



## **Law no. 46/2007 of 24 August 2007**

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Regulates access to and the re-use of administrative documents, revokes Law no. 65/93 of 26 August 1993, as amended by Law no. 8/95 of 29 March 1995 and Law no. 94/99 of 16 July 1999, and transposes Directive no. 2003/98/EC of the European Parliament and of the Council of 17 November 2003, on the re-use of public sector information, into Portuguese law.



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Under the terms of Article 161c of the Constitution the Assembly of the Republic hereby decrees the following:

#### **Chapter I General provisions**

##### **Article 1 Open administration**

Access to and the re-use of administrative documents shall be ensured in accordance with the principles of publicity, transparency, equality, justice, and impartiality.

##### **Article 2 Object**

1. 1. The present Law shall regulate access to administrative documents, without prejudice to the provisions of legislation governing access to environment-related information.
2. 2. The present Law shall also regulate the re-use of documents concerning activities undertaken by the bodies referred to by Article 4, thereby transposing Directive no. 2003/98/EC of the European Parliament and of the Council of 17 November 2003, on the re-use of public sector information, into Portuguese law.
3. 3. The present Law shall govern access to nominative documents, particularly when they include health-related data, by the person to whom the information refers, by a third party authorised by the person to whom the information refers, or by anyone who demonstrates a direct, personal and legitimate interest.
4. 4. The rules governing the exercise of a citizen's right to be informed by the Public Administration about the situation and progress of files in which he is directly interested, and to know any definitive resolutions that have been taken in relation thereto, shall be set out in specific legislation.
5. 5. Access to documents kept by notaries public or in official registries, to civil and criminal identification documents, and to documents deposited in historical archives shall be governed by specific legislation.

### **Article 3**

#### **Definitions**

1. 1. For the purposes of the present Law the following terms shall mean:
  - a) "Administrative document": any information medium in written, visual, aural, electronic or other material form, which is in the possession, or is held on behalf, of the bodies and entities referred to by the following Article;
  - b) "Nominative document": an administrative document which contains an assessment or value judgement, or information covered by the reservation on the intimacy of private life, about an identified or identifiable natural person.
2. 2. For the purposes of the present Law the following shall not be deemed administrative documents:
  - a) Personal notes, sketches, notations, and other records of a similar nature;
  - b) Documents which are drawn up as a result of administrative activities, particularly those concerning meetings of the Council of Ministers and Secretaries of State, and the preparation thereof.

### **Article 4**

#### **Scope**

1. 1. The present Law shall apply to the following bodies and entities:
  - a) Bodies which belong to the State and the autonomous regions and form part of the Public Administration;
  - b) Other bodies which belong to the State and the autonomous regions, to the extent to which they perform materially administrative functions;
  - c) Bodies which belong to public institutes and public associations and foundations;
  - d) Bodies which belong to state-owned companies;
  - e) Bodies which belong to local authorities and to their associations and federations;

- f) Bodies which belong to regional, inter-municipal and municipal companies;
  - g) Other bodies which engage in administrative functions or exercise public authority.
2. 2. The provisions of the present Law shall also apply to documents held or drawn up by any body which possesses legal personality and has been created to fulfil needs of general interest that do not possess an industrial or commercial nature in a specific manner, and to which any of the following circumstances applies:
- a) The majority of the funding for the body's activities is provided by any of the entities referred to by the previous paragraph or the present paragraph;
  - b) The body's management is subject to a control by any of the entities referred to by the previous paragraph or the present paragraph;
  - c) More than half the members of the body's management or supervisory boards are appointed by any of the entities referred to by the previous paragraph or the present paragraph.

## **Article 5**

### **Right of access**

Everyone shall possess the right of access to administrative documents without the need to state any interest, to include the rights of consultation, reproduction, and information as to the administrative documents' existence and content.

