

Final Master Thesis

Global MBA- EOI Business School

Group 2:

Amaia Zabaleta,, Christine Stroetzel, Ginette Rodriguez, Pratima Painuly

Project advisor: Antonio Fontanini

Index

Executive Summary

1. Introduction

1.1. General information and aim of the company 4

1.1.1. Name of the company 4

1.1.2. Mission, Vision, & Philosophy 4

1.1.3. General description of the activities of the company 4

1.2. Justification of the necessity/importance of this company (market segment, product/services, geographical location, singularities) 4

2. External analysis

2.1. Environmental analysis 5

2.1.1. Legislation-Political Analysis (specific legislation applicable, subsidies) 5

2.1.2. Economic Analysis (currency, parity, & monetary tendency, data on inflation and interest rates, GDP & GDP per Capita...) 7

2.1.3. Socio-Cultural Analysis (population- male & female, their age, formation or education level, companies, size of the company) 8

2.1.4. Technological Analysis (state of art, costs, marketing level) 9

2.1.5. Conclusion 9

2.2. Sector analysis

2.2.1. Size of the market: current and expected (trends, segments, characteristics) 10

2.2.2. Structure of the sector 10

2.2.3. Current and future competitors- how many, where are they, how are they??? (positioning, market share, economic results, success strategies) 11

2.2.4. Substitute Competitors - how many, where are they, how are they??? (and possible response strategies) 20

2.2.5. Strategic Groups- how many, where are they, how are they??? (identification, justification) 20

2.2.6. Clients - how many, where are they, how are they??? (identification, bargain power) 21

2.2.7. Suppliers - how many, where are they, how are they??? (identification, bargain power, levels of concentration) 26

2.2.8. Barriers to entry and exit 26

2.2.9. Cost Structure 30

2.2.10. Distribution Channels (identification, margins, channels aids) 30

2.2.11. Communication (channels, characteristics) 30

2.2.12. Innovative trends in the sector 33

2.3. SWOT analysis

2.3.1. Mckinsey Analysis 34

2.3.2. Tows Analysis 38

2.3.3. Space Matrix 39

2.3.4. Sales and Income Forecasts with different scenarios 41

2.3.5. General Strategic Aim 41

2.3.6. Justification to Continue with Project 41

3. <u>Strategic Planning</u>	41
3.1. Operation Plan	41
3.1.1. <i>Product development</i>	41
3.1.2. <i>Manufacture or production</i>	42
3.1.3. <i>Pre-sale, maintenance & after sales service</i>	49
3.1.4. <i>Budget: Cost, expenditure and investment summary</i>	50
3.2. Marketing Plan	52
3.2.1. <i>Market segmentation, positioning and targeting</i>	52
3.2.2. <i>Description of services offered</i>	52
3.2.3. <i>Promotion and processes</i>	53
3.2.4. <i>Human Resource for Marketing</i>	54
3.2.5. <i>Post Sales</i>	56
3.2.6. <i>Marketing communication plan</i>	56
3.2.7. <i>Marketing budget</i>	64
3.2.8. <i>Pricing policy & Sales forecasting</i>	66
3.3. Organization and HR Plan	72
3.3.1. <i>Organizational chart of the company</i>	72
3.3.2. <i>Description of each function</i>	75
3.3.3. <i>Selection process</i>	81
3.3.4. <i>Training</i>	83
3.3.5. <i>Budget for HR (salaries, training)</i>	85
3.3.6. <i>Discussion and conclusions</i>	85
3.4. Financial Plan	85
3.4.1. <i>Introduction</i>	85
3.4.2. <i>Profit and Loss Account</i>	85
3.4.3. <i>Balance Sheet</i>	88
3.4.4. <i>Cash Flows</i>	91
3.4.5. <i>Sensitivity Analysis</i>	93
3.4.6. <i>Optimistic and pessimistic scenarios</i>	94
3.4.7. <i>Contingency Plan</i>	94
4. <u>Gratitude</u>	95
5. <u>Works cited</u>	96
6. <u>Annexes</u>	99

Introduction

1.1. General information and aim of the company

1.1.1. Name of Company

STAR S.L. is a sustainability consultancy company that uses innovative internal software to assess its clients. The company offers two different types of services. On the one hand, sustainability assessments and consultation for possible solutions and on the other hand, tangible and intangible solutions to identified sustainable inadequacies.

STAR S.L will be an official legal company on July 1st, 2009 with headquarters in Madrid (Spain) and with software factory in India.

1.1.2 Mission, Vision, & Philosophy

Mission: provide companies the tools and knowledge needed to perform activities in a more sustainable, responsible and cost efficient way.

Vision: the company wants to be regarded as a reference consultancy firm that transforms other companies from thinking only in the short term return into long term sustainable and responsible investments, saving money and avoiding future risks.

Philosophy: for our company, businesses reflect the views, social realities and rules of the wider communities in which they operate. The purpose of businesses is to create goods and services to sell to their community and by doing so, to make profit within the obligations set for them by society. To make profit is something essential for businesses since it is used as return for their investors, to invest, to pay the wage and the career expectations of its employees, and to pay taxes and other contributions to governments as specified by legislation and regulation. So, without profit there is no business, and without business there is no wealth creation in society. That is why our company believes firmly in the key role that the private sector plays in the development of the world. We do not have any doubt about the necessity of promoting SUSTAINABLE DEVELOPMENT, understanding for it “the development that meets today’s needs without compromising the ability of future generations to meet their own needs” (UN, Commission on Sustainable Development).

1.1.3. General Description of activities of company

Our company supports and encourages other companies to recognize the concept of Corporate Social Responsibility in their core business strategy, showing them the huge internal and external benefits of doing it. We are convinced that this is the main and first step to assure that a company is performing its activities being socially and environmentally responsible, and saving costs and future risks at the same time.

1.2 Justification of the necessity/importance of this company

Acknowledging that the world is becoming more socially and environmentally conscious, a leading company is needed to support companies in their venture to be sustainable. There is a paradigm shift in new business models of industrial growth, and in this environment sustainability consulting firm is required. STAR S.L aspires to be this leading company of change.

External Analysis

2.1 Environmental Analysis

In this section, a brief overview about the general environmental situation of STAR S.L is presented. Four different points of view have been considered: legislative-political, economical, social and technological.

2.1.1. Legislative-Political Analysis

Spain is a democratic country where the process of creating new companies is regulated and no restrictions exist to create a company with the characteristics described previously in the introduction. Moreover, both in the Spanish and the European framework, the creation of companies that promote sustainability and include an innovative product and/or service is actively supported.

A great variety of actions and proposals have been and are being introduced for the creation of innovative companies as well as for including Corporate Social Responsibility (CSR) and sustainability matters as main pillars of companies.

