecy, statistical confidentiality, banking secrecy, medical confidentiality and other business secrets, as well as documents held by Inspectorate-Generals and other entities, where they concern matters that result in financial, disciplinary or purely administrative liability, provided that the procedure is subject to the rules on secrecy, in accordance with the applicable law.

Article 2

Principle of open administration

- 1 – The access to and re-use of administrative information shall be guaranteed in accordance with the other principles of administrative activity, in particular the principles of equality, proportionality, fairness, impartiality and collaboration with individuals.
- 2 – Public information that is relevant to ensure the transparency of administrative activity, particularly that related to the operation and control of public activity, shall be actively disseminated, on a regular and updated basis, by the respective bodies and entities.
- 3 – When disclosing information and providing information for re-use via the Internet, its comprehensibility and free and universal access shall be ensured, as well as the interoperability, quality, integrity and authenticity of the published data, and its identification and location.

Article 3

Definitions

- 1 – For the purposes of this Law, the following definitions shall apply:
 - a) ‘Administrative document’ means any content or part of this content that is in the possession or is held on behalf of the bodies and entities referred to in the following Article, whether the information support is in written, visual, aural, electronic or other material form, including in particular those relating to:
 - i) Procedures for issuing administrative acts and regulations;
 - ii) Public procurement procedures, including contracts concluded;
 - iii) Budgetary and financial management of the bodies and entities;
 - iv) Human resources management, including recruitment procedures, evaluation, exercise of disciplinary authority and any modifications to the respective legal relationships.
 - b) ‘Named document’ means administrative documents containing personal data, defined in accordance with the legal provisions on the protection of personal data.
 - c) ‘Open format’ means a file format available to the public and reusable regardless of the platform used, in accordance with the legal framework that regulates the use of open standards for information in digital form in the Public Administration;
 - d) ‘Machine-readable format’ means a file format structured so that software applications can easily identify, recognise and extract specific data, including individual statements of fact, and their internal structure;

e) 'Environmental information' means any information of an administrative nature, in written, visual, aural, electronic or other material form, concerning:

- i) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- ii) Factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in the previous point;
- iii) Political, legislative and administrative measures, particularly plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to in the previous, as well as measures and activities designed to protect those elements;
- iv) Reports on the implementation of environmental legislation;
- v) Cost-benefit analyses and other economic assessments and assumptions used within the framework of the measures and activities referred to in point iii);
- vi) The state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in point (i) or, through those elements, by any of the matters referred to in points (ii) and (iii);

f) 'Formal open standard' means a standard which has been laid down in written form, detailing specifications for the requirements on how to ensure software interoperability;

g) 'Re-use' means the use by persons or legal entities of administrative documents, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced.

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

- a) Personal notes, sketches, jottings, personal electronic communications and other records of a similar nature, whatever their support;
- b) Documents whose drawing up is not the result of administrative activity, in particular those relating to meetings of the Council of Ministers and/or Secretaries of State, and their preparation;
- c) Documents produced regarding diplomatic relations of the Portuguese State.

Article 4

Subjective scope of application

1 – This Law shall apply to the following bodies and entities:

- a) Sovereign bodies and bodies of the State and Autonomous Regions forming part of the Public Administration;
- b) Other bodies of the State and Autonomous Regions, to the extent that they perform materially administrative functions;
- c) Bodies of public institutes, independent administrative entities and public associations and foundations;

- d) Bodies of public enterprises;
- e) Bodies of local authorities, inter-municipal entities and any other local public associations or federations;
- f) Bodies of regional, municipal, inter-municipal or metropolitan enterprises, as well as any other local enterprises or public municipal services;
- g) Associations or foundations governed by private law in which the bodies and entities referred to in this paragraph exercise management control powers or appoint, directly or indirectly, the majority of the members of the administrative, management or supervisory body;
- h) Other entities responsible for managing files of a public nature;
- i) Other entities in the exercise of materially administrative functions or public authority, particularly those who hold concessions or public service delegations.

2 – The provisions of this Law shall also apply to documents held or drawn up by any entities with legal personality which have been established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, to which any one of the following circumstances may apply:

- a) The activity in question is mainly financed by one of the entities referred to in the previous paragraph or this subparagraph;
- b) Management of the activity concerned is subject to control by one of the entities referred to in the previous paragraph or this subparagraph;
- c) More than half of the members of the respective administrative, management or supervisory bodies are appointed by one of the entities referred to in the previous paragraph or this subparagraph.

3 – Although no longer part of its subjective scope of application, this Law shall also apply to entities that previously satisfied the requirements referred to in the previous paragraphs, in relation to documents corresponding to this period.

4 – The provisions on access to environmental information shall also apply to:

- a) Any public or private natural or legal person belonging to the indirect administration of the bodies or entities referred to in the previous paragraphs and who has powers or competences, performs public administrative functions or provides public services relating to the environment, particularly public enterprises, subsidiary companies and concessionary companies;
- b) Any person or legal entity that holds or materially maintains environmental information in the name or on behalf of any of the bodies or entities referred to in the previous paragraphs.

Article 5 **Right of access**

1 – All persons, without having to declare any interest, shall be entitled to access to administrative documents, which includes the right to consult, reproduce and obtain information concerning their existence and contents.

2 – The right of access shall be ensured regardless of whether administrative documents are included in current, intermediate or definitive archives.