## **Article 6**

### **Restrictions on the right of access**

- 1. 1. Documents which contain information, knowledge of which is deemed capable of endangering or damaging the internal and external security of the State, shall be subject to prohibited access or access with authorisation, for such time as is strictly necessary, by means of their classification as such in accordance with specific legislation.
- 2. 2. Access to documents concerning the confidentiality of legal proceedings shall be governed by specific legislation.
- 3. 3. Access to administrative documents which are preparatory to a decision or which are included in incomplete files may be delayed until the decision in question is taken, the file is archived, or one year has passed since they were drawn up.
- 4. 4. Access to inquiries and investigations shall occur after the time period for any disciplinary proceedings has passed.
- 5. 5. Third parties shall only possess the right of access to nominative documents if they are in possession of written authorisation from the person to whom the data refer, or if they demonstrate a direct, personal and legitimate interest which is sufficiently important under the principle of proportionality.
- 6. 6. Third parties shall only possess the right of access to administrative documents which contain commercial or industrial secrets or the internal life of a company, if they are in possession of written authorisation from the company in question, or if they demonstrate a direct, personal and legitimate interest which is sufficiently important under the principle of proportionality.
- 7. 7. Administrative documents which are subject to restricted access shall be the object of partial communication whenever it is possible to expunge the information concerning the

reserved matter.

**Article 7**  
**Communication of health-related data**

Health-related data shall be communicated via a doctor if the applicant so requests.

**Article 8**  
**Illegitimate use of information**

1. 1. The use of information in breach of copyright or industrial property rights shall not be permitted.
2. 2. Nominative documents which are communicated to third parties shall not be used for purposes other than those which led to their access, failing which there shall be liability for losses and damages as laid down by law.

**Article 9**  
**Person responsible for access**

Every ministry, regional secretariat, local authority, public institute, public association, public foundation, public company, regional company, inter-municipal company, and municipal company shall designate a person to be responsible for compliance with the provisions of the present Law.

**Article 10**  
**Publicising of information**

The bodies and entities referred to by Article 4 shall ensure that the following administrative information, which shall be updated at least every six months, is publicised, particularly in electronic databases which are easily accessible to the public by means of public telecommunications networks:

- a) All documents, particularly internal rule-making orders, circulars, and guidelines which contain any framework for administrative activities;
- b) A list of all the documents which contain an interpretation of positive law or a description of administrative procedure, to particularly mention their title, subject matter, date, source, and a place in which they can be consulted.

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

**Section I**  
**Right of access**

**Article 11**  
**Form of access**

1. 1. Access to administrative documents shall occur by one of the following means, at the applicant's option:
  - a) Consultation, which shall take place in the departments or services that hold the documents in question and shall be free of charge;
  - b) Reproduction by photocopying or any technical, particularly visual, aural or electronic, means;
  - c) The issue of a certificate.
2. 2. The documents shall be transmitted in an understandable form and in a manner which accurately corresponds to the content of the register.
3. 3. When there is a risk that the reproduction will cause damage to the document, the applicant may, at his own expense and under the direction of the department or service which holds the document, take steps to have it copied manually or reproduced by some other means that does not prejudice its conservation.
4. 4. Computerised documents shall be sent by any means of electronically transmitting data, whenever it is possible to do so and on condition that the means in question is appropriate to the understandability and faithfulness of the documents' content and the result accurately corresponds to the content of the register.
5. 5. The body to which an application is made shall not be under a duty to create or adapt documents in order to satisfy the request, nor under an obligation to provide extracts of documents in the event that this involves a disproportionate effort which goes beyond the simple handling thereof.

## **Article 12**

### **Reproduction costs**

1. 1. The reproduction provided for by paragraph (1)b of the previous Article shall take the form of a single copy, which shall be subject to payment by whoever requests it of a fixed fee, which shall be equal to the sum of the proportional costs of the use of machines and tools and of the materials used and the service provided, but shall not exceed the average amount for the equivalent service practised by the market.
2. 2. With due regard to the provisions of the previous paragraph and after consulting the Commission on Access to Administrative Documents (hereinafter referred to in abbreviated form as "CADA"), the Government of the Republic, the Governments of the Autonomous Regions, and the national associations of local authorities shall set the fees to be charged for reproductions and certificates of administrative documents.
3. 3. Bodies which possess an autonomous power to tax shall not set fees that exceed the various 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. 4. The bodies and entities referred to by Article 4 shall affix a list of the fees they charge for reproductions and certificates of administrative documents in a place which is accessible to the public.
5. 5. A body to which an application is made may require an advance to guarantee payment of fees and, where applicable, of postage or shipping charges.

