



**Datuak Babesteko**  
**Euskal Bulegoa**  
**Agencia Vasca de**  
**Protección de Datos**

## **Act 2/2004 of 25 February on Personal Data Files in Public Ownership and the Creation of the Basque Data Protection Agency.**

*(Ley 2/2004, de 25 de febrero, de Ficheros de Datos de Carácter Personal de Titularidad Pública y de Creación de la Agencia Vasca de Protección de Datos)*

(Official Gazette of the Basque Country [BOPV] no. 44, 4 March 2004)

Know all citizens of the Basque Country that the Basque Parliament has passed the following Law:

### **ACT 2/2004 OF 25 FEBRUARY ON PERSONAL DATA FILES IN PUBLIC OWNERSHIP AND THE CREATION OF THE BASQUE DATA PROTECTION AGENCY**

#### **PREAMBLE**

Technical progress has speeded up to a remarkable extent in recent years. At present, the use of computers facilitates the processing of vast amounts of data concerning individuals, it being possible to discover aspects of these individuals' lives that is tantamount to an invasion of their privacy. Legislation cannot ignore the increasing likelihood of the perverse use of technological potential, in detriment of areas that should be reserved for personal privacy.

The antagonism between technology, and in particular computers, and the privacy of individuals requires legislation seeking to establish a satisfactory balance between two assets worthy of legal protection. While it is not beneficial for society to put a brake on technological development, where potential is immense and should contribute to increasing levels of welfare in the community; individual citizens have the right to have their personal privacy protected and for the potential of computer technology to be prevented from reducing such privacy beyond acceptable limits. To do this, restrictions must be placed on the use of computers, thereby guaranteeing the personal honour and individual and family privacy of citizens and the full exercise of their rights. This is a mandate that Article 18.4 of the Spanish Constitution imposes on the legislator, and which is included in the Spanish Act 15/1999 of 13 December on the Protection of Personal Data (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal*).

Concern over the protection of the personal and family privacy of citizens, with the accompanying limitations on the use of computers, is not exclusive to the state legislator. A number of European Union institutions have also made their preoccupation clear.

Article 286 of the Treaty of Amsterdam, of 17 June 1997, which requires that Community acts concerning the protection of individuals in the treatment of personal



data and the free circulation of such data be applied to Community institutions and bodies, has now been included in the foundational treaty of the European Community.

Prior to this, the European Parliament and Council had adopted Directive 95/46/CE, of 24 October 1995, concerning the protection of individuals with regard to the treatment of personal data and the free circulation of such data, which includes the principle that data processing systems are there to serve man and should respect the fundamental freedoms and rights of individuals, in particular their privacy, while contributing to economic and social progress and the development of exchange and the welfare of individuals.

According to this directive, national legislation concerning the processing of personal data is designed to guarantee the respect of the abovementioned rights and liberties, particularly the right to respect for one's private life acknowledged in Article 8 of the European Agreement for the Protection of Human Rights and Fundamental Rights, as well as in the general principles of Community law, and considers such legislation should be designed to assure high levels of protection.

As an essential element in the protection of individuals, the directive emphasizes the creation of a fully independent control authority in each Member state. Such authorities should be furnished with the means, whether powers to investigate or to intervene, necessary to fulfil their functions.

The directive gives member states a period of three years to adopt the legal, regulatory and administrative provisions required to comply with its stipulations.

Community institutional action on data protection has not however been limited to issuing directives addressed to member states. Such action has also involved the adoption of measures designed to protect individuals in the processing of their personal data by community institutions and bodies, by means of the European Parliament and Council's Regulation (CE) No. 45/2001 of 18 December 2000, which actually established an independent control authority (the European Data Protection Supervisor).

One of the principles behind the community regulations is to achieve a high level of protection for personal data and privacy. Even directive proposals not specifically designed to regulate personal data protection are imbued with this principle, a good example being the case of the proposal for a European Parliament and Council directive concerning a common regulatory frame for electronic communications networks and services (Official Journal no. C 365 E of 19/12/2000).

As noted above, in internal legislation the protection of personal data is regulated in Act 15/1999 of 13 December on the Protection of Personal Data (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal*), which, besides other issues associated with the fundamental right referred to in Article 18.4 of the Constitution, regulates the basic aspects of the legal system governing the Data Protection Agency, formed as the independent control authority mentioned in Directive 95/46/CE.

