General aspects of online tax administration

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Introduction

The second module of the *Taxation and the Internet* course covers general aspects of online tax administration. As such, it covers several of the main general issues affecting the development of online relationships between the Administration and the taxpayer.

The first section looks into how the General Tax Act (LGT) regulates the use of information and communications technology (ICT) in the different taxation procedures. The analysis is essentially based around a discussion of LGT art. 96, particularly in relation to the promotion of the use of ICT, the online relationship with the taxpayer, electronic taxation procedures, the approval of IT applications and programs, and the legal validity of the electronic document.

The second section covers the right and obligation to an electronic relationship. The regulation contained in the Act of Common Administrative Procedure of the Public Administrations is covered here, paying particular attention to the citizen's right to communicate with administrations via electronic means and its peculiarities in the tax domain, as well as other civil rights with respect to electronic tax administration.

The third and fourth sections analyse two essential tools when implementing any electronic administration: websites and electronic registries. The concept of the website, the guiding principles and responsibility of the website owner, the identification and content of the website, the concept of the electronic registry, admissible documents and the rejection of documents in electronic registries, the calculation of periods, and the recording of entries in electronic registries are all examined.

The last section examines personal data protection in the tax domain, analysing this fundamental right, the principles of data minimization, the purpose limitation, the **storage limitation**, the **legitimizing budgets**, the duty of information, the rights of access, rectification and deletion of the data, the communication of personal data between administrations, the electronic transfer of data and the right not to provide data already in the possession of the Administration.

Objectives

The main learning objectives while studying this topic are as follows:

1. To gain an understanding of the main issues surrounding the General Tax Act regulating the use of ICT in the relationships between the Administration and taxpayers.

2. To distinguish the key aspects relating to taxpayer rights in the electronic relationship with the Administration, particularly the contents of the Act of Common Administrative Procedure of the Public Administrations.

3. To examine the concept, the guiding principles, and the content of websites within the domain of electronic tax administration.

4. To understand the main aspects regarding electronic registries in the tax domain, particularly with respect to admissible documents, the calculation of periods, and what is recorded in the entries.

5. To study personal data protection in the tax domain, paying particular attention to the establishment of the fundamental right in relationships between taxpayers and the Administration.

1. Regulation in the General Tax Act

Despite the term 'electronic administration' not being mentioned in LGT articles, the regulation cannot be said to be unrelated to the electronic administration trend – quite the opposite. To be precise, compared to the other Spanish public administrations, the taxation domain is where we find the electronic administration that is **most developed**. Furthermore, the LGT has contemplated and regulated various different versions of the aforementioned electronic administration.

Regulation of the use of ICT

The LGT introduces the main regulation on the use of ICT in article 96. As indicated in its memorandum statement, this regulation basically aims to achieve the following objectives, "to boost taxpayers assurances and legal security, to drive the unification of criteria in administrative operations, to make the use of new technologies possible and modernize taxation procedures, to establish mechanisms that help in the fight against fraud, in taxation control, and in the collection of tax debts, and to reduce the current levels of taxation-related litigation".

In this context, what stands out in the aforementioned statement is "the importance placed on the Tax Administration's use and application of electronic, computerized and online means and techniques to carry out their operations and relationships with taxpayers, establishing the main scenarios in which they are used, and with wide ranging regulations enabled".

The regulation of the use of information technologies within the taxation domain is definitely an innovation on the previous LGT. Under heading III of the aforementioned regulation relating to the application of taxes, in which the most important new legal aspects are produced, a section (the fourth) on information and online technologies is added to chapter I on general principles, with a single precept, LGT art. 96, entitled "the use of information and online technologies".

It therefore systematically approaches the use of ICT in the heart of its general principles for applying taxes, alongside the regulation of other aspects that are closely linked with the objective of this study. Other than the first section, covering the area of tax application and jurisdiction within the country, the second section regulates information and assistance for taxpayers, and the third section approaches social collaboration when applying taxes (in which, curiously, taxpayer data obligations are also included alongside the confidential nature of important tax data).

LGT art. 96 involved the transfer of the provisions of the now repealed art. 45 of the Legal Regime and Common Administrative Procedure Act (LRJPAC) to the tax domain. The latter precept, called the "incorporation of technical means", was the one that was usually invoked as a general enabling regulation when any aspect involving ICT was developed in the tax domain.

The relationship with the LRJPAC

In fact, according to its explanatory statement, the new LGT "is a significant move towards the general regulations of the administrative law, with the consequent increase in legal security in the regulation of taxation procedures". When it comes to the use of ICT, this move towards administrative law cannot be ignored, given that the LGT art. 96 is practically identical to the now repealed LRJPAC. Only a couple of new aspects are introduced by the LGT, which affect firstly taxpayer assurances in automated decision-making (LGT art. 96.3 *in fine*), and secondly, the legal validity of the electronic images of the original documents or their copies (LGT art. 96.5), all of which will be analysed later.

The **basis** for using ICT at the heart of tax administration and in their relationships with taxpayers is derived from the principle of efficacy in the service to general interests, established in art. 103 of the Spanish Constitution, according to which the basic principles presiding over public administration activity are service, objectivity, generalization, efficacy, hierarchy, decentralisation, deconcentration, and coordination.

The principle of efficacy

For the Constitutional Court, efficacy is a true legal principle, resulting in a positive obligation to act in accordance with its demands, that is, service with objectivity to general interest and fully subject to the law (among others, see Constitutional Court rulings 22/1984, from 17 February; SSTC 27/1987, from 27 February; and 178/1989, from 2 November). In this sense, it should be remembered that technological means undoubtedly mean procedures can be speeded up, and that greater transparency can be provided, by facilitating the taxpayer's access to, and knowledge of, the status of their procedure.

1.1. Promotion of the use of ICT

In accordance with the provisions of the LGT, the Tax Administration is to **promote the use** of the online, computerized and electronic means and techniques necessary for its operations and to exercise its powers, within the limits established in the Constitution and the law[1].

(1)Art. 96.1 LGT.

This precept covers the legislator's concern that the Administration does not fall behind with respect to technological advances, given that the availability, progression, and spread of new ICT in our society have led to notable transformations in all areas of human activity; and Tax Administration is no exception. This gives rise to the **need to incorporate ICT**, not only internally with the Tax Administration, but also in its relationships with taxpayers.

Comments on the wording of the regulatory precept

A series of observations can be made on the wording of this precept. Firstly, the obligation of the Tax Administration to which it refers consists simply in promoting the use of ICT, which materialises as a positive obligation on the part of the Tax Administration. All the same, it does not contain a mandate to directly incorporate such techniques in their activity and relationships with taxpayers; although it is true that the first step to their implementation is to promote their use.

Secondly, it involves a generically defined obligation, given that neither the quantitative or qualitative effort by which it should be fulfilled is specified. This level of effort can vary considerably from one Tax Administration to another, for example, in function of the number of taxpayers over which they exercise their powers, the class of taxes corresponding to them, or the staff they have available.

Consequently, the effective implementation of ICT in this domain can depend, in practice, on diverse factors of a varied nature. Leaving psychological, cultural, and educational barriers to one side, the budget is the first factor that can condition the promotion of these techniques; secondly, the different characteristics of the administrations can have an influence; and lastly, it can also depend on the activity to which they have to be applied.

All the same, it has to be stated that the use of ICT is becoming a more evident need in the tax domain than in the other public administrations given the specific underlying public interest in the inherent contributory purpose of the taxes. For that reason, a lot of resources have been invested in applying technological means in the Tax Administration, and bodies have been created to supervise and provide coherence to their imple-

mentation process, such as the Spanish Tax Administration Agency (AEAT) Information Technology Department.

The third observation that needs to be made involves the existing relationship between the Tax Administration's internal IT implementations and its external IT implementations, i.e. its relationship with taxpayers. As such, it is worth highlighting that the least obstacles (budgetary, technological, or reticence about its effectiveness) exist in the introduction of ICT at an internal or organizational level in the Tax Administration (databases that hold tax information about taxpayers or cover administrative interpretation, etc.). Conversely, the biggest difficulties arise in the external relationships with taxpayers. In addition, it must be remembered that implementing IT and the internal modernization of the Tax Administration is a first step in its move towards relationships with taxpayers.

The last observation worth making is that, other than the Tax Administration's efforts to promote ICT, with more or less efforts, widespread social use is required of such techniques so that more taxpayers decide to use them in their relationships with the Tax Administration. There has been a significant and progressive increase of taxpayers using them in the domain in recent times, although the percentage compared to the total number of taxpayers should further increase.

The current regulation on the use of ICT in the LGT **does not establish a right for the taxpayer** to relate with the Administration by electronic means.

In view of LGT art. 96.1, it is worth considering whether, at the same time, the obligation imposed on the Tax Administration forms a taxpayer's right to demand the promotion and effective use of ICT in their relationships with the Administration.

As was already mentioned, we consider the answer has to be no, given the referenced LGT art. 96.1 clearly imposes a mandate on the Administration, but does not clearly determine a taxpayer's subjective right to demand the incorporation of such techniques in the relationship with the Administration, as there is no penalty established for the Tax Administration failing to fulfil this obligation. In the face of a non-fulfilment of the aforementioned obligation, it does not appear possible that taxpayers have the right for such demands to be satisfied, as happens with other obligations the LGT imposes on the Tax Administration.

1.2. The online relationship with the taxpayer

In accordance with the LGT, when compatible with the technical means provided by the Tax Administration, **citizens can relate** with them to exercise their rights and fulfil their obligations through electronic, computerized or online means and techniques, with the assurances and requisites provided with each procedure[2].

(2)Art. 96.2 LGT.

From the literal wording of LGT art. 96.2, it can be deduced that the use of ICT in the relationship between the Administration and the taxpayers constitutes a possibility to reach the latter, i.e. **its use is optional** and the choice is specifically the taxpayer's, rather than the Administration's.

All the same, the aforementioned precept **does not prohibit the imposition of an obligatory nature** for the online method to certain taxpayers in specific cases.

In addition, in accordance with the content from the aforementioned section 2 from LGT art. 96, it is worth considering whether the aforementioned freedom of choice of method for the taxpayer is present in every case. That is, whether the taxpayer has the right to choose the computerized medium to relate with the Administration whenever they want, and consequently, whether the Administration is obliged to make the necessary technical options available to enable this communication pathway.

The subjective right to an online relationship with the Tax Administration

As was commented earlier, we think the answer must be no, given the discretionary nature of the implementation of computerized and online means in administrative activities. Therefore, for the taxpayer to be able to choose the computerized medium in their relationships with the Administration, this possibility must be acknowledged in the corresponding regulation of the tax procedure. If not acknowledged in the regulation, the taxpayer cannot choose this computerized medium for their administrative relationships, given it needs to be included in legislation, as stated in LGT art. 96.2, with the assurances and requisites provided for each procedure.

As we will examine later on, this was the main new aspect introduced by Law 11/2007 of 22 June regarding Citizens' Electronic Access to Public Services, which in art 6. stated the right of such citizens to relate with the public Administration using electronic means. As of today, this aspect is consolidated in the LPACAP articles 13 and 14.

1.3. Tax procedures via online means

The LGT decrees that **procedures** and actions in which electronic, computerized and online means and techniques are used ensure the identification of the acting Tax Administration and the exercising of its power. In addition, when the Tax Administration uses an automated procedure, the identification of the relevant bodies for the programming and supervision of the data system is assured, along with the relevant bodies for determining resources that may become involved[3].

(3)Art. 96.3 LGT.

This LGT provision refers to online tax procedures. Given the unstoppable trend to replace paper with electronic formats, the concept of the **electronic file** becomes increasingly important. The General Tax Administration and Inspection Code (RGGIT) art. 86.4 refers to the concept of an electronic file. In effect, this precept describes the electronic file as the set of relevant electronic documents for an administrative procedure, irrespective of the type of information they contain.

The electronic file

With respect to electronic files, the aforementioned regulatory precept indicates that an electronic index can be used for their numbering, which is signed or stamped by the acting Administration, body or entity, as applicable. This index will ensure the integrity

of the electronic file and will enable its recovery whenever required, as it is admissible that one same document can form part of different electronic files.

In addition, RGGIT art. 86.4 states that the retrieval of files can be replaced for all legal purposes by making the electronic file available, with the interested party having the right to obtain a copy.

As such, in accordance with the aforementioned LGT art. 96.3, in online tax procedures, the **identification of the acting Tax Administration** and the exercise of its power is to be ensured. This provision has been developed from the RGGIT, which indicates that the acting Tax Administration for the procedures and actions in which online, computerized and electronic means and techniques are used may be identified using systems of codes or electronic signatures, previously approved by the relevant body and published in the corresponding official gazette[4].

[(4)]Art. 83 RGGIT.

Recommended reading

A. M. Delgado García; R. Oliver Cuello (2007). "La actuación administrativa automatizada. Algunas experiencias en el ámbito tributario". *Revista Catalana de Derecho Público* (no. 35).

Identification of the acting Tax Administration

In this respect, the second paragraph of RGGIT art. 83 states that acting bodies and holders may be identified in the same manner, when so required by the nature of the action or procedure. Similarly, the exercise of their power will be ensured. And RGGIT art. 83 concludes in paragraph 3, establishing that the Tax Administration will publish the codes in the corresponding official gazette that serve to confirm secure communications are established with citizens using open networks. Closed network communications will operate under their own specific rules.

In addition, it is worth highlighting that in the aforementioned LGT art. 96.3, as opposed to what was established in the now repealed LRJPAC art. 45.3, there is a specific mention of the Tax Administration's **automated operational methods**. That is, the trend for decision-making IT is contemplated, or rather the replacement of human intelligence for artificial intelligence (a software application) when making tax decisions.

LGT art. 96.3 should be related to LGT art. 100.2, which states that an automated response from the Tax Administration in procedures where this type of response is anticipated will be considered resolved.

Decision-making software

Within this context of implementing and developing electronic administration, decision-making processes in which IT is extensively involved become very important. This is the so-called decision-making software, and it is regulated for the first time in a legal text of this type under the current General Tax Act. We consider the fact decision-making software is specifically mentioned in the LGT is positive.

Art. 96.3 LGT definitively establishes an **additional guarantee** for cases in which decision-making software is used by the Tax Administration, consistent in that not only should the acting Tax Administration and the exercise of its power be identified, but also the relevant bodies for the programming and supervision of the IT system and the relevant bodies to determine the resources that can become involved. As we mentioned, that provision deserves being rated positively, given it establishes a new right for taxpayers when automated decisions are made, which will be increasingly common within the domain of electronic tax administration.

1.4. The approval of application software

According to the LGT, electronic, computerized and online applications and programs that will be used by the Tax Administration to exercise their powers will have to be **approved beforehand** by the latter in the way established in the regulation[5].

[(5)]Art. 96.4 LGT.

This is a provision that aims to provide **transparency**, albeit minimal, to the workings of the technical tools used by the Tax Administration in their operations and relationships with taxpayers, given that the specific program or application can affect the corresponding administrative body when issuing an act.

This measure has two effects: firstly, it enables the taxpayer to defend themselves against the inappropriate use of such techniques, and secondly, it gives rise to the possibility of learning the technical requisites required to be able to communicate with the Tax Administration.

Communicating the applications and programs

Although LGT art. 96.4 does not refer to the "public communication of the characteristics" of those applications or programs, like the now repealed LRJPAC art. 45.4 did, we understand that if the communication of their approval is imposed by the LGT, it should be specified under the regulation. What would not make sense is for the application software approval to remain secret, because we understand, as previously mentioned, the aim of this precept is to inform taxpayers about the technological means the Tax Administration uses.

In this point, there is a lack of specific regulation about the consequences deriving from a lack of communication about the programs and their approved use. Given the lack of a specific cause for automatic nullity, decisions based significantly on information technology applications and programs that would not have been approved in accordance with the legally established criteria and are not made public as required would become voidable, given that it is not just a simple non-disabling irregularity; beyond being a simple formal error without major repercussions, we find ourselves faced with a substantially relevant or material non-compliance, which looms over the content of the administrative action.

However, the Administration does not just have to communicate the new information technology applications or programs, but also any later modifications to them, unless the changes do not substantially affect the results of the data processing they undertake.

In addition, as indicated in the preamble of the AEAT Resolution of 11 April 2001 on assistance to taxpayers and citizens in their online identification before collaborating entities during the processing of tax procedures, "security reasons advise extending this provision for approval and publication of all cases in which the public administration intervenes whilst acts are being carried out for the general public with significant legal importance".