Article 6
Restrictions on the right of access

1 – Documents which contain information, knowledge of which is judged liable to jeopardise the fundamental interests of the State, shall be subject to a prohibition on access, or to access with authorisation, during such time that may be strictly necessary, by means of classification operated through the provisions on State secrets or other legal provisions relating to classified information.

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

3 – Access to administrative documents which are preparatory to a decision or belong to proceedings which are not yet concluded may be deferred until the decision is taken, the case is filed or one year after the documents were drawn up, whichever event occurs first.

4 – Access to the content of audits, inspections, surveys, investigations or inquiries may be deferred until the expiry of the period for initiation of disciplinary proceedings.

5 – Third parties shall only be entitled to access named documents:

- a) if they have explicit written consent from the data subject which specifies their purpose and the type of data they wish to access;
- b) if they can prove a sufficiently relevant direct, personal, legitimate and constitutionally protected interest, after due consideration, in the context of the principle of proportionality, of all the fundamental rights involved and the principle of open administration, that justifies access to the information.

6 – Third parties shall only be entitled to access to administrative documents which contain commercial or industrial secrets or which concern the internal affairs of a company if they have written authorisation from the latter or if they can prove a sufficiently relevant direct, personal, legitimate and constitutionally protected interest, after due consideration, in the context of the principle of proportionality, of all the fundamental rights involved and the principle of open administration, that justifies access to the information.

7 – Without prejudice to other legally established restrictions, administrative documents shall be subject to a prohibition on access, or to access with authorisation, during such time that may be strictly necessary to safeguard other legally relevant interests, by decision of the competent body or entity, whenever they contain information, knowledge of which may:

- a) Affect the effectiveness of monitoring or supervision, including supervisory or monitoring plans, methodologies and strategies;
- b) Jeopardise the operational capacity or safety of the facilities or staff of the Armed Forces, the intelligence services of the Portuguese Republic, the security forces and services and criminal police, as well as the safety of diplomatic and consular representations; or

c) Cause serious and potentially irreversible damage to third-party assets or property that are greater than the assets and interests protected by the right of access to administrative information.

8 – Administrative documents subject to access restrictions may be disseminated in part whenever it is possible to delete the information relating to the classified material.

Article 7

Access to and communication of health data

1 – Access to health information by the holder of the information, or by third parties with their consent or pursuant to the law, shall be exercised through a doctor if the information holder so requests, in compliance with the provisions of Law No 12/2005 of 26 January 2015.

2 – In the event that it is not possible to determine the wishes of the information holder with regard to access, this shall always be performed through a doctor.

3 – In the event of access by third parties with the consent of the data subject, only the information specifically covered by the instrument of consent shall be disclosed.

4 – In other cases of access by third parties, only the information strictly necessary to the exercise of the direct, personal, legitimate and constitutionally protected interest on which the access is based may be transmitted.

Article 8

Unlawful use of information

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

2 – Named documents which are disclosed to third parties may not be used or reproduced in a manner inconsistent with the authorisation granted, with the grounds of access, with the purpose of the collection or with the legalisation instrument, subject to liability for damages and criminal liability, in accordance with the law.

Article 9

Responsibility for access

Each body or entity referred to in Article 4(1) shall appoint a person responsible for overseeing compliance with the provisions of this Law, who shall be responsible in particular for organising and promoting the obligations on the active disclosure of information by which the body or entity is bound, monitoring the processing of requests for access and re-use and establishing the relationships necessary to exercise the powers of the Commission for Access to Administrative Documents (*Comissão de Acesso aos Documentos Administrativos*), hereinafter referred to as CADA.

Article 10

Active dissemination of information

1 – The bodies and entities to whom this Law applies shall regularly publish the following information on their websites, which must be updated at least every six months:

a) The administrative documents, data or inventory lists they intend to make freely available for access and re-use in accordance with this Law, subject to the legal provisions on the protection of personal data;

b) The e-mail address, place and timetable for face to face consultation, application form or other appropriate means through which requests for access and re-use of the information and documents covered by this law may be sent;

c) The following information, knowledge of which is relevant to ensure the transparency of the activity related to their operation, including at least:

i) Activity Plans, budgets, activity reports and accounts, social balance report and other similar management tools;

ii) Composition of their management and supervisory bodies, organisation chart or other internal organisation model;

iii) All documents, particularly internal regulatory orders, circulars and guidelines, which involve strategic framework of the administrative activity;

iv) A statement of all documents which involve generalised interpretation of positive law or a generic description of administrative procedure, mentioning in particular the title, subject matter, date, source and place where they can be consulted.

d) The rules and conditions on the re-use of information applicable in each case.

2 – The administrative information available on the websites referred to in the previous paragraph shall be indexed in the online search system of public information, in accordance with Article 49 of Decree-Law No 135/99 of 22 April 1999, amended by Decree-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 this Article shall be made available in an open format and in terms that enable unrestricted access to its contents, with preference for availability in machine-readable formats which enable its subsequent automatic processing.

4 – The administrative information referred to in paragraph 1(c) shall remain available for two years or, in the case of local authorities, for the duration of each term of office, excluding the period of validity, when appropriate, or for the appropriate time for the satisfactory disclosure of its contents, if this period is greater.