Legislation and subsidies that applies directly in our company

Legislation

EU's Service Directive: it is a directive under development which must be implemented by all the European countries by the end of 2009. Its aim is to regulate and simplify the setting up of service businesses and the cross-border service provision. It is based on the principles of freedom of establishment and freedom to provide services. Nowadays, those principles already apply. For more information refer to (Annex 1).

Spanish Law 15/1999 on Personal Data Protection (Annex 2): it establishes the basis for the data protection, defining different protection levels and the required procedures with each of them. It is applicable in this case mainly for the data protection of the customer companies.

Bilateral Trade Agreement between Europe-India: it is an agreement to regulate and support the business relationships between both regions. The establishment of offices in India, considering as office the place where the company does not make business and has just a representation of the company or uses for other activities, is regulated according to the purpose with which the office is opened. The development of software is one of the activities freely allowed. In case any business opportunity is found in India in the future, the relevant regulations that apply will be followed.

The three points mentioned above establish the basis for the activities developed in our company, what clearly supports and facilitates our procedures.

Financing and Subsidies

Competitiveness and Innovation Framework Programme (CIP) 2007-2013: it is a decision taken by the European Parliament and the Council in order to support measures to strengthen competitiveness and innovation capacity mainly in the SME's of the EU. It particularly

encourages the use of information technologies, environmental technologies and renewable energy sources, through two different funds that are the Multiannual Programme for Enterprise and Entrepreneurship, the ETF (European Technology Facility) and the High Growth and Innovative SME Facility (GIF).

The European commission finances through the European Regional Development Funds the business activities of SME's related with research and innovation and ICT (among others), in which partners from two or more EU countries participate.

The Spanish "Plan Nacional de investigación científica, desarrollo e innovación 2008-2011": it establishes the basis for the financing, supporting and regulation of innovative projects and research.

All the points above show how STAR S.L fits perfectly with the profile of company that is getting the best financing support nowadays both in Spain and Europe.

Legislation and subsidies that apply in STAR S.L's customers: promotion of CSR and sustainability

Related with the EU's Sustainable Development Strategy, the EU has developed several actions and proposals to promote the sustainable development of the EU and the world. Additionally the UE has declared that the private sector plays an important role in finding a way to ensure sustainable economic growth and environment protection. Some of the main actions and proposals are:

The EU has done a communication to promote CSR in the EU and globally. As part of the mid-term review of the Lisbon Strategy and the Sustainable Development Strategy, it traces the development of CSR in the European Union (EU) and sends a message to businesses to play a part in the partnership for growth and jobs. It gives its political support to the creation of a European Alliance on CSR. It also sets priorities with regard to CSR and announces a series of measures to achieve them, including cooperation with Member States, support for multi-stakeholder initiatives, research, SMEs and global action.

Environmental Liability Directive: it is the first legislation including the concept of the "polluter pays" principle and it establishes a common framework for liability with a view to preventing and remedying damage to animals, plants, natural habitats and water resources, and damage affecting the land. The liability scheme applies to certain specified occupational activities and to other activities in cases where the operator is at fault or negligent. The public authorities are also responsible for ensuring that the operators responsible take or finance the necessary preventive or remedial measures themselves.

Energy taxation directive: that introduces tax incentives and changes to promote the use of "clean" energy sources and penalize the use of the other.

IPPC Directive: Integrated Pollution Prevention and Control. It is a directive that tries to establish a framework for minimizing the pollution from industrial processes, through an integrated approach, promoting the use of BAT's (Best Available Techniques) and with flexibility for each process and specific situation.

The EU is adopting an Action plan in favor of Environmental Technologies which concerns technologies to manage pollution, less polluting and less resource-intensive products and

services and ways to manage resources more efficiently. These environmentally friendly technologies pervade all economic activities and sectors. They cut costs and improve competitiveness by reducing energy and resource consumption and so creating fewer emissions and less waste.

LIFE+: it is a regulation from the EU based on a financial instrument for schemes that contribute to the development, implementation and updating of Community environmental policy and environmental legislation. This financial instrument also tries to facilitate the integration of the environment into other policies, and achieve sustainable development in the European Union.

All these points affect not only to STAR S.L, but also and mainly its customers. The main target of all of them is to promote the sustainable development in companies. This is a clear opportunity for STAR S.L, since the use of its product and services will help companies to fulfill that target, and there our benefit. Additionally it is also important to consider that this will be an increasing trend, with more and stricter requirements from governments, and also other stakeholders involved.

2.1.2. Economic Analysis

Spanish's growth has excelled in the past ten years because of the huge consumerism culture. With the economic and financial crisis this has created a great shift, turning Spaniards into more conscious while spending and taking into consideration their social responsibility.

General review on the economic situation

Until 2002 Spain's currency had been the pesetas. But as it became a member of the European Union it adopted the euro, changing the monetary policies regulations.

Spain has a huge trade deficit which translates to a competitiveness loss. Unemployment has increased dramatically, leaving approximately 12,8% of Spaniards without monthly income. This, in turn, has contributed to the reduction in consumption. It can be seen how consumption has affected Spain's economy by seeing the shift from 2008 2nd Q's GDP of 2,8% to 3rd Q of -0,3%; in other words, in the 3rd Q, Spain's purchasing power declined so people could buy less with their yearly income.

It is expected that this deflation will continue to increase at least up to 0.7% in 2009 until mid 2010. For 2008 the inflation rate is said to be of 1,5%. Even that all economic indicators have been worse, Spain has been able to maintain inflation to the lowest rate in a decade.

Over the past year the financial market has experimented huge variations in the exchange rate, aggravating volatility between the euro and other currencies such as the dollar. At present 1 Euro equals 1,39 US\$. Annex 3 shows a graph with fluctuations since Aug 2008.

Expectations are that the dollar will continue to devaluate due to the economic and financial environment nowadays affecting world's market.

The country is ranked number 29 in the Global Competitiveness Index for 2008-2009, being situated below countries like Denmark (#3) and the United States (#1) who have developed good innovations regarding sustainable development.

Spain's major sectors have suffered major deterioration with the economic and financial crisis affecting the world, reflecting in a sharp slowdown in the industry and construction sectors.

The commercial balance has held an account deficit for many years but has increased more because of the increase in oil prices (Spain not being a producer but consumer). The general imports have decreased, because of the growing deficit on the income account and the increase deficit in the current transfers. In May 2008 the account deficit was as much as 9.423 billion euros, which means an increase of 11% if compared to May 2007 of 8.492 billion euros.

Nevertheless, it is expected for the commercial balance not to increase as fast because of the reduction in international oil prices representing approximately 50% of this deficit.

In conclusion, the economic situation nowadays calls for Corporate Social Responsibility. For this reason, the company enters the market in a perfect atmosphere, trying to recover companies' profit in a sustainable manner.

