

## NEW REGIME OF ACCESS TO ADMINISTRATIVE AND ENVIRONMENTAL INFORMATION AND RE-USE OF ADMINISTRATIVE DOCUMENTS

### PUBLIC LAW

On October 1 of 2016 Law no. 26/2016 entered into force, approving the regime of access to administrative documents and information, including environmental matters, and the re-use of administrative documents.

Thus, matters relating to the access to administrative documents and to environmental information, which were subject to different diplomas<sup>i</sup>, are now regulated by a single piece of legislation.

Among the various innovations introduced by Law no. 26/2016, we highlight the following:

- Regarding its **subjective scope of application**, the list of entities contained in the new diploma now expressly includes, for example, *sovereign bodies, metropolitan companies* or *private law associations or foundations* in which the entities subject to this law hold a power of management control or appoint the majority of members of the administrative, managerial or supervisory bodies.
- In relation to the **requests for access** to administrative documents, the model of the respective application must now be made available on the entities' websites. If the requests are not sufficiently precise, the requested entity shall, within five days from the receipt of the request, invite the applicant to remedy the deficiency within the deadline set out for that purpose.
- The universe of "**nominative documents**", subject to a more demanding access regime, now covers administrative documents containing "personal data" as defined by the legal regime of personal data protection.

With regard to **restrictions on a third party's right to access documents of this type**, the requirement to demonstrate a direct, personal and legitimate interest, relevant enough to justify access to information, is complemented by the requirement that the third party interest is constitutionally protected.

- Still within the context of **restrictions on the right to access**, Law no. 26/2016 provides for the submission of administrative documents to prohibited access or access subject to authorization for the time strictly necessary to safeguard other legally relevant interests, whenever the knowledge of information contained in those documents is capable of:

<sup>i</sup> Law no. 19/2006 of June 12 and Law no. 46/2007 of August 24, repealed by new law.

*The concept of “nominative documents” now covers administrative documents containing “personal data”*

- i. affecting the effectiveness of the monitoring or supervision,
  - ii. jeopardizing the operational capacity or the safety of facilities or staff of the Armed Forces, the intelligence services of the Portuguese Republic, the security forces and services and criminal police bodies, as well as the safety of diplomatic and consular representations or
  - iii. causing severe and hardly reversible damages to goods or financial interests of third parties that outweigh the goods and interests protected by the right to access administrative information.
- In relation to the **re-use of administrative documents**, authorization by the entity holding the documents is not required when those documents are made available on the Internet unless indicated otherwise or when it is clear to any recipient that the document is protected by copyright or related rights. In other cases, authorization of the entity holding the documents is still required.
  - With regard to **sanctions**, and in addition to the established administrative offences, the new diploma also defines a criminal offence as: “one, who with intent to unduly access nominative data falsely declares or attests before a body or entity referred to in paragraph 1 of Article 4 to hold a direct, personal, legitimate and constitutionally protected interest, justifying access to required information or documents is punishable by imprisonment of up to one year or by a fine”<sup>ii</sup>.

<sup>ii</sup> Article 38.

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