## **Article 13**

## **Requests for access**

1. 1. Access to documents shall be requested in writing in the form of an application which shall contain such elements as are essential to the identification of the documents in question, together with the applicant's name, address and signature.
2. 2. Bodies to which applications are made may also accept verbal applications, and shall do so in cases in which the law so requires.
3. 3. No complaint shall be made to CADA under the terms of the present Law unless the application for access in question was made in writing, or at least the verbal application in question was denied in writing.
4. 4. If an application is not sufficiently precise, within five days the body to which it was made shall inform the applicant of the shortcoming and invite him to make it good within a time period to be set for that purpose.
5. 5. Acting in the person of their members of staff, the bodies and entities referred to by Article 4 shall assist the public in identifying the documents they want, particularly by informing them of the way in which their archives and registers are organised and used.

## **Article 14**

### **Responses to requests for access**

1. 1. The body to which an application for access to an administrative document is made shall, within ten days:
  - a) Communicate the date, place and means on, in and by which the consultation, if one is requested, is to take place;
  - b) Issue the requested reproduction or certificate;
  - c) Communicate in writing the reasons for any total or partial denial of access to the desired document, together with a description of the guarantees applicable to administrative and litigious appeals against the decision in question;
  - d) Inform the applicant that it does not possess the document and, if it knows what body does hold it, send the application to that body with a copy to the applicant;
  - e) Expound any doubts which it has about the decision it has to make to CADA, in order that the latter may issue a formal opinion thereon.
2. 2. In the case of subparagraph e) of the previous paragraph, the body to which the application was made shall inform the applicant and send CADA a copy of the application and of all such information and documents as are appropriate to providing it with the facts in the case.
3. 3. The Public Administration shall not be obliged to satisfy applications whose repetitive and systematic nature or the number of documents they entail reveal a manifestly improper nature.
4. 4. In exceptional cases, if the volume or complexity of the information so warrant, the time period referred to by paragraph (1) above may be extended to a maximum of two months, whereupon the applicant shall be informed of the fact and of the grounds therefore within a maximum of ten working days.

## **Article 15**

### **Right of complaint**

1. 1. Applicants may complain to CADA about a lack of response, denial of an application, or any other decision which restricts access to administrative documents.
2. 2. A complaint shall interrupt the time period for judicial submission of a request for a court order to provide information, consult files, or issue certificates, and shall be made within the said time period, to which the provisions governing the submission to a court of procedural items shall apply *mutatis mutandis*.
3. 3. In the event that the complaint is not summarily dismissed, CADA shall invite the body to which the application was made to respond to the complaint within ten days.
4. 4. In both the case of a complaint and that of the consultation provided for by Article 14(1)e, CADA shall have forty days in which to draw up the applicable situation assessment report and send it with its due conclusions to all the interested parties.
5. 5. Once it has received the report referred to by the previous paragraph, the body to which the application was made shall communicate its duly justified final decision to the applicant within ten days, failing which there shall be deemed to be an absence of decision.
6. 6. An interested party may impugn either the decision or the absence of decision referred to by the previous paragraph before the administrative courts, whereupon the rules governing the process of requesting a court order referred to by paragraph (2) above shall apply.

