

[Translation]

Instruction 1/1995, of 1 March, of the Data Protection Agency, regarding the rendering of information services on creditworthiness and credit.

Article 36 of Organic Law 5/1992, of 29 October, on the regulation of automated processing of personal data defines the tasks of the Data Protection Agency, section c) of which provides: *to issue, where applicable, and without prejudice to the competences of other public bodies, the instructions required to bring processing operations in line with the principles of this Law.* This provision is complemented by Article 5. c) of the Agency's Statute, passed by Royal Decree 428/1993, of 26 March, which establishes as part of the tasks of the Agency *to issue the instructions and recommendations required to bring processing operations in line with the principles contained in the Organic Law.*

Article 28 of the above Law deals with the rendering of information services on creditworthiness and credit from a double perspective: First, it provides that entities who render services on creditworthiness and credit shall only process by automated means personal data which is obtained from publicly available files or information provided by the data subject or with the data subject's consent. Second, it regulates the processing of personal data regarding compliance or non-compliance with financial obligations stressing that such data may be processed when it is "provided by the creditor or a person acting on his interest or behalf".

The first case falls within the common regulation provided by the Organic Law. The second case presents, on the contrary, a series of particularities (i.e. derogation from the principle of consent both for data collection and processing), which require clarification. Moreover, in the latter case, reality has shown that there exist two types of perfectly integrated files: On the one hand, the creditor's file, which includes personal data generated as a consequence of economic relations maintained with the data subject, is aimed exclusively at settling the financial obligation. On the other hand, a file which could be termed the common file, which, consolidating all of the personal data contained in the other files, is aimed at providing information on a person's creditworthiness, the controller of which, not being the creditor, is not competent to amend or cancel inaccurate data contained therein.

Consequently, in accordance with the powers accorded to the Agency, the Agency has ruled:

CHAPTER ONE

Quality of the data being processed by automated means, manner and time periods in which the notifications must be effected and calculation of the time period referred to in Article 28.3 of the Organic Law

RULE ONE

Quality of the data being processed

The inclusion of personal data in files regarding compliance or non-compliance with financial obligations, referred to in Article 28 of Organic Law 5/1992, shall be carried out solely under the following circumstances:

Prior existence of a certain, due and payable debt, which has not been discharged.

Prior request for payment, as appropriate, from the person who must comply with the payment obligation.

Personal data on which there is some documentary proof which apparently contradicts any of the above requirements shall not be included in files of this nature. This circumstance shall also determine the precautionary cancellation of the unfavorable personal data when such data has already been included in the file.

The creditor or person acting on his behalf shall make sure that all of the requirements set out under number 1 of the present Rule are present when notifying the adverse data to the controller of the common file.

The communication regarding the inexistent or inaccurate data aimed at canceling or amending the same shall be carried out by the creditor or person acting on his behalf to the controller of the common file with minimum delay, and in all cases, within one week. This time period is without prejudice to the time period provided in Article 15.2 of Royal Decree 1332/1994, of 20 June, which applies to the creditor's file.

RULE TWO

Notification of inclusion in the file

Notifications regarding the inclusion of personal data in a file carried out after the entry into force of Organic Law 5/1992 shall be effected in accordance with Article 28 of the said law.

In the cases where personal data is included in a file prior to the entry into force of the Organic Law the notification shall be made to the data subject within minimum possible delay and, in an all cases, within the following year from the date of publication of this Instruction.

The inscription of the outstanding obligation in the file shall be carried out, either in one sole entry when the obligation matures on one date, or in as many entries as outstanding periodic maturity dates exist, including in this case, the date of each one.

One notification shall be made for each specific and actual debt in all cases, whether the debt has one or more creditors.

The data controller shall adopt the organizational and technical measures which are necessary to prove the sending of the notification and date of delivery or attempted delivery of the same.

The notification shall be addressed to the last known address of the data subject through reliable and independent means of the data controller.

RULE THREE

Calculation of the six year period referred to in Article 28.3 of the Organic Law

The calculation of the time period referred to in Article 28.3 of the Organic Law shall commence at the time of inclusion of the unfavorable personal data in the file and, in any event, as from the fourth month after the date of maturity of the outstanding obligation or the specific time period of the obligation in cases of periodic maturity.

CHAPTER TWO

Security Measures

RULE FOUR

Form of verification

Systems which store or process information regarding compliance or non-compliance with financial obligations shall provide evidence of the effective implementation of the security measures required under Article 9.1 of the Organic Law within one year following publication of this Instruction. For files which are registered after this Instruction, the time period shall be calculated as from the date of registration in the General Data Protection Registry.

The implementation, conformity and efficacy of such measures shall be proved by the carrying out of an audit which is proportionate to the nature, volume and characteristics of the personal data stored and processed and the sending of the final report of the audit to the Data Protection Agency.

The audit may be carried out:

By the data controller's in-house auditing department, when the data controller has a formally constituted and professionally qualified department which is independent from the entity responsible for the data processing and management.

By an external auditor, which is professionally qualified and independent from the data controller.

The audit must be carried out in accordance with the professional rules and recommendations applicable at the time of its execution.

The audit report shall evaluate the adequacy of the measures and controls aimed at guaranteeing the integrity and confidentiality of the personal data stored or processed, identify its deficiencies or insufficiencies and propose the necessary corrective or complementary measures. It shall likewise include the data, facts and observations which form the basis of the opinions reached and recommendations proposed.

In addition, the systems which store or process information regarding the compliance or non-compliance with financial obligations shall be subject to a new audit after the adoption of the specific measures which, where applicable, the Agency determines as a result of the initial audit report. In any event, the above systems must be audited periodically, at least every two years.

FINAL RULE

Entry into force:

This Instruction shall enter into force on the day following its publication in the Official State Gazette.

Madrid, 1 March 1995.- The Director, Juan José Martín-Casallo López.