One issue that needs defining around this provision is, specifically, defining what **type of communication** is required, in terms of whether it goes through the corresponding official gazette, or whether communication is sufficient via other means within the administrative domain itself, such as notice boards or even the internet. A reading of LGT art. 96.4 does not indicate that official

gazettes have to be used; as such, unless otherwise established in a provision, it must be understood that communication via any other means that enable the taxpayer to learn about all those points is acceptable.

Information on the corresponding Tax Administration website

RGGIT art. 85 contains a statement to this effect, referring to the approval and communication of applications for automated methods scenarios. In section 1 of this regulatory order, it is established that in the cases of automated methods, application software that processes data with results used by the Tax Administration to exercise their powers, and which directly determines the content of the administrative actions, must have previously been approved by a resolution from the body considered responsible in the event of a challenge to the corresponding administrative acts. When unrelated different Tax Administration bodies are involved, the approval will come from the common higher hierarchical body from the appropriate Tax Administration, without prejudicing the delegation powers established in the legal order.

Section 2 of the aforementioned RGGIT art. 85 goes on to state that the interested parties may learn about the connection of the aforementioned software by visiting the corresponding Tax Administration website, which is to include the possibility of a secure connection in accordance with the provision of the aforementioned art. 83.3 of this regulation.

1.5. The legal validity of the electronic document

With respect to the validity of electronic documents in the tax domain, the doctrine has proposed the convenience of there being a **specific regulation** in this domain, outside the existing common regulation, given the particular nature of the electronic format, and the malfunctions that could arise in its absence. All the same, despite some specific details representing arguments for the approval of a separate regulation, given the characteristics of electronic format, it is worth applying the common regulation to the documents to avoid inequalities.

In that respect, the LGT sets out that documents issued by Tax Administration, whatever their format, by electronic, computerized or online means, or those issued as copies of saved originals in those same means, as well as electronic images of original documents or their copies, will be equally as **valid and effective** as the original documents, as long as their authenticity, integrity, and conservation is guaranteed, as well as reception by the interested party, where applicable, and compliance with the guarantees and requisites demanded by the applicable regulation[6].

[(6)] Art. 96.5 LGT.

Observations on the wording of the regulation precept

With respect to the wording of the aforementioned regulation, firstly, the use of the terms “original” and “copy” appears surprising, given that it does not make sense to talk about copies and originals for electronic format documents, given that both the original document and its copy are identical.

In addition, the legislator does not distinguish between documents in electronic, computerized or online format, where these do not refer to exactly the same thing, particularly from the point of view of the different levels of satisfaction required by authenticity, integrity, and conservation demands. Whilst computerized, unlike electronic, refers

to the automatic processing of data, online implies communication between different computers.

All the same, the legislator does use this terminology often, and it has ended up being used in this domain, with indistinct references to electronic, computerized and online means.

Ultimately, we consider the **electronic document** can be referred to as the instrument through which concepts, ideas, or intentions are expressed, with IT and telecommunications mediums using it as a format for that purpose.

With respect to the specific **requisites** in LGT art. 96.5, they involve some demands deriving from the characteristics of the computerized format and which (with regard to the first two) are not foreseen, expressly at least, in terms of documents issued in any other format, such as paper, although that type of format should clearly also be respected.

Validity requisites for the electronic document

The first requisite relating to the validity of the action is that the document's authenticity should be guaranteed, that is, the identity of the issuing administrative body should be ensured as well as the link of the authorship to the contents of the action. This demand can be safeguarded through the use of a recognized electronic signature.

The second requisite involves guaranteeing the integrity of the document, with respect to impeding possible unauthorized manipulations of the stated action. Similarly, this new demand can be fulfilled by using a recognized electronic signature.

The third requisite is to ensure it is conserved, as a requirement for the correct exercise of the administrative functions and in defence of taxpayers' rights. And the last one involves ensuring the interested party receives them, when the actions contained in this type of document need to be communicated, as a requirement of their efficacy.

As a final comment on this precept, it is worth referring to the new aspect introduced with the LGT compared to the repealed LRJPAC, relating to the legal validity of **electronic images of originals or copies of documents** and which is currently regulated in LPACAP art. 27.3.b.

Electronic images of paper documents

We consider this a positive measure given that it enables, for example, the computerized filing of acknowledgements of receipt as images, such that if a court were to ask for a copy, the filed image could be provided with the same validity as if it was a certified photocopy of the original acknowledgement of receipt. It is also highly important with respect to the boosting the use of the electronic file, given that it facilitates the conversion from paper into electronic format and enables a file that was started on paper to be digitized into an electronic file.

With respect to this issue of the digitization of documents and electronic images, RGGIT art. 86.3 establishes that the tax administrations may obtain electronic images of documents, with the same validity and efficacy, through digitization processes that guarantee the authenticity, integrity, and conservation of the image document, which will be left on record. In this case, the original may be destroyed unless a legal ruling or regulation imposes a specific obligation for conservation.

2. Right and obligation to electronic commercial relations

2.1. Law of the common administrative procedure of public administrations

The approval of the new basic administrative legislation (the LPACAP and the LRJSP) has two important implications in relation to the regulatory framework of e-Government. On the one hand, its regulation is no longer found in a special law (the CEPS) but rather it is integrated into the basic laws of public administrations; and on the other hand, e-Government regulation is divided between the enacting terms of the two basic provisions approved, one relative to common administrative procedure and the other relative to legal status of the public sector.

Recommended reading

Oliver Cuello, R. (2009). "El derecho del obligado tributario a relacionarse con la Administración por medios electrónicos". *Revista de Información Fiscal* (issue 96).

Indeed, as the doctrine has pointed out, **e-Government** ceases to be regulated in a special law to be inserted directly and fully into the very heart of common administrative Law. In this respect, it can be stated that if the use of technologies is common and ordinary in economic and social life, the same must happen with administrative action and, of course, with its legal status, which can no longer be consistently split from the common regulatory body as if it were a marginal addition and must be fully integrated into the hard core of legal and administrative provisions. Therefore, e-Government has been fully introduced in the main body of administrative law, which is a success.

The doctrine also points out that placing e-Government at the heart of administrative Law today has suddenly evidenced the serious problems found in its legal status. In short, it is simply impossible to address administrative records or notifications today without being knowledgeable about e-Government and without becoming fully aware of the important legal problems that underlie relations through electronic means.

Recommended reading

Gamero Casado, E. (2016). "Panorámica de la Administración electrónica en la nueva legislación administrativa básica". *Revista Española de Derecho Administrativo* (issue 175).

However, as the doctrine has also highlighted, the reform must be recognized an important merit: it breaks with the inertia of regulating the use of technology by its equation with the previous way of operating. With it, **electronics is the means and the way to act**. The integration of the contents of the LAECSP in the LPACAP (and, to a lesser extent, in the LRJSP) will allow e-Government to carry out the role it really deserves and will re-energise the implementation of electronic media in the organization and administrative procedure.

As already mentioned, the second consequence of the new e-Government regulatory framework is that **its regulation is divided between the enacting terms of the two basic provisions** approved: common administrative procedure and legal status of the public sector.

Recommended reading

Martín Delgado, I. (2016). "El impacto de la reforma de la Administración electrónica sobre los derechos de los ciudadanos y el funcionamiento de las Administraciones públicas". In: *La actualización de la Administración electrónica*. Santiago de Compostela: Andavira.

Indeed, although most of the matters relative to e-Government are regulated in the LPACAP since they are procedural issues, there are also important issues related to e-Government that are included in the articles of the LRJSP.

e-Government in the LRJSP

Mention may be made, for example, of LRJSP arts. 38 to 46, which are devoted to the electronic operation of the public sector. Such articles address regulations on electronic headquarters; internet portal; identification system of administrations; automated administrative action; signature systems for automated administrative action; electronic signature of staff working for public administrations; electronic data interchange in closed communication environments; interoperability and security of electronic identification, and digital archiving of documents.

Likewise, e-Government matters are addressed in LRJSP arts. 155 to 158, which are devoted to electronic relations between administrations. In this respect, these articles address regulations on data transmission between public administrations, the Spanish National Interoperability Framework and the National Security Framework; reuse of systems and applications owned by the Administration, and transfer of technology between administrations.

Most of the doctrine criticises this separation of regulation into two different rules. It has been argued that this **regulatory diversification** entails a difficulty since it can lead to legal uncertainty, in the sense that it will be necessary to resort to the two laws (procedure and public sector) to find informative or applicable provisions in each specific case. In our view, there must be a genuine and orderly willingness to comply with the regulatory mandates aimed at e-Government unification and effectiveness, with the conditions involved in the extension of citizen intervention in the regulatory power of governments and with the protection that must always be taken care of as regards the rights of citizens. Without this guarantee, the laws would clearly cease to be an expression of the popular will and would become elements that favour legal insecurity.

Recommended reading

Sala Sánchez, P. (2016). "Reflexiones puntuales sobre algunos aspectos de las nuevas Leyes de Procedimiento Administrativo Común de las Administraciones Públicas y de Régimen Jurídico del Sector Público". *Revista Española de Control Externo* (issue 54).

Indeed, the aforementioned provisions established in the LRJSP will undoubtedly affect the legitimate rights and interests of citizens, which they must know promptly to act rights or interests relative to electronic records through empowerments of attorney; to the identification and signature of the parties concerned in the administrative procedure; to the right to use electronic communications to interact with public administrations (and with the obligation to do so for certain groups and individuals), and to the General Electronic Registry (REC) and the Electronic Archiving of Documents that each administration must have in place. These aspects are regulated exclusively in the

LPACAP (arts. 6, 9, 10, 13.a, 14.1 and 2, 16, 17 and 19) or shared by both rules, as is the case with the Electronic Archiving of Documents also regulated in LRJSP art. 46.

e-Government regulatory disaggregation

The regulatory disaggregation of e-Government into administrative activities *ad extra* and *ad intra* has also come under criticism by the doctrine. As the doctrine argues, the systematic structure consolidated in Spanish Law has been modified and must now be adapted to the new scheme. In addition, they claim that this scheme is chaotic and causes legal uncertainty, as it will make it difficult for legal operators to locate and meet the precepts applicable to the issues they manage.

In this respect, the doctrine criticizes that it is not possible to understand that electronic records are regulated in the LPACAP while the electronic headquarters is regulated in the LRJSP, being in both cases auxiliary means through which legal and administrative relations are defined and which are, therefore, based on the same nature and purpose from the point of view under review. It is neither understood that the automated administrative activity pertains in the LRJSP, as it is obvious that it produces *ad extra* activities. It is also astonishing that the archives have deserved attention by both rules (LPACAP art. 17 and LRJSP art. 46), which even share instances that have been literally duplicated.

In any case, the new regulatory framework for e-Government, as is rightly highlighted by most of the doctrine, implies the consecration of a new **principle of preference for the electronic medium**. Indeed, in case of the LRJSP it is clearly stated for inter-administrative relations in its article 3.2, which in fact imposes that means not only as a preference, but as exclusive, although we must understand it subject to the viability or technical availability of the medium. As regards the LPACAP, there is no analogous rule that proclaims a general principle, but this can be inferred from many provisions of its articles.

In general, the doctrine is critical of the **new features introduced** in the new regulatory framework for e-Government since citizen service does not precisely seem to have been the main concern when facing legal reform. On the one hand, the proposed measures disregard the user assistance function of electronic services and, on the other, the consequences that will be faced by those public administrations that fail to comply with the legally established obligations have not been established with sufficient clarity and precision, particularly as regards the fulfilment of the right not to file documents that are already in possession of any of such administrations.

Recommended reading

Valero Torrijos, J. (2015). "La reforma de la Administración electrónica, ¿una oportunidad perdida?". *Revista Española de Derecho Administrativo* (issue 172).

The doctrine also criticizes how the rule is excessively focused on the reality and needs of the General State Administration, to the point that some of the main demands raised from autonomous and local spheres have not been incorporated; in particular, as regards the provision of the necessary services to facilitate that citizens can exercise their rights and fulfil their obligations using electronic means.

Consequently, as stated, even recognizing that there are some relevant developments

(such as the singular acceptance of presentation periods by the hour and the consideration of Saturdays as non-working days), the reform made by both laws in the field of e-Government is substantially limited to consolidating an existing model of management that, to a large extent, is at the root of some of the main problems of effectiveness and efficiency that prevent the definitive modernization of administrative activity and relations with citizens.

New developments introduced in e-Government regulation

The doctrine also criticizes the amendments introduced by the new basic administrative rules in e-Government, especially as regards the rights of citizens in their relations with the Public Administration by electronic means. In this regard, the doctrine remarks that we now move from the mere possibility of using electronic media (incorporated in the LRJPAC of 1992), subsequently transformed into a citizen right (established in the LAECSP of 2007) to the obligation of dealing with the Administration this way. However, it is done in such a way that the necessary guarantees are undermined as are the rights recognized in the LAECSP.

The doctrine highlights the omission of guarantees against the eventual breach of obligations concerning e-Government and that no means are established to force compliance. In this regard, the doctrine remarks that although there is no longer a provision in the new LPACAP with a content similar to that of DF 3 LAECSP (and, consequently, the lack of budgetary resources cannot be invoked to justify the absence of implementation of the electronic means in organization and administrative procedure), the absence of coercive instruments that allow reacting to possible breaches of the obligations contained therein can have an equivalent effect.

In our view, far from improving the current regulation, the few new developments introduced in the LPACAP regarding recognition of the rights of individuals and parties concerned in their relations with public administrations by electronic means represent, to a certain extent, a step backwards in comparison with the situation created by the LAECSP: the scope of the general right of citizens to deal with the Administration using electronic means is limited and some rights with content are suppressed; in addition, the extension of the obligation to interact via electronic means to all legal entities (being a legal entity does not ensure the availability of means). Also, the exclusion of all groups of taxpayers from the ownership of the right of assistance in the use of such electronic means must be negatively appraised.

Recommended reading

Oliver Cuello, R. (2018). "Análisis de los derechos de los contribuyentes en la Administración electrónica". *Quincena Fiscal* (issue 18).

2.2. The right and obligation to an electronic relationship

The **right** and **obligation** to deal with public administrations electronically are regulated in LPACAP art. 14, which is probably, as has been stressed by some authors, the legal principle that has raised the most comments and which substitutes the rule contained in LAECSP art. 6.1.

Up until the entry into force of the LPACAP generally, the possibility of dealing with public entities electronically was a right of natural and legal persons who could choose to exercise this right or not, and even change criteria within the framework of each of the specific procedures they hold. However, in relation to certain groups and in specific procedures, various public bodies had already made the electronic relationship mandatory using the legal authorization that LAECSP art. 27 reflected by way of exception.

Recommended reading

de Juan Casero, L.J.; Bustos Pretel, G.; Gallego Alcalá, J. D. (2017). "Comentarios a los artículos 13 a 28 LPACAP". In: *Comentarios a la Ley 39/2015, de Procedimiento Administrativo Común de las Administraciones Públicas*. Madrid: Wolters Kluwer.

So, the new LPACAP maintains the right of persons to deal with the Administration by electronic means, but at the same time it generalizes and imposes such an electronic interaction to all legal entities and to members of professional associations, as well as to other groups (as will be analysed below).

Therefore, as stated before, the LPACAP establishes **the right to deal with public**administrations[7] **electronically**. This provision states that natural persons may always choose whether they use electronic communications in their relations with public administrations for the exercise of their rights and obligations unless they are required to communicate electronically with said administrations. The means chosen by the person to communicate with the administration may be modified by such person at any point in time.

(7)LPACAP art. 14.1

The most notable difference with the regulation in the previous LAECSP is that the current LPACAP generally reflects the right to the electronic relationship, for any formality and procedure, and does not consider it necessary to incorporate, in contrast to the CEP, the relationship of formalities and services this right can be extended to in a detailed manner. Therefore, we are before a **general right**, applicable to any type of formality, for the exercise of any right or obligation and before any of the entities that have the consideration of the Public Administration, without exception[8].

(8)LPACAP art. 2.3

As occurs with the rights granted in the previous LAECSP art. 6, this right entails a **correlative obligation** that falls on all public entities: that of having the resources and electronic tools necessary to make it effective. We agree that this is a long way to go for all administrations, one that should be guided by the principles contained in LRJSP art.157 and, especially, by the principle of mandatory reuse of available public tools.