5 – The active dissemination of information shall ensure respect for the access restrictions provided for in this Law, and partial dissemination shall take place whenever it is possible to delete the information relating to the classified material.

6 – The application of the provisions of this Article shall be optional for wards with less than 10 000 voters, with the exception of the provisions of paragraph 1(c).

Article 11

Active dissemination of environmental information

1 – The bodies and entities to which this Law applies shall collect and organise environmental information as part of their duties and ensure its dissemination to the public on a systematic and regular basis, in particular electronically, and shall ensure its progressive availability on easily accessible Internet databases.

2 – The information referred to in this Article shall be updated at least every six months and shall include as a minimum:

- a) Texts of international treaties, conventions or agreements, and of national and European legislation on the environment or relating to it;
- b) Policies, plans and programmes relating to the environment;
- c) Reports on the implementation of the instruments referred to in the previous paragraphs;
- d) A national report on the state of environment, in accordance with the following paragraph;
- e) Data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
- f) Authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or obtained;
- g) Environmental impact studies and risk assessments concerning the environmental elements referred to in Article 3(1)(e) or a reference to the place where the information can be requested or obtained.

3 – The national report on the state of the environment, which the member of Government responsible for the environment shall be responsible for drawing up and publishing, shall include information on the quality of, and pressures placed on the environment.

4 – The competent public bodies and authorities shall ensure that, in the event of an imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information enabling the public likely to be affected to take measures to prevent or mitigate harm arising from the threat is disseminated immediately.

CHAPTER II

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

SECTION I

Right of access

Article 12

Request for access

1 – Access to administrative documents shall be requested in writing, through an application that sets out the information required to identify the applicant, in particular the name, personal or collective identification details, contact details and signature.

- 2 – The entities shall make the access application form request available on their website.
- 3 – The receiving entity may also accept verbal requests, and must do so in cases where the law expressly so determines.
- 4 – In order to submit a complaint to the CADA, under this Law, a written request for access must have been or at least written confirmation of a refusal to handle a verbal request.
- 5 – The bodies and entities to whom this Law applies shall be required to assist the public in identifying the documents and data requested, in particular by providing information on the way in which their archives and records are organised and used, and by publishing the form, medium, place and timetable, if applicable, to submit the request for access.
- 6 – If the request is not sufficiently precise, the receiving entity shall, within five days from the date of its receipt, inform the applicant of the shortcoming and invite them to remedy it within a period set for that purpose, seeking to assist the applicant in doing so, in particular by providing information on the use of its archives and records.

Article 13

Form of access

- 1 – Access to administrative documents shall be exercised in the following ways, at the discretion of the applicant:
- a) Free consultation, electronically or in person, at the department holding them;
 - b) Reproduction by photocopying or any other technical means, particularly visual, aural or electronic;
 - c) Certification.
- 2 – The documents shall be transmitted in a comprehensible manner and in terms strictly corresponding to the contents of the record.
- 3 – If there is a risk that reproduction will damage the document, the applicant may, at their own expense and under the direction of the department holding the document, have a manual copy made or reproduce it in some other way which will not expose it to damage.
- 4 – Computerised documents shall be sent by any form of electronic data transmission, whenever this is possible and provided it is a means capable of preserving the intelligibility and reliability of the contents, and in terms strictly corresponding to the contents of the record.
- 5 – The receiving entity may simply indicate the exact location on the Internet of the requested document, unless the applicant demonstrates the inability to use this form of access.
- 6 – The receiving entity shall not be obliged to create or adapt documents in order to satisfy the request, nor shall it be obliged to provide extracts from documents, where this would involve a disproportionate effort, going beyond the simple handling thereof.

Article 14

Reproduction costs

1 – Access through the means provided for in Article 1(b) and (c) of the previous paragraph shall take the form of a single copy, subject to payment by the applicant of the fixed fee, which shall respect the following principles:

- a) Correspond to the sum of the costs commensurate with the use of machines and tools for the collection, production and reproduction of the document, the costs of the materials used and the service provided, but shall not exceed the average value charged in the market for the service concerned;
- b) In the event of issuing a certificate, when the document provided is the material result of an administrative activity for which fees or charges are due, the costs referred to in the previous paragraph may be increased by a reasonable amount, bearing in the mind the direct and indirect costs of investments and the high quality of service, in accordance with applicable legislation;
- c) When applicable and required by law, the cost of anonymisation of documents and shipping charges, when shipping is by post, may be added to the fees charged;
- d) No fees shall be payable for reproduction performed by electronic means, particularly sending by email.

2 – With due regard to the provisions of the previous paragraph and after consultation with the CADA and the national associations representing the local authorities, the Government and the Regional Governments shall set the fees to be charged for reproductions and certifications of administrative documents.

3 – Entities with independent taxation powers shall not set fees that exceed the amounts set in accordance with the previous paragraph by more than 100%, and shall abide by those amounts until such time as they publish their own tables of fees.

4 – The bodies and entities to whom this Law applies shall publish on their websites and post in a place that is accessible to the public a list of the fees they charge for reproductions and certifications of administrative documents, as well as information on the applicable payment exemptions, reductions and waivers.

5 – Environmental non-governmental organisations and the like, as defined in accordance with applicable law, shall enjoy a 50% reduction in the payment of any fees payable for access to environmental information.