The Act, or *ley orgánica*, establishes that most of the functions assigned to the agency, when they affect personal data files created or managed by the autonomous communities and by the local authorities in their territory, shall be exercised by the corresponding bodies in each community, bodies that shall be considered control



authorities with full independence and objectivity in the performance of their duties guaranteed. This is a legal criterion in accordance with Article 28 of Directive 95/46/CE, according to which member states shall have one or more public authorities entrusted with the task of supervising, in their territory, the way the dispositions adopted by them pursuant to the abovementioned directive are applied, and adds that such authorities shall perform the functions assigned to them with complete independence.

The Act itself is divided into three CHAPTERS.

CHAPTER I, covering general provisions, specifies the purpose and scope of the Act, delimiting the files affected by its regulations depending on the public Administration, institution or corporation that creates or manages them. This delimitation is completed with a list of files to which the Act does not apply and the files governed by specific regimes where the Act shall be of limited application. It also contains a list of definitions that is particularly useful in narrowing down and unifying the specific terminology of the subjects under regulation; also regulated are aspects concerning the creation, modification and suppression of files, the limitations placed on the collection of personal data, information to the parties affected and the safety and security of such data files, and the complaints procedure for presenting claims to the Basque Data protection Agency. The CHAPTER is necessary to give the Act, which shall require subsequent development, systematic coherence and integrity.

CHAPTER II creates the Basque Data Protection Agency and regulates the essential features of its legal system. It contains precepts concerning Agency staff labour arrangements, economic resources, budgets, governing bodies, functions and powers. One important feature is the creation of the Data Protection Register as a vital body of the agency.

CHAPTER III concerns the disciplinary system, defining the persons liable, classifying infringements and establishing the corresponding sanctions. As the abovementioned Regulation (CE) No. 45/2001 states, besides requiring a definition of rights and duties, any personal data protection system needs to establish the appropriate sanctions for offenders. In our case, in view of the special characteristics of file controllers, particular attention is given to possible infringements by members of the staff working for the administrations, institutions and corporations to whose files this Act is applicable.

The Act contains three additional provisions, one stipulating that the Basque Data protection Agency must be informed of existing files, one on the use by autonomous community and *foral* (i.e. Spanish charter law) authorities of data from the municipal register in the exercise of their powers, and a third on the respect due to the powers of the Basque Ombudsman (*Ararteko*) and the Spanish State Data Protection Agency.

It concludes with a final provision authorizing the Basque Government to proceed with its enactment and application.

## **CHAPTER I. GENERAL PROVISIONS**

### **Article 1.- Purpose**

The purpose of the present Act is to:



1.- Regulate the personal data files created or managed by the Autonomous Community of the Basque Country, the *foral* (Spanish charter law) bodies of the three provinces and the local administrations of the Autonomous Community of the Basque Country.

2.- Create and regulate the Basque Data Protection Agency.

### **Article 2.- Scope**

1.- The present Act shall apply to the personal data files created or managed, for the exercise of their powers under public law, by:

a) The General Administration of the Autonomous Community, the *foral*, or charter law, bodies of the three provinces and the local administrations of the Autonomous Community of the Basque Country, and public entities of any kind, dependent on or officially associated with the respective public administrations, in so far as they have been created to exercise powers under public law.

b) The Basque Parliament.

c) The Basque Court of Public Auditors.

d) The Basque Ombudsman.

e) The Labour Relations Council.

f) The Economic and Social Council.

g) The Higher Council of Cooperatives.

h) The Basque Data Protection Agency.

i) The Arbitration Committee.

j) Corporations under public law, representatives of economic and professional interests, of the Autonomous Community of the Basque Country.

k) Any other bodies or institutions, with or without legal personality, created by Basque Parliamentary Act, except when otherwise established under said Act.

2.- The provisions of the previous number notwithstanding, this Act shall not apply to files:

a) Subject to regulations governing the protection of classified material.

b) Established for the investigation of terrorism and serious forms of organized delinquency.

c) Regulated by electoral system legislation.

d) Made using images and sound obtained by the use of video cameras by the Police of the Basque Country, pursuant to the pertinent legislation.



