SUPPORTING DOCUMENTATION

Subject: **Supporting Document – PALP´s Communication to the Aarhus Convention Compliance Committee – January 2019**

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Faro, January, 2019

To Whom it may concern,

We would like to provide additional information that we believe is necessary and that concerns the non-compliance situations reported in the Communication to the Aarhus Convention Compliance Committee. This Communication was made by Almargem, an association for the defense of the cultural and environmental heritage of the Algarve, a member of the Platform for an Algarve Free of Oil (PALP), and sent by email on 28th of January, 2019.

The list of supporting documents in English are as follows:

- Document No. 1. CADA Advisory Opinion ("Parecer") in response to PALP´s complaint regarding access to information, dated September 2016;
- Document No. 2. List of documents made available with explanation by ENMC, dated 13.02.2017
- Document No. 3. "Ofício N. 551". Official letter (response) regarding ENI/GALP renunciation. Dated 15.01.2019

It should be noted that the Documents were translated from the original documents written in Portuguese.

CONTENTS. LIST OF SUPPORTING DOCUMENTS IN ENGLISH

Document No. 1. CADA Advisory Opinion ("Parecer"). September 2016.

PAGE 1

Opinion n.º 350/2016

Process nº 386/2016

Complaint of: *«Platform for an Algarve Free of Oil»*

Entity required: National Entity for the Market of Fuels, E.P.E.

I- Facts and request

1. The *«Platform for an Algarve Free of Oil»* (PALP) requested to the National Entity for the Market of Fuels, E.P.E. (ENMC) the access to the following documents (cfr. Pages 1, 5 and 38 of the administrative process - P. A.):

a) "Contracts in between the Portuguese State and all the companies that wish to prospect /explore hydrocarbons in the Algarve (...)";

b) "Yearly Plans of the activities since 1998";

c) "Activities Reports since 1998";

d) "Evaluation of Environmental Impact";

e) "Reports of the cetaceous observers during the seismic research campaigns, namely, the several 2D campaigns of:

- *TGS-NOPEC of 1999-2002;*
- *HARDMAN/GALP/PARTEX of 2008;*
- *PETROBRAS/GALP/PARTEX of 2008;*
- *CHARGE OIL of 2013;*

And the several 3D campaigns of:

- *PETROBRAS/GALP/PARTEX of 2010;*
- *As várias campanhas de MOI-IAVE from 2010 to 2012;*
- *PETROBRAS/GALP from 2010 to 2012*
- *REPSOL of 2012*
- *REPSOL of 2O15";*

f) "Documents that proof the technical and economic-finance repute of all the companies with concessions";

g) "Opinions and/or permits from the ICNF and APA for the activities of Research and Prospection";

h) "Evaluations of Environmental Impact of the several works";

PAGE 2

i) 'Studies of Environmental Impact done by the concessionaires";

j) 'Plans to respond in case of accidents, including funds reserved for such events;

2. After insisting several times, the required entity communicated to PALP, by e-mail on the 6 of June of 2016, that from the following week, *"the documents requested would be available for consultation,*

therefore the requester, should appoint two days for the effect and indicate the persons, «in a maximum of 4», who would be present at the ENMC" (cfr. pages 3 and 39 of the P.A.).

3. Soon after the reception of the e-mail referred in the point before, it was sent to PALP a new message from the ENMC, to *"retrieve*" [that was the word used] the content of the previous message (cfr. pages 3 and 41 of the P.A.)
4. PALP presented a complaint to the Commission for the Access Administrative Documents (CADA)
5. Invited to present an opinion on that complaint, the required entity transmitted namely, the following (cfr. Pages 45 and following from the P. A.)

a) It has been the intention of ENMC, *"as it is its policy of transparence, to transmit the maximum information possible to the public in order to contribute to an effective cu1ture of inspection and of direct evaluation of the public performance by the civilian society";*

b) In this specific case, the availability of the contracts of concession occurred from July 2015 because, in that time the first phase of the website of the ENMC was finished (project contracted by public announcement in April of the same year)"; and therefore, the publication of those contracts was done not by request of PALP, but by initiative of the entity required;

c) And it so much so, that the ENMC has published "all the contracts of prospection, research, development and production of oil active in the country and not just those requested by PALP and referred to the Algarve";

d) "Note that the Environmental Base Studies in question are not obliged by law, being those documents done for the concessionaries by independent companies and submitted voluntarily, in the context of the best international practices. Given the foresaid the ENMC, before proceeding with the publication inquired on the possibility of placing it for public consultation (…)

PAGE 3

Having than received an agreement for a presence consultation but without the resourcing to document reproduction";

e) Regarding the access to the remaining documentation referred [cfr., above, 1b) and following, it had been communicated to PALP that *"due to the volume of documents requested, the space of time it takes, as well as the need to confirm, previously, which documents are legally admissible for consultation, it obliges a longer previous classification, therefore only possible within two months, (…) therefore it was requested the indication of a date in that period in order to organize the referred consultation(...)";*

f)"In what regards the analyses of the documentation requested, it must be noted the legal applicable regime and which cannot, in any case be seen as superficial, with possible high indemnity consequences for the State. Some of the information required, as referred to PALP, is still under duty of confidentiality foreseen in article 66. Of the Law 109/94, of 26 of April [Regime juridical for the activities of prospection, research, development and prospection of oil], which reads: «For the effect of the written on the previous number, the licensed or concessionaries will send to the GPEP, in three copies, all the information produced, as well as the reports of activity, which purpose and periodicity will be written in the license of previous evaluation or in the contract of concession (nº 2);

The information above referred are the propriety of the licensed or concessionary and of the GPEP, who can dispose of them freely, without disregarding the duty of confidentiality referred on nº 5 (nº 3.);

The duty of confidentiality of the GPEP ends in the time of 5 years after the reception of the information, or with the extinction of the license of of the contract of concession, if that occurs before that time (nº 5);

It is not considered in the duty of confidentiality of the GPEP general information namely those that might be used for geological cartography of the country or for statistics (nº 6)»;

g) "This legal regime is reflected, still, in an article of confidentiality present in the clauses of the contracts done with the Portuguese State, which reads the following:

PAGE 4

1. The Concessionary, as well as the entities with whom it cooperates will maintain confidential all data or elements of information obtained in the process of its activities, during the period of the present contract, not being allowed to transmit to third parties, safe with previous authorization expressed by DGEG /ENMC

2. All the information and data transmitted to the DGEG/ENMC, by the Concessionary, will be kept under the regime of confidentiality for the period of 5 (five) years, after the respective reception, or until the extinction of the contract of concession, if this happens before";

h) "The documentation technical and scientific delivered and produced under the activities of prospection and research of oil, contains, often, information subjected to confidentiality under the terms of the law. That is the case, among others, of geological data acquired in the prospection and research (with high commercial value, subject to confidentiality for 5 years) or of eventual advance in the technics used by an entity and is still not within common knowledge (considered «corporation secrets») or of other data regarding inside life of the companies";

i) "Regarding the foresaid, and the volume of the documentation required, which the availability of most of the documentation required by PALP implicates in work of preparation and analyses, and administrative effort of the technical area coordinating these matters – Unity of Research and Exploration of Oil Resources – that it is not possible to conclude quickly, without induce functional constraining in the competence of ENMC";

j) "Therefore, much of the documentation had to be, previous and individually, verified with the purpose of excluding eventual elements related to the reserved material – specially commercial information and company secrets – before its information is available, as foreseen under nº 6 and 7 of article 6" of Law nº 46/2007, of 24 of august;

l) On the 6th of June, the ENMC sends an email to PALP, making available the consultation of the documents requested from the 2nd half of June" (…) where the "alleged retrieving of the e-mail of 6 of June" was due to "the fact that, in the same date

PAGE 5

two emails were sent with the same content, and the retrieving of one of those messages had the purpose of avoiding confusion";

m) "the consultation happened in the past 20th of June, and there hasn't been up to date, [28th of June of 2016], no claim regarding the available documents or regarding the way how the consultation was processed"

6. And, therefore, considers the ENMC that no reason assists on PALP and requested CADA to give an opinion, *"under the report of appreciation regarding all above foresaid,* i*ncluding the performance assumed by the requester, seen as an important contribution for the clarification of the regime of access of administrative documents"* (cfr. Page 56 of the P.A.).

7. By e-maíl sent to CADA on the 5th of July of 2016, the requester referred (cfr. Pages 77 and 78 of the P.A.) that:

a) On the 20th of June of 2016, two elements of PALP had gone to the head Office of the ENMC, whom, *"once more couldn't do any consultation of the requested documents";*

b) Considered the fact that the required *"entity one-sidedly defined the date, the hour of the consultation and the number of elements being by itself a limitation" as "in the moment of the pretense consultation other limitations were imposed by the ENMC" as:*

• The documents were "pilled on a table, with no organization which made it difficult even the recognition of the documents and the verification of the missing ones, being a consultation with a limited time and extensive documents to analyze. The representatives of PALP asked for a list of the documentation present and the workers of the ENMC answered they had none. The representatives of PALP were also informed that the documentation requested was not all present, but couldn't [sic) discriminate what was missing. However, when they inquired the referred workers of the ENMC about the opinions of the Institute of Nature and Conservation of Forests (ICNF), it was told they had no knowledge of the existence of such opinions (ICNF)";

(!CNF';

• "Each one of the representatives of PALP could only take 2 documents or file at the time; after consulting they would deliver them to a worker, who placed it in another table with the already consulted documentation. After that, they could take 2 more"

• "They could ask for photocopies but couldn't take photos, and there wasn't/ isn't access to digital registration; it was obligatory to photocopy the documents in full and not just sheets or pages they would be interested in. The price paid per photocopy was 2 euros, and the new price list was affixed on the moment";

• "They had to sign a declaration of confidentiality over the use of the information".