The obligation of public administrations to have the necessary means

The doctrine emphasizes that the obligation to have the necessary electronic means and resources available for the exercise of the right mentioned for citizens is general. Therefore, the obligation also extends to all the entities that make up the Local administration and it is incumbent on all municipalities. However, in this regard, it must be taken into account that, according to article 36.1.g of the Fundamental Law on Local Government, it falls within the competence of the provincial delegations to provide electronic services to municipalities with less than 20,000 inhabitants and, although it is very unspecific and inaccurate, this competence must cover, at least, the right of persons to deal with these municipalities electronically as established in LPACAP art. 14.1 and as was already stipulated in DF LAECSP 3.4, without a limit of municipal population.

On the other hand, the doctrine has also emphasized that the previous LAECSP excepted the right to electronic relations in cases in which it was inferred by law that the use of electronic means was not possible (LAECSP art 27.1), whereas in the current LPACAP there is no longer a generic exception to the right to deal with the Administration electronically, so that only in exceptional cases may the relation with the Administration face-to-face or on

Recommended reading

Cotino Hueso, L. (2018). "La obligación de relacionarse electrónicamente con la Administración y sus escasas garantías". *Revista de Internet, Derecho y Política* (issue 26).

paper and not electronic. These exceptions to the electronic relations must be expressed or derived with some clarity from the nature of the relationship expressed in the law.

Only on an exceptional basis can the contribution of original documents be required (LPACAP art. 28.3) and, in these cases, if applicable, on paper (LPACAP art. 28.4). Also, exceptionally and in a motivated manner, the display of the original may be required for comparison (LPACAP art. 28.5). LAECSP art. 35.2 regulated the aforementioned stipulations in a more laconic manner.

Another important aspect is that, unlike previous legislation, which required the express consent for the Administration to engage in electronical relations (LAECSP art. 27.2, in general, and LAECSP art. 28.1 for notifications), the **consent is considered by defect**.

Withdrawal of consent for the electronic relationship

Indeed, LPACAP art. 14.1 removes any reference to the need for consent for the electronic relationship, so that, with the new consent, natural persons can choose or opt for the relationship channel. That is, the relationship with the Administration by defect is not face-to-face but electronic. The same applies to notifications, which will be preferably electronic and, in contrast with the previous regulations, LPACAP art.1.41 does not require consent to give them, but one or other type of notification may be chosen at any time.

Likewise, it must be remembered that ECSP already ensured **intermodality**, that is, the possibility of altering the relationship already initiated by the electronic or face-to-face channel. And LPACAP art. 14, as has been said, generally holds this right. And in relation to notifications, LPACAP art. 41.1 adds that the decision to change the channel must be made through standardized models. We are of the opinion that the Law is still too benevolent by allowing the administrator to vary the channel (face-to-face or electronic), as this can bring about dysfunctionalities, duplications, unnecessary burdens of administrative work and, above all, spurious uses, as for example with respect to deadlines.

2.3. Persons required to deal with public administrations electronically

The LPACAP regulates the **obligation to deal with public administrations**electronically[9]. In this regard, it is stipulated that the following are required to interact electronically with the Administration: legal persons, organisational entities without legal personality, those exercising a professional activity for which mandatory registration is required, those representing a person subject to the obligation to deal with the Administration electronically, and the employees of public administrations for the procedures and actions that they carry out through them due to their status as civil servants.

[9] LPACAP art. 14.2

In addition, by regulation, administrations may establish the obligation to relate to them by electronic means for certain procedures and for certain groups of natural persons that, due to their economic, technical, professional dedication or other reasons, it is established that they have access to and availability of the necessary electronic means.

The public administrations[10] themselves are also required to deal with each other using electronic means in any formality and procedure. This makes sense, since it would not have been coherent to demand electronic relations and not establish it on the same terms for inter-administrative relations developed by legal and public persons.

(10)LRJSP art. 3.2

The obligation to deal with the Administration electronically must be understood as a **general duty** that requires the parties concerned to use the electronic tools made available to citizens by the Public administration.

On the one hand, this implies the obligation to submit any type of application or document through the **electronic registration** of the public entity; and, on the other, the obligation to register in the **electronic notificationsystem** that the Public administration has established or through the electronic headquarters, or through both, in accordance with LPACAP arts. 41.1 and 43.

In this regard, it is important to note that the **consequences of the breach** of the obligation to deal with the Administration electronically are, fundamentally, two:

- Firstly, if any of the persons subject to the obligation submits their application in person, the Public Administration will require the data subject to submit it electronically within a period of ten days, indicating that, if they do not do so, the application will be deemed withdrawn, following and in accordance with LPACAP[11]

(11)LPACAP art. 68.4.

- And, secondly, it is established that when the notification by electronic means is mandatory, or has been expressly chosen by the data subject, it will be deemed rejected ten natural days after the notification was made available without its content having been accessed[12].

(12)LPACAP art. 43.2

The transformation of the right to electronic relations into an obligation

The doctrine is critical with the LPACAP regulation regarding the persons subject to the obligation to deal with public administrations electronically. According to the doctrine, the new laws confirm a tendency that had been observed since 2010: the progressive transfiguration of the right to deal with the Administration electronically to a duty. In this respect, LPACAP art. 14 greatly expands on the range of persons that, by Operation of Law, and therefore, without the need for any other measure or provision of development, declare themselves subject to the obligation to deal with public administrations by electronic means.

Thus, the doctrine criticises the legislative option of expanding the range of persons subject to the obligation so extraordinarily, especially as regards legal persons, entities without legal personality and civil servants. In this respect, and to this day, many of the persons that are affected by this scheme lack the means and knowledge necessary to establish electronic relations, especially regarding the design of many e-Government platforms, which create endless usability problems.

Along the same lines, it is argued that establishing an obligation is easier than having to fight for a more user-friendly and intuitive administration for those administered that are reluctant to use it. And, as rightly stated, the LPACAP has made an important leap forward without having the sufficient guarantees for those administered.

As regards the **exception to the regulatory standard** to establish the obligation to deal with the Public administration[13] electronically, the doctrine reminds us that the regulatory nature of a rule does not come from the form by which it is adopted (decree, order, ordinance, etc.), but from the nature of the content and the approval procedure according to the corresponding legislation. It is well understood, then, that calls for grants, recruitment or competitive examinations, among others, are not regulations that may impose the electronic relationship.

(13) LPACAP art.14.3

Therefore, blank referrals that allow the obligation of electronic relations to be established by acts or other means of the Administration should be avoided. The regulation must refer to a specific procedure or, where appropriate, to a set of procedures well determined by their nature, to groups to which it is addressed and to other defining elements. On this basis, it may be reasonable and admissible for the regulation to refer to an administrative resolution that already establishes specifically the obligation to engage in electronic relations in a given procedure.

On the other hand, as regards the **material requirements** that must be satisfied for the Administration to establish the imposition of the electronic way, the requirements and limits set forth in LPACAP art. 14.3 must be met, that is, certain groups of natural persons that, due to their economic, technical, professional dedication or other reasons, it is established that they have access to and availability of the necessary electronic means. However, we share the doctrine's opinion that such requirements and guarantees to be able to impose them are few and that as of today, with the new LPACAP, there doesn't even exist a right to deal with the Administration face-to-face, which obviously tempers these demands.

In short, as the doctrine points out, before the imposition of the obligation to deal with the Administration electronically it is necessary to aim for better rules and specific guarantees that prove or ensure that the persons subject to the obligation in question **have effective access to electronic media**. Otherwise, there may exist discrimination or defencelessness in the specific administrative relations.

2.4. Further rights of persons regarding electronic interactions

The LPACAP establishes the rights of persons in their relations with public administrations and it includes in its area of application the set of **persons** without there being a need to be data subjects or part of a procedure[14]. Consequently, these are rights that affect those persons dealing with the Administration, regardless of whether they take part in an administrative procedure or not.

(14)13 LPACAP art. 13

Some authors have stated in this regard that what this LPACAP provision reflects (differentiating persons from citizens) is the functionality of the Administration on the theoretical basis of pointing out that there is an unformalized activity of collaboration, information or assistance to the citizen so that they exercise their rights.

The importance of this collaborative activity consists precisely in the fact that an administrative procedure does not exist or is initiated and, therefore, the debate is not about a concrete and current benefit that the citizen (ya interesado) wants to obtain, but about a diffuse relationship within the framework of the service performance of the Public Administration for the facilitation of the rights that may correspond to them.

Recommended reading

Palomar Olmeda, A. (2016). "Derechos de los ciudadanos y de los interesados en sus relaciones con la Administración". *Revista Española de Control Externo* (issue 54).

1) The right to issue communications through the general electronic entry point

The right to interact with public administrations through a **general electronic entry point** of the Administration is regulated in LPACAP[15]. The Administration has the obligation to establish this entry point to ensure that citizens can use it and deal with the Administration through it.

(15)LPACAP art. 13.a

This provision should have taken effect two years after the Law of 2 October 2018 came into force, in accordance with the provisions of LPACAP 7 DF. However, article 6 of RD Law 11/2018, of 31 August has extended this deadline until 2 October 2020.

Neither the LPACAP nor the LRJSP specifically regulate the general electronic entry point of the Administration, although it is mentioned in various provisions, such as, for example, in LPACAP art. 43.4 (place where the data subjects may access electronic notifications) or LPACAP art. 53.1.a (place where to look up information related to the status of the proceedings, reason for adminis-

trative silence, competent body, procedural acts issued, as well as access and procurement of a copy of the documents contained in the aforementioned proceedings).

Previous LAECSP

The previous LAECSP established that each public administration would have an electronic entry point that would be equivalent to its general web portal and the mandatory electronic headquarters: as for the General State Administration, public departments and agencies would also have their portals and electronic headquarters. A general entry point of the General State Administration was also established, and it was understood as an intercom used between the entry points and the headquarters of the departments and dependent public bodies.

These were regulatory provisions exclusively related to the General State Administration, although the rest of the public administrations could also create their own general entry points. This could be very useful, for example, in the area of autonomous administrations.

Currently, LRJSP art. 39 seems to equate "entry point" to "internet portal", since it establishes that **internet portal** is understood as the electronic entry point whose ownership corresponds to a public administration, public body or legal public entity that allows online access to published information and, where appropriate, to the corresponding electronic headquarters.

Recommended reading

Martínez Gutiérrez, R. (2016). *El régimen jurídico del nuevo procedimiento administrativo común*. Pamplona: Aranzadi.

Therefore, it seems that the new LRJSP "electronic entry point" is equivalent to "web portal" or "internet portal" of each public administration from which the electronic headquarters should be accessible as a portal specifically intended for the formal opening of proceedings with administrations.

In any case, it can be stated that the Administration's general electronic entry point is a concretion of the **technical device** through which the right to deal with the Administration electronically can be realized. In addition, this instrument must include redirect functions to reroute to other technical instruments (electronic headquarters) where citizens can be informed or exercise the rights of a procedural nature that correspond to them.

Therefore, what is relevant about the Administration's general electronic entry point is its operational concept, that is, that which groups together the set of procedures that can be carried out with the respective Administration.

2) The right to assistance in the use of electronic media

The right to being assisted in the use of electronic means in the citizens' relations with public administrations is established in the LPACAP. It must then be ensured that data subjects can deal with the Administration electronically. The Administration is obliged to provide all the necessary access channels to them, as well as the systems and applications that are specified for each case[16].

(16)LPACAP arts. 12.1 and 13.b

In this regard, and in accordance with LPACAP art. 12.2, public administrations **will assist in the use of electronic means** to the data subjects not included in sections 2 (legal entities, organisational entities without legal personality, members of professional associations, representatives and civil servants) and 3 (groups to which the electronic relationship is statutorily imposed) of LPACAP art. 14 who request it, especially with regard to identification and electronic signature, submission of applications through the general electronic registration and obtaining certified true copies.

Likewise, if any of the data subjects do not have the necessary electronic means, their **identification or electronic signature** in the administrative procedure may be validly carried out by a public official using the electronic signature system that is provided for it. In this case, it will be necessary for the data subject that lacks the necessary electronic means to identify themselves before the civil servant and give his express consent for this action, which must be recorded for cases of discrepancy or litigation.

In this regard, LPACAP art. 12.3 stipulates that the General State Administration, the autonomous regions in Spain and local entities will keep a record updated, or other equivalent system, which will include the civil servants authorized for the identification or signature regulated in this article. These registries or systems must be fully interoperable and interconnected with those of the other public administrations so that validity of the aforementioned authorizations can be verified. This record or equivalent system shall at least include the civil servants who provide services for the assistance offices in the field of records and registries.

It is debatable that the right to receive assistance in order to use electronic media by citizens has been **limited to those who have no obligation to use them**, either directly by legal provision or by regulatory requirement, since nothing prevents them from being precisely those who have greater difficulties when interacting with public administrations.

This problem, as the doctrine emphasizes, can be singularly frequent with regard to certain non-profit legal persons, non-legal entities without legal personality and natural persons who, even belonging to a group that, as such and in general, have the economic and technical capacity or a professional dedication that facilitates access to and availability of the necessary means, may find difficulties when exercising their rights and obligations or, even, lack the necessary knowledge or instruments to carry out the action in question.

In the same respect, most of the doctrine understands that the limitation to the right to being assisted in the use of electronic means is inadmissible, since it implies a negative discrimination that lacks any foundation and justifica-

tion, since it is precisely the persons subject to the obligation to deal with the Administration electronically who need the most support and assistance to adequately address their legal obligations.

We believe that this legal provision should not be applied in practice. Public administrations would have to offer this assistance to all citizens without discrimination, whether they are obliged to use electronic means or not.

3) The right to use means of identification and electronic signature

The right to obtain and **use the means of identification and electronic signature** is regulated in the LPACAP. The data subjects can identify themselves electronically before the public administrations through any system which has a previous user registration that assures their identity. Likewise, the data subjects may sign by any means that allows to prove the authenticity of the expression of their will and consent, as well as the integrity and inalterability of the document[17].

(17)LPACAP art. 9.2, 10.1 and 13.g

The regulation of identification and signature systems of the data subjects in the procedure in LPACAP arts. 9 to 11 deserves a favourable judgment by most of the doctrine. In the line of promoting the delivery of communications by electronic means, the possibility of **imposing the use of the electronic signature has been legally limited**, so that its use will only be mandatory when dealing with actions that require a greater demand from the perspective of technical and legal security, that is, submission of applications, responsible declarations and communications, lodging of appeals, withdrawal of actions and the waiver of rights. On the contrary, when it comes to simply assuring the identification of the citizen, any system that has a previous user registration in place can be used.

In the same regard, the implementation of the ***sistema Clave*** (Spanish for Key system) is thought to be a success, although its regulation is based on provisions which are somewhat earlier in time (Law 25/2015, as amendment of Law 59/2003, regarding the electronic signature). This system has taken on a great significance in the regulation specified in LPACAP arts. 9 to 11. This type of solutions will facilitate citizens' efforts extraordinarily, articulating identification and signature systems that are much more usable and interoperable, surpassing the previous model, which was excessively rigid and focused on asymmetric key certificates.

Likewise, the doctrine generally agrees with the regulation that applies to matters of **representation and empowerment**[18]. The possibility (foreseen in advance) of civil servants acting with their own electronic signature on behalf of citizens (LPACAP art 12.2) is reinforced. At the same time, the alternative of conferring representation *apud acta* in person or electronically is also envis-

(18)LPACAP arts. 5 and 6

aged. This said, the great measure that can undoubtedly stimulate representation consists in the obligatory creation of an electronic registry of powers of attorney by each public administration. These registries will have to be interoperable, so that the appropriate checks can be carried out immediately.

Similarly, the doctrine remarks that, at present, the aberrant practice of transferring the electronic certificate and its codes by citizens to people who make administrative procedures on their behalf by electronic means is fairly widespread, which entails extraordinary risks. The generous regulation of the instruments of representation (especially representation *apud acta*), as well as the electronic records of empowerments should lead citizens to not transfer their certificates, but to generalize these means of representation and this avoid or lower the current risks.

4) The right to personal data protection

The right to personal data protection, in particular the right to the security and confidentiality of the information contained in the files, systems and applications of public administrations is established in the LPACAP[19]. In this area, the provisions contained in personal data protection regulations are applicable.

[19] LPACAP art. 13.h

This right is the result of reissuing the right previously established in LAECSP art. 6.2.i, and it means that he e-Government platforms used by public administrations must necessarily be secure, that is, they must comply with what is established in the **National Interoperability and Security Schemes** regulated in the LRJSP.

Recommended reading

Olivares Olivares, B. D. (2017). *La protección de datos tributarios de carácter personal durante su obtención en España*. Pamplona: Thomson Reuters Aranzadi.