## **SECTION II**

### **Re-use of documents**

#### **Article 16**

#### **General principle**

1. 1. Documents which are held or drawn up by the bodies referred to by Article 4 and access to which is authorised under the terms of the present Law, may be re-used by natural persons or bodies corporate for purposes other than the public service purpose for which they were produced.
2. 2. The provisions of the present Section shall not prejudice the use of texts of conventions, laws, regulations, reports, or administrative, judicial decisions or decisions made by any body or authority belonging to the State or the Public Administration, or the use of official translations of such texts.
3. 3. The provisions of the present Section shall not apply to documents held or drawn up by:
  - a) Public-service broadcasting companies, their subsidiaries, and other bodies which perform public-service broadcasting functions;
  - b) Learning and research establishments including, when pertinent, organisations created with a view to the transfer of results of research;
  - c) Public or private bodies corporate which dedicate themselves to the provision of cultural activities, particularly museums, libraries, archives, orchestras, and opera, dance and theatre companies.
4. 4. Exchanges of documents between the bodies referred to by Article 4 shall not constitute re-use when conducted exclusively in the performance of their functions.
5. 5. Save only in cases in which the Public Administration agrees to it, whosoever re-uses administrative documents shall not alter the information they contained, or allow their meaning

to be distorted, and shall always mention the sources, as well as the date on which the information in question was last updated.

### **Article 17**

#### **Requests for re-use**

1. 1. The re-use of documents shall be dependent on express authorisation by the body which holds them, to be obtained by means of an application submitted by the applicant.
2. 2. Applications for re-use shall be made in writing in the same application as that in which access to the document in question is requested.
3. 3. When the re-use of documents is intended for educational or research and development purposes, applicants shall make express mention of the fact.

### **Article 18**

#### **Excluded documents**

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

- a) Documents which were drawn up in pursuit of a privately managed activity of the body in question;
- b) Documents whose copyright or related rights belong to third parties, or whose reproduction, dissemination or use might constitute the practise of unfair competition;
- c) Nominative documents, save only with authorisation by the person to whom they refer, or a legal provision which expressly provides for their re-use, or when value judgements or information covered by the reservation on the intimacy of private life can be rendered anonymous.

### **Article 19**

#### **Responses of bodies to which applications are made**

1. 1. Within the same time period as that provided for by Article 14(1), bodies to which an application for the re-use of a document is made shall:
  - a) Authorise the re-use of the document; or
  - b) Indicate the reasons for the total or partial denial of the re-use of the document, and the forms of oversight which are available to the applicant should he contest the decision.
2. 2. An application to re-use a document shall only be denied on the grounds that it breaches the law, particularly the provisions of the present Law.
3. 3. The duty to indicate the reasons for denial shall include naming the natural person or body corporate who or which holds the copyright or related rights to the document in question, when such holding constitutes the grounds for denial of the desired re-use.
4. 4. In the case of an extensive or complex application, the time period provided for by paragraph (1) above may be extended once for an identical amount of time, subject to notification of the applicant within five days of receipt of the application.

### **Article 20**

#### **Conditions governing re-use**

1. 1. Authorisations granted under the terms of the previous Article may be subject to

- compliance with certain conditions governing re-use.
2. 2. The re-use of documents may also be subject to payment by the applicant, in accordance with terms and conditions to be set by joint ministerial order of the Ministers with responsibility for the Finance, Public Administration, and Administrative Modernisation areas; the total amount charged for access and re-use shall not exceed the costs incurred in the gathering, production, reproduction and publicising of the document in question, plus a reasonable margin intended to recover any investments and ensure the good quality of the service.
  3. 3. Re-use may also be subject to payment by the applicant of the cost of rendering the documents anonymous.
  4. 4. The body to which an application is made may require an advance to guarantee payment of fees and, where applicable, of postage or shipping charges.
  5. 5. When setting the amounts to be charged under the terms of paragraphs (1) and (2) above, the body to which an application is made shall base itself on the costs incurred during the normal accounting period, to be calculated in accordance with the applicable accounting principles.
  6. 6. Different sets of pricing rules shall be introduced, depending on whether documents are to be re-used for commercial or non-commercial purposes, and the re-use of documents for educational or research and development purposes shall be free of charge.
  7. 7. The conditions governing re-use and the amounts charged shall not unnecessarily restrict the possibilities for re-use, and bodies to which applications are made shall not thereby discriminate between categories of re-use that are equivalent to one another, or restrict competition.

