



The e-Administration: an unfinished business

Draft of Royal Decree implementing Law 39/2015 and Law 40/2015 regarding performance and functioning of the public sector by electronic means

Introduction

Law 39/2015, on the common administrative procedure of public administrations and Law 40/2015, on the legal regime of the public sector were aimed to transform the public administration into a digital one. Both laws implied an unprecedented change in the relationships with and between public Administrations.

Law 39/2015 states that companies having to interact with the public administration must do so through electronic means. However, according to this law, the most important provisions in relation to the electronic transformation would only take effect after two years from its entry into force. Now, those two years have already elapsed and yet there are many doubts about the reality of the digital transformation of the Administration, often leaving individuals in a situation of legal uncertainty.

In the following lines we will comment on the Draft Royal Decree which develops Law 39/2015 and Law 40/2015 regarding performance and functioning of the public sector by electronic means, which sheds some light on this matter.

Electronic Sites, General Electronic Access Point and Personal File

All Public Administrations will have a General Electronic Access Point through which all services, procedures and information will be accessible.

The Electronic Access Point through which will have an associated electronic site through which all electronic sites of the Administration will be accessible as well.

Additionally, there will be a single space of personal documentation for each interested party. This space for personal documents will be found in a Personal File. The Personal File will be a personalized area of interested parties for their interactions with the public sector as regards the Central Government Administration in Spain.

Electronic Signature Systems

Interested parties may act through an authorized representative who may be a person or an entity. In such case, a qualified electronic certificate as representative must be obtained.

There are various methods of electronic signature regulated in this Draft. Among such methods, there is the key concerted system (the so-called “cl@ve” system) along with other systems that the Administration may consider valid and which must meet all the criteria approved and published by the National Cryptologic Centre.

Electronic Registry

Except for those matters having a specific submission way, the forms, documents and communications may be submitted using the General Electronic Registry of the Central Government Administration in Spain.



It is important to note that those documents for which there is a specific way of submission will not be considered as submitted or filed when done through the abovementioned General Electronic Registry.

Electronic notifications

The interested parties will be able to access all their notifications through the Point of Access.

This Draft Royal Decree also regulates the “Unique Enabled Electronic Address”, which is an information system managed by the Ministry of Finance and Public Affairs for the purposes of electronic notifications which will be integrated in the Point of Access.

Furthermore, the Draft Royal Decree provides that in order for electronic notifications to produce the legal effects, they must meet the following requirements:

- The Administration must inform that the access to the content of the notification shall be considered as a notification for legal purposes, and that the rejection of such notification will have the effects provided by law (i.e. the notification is considered completed and the administrative procedure carries on).
- The acceptance or rejection of the notification must be recorded on the electronic site. In both cases, the notification will be considered as completed.

Key aspects of the administrative file

There are some aspects of the administrative file which are key to understand its functioning and related features.

The most interesting key aspects on the administrative file are the following:

- When the interested party submits a paper copy of a document to be incorporated into an administrative file, the Administration must generate an authentic copy which will have equal value as the submitted paper copy.
- All electronic administrative documents must be marked with a timestamp or an electronic stamp.
- In connection with the delivery of an administrative file by the Administration to the interested party, documents will be organized by an electronic index ensuring that the administrative file is complete.
- When an interested party requests access to the administrative file, such party must be granted electronic access to the file and has the right to obtain a copy thereof.
- The Administration must keep in electronic form all documents which are part of an administrative file.

Conclusion

It is not clear whether the new Spanish Government will accept the ideas raised by the previous members of the Ministry of Finance by means of the Draft Royal Decree analysed herein.

In any case, the Royal Decree that is finally approved will be of great importance for companies in order for them to know their rights and guarantees when interacting electronically with the Administration.