

Determination

ICP-ANACOM aims to regulate, monitor and represent the communications sector, and, within the scope of the first two powers, it is entitled to disseminate information. The Regulatory Authority must also be provided with a website for requesting and obtaining online information (cfr. article 1, paragraph 2, article 9 h) and article 55, paragraph 2, of the respective Statutes, approved by Decree-Law number 309/2001, of 7 December).

Moreover, under article 13, paragraphs 1 and 2, of the referred Statutes, concessionaires and licensed bodies, operators and other registered service providers must provide ICP-ANACOM with all cooperation requested by the latter for the proper fulfilment of its duties, namely information and documents, and ICP-ANACOM is empowered to disclose the information obtained, where relevant for the regulation of the sector.

Likewise, article 18, paragraph 1 i) of Decree-Law number 150/2001, of 7 May, places on bodies that are licensed and authorized for the provision of postal services the obligation to supply ICP-ANACOM with the information required to verify and monitor obligations and conditions laid down in the respective licences or authorisations, as well as to provide information for statistical purposes.

Even without any explicit request to this effect, ICP-ANACOM has sought to safeguard any legally-protected confidential information (for revealing secrets safeguarded by the law, such as commercial and industrial secrecy, or secrets related to the internal affairs of companies) in particular where access to such data is requested by a third party relatively to the data holder.

The right to information laid down in article 268, paragraphs 1 and 2, of the Constitution of the Portuguese Republic, articles 61 *et seq.* of the Administrative Procedure Code and in the Law of Access to Administrative Documents (Law number 46/2007, of 24 August) has been increasingly exercised, and this is welcomed. However, it also implies on ICP-ANACOM's side a significant effort to identify, for the purpose of its own protection, any information which should not be made available to third parties as this could be injurious for bodies that provided such information or for bodies concerned by it, as sometimes these bodies neglect to indicate it.

Therefore, pursuant to article 13 and to article 26, point I), of ICP-ANACOM Statutes, approved by Decree-Law number 309/2001, of 7 December, the Management Board hereby decides to determine that whenever information is provided to the Regulatory Authority, providers of postal services must indicate which elements are deemed to be confidential, otherwise it shall be concluded that all information submitted without such indication shall not be considered likely to reveal any commercial and industrial secrecy, or secrets related to the internal affairs of the concerned company.

The referred indication shall be substantiated, taking into account legal rules on access to documents held by the Administration, namely the principles of publicity and transparency, and the fact that administrative documents should be accessed by whoever has a legitimate interest in the issue, unless documents concerned are named or include other matters which under the law must be deemed as reserved - namely due to commercial and industrial secrecy, or secrets related to the internal affairs of a company - in which case, if the person applying for the access proves its personal, direct and legitimate interest on the matter, the conflicting interests at stake must be weighted.

Considering that administrative documents subject to access restrictions may be only partially communicated, if the part subject to reservation can be excluded, bodies that indicate that part of documents submitted to ICP-ANACOM are deemed to be confidential must attach, where appropriate, a non-confidential version of those documents.