2.1.3. Socio-Cultural Analysis

Spain is an opportunistic country to start a business. The following will take a deeper look into the social sector and identify potential opportunities or risks for the company to enter into the market.

Sustainability as a lifestyle

In Europe there is a clear acceptance that sustainable lifestyles and companies are crucial to the success of the world and economy. In Spain for instance, there is an organization called Observatory of Sustainability in Spain (OSE). According to their website, "The OSE aspires to turn into a center of reference of state area that, in a rigorous way, compiles, elaborates and evaluates the basic information on sustainability in Spain (situation, trends and scenes), bearing in mind its different dimensions (social, economic and environmental)" (Observatory of Sustainability in Spain). The creation of this organization indicates that Spain is involved in the sustainability movement that is sweeping the globe and therefore an opportunity for our company's success.

The concept of lifestyle of health and sustainability (LOHAS) is becoming a new trend around the world. In the 2008 report written by Moxie, when talking about Spain it states, "20% of the population in Spain has adopted LOHAS lifestyle and a further 23% have more "me-centered" Naturalite tendencies. Spanish LOHAS are distinctive compared to other European consumers in their desire to learn and teach others about the environment. Spaniards find it more important than others for companies to support the communities in which they work." (Summary- Global Lifestyle of Health and Sustainability)

Sustainability in corporations

There are also many studies and articles being written in Spain regarding corporate trends and attitudes towards sustainability. One such article, involving six major countries, including Spain writes about new ways of thinking for corporations to incorporate sustainability. This article states that sustainability is a catalyst for innovation. In sum, the ideas of sustainability as part of an essential aspect for corporate financial success is becoming more talked about and just needs to be implemented more. (Corporate Sustainability- It's all about Attitude).

Another aspect important to note is that Spain currently has sustainable companies internationally recognized. Spain has 3 companies listed in Global 100 2008 list for most sustainable companies: Acciona, Iberdrola SA, Inditex SA. (Global 100). These well established companies may pose as a barrier to enter into the market for STAR S.L because these three companies have great name recognition within and outside Spain creating a competitive market. However, competition is a way for a company like this to be successful because it will be able to use its innovative advantage to attract future clients.

Population Figures

Spain's current population is 40,448,191 for 2007 with an overall density of 79 persons per sq km. Most Spanish reside in densely populated urban areas with 78% of the population now resides in towns and cities. Spain's capital, Madrid, with its surrounding areas accounts for approximately 5 million people. Find the major cities of Spain and their approximate populations in a chart in Annex 9.

Taking into consideration that STAR S.L will be headquartered in Spain, this chart illustrates that there are many people living in Spain, thus a large potential pool of future clients. Due to the fact that STAR S.L's product and services are for all size companies (while leaning towards medium and large-sized companies), the possibility of reaching this potential client pool seems promising, of course, with the right marketing and public visibility plan.

We can conclude saying that this social research is useful to find out trends, beliefs, and numerical information about a specific population. The understanding and proper use of the information presented about the social aspects of Spain are crucial in a successful development of the company. Taking into consideration sustainability as a lifestyle and the corporation trends it is clear that the company has great potential to be successful.

2.1.4. Technological Analysis

STAR S.L basically requires the following technologies to run the business:

- i. Technology to develop a software product to operate the program
- ii. Technology to design website for social networking and marketing purposes

All this technology is easily available in the market, and a company like ours can afford the investment it requires. This means that technology is not going to be a problem for this company.

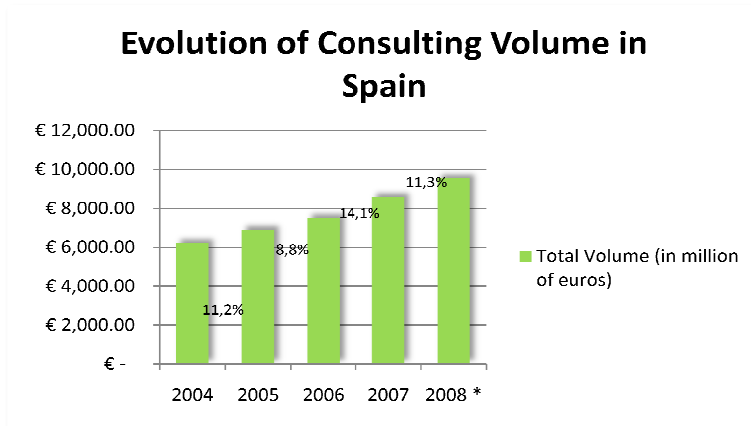
2.1.5. Conclusions

This analysis shows a clear favorable environment for STAR S.L in Spain, with lack of legislative restrictions, an important opportunity in the economic and financial crisis scenario we are facing, current and future expected high society acceptance and the existence of the required technology. However, this is not enough to assure the suitability of our company, and a deep sector analysis is mandatory.

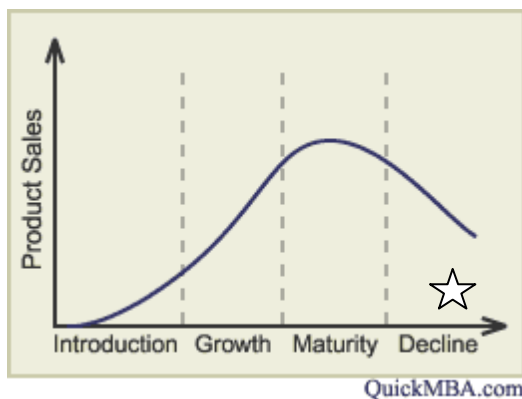
2.2. Sector Analysis

2.2.1 Size of the Market

The consulting companies have had a steady growth in the past five years. Its evolution has changed from being a mere consulting to an outsourcing activity base. The trend for sustainability consulting services can be considered as a new sector of the consulting industry. Below graph of the growth in consulting services:



There is a strong movement towards sustainability awareness in Spain. One significant organization is Observatory of Sustainability (OSE), which holds monthly forums, training sessions, and is a research center for trends relating to sustainability in Spain. The development and growing visibility of such organizations illustrates the trend towards a more sustainable conscious Spain. There are also consulting agencies that are moving towards this trend. For example, Indra offers sustainability and CSR consulting. There are also many small companies that are involved in sustainability consultancy. On the one hand the ones that deal just with environmental sustainability and on the other hand, the ones that have a broader concept of sustainability, that is, they consider environmental-social-economic sustainability. Below we can find the positioning in the product life cycle. This is a new market segment, so it is considered to be in the introduction following towards the growth of the sector.



2.2.2. Structure of the Sector

Definition of the Services Offered by Our Company

Our company will use the software developed in India to advise the companies that hire our services in their sustainability performance. The software itself will not be commercialized. We will also offer the possibility to supply the services needed to correct the sustainably weak factors that have been identified in the consultancy. The key component of STAR S.L is that it will identify in the initial consultancy the profitability of the services offered by using indicators such as ROI or Payback.