3.- Processing applied to personal data used exclusively for statistical purposes and covered by legislation concerning public statistics shall be governed by their specific provisions and, where appropriate, by the specific provisions of this Act.

4.- Public institutions and health centres and the professionals working in them may process personal data concerning the health of the persons who consult them or who are treated by them, pursuant to sector legislation on health, without prejudice to the provisions of this Act and in all matters that are not incompatible with said legislation.

5.- The application of the provisions of this Act to personal data files, different from those listed in number 2 of this article, created or managed by the Police of the Basque Country shall be performed without prejudice to the specific features of its legal system contained in Act 15/1999 of 13 December, on the Protection of Personal Data (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal*) and in Act 4/1992 of 17 July on the Police of the Basque Country (*Ley 4/1992, de 17 de julio, de Policía del País Vasco*).

### **Article 3.- Definitions**

For the purposes of this law, the following definitions shall be accepted:

a) Personal data: any information concerning identified or identifiable individuals. Any person shall be considered identifiable whose identity may be directly or indirectly established, in particular by an identification number or one or several specific elements of his or her physical, physiological, psychical, economic, cultural or social identity.

b) File: any organized set of personal data, of whatever form or mode of creation, storage, organization and access.

c) Data processing: automated or non-automated technical operations and procedures facilitating the collection, recording, conservation, preparation, modification, blocking and cancellation, and transfer of data deriving from communications, inquiries, interconnections and transfers.

d) File or processing controller: person, institution, entity, corporation or administrative body to which the file is assigned and which decides on the purpose, content and use of processing. The provision under which the file is created shall also identify the person or organization responsible for it. The functions of the person or organization identified as the file controller shall be listed in the security document.

e) Data subject: individual whose personal data is the object of the processing referred to in paragraph c) of this article.

f) Processor: individual or legal person, public authority, service or any other body which, alone or with others, processes personal data on behalf of the processing controller.

g) Consent of data subject: any free, unequivocal, specific and informed expression of willingness, by means of which the data subject consents to the treatment of personal data that concern him/her.



h) Transfer or communication of data: any disclosure of data made to a person other than the data subject.

#### **Article 4.- Creation, modification and suppression of files**

1.- The creation, modification and suppression of files of the Administration of the Autonomous Community shall be performed by order of the head of the department to which the file is assigned, which should contain all the references required by current legislation and shall be published in the Official Gazette of the Basque Country. The procedure by which the order is prepared and issued shall be the same as the one followed in the preparation of general provisions.

2.- With regard to personal data files from other administrations, institutions or corporations, the agreement or provision by which they are created, modified or suppressed must contain all the references required and shall be published in the Official Gazette of the Basque Country or the province in question, depending on the territorial scope of its functions or powers.

#### **Article 5.- Collection of personal data**

Public administrations and other institutions, corporations and entities referred to in Article 2.1 of this Act may only collect personal data for processing when these are suitable, pertinent and not excessive for the exercise of their respective powers. Except when a legal principle dictates otherwise, the consent of the data subjects shall not be necessary for the collection of such data, but these may only be used for the specific, explicit and legitimate purposes for which they have been obtained, without prejudice to their possible subsequent treatment for historical, statistical or scientific purposes, pursuant to the applicable legislation.

#### **Article 6.- Information for data subjects**

Data subjects required to provide personal data shall be previously informed, pursuant to the legislation governing the protection of said data. Nevertheless, when the data has not been collected directly from the data subject and the number of data subjects, the age of the data and the possible compensatory measures make informing the subject concerned impossible or requires disproportionate efforts, the Director of the Basque Data Protection Agency may, pursuant to the legislation mentioned above, excuse the controller of the file from the obligation to inform the data subjects.

#### **Article 7.- Approval of the minimum content of the security document**

In the exercise of its powers of self-organization, the governing bodies of the public administrations, institutions and corporations referred to in Article 2.1 of this Act may approve, in application of the principles concerning data security and to apply to all or part of the files of which their respective administrations, institutions or corporations are the controllers, the minimum content of the security document that in all cases the file controller must create and implant to guarantee the security of the personal data contained in the files.