II. Jurídical Assessment

1. The Law nº 165/2013, of 16 of December, transferred for the internal juridical order the Directive nº 2009/119/CE, of the Council, of 14 September of 2009, and proceeded also with the restructuration and renaming of the Entity Managing the Strategic Reserves of Oil Products, E.P.E., which became "ENMC – National Entity for the Market of Fuels, E.P.E." (cfr. Its article 1, nº 1 and 2).

In agreement with the respective Statutes, published in attachment of the mentioned law, the ENMC *"is a public entrepreneur entity, with administrative autonomy, financially and patrimonial" (nº 1) and is "ruled by the juridical regime applicable to public entrepreneur entities* (...)" (nº 2).

The ENMC is, therefore, subject to the Law 46/2007, of the 24th of August, which regulates the access to administrative documents and to its reuse (here after, LADA).

I tis what results from the text d) of nº 1 of article 4º of this diploma, to which report the rules here after mentioned with no other reference.

2. On another side, the request made by PALP to the ENMC, seem to regard, at least partially, to the access of environmental information.

   Where, the access to environmental information is ruled by Law n.° 19/2006, of the 12th of June (LAIA).

   To the ENMC it also applies, equally, the LAIA, as referred on its articles1º, 2º and 3º.

PAGE 7

3. To be noted, also, that, under the terms of the article 18° of the LAIA, in all not specially regulated by the present law" it is applied subsidiary the LADA1".
4. In agreement with article 15º, nº1, *"the requester may complain to the CADA against the lack of reply, or refusal or other limitative decision to the right of access to administrative documents, being for this Commission to 'assess the complaints presented under the terms of article15º"* [cfr. article 27º nº1 b).

   And the same is referred in article 14º of the LAIA.
5. Administrative document, for the effects of the LADA, is *"any support of information, either, written, visual, taped, electronic or any other material, in the possession of the organs or entities referred in the article 4º, or detained in their name"* [article 3º, nº 1, a).
6. The general regime of access of administrative documents is written in article 5º:

   "All, with no need to list any interest, have the right to access administrative documents, which understands the rights of consultation, reproduction and of information over its existence and content".

   The access to that type of documents is therefore, free and general: with no need to present any justification or fundament.
7. Article 6º identifies some restrictions to the right of free access:
   - When it regards nominative documents (nº 5);
   - When it contains secrets of companies (nº 6);
   - When there are reasons to accept or refuse the access (nºs 1, 2, 3, and 4)
8. The right to access the information is, also subject to limits or restrictions, for the safeguard of other constitutional regulated wealth and other rights in contradiction, namely regarding the dignity of the human being, the rights of persons to moral integrity, to the good name and reputation, to the word, to the image, to the privacy, restrictions imposed by the secret of justice or by the secret of State.2

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1 – The LAIA refers to law 65/93 of 26 of August, with the alterations introduced by the Laws nº 8/95 of 29 of March and nº 94/99 of 16 of July. Law 65/93 of 26 of August (previous LADA) was revoked by the actual LADA (Law 46/2007 of 24 of August).

2 – Cfr J.J. Gomes Carrilho/ Vital Moreira in the Constitution of the Portuguese Republic, noted 4th Edition, Volume I, Coimbra 2007, pp 573-574; Jorge Miranda/ Rui Medeiros, in the Constitution of the Portuguese Republic, Noted, Tomo I, Coimbra 2005, p. 430; J. Renato Gonçalves, in Access to Information from Public Entities, Almedina, Coimbra 2002, page 51 and followings.

PAGE 8

To add, however, that the exceptions to the right of access – besides being explained – must be always interpreted and applied restrictively, in a way not to question the application of the general principle consecrated in article 5º. (3)

Besides, also nº 8 of article 11 of the LAlA reads in the same sense:

"The fundaments of the refusal foreseen in the present article must be interpreted in a restrictive way by the public authorities, weighing the public interest served by the publication of the information and the interests protected which fundament the refusal".

And, therefore, the exam required, in each case, must be always concrete and not general and abstract.

9. Administrative documents nominative are those which contain *"about the singular person, identified or identifiable, an assessment or a judgement of value, or information within the reserve of intimacy of private life."* (b) of nº 1 of article 3º)

May access such documents the owner of the information stated.

And, if i tis a third party, the access can only be allowed through *"written permission of the person to whom the data regard or through interest direct, personal and legitimate, relevant enough according to the principle of proportionality"*. (nº 3 of article 2º, and nº5 of article 6º).

I tis understood by CADA that are to be classified as nominative documents those that reveal intimate data of an individual, such as his genetical data, health, or those that concern his sexual life, or related to his convictions or philosophic filiations, political, religious, party, or syndical and other that by being known by third parties might, because of its content, translate into invasion of intimacy of private living.

Therefore, it does not include nominative information the document that include, regarding the singular person, identified or identifiable, assessment, judgement of value or information not foreseen by the reserve of privacy intimacy of private living.

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1 Regarding this matter, see the following Court Rulling from the Court of Justice of the European Union:

- Court Rulling from the Court of Justice of the European Union (Grand Chamber), of 1st of July 2008 (Processes attached C-39/05 P and C-52/OS P);
- Court Rulling from the Court of Justice of the European Union (Grand Chamber), of 18th December 2007 (Process C-64/05 P.

PAGE 9

It is what happens in the assessments and judgement of value issued in what regards school files of students or in what concerns the processes of public hiring.

The same happens on assessments, judgements of value and functional information (v.g., classifications of service/ evaluations of performance), that because it refers to the exercise of function it doesn't clash with the reserve of privacy intimacy of private living.

And the same applies, to a document referring that a certain worker has missed service for so many days, or who didn't fulfil certain legal obligations.

Note that the ruling (CE) nº 1049/2001 from the European Parliament and Council, of 30 May 2001, regarding public access of documents from the European Parliament, from the Council and from the Commission, also foresees this solution: it is limited the access expressly to documents that, if published, may damage the protection *"of private life and individual integrity*" (b) of nº1 of article 4.

In this same perspective – Reading the word of the Supreme Court of Justice [STJ), of 28th September 2011, in a decision issued in the Process 22/09.6 – IV – and, quoting the Judgment of the Court of Appeal of Oporto, of 31st May 2006 - *"what is intended to include and safeguard, is just the «the inside core of the private life» and the most sensitive of each person such as the intimacy, the sexuality, the health, the most restrict private and family life, which is to be reserved and out of other people's knowledge*".

10. To be noted, also, that the LADA only refers to the access of information/ documents that have already been produced or have already be in the possession of the entities referred in 4th. In other words, it refers to the access of existing information/ documents, not falling over the required entity *"the duty to create or adapt documents to fulfil neither the request, nor the obligation to supply extracts of documents, if that means an effort out of proportion which surpasses the handling of such documents"* (nº5 of article 11).
11. As seen, generally, the regime of access that the LADA stablishes, it is assessed the actual situation. This assessment is done by the order the questions were asked to us (cfr. points1, 5, 6 and 7 above).
12. The **first question** regards the circumstance that ENMC *"before publishing"* the Environmental Base Studies, has inquired *"the referred concessionaries on the possibility*

of placing it for public consultation (...), having received the agreement for the presence consultation without the resource to document reproduction" [cfr. above, point I.5, d)].

Well, there are three ways of access (cfr. nº 1 of article 11.):

- Free consultation, done it the facilities where the documents are kept;
- Reproduction by photocopy or any other technical way, namely visual, taped or electronical;
- Certificate.

The choice for one of those options is for the requester to decide and not for the required entity nor for whom the required entity chooses to consult.

And, therefore, an eventual choice (by the ENMC or by third parties) for the form of access does not prevail, under the terms of the law, over the choice of the requester (article 11, nº 1).

13. The **second problem** that is presented is the following: the ENMC claims that the *"the volume of documents requested, the space of time it takes, as well as the need to confirm, previously, which documents are legally admissible for consultation, it obliges a longer previous classification, therefore only possible within two months"*. [cfr. above, point I.5, e)].

Nothing in the law stops it from being so, or better said, the law allows it.

And, therefore – and as it is, in what refers the ENMC, a considerable amount of documents - the access may be available, without damage to the time of fulfilment of its attributions nor to the fulfilment of the competence of its services. In other words, the access may be done in phases, as it is, indeed, referred in article 14, nº 4:

"In exceptional cases, if the volume or the complexity of the information justify, the deadline referred in n.° 1 [of 10 days] may be prolonged, to a maximum of two months, where the requester is informed of that fact with the indication of the respective fundament, within a maximum of 10 days".

It is so, that, without damage to the duty of cooperation with the administrated in the access to information, the entities that integrate the Public Administration (central, regional, local and indirect) are, all of them, at the service of the general interest and not of this or the other user,

PAGE 11

In particular, where the services cannot stay exclusive and out of balance because of a single request.