2.2.3. Current and Future Competitors

Introduction and Definition

As a consequence of the increasing awareness of sustainability matters and the increasing trend of implementing CSR programs in companies, the number of consultancies offering similar services as ours has increased considerably in the last years.

Sustainability is a broad concept that covers social, environmental and economical aspects. Some consulting companies offer solutions just to one or two of these aspects. For instance, some companies deal with environmental problems of companies, others with the social ones and others with the economic ones, while others combine two of them. In one way, all of them can be considered our competitors, since they can catch our potential customers. However, in order to perform a realistic and specific analysis, we will focus mainly on our direct competitors (the ones offering complete sustainability solutions: environmental, social, economic), and analyze more roughly the rest, taking them as potential competitors considering the possibility that they can open the services they offer, and cover the three fields.

Analysis

From the competitor analysis developed it is clear that no company is offering exactly the same services STAR S.L is offering. However, there are some companies that work with similar solutions.

The market of consultancy is a big market in Spain. STAR S.L can distinguish between two different groups of consultancies. On the one hand the most important and powerful consultancies and on the other hand the smaller and more local ones.

From the first group of companies (“macro-consultancies”), only one, *Indra* (with the brand *Euroquality*), is offering similar services as STAR S.L in Spain. The rest, more than current competitors, can be considered both potential future competitors and potential future clients. That is, according to their prestige, the existing establishment, their network capacity and the increasing trend of incorporating CSR in companies, it is likely that companies such as Deloitte (already doing so abroad), PricewaterhouseCoopers and Accenture offer sustainability services in the future. But this issue can be seen also as an opportunity for STAR S.L, since they can turn to STAR S.L and outsource STAR S.L services. Apart from these “macro-consultancies”, other small sustainability consultancies exist in Spain.

The following paragraphs deeply analyze the main current competitors.

Indra-Euroquality (European Quality Assurance)

- Foundation: in 1993, it was incorporated in *Azertia* in 2005 and later in *Indra* in 2007
- Headquarters: Avda. Bruselas, 35 28108 Alcobendas (Madrid)
- Description of the services: they offer consulting services for quality, innovation, environment, CSR and project financing management. Regarding CSR, they offer both basic consulting and outsourcing services that cover the analysis of CSR management systems, studies of the working environment, development of the ethical code, stakeholders analysis and network, CSR reports development, training and sensibilization plans, integration of CSR standards (SA 8000, SGE 21 and EFR 1000) and have designed and use CSR indicators.
- Clients: mainly from the healthcare, petrochemical and technology sectors. More accurate information is not available
- Other features: international presence and high reputation of Indra
- Size: 73 employees in 2005, other information not available. Recent employee reduction

- Income: 4.856.000€ in 2007. As mentioned before, they are offering 5 different lines of services, and as information about the weight of each of them is not available, it may be assumed that they contribute equally to the income, that is, their income from CSR services was approximately 971.200€ in 2007.

URS

- Foundation date: information not available
- Headquarters: Méndez Álvaro 9, 2a dcha. 28045 Madrid, with another office in Barcelona
- Description of the company and offered services: development of CSR strategies (situation diagnosis and evaluation, opportunities and necessities evaluation, improvement areas, CSR policy), development of sustainability reports (design of CSR indicators), corporate communication and information management (internal and external), non financial risk management (evaluation and management of environmental and social risks, responsible investment), stakeholder dialogue management (stakeholder identification, prioritizing, action plan)
- Sectors: public administrations, energetic, industrial, real state, legal and finances, mining, fuel and gas, transport
- Clients: information not available
- Other features: international company with presence in Germany, Belgium, France, Ireland, Italy, The Netherlands, Nordic countries and United Kingdom
- Size: 100 employees in Spain
- Income: 4.164,94 million € in 2007 for the whole group, specific information for Spain is unavailable. It can be generally assumed that the company needs to do an income of at least 60.000€/employee/year, what means that the company can account its income for 6.000.000€ more or less. As the company has 7 different business lines, and it will be assumed that all of them are contributing in the same proportion of revenues, the company did approximately 857.143€ with CSR in Spain in 2007

Atenea comunicaciones

- Foundation date: 1992
- Headquarters: C/ Santander 3, 2º 28003 Madrid
- Services: they provide their customers with consultancy services (corporate sustainability in order to avoid and reduce risks and indentify stakeholders; they provide customers with a free, simple and online diagnosis tool, and support later customers with their consultants advise), knowledge management (CSR communication, public relationships development, responsible image and reputation creation), sustainability reporting development, training and education. For them, CSR is mainly essential for giving a good image of the company for clients.
- Clients: Caja Madrid, Aena, ACS, Cortefiel, Aldeasa, Eroski, some public administrations.
- Size: 6 Clients
- Income: 513.636,23€

Responsables Consulting

- Foundation: *Red2Red* was created in 05/07/2000, and *Responsables Consulting*-their brand for sustainability in 2003
- Headquarters: C/ Numancia, 2 28039 Madrid
- Description: they deal with the analysis of CSR practices of clients (internal sustainability analysis and diagnosis, sustainability performance measurement, sectorial studies, benchmarking, stakeholder identification and analysis), their communication channels (information gathering systems implantation, information management, adaptation to international standards, sustainability communication) and the

incorporation of them into the core business activities (CSR plans and policies development, action plans, stakeholder engagement, integration to sustainability stock indexes)

- Clients: mainly public administrations, BBVA, Liberty Seguros, Banesto, Fundación ONCE, CERMI (Comite Español de Representantes con Personas con Discapacidad), Caixa Catalunya, Caja Burgos, Caja España, Caixa Galicia, Cajasol, Telecinco, Ferrovial
- Size: 15 employees
- Income: 417.424,50€ in 2007

Lavola

- Foundation date: 1989
- Headquarters: Av. de Roma, 254 08560 Manlleu (Barcelona)
- Description of the company and offered services: they offer consulting, engineering, communication and training services. Regarding CSR, they work on the analysis and diagnosis, CSR actions plans, CSR indicators design, training and education, CSR reporting and certification of SA 8000 standard.
- Clients: more than 120 clients, which are mainly city councils, diputations and governments in Catalonia, Banc Sabadell, CESPÀ, Eco-equip, Ecoembes, Ecovidrio, FCC, Fundación “La Caixa”, Gas Natural, Gestiomat, Uniland Cementera, etc.
- Other features: additional offices in Barcelona and Vilanova i la Geltrú, strong sustainability principles, multidisciplinary team
- Size: more than 180 employees
- Income: 7.000.000€ in 2007 for the whole company. Assuming that each of the activities contributes equally to the income of the company, and acknowledging that the company offers 4 lines of products and inside the one of consulting only 2 out of 10 are related to CSR, the company earned approximately 350.000€ in 2007 from CSR and sustainability issues.