6 – Beneficiaries of legal aid, recognised as such under the law, shall be exempt from any fees payable for access to administrative information necessary to examine the case for which they have been granted the respective aid.

7 – Victims of domestic violence and the respective representative associations, qualified as such under the law, shall be exempt from any fees payable for access to administrative information necessary to examine requests for administrative protection or judicial action aimed at preventing or prosecuting acts of domestic violence committed against them or against their members.

Article 15
Response to request for access

1 – The entity to which the request for access to an administrative document is addressed shall, within 10 days;

- a) State the date and place and how to make the enquiry, if requested;
- b) Issue the requested reproduction or certificate;
- c) Communicate in writing the reasons for total or partial denial of access to the document, and what rights of administrative and contentious appeal against the decision are available to the applicant, in particular submission of a complaint to the CADA and court summons of the receiving entity;
- d) Inform the applicant if it does not have the document, and, if it knows which entity does have it, forward the request to the latter, advising the applicant of this fact;
- e) Explain any doubts it may have concerning the decision to be taken to the CADA, in order that the latter may issue an opinion.

2 – In the case of 1(e), the receiving entity shall inform the applicant and send the CADA a copy of the request and of all the information and documents which will assist in handling it.

3 – The entities shall not be obliged to satisfy requests which, because of their repetitive and systematic nature or the number of documents requested, are clearly excessive, without prejudice to the applicant's right to complain.

4 – In exceptional cases, if the volume or complexity of the information so warrant, the period referred to in paragraph 1 may be extended up to a maximum of two months. The applicant shall be informed of this fact and the reasons for it within a maximum of 10 days.

Article 16

Right of complaint

1 – The applicant may complain to the CADA in the case of a lack of response following the period laid down in the previous paragraph, refusal, partial satisfaction of the request or other decision which limits access to administrative documents, within 20 days.

2 – The complaint shall result in suspension of the period for judicial submission of a request for a court order to provide information, consult files or issue certificates.

3 – Except in cases of preliminary rejection, the CADA shall ask the receiving entity to respond to the complaint within 10 days.

4 – In the case of both a complaint and the enquiry referred to in Article 15(1)(e), the CADA shall have 40 days in which to produce the report on its assessment of the situation and to send it, with its conclusions, to all the parties concerned.

5 – Following receipt of the report referred to in the previous paragraph, the receiving entity shall communicate its duly justified final decision to the applicant within 10 days.

6 – Both the decision and the lack of decision within the period referred to in the previous paragraph may be challenged by the party concerned in the administrative courts, and the rules of the Code of Procedure in the Administrative Courts shall apply to the summons procedure referred to in paragraph 2, *mutatis mutandis*.

SECTION II

Right of access to administrative information

Article 17

Right of access to environmental information

The bodies and entities to whom this Law applies shall ensure the right of access to environmental information as provided for in the previous section, and shall:

- a) Make available to the public, free of charge, lists with the names of all the bodies and entities which hold environmental information, preferably on a single website that centralises the respective sites where the information is available, and the identity of the person responsible for access, in accordance with Article 9;
- b) Establish and maintain appropriate facilities for the consultation of information, assisting the public in the exercise of the right of access;
- c) Adopt procedures to ensure the standardisation of environmental information, in order to ensure accurate, updated and comparable information;
- d) Indicate, when providing the environmental information referred to in Article 3(1)(e)(i) and (ii), where information on the measurement procedures used for its collection may be found and obtained, when available, including methods of analysis, sampling and sample pre-treatment, or reference to the standardised procedure used in the collection of information.

Article 18

Refusal of request for access

1 – Requests for access to environmental information may be refused when the administrative document requested is not and should not be held by the body or entity to whom the request is addressed. In the event that the receiving body or entity is aware that the information is held by another entity, it shall forward the request directly and immediately to the latter, advising the applicant of this fact.

2 – When the request refers to an ongoing procedure, the entity shall refer it to the entity coordinating the process, which shall inform the applicant of the expected date of its completion, as well as the legal provisions laid down in the respective procedure on access to information.

3 – When the request refers to information contained in internal communications between entities or covers access to named documents, it shall only be approved if there is an overriding public interest in dissemination of the information and, in any case, when the request relates to information on emissions into the environment.

4 – In addition to the provisions of the previous paragraph, a request for access to administrative documents containing environmental information may only be refused in the following cases:

- a) When the request is manifestly unreasonable or is based on incorrect or incomplete documents or data;

- b) When it is not possible to remedy the shortcoming referred to in Article 12(6);
- c) When the dissemination of that information would adversely affect:
 - i) The confidentiality of the process or information, where such confidentiality is provided for by law, particularly in the case of banking secrecy, statistical confidentiality and fiscal secrecy;
 - ii) International relations, public security or national defence;
 - iii) Judicial secrecy, secrecy in terms of administrative offence procedures, disciplinary, financial or purely administrative procedures, if provided for by law, access to justice and its proper functioning;
 - iv) The confidentiality of commercial or industrial information, where such confidentiality is legally provided for in order to protect a legitimate economic interest, as well as the public interest in statistical, fiscal and banking secrecy;
 - v) Copyright and related rights and industrial property rights;
 - vi) The interests or protection of any person who voluntarily provided the information and is not and will not be legally obliged to do so, unless that person has consented to the dissemination of such information;
 - vii) The environmental protection to which the information relates, in particular the location of protected species.