#### **Article 8.- Procedure by which data subjects exercise their rights**



1.- Data subjects may exercise the rights of opposition, access, rectification, cancellation and any other rights upheld by the Act. The actual content of such rights shall be defined in the Act.

2.- Each administration, institution or corporation shall define the regulations controlling the procedure for the exercise of the rights identified in the number hereabove in relation to the files controlled by the administration, institution or corporation in question and to which this Act applies. No fee or payment shall be exacted for this.

### **Article 9.- Claims presented to the Basque Data Protection Agency**

1.- Claims in accordance with the established regulations may be made to the Basque Data Protection Agency by data subjects to redress infringements of this Act.

2.- Any data subject refused, totally or partially, the exercise of his/her right to opposition, access, rectification, cancellation or any other right upheld by the legislation on the protection of personal data, should inform the Basque Data Protection Agency, which in turn should ascertain whether said refusal is appropriate or inappropriate.

3.- A specific resolution on the custodianship of rights must be issued and notified in a maximum of six months, administrative silence being understood as a rejection of the custodianship requested.

4.- An appeal to the ordinary courts (*recurso contencioso-administrativo*) may be filed against the resolutions of the Basque Data Protection Agency. A prior, facultative appeal for judicial review (*recurso de reposición*) may also be made.

## **CHAPTER II. ON THE BASQUE DATA PROTECTION AGENCY**

### **Article 10.- Creation and legal system**

1.- The Basque Data Protection Agency is created as an agency under public law, with its own legal personality and full public and private capacity, acting fully independently of public administrations in the exercise of its functions. It shall be governed by the provisions contained in the present Act and in its own byelaws, which shall be approved by a Basque Government decree at the proposal of the Vice-President's Office.

2.- The Basque Data Protection Agency's activity shall be subject to Act 30/1992 of 26 November on the Legal system of the Public Administrations and Common Administrative Procedure (*Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*), when exercising administrative powers. The rest of its activity shall be subject to Act 15/1999, of 13 December, on the Protection of Personal Data (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal*), to this Act and the provisions for their enactment.

3.- Asset acquisitions and staff recruitments by the Basque Data Protection Agency shall be subject to current public legislation. The Agency's assets and rights shall pertain to the assets of the Autonomous Community of the Basque Country.



4.- The Basque Data Protection Agency shall be represented and defended by the legal services of the Administration of the Autonomous Community of the Basque Country, pursuant to the contents of its regulatory rules.

#### **Article 11.- Staff**

1.- Posts at the Basque Data Protection Agency shall be filled by civil servants from the public administrations and institutions referred to in Article 2.1 of this Act and by specially recruited non-civil service staff, depending on the type of functions assigned to each work post. Such staff members shall be obliged to keep secret any personal data they come into contact with in the course of their duties.

2.- Staff working for the Basque Data Protection Agency shall be subject to the regulatory rules of public service in the Administration General of the Autonomous Community. Pursuant to these rules, the Basque Data Protection Agency shall determine the system of access to jobs at the Agency, the requirements and the characteristics of staff selection methods, as well as the announcement, management and resolution of the procedures for providing for posts and professional promotion.

3.- Posts of work involving the exercise of public powers shall be reserved for civil service staff.

#### **Article 12.- Resources**

To comply with its purpose and objectives, the Basque Data Protection Agency shall have the following economic assets and means:

- a) The allocations established annually under the General Budget of the Autonomous Community.
- b) Subsidies and contributions awarded in its favour.
- c) All ordinary and extraordinary earnings deriving from its activities.
- d) The goods and values comprising its assets, together with the products and income therefrom.
- e) Any others that may legally be attributed to the Agency.

#### **Article 13.- Budget**

The Basque Data Protection Agency shall annually prepare and approve a draft budget, to be forwarded to the Basque Government for inclusion, with due independence, in the General Budget of the Autonomous Community, pursuant to the legislation regulating the budgetary system of the Autonomous Community of the Basque Country. The Agency shall be subject to this legislation with regard to the system used to modify, execute and liquidate its budget, taking account, for this purpose, of the nature of the entity, the public accounting system and the financial, economic and management control of the Treasury & Public Administration Department of the Administration of the Autonomous Community, without prejudice to the control of its financial, economic and accounting activities by the Basque Court of Public Auditors.