14. The **third question** to approach regards the documentation requested involving or might involve (the CADA doesn't know it) the referred *"secrets of company"* [cfr. above, point I.5, f) and h)].
However, one point seems certain: the documentation in question doesn't have a nominative nature, that is, it is not susceptible to clash with the reserve of intimacy of the private life of whom ever it may be.
And if it is true that any person may, in principle, access administrative documents, it is not less certain that there it is always necessary to consider article 6 regarding the exceptions to the right of access.
15. One of those exceptions is, namely, the one referring to *"administrative documents that contain commercial or industrial secrets or about the internal life of a company"* and to which a third party can only access *"if having the written permission"* of that company or if *"demonstrating an interest that is direct, personal and legitimate relevant enough according to the principle of proportionality"* (cfr. nº 6 of article 6.; v., as well as, article11., nº 6, d), of LAIA].
16. It must be noted that this Commission has considered in the Opinion nº 226/2013 (which reading has been reaffirmed, indicated as mere example, the Opinions nº 464/2014, nº33/2015 and nº242/2016):
"- The access must consist the rule, as it refers to the exercise of a fundamental right with the same structure as the rights, freedoms and guaranties and of the same regime as such;
- The restrictions must be applied restrictively and only after a considered analyses of the actual case, and must be also, explained;
- There is, therefore, the need to separate what, in each situation, is not accessible (because it is an exception to the right of access), being all the rest subject to the knowledge of third parties".
17. The entity required invokes a duty of confidentiality, which, in this context, is equivalent to secrecy.

PAGE 12

Well, in order to protect the reserve of intimacy of the private life and to safeguard the *"secrets of the company"* the legislator created the duty of professional secrecy for those, whom by the exercise of their activity and because of that exercise, knows the information to preserve from the knowledge of others.
But, like the medical secrecy (which binds all professionals) doesn't have an absolute value, admitting exceptions when necessary to safeguard other rights or interests constitutionally protected, the same happens to other forms of secrecy, namely with fiscal secrecy and with bank secrecy.

As writes Miguel Assis Raimundo (in the notes of the Court Judgement of the STA of 30-05-2012, P. 263/12, in Administrative Justice, nº 98, March/April 2013, page 53), it is not absolute any form of secrecy, such as the bank secrecy, as it is not valid as unconditional the rule that foresees it.

It is so, that such a rule, that foresees the secrecy, it is not special in what concerns the rules of the LADA, as they have a pretension of application to all the cases to which it may apply a problem of administrative information, whatever may be the activity developed.

And, therefore, only the analyses of similar rights, done it the light of the principle of proportionality, may give to whom what is right and decide if the requester has (or not) reason enough to access the information requested.

Such decision must always – we must repeat – be searched, in concrete, and not in abstract, noting that the access to information may be a condition of the guard of juridical rights of the requester.

Therefore (and, for example), it is not a violation of the duty of secrecy when the information is communicated to an entity which needs that information to fulfil its competence and that,

Is equally, obliged to the duty of secrecy.

18. It is certain that the requester (PALP) does not invoke (and, therefore, doesn't prove) its quality of holder of an *"interest direct, personal and legitimate relevant enough according to the principle of proportionality"* (nº 6 of article 6).

And, so, the CADA will issue an opinion in abstract – not knowing such documents -, on what is known on company secrecy and respective confidentiality.

PAGE 13

19. In what regards "*company secrets*" it include, namely, elements regarding its finance structure, (for example, internal and specific data referring to its model and volume of business, and its invoicing, and to its taxation or to its corporation strategy).

Must, therefore, the entity required assess and calculate (doing so always in a explainable way) if the secrets fit in the nº 6 of article 6., weighing, for that purpose, namely, the interest of the company subjected to the request and the public interest related with the transparency of the Administration (cfr., among others the Opinions nº 119/2015 and 242/2016).

After such analyses, the ENMC – considering that there is (or there is not) material subject to secrecy -, must decide, explaining in a clear and unequivocal way the basis in which founded that decision.

And if, eventually, still has doubt on other issues must identified it specifically so that the CADA may measure the existence of eventual secrecy.

It results, therefore, from what is here expressed that it is up to the public entities, in the possession of information which have been given to them by other entities, namely in the process of contracts or of public contests, to decide in an explainable way, over the right to access that information or if it is subjected to company secrecy, considering that secrecy is all that might allow the replication of the business and which is innovative (cfr. Opinions n°78/2015, 119/2015 and 242/2016).

20. And, if by any chance, the documentation requested contains *"secrets of company*", it is not considered, *"in toto"* as inaccessible: as it is determined in the nº 7 of article 6: *"the administrative documents subject to restrictions of access are object of partial communication as much as it is possible to purge the information related to the reserved matter"*'. It is, anyway, also what refers the article 12 of the LAIA.

21. Still on this subject, two complementary notes, presented as they are susceptible to contribute to the full enlightenment of the question (and of similar questions which, might eventually, appear):

a) The first, to refer what has been the policy of the CADA on the referred «*secrets of company*»;

PAGE 14

b) The second, to underline the nature of the right to access.

22. About the densification of the notion of *"commercial, industrial secrets or about the internal life of a company"*; (article 6, nº 6), the CADA has already pronounced an opinion.

Done, for example, in the referred Opinion nº242/2016, in which retook the previous policy already consolidated (from, namely, the Opinion nº 464/2014 and from the Opinion nº338/2015).

It is therein stated that:

"We are before a question of access to administrative documents. It is also sure, that it refers to documents that are not nominative. What must be clarified, as the entity consulting well refers, it is weather it is or not in question commercial or industrial secrets or about the internal life of a company - (…) - that justify the refusal to the access under the terms of the article 6, nº 6 (…).

In what regards commercial secrets and the internal life of a company, here is what was referred in our Opinion nº 284/2008:

"(…)

a) The right to access to administrative files and archive – from which the LADA, is a development normative – it is referred in article 268 nº 2, of the Portuguese Constitution

[CRP). It is recognized by the Jurisprudence and by the policy as a right of the same nature as other rights, freedoms and guaranties, under the same respective applicable regime (cfr. articles 17 and 18 from the CRP).

Therefore, as the secret implies a limitation to the exercise of the right to access, only in the situations where that secret is referred in the CRP, under the form of rights and interests predicted by the CRP, may have as a consequence that limitation [cfr. article 18, nº 2 of the CRP).

b) The restriction of access predicted in the article 6, nº 6, of the LADA has the presupposition that the documents subjected to that restriction have secret information. That is because not all information commercial, industrial or about the internal life of a company is secret.

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4 - Available at www.cada.pt as well as all the quoted

PAGE 15

Any interpretation different than this is against the law, and would question the principle of an open administration and its application to entrepreneur public entities, to entities in the exercise of their administrative functions or of public powers and also to other created to satisfy, specifically, the needs of general interest.

To be noted that the secrets stop being so (stop being thereafter protected) when they are known outside the company to whom they refer, and known to others (like the Administration) which knowing them must keep it a secret, or when they lose their economic worth.

c) The rule that protects the secret has the purpose of stopping the exercise of the right of access to administrative documents of becoming a way to get, through the Administration, strategic indications regarding basic interests regarding third parties, distorting in that manner, the rules of the market.

The entities that have a report with the Administration, through their activities materially administrative, are, in some situations, forced (by law or by imposition of the Administration) and to reveal reserved information. It is in regard to this information, (...) that can be claimed the application of the restriction of access here in analyses.

The voluntary revelation of this information to an entity subject to the principle of the open administration undertakes that it can't be understood as secret, as there is not the will to keep it secret.

d) The limitation of what may be a commercial and industrial secret juridically relevant may have a starting point on article 3I8 of the Code of the Industrial Propriety (CPI), which, in what regards the matter of unlawful concurrence refers to the protection of information not published.

The article 318 of the CPI refers that «it constitutes an illegal act, namely, the publishing, the acquisition or the use of business secrets of a concurrent, without his consent, as long as this information:

a) Is secret, in the sense that it is not generally known or easily accessible, in its totality or in configuration and exact connection of its constitutive elements,

PAGE 16

for people in the circles that deal usually with this sort of information in question;

b) It has commercial value by the fact of being secret;

c) It has been object of considerable diligence, given the circumstance, by the person who holds legally the control of the information, in the sense of keeping it secret».

From this definition, we may state that commercial or industrial secrets («business secrets») is the secret information, that, because of that fact, has commercial value (actual or potential) and are object of measure in the sense of keeping it secret.

Secret information is detained by an entity (public or private) regarding, namely, «methods of evaluation of costs of manufacture and of distribution, of secrets and processes of manufacture, of sources of storage, of quantities produced and sold and of quota of market, of files of clients and distribution, of commercial strategy, of structure, of price, of cost and of policy of sales».

It may as well be, secret information «information of entrepreneur strategy of a production unit» and «its technics which may have no inventive level, but might be apannage of a company», as for example « particular aspect of investigation projects» and «formulas or recipes for the preparation of certain products».