5 – Grounds for refusal and the respective protected interests shall be interpreted in a restrictive manner with regard to the public interest underlying the dissemination of the information, and those grounds referred to in subparagraphs i), iv), vi) and vii) above may not be invoked when the request relates to information on emissions into the environment.

6 – The requested environmental information shall be made available in part where it is possible to delete the information that justified the refusal.

SECTION III **Re-use of documents**

Article 19 **General principle**

1 – The administrative documents to which access may be authorised under this Law may be re-used.

2 – The provisions of this section shall not prejudice the use of the texts of conventions, laws, regulations and reports or administrative or judicial decisions or decisions of any bodies or entities of the State or the Public Administration, or the use of official translations of these texts.

3 – The provisions of this section shall not apply to documents held or drawn up by:

- a) Public service broadcasting companies, their subsidiaries and other entities performing public service broadcasting functions;
- b) Educational and research establishments, including organisations established for the transfer of research results, schools and higher education institutions, with the exception of the respective libraries;

c) Public or private legal persons dedicated to the provision of cultural services and activities, with the exception of libraries, museums and archives.

4 – The exchange of administrative documents between the bodies and entities referred to in Article 4 shall not constitute re-use when conducted exclusively within the scope of the performance of their functions and of the public interest purposes they are responsible for pursuing.

5 – Unless otherwise agreed by the entity that holds them, persons who re-use administrative documents may not alter the information contained in them, nor must they allow their meaning to be distorted. They must always cite the sources and the last date on which the information was updated.

6 – Documents shall be made available in their pre-existing format or language and, where appropriate, in open and machine-readable formats, together with their metadata, both of which shall comply with formal open standards.

7 – The provisions of the previous paragraph shall be complied with as far as possible and shall not require the holding entity to create or adapt documents or provide extracts where this would involve a disproportionate effort, going beyond the simple handling thereof.

Article 20

Excluded documents

The following documents may not be re-used:

- a) Documents which were drawn up in pursuit of a privately managed activity of the entity concerned;
- b) Documents whose copyright or related rights belong to third parties or whose reproduction, dissemination or use may constitute unfair competitive practices;
- c) Named documents, unless authorised by the person to whom they refer, by legal provision that expressly provides for their re-use or where personal data may be anonymised with no possibility of reversal, in which case, within the scope of the authorisation granted and pursuant to Article 23(1), the provision of special security measures to protect sensitive data shall apply, in accordance with the legal provisions on the protection of personal data.
- d) Parts of documents that contain only logos, coats of arms and insignia.

Article 21

Request for re-use

1 – The re-use of documents made available through the Internet shall not be dependent on the authorisation of the entity which holds them, except where otherwise stated or if it is clear to any recipient that the document is protected by copyright or related rights.

2 – In other cases, the re-use of documents shall be dependent on the authorisation of the entity which holds them, by way of a request submitted by the applicant pursuant to the provisions of Article 12.

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

Article 22

Response to the request for re-use

1 – The entity to whom a request to re-use a document is addressed shall, within 10 days:

- a) Authorise the re-use of the document stating the applicable conditions and licences, if any, in accordance with the following Article; or
- b) State the reasons for the total or partial denial of permission to re-use the document, and what rights of administrative and contentious appeal against the decision are available to the applicant, in particular submission of a complaint to the CADA and court summons of the receiving entity.

2 – A request to re-use a document may only be denied on the grounds of the breach of legal provisions, and in particular any of the provisions of this Law on the right of access and re-use, or when the body or entity no longer has an obligation to draw up, hold or store the information.

3 – The duty to state the reasons for denial of permission shall include naming the natural or legal person who holds the copyright or related rights over the document or, alternatively, naming the licensor who assigned the document, when such holding constitutes the grounds for denial of the intended re-use.

4 – The information referred to in the previous paragraph shall not be required if the receiving entity is a library, including libraries of higher education institutions, a museum or an archive.

5 – The period specified in paragraph 1 may be extended once, by the same duration, in the case of large or complex requests, and the applicant shall be informed accordingly, stating the respective grounds, within five days.

Article 23

Conditions governing re-use

1 – The authorisation granted pursuant to the previous Article may be subject to compliance with certain conditions governing re-use, including through open licences available online, which grant wider re-use rights without technological, financial or geographical limitations, and are based on open data formats.

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

3 – Without prejudice to Article 15 of the Administrative Procedure Code, it is free to re-use documents made available:

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

4 – The fees charged for re-use shall be limited to the marginal costs incurred in the collection, production, reproduction and dissemination of the respective document, and may include, where applicable, the cost of anonymisation of documents and shipping charges, when shipping is by post.

5 – When the document provided is the material result of an administrative activity for which fees or charges are due, the costs referred to in the previous paragraph may be increased by a reasonable amount, bearing in the mind the direct and indirect costs of investments and the high quality of service, in accordance with applicable legislation.

6 – When the requested document is part of a library, including a library of higher education institutions, a museum or an archive, the fees shall also include the costs of preserving the documents and the assignment of rights, and may be increased by a reasonable amount, bearing in the mind the direct and indirect costs of investments and the high quality of service, in accordance with applicable legislation.

7 – When setting the fees to be charged in accordance with the previous paragraphs, the receiving entity shall base it on costs during the normal accounting period, calculated in accordance with the applicable accounting principles.

