

DETERMINATION

Pursuant to paragraph 3 of article 108 of the Electronic Communications Law, bodies that submit to ICP - ANACOM any information requested by that Authority, must identify, in a substantiated manner, the elements deemed to be confidential, attaching, where appropriate, a non-confidential copy of documents comprising such information.

The same applies in cases where information is provided spontaneously to the Regulator, as has been requested in the scope of public consultations undertaken. In any case, ICP - ANACOM has sought to safeguard commercial and industrial secrecy, or secrets related to the internal affairs of companies, even without any express request for the purpose.

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 its own protection purposes, 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 point I) of article 26 of the respective 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 Regulator, companies themselves 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 companies.

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.

Lisbon, 17 November 2011