Commercial secrets, as being passible of appropriation and, eventually of reproduction, have a market value. Generally, it allows an increase of the economic efficiency or effectivity;

e) The secret of the internal life a company may have is, from the start, conditioned to the circumstance as being valued in the stock market (or not), of being a public company, a private company or an entity in the exercise of an activity materially administrative.
Considering these circumstances, each company may claim a space of reserve, limited, namely, by obligations of transparency and of publishing information

PAGE 17

These secrets have to do with the way each company, internally, organizes, executes and plans its activity. It regards the private life of the companies. 5

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These are secrets about the internal life of the companies, for example, the tax situation regarding social security and the revenue tax (unless, by law, it must be revealed), the commercial deeds and the planning of internal restructures
The secrets of the internal life of the companies, generally, are not appropriable and don't have a market value. Are not passible of replica, but its knowledge by third parties may imply damage (…)»

Complement with the Reading of the Opinion nº 81/2008:
«I tis concluded from what is here exposed that, when the Administration decides to refuse the access to documents considering that the respective publication is susceptible of "questioning commercial, industrial secrets, or about the internal life of the companies" must do it always in an explained manner, that is, cannot, simply, refer that the knowledge of that documentation by the requester interferes with a certain type of values.
It must, therefore, indicate "why" that decision, which means, must name the reasons why that revelation, if done, would affect these values.
More: that explanation must be done in a way to allow the requester to know not only the presuppose in which the (hypothetical) act of denial of the access was based from, as well as confirm if all the rules of the administrative procedures were (or not) fulfilled [or other, which in the case applies if the decision reflects (or not) the material application of the fact, if there was (or not) manifest mistake of appreciation and if there was (or not) a detour of power.
In summary, the explanation must reveal, clearly and unequivocally, the arguments of the required entity and author of the act and, moreover, the

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Alexandre Brandão da Veiga, in Access to Information of the Public Administration by Private, Coimbra, Almedina (2007), p.134.

PAGE 18

Presupposes in which was based, in a way to allow the requester to know the reasons of the decision adopted (…)».

In the same sense, the Opinion nº 165/2011:

«(...) The restriction to the right of access, or the possibility of restriction, does not assume absolute character, but it must be object of a suitable ponderation of the interests and values in confrontation, namely to the interests of the companies and the public interest related with the transparency of the Administration.
It is, therefore, a power of the Administration. But a power, which is limited by the principles applicable, namely the principle of transparency, which, besides the rest, imposes that the reasons must be published, on the reason why the decision of the Administration was oriented in a sense or another.
When the Administration decides to refuse the access to the documents by considering that the respective publication is susceptible to question commercial, industrial secrets or the internal life of the companies, must be done always in a way explained, that is, cannot, simply, refer that the knowledge of this documentation, by a requester affects a certain type of values.
It must be indicated the reasons by which such a revelation, if it was done, would affect these values. Such an explanation must reveal, clearly and unequivocally, the argumentation of the required entity and author of the act and, moreover, the presupposes in which it was based, allowing the requester to know the reasons of the decision adopted (...) In what regards such processes, the entity required must identify (minimally), document by document, the information which considers being of reserved access; and must, afterwards, justify, point by point, the refusal of access (…) ».

Let us resource to the Opinion nº 42/2012:
«(…) The Court Judgement of (Third Section), of 14 February 2008, Process C-450/06, where the question was the access to documentation regarding the process of adjudication of a public contract for the supply of caterpillar iron links for tanks, regarding the balance in between the principle of the contradictory and the right to the respect of business secrets and the protection, by

the instance responsible for the appeals, the confidentiality of the information given by the economic operators, refer the following:
(...)
48. Among the basic rights susceptible of that protection is the respect for the private life, written in article 8 of the CEDH which reads from the common constitutional traditions of the Member States and it is reaffirmed in the article 7 of the Letter of Basic Rights of the European Union, [...]. To that purpose, results from the jurisprudence of the European Court of Human Rights that it cannot be considered that the concept of private life may be interpreted in the sense to exclude professional or commercial activities of singular persons as well as of collective [...), activities that may comprehend the participation in a process of adjudication of a contract of public right.
49. On the other side, the Court of Justice recognized the protection of business secrets as a general principle [...].
50. Finally, the maintenance of a loyal concurrence in what regards the processes of the contracts of public right constitutes an important public interest [...).

51. From there results that, in the regard of an appeal entered by decision from an adjudicatory entity in a process of adjudication of a contract of public right, the principle of the contradictory doesn't imply a right of unlimited access and absolute from the parts to the totality of the information regarding the process of adjudication in question presented to the instance responsible for the appeal. On the contrary, that right of access must be pondered with the right of other economic operators to the protection of their confidential information and of their business secrets.

(...).

55. Therefore, it must be responded to the question submitted that the article 1, nº 1, of the Directive 89/665, together with the article 15, nº 2, of the Directive 93/36, must be interpreted

In the sense that the instance responsible for the appeal foreseen in the referred article 1, nº1, must assure the confidentiality and the right to the respect of the business secrets regarding the information contained in the processes that are

PAGE 20

Transmitted by the parts in the cause, namely by the adjudicatory entity, being itself able, however, to know such information and take them in consideration. It is up to that instance to decide in which measure and according to which way assure the confidentiality and the secret of that information, regarding the demands of an effective juridical protection and the respect of the rights of defense of the parts in litigation and, in case of a juridical appeal or of an appeal at an instance which a juridical organ in what concern the article 234 CE, so that the process respects, in its all, the right to an equitable process..(...)."

From the jurisprudence quoted results that it is up to the public entities, in the possession of the information that were transmitted to them by economic operators, namely under public contracting, market regulation or State support, to decide in an explained manner, over the right to access that information or if it is subject to a company secret (...)».

When a rule or a decision of the Administration determines the publication of the information of reserve access, it becomes public, of free access and unrestricted.

Well, in anonymous firms, informative publicity is essentially done two levels.

In a first level, all other anonymous firms must advertise information through the commercial registration, obligatory publications and the exteriorization of information through external acts.

In a second level, the firms must transmit a number of information to the market in which they operate.

This second level of information is only applicable, however, to the anonymous open firms.

It matters, therefore, to analyze each one of these sides of the informative publicity.

A) Information advertised through the commercial registration

There are several facts in the life of societies subject to a registration and publication.

PAGE 21

In agreement with nº 1 of the article 3 of the Code of the Commercial Registration together with the nº 1 of the article 15 of the same Code, the anonymous firms are obliged to register, namely:

- The respective constitution;

- The deliberation of the amortization, conversion and remission of shares;

- The designation and termination of functions of the members of the administration and taxation organs of the firm;

- The closing of accounts;

- The change of Head office;

- The changes of the firm's contract;

- The prolong, the fusion, the ending, the transformation or the dissolution;

- The closing of the liquidation or the return to the activity.

The facts object of registration and the documents send to the Conservatory are of free access (article 73 of the Code of the Commercial Registration).

Besides that obligation of registration, some facts must also be officially published in the Internet of public access (article 70 and 71 of the Code of the Commercial Registration).

B) Information advertised through obligatory mentions in external acts:

In what refers the article 171 of the Code of the anonymous Commercial firms 7, the anonymous firms must indicate in all external acts, clearly, the firm, the type, the head office, the conservatory of the commercial registration where they are registered, the number of the registration and of identification of collective subject, the social capital, the amount of the self-capital in case of loss and of more than half of the social capital and, if it is the case, that the firm is in liquidation.

The anonymous open firms must also indicate in the external acts the respective quality of the open firms (article 14 of the CVM).

C) Obligatory Publications imposed by the CVM and Regulation of the CMVM nº 5/2008

The CVM and the Regulation of the CMVM nº 5/2008 include several rules referring to the duties of information of the firm to the market.

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6 Law nº 403/86 of 3 December, revoked partially, edited and changed successively

7 Law nº 262/86, of 2 September, revoked partially, edited and changed successively

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PAGE 22

The notes Sofia Ribeiro Branco (8), such duties have the purpose to "reinforce the efficiency of the finance market so that the intervenient in that market are in the condition of evaluate the information available and trust the market, trying to eliminate the asymmetry of the information among the suppliers of financial service and the consumers of those services"

It is, as refers Teixeira Santos 9:

"(…)

In capital market, market known as efficient, the evaluations reflect at any moment the information available, and the information is a key element in the functioning of the market.

The information is like the air that the market breads.

It is a must therefore to assure a good quality of the air, and that the air floats so that the market can bread well.

(...).

Sofia Ribeiro Branco speaks, on that regard, about the "triangle of informative transparency" 10:
In that sense, the central question corresponds to know which and how much information is necessary to effectively fulfil the objective of create and maintain an efficient market. Besides this question, comes, naturally, the question of the way the investor accesses that information.
The answer to these questions is found in the analyses of the triangle of informative transparency.
In the first dimension of the triangle, we find the obligation of the transmission of information by the firm to the public organism regulator of the financial sector that, in the Portuguese case, is the CMVM (cfr. Articles 208 and 353 nº 1 of the CVM).
(…).
Once that information is transmitted to the CMVM, this authority, in the fulfilment of the applicable principles regarding the development of the supervision, must control the information in a continuous way (articles 358 c) and 362 of the CVM).

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8 In the Right of the Shareholders to the lnformation. The same right twenty years after?, Almedina, 2007, p. 219.
9 In Acts of the Meetings of the National Council of the Market of Values of 5 December 2001 and 28 February 2002, Ministery of Finance, Commission of the Market of Values, 2002, p.91.
10 In the Right of the Shareholders to the Information. The same right twenty years after?, Almedina, 2007, pp.227 and 228.