EIG-EcoIntelligentGrowth

- Foundation date: 2006
- Headquarters: Avinguda Diagonal, 523, 5è 1a 08029 Barcelona
- Description: their main activities are related with sustainable building consulting (LEED certification), industrial ecology consulting (under the Cradle to Cradle principle) and training and education. Their services are offered to all sectors. They have created a network of suppliers to offers to their customers.
- Clients: Real Club de Tennis Barcelona, Hostal Empúries, Agrícola del Hidalgo, etc.
- Other features: small company, with passionate and really committed people
- Size: 7 employees
- Income: between 200.000€ and 500.00€ in 2007

Solingesà

- Foundation date: 06/07/2001
- Headquarters: Avda. De la Astronomía, 1- torre 1. Plt 8 41015 Sevilla
- Description of the company: it is a consulting company specialized in innovation, CSR and engineering, both in the industrial and service sectors.
- Services Offered: diagnosis, strategic planning, consulting and training services in CSR. They also help companies in the sustainability reporting and in the implantation of CSR standards like SGE21 and SA 8000.
- Clients: information not available
- Other features: multidisciplinary team, offices in Sevilla, Málaga, Granada, Jerez and Las Palmas
- Size: 4 employees
- Income: 337.624,56€ in 2007

Garrigues Medio Ambiente

- Foundation: 01/12/2000

- Headquarters: C/ Hemosilla, 3 28001 Madrid
- Description: Garrigues Medio Ambiente is the environmental brand of Garrigues, the biggest lawyer and consulting company of the Iberian Peninsula
- Offered services: they offer a huge variety of services such as environmental legal assessment, environmental management, solutions for waste, water and soil pollution, etc. Within the CSR line, they are focused on auditing and diagnosis of SR of companies, social and environmental auditing of suppliers, benchmarking and identification of the best available techniques in CSR, design of sustainable development and CSR strategies for Public Administrations and private companies, design, development and implantation of Agenda Local 21, definition of the managements and relationships with stakeholders, development of CSR policies, CSR reporting, managements of crisis and organizational changes in CSR, advise to companies in Sustainability Index stock markets and advise in ethical investments.
- Clients: information not available
- Other features: international company with high prestige and reputation
- Size: 52 employees
- Income: 3.392.000€ in 2007 for the whole group. As in other companies above, no data is available about the contribution of the CSR business line (in total 11 in this case) to the total income, so it will assumed that each business line contributes equally, that is, the company earns approximately 308.364€ in 2007 from CSR services.

Formastur

- Foundation date: 10/02/1992
- Headquarters: Avda. Pedro Masaveu, 1 33007 Oviedo-Asturias
- Description: they offer three different lines of services, continual and occupational training, consultancy in excellence and sustainability and e-learning. Regarding excellence and sustainability consultancy, one of their services is CSR (out of 4, which are more related to basic environmental sustainability) with which they assess all kind of companies in the design, management and communication of CSR plans and strategies, as well as in the implementation of CSR management systems and in the CSR reporting.
- Clients: Alcoa, Adecco, Alimerka, El Arbol, hc energía, Du Pont, Fluor, Grupo Eulen, Reny Picot, Asturiana, Grupo Hunosa
- Size: 23 employees
- Income: 2.898.344,37€ in 2007. No information is available about the weight of each of the business lines, it will be assumed that all contribute equally to the income of the company, that is, Formastur, earned approximately 241.529€ in 2007 from CSR consulting.

Auren

- Foundation date: 1998 in Spain
- Headquarters: offices in Spain in Alicante, Barcelona, Bilbao, Cáceres, Cartagena, Las Palmas, Lleida, Madrid, Málaga, Maó, Murcia, Palma de Mallorca, Sevilla, Valencia and Zaragoza
- Description of the company and offered services: the company offers auditing, consulting and law services for different sectors. Related to CSR, their main activities deal with:
 Definition of a CSR strategy in companies: including stakeholders relationships, definition of CSR indicators, CSR reporting, consulting and auditing related to SA8000, GRI, AA1000;
 Suppliers CSR evaluation planning: they have developed a standard to audit responsible purchases from suppliers, they audit suppliers and offer Supply Chain Management;

Human Resources responsible management: gender equality, flexibility, accessibility, and implantation of different standards and legislation (GRH 27001, OHSAS 18001, LOPD);

Sustainable Economy: implantation of GEF 55001 standard for economical and financial management, money laundering prevention system;

Environment respect: eco-efficiency, energetic efficiency auditing, environmental impact evaluation, ISO 14001 implantation, waste and water reutilization, polluted water and soil cleaning;

Social marketing: CSR communication strategies, social positioning, implantation of GC 32001 standard;

- Clients: information not available
- Other features: international company with presence in Mexico, Chile, Argentina, Uruguay, Angola, Portugal, Andorra, Germany. Within Spain, in the Basque Country
- Size: 1200 employees, specific information for Spain not available
- Income: 14.600.000€ in 2007 for all the consulting services. They have 7 different consulting lines, and CSR is part of the one related to senior management, where at the same time 11 business lines are covered. Dividing the total consulting income of the company by 7 and 11, it can be assumed that the income of the company from CSR services accounts for approximately 200.000€.

Bidea

- Foundation date: 09/25/2003
- Headquarters: Avda. Corts Catalanes, 5 08173 Sant Cugat del Valles (Barcelona)
- Description: they offer implementation, sensibilization and knowledge of CSR to companies, encouraging internal and external communication, transparency and equality in companies. The help companies developing specific responsible policies, sustainability reporting, stakeholder identification, knowledge and relationship development.
- Clients: information not available
- Other features: connected with many prestigious organizations
- Size: 1 employee
- Income: 112.492,44€ in 2007; decrease on a 44% from sales in 2006

Mas Business (Moragues and Scade Business S.L.)

- Foundation date: 2004
- Headquarters: Las Rozas-Madrid
- Description of the services: the services they offer can be knowledge providing (training, conferences, sensibilization, teaching in companies), consultancy in CSR (diagnosis, evaluation, new policies design, stakeholder identification and relationship creation, supply channel, responsible investment), advising (innovation processes implementation to increase tangible and intangible value of the company, standards implementation, use and understanding, CSR global plans adaptation to local circumstances), using different specific tools for it (Project SIGMA, LBG España, SEDEX, OpinaRSE) and assurance of sustainability and CSR information (AA1000 diagnosis, Assurance Gap analysis, AA1000AS assutance).
- Clients: Abertis, BBVA, Barclays, Ferrovial, Gas Natural, Grupo Agbar, Iberdrola, Repsol, Telefónica
- Other features: small and local company but with links with other leader international CSR consultancies, such as Corporate Citizenship, Sd3 Global, Sedex, Adrian Henriques
- Size: information not available
- Income: 13392,09€ in 2004

Hispaval Consultores Asociados S.L.