8 – The conditions governing re-use and the fees charged shall not unnecessarily restrict the possibilities for re-use, and the receiving entity may not use this as a means of differentiating between equivalent categories of re-use or limiting competition, but may reduce or waive the fee for re-use requested by profit-making or non-profit-making entities, provided they are in pursuit of purposes and activities of recognised social interest.

Article 24 **Publicity**

1 – The conditions governing re-use and the fees applicable, including the period, amount and method of payment and any reductions or exemptions, shall be pre-established and publicised electronically whenever possible. The basis for calculating the amounts to be charged shall be stated along with the legal remedies available to the applicant in the event of refusal of re-use of the document.

2 – The bodies and entities to whom this Law applies shall publish on their websites and post in a place that is accessible to the public a list of the fees they charge for reproductions and certifications of administrative documents, as well as information on the applicable payment exemptions, reductions and waivers.

3 – In the event that the relative unavailability, nature or complexity of the information whose re-use is requested gives rise to the application of fees which are not pre-determined,

the receiving party shall inform the applicant in advance of the factors that are taken into account when calculating the amounts to be charged.

4 – When the fees to be applied have not been set, pre-determined or publicised, and until they are, re-use shall be considered free.

Article 25

Prohibition of exclusive agreements

1 – The conclusion of exclusive agreements for the re-use of documents shall be prohibited, except for cases where the exclusive right concerns the digitisation of cultural resources and where it may be necessary to create an exclusive right in order to provide a service which is in the public interest.

2 – Exclusive agreements concluded in accordance with the previous paragraph, and the reasons for them, shall be transparent and publicised, electronically whenever possible.

3 – The underlying reasons for creating an exclusive right shall be subject to periodic review at least on a three-yearly basis, with the exception of exclusive rights relating to the digitisation of cultural resources, whose period of exclusivity shall not, as a rule, exceed 10 years, with the aforementioned review to be performed in the 11th year and every seven years thereafter, if applicable.

4 – In cases where there is an exclusive right for the digitising of cultural resources, the respective agreement shall provide for the public entity concerned to be provided with a copy, free of charge, of the digitised cultural resources, which shall be available for re-use at the end the exclusivity period.

Article 26

Summons for the re-use of documents

When a request for re-use submitted in accordance with this section is completely or partially rejected, the applicant may complain to the CADA in accordance with Article 16, the relevant provisions of which shall apply with regard to the summons of the entity receiving the request for authorisation of re-use, which may be lodged with the competent administrative court, pursuant to the Code of Procedure in the Administrative Courts.

Article 27

Dissemination of documents available for re-use

1 – The entities covered by the provisions of this section shall make updated lists of documents available for re-use available on their websites.

2 – Whenever possible, inventories of the most important documents shall be provided, together with accessible related metadata, and it shall be possible to perform a cross-lingual search of documents and data.

3 – The information referred to in the previous paragraph shall be organised on a decentralised inventories portal, in order to help locate documents and data which are available for re-use.

4 – The application of the provisions of this Article shall be optional for wards with less than 10 000 voters.

CHAPTER III **Commission for Access to Administrative Documents**

Article 28 **Description**

1 – The CADA is an independent administrative entity working in conjunction with the Assembly of the Republic and shall be responsible for overseeing compliance with the provisions of this Law.

2 – The CADA has an annual budget, provision for which shall be included in the budget of the Assembly of the Republic.

Article 29 **Composition**

1 – The CADA shall be composed of the following members:

- a) A judge-counsellor from the Supreme Administrative Court, appointed by the Senior Council of the Administrative and Fiscal Courts, who shall preside over;
- b) Two members of the Assembly of the Republic elected by the latter, one of them 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) One professor of law appointed by the President of the Assembly of the Republic;
- d) Two leading figures appointed by the Government;
- e) One leading figure appointed by each of the Regional Governments;
- f) One leading figure appointed by the National Association of Portuguese Municipalities;
- g) One lawyer appointed by the Lawyers' Association;
- h) One member designated by the National Data Protection Commission from among its members.

2 – Incumbents shall be replaced by an alternate, appointed by the same entities.

3 – The members of the CADA shall take office before the President of the Assembly of the Republic during the 10 days following publication of their appointment in Series I of the Official Gazette.

4 – The terms of office of the members shall be three years, without prejudice to the provisions of the following paragraph, and shall only end when the new incumbents take office.

5 – The Assembly of the Republic shall elect the members referred to in subparagraph b) at the start of each legislative term and for the duration thereof.

6 – Terms of office shall be renewable twice.