PAGE 23

In this dimension, we verify that the information to be given by the open anonymous firm, by comparing to the anonymous closed firm, must conform with the much more strict principals, is more extensive and of easier access (control of information).
As it is the information given with quality that allows the investors to take their decisions of investment or disinvestment (…) the information is verified by the CMVM.
It is important to refer that the type of information considered more relevant for the decision of the investors corresponds to the information about the financial situation of the firm.
(…)"

Finally, in a last dimension, it is conferred publicity to the information transmitted and verified by CMVM.
That publicity occurs from the respective transmission to the market through the system of diffusion from the CMVM or indirectly by the firm (…).
(…)".

In what regards the information to give it is common to refer:
a) The duties of permanent information; and
b) The duties of occasional information.

Permanent information is the one that must be transmitted to the market without the need of verification of any event or circumstance relevant – yearly information, or every six months and in some cases three months, (see articles 245 and following of the CVM).

As for the occasional information, it is the one that must be given in the case of some event or relevant circumstance. It is what happens, for example, with the publication of a prospect, for the campaign of public offers (see articles 134 and following of the CVM)".

23. As for the nature, of the right to access, we must underline that this right, corollary of the principle of the open administration (cfr. article 268, nº 2 of the Constitution of the Republic) is also a fundamental right of the same nature of the rights,

PAGE 24

freedoms and guaranties (referred in the Title II of Part I of the Constitution) although a right *"out of the catalogue"*. 11

At has been always this, the understanding expressed by the CADA, based on the policy and jurisprudence (cfr. among several Constitutional Court Judgements nº 254/99 nº 2/2013, and specially the Court Judgement nº 117/2015.

It is worth it to quote this last Court Judgement:

11 - (...). It is so that the access to the files and archives and administrative registrations are within a disposition that condenses the dimensions more significant of the position juridical-constitutional of the private person before the Public Administration, underlining this way the subjective dimension inherent to the right to the administrative information. The nº2 of the article 268 although lacking legislative concretization, gives the citizens a "right" which must be considered of the same nature of the rights, freedoms and guaranties, under the terms of the article 17 of the CRP, and therefore, directly applicable and immediately binding (…) (our underlining).

But the access to administrative documentation, assume as well an institutional dimension, when it wishes to protect juridical and constitutionally the principle and value of the administrative transparency. As a matter of fact, the demand of transparency should translate in the obligation of the Public Administration to allow visibility to its practice. And therefore the normative intention to push away the administrative secret and turn the functioning the Administration more democratic and transparent may only happen through the knowledge of the information in its files and registrations, with the legal exceptions justified on the internal and external safety, in the criminal investigation and in the privacy of the people (our underlining).

(…)

15 – (…)

The essential presupposed of the right to access is the public nature of its activity developed by the entities charged with the duty to assure the access to the files and

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11 Considering "inside the catalogue" the rights referred by the Constitution in Title I of its Part II

PAGE 25

administrative registrations. Therefore all activities responsible for the execution of administrative tasks are passive subjects to the right of access. Within the general rule of access to the administrative files, are not just the traditional collective subjects to of public right, but also the public entities with the function of administrative tasks, as it is the case of the private administrative entities, that is, the administrative organizations with a statute juridical private under the field or dominant influence of public persons, and the private entities, when invested in administrative public functions."

However - as it happens with most of fundamental rights - , also the right of access is not an absolute right. In this regard, referred the mentioned Court Judgement nº 117/2015 of the Constitutional Court that:

" 17 – (…)

The consecration of the transparency and the publicity as a rule doesn't exclude the existence of areas of the exercise of the right where it is justified the secret for the protection of certain values with constitutional support. The right of access to files and administrative registrations is not a right absolute and unlimited, since, under express constitutional authorization it is subject to the limits the law establishes in matters related to internal and external security, criminal investigation and people's intimacy. The formula of the reserve of the law for this "restrictive trinity" doesn't imply, however, an abstract prevalence of the values there mentioned regarding the right of access. The safeguard of those rights and interests constitutionally protected can only justify confidentiality of the documents held by the entities subject to the access, as long as, the essential content of the right is not compromised and the proportionality criteria is obeyed (cfr. nº2 of article 18 of the CRP)

Therefore the legislative solution for this conflict of values and interests – the one of transparency in which is based the open file and the one of confidentiality demanded by the values of safety, criminal investigation and people's intimacy – has to be constructed through a valuation, through which the conflicting and contradictory values and interests may be optimized in a compromise that

PAGE 26

assures the fair balance in between them. Given the need to consider the relevant circumstance, the resolution of the conflict through legislation implies normally a normative opening that assures the consideration of these circumstances, limiting the law to establishing a "criteria of ponderation" to guide the judges in the concrete cases (cfr. Vieira de Andrade, Fundamental Rights, page 306)

(…)

20 – (…)

Well, the definition of the object of the right to the administrative files and registrations stops the secret from being a rule and the transparency the exception. The nº 2 of the article 268 from the CRP is peremptory in excluding the right to the secret as a general rule, when it establishes a reserve of the law for certain matters in which the interest of confidentiality may exceptionally prevail. As said above, the reserves of the law in the matter of internal and external security, criminal investigation and intimacy of the people, the Constitution made clear that the transparency is the rule and the secret the exception. (…) The right of access and the right to the secret, in the cases expressly authorized and in the hypotheses of conflict of rights or interests constitutionally recognized, are rights prima facie which only end

subjectively after evaluation and pondering the circumstances of the concrete case. It is possible for the legislator or the judge to establish restrictions and conditionings to the right of access, but the type of these situations or the rule of decision for the concrete case demands always a judgement of ponderation of the relevant aspects of the concrete case. The nº 2 of the article 268, together with nº 2 of the article 18 of the CRP, imposes that the restrictions to the right of access must be based in a pondered criterion of the values or interests in question in a certain concrete situation".

24. Besides the duty of confidentiality to which the EMC considers to be binded by the law 109/94 of 26 of April, the ENMC says there are clauses of confidentiality (cfr. above, point I.5, f) and g) And this a **fourth point** to consider.

PAGE 27

In what regards the duty to confidentiality, we must register the following: the right of access is, as seen, a fundamental right, of the same nature as the rights, freedoms and guaranties.

Therefore:

a) That right is directly applicable and binds the public and private entities (cfr. nº1 of article 18 of the CRP)

b) It can only be limited in the cases expressly foreseen in the fundamental law, *"where the restrictions must be limited to the necessary to safeguard other rights or interests constitutionally protected"* (article 18, nº 2 of the CRP);

c) The laws that eventually restring it *"must be of general and abstract character and cannot have a retroactive effect not diminish the extension of the constitutional rule"* (cfr, article 18, nº 3 of the CRP);

d) In case of restriction, it must be within the law of the Assembly of the Republic or the authorized law (cfr. article 165, nº1 b) of the Constitution).

Well, the diploma invoked regarding the duty of confidentiality (Law 109/94, of 26 of April) was, it is certain, issued *"by legislative authorization granted by the article 30 of the law 75/93 of 20 December"*.

However, the referred article 30 of the law 75/93 is reported to the authorization, given by the Assembly of the Republic to the government, *"to review the fiscal regime of the access and exercise of the activities of prospection, research and production of oil (…)"*

That is that and only that. That law (Law 75/93 of 20 December) doesn't contain, therefore, any restriction to the right of access nor any other authorization so that the government may legislate, restringing that right.

Regarding the clauses of confidentiality, they don't prevail over the law, meaning that its existence doesn't exclude pondered analyses of the request and of the documents in which such clauses are in and to which a third party may want to access.

PAGE 28

This analysis is done within the parameters above referred. And, so, once that assessment is done, if it is concluded effectively that there is matter which must be kept under reserve, a partial access will be available, when possible. (article 6, nº 7)

We must add, however, if that third party has a direct interest, personal and legitimate, must have, in agreement with the law, access to the documents in its integrality, even thow they may contain clauses of confidentiality.

In summary: The access and the denial of access are ruled by the law and not by the existence (or inexistence) of clauses of confidentiality.

25. The **fifth question** has to do with the circumstance that the ENMC understands that PALP is not right, and therefore, has asked this commission for an opinion, *"under the report of appreciation regarding the subject above referred, including the performance assumed by the requester, as it may be an important contribution to the clarification of the regime of access to administrative documents"*. (cfr. Point I. 6 above)

It is the competence of CADA to appreciate, for a juridical point of view, the problems emerging (from the concretization or not) of the right of access, but it is not up to evaluations of the attitudes or behavior of the requesters and required entities, except in the strict measure of the right of access.

26. The **sixth problem** raised is the way how the consultation was made available (cfr. point I.7 above).

In what regards the fact that *"the required entity unilaterally defined the date, the hour of consultation and the number of elements being limitative"*, we must consider that the appointment, by a required entity (whatever it may be) of the date, hour and place of the consultation doesn't surpass the referred in the law (cfr. article 16, nº1 a)).

Regarding the number of elements present of PALP, it is not up to the CADA to issue an opinion, as it is a problem which occurs from the internal organization and logistic of the ENMC.

For the same reason, the CADA doesn't issue an opinion, regarding the circumstance that *"each of the representatives of PALP"* can only *"take 2 documents or a file at the time"*.