The National Interoperability Scheme includes the set of criteria and recommendations regarding security, conservation and standardization of information, formats and applications that must be taken into account by public administrations for technological decision making that ensures interoperability. The National Security Scheme aims to establish the security policy in the use of electronic means within the scope of this law and consists of the basic principles and requirements that adequately ensure the security of the information processed[20].

[20] LRJSP art. 156

On the other hand, if the e-Government platforms used by the various public administrations are to be secure, the provisions of the **personal data protection regulations** must be respected. This basically applies to the Organic Law 3/2018, of 5 December on personal data protection and safeguarding of digital rights, and the Regulation (EU) 2016/679 of the European Parliament and of

the **Council** of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/**EC**.

In this regard, the doctrine has stated that linking these two areas, security and confidentiality, should lead to the need for many administrations to proceed to review their security policy and data protection policy documents, since unfortunately, in many cases and despite the obvious and necessary feedback existing between both, these areas have been designed separately, without a clear interrelation and with noticeable inconsistencies in terms of security levels of applications, data and documents.

2.5. Rights of the data subject in administrative procedure

The new development in 53 LPACAP art. 53, where the **rights of the data subject** in the administrative procedure are regulated, occurs because it subsumes not only the rights of data subjects stipulated in LRJPAC art. 35.a, of 1992, but also those in LAECSP art. 6.2, sections d and e, of 2007, which are rights that were recognized to citizens.

Thus, as the doctrine has highlighted, a single precept in LPACAP art. 53 regulates the rights of those persons having the status of data subjects in an administrative procedure, from the point of view of their traditional conception, together with those data subjects derived from the transformation to the electronic format, which must be combined throughout the procedure.

Recommended reading

Campos Acuña, C. (2017). "Comentarios al artículo 53 LPACAP". In: *Comentarios a la Ley 39/2015, de procedimiento administrativo común de las administraciones públicas*. Madrid: Wolters Kluwer.

The exercise of these rights, even if its previous diction is maintained, will be strongly determined by the transformation of the format, currently electronic, in the proceedings, since despite the fact that its previous wording is maintained, its digital exercise, as well as the existence of a large number of persons subject to the obligation to deal with the Administration only electronically, will introduce relevant application and terminological modifications in accordance with the provisions of LPACAP art. 14, sections 2 and 3.

1) The right to know the current status of the proceeding, the reason for administrative silence, the competent body and the administrative acts

The LPACAP establishes the right to know, at any time, the current status of the proceedings in which the data subjects are recognised as parties concerned; the reason for the corresponding administrative silence, if the Administration does not issue an express decision within a reasonable time limit; the competent body for its investigation, where appropriate, and resolution; and the procedural acts issued[21]. Those who deal with public administrations by electronic means will have the right to consult all this information in the general electronic entry point of the Administration.

[21] LPACAP art. 53.1.a

This legislative precept includes an **expanded version** of its predecessor, LRJPAC art. 35.a, which only referred to the status of the proceedings in which the data subjects are recognised as parties concerned. On the other hand, LPACAP art. 53.1.a also adds the right to know the reason for administrative silence, the competent body for its investigation, where appropriate, and resolution, as well as the administrative acts adopted.

In order to know the reason for **administrative silence**, and in the event that the Administration fails to issue or notify an express decision in due time, the rules contained in LPACAP arts. 24 and 25 must be applied, based on the general rule under the first of these precepts of the positive administrative silence in the proceedings initiated at the request of the data subject and the peculiarities that are established in case of lack of express decision in the proceedings initiated *ex officio*.

Regarding the reference on the **competent body** for the investigation, where appropriate, and outcome of the proceedings, it is a basic and fundamental information to ensure, where appropriate, the requirement of liability for defects or delays in processing and to demand the said body to prepare and conduct the respective proceedings from the said body of their own motion.

The doctrine has rightly argued that one of the new developments contemplated by the LPACAP is the possibility of exercising the right of consultation **by electronic means**. This is not incompatible with face-to-face access for those who are not required to deal with the Administration electronically, in accordance with the provisions of LPACAP art. 14.1. LAECSP art. 6.2.d already contemplated the right of citizens to know electronically the status of the proceedings in which they are data subjects, except in the cases in which the implementing legislation established restrictions on access to information on the said data subjects.

As the doctrine also emphasizes, the adequate exercise of this right follows from the **principle of transparency** in administrative procedure, facilitating the knowledge by the parties concerned of all the actions that comprise it, including the preparatory measures as well as the identification of those responsible for?.

2) The right to obtain an electronic copy of the documents

The data subjects will have the **right to access and obtain a copy of the documents** contained in the procedures. In accordance with the provisions of the LPACAP, the obligation of the Administration to provide copies of the documents contained in the procedures shall be deemed fulfilled by making them available at the general electronic entry point of the competent administration or at the corresponding electronic headquarters[22].

[(22)]LPACAP art. 53.1

It is important to highlight that we are not dealing with the general right of access to documents in the archives and registries regulated in Law 19/2013, of 9 December on transparency, access to public information and good governance, since that Law regulates the procurement and access of documents in files on procedures already concluded, unlike what happens with the right laid down in LPACAP art. 53.1.a and which is linked to **ongoingproceedings**.

As the doctrine has pointed out, the correct fulfilment of this right can be very beneficial for the data subjects when it comes to raising arguments or for a better compliance by administrations in view of the file included in the hearing of the constitutionally recognized party.

Recommended reading

R. Martínez Gutiérrez (2016). *El régimen jurídico del nuevo procedimiento administrativo común*. Pamplona: Aranzadi.

On the other hand, according to the doctrine, the reference made in this precept to the general electronic entry point of the Administration is not accurate, since this instrument must be an intercom between the different electronic headquarters of the departments, public bodies and administrations. It would have been more accurate for the legislator to refer only to the provision of documents for the procurement of copies thereof through the electronic headquarters of the Administration.

3) The right to meet payment obligations by electronic means

The data subject has the right to **meet payment obligations by electronic means** as is provided in LPACAP[23]. In this regard, the LPACAP establishes that the payment will be preferably made, unless evidence is provided that such methods cannot be used, using any of the following electronic means: credit or debit card, bank transfer, direct debit or any other payment methods authorized by the competent body in matters of public finance.

[23] arts. 53.1.h and 98.2

LPACAP art. 98.2 must be interpreted in reference to the power of self-organization of each administration in order to determine, in the legislative framework which applies, the most appropriate means and systems, while taking into account that the rule provides for the use of electronic means **preferentially** and not exclusively.

LPACAP 16.6 also establishes that any amounts that must be paid at the time of submission of documents to public administrations can be made effective by transfer to the corresponding public office, without prejudice to making the payment by other means.

Many administrations had already enabled these payment systems on a voluntary basis and even in response to the demand of the data subjects, who are generally already well used to these payment mechanisms. In addition, according to LPACAP art. 98.2, these payment mechanisms must be used as a preferential means for payment obligations arising from a monetary penalty, fine or any other right to be paid to the Public Treasury.

In short, as the doctrine emphasizes, due to the establishment of this right of the data subjects, there is a real **obligation for all public administrations** to generally enable the electronic payment systems expressly established in LPACAP art. 98.2.

3. Websites

3.1. The website concept

The LRJSP determines that the **website**[24] is the web page available to citizens through telecommunications networks that is owned, managed, and administered by a public Administration, body, or administrative entity for the exercising of its powers.

(24)Art. LRJSP art. 38.1.

Recommended reading

R. Oliver Cuello (2011). "La sede electrónica de la Agencia Estatal de Administración Tributaria". *Revista Internet, Derecho y Política* (no. 12).

The doctrine has criticized this definition, given that the website is not an electronic address, rather the website is accessed through an electronic address. This means that in reality it is **a website, or internet site** (a set of web pages), for a public administration, enabling citizens to access a set of services and information made available to them via telecommunications networks.

The website as a channel for the relationship between the Administration and citizens

Civil rights in the relationship with public administrations through electronic means come with the need to establish an electronic and computerized structure that enables citizens to exercise those rights within the framework of a simple technological interrelationship. In this context, it is necessary to present electronic access points for citizens to the Administrations in a simple, direct, and effective way, in order for them to become a channel that enables the relationship and the breaking down of different barriers, which can often arise for different reasons.

Reference is also made in the aforementioned LRJSP art. 38.1 that website **ownership** should correspond to a public administration, administrative entity or body. That's exactly how it should be, understood such organizations as the General State Administration, the autonomous community administrations, and the entities making up local administration, as well as public legal entities linked or dependent on them.

We understand that the **management and administration** also has to correspond to a public administration, administrative entity or body. In reality and in practice, both the management and essentially the administration of the website may involve actions by private persons or entities. It is fairly common for professionals from the IT service provider sector to be commissioned for a web design, as well as the administration or maintenance being carried out by staff external to the Administration.

The intervention of professionals

It is usual for professionals from the IT sector to be involved in the management and administration of websites, under the supervision of the website owner.

When it comes to **creating the website**, LRJSP art. 38 clearly states the need for its formal creation, which does not require a regulatory provision, rather it can be a simply administrative action. As such, LRJSP art. 38.3 establishes that each public administration is to set the conditions and tools for creating websites.

In the area of the **nationwide tax administration**, the Resolution from the Presidency of the State Tax Administration Agency (RPAEAT), of 28 December 2009, needs to be considered, as it is through this that the website is created and electronic registries of the AEAT are managed (RSERE). In accordance with art. 2.1 of this Resolution, the State Tax Administration Agency (AEAT) has a main website, directly accessible at the web address https://www.agenciatributaria.gob.es, as well as through the portal http://www.agenciatributaria.es. This website covers all the bodies of the AEAT, which is the owner, and its scope of application reaches all actions and procedures of its jurisdiction.

Free and permanent access to the website

Although it may appear superficial and unnecessary, we consider the provision in RSERE art. 2.2 of 28 December 2009 is correct, in accordance with which "the website is permanently available to all citizens for free".

In addition, when it comes to **derivative websites**, it is worth highlighting that the Regulation on Citizens' Electronic Access to Public Services (RAECSP)[25] considers the possibility of creating one or several websites deriving from a main website. The derivative websites should be accessible from the main website, and should ensure that direct electronic access is possible.

(25) Art. 4.2 RAECSP.

With respect to the state Tax Administration, RSERE art. 2.6 establishes the following derivative websites are to exist, which are dependent on and accessible through the main website address: https://www1.agenciatributaria.gob.es and https://www2.agenciatributaria.gob.es. This same precept states that the creation of new derivative websites or their modification or elimination should be published through the AEAT's main website.

Also, we must take into account another concept that is closely related to that of electronic headquarters: "internet portal" and the "electronic entry point." The LRJSP provides that **internet portal** is the electronic entry point whose ownership corresponds to a public administration, public body or public law entity that allows access to information published online and, where appropriate, to the corresponding electronic headquarters headquarters[26].

(26) LRJSP art. 39

As mentioned earlier, according to the LRJSP it seems that "internet portal" is equivalent to "electronic entry point" of each public administration from which the electronic headquarters should be accessible as a portal specifically intended for the formal opening of proceedings with administrations.

In this regard, it has already been pointed out that the Administration's electronic entry point is a concretion of the **technical device** through which the right to deal with the Administration electronically can be realized. In addition, this instrument must include redirect functions to reroute to other technical instruments (electronic headquarters) where citizens can be informed or exercise the rights of a procedural nature that correspond to them.

The right to issue communications through the general electronic entry point

As already mentioned, the right to deal with public administrations through a general electronic entry point is regulated in LPACAP art. 13.a. It is mandatory for the Administration to establish it to ensure that citizens can use it and interact with it through this entry point.

3.2. Guiding principles and the owner's responsibility

1) The guiding principles of the website

As well as establishing the need to formally create a website, LRJSP art. 38.3 provides a series of principles to guide their use. Indeed, it establishes the obligation for the websites to be subject to the **principles**[27] of transparency, responsibility, quality, security, availability, accessibility, neutrality, and interoperability.

(27) Art. LRJSP art. 38.3

The **principle of transparency and communications**[28] is also covered in the LRJSP, when it states the principle of transparency and communication of procedures, meaning the use of electronic means should lead to maximum dissemination, communication and transparency of administrative actions.

(28) Art. LRJSP art. 3.1

With respect to the **principle of quality**, the demand for quality in public services in the overall administrative domain can be seen reflected in some of the rights of LRJPAC art. 35 , and in some of the principles acknowledged by the LRJSP art 3.1: effective service to citizens; simplicity, clarity and proximity to citizens; efficiency in meeting the objectives set; economy, sufficiency and strict adaptation of the means to institutional purposes; and efficiency in the allocation and use of public resources.

With respect to the **principle of security**[29], it should be remembered that the LRJSP determines that the websites will have systems that enable secure communications to be established whenever required. In this case, this principle also has to be related with one of the rights acknowledged in the legal regu-

(29) Art. LRJSP art 38.4

lation, specifically, in LPACAP 13.h, by which the right to guaranteed data confidentiality and security of the data in public administration applications, systems and files is acknowledged.

As has already been stated, the websites also have to be governed by the **principle of availability**. In short, the public administrations are to use information technologies in accordance with the provisions of the law, ensuring the availability, access, integrity, authenticity, confidentiality, and conservation of data, information and services they manage whilst exercising their powers.

Website availability

Availability is one of the basic characteristics of websites, which sets them apart from traditional administrative offices with set working hours. Clearly, one of the major benefits of electronic administration, which brings the Administration closer to the citizen, is the possibility of always being able to access data and services from the aforementioned Administration at any time during the day, which helps citizens in their dealings enormously, avoiding the issues caused by having to adapt to the traditional public office opening hours.

The **principle of accessibility**[30]is also related to availability, and is a principle which should govern websites. In this respect, it should be considered that the LRJSP established that communications in websites containing information, services, and transactions are to respect the principles of accessibility and usability in accordance with the established regulations in this respect, open standards and, if applicable, others that are for general use by citizens. Therefore, it involves trying to breach the so-called digital gap, irrespective of the type of difficulty in the access to the aforementioned technologies that affect each group, such that it promotes their complete integration into the information and knowledge society.

(30)Art. LRJSP art. 38.5

Websites should also be governed by the **principle of neutrality**[31]. In this respect, it is worth noting that the LRJSP contemplates the principle of technological neutrality and adaptability to the progress of electronic communications systems and techniques.

(31)Art. 4.i LAECSP.

Technological neutrality

This principle aims to ensure an independent approach to choosing technological options for citizens and public administrations, as well as the freedom to develop and implement technological advances within a free market environment. To that end, public administrations will have to use open standards as well as, if applicable and in complementary fashion, standards that are used generally by citizens. This principle is closely related to the use of free software by public administrations and citizens, as well as applications and systems based on open standards.

Another principle that is closely related to neutrality, and which websites should be governed by, is the **principle of interoperability**. It should be understood that it involves information systems capacities, and subsequently the procedures for which they provide support, for sharing data, and enabling the interchange of data and knowledge. For that purpose, two significant tools are provided: the National Interoperability Plan and the National Security Plan[32].

(32)Art. 42 LAECSP.

2) The responsibility of the website owner

The setting up of a website, in accordance with the LAECSP, means the owner is responsible for the **integrity, veracity, and updating**[33] of the information and services that can be accessed through it.

(33)Art. LRJSP art. 38.2

We consider this is a very important regulatory provision, given that it clearly defines the **principle of responsibility**, which, as we have seen, is found among those that should govern the activity of the aforementioned website (LRJSP art. 38.2). We find ourselves faced with a legal provision that obliges the owner of the website to respect a series of guarantees of major legal importance (integrity, veracity, and data updates).

State liability of the public Administration

With respect to the state liability of the public Administration, it must be recalled that, as established in LRJSP art. 38.2, "the individuals will have the right to be compensated by the corresponding public administrations for all damage suffered to any of their assets and rights, as long as the damage is a consequence of the normal or abnormal functioning of the public services". An objective responsibility system is therefore contemplated, but one in which damages caused by force majeure are expressly excluded, whilst it is also qualified whether the damage should constitute an effective, economically evaluable, and individualized damage. In addition, LRJSP art. 34.1 limits the responsibility to the aggrieved not having the legal obligation to bear it.

In the **tax domain**, LGT art. 85.1 states the obligation for information to tax payers. An obligation that is defined in the regulation itself, and in others on regulatory implementation in diverse information actions to which the Tax Administration is obliged. Consequently, a claim for damages derived from the obligation to provide information is perfectly possible. As such, when administrative information actions cause any effective damage to a taxpayer's assets or rights that they do not have the obligation to bear (as long as it is economically evaluable and can be individualized), they may claim their compensation from the corresponding Tax Administration, which may be responsible for it either through their action (whether incorrect or a simple change of criteria) or their inactivity.