## **Article 21 Publicity**

The conditions governing re-use and the applicable prices, to include the time period and form of payment therefore, shall be established in advance and publicised, whenever possible by electronic means, and the basis on which amounts that are to be charged are calculated shall be indicated whenever an applicant so requests.

## **Article 22 Prohibition of exclusive agreements**

1. 1. Entry into exclusive agreements for the re-use of documents shall be prohibited, save only in cases in which the constitution of an exclusive right is necessary to the provision of a service which is in the public interest.
2. 2. Exclusive agreements which are entered into under the terms of the previous paragraph, and the grounds therefore, shall be publicised, whenever possible by electronic means.
3. 3. The underlying reasons for the constitution of an exclusive right shall be the object of periodic examination, to be conducted at least every three years.
4. 4. Existing exclusive agreements which do not comply with the provisions of paragraph (1) above shall terminate on 31 December 2008.

## **Article 23**

### **Court orders for the re-use of documents**

Without prejudice to other guarantees provided for by law, when an application to re-use which is formulated under the terms of the present Section is not complied with in full, the interested party may ask the competent administrative court to order the body to which the application was made to do so, and the provisions of Articles 104 to 108 of the Code of Administrative Court Procedure (CPTA) shall apply accordingly.

## **Article 24**

### **Publicising documents which are available for re-use**

1. 1. Bodies which are covered by the provisions of the present Section shall publicise lists of the documents that are available for re-use, whenever possible by electronic means.
2. 2. As soon as possible and with a view to facilitating the search for documents which are available for re-use, the information provided for by the previous paragraph shall be organised on a website containing decentralised lists.

## **CHAPTER III**

### **CADA**

## **Article 25**

### **Nature**

1. 1. CADA shall be an independent administrative body, which shall operate under the aegis of the Assembly of the Republic and shall be responsible for making its best efforts to ensure compliance with the provisions of the present Law.
2. 2. CADA shall dispose of an annual budget, provision for which shall be included in the budget of the Assembly of the Republic.

## **Article 26**

### **Composition**

1. 1. CADA shall be composed of the following members:
  - a) One Justice of the Supreme Administrative Court, who shall be appointed by the Supreme Council of Administrative and Fiscal Courts and shall chair the Commission;
  - b) Two Members of the Assembly of the Republic, to be appointed by the latter, one upon a proposal from the parliamentary group of the largest political party which supports the Government, and one upon a proposal from the largest opposition party;
  - c) A Professor of Law, to be appointed by the President of the Assembly of the Republic;
  - d) Two prominent persons, to be appointed by the Government;
  - e) One prominent person appointed by the Governments of each of the autonomous regions;
  - f) One prominent person, to be appointed by the National Association of Portuguese Municipalities (ANMP);
  - g) A lawyer, to be appointed by the Lawyers' Order;
  - h) One member, to be appointed by the National Data Protection Commission (CNPD) from among its own members.

2. 2. Full members shall be substituted by substitute members appointed by the same persons and bodies.
3. 3. The members of CADA shall be installed in the presence of the President of the Assembly of the Republic within the ten days following the publication of the list of the Commission's members in Series I of the Diário da República.
4. 4. Their terms of office shall be for two years, shall be renewable, and shall terminate upon the installation of new members.

## **Article 27**

### **Responsibilities**

1. 1. CADA shall be responsible for:
  - a) Drawing up its own internal regulations, which shall be published in Series II of the Diário da República;
  - b) Considering complaints which are submitted to it in accordance with Article 15;
  - c) At the request of the bodies and entities referred to by Article 4, issuing a formal opinion on access to administrative documents;
  - d) At the request of a body to which an application has been made or of an interested party, issuing a formal opinion on the communication of documents between departments, services and bodies belonging to the Public Administration, unless there is a foreseeable risk that data will be linked to other data, in which case the question shall be put to the National Data Protection Committee (CNPD);
  - e) Pronouncing on the document registration and classification system;
  - f) At the request of the Assembly of the Republic, the Government, or the bodies and entities referred to by Article 4, issuing a formal opinion on the drawing up and implementation of complementary legislation;
  - g) Drawing up an annual report on the implementation of the present Law and on its own activities, to be sent to the Assembly of the Republic for publication and consideration and to the Prime Minister;
  - h) Helping to clarify and publicise the different means of access to administrative documents, within the overall framework of the principle of open administration.
  - i) Imposing fines in proceedings involving administrative offences.
2. 2. CADA's draft decisions shall be drawn up by its members with the support of its technical services.
3. 3. CADA's formal opinions shall be published in accordance with its own internal regulations.