Article 30 **Responsibilities**

1 – The CADA shall be responsible for:

- a) Drawing up its internal regulations, to be published in Series II of the Official Gazette;
- b) Considering complaints submitted to it in accordance with Articles 16 and 26;
- c) Issuing an opinion on access to administrative documents, in accordance with Article 15(1)(e);
- d) Issuing an opinion on the communication of documents between departments and bodies within the Public Administration, at the request of the receiving entity or the interested party, unless it foresees a risk of linkage of data, in which case the matter shall be referred to the National Data Protection Commission;
- e) Issuing statements on the document registration and classification system;
- f) Issuing an opinion on the application of this Law, and on the drawing up and application of complementary legislation, on its own initiative or at the request of the Assembly of the Republic, the Government and the bodies and entities referred to in Article 4;
- g) Drawing up an annual report on the application of this Law and its activities, to be sent to the Assembly of the Republic for publication and consideration, and to the Prime Minister;
- h) Drawing up a report every three years on the availability of public sector information for re-use and the conditions of its availability, in particular with regard to fees due for re-use of documents that are higher than marginal costs, as well as on practices with regard to legal remedies, which shall be sent to the Assembly of the Republic for publication and consideration, and to the Prime Minister with a view to its submission to the European Commission;
- i) Helping to clarify and disseminate information on the various forms of access to administrative documents, within the scope of the principle of open administration;
- j) Issuing decisions on the imposition of fines in administrative offence proceedings provided for under this Law.

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

3 – Its opinions shall be published in accordance with its internal regulations.

Article 31 **Cooperation by the administration**

1 – All heads, employees and agents of the bodies and entities to whom this Law applies shall have a duty to cooperate with the CADA, failing which they may be held liable in disciplinary or other terms, as provided for by law.

2 – For the purposes of the previous paragraph, all information relevant to knowledge of the issues submitted to the CADA within the scope of its responsibilities shall be communicated.

Article 32

Status of members of the CADA

1 – Citizens who are not in full enjoyment of their civil and political rights may not be members of the CADA.

2 – CADA members shall:

- a) Perform their duties impartially, conscientiously and independently;
- b) Participate actively and diligently in the work of the CADA.

3 – Members of the CADA shall suffer no disadvantage in relation to their job security or professional career, in particular with regard to any promotions to which they have since become entitled, public tenders they may participate in, or their social security entitlements on the date their term of office begins.

4 – CADA members may not be removed from office and their functions may not be terminated before the end of the term of office, except in the following circumstances:

- a) Death;
- b) Permanent physical incapacity or incapacity which is expected to extend beyond the end of the term of office;
- c) Resignation from office;
- d) Loss of office.

5 – Resignation from office shall take effect upon submission of a written statement to that effect to the President of the CADA and publication in Series II of the Official Gazette.

6 – CADA members shall lose their office if they are disqualified for reasons of ineligibility or incompatibility as defined by law, or if they fail to attend three consecutive meetings or six non-consecutive meetings in the same calendar year without justified reason.

7 – Loss of office shall be subject to a decision, to be published in Series II of the Official Gazette.

Article 33

Remuneratory status

1 – The President shall receive the remuneration and other benefits applicable to a judge-counsellor of the Supreme Administrative Court, together with a monthly allowance for representation costs of 20% of the respective base salary.

2 – With the exception of the President, all members may carry out their term of office in addition to other functions and shall receive an allowance of 5% of the amount represented by index 100 on the salary scale applicable to civil service managers.

3 – With the exception of the President, all members shall receive an allowance of 5% of the amount represented by index 100 on the salary scale applicable to civil service managers for each CADA session they attend.

4 – All members shall be entitled to subsistence allowance and reimbursement of transport and telecommunications expenses, pursuant to the terms laid down for the post of general manager.

5 – With regard to travel by the leading figures appointed by the Regional Governments, payment of the subsistence allowance shall be processed in accordance with the current arrangements of the respective regional administrations.

Article 34

Responsibilities of the President

1 – Within the overall framework of the guidelines laid down by the CADA, the President, who shall be entitled to delegate to the Secretary, shall fulfil the responsibilities laid down by law for the post of chief executive of an autonomous body in matters concerning personnel, financial, asset-related and administrative management.

2 – The CADA may delegate powers to the President to consider and decide on:

- a) Complaints which are manifestly unfounded or made after the expiry of the applicable time period;
- b) Complaints which are withdrawn;
- c) Cases where the process no longer serves any useful purpose;
- d) Complaints about issues which have already been considered by the CADA in a uniform and repeated manner.

Article 35

Support services

The CADA shall have its own technical and administrative support services, provided for in organic regulations approved in separate legislation.

Article 36

Judicial challenge

1 – A challenge to the final decision of the CADA shall take the form of a complaint to be submitted within 10 days of notification of the decision.

2 – In response to the challenge, the CADA may modify or revoke its decision, and shall notify the accused person or persons of the new final decision.

3 – If it maintains its previous decision, the CADA shall forward the complaint to the Public Prosecutor's Office at the Lisbon Administrative and Fiscal Court within 10 days.

Article 37

Course of judicial proceedings

1 – The CADA shall be responsible for forwarding all the necessary and relevant information for the case to the Public Prosecutor's Office, in order that it may complete the case files and present them to the judge.

2 – The judge may decide the issue in accordance with this Law by issuing a simple order, if there is no objection by the defence, the Public Prosecutor's Office or the CADA.

3 – If a hearing takes place, the respective formalities shall be kept to the absolute minimum, without the need to record the evidence or hear more than three witnesses in relation to each alleged administrative offence.

4 – The judge shall always possess the power to award compensation to any party he deems entitled thereto.

5 – The judge's final decision shall be subject to appeal directly to the Supreme Administrative Court, which shall decide in accordance with the law.

CHAPTER IV

Penalty system

Article 38

Improper access to personal data

1 – Any person who, with the intent to obtain improper access to personal data, falsely declares or attests before a body or entity referred to in Article 4(1) to hold a direct, personal, legitimate and constitutionally protected interest that justifies access to the requested information or documents, shall be punished with imprisonment up to one year or a fine.