#### **Article 14.- Governing bodies**

The governing bodies of the Basque Data Protection Agency are its Director, the Advisory Committee and any others established under its own byelaws.

#### **Article 15.- The Director**

1.- The Director of the Basque Data Protection Agency directs the agency and acts on its behalf. The Director shall be appointed for a period of four years by Basque Government decree.

2.- The Director shall exercise his functions with full independence and objectivity, not being subject to any instruction in the course of his duties. Nevertheless, the Director must pay heed to the Advisory Committee on those proposals it makes in the exercise of its functions.

3.- The Director of the Basque Data Protection Agency shall step down or undergo severance from the post before the term of office expires only owing to one of the following reasons:

a) At his request.

b) By severance, when agreed by the Cabinet of the Government, after disciplinary proceedings have been opened, for which consultation with the Advisory Committee is obligatory, for serious neglect of his duties, sudden incapacity to exercise his function, incompatibility or conviction on charges of deceit or wrongdoing.

4.- Ranking as a senior officer, the Director of the Basque Data Protection Agency shall remain in a situation of special services if he has previously exercised a public function, and shall be subject to the system of incompatibilities concerning senior officers of the Administration of the Autonomous Community.

#### **Article 16.- Advisory Committee**

1.- The Director of the Basque Data Protection Agency shall be advised by an Advisory Committee of the following members:

a) One representative from the Basque Parliament, assigned by Parliament itself.

b) One representative from the Administration of the Autonomous Community of the Basque Country, assigned by the Government Cabinet.

c) One representative from the three Basque provinces, chosen by agreement between them.

d) One representative from local provincial bodies of the Autonomous Community of the Basque Country, assigned by their most representative association in the provincial area of influence.

e) Two experts, one in computers and another in basic rights, assigned by the University of the Basque Country after consultation with the corporations under public law of the Autonomous Community of the Basque Country.



2.- The Advisory Committee shall approve its own organization and operational regulations, which shall provide for the posts of chairman and secretary, and the system for their election or appointment.

### **Article 17.- Functions**

1.- In connection with the files referred to in Article 2.1 of this Act, and in all matters concerning the powers of the Autonomous Community of the Basque Country, the functions of the Basque Data Protection Agency are to:

- a) Ensure the legislation on data protection is observed and control its application, particularly with regard to rights of information about, access to, rectification of, opposition to and cancellation of data.
- b) Issue the authorizations established in the legislation and regulations.
- c) Issue, where appropriate, and without prejudice to the powers of other bodies, the instructions needed to adapt data treatments to the principles of current legislation on data protection.
- d) Deal with requests and claims filed by data subjects.
- e) Provide individuals with information on their rights as regards the processing of personal data.
- f) Insist that file controllers and processors take the necessary measures to adapt all such data processing to current legislation and, where appropriate, stop the processing of and block files when they are not in line with such legislation, except in cases of international data transfers.
- g) Exercise the power to sanction and, where necessary, propose disciplinary measures for anyone he/she finds responsible for the infringements described in Article 22 of this Act, and to take any precautionary measures required, except with regard to the international transfer of data. All of which should be carried out pursuant to the terms established in this Act.
- h) Formulate binding projects for general provisions implementing this Act.
- i) Obtain all the help he/she considers necessary to carry out his/her functions from the file controllers.
- j) Publicize the existence of the personal data files, to which end he/she shall publish an annual list of such files with any additional information the Director of the Basque Data Protection Agency deems pertinent.
- k) Write an annual report and forward it to the Vice-President's Office of the Basque Government.
- l) Ensure the provisions contained in the legislation governing public statistics is observed in respect of the collection of statistical data and statistical secrecy, and issue any necessary instructions, rule on the security conditions of files set up exclusively for statistical purposes and exercise the powers referred to in Article 24.



m) Cooperate with the Spanish State Data Protection Agency and similar entities in other autonomous communities on any initiatives and activities needed to improve the level of personal data file security and the rights of citizens concerning such files.

n) Deal with inquiries concerning the protection of personal data from the public administrations, institutions and corporations referred to in Article 2.1 of this Act, and from any other individuals or legal persons, regarding the treatment of personal data coming within the scope of this Act.