When it comes to the regulation of the responsibility of the owner of the website in the case of the **AEAT**, it is worth highlighting that RSERE art. 2.4 includes the legal provisions we have just outlined.

The responsibility of the AEAT website owner

It is established in this precept that "the Tax Agency will respond for the integrity, veracity, and updating of the data and services relating to the Tax Agency itself that can be accessed through the website and derivative websites, if applicable. And it goes on to add the different departments, services, and other bodies from the Tax Agency that will be responsible for managing the services made available to citizens.

3.3. Website login and content

1) Identifying the website

In accordance with the LRJSP, it should always be ensured the **website owner is identified** in the website, as well as the available means to make suggestions and complaints[34].

(34)Art. LRJSP art. 38.3

According to the LRJSP, the websites are to use **electronic signature systems**[35]. Public administrations may be identified through the use of an **electronic seal** based on a recognized or qualified electronic certificate that meets the requirements required by electronic signature legislation. These electronic certificates will include the tax identification number and the corresponding denomination, as well as the identity of the holder in the case of electronic seals of administrative bodies. The list of electronic stamps used by each public administration, including the characteristics of the electronic certificates and the providers that issue them, must be public and accessible by electronic means. In addition, each public administration will take appropriate measures to facilitate the verification of its electronic stamps. The Public Administration will be understood as identified with respect to the information that is published as its own in its internet portal.

(35)Art. 17 LAECSP.

Logging in on websites using electronic signature systems is undoubtedly an important issue in the functioning of the website and in electronic administration in general. It must also be remembered that automated administrative action scenarios are increasing in number, and as such, there is a clear need to regulate electronic signature systems in those cases.

In this regard, the LRJSP provides that an automated administrative **action**[36] is any action or activity carried out entirely through electronic means by a public administration within the framework of an administrative procedure in which a civil servant has not directly intervened. In the event of automated administrative action, the competent body or bodies must be established in advance, as appropriate, for the definition of specifications, programming, maintenance, supervision and quality control and, where appropriate, the audit of the information system and its source code. Also, the body that should be held liable for the purposes of challenges will be indicated.

(36)LRJSP art. 41

Login for automated administration scenarios

LRJSP art. 42 establishes that when logging in and authenticating the exercising of powers in an automated administrative action, each public administration may determine the scenarios in which the following electronic signature systems are used: a) an electronic seal from the public administration, body, or public legal entity, based on an electronic certificate that meets the requisites demanded by electronic signature legislation; b) a secure verification code linked to the public administration, body, or entity and, if applicable, the person signing the document, always enabling the checking of the integrity of the document through access to the corresponding website.

With respect to automated administration, it is worth highlighting the experience in the tax domain. Indeed, RGGIT art 73.3, in relation to the issuing of tax certificates, regulates an interesting issue and deserves some credit. It involves verifying the content, authenticity, and validity of the certificate through the medium of the so-called secure verification code. In effect, this precept states that "the content, authenticity, and validity of the certificate may be checked through the connection with the Tax Administration website, using a secure verification code that appears in the certificate. When the recipient of the certificate is a public administration, it will be obligatory to check".

We are therefore witnessing another example of the use of ICT for taxes, which can provide additional security, whilst enabling the taxpayer and third parties to save time and unnecessary travel, and shorten Administration response times, by providing a computerized system for issuing certificates.

With respect to the AEAT website, RSERE art. 2.5 does not add anything extra to the general provisions for the General State Administration, establishing that login to the website is to be with a website certificate, consisting of a server certificate hosting information or any other secure device certificate or equivalent medium.

2) The website's content

LRJSP does not establish minimum obligatory content for websites. Nevertheless, the regulatory implementation. In the domain of the General State Administration, the RAECSP refers extensively to website content.

The RAECSP states that, through the websites, all actions, procedures, and services that require **authentication** from the public Administration or citizens are to be undertaken by electronic means[37].

[37] Art. 4.1 RAECSP.

Website content established by the RAECSP

Specifically, RAECSP art. 6.1 establishes that all websites have to have at least the following content:

a) identification of the website, as well as the owning body or bodies and those responsible for the management and the services made available within and, if applicable, from its derivative websites;

b) the information required to correctly use the websites, including a website map or equivalent information, specifying the browsing structure and the different sections available, as well as the information about intellectual property rights;

c) electronic advice services for the user on the correct use of the website;

d) a verification system for the website's certificates, which is to be directly accessible and free;

e) a list of electronic signatures which, in accordance with the provisions of this Royal Decree, are to be allowed or used in the website;

f) guidelines for creating electronic registrations accessible from the website;

g) information relating to personal data protection, including a link to the Spanish Data Protection Agency website.

Similarly, in accordance with RAECSP art. 6.2 , the websites are to make the following services available to citizens:

a) a list of the services available on the website;

b) services and electronic services menus;

c) a list of the electronic means that the citizens can use in each case to exercise their right to communicate with them.

d) a link to make suggestions and complaints to the relevant competent bodies;

e) access to the status of a file's processing, if applicable;

f) the publication of gazettes, if applicable;

g) if applicable, the electronic publishing of acts and communications that should be published on the notice or decree board, indicating the substantive or complementary nature of the electronic communication;

h) verification of the electronic seals of the public s and bodies the website comprises;organization

i) the checking of the authenticity and integrity of the documents issued by the public s and bodies the website comprises that have been authenticated using the secure verification code;organization

j) an indication of the official time and date for the purposes of calculating periods.

Lastly, RAECSP art. 6.3 establishes that the bodies responsible for ownership of the website may also include other services or content in it. However, it will not be necessary to offer the information and services referred to in the previous section of this regulatory precept in the derivative websites if they already feature in the websites they derive from (RAECSP art. 6.4). Finally, websites whose owners have powers over territories with a co-official language regime are to make accessing their content and services in the corresponding languages possible (RAECSP art. 6.5).

RSERE art. 3.1 established that the AEAT website will provide the content and make the services available to citizens in that respect, as expressly provided in RAECSP art. 6. It can therefore be stated that the AEAT website regulation fits the basic legislation and the regulations on procedures for electronic administration.

Additional contents and services on the AEAT website

Some additional content and services are provided, which are not considered among the construed minimum content and services available to citizens envisaged in the regulatory order, in accordance with the provision of RAECSP art. 6.3.

In this respect, RSERE art. 3.2 determines that the Tax Agency website has to also include the following content:

a) access to the current Resolution for creating the website as well as the regulations by which the electronic seals are created; the application of a secure verification code system is agreed, or it is established as compulsory to communicate using electronic means, all within the scope of Tax Agency actions;

b) a list of the electronic documents standardized within the Tax Agency's electronic registry domain;

c) technical specifications to which the presentation of electronic documents to the Tax Agency's electronic registry should adapt;

d) access to the information relating to the Tax Agency's adjudication procedures, in accordance with the provisions on the contractor's profile;

e) agreements between the Tax Agency and other public administrations for the recognition of electronic records, which could be mutual, or for the creating of shared websites;

f) interruptions needed for essential technical reasons.

Similarly, in accordance with RSERE art. 3.3, the Tax Administration website is to make the following additional services available to citizens:

a) administrative and tax information relating to the rights and obligations of citizens;

b) a Tax Agency electronic registry, with detailed information about the public holidays in the calendar for the purposes of presenting electronic documents in the electronic registry;

c) access to information about public tendering procedures and actions of public recruitment.

d) electronic access for interested parties to the content of the administrative actions for the specific purposes of notifying a summons.

Lastly, it should be considered that, in accordance with RSERE art. 2.3, the official date and time of the Tax Agency website is to correspond with the time in mainland Spain in accordance with that established by the National Interoperability Plan, where applicable.

The information and services classed as additional in this AEAT Resolution derive from regulations other than RAECSP art. 6. Their inclusion in the additional services and content offered by the AEAT website is undoubtedly worthy of positive evaluation. It is clear that the more information and services offered to citizens through the website, the closer it will bring the Administration to citizens and the more effective and efficient administrative actions will be. For that reason, we consider that this list of additional information and services through the AEAT website should be constantly updated and complemented in the future, with new content that enriches and improves the functions of the website.

4. Electronic registries

4.1. The concept of the electronic registry

1) The old online tax registries

RD 772/1999, of 7 May, which regulated the presentation of applications, documents, and communications with the General State Administration already referred to the so-called online registries, by expressly accepting presentation through online means at its registry offices.

Recommended reading

R. Oliver Cuello (2011). "Los registros electrónicos de la Agencia Estatal de Administración Tributaria". *Quincena Fiscal* (no. 18).

Regulation in the tax domain

The regulation responsible for the creation of online registries in the tax domain was the Resolution of 23 July 2002, of the Tax Presidency (which created a general online registry and a staff online registry), repealed by the Resolution of 3 June 2005, of the Tax Presidency, which regulated online registries. The Resolution of 23 August 2005 of the AEAT General Directorate is also worth mentioning. It regulated the presentation of certain electronic documents in the general online registry of the AEAT, and the scenarios and conditions in which the social partnership could be extended to the presentation of such documents were established.

In accordance with art. 1 of the Resolution of 3 June 2005, the general **online registry** was regulated for the reception and issue of declarations, applications, communications, and other documents sent by online means (section 1), as well as the online registry for the reception and issue of requests, applications, documents, and communications that are sent by its staff using online means (section 2).

A basic characteristic of the old online registries was their **speciality**. Indeed, in accordance with RD 209/2003, of 21 February, regulating online registries and notifications, a new art 16.1 was added to RD 772/1999, of 7 May, according to which the online registries had to allow online presentation of applications, documents, and communications relating to the procedures that were specified in their creation resolution. The web page for access to the registry showed the updated list of applications, documents, and communications that could be presented. In accordance with what art. 16.2 established for this regulation, reception of applications, documents, and communications to an online registry that were not included on the aforementioned list, or had been presented by means other than online, meant no action would be taken. These cases were filed as not presented, and the sender was informed accordingly.

Given that the online registries were conceived to serve the procedures indicated in the creation resolution, **the principle of versatility**, which was established by the LRJPAC for physical registries, **did not apply to them**. This versatility, however, did provide for the electronic registries, regulated in the

LAECSP, although the maximum level is not reached, because it only admitted submit the writings in the electronic record of the same Administration to the one they were going to.

2) The current electronic tax registries

The LAECSP devoted arts. 24 to 26 to electronic registries. It was established in the LAECSP that public administrations were to create electronic registries to receive and remit applications, documents, and communications.

It was specified in the LAECSP that **electronic registries** may accept, firstly, standardized electronic documents corresponding to the specified services and procedures in accordance with the provisions in the registry's creation resolution, completed in accordance with pre-established formats, and secondly, any other application, communication, or document addressed to any organ or entity within the scope of the Administration owning the registry.

In this respect, the RAECSP[38] establishes that electronic registries are to carry out the following **functions**:

(38)Art. 28 RAECSP.

1) the reception and remission of applications, documents, and communications relating to the corresponding procedures in accordance with their creation resolution, and for attached documents, as well as the emission of the receipts required to confirm reception;

2) the electronic remission of documents, applications, and communications to recipient persons, bodies, or units;

3) the recording of the corresponding entries and outputs;

4) functions of recording and certification in scenarios of litigation, discrepancies, or queries about the reception of applications, documents, and communications.

The LPACAP establishes that each administration will have a **general electronic record** in which the corresponding entry will be made of any document that is filed or sent to any administrative body, public body or entity related to or dependent on them. Any outgoing official documents addressed to other organs or individuals[39]may also be noted therein.

(39)LPACAP art. 16.1.

In addition, the law also provides that the public bodies related to or dependent on each administration may have their own electronic record, which will be fully interoperable and interconnected with the general electronic record of the administration they depend on.

In this respect, according to the legal provision, the general electronic record of each administration will function as a portal that eases access to the electronic records of each body. Both the general electronic record of each administration and the electronic records of each body shall comply with the safeguarding and security measures provided for in the law on personal data protection.

On the other hand, LPACAP art. 16.1 establishes that the provisions for the **creation of electronic registries** will be published in the corresponding official journal and that their full text must be available for consultation in the electronic headquarters that grants access to the record. In any case, the provisions for the creation of electronic registries shall specify the body or unit responsible for its management, as well as the official date and time and the days declared as non-working days.

This legal precept also indicates that the updated list of proceedings that can be initiated will be available in the electronic headquarters that grants access to each record.

The LPACAP also provides that the documents that the data subjects address to the public administration bodies **may be filed or submitted**:

- in the electronic registry of the administration or body the documents are addressed to, as well as in the remaining electronic registries of any of the parties referred to in article 2.1;
- in post offices, as is established by regulation;
- in diplomatic representations or consular offices of Spain abroad;
- in registration assistance offices;
- in any other office established by the provisions in force[40].

(40)LPACAP art. 16.1

Therefore, the documents the data subjects address to public administration bodies may be filed in the electronic registry of the administration or agency to which they are addressed, as well as in the remaining electronic records of any public administration, that is, the *Administración General del Estado* (General Administration of the State, Spain), administrations of the autonomous regions, entities that make up the local administration and the institutional public sector.

In this way, the **highest level of register versatility** is achieved. The regulation of records in the LPACAP is improved when compared to the previous regulation, and these advances are two-fold. On the one hand, LAECSP art. 24 only allowed the filing of documents in the electronic registry of the same administration to which they were addressed, and on the other, LRJPAC art. 38.4 (regarding face-to-face records) did not consider all local entities, but only provincial councils and municipalities with large populations.

For records to be effectively versatile, LPACAP art. 16.4 provides that the electronic registry of each and every administration **must be fully interoperable** so as to ensure their computer compatibility and interconnection, as well as the telematic transmission of record entries and documents filed in any of the registries.

This said, although this normative progress relative to the regulation of electronic records must be praised, the doctrine reminds us that, by simply regulating a certain institution through a law, the reality will not change unless it is accompanied by an adequate budgetary allocation that allows the implementation of the aforementioned changes. Hence the extension in the effective application of the legislative precepts related to electronic registries.

Validity of rules for archives, registries and general entry point

According to LPACAP 7 DF, the provisions regarding the electronic registry of empowerments, electronic registry, registry of authorized civil servants, the Administration's general electronic entry point and single electronic file shall take effect two years after the entry into force of the Law (that is, as of 2 October 2018). However, this provision is amended by article 6 of the RD Law 11/2018, of 31 August, which states that these regulations shall take effect from 2 October 2020.

In this respect, LPACAP 4 DT establishes the transitory regime of files, registries and general entry point, noting that while the provisions regarding the electronic registry of empowerments, electronic registry, the Administration's general electronic entry point and single electronic file are not yet in force, the public administrations will maintain the same channels, means or electronic systems related to said matters in force, which safeguard the right of persons to deal with administrations electronically.

In relation to regulatory development, the LPACAP's Sole Repealing Provision provides that articles 2.3, 10, 13, 14, 15, 16, 26, 27, 28, 29.1.a, 29.1.d, 31, 32, 33, 35, 36, 39, 48, 50, paragraphs 1, 2 and 4 of the first Additional Provision, the third Additional Provision, the first Transitional Provision, the second Transitional Provision, the third Transitional Provision and the fourth Transitional Provision of RD 1671/2009, of 6 November, are expressly repealed. Consequently, Law 11/2007, of 22 June on citizens' electronic access to public services (RAECSP) is partially developed.

The articles relative to the aforementioned subjects will be held in force until, in accordance with LPACAP 7 DF, the provisions relative to the electronic registry of empowerments, electronic registry, the Administration's general electronic entry point and electronic single file take effect.

The LPACAP also provides that the documents filed in person to the public administrations must be digitized, in accordance with the provisions of art. 27 and other applicable regulations, by the registry assistance office in which they have been submitted for incorporation into the electronic administrative file. The originals will be returned to the data subject without prejudice to those cases in which the rule determines the custody by the Administration of the documents filed or it is mandatory to produce objects or documents on a specific support not eligible for digitization[41].

(41)LPACAP art. 16.5

In this regard, it is provided that, by regulation, administrations may establish the obligation to submit certain documents electronically for certain procedures. This applies for groups of natural persons who, due to their economic, technical, professional dedication or other reasons, it is established that they have access to and availability of the necessary electronic means.

Validity and effectiveness of copies made by public administrations

In accordance with LPACAP art. 27, public administrations shall be required to issue authentic electronic copies of any document on paper produced by the data subjects and which is to be included in an administrative file.