## **Article 28**

### **Cooperation of the Public Administration**

1. 1. Every director, member of staff and agent of the bodies and entities referred to by Article 4 shall be under a duty to cooperate with CADA, failing which they may be held responsible in disciplinary or other terms, as laid down by law.
2. 2. For the purposes of the previous paragraph, all information that is relevant to knowledge

of the questions submitted to CADA within the scope of its responsibilities shall be communicated to CADA.

## **Article 29**

### **Status of members of CADA**

1. 1. Persons who do not enjoy full possession and use of their civic and political rights shall not be members of CADA.
2. 3. Members of CADA shall be under the following duties:
  - a) To be unbiased, rigorous and independent in the performance of their functions;
  - b) To actively and assiduously take part in CADA's work.
3. 3. Members of CADA shall not be prejudiced in the stability of their employment, in their professional careers, particularly any promotions to which they have become entitled in the meantime, in any public competitive tenders in which they participate, or in the social security system from which they benefit on the date on which their term of office begins.
4. 4. Members of CADA shall enjoy secure tenure of office, and their functions shall not cease before their terms of office come to an end, save only in the following cases:
  - a) Their death;
  - b) A physical impossibility which is permanent or whose duration is expected to last beyond the date on which their term of office is to end;
  - c) They resign their position;
  - d) They lose their seat on the Commission.
5. 5. Resignations shall take effect upon presentation of the applicable written declaration to the President of CADA, and shall be published in Series II of the Diário da República.
6. 6. Members of CADA who become subject to any of the inabilities or incompatibilities provided for by law, or who fail to attend three consecutive meetings or six non-consecutive meetings in any one calendar year without due justification, shall lose their seat on the Commission.
7. 7. A loss of seat shall be the object of a decision, which shall be published in Series II of the Diário da República.

## **Article 30**

### **Remuneratory status**

1. 1. The President shall receive the remuneration and other benefits applicable to a Justice of the Supreme Administrative Court, together with a monthly expense allowance in an amount equal to 20% of his monthly salary.
2. 2. With the exception of the President, every member may accumulate the exercise of his mandate with other functions, and shall receive an allowance equal to 25% of the amount represented by index 100 on the salary scale applicable to civil service managers.
3. 3. With the exception of the President, every member shall receive an allowance equal to 5% of the amount represented by index 100 on the salary scale applicable to civil service managers for each CADA session in which he participates.
4. 4. Every member shall possess the right to expenses and the reimbursement of transport and

- communications costs as provided for in relation to the post of Director-General.
5. 5. The travel expense allowances of the prominent persons appointed by the Governments of the autonomous regions shall be processed in accordance with the then current rules of the applicable regional administration.

### **Article 31**

#### **Responsibilities of the President**

1. 1. Within the overall framework of the guidelines laid down by CADA, the President, who shall be entitled to delegate to the Secretary, shall fulfil the responsibilities which the law lays down for the post of chief executive of an autonomous body in matters concerning personnel, financial, asset-related and administrative management.
2. 2. CADA may delegate to its President powers to consider and make decisions in relation to:
- a) Complaints which are manifestly unfounded or made after the expiry of the applicable time period;
  - b) Complaints which are withdrawn;
  - c) Cases in which complaints become pointless.

### **Article 32**

#### **Support services**

1. 1. CADA shall possess its own technical and administrative support services, whose regulations and staff roster shall be approved by Resolution of the Assembly of the Republic, upon a proposal from the Commission.
2. 2. The regulations and staff roster provided for by Law no. 8/95 of 29 March 1995 shall continue to apply until the legal instrument referred to by the previous paragraph enters into force.