- Foundation date: information not available
- Headquarters: Av. Barón de Carcer, 17 - 9A 46001 Valencia
- Description of the company and offered services: they propose companies quality, environmental and management consulting. Related to CSR, they help companies developing Sustainability reports, Sustainability indicators, social participation and communication plans, Responsible Marketing and socially responsible investments
- Clients: information not available
- Other features: offices in Malaga and Sevilla additionally
- Size: information not available
- Income: information not available

Ashridge-InterfaceRaise

- Foundation date: 2007
- Headquarters: UK-USA
- Description of the company: it is a joint consultancy company by *Ashridge Consulting Business School* (UK) and *InterfaceRaise* (the brand through which Interface-the mother company, is developing sustainability consultancy services). The joint took place in the early 2007, and March 2008 started offering their services in Spain. In that moment Interface was already operating in Spain through the already established InterfaceFloor (modular flooring producer and distributor), international leaders in the sector. The idea grew after incorporating highly sustainable practices in Interface, and proving the benefits of doing so.
- Services: “sustainability consulting, connecting and convening”. Basically, they help companies to identify which are their weak point related to sustainability aspects, to solve them connecting them with other clients and suppliers (network), and to incorporate them in the core business and strategy.
- Clients: information not available
- Other features: high international reputation, experienced experts and just entered in the Spanish market.
- Information of the size and income of the company is not available yet, due to their recent establishment.

KPMG

- CSR is not explicitly offered as one of their services in Spain, but is offered abroad. However, from some information received by experts on the field, they are already implementing it in Spain and have an important market share. No information has been found to measure it.

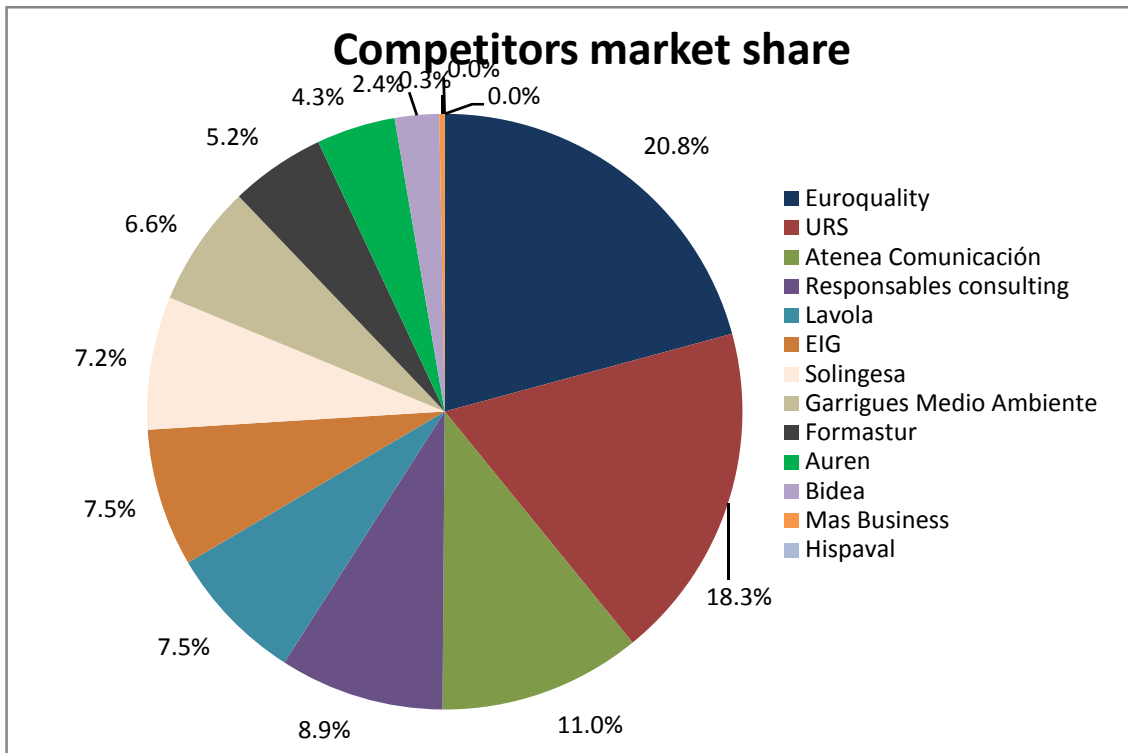
Current Competitor Summary

Market age: most of the competitor companies have been created within the last 10 years, showing how new it is in the market. Nevertheless, companies like Lavola, Formastur or Atenea Comunicación have a longer trajectory in the sector.

Geographical analysis: these companies are spread all over the Spanish geography, most of them in Madrid, and then in Barcelona, Andalucia, Valencia, Asturias and the Basque Country. Products portfolio offered: all the main product/services possibilities are covered with the companies analyzed, though issues like responsible investments, responsible consumption and HR responsible strategies are the ones less offered. The majority of the companies focus their

activities in CSR strategies development, stakeholder identification and relationship creation and CSR indicator development.

Market share: it is important to consider the high level of assumptions made in the calculation process and the lack of information of some competitors (still information is missing about Mas Business and Hispaval). Find in the graph below the provisional competitors market share (Annex 10):



With the information managed until the moment (no data about KPMG, Mas Business and Ashridge-InterfaceRaise), it can be deduced that Euroquality is the market leader, followed by URS, Atenea Comunicación, Responsables Consulting, Lavola, EIG and the rest smaller companies. However, the main message that can be deduced from the graph is that there are not huge differences between the competitors, since all of them have the same magnitude in income. On the one hand, this can be seen as an advantage for STAR S.L, since there is no company with a big strength to compete. On the other hand, the important number of companies and the fact that they are spread all over the country can become a barrier for STAR S.L.

Taking into consideration all of the above information, the competitive advantage of STAR S.L would be based mainly on two aspects:

- None of the companies mentioned above are using the innovative software STAR S.L is using, which aims to help making decision in an efficient way
- STAR S.L shows his customers since the first step the profitability rates and benefits of implementing the offered services

Potential Future Competitors

We can differentiate between different types of potential future competitors. On the one hand, the companies that are currently offering just environmental, social or economical services in Spain and that can develop their services towards an integral sustainable advising. And on the other hand, the companies that are already offering integral sustainability services abroad, and

can start doing so in Spain. In the paragraphs below, just the main potential competitors are briefly analyzed.

Companies Offering Environmental, or Social or Economical Consultancy Services in Spain:

- **Environmental consultancies:** Environ, Evaluación Ambiental, Pryisma, Tecnomia, Allpe and other with less influence such as: Styralia, Valora consultores, Burotec, Eco Avantis, Sir S.A, Mediterra, Inocsa, Econima, Socoin.
- **Social consultancies:** Consultoría Social, Consultores Sociales, AON
- **Economic/Financial consultancies:** f-3net, GIA Banca de Inversión, InverConsulting, MGI, and the some of the companies in Annex 1.