ñ) Any others the laws and regulations attribute to him/her.

2.- For the purposes of the functions mentioned in the previous number, the Basque Data Protection Agency shall rank as a control authority, the Act guaranteeing the Agency full independence and objectivity in the performance of its mission.

#### **Article 18.- Data Protection Register**

1.- Also created is the Data Protection Register, as an integrated part of the Basque Data Protection Agency pursuant to the terms established in the latter's byelaws.

2.- The following shall be entered in the Data Protection Register:

a) Files referred to in Article 2.1 of this Act.

b) The authorizations covered by Act 15/1999 of 13 December on the Protection of Personal data (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal*).

c) Standard codes of conduct affecting registered files.

d) Any related data on registered files needed to facilitate the exercise of the rights to information, access, rectification, cancellation and opposition.

3.- The Data Protection Register may reject registration applications when it considers the application to be unlawful. When this occurs, the Director of the Basque Data Protection Agency shall require the applicant to make the required changes.

4.- Regulations shall be drawn up to regulate the procedure for registering files referred to in article 2.1 of this Act in the Data Protection Register, together with the content of the registration, any modifications, cancellation, claims and appeals against resolutions concerning the files registered, and any other pertinent developments.

5.- The public shall be able to consult the Data Protection Register freely. Using the relevant information from the register, individuals may inform themselves about the existence of personal data processing, its purpose and the identity of the processor.

#### **Article 19.- Powers of inspection**

1.- As a control authority, the Basque Data Protection Agency can inspect the files referred to in Article 2.1 of this Act, collecting any information it requires to comply with its mission. To this end, it can request the showing or forwarding of documents and data and inspect them wherever they are stored, and can inspect the physical and



logical equipment used in data processing, with powers of access to the premises where such equipment is installed.

2.- Civil service personnel performing the inspection referred to in the previous number shall be considered as having public authority in the discharge of their functions, and shall be duty bound to keep secret any information they learn in the discharge of their functions, even after relinquishing such functions.

#### **Article 20.- Requirements made of file controllers**

When the Director of the Basque Data Protection Agency becomes aware that a particular file included within the scope of this Act is being maintained and used in a manner that contravenes any principle in this Act or the provisions developing it, he/she can instruct the public administration, institution or corporation controlling the file to take the corrective measures he/she considers necessary in the period expressly set in the instruction. If the administration involved fails to comply with the instruction, the Director of the Basque Data Protection Agency, without prejudice to other measures he/she can take pursuant to Article 17.f) of this Act, may appeal against the resolution or omission taken by the administration in question, having, to this purpose, the condition of data subject.

### **CHAPTER III. ON THE DISCIPLINARY SYSTEM**

#### **Article 21.- Controllers**

Controllers of files referred to in Article 2.1 of this Act and processors shall be subject to the system of infringements and disciplinary action set in place in this Act .

#### **Article 22.- Types of infringements**

- 1.- Infringements shall be classed as minor, serious or very serious.
- 2.- Minor infringements are:
  - a) Not dealing, for formal motives, with a request from the data subject to rectify or cancel the personal data subject to processing, when that is the correct action to take under law.
  - b) Not providing the information requested by the Basque Data Protection Agency in the exercise of its legally attributed functions, concerning non-substantive aspects of data protection.
  - c) Not applying for registration of the personal data file in the Data Protection Register, except when this constitutes a serious infringement.
  - d) Collecting personal data from the data subjects themselves without first having provided them with the legally required information.
  - e) Breaching the legal obligation to secrecy, except when this constitutes a serious infringement.
- 3.- Serious infringements are:



- a) Proceeding with the creation of files, or beginning the collection of personal data for such files, without the general authorization published in the Official Gazette of the Basque Country or in the Official Gazette of the corresponding province.
- b) Collecting personal data without prior, express consent from the data subjects, in cases where such consent is required.
- c) Processing personal data or subsequently using them in breach of the legally established principles and guarantees or of the principles of protection imposed by the regulatory provisions on development, except when this constitutes a very serious infringement.
- d) Impeding the exercise of the rights to access and opposition and refusing to facilitate information requested.
- e) Maintaining inaccurate personal data or not rectifying or cancelling such data pursuant to the legislation when the rights of persons protected by legislation on the protection of personal data are affected.
- f) Any breach of the obligation to secrecy regarding personal data added to files containing data on the commission of administrative or criminal infringements or against the public Treasury, and regarding other files containing a set of personal data sufficient to obtain an evaluation of the character or personality of the individual.
- g) Maintaining files, premises, programmes or equipment containing personal data without the proper security conditions.
- h) Not forwarding to the Basque Data Protection Agency the reports or communications provided for in the legislation and regulations, and likewise not providing the Agency with the documents and information it should receive or that the Agency requests to such purposes.
- i) Obstructing inspections.
- j) Not registering a personal data file in the Data Protection Register, when instructed to do so by the Director of the Basque Data Protection Agency.
- k) Not observing the legal duty to inform, when the data has been collected from a person different from the data subject.

4.- Very serious infringements are:

- a) Collecting data in a fraudulent or misleading manner.
- b) Communicating or transferring personal data, when not one of the cases in which such a course of action is permitted.
- c) Collecting and processing personal data revealing the ideology, trade union membership, religion or beliefs, without the express consent of the data subject.
- d) Collecting and processing data on racial origins, health or sexual practices, when no legislation provides for such a course or the data subject has not given his/her express consent.



- e) Creating files with the exclusive purpose of storing personal data revealing ideology, trade union membership, religion, beliefs, racial or ethnic origins or sexual practices.
- f) Continuing to use personal data processing illegitimately when instructed not to do so by the Director of the Basque Data Protection Agency or by the owners of the right to access.
- g) Processing personal data illegitimately or in breach of the applicable principles and guarantees, when by such a course of action the exercise of basic rights is either denied or attacked.
- h) Any breaches of the duty to keep secret personal data referred to in e) of this section, or data collected for police purposes without the consent of the data subjects.
- i) Not dealing with, or systematically impeding the exercise of rights to access, rectification, cancellation or opposition.
- j) Systematically neglecting the legal duty to notify the inclusion of personal data in a file.

5.- The types of infringements defined in this Article are understood as being without prejudice to the infringements catalogued in state legislation on the protection of data, in those aspects where the Autonomous Community of the Basque Country lacks powers.

### **Article 23.- Types of disciplinary action**

- 1.- Slight infringements will be sanctioned with a fine of 601.01 a 60,101.21 euros.
- 2.- Serious infringements will be sanctioned with fines ranging from 60,101.21 to 300,506.05 euros.
- 3.- Very serious infringements will be sanctioned with fines ranging from 300,506.05 to 601,012.1 euros.
- 4.- The precise amount of the fines will be graded depending on the nature of the personal rights affected, on the volume of processing done, on the benefits obtained, the degree of intentionality, repetition, the harm or damages caused to data subjects and third parties, and on any other relevant circumstance for determining the degree of unlawfulness and guilt present in the specific infringement.
- 5.- If, in view of the circumstances surrounding the infringement, the level of guilt of the accused or in the unlawfulness of the action is reduced, the disciplinary body shall set the amount of the fine in line with the scale relative to the type of infringements immediately preceding in seriousness the one in which the infringement under consideration is included.
- 6.- In no case may a heavier fine be imposed than the one established by law for the type of infringement in which the infringement subject to disciplinary action is included.



7.- The Basque Government shall regularly update the amount of the fines, in line with price index variations.

#### **Article 24.- Infringements committed by the public administrations, institutions and corporations under public law**

1.- If, after having carried out the corresponding procedure, the conclusion is reached that one or several of the infringements referred to in the previous article have been committed in relation to files covered by Article 2.1 of this Act, the Director of the Basque Data Protection Agency shall issue a resolution establishing the measures to be taken to stop or correct the effects of the infringement. The controller of the file, the body to which he/she is hierarchically answerable and any data subjects and other parties involved shall be notified, the resolution concluding the administrative action.

2.- If appropriate, the Director of the Basque Data Protection Agency may also propose taking other disciplinary action. Procedure and sanctions applicable shall be pursuant to the regulatory legislation of the disciplinary system of civil service staff and no civil service staff working in the public administrations, institutions and corporations referred to in Article 2.1 of this Act. To this purpose, the infringements described and classified in this law shall complete the applicable disciplinary system.