Electronic copies of documents on paper or other non-electronic media that are eligible for digitization, will require that the document has been scanned. These copies must include metadata that demonstrates its copy status and that is visible when looking up the document.

Scanning is the technological process through which a document on paper or other non-electronic media is converted into an electronic file that contains the encoded image of the document.

The copies made by the competent bodies of the public administrations where the identity of the body that has made the copy and its content are guaranteed will be considered authentic copy of a public administrative or private document regardless of the medium. Authentic copies will have the same validity and effectiveness as the original documents.

In relation to **archivingdocuments**, the LPACAP determines that each administration must have a single electronic archive of the electronic documents that correspond to procedures which have already been concluded, in accordance with the relevant legislation[42].

(42)LPACAP art. 17

Electronic documents must be kept in a format that ensures authenticity, integrity and conservation of the document, as well as its consultation regardless of the time elapsed since its issuance. In any case, the possibility of transferring data to other formats and media that allows access from different applications will be ensured. The deletion of said documents must be authorized in accordance with the provisions of the required regulations.

In addition, the legal regulations provide that the media in which documents are stored must have **security measures** in accordance with the provisions of the National Security Scheme. Such measures must ensure the integrity,

authenticity, confidentiality, quality, protection and conservation of stored documents. In particular, these measures will ensure user identification and access control, as well as compliance with the guarantees provided in the data protection legislation.

In the domain of **state Tax Administration**, the objective of the Resolution on Electronic Headquarters and Registries (RSERE) is to create the AEAT website, as well as the regulation of its electronic registry, along with the staff electronic registry. In accordance with art. 5.1 of this Resolution, the AEAT has an electronic registry, accessible on its website, to receive and remit applications, documents, and communications, in the manner and with the scope and functions provided for in RAECSP arts. 26 to 31.

The **AEAT electronic registry**, in accordance with the provisions of the RSERE will have the official time and date corresponding to the AEAT website, in accordance with the National Interoperability Plan, with the calendar of public holidays applicable to AEAT actions and procedures. According to RSERE art. 2.3, the official date and time of the Tax Agency website is to correspond with the time in mainland Spain in accordance with the National Interoperability Plan, where applicable.

The AEAT electronic registry

In a similar way to the provisions contained in sections 3 and 4 of RAECSP art. 27, it is determined in sections 3 and 4 of RSERE art. 5 that, under no circumstances can corporate email boxes assigned to public employees or the different units or organizations operate as the AEAT electronic registry; and that applications, documents, and communications may only be presented by telefax in scenarios expressly provided by a legal ruling.

In RSERE art. 6 it is stated that the Tax Office IT department is responsible for managing the AEAT's electronic registry. The approval and modification of the list of standardized electronic documents within the domain of the registry correspond to the manager of the department of Organization, Planning, and Institutional Relationships. They are also responsible, on behalf of the corresponding departments or services, for approving and modifying the corresponding forms, specifying which fields are compulsory to complete and the congruence criteria for the data to include in the form. The forms themselves should contain accurate indications of the compulsory fields. In any event, approved standardized documents in accordance with a regulation published in the State Official Gazette in this area are considered part of this list.

The Resolution of 28 December 2009 creates both the AEAT electronic registry and the staff electronic registry. RSERE art. 15.1 states that the aforementioned electronic registry will be the responsibility of the Human Resources department, and that its aim will be to facilitate the reception and remission of requests, applications, documents, and communications that are sent by its employees by those means, with respect to the procedures constantly being undertaken in the corporate intranet.

4.2. Admissible documents and the rejection of documents from electronic registries

1) The admission and rejection of documents

In relation to the documents provided by the data subjects to the administrative procedure, the LPACAP incorporates a rule that has its origin in tax legislation, specifically in LGT art. 95.2, which was the first one to stablish that

when public administrations can get information by electronic means, they cannot require the data subjects to provide certificates from the Tax Administration in relation to said information.

The LPACAP provides that **data subjects have theright not to provide documents** that are already held by the acting administration or have been prepared by any administration, regardless of whether the submission of the aforementioned documents is mandatory or optional in the concerning procedure, provided that the data subject has expressed their consent to the consultation or collection of said documents. The consultation or procurement will be presumed to have been authorized by the data subjects unless explicit opposition is expressed in the procedure or the relevant special law requires explicit consent[43].

(43)LPACAP art. 28.2

In the absence of opposition from the data subject, public administrations must collect the documents electronically through their corporate networks or through consultation with data intermediation platforms or other electronic systems enabled to this end.

In case of mandatory reports already prepared by an administrative body other than the one that processes the procedure, these must be submitted within ten days of receipt of the request. Once this deadline is met, the data subject will be informed that they can provide this report or wait for its referral by the competent body.

Documents provided by data subjects relative to the administrative procedure

It is established in LPACAP art. 28 that administrations will not require data subjects to submit original documents, unless, exceptionally, the relevant legislation establishes otherwise.

Also, public administrations will not require data or documents from data subjects which are not required by the applicable legislation or which have been previously submitted by the data subject to any administration. For these purposes, the data subject must indicate the time when said documents were filed and the administrative body where they were submitted. Public administrations must collect them electronically through their corporate networks or by consulting the data intermediation platforms or other electronic systems enabled to that end. This consultation will be presumed to be authorized by the data subjects unless explicit opposition is expressed in the procedure or the relevant special law requires explicit consent. In both cases, data subjects must be informed in advance of their rights regarding personal data protection. Exceptionally, if public administrations could not collect the aforementioned documents, they may request their resubmission.

When, on an exceptional basis, and in accordance with the provisions of the LPACAP, the administration will request the data subject to submit an original document on paper, the data subject must obtain an authentic copy according to the requirements established in article 27, prior to its electronic submission.

The resulting electronic copy will expressly reflect this circumstance.

Exceptionally, when required by the relevance of the document in the procedure or when there exist doubts regarding the quality of the copy, administrations may request the reasoned collation of the copies provided by the data subject and display of the document or of the original information.

With respect to the applications, documents, and communications that can be **rejected** in electronic registries, the RAECSP establishes[44] that the electronic registries may reject the electronic documents presented to them under the following circumstances:

(44)Art. 29.1 RAECSP.

a) when the documents are addressed to bodies or organization outside the domain of the General State Administration;

b) when they contain a malicious code or a device likely to affect the integrity or security of the system;

c) in the case of standardized documents, when the fields ruled as compulsory for approval of the document are not completed, or when it contains inconsistencies or omissions that impede its processing;

d) when they are documents that, in accordance with the provisions of RAECSP arts. 14 and 32, should be presented in specific electronic registries.

In the domain of state Tax Administration, the RSERE is responsible for listing **the documents admissible in the AEAT electronic registry**[45], which are the following:

(45)Art. 7.1 RSERE.

a) standardized electronic documents or forms corresponding to services and procedures specified on the AEAT website, completed in accordance with preestablished formats and presented directly or through a shared site;

b) any electronic document other than those mentioned in the previous section addressed to any AEAT body;

c) financial administrative claims filed against acts and actions of the AEAT or any of their organizations;

d) applications, documents, and communications of the jurisdiction of the Council for the Defence of the Taxpayer.

In this respect, it is worth recalling the provision with respect to **correction** by the RGGIT, which states that all receptions through electronic, computerized and online techniques and means will be provisional to the results of their processing. When they do not fit the design and other specifications established by the applicable regulation, the declaring party will have to correct its errors within ten days after the day of being notified of the requirement. If anomalies remain unattended after the aforementioned period and they still impede the Tax Administration from understanding the data, the petition for the corresponding obligation will be withdrawn or deemed not compliant, and it will go on file without further procedures. In this respect, the RGGIT[46]

(46)Art. 89.2 and 3 RGGIT.

states that when the correction requirements have been attended to on time, but the observed errors are not understood as having been corrected, it must reported in the file.

According to the RSERE, the AEAT electronic registry **is to automatically reject**, whenever possible, the applications, documents, and communications referred to in RAECSP art. 29.1, providing the information and warnings alluded to in section 2 of that article during the same session and giving the interested party the option to request proof of the attempt to present, unless the information on the attempt appears on the screen as unprintable or not possible for download by the interested party[47].

(47)Art. 7.4 RSERE.

2) Admission requisites and identity accreditation

With the aim of making it possible to read and store the documents, the Tax Agency's website is to contain information on the **formats and versions that should be used for presenting electronic documents**, applying the criteria established by the National Interoperability Plan and the National Security Plan[48].

(48)Art. 9.1 RSERE.

Also related to the admission requisites for documents and adding information, the RSERE indicates that the standardized request systems may include automatic checks of the information provided compared to data stored in their own systems or those belonging to other administrations, and even **offer the form readily completed**, either fully or partly, so that the citizen can verify the information, and, where applicable, modify it and complete it. Specifically, a copy of the presented electronic document may be presented in order for the appropriate corrections to be made before a new presentation[49]. The latter provision is clearly linked with the extensive experience of the Tax Administration in the area of personal income tax draft returns, as well as their confirmation through a range of different electronic channels.

(49)Art. 9.2 RSERE.

When it comes to **identity accreditation**, the RSERE establishes that electronic documents may be presented to the electronic registries by interested parties or their representatives. When there is no accreditation for the representation or it cannot be presumed, the aforementioned accreditation will be requested via the corresponding method.

Lastly, with respect to the accreditation of identity when presenting electronic documents to the AEAT electronic registry, it is worth highlighting that the RSERE states[50] that the presented electronic documents should be signed using an **electronic signature** system from those the Tax Agency allows.

(50)Art. 10.2 RSERE.

4.3. Calculating periods and records of entries in electronic registries

1) Calculating periods in electronic registries

With respect to **calculating periods**, the regulation for electronic registries introduces a particularity when it comes to the general administrative regulation.

The general administrative regulation for calculating periods

LPACAP art. 30.2 establishes that unless expressed in law or by European Union guidelines, when periods are indicated by days, they are understood to be referring to working days, excluding Sundays and official public holidays from the calculation. When the periods are indicated by calendar days, this situation must be stated in the corresponding notifications.

If the period is set at months or years, they are to be calculated from the day after the corresponding act is notified or communicated, or from the day after the acceptance is given or rejection is implied. If the month of the due date does not have the equivalent date to the start of the calculation, the period will expire on the last date of the month (LPACAP art. 30.4). When the last day of the period is not a working day, it is to be extended to the first working day afterwards (LPACAP art. 30.5). Periods expressed in days are to be calculated from the day after the corresponding act is notified or communicated, or from the day after acceptance is given or rejection is implied (LPACAP art. 30.3.).

LPACAP art. 30.4 establishes a regulation that, as we will see, does not apply to electronic registries. Indeed, for face-to-face registries, when a date is a working day in the district or autonomous community where the interested party lives, and not a working day at the administrative body's office, or vice versa, it is to be considered a non-working day in any case.

In addition, another LPACAP regulation needs to be considered, which does not apply to electronic registries: the declaration of a day as either working or non-working when calculating periods, in accordance with LPACAP art. 30.8, does not determine the operating schedule of public administration centres, the organization of working hours, or the regime of working hours and schedules thereof.

Lastly, in accordance with LPACAP art. 48.7, the General State Administration and the autonomous community administrations will determine the calendar for non-working days for the purposes of calculating periods in their respective domain with respect to the official working calendar. The calendar approved by autonomous communities will include the non-working days of the entities that form part of the local administration corresponding to their territorial domain, and the calendar will apply to those entities. The aforementioned calendar should be published in the corresponding official gazette before each year starts and in other communication channels to ensure citizens are aware of its existence.

When it comes to calculating deadlines, the **LPACAP** states that the electronic registries are to be governed by the official date and time of the website of access for the purposes of calculating the attributable period for both the interested party and the public administrations, and the website should have the necessary security measures to guarantee its integrity and for it to be visible[51].

(51) Art. LPACAP art. 31.2

The electronic registries are to enable applications, documents, and communications to be presented at any time of the day or night throughout the entire year. This provision relating to electronic registries introduces a difference compared to the general regulation of the calculation of periods.

All the same, it qualifies the previous guideline in accordance with the provisions of the LPACAP itself. Indeed, this legal text establishes that for the purposes of calculating a fixed period in working days, and in terms of compliance with periods by interested parties, presentation on a non-working day is to be understood as the start of the next working day, unless the regulation expressly permits reception on a non-working day[52]. Consequently, the non-working days calendar does not affect the option of sending documents to an electronic registry (given that applications, documents, and communications can be presented at any time of day and night throughout the year); but the aforementioned non-working days calender does affect definition of moment the document is entered into the electronic registry and has an impact on calculating periods.

(52)Art. 26.3 LAECSP.

Regulation of the calculation of periods in the electronic registries

Lastly, LPACAP art. 31.1 states that each website containing an electronic registry will determine the days considered as non-working days, with respect to the territorial area in which the owner of the registry exercises their powers. It goes on to introduce a difference compared to the general regulation of the calculation of periods by indicating the provisions of LPACAP art. 30.6 can never be applied to electronic registries. It is worth remembering that this last precept establishes that "when a date is a working day in the district or autonomous community in which the interested party lives and not a working day at the administrative body's office, or vice versa, it is to be considered a non-working day in any case".

With respect to the **calculation of periods in documents presented to the AEAT electronic registry**, the RSERE establishes that the applications managing the procedures that use the AEAT electronic registry are to make it possible to present applications, documents, and communications at any time of day or night throughout the entire year, without prejudice to interruptions for the technical and operational maintenance contemplated in RAECSP art. 30.2, which are to be announced as early as possible on the respective website[53].

(53)Art. 11.1 RSERE.

Calculating the periods in the AEAT electronic registry

When it comes to unplanned interruptions preventing the presentation of documents, given that it involves managing applications such as those providing support to the AEAT electronic registry, they cannot be announced beforehand, and action is to be taken in accordance with the provisions of RAECSP art. 30.2. Whenever possible, users are to be informed of the incident and an extension is to be communicated in the event a period is soon to expire (RSERE art. 11.2).

In addition, RSERE art 11.3 states that, in accordance with the provisions of LAECSP art. 26.1, the date and time to record for entries into the electronic registry will be the official date and time from the AEAT website, which is to be visible to the user.

Lastly, and somewhat superfluous in our view, it is indicated in RSERE art. 11.4 that the calculation of periods will be undertaken in accordance with the provisions in sections 3, 4, and 5 of LAECSP art. 26. It is also clarified in section 5 of the same precept that once the

date the document is presented is determined, the calculation of the respective period for the procedure will refer to the calendar specifically applicable in accordance with the general or special administrative regulation to be applied. We recall that according to RSERE art. 5.2, the AEAT electronic registry will refer to the non-working days calendar corresponding to the AEAT actions and procedures.

2) Recording entries. The receipt of presentation

With respect to the legal and regulatory guidelines that regulate the operation of electronic registries, both in the general administrative domain and the tax domain in particular, we consider it is worth highlighting that **maximum transparency has been promoted**.

In fact, it can be stated that the regulation is very comprehensive, particularly in the state tax domain, in terms of both the information that has to be provided from electronic registries in the websites as well as the recording of entries and the issuing of receipts of presentation.

With respect to the information that has to be offered on electronic registries on the websites, as has already been mentioned, the LPACAP indicates the **provisions for creating electronic registries** are to be published in the corresponding official gazette and the entire text must be available for consultation in the website providing access to the registry[54]. In any event, the provisions for creating electronic registries will specify the body or unit responsible for their management, as well as the official date and time, and the dates declared as public holidays.

(54)Art. LPACAP art. 16.1

In addition, the updated list of procedures that can be initiated in it will appear in the electronic access to each registry.

In the state tax domain, the RSERE is responsible for regulating the **recording of entries in the AEAT electronic registry**. In accordance with this resolution, the reception and sending of applications, documents, and communications will create the corresponding entries in the electronic registry, using secure online means to record the entries and recover the entry data. In addition, the data system providing support for the electronic registry is to guarantee both the recording of each entry or output that takes place and its content, establishing one record per entry in which the presented or remitted documentation is identified, which will be associated to the corresponding entry number[55].

(55)Art. 12 RSERE.

In relation to **recording entries** in the registries, the LPACAP establishes that entries will be recorded following the order in which the documents were received or sent out. The entries will include the date of the day on which they occur. Once the registration process has been completed, documents will be sent without delay to their recipients and to the corresponding administrative units from the registry they were submitted to[56].