Companies offering integral sustainability services abroad:

Deloitte : They offer CSR verification services to companies in Spain, and abroad are also working as consultants and advisors for companies in CSR matters offering a broad variety of solutions such as stakeholder identification, prioritizing and management, CSR reporting and application of different international standards on CSR (ISAE 3000, AS1000 AS).

PricewaterhouseCoopers: they offer CSR strategy and deployment services including stakeholder engagement, inventory and gap analysis, program development and implementation, operational solutions and support to decision making, also reporting and communication planning and strategy, reporting analysis, obtaining external assurance of non-financial information and supply chain risk management. They have recently bought Sustainable Finance to operate in the US offering sustainability services with this brand.

Sustainability

(UK-Europe): born in 1987, they are now leaders in Europe providing sustainability and CSR consultancy, with lots and prestigious customers (none of them Spanish, at least in their official list), and presence in US and developing countries.

It is likely that Deloitte and PricewaterhouseCoopers will start offering CSR services in Spain since they are companies already established in the country, with high reputation and with a big power of influence in clients. It is more difficult to predict anything about Sustainability but as they have a mature market in other places in Europe, they can arrive to Spain. However, no data has been found supporting this idea.

The difficulty arises when trying to predict the time all these companies will need to become STAR S.L's competitors, and especially in the difficult economic and financial environment in which we are in the moment.

Demand-Potential Market:

In principle, all kind of companies can hire STAR S.L company's services, but there are a number of sectors with a higher potential, like the IT, transport and infrastructure, textile, electric/energy and banks. Reasons:

- High presence in Spain
- They are sectors that have shown high interests at CSR matters (“Estudio Multisectorial sobre el estado de la RSC de la gran empresa en España”)
- They have intensive social and environmental impacts (in particular: transport and infrastructure, electric/energy and textiles)

In the report “Estudio Multisectorial sobre el estado de la RSC de la gran empresa en España”, published by the Club de Excelencia en Sostenibilidad a deep analysis has been done about the situation of different sectors regarding CSR. According to them the situation of the sectors considered has a higher potential for becoming STAR S.L’s customers is the following:

IT: it is the sector with higher overall punctuation in CSR performance, what means that the sector is doing well and additionally shows high interest in sustainability matters.

Transport and infrastructure: the sector has been focused on managing the environmental issues but not paying too much attention to external and internal social management, stakeholder relationship, technical economic management and the development of a clear CSR strategy within the companies. According to the study, the sector has not shown much interest in CSR, but it shows the huge areas of improvement, that is, the huge opportunities for STAR S.L in the sector.

Electric/energy: the sector’s weak point appears in the internal social management, showing interest and effort put on CSR. It is important to consider their presence in developing countries and that they are intensive environmental pollutants.

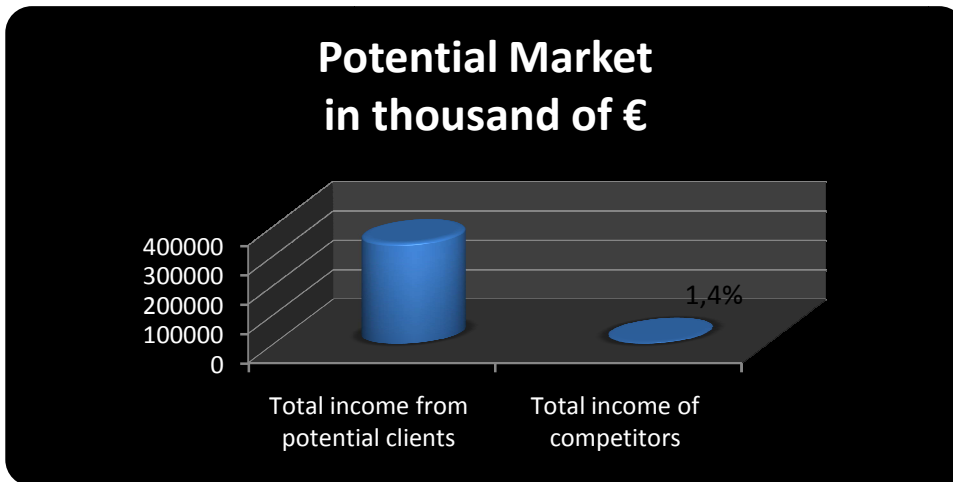
Banks: they show a high interest on CSR, paying specially attention to their CSR communication, but showing a lack of interest on the environmental management.

Textile sector: as the electric/energetic sector, this sector is also present in developing countries and it is an important polluting source. Its main weaknesses are the environmental management and the development and implementation of a CSR strategy.

According to the book “La responsabilidad Social de la Empresa en la gestión de Pymes. Jaime Urcelay. Colección EOI Empresas” not only big companies but SMEs also are really interested on CSR and they are aware about the intangible and tangible benefits of implementing CSR policies in companies.

Analysis of the demand/potential market

The process followed to calculate the potential market size for STAR S.L is detailed explained in Annex 11 as well as the assumptions made for it, and the detailed calculations. The following table shows the result of those calculations (figures based on information from companies from 2007):



It is important to clarify that the potential market size and the total market occupied by STAR S.L's competitors are not directly comparable figures in this case since the competitors are not operating just in the 4 sectors considered as potential for STAR S.L, but at least the information is useful to evaluate the possibilities in the market of STAR S.L.

As it can be seen in the table, just the 1,4% of the potential market is occupied, what suggests the great opportunities that STAR S.L has.

2.2.4. Substitute Competitors

It is difficult to predict which kind of substitute competitors will appear in the future when STAR S.L is part of a new trend, still not mature.

2.2.5. Strategic Groups

Consulting companies is an industry that has been growing through the paste years. Currently, one innovative sector of the industry does sustainability consulting, which is just arising. Considering the product life cycle, it is rapidly identified in the introduction cycle, what is also known as product placement.

The strategic groups that can be identified for the sector are described below:

Club de Excelencia de Sostenibilidad

It was created in 2002 by a group of companies that believe that sustainability is the core importance for economic, environmental, & social growth. Its mission is to urge the growth of industries sharing the value of corporate social responsibility.

Companies in associatiation:

ABB, Adeco, Adif, Alstom, Amena, BASF Española, BSH Electrodomésticos España, Cemex España, CEPSA, Endesa, Holcim (España), Iberdrola, ISS, "la Caixa", Mondragón Corporación Cooperativa, MRW, Port Aventura, Red Eléctrica de España, Renfe, Siemens, Telefónica Móviles España, Unión FENOSA, & Vodafone España.