3.- Should disciplinary action be unavoidable, this will be administered pursuant to Act 2/1998 of 20 February (*Ley 2/1998, de 20 de febrero, de la Potestad Sancionadora de las Administraciones Públicas de la Comunidad Autónoma del País Vasco*), on the Disciplinary Powers of the Public Administrations of the Autonomous Community of the Basque Country.

4.- The Basque Data Protection Agency must be informed of the resolutions approved with the measures and actions outlined in the previous numbers.

5.- The Director of the Basque Data Protection Agency shall inform the Basque Ombudsman (*Ararteko*) of the action taken and the resolutions issued under the foregoing numbers.

#### **Article 25.- Blocking files**

In the case of a very serious violation, the unlawful use or transfer of personal data that seriously impedes or affects the exercise of the rights of citizens and the free development of personality guaranteed by the Spanish Constitution and legislation, the Director of the Basque Data Protection Agency shall be entitled to demand that the controllers of the personal data files stop the unlawful use or transfer of the data. If such a demand is not honoured, the Agency shall be entitled to issue a reasoned resolution to block such files for the sole purpose of restoring the rights of the data subjects.

### **ADDITIONAL PROVISIONS**

#### **One.- Informing the Basque Data Protection Agency about files**

The public administrations, institutions and corporations referred to in Article 2.1) of this Act shall inform the Basque Data Protection Agency, within three months following the entry into force of this Act, of the personal data files identified in the Article



that they control. They must have first approved and published the regulatory provision of the corresponding file.

## **Two.- Communication of data from the municipal electoral register**

1.- The general and Spanish charter law (*forales*) administrations of the Autonomous Community of the Basque Country may apply to the Basque Statistics Institute (*Euskal Estatistika-Erakundea/Instituto Vasco de Estadística*), in the terms established in the second additional provision of Act 15/1999 of 13 December on the Protection of Personal Data (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos Personales*), and Article 17.3 of Law 7/1985 of 2 April regulating the Bases of the Local System (*Ley 7/1985, de 2 de abril, reguladora de las Bases del Régimen Local*), without consent of the data subject, for an updated copy of the file made with the data of name, surname, domicile, sex and date of birth included in the municipal electoral registers of inhabitants corresponding to the provinces where they exercise their powers, for the creation of files or registers of the population. The purpose of such population files or registers shall be the communication of the different bodies of each public administration with data subjects resident in each province, with respect to the legal and administrative relations deriving from the powers of the public administrations.

2.- To facilitate the provision contained in the previous paragraph, Article 29 of Act 4/1986 of 28 April on Statistics of the Autonomous Community of the Basque Country (*Ley 4/1986, de 28 de abril, de Estadística de la Comunidad Autónoma de Euskadi*), is modified in the following terms: the present text of the Article in question becomes number 1 of the Article, to which is added a number 2 with the following text:

"2. The Basque Statistics Institute (*Euskal Estatistika-Erakundea/Instituto Vasco de Estadística*) shall also act as depository of copies of the municipal registers of all the municipalities of the Autonomous Community of the Basque Country, to which end the municipalities should forward to the Institute copies of the administrative registers pursuant to the corresponding regulations."

## **Three.- Powers of the Basque Ombudsman (*Ararteko*) and the State Data Protection Agency**

The provisions of this Act shall be understood to be without prejudice to the powers attributed to the Basque Ombudsman (*Ararteko*) and the State Data Protection Agency.

### **FINAL PROVISION**

Development and implementation

1.- The Basque Government is authorized to develop and apply the provisions of this Act.

2.- The Basque Government Treasury and Public Administration Department is authorized to create the corresponding budget assignment and to make, in accordance with the legislation regulating the budget system of the Autonomous Community of the Basque Country, the budgetary modifications required to apply the provisions of this Act.



Therefore, I order all citizens of the Basque Country, private individuals and authorities, to uphold it and ensure that it is upheld.

In Vitoria-Gasteiz, on 26 February 2004.

The President,

JUAN JOSÉ IBARRETXE MARKUARTU.