[56] LPACAP art. 16.2

The electronic registry of each administration or body will provide proof, in each of the entries recorded, of the following: entry number; heading expressing its nature; submission date and time; data subject identification; administrative body, if applicable; and person or administrative body to which it is sent, and, where appropriate, reference to the content of the document that is registered. To this end, LPACAP art. 16.3 provides that a **receipt** consisting of an authenticated copy of the document in question **will be automatically issued**, including the date and time of submission and registration entry number, as well as a receipt for other accompanying documents, ensuring integrity and non-repudiation of said documents.

Issuing an AEAT electronic registry receipt

In the state tax domain, RSERE art. 13.1 states that the electronic registry will automatically issue an AEAT electronically signed receipt, containing the following: a) the individual registry code or number; b) the date and time of presentation; c) a copy of the document, communication or application presented, a literal copy of the data entered in the form presented being admissible for those purposes; d) where appropriate, the numbering and naming of documents attached to the presentation form or document presented, followed by an electronic signature for each one; and e) when involving documents starting a procedure, information on the maximum regulatory period established for the resolution and notification of the procedure, as well as the potential effects of implied rejection, when it can be determined automatically.

Similarly, the receipt of presentation, in accordance with the provisions of RSERE art. 13.2, is to indicate that it does not prejudice the definitive admission of the document in the event of any of the causes for rejection contained in RAECSP art. 29.1.

Lastly, the sending of the receipt of presentation to the interested parties for the documents that will be recorded in the electronic registry, in accordance with RSERE art. 13.3, is to occur, whenever possible, during the same session the presentation is made, as such deriving complete guarantees of the authenticity, integrity, and acceptance by the Administration when it comes to the content of the presented forms, as well as the attached documents, providing citizens with fully supportive elements that the presentation was completed, along with the content of the presented documentation, which may be used later independently, without the aid of the Administration or the electronic registry itself.

5. Personal data protection

On 6 December 2018, Organic Law 3/2018, of 5 December on protection of personal data and safeguarding of digital rights came into force, approved in response to the need to adapt certain national situations to the mandates required by the General Data Protection Regulation 2018/679, of 27 April 2016. Both regulations replace the previous regulation, Organic Law 15/1999, of 13 December on personal data protection and Directive 95/46/EC, of the European Parliament and of the Council, of 24 October 1995 on protection of individuals with regard to the processing of personal data and on free movement of such data.

Personal data protection regulation

The LOPD is a legal development of art. 18.4 of the Spanish Constitution, which establishes that "the law will restrict the use of information technology to ensure personal and family honour, the privacy of citizens, and the full exercise of their rights", a precept that is found in the same article regulating the protection of the right to privacy, the inviolability of the domicile, and the secrecy of communication, and located in the first section of the second chapter of title 1 of the Constitution, devoted to the fundamental rights and public liberties (Spanish Constitution arts. 15 to 29).

Similarly, it must be considered that Spain is signatory of the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, of 28 January 1981, ratified by the instrument of 27 January 1984.

The right to informational self-determination or information technology freedom is a fundamental right acknowledged in the Spanish Constitution, art. 18.4, subject to enforcement therefore through a writ of *amparo*. Its key content is integrated by the powers within the so-called *habeas data*, configured in the European Convention for data protection. Therefore, the legislator has to respect this during the course of proceedings, as precepts that violate or impair it go against the Spanish Constitution.

5.1. Right to personal data protection

The **right to personal data protection**, which is included in the EU's Charter of Fundamental Rights, is a fundamental right which gives the natural person the power to control the processing of their personal information. That is, any collection, use and transfer of data must be governed by the principles of legality, loyalty and transparency. This allows the Tax administration to know what data is being processed, how long for and to what end, among other issues.

Recommended reading

Olivares Olivares, B. D. (2018). "El acceso a los datos personales en la Administración tributaria". *CEF. Revista de contabilidad y tributación* (issue 419).

The **basis** for this right is found in the free development of personality, which will end up being impaired due to the simple fact that the interconnection and combination of data stored in information technology format ends up creating a certain image, either real or false, but unwanted by its owner in any case.

The **objective scope** of the fundamental right includes all personal data that directly or indirectly identify the natural person so that what is protected is not only their intimacy, but also their privacy.

The content of the right to informational self-determination

The right can only be effective by granting the owner the possibility of controlling personal data, that is, allowing them to know, correct and delete these data or add new one. These safeguards aimed at ensuring rights is called *habeas data*.

It may be limited like any other basic right, but it has to be considered that state interventions that want to annul or make the data protection system more flexible have to be constitutionally based, legally established, and reduced to the bare minimum to achieve the objective that justifies them.

From a **tax point of view**, it can be concluded that all the information contained in the databases of the Tax Administration, which is derived from natural persons or allows them to be identified, has to adapt its legal scheme to the postulates of the LOPD and the RGPD (arts. 2 and 3). According to the RGPD, all information about an identified or identifiable natural person is considered to be personal data. In this respect, any person whose identity can be determined, directly or indirectly, in particular by means of an identifier such as, for example, a name, an identification number, location data, an online identifier or at least one or more elements of the physical, physiological, genetic, psychic, economic, cultural or social identity of said person, shall be considered as an identifiable individual. As we can see, the RGPD the concept of identifier includes for the first time, following the instructions of the GT 29 on the concept of personal data (WP 136. *Opinion 4/2007 on the concept of personal data*).

Therefore, the data contained in the processing activity registries of the Tax administration are mostly personal and, in turn, have an unquestionable economic content. This quality only highlights the importance that must preside over its correct processing.

In any event, it is essential to go into more depth about personal data protection in the tax domain. In this sense, it is worth highlighting the provisions of the RGGIT[57], according to which the use of electronic, computerized or online means and techniques should respect the right to personal data protection under the terms established in the LOPD, in other specific laws that regulate the processing of the data, and within its procedural regulations.

(57)Art. 82 RGGIT.

5.2. The principles of data minimization, the purpose limitation, the duty of information and the legitimizing budgets of treatment

The principles of data minimization, the purpose limitation, the duty of information and the **legitimizing budgets of treatment**

1) Principles of data minimisation, purpose limitation and accuracy

The RGPD requires that the processing of information be governed by the principles it contemplates. In this regard, the principle of **data minimisation** must be stressed. According to this principle, the personal data that the Tax administration uses is required to adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. In turn, through the principle of **purpose limitation** the data on taxpayers must be collected for specific, explicit and legitimate purposes and that must not be subsequently treated in a manner incompatible with said purposes[58].

(58)RGPD art. 5

This mandate is closely linked with the tax importance the data provided to the Treasury should have, particularly the very wide-ranging content provided by the of different resolutions acting on the aforementioned concept and deemed correspondingly important.

The tax importance of data

With respect to the concept of tax importance and the wide scope given by jurisprudence, the Resolution of the Central Financial Administrative Court of 23 September 1987 applies, which by and large has been copied by later jurisprudence.

The ruling of the National Court of 16 May 1990 is equally relevant, defining tax importance as "the quality of such facts or acts that may be useful for the Administration, with respect to human rights, to find out whether certain individuals fulfil the obligation established in art. 31.1 of the Spanish Constitution, on contributing to maintain public budgets in accordance with their economic capacity, and if otherwise, being able to work to ends in accordance with the Law".

It is also important to keep in mind that the RGPD holds that the data will be **accurate** and, if necessary, will have to be updated. In addition, those responsible for the processing of the data must take reasonable measures so that personal data that are inaccurate with respect to the purposes for which they are processed are deleted or rectified without delay[59].

(59)RGPD art. 5.d

In addition, the LOPD establishes that the inaccuracy of data processing will not be attributable to the controller, provided that it has taken all reasonable measures to be deleted or rectified without delay, with respect to the purposes for which they are processed, when inaccurate data had been obtained by the

(60)LOPD art. 4

person directly responsible for the person concerned, by the person directly responsible for a mediator or intermediary; or from another person in charge; or had been obtained from a public registry[60].

The detection and elimination of inaccurate data

From our point of view, these principles, when sectoral legislation is lacking, would have to be developed, given that the Treasury has not yet developed suitable plans to detect and eliminate inaccurate data.

The RGPD commands the Tax Administration to adopt preliminary veracity controls of the data contained in their files, a mandate not yet assumed by the Treasury, as when so-called "discrepancies" occur between what the taxpayer declares and what a third party declares (when briefly cross checking information given in self-assessments), it does not hesitate in turning to owner of the data for most of the proof, through the opening of a verification file.

On the other hand, it should be noted that the principle of purpose limitation holds that the personal data subject to processing cannot be used for incompatible purposes. In contrast, RGPD art. 5.e, which contemplates the principle of storage limitation, establishes that the data will be kept in a way that allows the identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed and that, therefore, its processing will end and the data will be archived and subsequently deleted.

The deletion of unnecessary personal data

The alluded contradiction is that personal data would be difficult to delete within the tax domain – even if they were not necessary for the purpose for which they were collected – if the legal possibility existed of any public administration needing to know them, and managing to obtain them by transfer or communication with the single justification that they will be used for purposes not incompatible with those for which they were collected.

As the doctrine denounces, this is a dangerous new aspect of the current Law with respect to the content of the previous Organic Law 2/1992 of October 29, regulating the automated processing of personal data, which indicated that data for processing may not be used for purposes "different" to those for which the data would have been collected, whilst the current LOPD determines that the data for processing may not be used for purposes "incompatible" with those for which it was collected.

2) The right to information, and the consent of the party concerned

With respect to the **duty to inform in the collection of data**, the GDPR establishes that the data subjects to whom personal data are requested will have to be previously informed in an express, accurate and unambiguous manner[61].

[61] Art. 13 RGPD art. 13

The following information will have to be provided:

- the identity and the contact details of the controller and, where applicable, of the controller's representative;
- the contact details of the data protection officer, where applicable;

- the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;

- where the processing is based on article 6.1.f, the legitimate interests pursued by the controller or by a third party;

- the recipients or categories of recipients of the personal data, if any;

- the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;

- the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject and to object to processing as well as the right to data portability;

- where processing is based on article 6.1.a or article 9.2.a, the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;

- the right to lodge a complaint with a supervisory authority;

- whether the provision of personal data is a statutory or contractual requirement, necessary to enter into a contract, an obligation, and the possible consequences of failing to provide the personal data;

- the existence of automated decision-making, including profiling, referred to in article 22.1 and 22.4 and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

The mandate incorporated in the indicated precept is perfectly applicable to the information requirements issued by the Treasury, which at present do not clarify all the points referred to, as the law prescribes.

Additionally, in the scenarios in which data is collected from **third parties** rather than the interested party, the latter would have to be expressly informed within one month of the recording of the data, the content of the processing, and its source.

Exceptions to the right to being informed

This right for information in tax data does not necessarily need to be affected by the exceptions the regulation itself contains: that the informing of the interested party is impossible or makes disproportionate demands in the view of the Data Protection Agency or equivalent autonomous community organization with respect to the number of interested parties, how old the data is, and possible compensatory measures deriving from accessible sources, to the public, or when expressly provided for by a law.

There is neither a law that excepts the aforementioned right for information about tax data, nor Data Protection Agency considerations that recognize disproportionate efforts in the informing referred to.

On the other hand, the RGPD establishes a series of **presupuestos legitimadores for the processing of data** (projection of the principle of lawfulness). In general, consent is not the legitimating budget in the field of Tax Administration. In this case, it suffices that processing is necessary for the fulfilment of a legal obligation applicable to the controller or that processing is necessary for the fulfilment of a mission carried out in the public interest or in the exercise of public powers conferred on the controller of the processing[62].

(62)RGPD art. 6.c and e

5.3. The rights to access, rectify, and delete data

The RGPD regulates the **right of access**, establishing it as the right of the data subject to request and obtain information of their personal data that is subject to processing; the purposes of the processing; the categories of personal data concerned; the recipients or categories of recipients to whom personal data were transferred or will be transferred, in particular to a recipient in a third country or international organization; if that is possible, the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period; the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject and to object to processing; when personal data have not been obtained from the data subject, the source from which the personal data originate; and the existence of automated decision-making, including profiling. The rights to request **rectification and erasure** set forth below are but a logical consequence of the right of access[63].

(63)RGPD arts. 15 to 17

Those rights of access, rectification, and deletion of personal data have to be requested directly to the Tax Administration. Now, the existence of the **exception** contained in LOPD 23.2 (previous LOPD, which is still in force by DA 14th LOPD). This needs to be considered, establishing that those responsible for the Treasury's files may reject the exercising of the rights to access, rectification and erasure when it creates obstacles for administrative actions associated with ensuring compliance with tax obligations, and in any case, when the party concerned is being investigated by inspectors.

The right to request access and rectification or erasure of personal data on the AEAT portal

Through Instruction 6/2000, of December 4, of the General Directorate of the AEAT, the exercise of these rights established in the previous LOPD has been developed. We understand that this rule is tacitly repealed for the most part after the entry into force of the new LOPD and the RGPD.

The right to request for access will be resolved within one month of receipt of the request. If the personal data of the persons concerned is not available, it will be notified within

the same period. That period may be extended by two further months where necessary, considering the complexity and number of requests. If the controller does not take action on the request of the data subject, they shall inform said data subject of any such extension within one month of receipt of the request, together with the reasons for the delay. The data subject must also be informed on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy.

If a positive decision is taken with respect to the information provided, regardless of the means in which it was provided, said information will be provided in a concise, transparent, intelligible and easily accessible form, using clear and plain language. If the data comes from several sources, the data relative to each of these sources will have to be specified.

The rights to request rectification and erasure of personal data may be exercised if the personal data of the person concerned are inaccurate or excessive. Steps can be taken by the data subject to ensure that the said data is rectified or erased upon request. The rights to request rectification and erasure shall be enforced without delay.

It is also indicated that:

"the right to request rectification or erasure will not be applicable if the data coincides with that existing in an administrative file. To proceed with the rectification or erasure, a prior review of the file by the legally established means will be necessary, and if they were amended, rectification or erasure of the personal data in computerized files may be considered".

In our opinion, this provision may end up undermining the content of the rights to request rectification and erasure of personal data. With the Administration acting on its own initiative, rectification or deletion of the data existing in these administrative files could have been foreseen once the origin of the right to request rectification or erasure had been verified.

Finally, in our opinion, the provision contained in subsection 5 is open to criticism. So, according to said provision:

"the exercise of the rights to request access, rectification and erasure of personal data may be rejected, in accordance with the provisions of art. 23.2 of Organic Law 15/1999, of 13 December on personal data protection, when said exercise hinders the administrative actions aimed at ensuring compliance with tax obligations and, in any case, when the data subject is being subject to investigative, verification or collection actions".

This is a clear overreach of the abovementioned Instruction, since the LOPD only refers to investigative activities.

In addition, RGPD art. 23 requires that, in order to restrict these rights, rules that contain at least the following should be approved: provisions regarding the purpose of the processing or categories of processing; the categories of relevant personal data; the scope of the established limitations; safeguards to prevent illegal or abusive access or transfer; the appointment of a controller or categories of controllers; the periods for which the personal data will be stored and the applicable safeguards given the nature, scope and purposes of the processing or categories of processing; the protection of the subjects' rights and freedoms and the data subjects' right to be informed on the limitation of processing, unless it can be detrimental to the purposes of said limitation.

5.4. The communication of personal data between administrations

With respect to the **communication or transfer of personal data for tax purposes**, LGT art. 95.1 is the legal regulation that should apply, both for its specific scope and for the increased protection of the rights at stake.