2 – Attempt shall be punishable.

Article 39

Administrative offences

1 – Natural or legal persons who commit any of the following acts shall be deemed to have committed an administrative offence punishable with a fine:

- a) Re-use of public sector documents without the authorisation of the competent entity;
- b) Re-use of public sector documents without observing the conditions governing re-use specified in Article 23(1);
- c) Re-use of public sector documents without having paid the amount specified in Article 23(2).

2 – The offences specified in subparagraphs a) and c) of the previous paragraph shall be punishable by the following fines:

- a) In the case of a natural person, a minimum of EUR 300 and a maximum of EUR 3 500;
- b) In the case of a legal person, a minimum of EUR 2 500 and a maximum of EUR 25 000.

3 – The offence specified in subparagraph b) of paragraph 1 shall be punishable by the following fines:

- a) In the case of a natural person, a minimum of EUR 150 and a maximum of EUR 1 750;
- b) In the case of a legal person, a minimum of EUR 1 250 and a maximum of EUR 12 500.

4 – Attempt shall be punishable.

Article 40 **Imposition of fines**

1 – The departments of the Public Administration in which the infringement was discovered shall be responsible for conducting the administrative offence proceedings, and may be assisted by the support services of the CADA.

2 – The CADA shall be solely responsible for imposing the fines specified in this Law and the respective decision shall constitute an enforceable title, unless it is challenged within the legally prescribed time period.

Article 41 **Allocation of the sums received**

The amounts received as a result of imposing the fines shall be allocated as follows:

- a) 40 % to the CADA;
- b) 40 % to the State;
- c) 20 % to the entity harmed by the offence.

Article 42 **Failure to perform a duty**

Whenever an administrative offence results from failure to perform a duty, the imposition of a penalty and the payment of a fine shall not exempt the offender from performing the duty, if it is still possible.

CHAPTER V **Legislative amendments**

Article 43
Amendment to Organic Regulations of the CADA

Article 3 of the Organic Regulations of the CADA, approved in annex to Law No 10/2012 of 29 February 2012, shall be replaced by the following wording:

‘Article 3

[...]

1 –

2 –

3 –

4 – The provisions of Article 26 of Decree-Law No 545/99 of 14 December 1999, as amended by Decree Law No 181/2015 of 16 September 2015 shall apply to the senior lawyers referred to in paragraph 1 while performing functions in the CADA.

5 – While performing functions in the CADA, the other workers referred to in paragraph 1 shall earn the remuneration corresponding to the remuneration position immediately following the respective category or career.’

Article 44
Amendment to Decree-Law No 16/93 of 23 January 1993

Article 17 of Decree-Law No 16/93 of 23 January 1993(Establishing the general arrangements in relation to archives and archival heritage), as amended by Laws Nos 14/94 of 11 May 1994, and 107/2001 of 8 September 2001, shall be replaced by the following wording:

‘Article 17

[...]

1 – Access to administrative documents stored in public archives shall be guaranteed, except for the limitations arising from species conservation requirements, and the restrictions resulting from general and special legislation on access to administrative documents shall apply.

2 – Documents that include personal data shall be accessible:

a) Provided that 30 years have passed from the date of death of the person to whom the documents relate; or

b) If the date of death is not known, after 40 years have passed from the date of the documents, but not before 10 years have passed from the time of knowledge of death.

3 – Sensitive data relating to legal persons, defined as such by law, may be communicated after 30 years have passed from the date of termination of the legal person, if the law does not establish a shorter period.

4 –

Article 45
Amendment to Law 12/2005 of 26 January 2005

Article 3 of Law No 12/2005 of 26 January 2005 (Personal genetic information and health information), shall be replaced by the following wording:

‘Article 3
[...]

1 –
2 –

3 – Access to health information by the holder of the information, or by third parties with their consent or pursuant to the law, shall be exercised through a doctor, with their own licence, if the information holder so requests.

4 – If it is not possible to determine the wishes of the information holder with regard to access, this shall always be performed through a doctor.’

CHAPTER VI
Final and transitional provisions

Article 46
Transitional provisions

1 – Existing exclusive arrangements that do not comply with the provisions of Article 25(1) of this Law shall expire at the end of the respective contract or, in any case, on 18 July 2043.

2 – The provisions of Article 25 of this Law shall not affect the expiry of exclusive agreements which has already taken effect.

3 – Wards with less than 10 000 voters shall have a transitional period for adjustment until 1 May 2017 in order to ensure the publication of the information provided for in Article 10(1)(c).

4 – The terms of office of CADA members prior to the entry into force of this Law, as well as terms of office which are underway at the time of its entry into force, shall not fall within the scope of application of the limitation of terms of office provided for in Article 29(6).

Article 47
Repeal

The following shall be repealed:

a) Law No 19/2006 of 12 June 2006, amended by Decree-Law No 214-G/2015 of 2 October 2015;

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

Article 48

Entry into force and application of the law in time

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

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

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

Approved on 20 July 2016.

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

Passed on 9 August 2016.

For publication.

The President of the Republic, MARCELO REBELO DE SOUSA.

Confirmed on 10 August 2016.

The Prime Minister, *António Luís Santos da Costa*.