## **CHAPTER IV**

### **Administrative offences**

### **Article 33**

#### **Administrative offences**

1. 1. The following natural persons and bodies corporate shall be deemed to have committed an administrative offence punishable with a fine:
- a) Those who or which re-use public sector documents without the authorisation of the competent body;
  - b) Those who or which re-use public sector documents without complying with the conditions governing re-use laid down by Article 20(1);
  - c) Those who or which re-use public sector documents without having paid the amount set by Article 20(2) and (3).
2. 2. The infractions provided for by 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 € 300.00 and a maximum of € 3,500.00;
  - b) In the case of a body corporate, a minimum of € 2,500.00 and a maximum of € 25,000.00.
3. 3. The infraction provided for by paragraph (1)b above shall be punishable by the following fines:
- a) In the case of a natural person, a minimum of € 150.00 and a maximum of € 1,750.00;
  - b) In the case of a body corporate, a minimum of € 1,250.00 and a maximum of € 12,500.00.

### **Article 34**

#### **Negligence and attempts**

**In the case of the administrative offences provided for by the previous Article, negligence and attempts shall always be punished.**

### **Article 35**

#### **Imposition of fines**

- 1. 1. The finding of facts in proceedings for administrative offences shall be the responsibility of the Public Administration department or service in which the infraction in question was detected, and may be completed by CADA's support services.
- 2. 2. CADA shall be responsible for the imposition of the fines provided for by the present Law.
- 3. 3. In the event that it is not impugned within the time period laid down by law, a decision made by CADA shall constitute authority to execute.

### **Article 36**

#### **Destination of income**

Amounts charged as the result of the imposition of fines shall be credited:

- a) 40% to CADA;
- b) 40% to the State; and,
- c) 20% to the body referred to by Article 4 which has been injured by the practice of the infraction.

### **Article 37**

#### **Failure to perform a duty**

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

### **Article 38**

#### **Judicial impugnation**

- 1. 1. An impugnation of a final decision made by CADA shall take the form of a claim, which

- shall be submitted within ten days of notification of the decision.
2. 2. In the event of such an impugnation, CADA may modify or revoke its decision, whereupon it shall notify the impugner of its new final decision.
  3. 3. In the event that it maintains its existing decision, within ten days CADA shall forward the claim to the Public Prosecutors' Office at the Lisbon Administrative and Fiscal Court.

### **Article 39**

#### **Course of judicial proceedings**

1. 1. With the assistance of a specialist or representative from CADA, the Public Prosecutors' Office shall complete the case file and present it to the Judge.
2. 2. If the defence, the Public Prosecutors' Office and CADA do not oppose it, the Judge may decide the case in question in accordance with the present Law by issuing a simple court order.
3. 3. If a hearing takes place, the applicable formalities shall be reduced to the indispensable minimum, evidence shall not be tape-recorded, and no more than three witnesses shall be heard in relation to each alleged administrative offence.
4. 4. The Judge shall always possess the power to award compensation to whomsoever he deems entitled thereto.
5. 5. The Judge's final decision shall be subject to appeal directly to the Supreme Administrative Court, which shall rule thereon *ex officio*.

### **Article 40**

#### **Revocation**

Law no. 65/93 of 26 August 1993, as amended by Law no. 8/95 of 29 March 1995, Law no. 94/99 of 16 July 1999 and Article 19 of Law no. 19/2006 of 12 June 2006, is hereby revoked.

### **Article 41**

#### **Entry into force**

The present Law shall enter into force on the first day of the month following its publication, save only the provisions of Article 30, which shall take effect upon the entry into force of the Law containing the State Budget that is passed following passage of the present Law.

Passed on 19 July 2007.

The President of the Assembly of the Republic, Jaime Gama

Enacted on 8 August 2007.

Let it be published.

The President of the Republic, Aníbal Cavaco e Silva

Ministerial counter-signature on 16 August 2007.

The Prime Minister, José Sócrates Carvalho Pinto de Sousa

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