PAGE 29

27. We must, however, refer the following: in agreement of the article 4, nº1 of the LAIA, *"the right of access of environmental information is assured by public authorities, who must, for the effect:*

a*) (…)*

b) Available to the public lists or registrations of environment information in the possession of the public authorities or detained by public authorities or will indicate where the information is available;

c) Appoint, in ach public authority, the responsible for the information and publish to the public his identity;

d) Create and maintain facilities for the consultation of the information;

e) Inform the public about the right of access to information and support the exercise of that right;

f) (…)

28. The **seventh point** to refer is the one referring to the fact that it is possible to obtain photocopies, although, as it is said by PALP, the pretension was not valid to photograph the documents.

This commission has already analyzed a similar problem, namely, in our Opinions nº 286/2014 and 461/2015.

There, in this last Opinion, the CADA has considered:

"(…)

Regarding a similar situation, analyzed in the Opinion of the CADA nº 286/2014, where the requester asked to "be allowed the photography of documents considered administrative, or, in alternative, justifying the impossibility of the first, the use of a portable computer and/ or a mobile phone to tape vocal notes, it was referred the following:

(…)

Under the terms of the nº 1 of the article 11, the access to documents is done through:

a) Free consultation, done in the services that withhold them;

b) Reproduction by photocopy or any technical means, namely visual, taping, or electronic;

c) Certificate.

PAGE 30

The requester wishes to photograph (supposed by his own means) the documents that he wishes to access or, if that is not possible, he wishes to use "a portable computer and/ or mobile phone to tape the vocal notes".

Regarding the administrative documents without nominative nature, the access is, as seen, general and not restrict. The requester has, therefore, the right to access by any means foreseen in the nº 1 of article 11.

Well, the means that he proposes to use are technical means of reproduction of documents. This way, the requester may proceed photographing the documents requested or, when possible, use the "portable computer and/ or mobile phone to tape vocal notes."

He will do so, however, always under the supervision of the entity holder of the documents.

(…)

The policy expressed in the Opinion 286/2014 I applied to the present situation, Although the law does not foresee expressively the reproduction by photography, it reads in the nº1 b) of article 11 the way of access, of reproduction by any technical means, namely electronic.

Therefore, as long as requested, the required entity and supervising, may the requesters, using their own means, proceed with the reproduction of documents, as long as that reproduction is not susceptible of damaging its preservation.

It is due to refer here the situation foreseen in nº 3 of article 11, that is, when there is a risk that the reproduction can cause damage to the document, may the requester, at his expense and under the direction of the service holder of the documents, promote the manual copy or the reproduction by other means that doesn't damage its preservation.

As the reproduction in question doesn't implicate costs to the required entity, it is understood that no taxes may be charged; in the same sense the decree nº 8691/202, of the Minister of Finance (DR 2nd series of 29 April 2002) which decided the prices to pay in the exercise of the right to access the administrative documents refers that it is free, for example, the access by digitalization done by the entity required, when recorded in a CD supplied by the requester.

(…)"

PAGE 31

29. The **eighth question** to enlighten is that the document had to be photocopied in the whole, not allowed just the part in which the PALP had/ has interest.

Nor the LADA nor the LAIA stop that, once the document consulted, the requester requires, just, photocopies of some of its pages, therefore it is not obliged to the whole reproduction, moreover when the required entity charges, as it seems to be the case, two euros per photocopy.

30. And this leads directly to the **nineth question**: the price to charge.

The CADA doesn't know the table used by the ENMC. However, we refer that this Commission has already replied to a similar question.

Therein, in the Opinion 124/2016, this Commission, in the same line of the previous policy, has referred the following:

"(…)

Regarding the costs of access per photocopy, reads the nº 1of the article 12, that «the reproduction foreseen in the nº 1 b) of the previous article, is done in a copy, subject to payment, by the person who requests it, of established tax, which must correspond to the add up of the proportional charges with the use of the machines and tools and the cost of the materials used and the service done, without though, surpassing the medium value done by the market for similar service.»

The nº 2 of the same precept refers that «the Government of the Republic and the Government of the Autonomous Regions, consulting the Commission for the Access of Administrative Documents (from here on referred as CADA) and the national associations of the Local Councils must establish the taxes to charge for the reproduction and certificates of the administrative documents.»

The nº 3 defines that «the entities with autonomous taxation powers can't establish taxes that surpass more than 100% the value respectively established under the terms of previous number, to which they must refer while not editing their own tables of prices.»

The charges to be paid by the citizens for the reproduction of the documents, in the exericise of their right to the access of administrative files and registrations, were established through the decree nº 8617/2002 of the Ministry of Finance, published in the Daily Republic Journal, (series II, nº 99 of 29 April 2002. (…)

PAGE 32

According to the Opinion of CADA nº 77/2006, «the taxes charged for the reproduction of documents can't surpass significantly or unjustifiably, in violation of the principals of proportionality and of the prohibition of the excess, the cost of the materials used and the services rendered. And if it is true that the decree nº 8617/2002 of the Ministry of Finance, doesn't bind the Local Council Administration (given the referred ruling power of the Local Councils), it is not less sure that such decree – exactly, because it reads the legal criteria –is susceptible to supply (safe) patterns of orientation.

Therefore, the values that diverge strongly from the ones established in that decree difficult – or even overrule – the exercise of the right of access of the administrative files and registrations, which the CPR consecrates in article 268, nº 2 and of which the LADA is a normative development. It is a constitutional based right, of a material right formally constitutional, that is, a valued right. Moreover: being a fundamental right of the same nature as the rights, freedoms and guaranties, it is applied the respective regime (cfr. article 17 of the CRP). And because it so, such values – when excessive -, restrain that right, that is, translate in a amputation of the real content of a right within the constitutional precept directly applicable (article 182, nº1 of the CRP) ». (…).

In this matter, it is important to refer a Court Judgment from the Constitutional Court, nº 248/2000 of 12 April (12), which policy, although it is directed immediately to the access of procedure information, it is applicable, also, to the access of not procedure information.

It reads, clearly, two main conclusions. First, that «it is not admissible, in the perspective of the constitutionality, solutions highly different, for similar situations, with no objective nor rational explanation.» Secondly, that the conditionings imposed cannot also be limitations that, given its objective cost, turn impossible or annul the consecrated right.»

To note that, in agreement with the referred Court Judgement, for the purpose of evaluation of cost, or verification of its source, what is considered «is the objective value considered,

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12 Republic Daily Journals, nº 256, Series II of 6 November 2000

PAGE 33

And the respective lack of justification», not considered, for example, the real finance capacity of the requester.

(…)»

And in the Opinion nº 94/2016, the CADA understood that:

«(…)

The tax charged must correspond to the adding of the proportional charges with the use of machinery and tools and the costs of material used and the service rendered, without, however, surpass the average market value for similar service (nº 1 of the article 12) and must consider the decree nº 8671/2002, of 29 April, which establishes the financial charges of the reproduction of documents in the exercise of the right of access to administrative documents.

The organs and entities must affix in an accessible place to the public a list of the taxes they charge for the reproductions and certifications of administrative documents (nº4 of the article 12).

The required entity may demand a prepayment to guaranty the due taxes and, when such is the case, the shipment fee (nº5 of article 12).

It is verified that there are no restrictions to the right of access (article 6 on the contrary), therefore the way of payment for the prepayment cannot be, in practice, a limitation to the access, more so, when the requester is willing to pay the referred amount. This way, it is underlined that the CADA has no competence to opinionate on how that prepayment is to be done (see the nº 1 of the article 25 and 27).

We appeal, however, on the general principles of the administrative activity for the resolution of the conflict which seem to oppose the requester and the required entity, in what regards the way of prepayment and payment of the respective proof, namely to the principle of justice and reasonability (article 8 of the Code of Administrative Procedure – CPA) and to the good faith (article 10 of the CPA)

(…)»

Register, as well, what was affirmed in the Opinion 49/2016:

PAGE 34

The decree 8617/2002 (13): stablishes the costs of the reproduction of documents in the exercise of the access to administrative documents. The price foreseen in that diploma, not yet revised, for a photocopy varies in between 0,02€ and 0,04€, depending on the quantity.

On this matter, the CADA already replied in several Opinions, for example the Opinions nº 445/2015, 323/2013 and 260/2013, to which we refer.

The policy of the CADA is based on the following points:

I. The taxes charged for the reproduction of documents cannot surpass in an unjustified manner the cost of the materials used and the service rendered, or it will be a violation of the principle of the proportionality and of the prohibition of excess;

II. The decree 8617/2002 doesn't bind the Local Council Administrations (because of the elf ruling power of local councils), but it is a reference in what regards the values to use, because it takes in legal criteria;

III. The values that diverge strongly from the established in that decree, difficult, might even make impossible, the exercise of the right to access;

IV. The right to access is a fundamental right of the same nature as the rights, freedoms and guaranties, and can only be limited in the terms foreseen by the Constitution (article 18 of the CRP).

Considering the analyses above referred, it seems that the value charged by the Local Council for the access of documents per photocopy is detached from the criteria established in article 12 and in the decree nº8617/2002.

(…)»

In this context and in summary, understands the CADA that:

a) It is up to us to appoint (safe) criteria to guide the administrative entities in this point;

b) It is not up to us to establish the value(s) to charge;

c) It Is not up to us to have the amounts eventually charged in excess be refunded.