Regulation in the LGT on the transfer of personal data

LGT art. 95.1 states that data, reports, or records obtained by the Tax Administration whilst undertaking their functions are confidential and may only be used for applying taxes or resources the management of which it is assigned, and for imposing sanctions where applicable, and that they cannot be transferred or communicated to third parties, unless the purpose of the transfer is:

a) collaboration with jurisdictional bodies and the prosecution service in the investigation or prosecution of criminal offences that cannot be prosecuted simply at the request of an aggrieved person;

b) collaboration with other tax administrations for the purposes of complying with tax obligations in the jurisdiction of their powers;

c) collaboration with the Labour and Social Security Inspectorate and managing entities and common services from the Social Security in the fight against benefit fraud and collections of the quotas from the Social Security system, in obtaining and enjoying benefits on account of the aforementioned system, and to determine the level of contribution of each user in the National Health System benefits;

d) collaboration with public administrations in the fight against tax offences and fraud when obtaining or perceiving subsidies or grants from public or European Union funds;

e) collaboration with parliamentary research commissions within the legally established framework;

f) the protection of rights and interests of minors and the disabled by jurisdictional bodies or the prosecution service;

g) collaboration with the Court of Audit when the AEAT exercises their inspection functions;

h) collaboration with judges and courts to exercise final judicial resolutions; the judicial request for information will demand express resolution in that, after deliberation of the public and private interests affected by the issue involved and having exploited all other means or sources of knowledge about the existence of assets and rights of the debtor, the need to obtain Tax Administration data arises;

i) collaboration with the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Infringements, with the Commission for Surveillance of Terrorism Funding Activities, and with the Ministry for both commissions, in the exercising of their respective functions;

j) collaboration with public legal bodies or entities responsible for collecting non taxation public resources to enable the appropriate identification of those obliged to pay, as well as with the Directorate General of Traffic to provide them with notifications, aimed at collecting from such resources;

k) collaboration with public administrations for the undertaking of their functions, after authorization from taxpayers relating to the data supplied;

l) collaboration with the General Intervention Board of the State Administration for the exercising of their functions of economic-financial management control, public debt monitoring, public subsidies and grants control, and the fight against defaults in public sector entity trade operations.

m) collaboration with the Office for the Recovery and Management of Assets by means of the transfer of data, reports and historical records needed for the localisation of goods seized or confiscated in criminal proceedings, subject to accreditation of this circumstance.

A hotly debated issue since the appearance of Law 25/1995, of 20 July, that redrafted the previous LGT art. 113 (equivalent to the current LGT art. 95) on the use and transfer of tax data, has been the repeated allegations coming

from jurisdictional bodies on the **obligation to collaborate with judges and courts** established by the Spanish Constitution, art. 118, and art. 17.1 of Organic Law 6/1985, of 1 July, on judicial power.

The transfer of personal tax data to judges and courts

The Spanish Constitution, art. 118, establishes that "it is obligatory to fulfil the sentences and other final resolutions of judges and courts, and to provide the collaboration they require during the process and the execution of judgements". In addition, the Judicial Powers Act (LOPJ) art. 17.1 establishes that "all public and private persons and entities are obliged to provide, as established in law, the collaboration judges and courts require during the process and in the execution of judgements, with the exceptions the Constitution and laws establish, and without prejudicing the redressing of costs and credit of payments due in accordance with the law".

With respect to this controversy, the AEAT legal department maintains that the Tax Administration's obligation to provide information to jurisdictional bodies is based on the Spanish Constitution, art. 118, which enshrines the obligation to provide the collaboration judges and courts require during the process and in the execution of judgements. Now, the aforementioned obligation is not absolute or unlimited in nature, rather it appears legally established through LOPJ art. 17.1. Therefore, LGT art. 95.1 sets the boundaries for this obligation to collaborate with judges and courts, given that it is a regulation with legal status, a scope expressly contemplated by LOPJ art. 17.1.

What is more, Law 34/2015 of 21 September brought in a partial modification of the LGT in the form of the new LGT art. 95 bis, which regulates the **publication of situations of significant non-fulfilment of tax obligations**. The regulation establishes the periodical publication of comprehensive lists of debtors to the Public Treasury for tax penalties or debts where two conditions are met: a) when the total amount for the penalties and debts awaiting payment is above 1 million Euros and b) when said debts or penalties have not been paid by the end of the period for voluntary payment. As an exception, tax penalties and debts that are suspended or deferred are not included.

Regime for the publication of the lists and its legal effects

- The information that must be included in the lists are the personal data of the debtors (for natural persons, their name, surnames and tax ID no.; for organizations, their company name or denomination and tax ID no.) and the combined amount of debts and penalties awaiting payment.

- The publication regulated in this article relates exclusively to state taxes for which the application, sanctioning authority and powers of revision are exclusively attributed to bodies of the State Tax Administration, and where no competencies in these areas have been delegated to autonomous communities or local entities.

- For the determination of whether the requirements are met for publication on the list of debtors, 31 December of the year previous to the publication of the list is used as the reference date.

- The proposed inclusion on the list must be communicated to the relevant debtor so that they may respond with pleadings within a period of 10 days. For the communication to be understood as having been effected, it is sufficient that the Administration has proof of having made a notification attempt. The pleadings must relate exclusively to the existence of material errors, either factual or arithmetic in relation with the requirements indicated.

- After any relevant rectifications have been made, the publication resolution is issued. Notification of the resolution is understood as effected with its publication and with that of the list itself. The publication date must be set by ministerial decree and in all cases must be during the first six months of the year. The authority to issue the resolution rests with the General Director of the AEAT. The publication resolution caps off this administrative procedure.

- The publication must be made in all cases electronically, with the necessary measures taken to prevent the indexing of its contents on internet search engines. The lists will cease to be accessible after three months following the publication date.

- The situations described in the list of debtors may not be altered by actions subsequently carried out by the debtor, for example a payment order for the corresponding debts and penalties.

- The actions carried out in this procedure do not affect actions carried out in other tax procedures and are not cause for an interruption of the limitation period.

Meanwhile, Organic Law 10/2015 of 10 September regulates **access to the information contained in the final conviction sentences** on matters particularly relevant to fiscal control, including offences against the Public Treasury, insolvency offences, cases where the creditor is the Public Treasury and, finally, smuggling offences. In these scenarios, certain personal data on the party convicted or holding civil responsibility are made available for public access. The personal data contained in the judgements in final conviction sentences for the offences referred to above are to be publicly accessible.

The personal data will be published in the Official State Gazette and will be the following:

a) identification of the court case;
b) the name, surnames or company name of the party convicted or, where applicable, holding civil responsibility;
c) the offence for which they are convicted;
d) the penalties imposed;
e) the amount corresponding to damages to the Public Treasury for all concepts, in accordance with what was established in the sentence.

Nevertheless, as an exception, it is established that the above data will not be published if the party pays the full amount corresponding to the damages to the Public Treasury for all concepts, provided that the payment is made prior to the final sentencing.

5.5. The online transfer of data and the right not to provide those in the Administration's possession

The LGT establishes an obligation to act for the public administrations of particular importance, more than just a civil right to be exercised or not at their discretion.

The LGT imposes that, in the cases of tax data transfer to another public administration, tax information should preferably be supplied through the use of computerized and online means. When the public administrations can receive data through those means, **they cannot demand that the interested parties provide certificates**[64] from the Tax Administration with respect to the aforementioned information.

(64) Art. 95.2 LGT.

This LGT art. 95.2 is a pioneering legal order and is real progress on personal data protection and civil rights and assurances in the domain of ICT. We consider this is a more advanced and assured regulation for the citizen compared to that made by the LAECSP in this area, given that the latter stopped at establishing a subjective right, in its art. 6.2.b, which the interested party can choose whether to exercise.

The provisions of the RGGIT are of great importance, establishing that when a **tax certificate** has to be obtained from the AEAT to process an administrative action or procedure, the public administration that requires it should request it directly, and there is to be note of law that enables the request to be undertaken or the previous consent from the taxpayer. In those cases, the requesting public administration may not demand from the taxpayer that they provide the certificate. The AEAT is not to issue the certificate on request of the taxpayer when they are aware it has been sent to the corresponding public administration[65].

(65) Art. 71.3 RGGIT.

In fact, this precept tackles the obligation of public administrations directly requesting tax certificates that affect a certain citizen from the Tax Administration (at least in the state domain) and not from the aforementioned citizen, who will have the right not to provide the required data and documents, and in turn, the Tax Administration (state) will be obliged not to issue the certificate on the taxpayer's request when they are aware it has been sent to the corresponding public administration. In addition, in these cases of tax certificate requests by administrative bodies, in accordance with the RGGIT, in the state domain, the certificates are to be issued by online means, and for those purposes, data transfers will replace the tax certificates[66].

(66) Art. 73.2 RGGIT.

Activities

Case studies

1. Ms. Martínez is a famous film director who wishes to request a grant from the Ministry of Culture to shoot a film. Among the requisites is the providing of a certificate of the previous year's personal income tax declaration. Ms. Martínez would like to know if she can refrain from having to provide this tax certificate.

2. Mr. Pérez is thinking of requesting that the Tax Administration provide any of his personal data they have in their possession.

a) Is the Tax Administration obliged to provide this data?

b) Can Mr. Pérez request to delate or rectify his personal data?

c) Does the Tax Administration have to communicate Mr. Pérez's personal data to a criminal judge if requested?

d) And if the aforementioned judge has knowledge of important tax information whilst a case is ongoing, can or do they have to communicate it to the Tax Administration?

Self-evaluation

1. The current regulation on the use of ICT in the LGT...

a) does not establish a right for the taxpayer to relate with the Administration using electronic means.
b) establishes a right for the taxpayer to relate with the Administration using electronic means.
c) prevents the establishment of a right for the taxpayer to relate with the Administration using electronic means.

2. The requisites contained in LGT art. 96.5 relating to the legal validity of the electronic document...

a) are demands deriving from the particularities of the electronic format and are also expressly stated with respect to paper documents.
b) are demands deriving from the particularities of the electronic format and some of them are not stated, at least not expressly, with respect to paper documents, although this type of format should also be respected.
c) are demands that do not derive from the particularities of the electronic format, but rather come imposed by the regulation of the legal regime of the public administrations.

3. As the LPACAP establishes, a Limited Liability Company...

a) has the right but not the obligation to deal with public administrations electronically.
b) has neither the right nor the obligation to deal with public administrations electronically.
c) is obliged to deal with public administrations electronically.

4. The data subject party has the right to meet the payment obligations through the electronic means provided by law...

a) only for high amounts, higher than the amounts established by regulation.
b) exclusively.
c) preferentially and not exclusively.

5. The management and administration of the websites has to be the responsibility...

a) of a public administration, body, or administrative entity, although private persons or entities may be involved.
b) of private persons or entities, supervised by a public administration, body, or administrative entity.
c) of private persons or entities, guided by a public administration, body, or administrative entity.

6. According to the provisions of the LRJSP, in the website...

a) it is not necessary to guarantee the identification of the website owner, but it is for the means available for making suggestions and complaints.
b) it should always be ensured the website owner is identified, as well as the available means to make suggestions and complaints.
c) it should always be ensured the website owner is identified, but not the available means to make suggestions and complaints.

7. The documents that data subjects address to the organs of public administrations may be produced in the electronic registry of the Administration or body to which they are addressed...

a) as well as in the remaining electronic registries of any public administration.
b) or, where these do not exist, in the electronic registries of the General State Administration.
c) but not in the remaining electronic registries of the other public administrations.

8. In electronic registries, the calendar of non-working days...

a) does not affect the possibility of submitting documents to an electronic registry, but it does influence the determination of when the document is entered in the electronic registry.
b) does not affect the possibility of submitting documents to an electronic registry, and it does not influence the determination of when the document is entered in the electronic registry.
c) does not consider the possibility of sending documents to an electronic registry.

9. In accordance with the RGPD, when recorded data is found to be inaccurate, either completely or partly, or incomplete...

a) it is to be deleted or replaced by the corresponding rectified or completed data, but only at the request of the party concerned.
b) it is to be automatically deleted or replaced by the corresponding rectified or completed data.
c) it is to be deleted or replaced by the corresponding rectified or completed data, but only at the request of a judicial body.

10. When public administrations can obtain tax information by online means...

a) they may demand that the interested parties provide Tax Administration certificates relating to the aforementioned information.
b) they will have to demand that the interested parties provide written confirmation relating to the aforementioned information.
c) they may not demand that the interested parties provide Tax Administration certificates relating to the aforementioned information.

Answer key

Case studies

1. Ms. Martínez can refuse to provide the tax certificate. What is more, the Ministry for Culture should not have requested it, given that they are obliged to obtain the information from the Tax Administration by online means.

The LGT establishes an obligation to act for the public administrations of particular importance, more than just a civil right to be exercised or not at their discretion. The LGT art. 95.2 states that when the public administrations can obtain data through electronic means, they cannot demand that the interested parties provide Tax Administration certificates in relation to that data.

This LGT art. 95.2 is a pioneering legal order and is real progress on personal data protection and civil rights and assurances in the domain of ICT.

In the same vein, LPACAP art. 28.2 provides that data subjects have the right not to provide documents that are already in the hands of the acting administration or have been prepared by any other administration. The acting administration may consult or collect said documents unless the data subject objects to it. Objections will not apply when submission of the document is required as part of the exercise of sanctioning or inspection powers. Public administrations must collect documents electronically through their corporate networks or through consultation with data intermediation platforms or other authorized electronic systems.

Also, LPACAP art. 28.3 establishes that public administrations will not require the parties concerned data or documents not required by the relevant legislation or which have been previously submitted by the data subject to any administration. For these purposes, the data subject must indicate the time when said documents were filed and the administrative body where they were submitted. Public administrations must collect them electronically through their corporate networks or by consulting the data intermediation platforms or other electronic systems enabled to that end, unless explicit opposition is expressed in the procedure or the relevant special law requires explicit consent. Exceptionally, if public administrations could not collect the aforementioned documents, they may request their resubmission.

2. a) The Tax Administration is obliged to allow access (and, when applicable, erasure or rectification) to the data it owns on a citizen in their databases, in accordance with the provisions of RGPD art. 15.

Indeed, the RGPD regulates the right of access, establishing it as the right of the data subject to request and obtain information of their personal data that is subject to processing; the purposes of the processing; the categories of personal data concerned; the recipients or categories of recipients to whom personal data were communicated or will be communicated, in particular to a recipient in a third country or international organization; if that is possible, the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period; the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject and to object to processing; when personal data have not been obtained from the data subject, the source from which the personal data originate; and the existence of automated decision-making, including profiling.

The right of access to personal data must be requested directly from the Tax Administration. However, it is necessary to take into account the exception in LOPD art. 23.2 (the previous LOPD, which is held in force by LOPD 14 DA). This precept establishes that controllers of Public Treasury files may refuse the exercise of the rights of access, rectification and erasure when said exercise hinders administrative actions aimed at ensuring compliance with tax obligations and, in any case, when the data subject is under inspection.

2. b) Erasure or rectification of the personal data can be effectively requested, as established in RGPD arts. 16 and 17, precepts developed in the tax area by Instruction 6/2000, of December 4, of the General Directorate of the AEAT. We understand that this rule is tacitly repealed for the most part after the entry into force of the new LOPD and the RGPD.

The rights to request rectification and erasure may be exercised if the data subject's personal data are inaccurate or incomplete, inadequate or excessive. This data subject may request the rectification or, where appropriate, the erasure of said rights. The rights of rectification and erasure shall be enforced without delay.

Also, it is indicated in the Instruction that:

> "the right to request rectification or erasure will not be applicable if the data coincides with that existing in an administrative file. To proceed with the rectification or erasure, a prior review of the file by the legally established means will be necessary, and if they were amended, rectification or erasure of the personal data in computerized files may be considered".

In our opinion, this provision may end up undermining the content of the rights to request rectification and erasure of personal data. With the Administration acting on its own initiative, rectification or deletion of the data existing in these administrative files could have been foreseen once the origin of the right to request rectification or erasure had been verified.

Finally, in our opinion, the provision contained in subsection 5 is open to criticism. So, according to said provision:

> "the exercise of the rights to request access, rectification and erasure of personal data may be rejected, in accordance with the provisions of art 23.2 of Organic Law 15/1999, of 13 December on personal data protection, when said exercise hinders the administrative actions aimed at ensuring compliance with tax obligations and, in any case, when the data subject is being subject to investigative, verification or collection actions".

This is a clear overreach of the abovementioned Instruction, since the LOPD only refers to investigative activities.

2. c) The Tax Administration has to communicate Mr. Pérez's personal data to the criminal judge, in accordance with the provisions of LGT art. 95.1.a: personal data cannot be transferred or communicated to third parties, unless the transfer is for "collaboration with jurisdictional bodies and the prosecution service in the investigation or prosecution of criminal offences that cannot only be prosecuted simply at the request of the aggrieved person".

In addition, collaboration with judges and courts for the execution of final judicial resolutions is also foreseen, as long as they have issued an express resolution in which the aforementioned information is requested and in which, "after deliberation of the public and private interests affected by the issue and having exploited all other means or sources of knowledge on the existence of assets and rights of the debtor, there is a need to obtain Tax Administration data" (LGT art. 95.1.h).

2. d) Similarly, if a judge during a court case has knowledge of "important tax data", they are obliged to inform the Tax Agency, "respecting, where possible, the secrecy of investigative actions" (LGT art. 94.3). In those cases, data communication between public administrations is not prohibited by virtue of the following section (LGT art. 94.5).

Self-evaluation

1. a

2. b

3. c

4. c

5. a

6. b

7. a

8. a

9. b

10. c