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13 Published in the Daily Journal of the Republic, Series II, nº 99 of 29 April 2002

PAGE 35

31. The **tenth point** to approach regards the *"declaration of confidentiality over the use of the information"* that the representatives of PALP had obliged to sign.

It is certain that, regarding the nominative documentation to access in the field of an academic dissertation, the CADA has issued an Opinion in favor, establishing the conditions for the access to be done.

Therefore, in the Opinion nº 301/2000, this Commission pointed the following:

a) The consultation of those documents should be done where they are, that is, in the services that withhold them (not allowing its removal);

b) The requester would be obliged not to remove the name of the people mentioned in the documents and processes;

c) The texts the conclusions and, in general, the results that were to be achieved and published should be *"impersonal"*, – including the notes, registrations and other preparatory works -, in order to make impossible the individualization of the data susceptible to offend the reserve of intimacy of the private life, of the person in question as well as of his nuclear family;

d) It should be subscribed by the requester, a document that would identify all the processes that were accessed;

e) The requester should be informed that, in agreement with the law (article 10, nº 3, of the previous LADA), *"the personal data communicated to third parties cannot be used for purposes other than the ones that determine the access, on penalty of responsibility for loss and damage, under the legal terms"* (this precept is in found in article 8, nº 2, of the updated LADA).

However, the CADA never lined conditions for the access of not nominative documentation, as it is the case.

And it seems that it is not justifiable the demand of a subscription of a *"declaration of confidentiality"* for the access of the documentation that was consulted and, maybe, photocopied.

And that, not having the PALP invoked (nor, much less, shown) to have an *"interest direct, personal and legitimate, relevant enough according to the principle of the proportionality"*, two hypotheses are placed:

PAGE 36

- Or that documentation doesn't contain the said "company secrets"and therefore, is generally accessible;
- Or containing them they were purged and, therefore are, equally, accessible by all,

32. However, it must be added that, under the terms of the nº 7 of the article 11 of the LAIA, *"the fundaments for the refusal referred in the a), d), f), g) and h) of the previous number cannot be invoked when the request for the information refers to emissions to the environment."*

III – Conclusion

Regarding the exposed, it is understood that:

a) It is up to the requester the option of one of the forms of access that the law foresees;

b) When the requests refer to a large volume of documentation, the access may be done in phases (up to two months - cfr. nº 4 of the article 14);

c) If eventually, the documentation requested by the PALP contains the so called «company secrets», it is up to the required entity to proceed with the analyses of these documents, in a way to, fundamentally, make available, in full, those that can and partially, the remain;

d) The duty of confidentiality referred in the Law nº 109/94 of 26 April, or the clauses of confidentiality do not prevail over the LADA, therefore its existence do not damage the access which should be done obeying legal criteria;

e) It is not up to the CADA to give an opinion on the performance of the requesters and of the required entities, unless from those performances result a damage to the constitutional right of access;

f) It is not up to the CADA to evaluate the conditionings of access (as referred by the PALP); in what regards that question, we must just list the legal parameters, without, however, say how the consultation should have been done, as it is a problem that occurs from the internal organization and logistics of the required entity ;

PAGE 37

g) Nothing stops the documents required from being photographed by the means the requested have;

h) There is no impediment for the documentation requested to be photocopied just in part;

i) For the reason of the nature of the documentation in question, we don't see the reason for the demand of the

subscription of a declaration of confidentiality.

To be communicated

Lisbon, 20 September 2016

Pedro Delgado Alves (Speaker

(Signatures)

LUIS MONTENEGRO

MARIA EDUARDA AZEVEDO

ANTERO ROLO

JOÃO ATAÍDE

HELENA DELGADO ANTONIO

JQAO PERRY DA CAMARA

PAULO MOURA PINHEIRO

PEDRO MADEIRA FROUFE

ANTONIO JOSÉ PIMPÃO (President)

Document No. 2. Documents made available by ENMC and explanation, dated 13.02.2017

ENMC – Entidade Nacional para o Mercado de Combustíveis (E.P.E.) – Estrada do Paço do Lumiar, Campus do Lumiar, Building D, First Floor, 1649-038, Lisbon.

Dear representatives of the Plataforma Algarve Livre de Petróleo (electronic notification),

Your reference:

Our reference: CE-772/2017

Date: 13/02/2017

Subject: Access to administrative documents.

Following your request for the consultation of documents, we answer you with the document attached, for a better comprehension.

We would also like to inform you that the documents requested will be available from the 2nd of March, you will just have to ask for a reservation with a minimum advance of 5 working days, in order to avoid problems in the service.

Thank you for your comprehension,

Yours faithfully,

Filipe Meirinho

CEO

[Signed]

Document	**Year**	**Concession(s)**	**Companies**			**Reason for the analysis**	**Classification of the requested document**
Documents which demonstrate the technic and economic eligibility of all the companies with concessions	2014		ENI	Galp (without consortium partners between April and December 2014)		Considering the environmental impact which the activities of these companies can have, we consider that, in representation of some of the most important NGO of the country, we need to have access to information about the ability to act of these companies	The information cannot be made available, since it contains sensible commercial information or trade secrets. It will be considered confidential information, made available only with the authorization of the company. A request was submitted in order to obtain this authorization, and we are waiting for the answer.
Annual plans of activities	2017	"Lavagante", "Santola", and "Gamba"	ENI	Galp		Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to evaluate their impact on the environment and its conservation.	The information cannot be made available, since it contains sensible commercial information or trade secrets. It will, therefore, be kept confidential for a period of 5 years (until the end of 2021).
Annual reports of activities	2007	"Lavagante", "Santola", and "Gamba"	Hardman	Petrogal	Partex	Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to compare this information with environmental and administrative data communicated by other bodies.	AVAILABLE FOR CONSULTATION
Documents which demonstrate the technic and economic eligibility of all the companies with concessions	2007		Hardman	Petrogal	Partex	Considering the environmental impact which the activities of these companies can have, we consider that, in representation of some of the most important NGO of the country, we need to have access to information about the ability to act of these companies	The information cannot be made available, since it contains sensible commercial information or trade secrets. It will be considered confidential information, made

							available only with the authorization of the company.
Annual reports of activities	2008	"Lavagante", "Santola", and "Gamba"	Hardman	Petrogal	Partex	Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to compare this information with environmental and administrative data communicated by other bodies.	AVAILABLE FOR CONSULTATION
Annual reports of activities	2009	"Lavagante", "Santola", and "Gamba"	Hardman	Petrogal	Partex	Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to compare this information with environmental and administrative data communicated by other bodies.	AVAILABLE FOR CONSULTATION
Annual reports of activities	2010	"Lavagante", "Santola", and "Gamba"	Petrobras	Galp		Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to compare this information with environmental and administrative data communicated by other bodies.	AVAILABLE FOR CONSULTATION
Annual reports of activities	2011	"Lavagante", "Santola", and "Gamba"	Petrobras	Galp		Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to compare this information with environmental and administrative data communicated by other bodies.	AVAILABLE FOR CONSULTATION
Annual reports of activities	2012	"Lavagante", "Santola", and "Gamba"	Petrobras	Galp		Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to compare this	The information cannot be made available, since it contains sensible commercial information or trade secrets. It will, therefore, be kept

					information with environmental and administrative data communicated by other bodies.	confidential for a period of 5 years (until the end of 2017).
Annual reports of activities	2013	"Lavagante", "Santola", and "Gamba"	Petrobras	Galp	Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to compare this information with environmental and administrative data communicated by other bodies.	The information cannot be made available, since it contains sensible commercial information or trade secrets. It will, therefore, be kept confidential for a period of 5 years (until the end of 2018).
Annual reports of activities	2014	"Lavagante", "Santola", and "Gamba"	ENI	Galp (without consortium partners between April and December 2014)	Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to compare this information with environmental and administrative data communicated by other bodies.	The information cannot be made available, since it contains sensible commercial information or trade secrets. It will, therefore, be kept confidential for a period of 5 years (until the end of 2020).
Annual reports of activities	2015	"Lavagante", "Santola", and "Gamba"	ENI	Galp	Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to compare this information with environmental and administrative data communicated by other bodies.	The information cannot be made available, since it contains sensible commercial information or trade secrets. It will, therefore, be kept confidential for a period of 5 years (until the end of 2021).
Annual reports of activities	2016	"Lavagante", "Santola", and "Gamba"	ENI	Galp	Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to compare this information with environmental and administrative data communicated by other bodies.	The information cannot be made available, since it contains sensible commercial information or trade secrets. It will, therefore, be kept confidential for a period of 5 years.
Documents which demonstrate the technic and	2015			Australis	Considering the environmental impact which the activities of these companies can have, we consider that, in representation of some of the	The information cannot be made available, since it contains sensible commercial information or trade

economic eligibility of all the companies with concessions				most important NGO of the country, we need to have access to information about the ability to act of these companies	secrets. It will be considered confidential information, made available only with the authorization of the company. A request was submitted in order to obtain this authorization, and we are waiting for the answer
Annual plans of activities	2017	"Batalha" e "Pombal"	Australis	Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to evaluate their impact on the environment and its conservation.	The information cannot be made available, since it contains sensible commercial information or trade secrets. It will, therefore, be kept confidential for a period of 5 years (until the end of 2021).
Annual reports of activities	2015	"Batalha" e "Pombal"	Australis	Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to compare this information with environmental and administrative data communicated by other bodies.	Inexistent. A report of the activities of 2015 was not issued, as the contract was stipulated only in September of that year.
Annual reports of activities	2016	"Batalha" e "Pombal"	Australis	Considering the environmental impact which the activities of these companies can have, we need to know which are the activities they are going to realize this year, in order to evaluate their impact on the environment and its conservation.	The information cannot be made available, since it contains sensible commercial information or trade secrets. It will, therefore, be kept confidential for a period of 5 years (until the end of 2021).
Analysis, opinions and report – 2D seismic analysis	1999 - 2002	See Map	TGS-NOPEC	Considering the environmental impact of seismic analysis, we are interested in knowing where it was made and in reading the reports, in order to compare them with administrative and environmental data submitted by other bodies, in particular relative to the restrictions of activities	AVAILABLE FOR CONSULTATION*

				in habitats of protected animal species, as stated in Decree Law n° 49/2005 of the 24th February.	
Analysis, opinions and report – 2D seismic analysis	2008	See Map	HARDMAN/GALP/PARTEX	Considering the environmental impact of seismic analysis, we are interested in knowing where it was made and in reading the reports, in order to compare them with administrative and environmental data submitted by other bodies, in particular relative to the restrictions of activities in habitats of protected animal species, as stated in Decree Law n° 49/2005 of the 24th February.	AVAILABLE FOR CONSULTATION*
Analysis, opinions and report – 2D seismic analysis	2008	See Map	PETROBRAS/GALP/PARTEX	Considering the environmental impact of seismic analysis, we are interested in knowing where it was made and in reading the reports, in order to compare them with administrative and environmental data submitted by other bodies, in particular relative to the restrictions of activities in habitats of protected animal species, as stated in Decree Law n° 49/2005 of the 24th February.	AVAILABLE FOR CONSULTATION*
Analysis, opinions and report – 2D seismic analysis	2013	See Map	CHARGE OIL	Considering the environmental impact of seismic analysis, we are interested in knowing where it was made and in reading the reports, in order to compare them with administrative and environmental data submitted by other bodies, in particular relative to the restrictions of activities in habitats of protected animal species, as stated in Decree Law n° 49/2005 of the 24th February.	AVAILABLE FOR CONSULTATION*
Analysis, opinions and report – 3D seismic analysis	2010	See Map	PETROBRAS/GALP/PARTEX	Considering the environmental impact of seismic analysis, we are interested in knowing where it was made and in reading the reports, in order to compare them with administrative and environmental data submitted by other bodies, in particular relative to the restrictions of activities in habitats of protected animal species, as stated in Decree Law n° 49/2005 of the 24th February.	AVAILABLE FOR CONSULTATION*

Analysis, opinions and report – 3D seismic analysis	From 2010 to 2012	See Map	Various campaigns by MOHAVE	Considering the environmental impact of seismic analysis, we are interested in knowing where it was made and in reading the reports, in order to compare them with administrative and environmental data submitted by other bodies, in particular relative to the restrictions of activities in habitats of protected animal species, as stated in Decree Law n° 49/2005 of the 24th February.	AVAILABLE FOR CONSULTATION*
Analysis, opinions and report – 3D seismic analysis	From 2010 to 2012	See Map	PETROBRAS/GALP	Considering the environmental impact of seismic analysis, we are interested in knowing where it was made and in reading the reports, in order to compare them with administrative and environmental data submitted by other bodies, in particular relative to the restrictions of activities in habitats of protected animal species, as stated in Decree Law n° 49/2005 of the 24th February.	AVAILABLE FOR CONSULTATION FOR 2010* For 2011 and 2012, the information cannot be made available, since it contains sensible commercial information or trade secrets. It will, therefore, be kept confidential for a period of 5 years (until the end of 2017 and 2018, respectively).
Analysis, opinions and report – 3D seismic analysis	2012	See Map	REPSOL	Considering the environmental impact of seismic analysis, we are interested in knowing where it was made and in reading the reports, in order to compare them with administrative and environmental data submitted by other bodies, in particular relative to the restrictions of activities in habitats of protected animal species, as stated in Decree Law n° 49/2005 of the 24th February.	The information cannot be made available, since it contains sensible commercial information or trade secrets. It will, therefore, be kept confidential for a period of 5 years (until the end of 2018).
Analysis, opinions and report – 3D seismic analysis	2012	See Map	REPSOL	Considering the environmental impact of seismic analysis, we are interested in knowing where it was made and in reading the reports, in order to compare them with administrative and environmental data submitted by other bodies, in particular relative to the restrictions of activities in habitats of protected animal species, as stated in Decree Law n° 49/2005 of the 24th February.	The information cannot be made available, since it contains sensible commercial information or trade secrets. It will, therefore, be kept confidential for a period of 5 years (until the end of 2018).

Environmental impact analysis made by concession-holding companies	2013		REPSOL	Considering the environmental impact which the activities of these companies can have, we consider that, in representation of some of the most important NGO of the country, we need to have access to the environmental impact analysis made by concession-holding companies, which the same companies agreed to made public (see the opinion of CADA)	AVAILABLE FOR CONSULTATION
Environmental impact analysis made by concession-holding companies	2015		ENI	Considering the environmental impact which the activities of these companies can have, we consider that, in representation of some of the most important NGO of the country, we need to have access to the environmental impact analysis made by concession-holding companies, which the same companies agreed to made public (see the opinion of CADA)	AVAILABLE FOR CONSULTATION
Action plans in case of accidents, included funds reserved for these eventualities. Also called "Major Hazard Report"			Repsol	Considering the environmental impact and the potential risks this kind of activities can have, we need to have access to the action plans in case of accidents and to know which are the funds reserved for these eventualities.	The process of exploration was not started, therefore this kind of report has not been submitted, as stated in the Decree Law 13/2016, of the 9th of March.
Action plans in case of accidents, included funds reserved for these eventualities. Also called "Major Hazard Report"			ENI	Considering the environmental impact and the potential risks this kind of activities can have, we need to have access to the action plans in case of accidents and to know which are the funds reserved for these eventualities.	AVAILABLE FOR CONSULTATION
Other opinions by ICNF or APA			For example, relative to the explorations of ENI and Repsol	Considering the environmental impact and the potential risks this kind of activities can have, we need to have access to the scientific opinions and to other documents elaborated by ICNF and APA	These reports were submitted relatively to TUPEM, and they belong to DGRM.

*This kind of information is not considered administrative information, as it is part of a commercial and strategic acts of Portugal. In this sense, this information is available to anybody after the concession of a license of use, being forbidden its use beyond the fixed limits and, in particular, its publication or communication to third parts.

The price associated to the consultation of this kind of information are defined by the Despacho n°8125/2015 and can be read on http://www.enmc.pt/pt-PT/atividades/pesquisa-e-exploracao-de-recursos-petroliferos/dados-e-informacao-tecnica/precario/

Document No. 3. "Oficio N. 551". Official letter (response) regarding ENI/GALP renunciation. Dated 15.01.2019

Letter from the Office of the Secretary of State of Energy

Portuguese Republic
Office of the Secretary of State of Energy

MATE – Of. N. 551
Date: 15-01-2019
52.04.03.02

Dear Sir
Dr. Joao Correia Bernardo
Directorate General of Energy and Geology
Av. 5 de Outubro, no. 208
1069-203 Lisboa

Dear Madam
Ana Matias
Algarve Livre de petróleo

palpalgarve@gmail.com

Your Reference E-mail	Your Comunication of 27-12-2018	Our Reference	Date

SUBJECT: Request for copy of the ENI/Galp Renunciation

In reference to the subject in question, the Secretary of State for Energy has instructed me to inform you that the resignation submitted by the ENI/GALP consortium has not yet produced the legal effects for which it is intended.

Given that the deadline for bringing such effects into effect is still underway and the case under consideration is still pending, we would to inform you that the resignation letter presented will be as soon as the effects of the resignation take place.

Best regards,

The Head of the Cabinet
[Signed]
Susana Corvelo

Gabinete do Secretário do Estado da Energia
Rua de "O Século", 51 - 1200-433 Lisboa, Portugal
Tel. +351 21 323 15 00 Email: gabinete.seenergia@mate.gov.pt www.portugal.gov.pt

In Portuguese:

ASSUNTO: Pedido de cópia da renúncia ENI/GALP
Por referencia ao assunto em epigrafe, encarrega-me o Senhor Secretário de Estado da Energia de transmitir a V.Exa, que a renúncia apresentada pelo consórcio ENI/GALP ainda não produziu os efeitos jurídicos a que se destina.
Estando, assim, em curso o prazo para a mencionada produção de efeitos e estando, ainda, o processo em análise, transmite-se a V.Exa. que a carta de renúncia apresentada será disponbilizada logo que os efeitos da renúncia se produzam.
Com os melhores cumprimentos,
A Chefe do Gabinete
(assinatura)
Susana Corvelo

Gabinete do Secretário do Estado da Energia
Rua de "O Século", 51 - 1200-433 Lisboa, Portugal
Tel. +351 21 323 15 00 Email: gabinete.seenergia@mate.gov.pt www.portugal.gov.pt