Observatorio de la Sostenibilidad en España (OSE)

The OSE was created in 2005 after the agreement for Ministerio de Medio Ambiente, Fundacion General de la Universidad de Alcala, & Fundacion Biodiversidad. Its objective is to become the main center for research and information about sustainability in Spain. It also stimulates social change by making the information accessible to all.

Asociación Española de Empresas de Consultoría (AEC):

AEC is an association that focuses in providing in hand solutions to consulting companies, trying to stabilize the regulations of the industry. Its main objectives are focused in reducing costs for consulting companies, increasing the demand of the service, & increasing the profitability of the business.

Companies in association:

Accenture, Altran, Atos Origin, Capgemini, Deloitte, Ernst&Young, Everis, Grupo Delaware, Hay Group, IBM, Informatica El Corte Ingles, INSA, IOR, Marchmind, PriceWaterhouseCoopers, Sadiel, Sigma Dos, Steria, T-Systmes, Tea-Cegos, Tecnom, Unisys, & VASS.

Fundación Entorno:

Fundación Entorno is an association that works together with leader companies to help them reach the threats that block their opportunity of sustainable growth.

Member Companies: Acciona, Adif, Bancaja Habitat, Campofrío, Cemex España, Consulnima, Dow Chemical, Elcogas, Endesa, Ericsson, Gamesa, Gas Natural, Grupo Ence, Grupo Erosli, Grupo Salvay, Grupo SOS, Holcim, Iberdrola Inmobiliaria, IBM, Metro de Madrid, OHL, Red Eléctrica de España, Repsol, Sol Meliá, Tragsatec, & Unilever España.

Based on Porter's analysis (annex 12), we can conclude that it is an attractive industry. The barriers to entry & to exit as the competitors' rivalry do not represent a true interference for the market. The most important factors of the industry are consumers bargaining power & substitute product, being consumers the market's most important asset & the market's greatest threat that the clients can easily and successfully change from the service provided to a another competitor in the market and still get the same or even better results at a lower price.

2.2.6. Clients

As consultants, the customers must be the most important asset considered in the company. One of the main complaints of customers is that there is no visible value added service resulting in dissatisfaction of consulting services.

The main customers are middle-large companies who are becoming more conscious about sustainability & corporate responsibility. Some examples have been noted as Abertis, BBVA, Barclays, Ferrovial, Gas Natural, Grupo Agbar, Iberdrola, Repsol, Telefónica, Caja Madrid, Aena, ACS, Cortefiel, Aldeasa, Eroski, some public administrations, Alcoa, Adecco, Alimerka, El Arbol, hc energía, Du Pont, Fluor, Grupo Eulen, Reny Picot, Asturiana, Grupo Hunosa, Real Club de Tennis Barcelona, Hostal Empúries, Agrícola del Hidalgo.

The sectors STAR S.L will target are analyzed, giving a brief overview of them, describing their main characteristics and nature of activities, and showing which are their main challenges in terms of CSR and sustainability; that is, which are STAR S.L's main business opportunities in each of them. In the analysis, the sustainability of the companies is going to be understood as a way to keep doing profit (or even save cost and increase revenues) while being responsible with the environment and the society. Due to this fact, the main environmental and social challenges will be discussed.

The clients of STAR S.L will be mainly other Spanish companies or companies operating in Spain. In general terms as a small and new company, the probability of STAR S.L reaching small companies would be unlikely since their common daily interests are other than investing in CSR. Consequently, the most realistic target for the initial steps of STAR S.L is medium and big companies. However, it is important to consider small companies as potential future

customers, as a result of the increasing CSR and sustainability awareness, and the increasing demand from all stakeholders.

Among all the medium and big Spanish companies, some sectors are currently more conscious about sustainability and CSR as a consequence of the nature of their activities. As studied in the Sector Analysis, the four sectors with higher demand potential for STAR S.L are energy and oil and gas, IT, transportation and infrastructure and financial entities. In the mentioned section the main reasons to choose them are given, which in general terms are the following:

- High presence of these sectors in Spain
- They have shown strong interests in CSR matters (“Estudio Multisectorial sobre el estado de la RSC de la gran empresa en España”)
- They have intensive social and environmental impacts

In the following paragraphs the targeted sectors are described:

Energy sector, including oil and gas

Companies in the sector and their situation regarding sustainability and CSR:

Some of the main Spanish companies belong to this sector. It is going to be considered as energy sector the one that includes companies which produce, distribute and/or commercialize electricity and the ones working on the construction the infrastructure required for that (i.e. aero generators). Find below some of the main ones:

- Endesa
- Iberdrola
- Unión Fenosa
- Abengoa
- Red Eléctrica
- Bahía de Bizkaia
- Bizkaia Energía
- Global Energy Services
- HC Energía
- Nuclenor
- Gamesa
- Acciona
- etc.

And in the area of oil and gas (extraction, distribution and/or commercialization):

- Repsol
- Cepsa
- Gas Natural
- Enagas
- Shell España
- BP Oil España
- etc.

Additionally, all the companies that supply these big companies should be considered (from the consultancy firms to the mechanical components supplier), since they might be required to follow specific sustainability and CSR patterns established by their big clients. It is not trivial to calculate the number of those companies, but it can be estimated that they form a big group.

In 2007, the companies in the sector accounted for 15% of the total industry net sales (69.222.719 m€) and the 0,7% of the total number of industries with more than 20 employees (174 companies) (INE-Industry statistics).

Those companies in the energy sector are facing both environmental and social challenges. Nowadays they are, in general, pretty aware about their impacts and are doing big efforts to eliminate or to reduce them. All the companies mentioned are already developing specific policies to improve their environmental performance and behaviour towards society, with the implementation of CSR strategies, dialoguing with stakeholders, promoting diverse activities in the close communities, etc. Apart from this, they try to communicate their actions and show their effort actively to their customer and investors through the publication of annual sustainability reports, and first page of their websites. For example, Iberdrola is one of the leading companies in the Dow Jones Sustainability Index.

However, a lot of work could still be done, especially if it is taken into consideration that this is a field that requires continuous improvement as a consequence of the more strict legislation (i.e. the new Law on Renewable Energies), the new development on alternative energy sources, and the increasing pressure from society.

Challenges in the sector:

In the environmental field, issues like inefficient equipment, old infrastructure in bad conditions for electricity production and distribution, limited development of new and more renewable systems for resource extraction (oil and gas) and electricity generation (renewable energy sources) are the main problems. Whereas in the social field, the location of energy sources, the lack of transparency, the lack of communication with all the stakeholders and the lack of equal treatment to the customers in the branches of these companies in developing countries, are the main issues to solve by companies in the sector

IT Sector

Companies in the sector and their situation regarding sustainability and CSR:

The companies considered in the IT sector, are teleoperators, mobile operators, internet, mobile producer and distributors, etc.

- Arsys
- Atento Teleservicios
- Euskaltel
- Ibersontel
- Ibys
- Ikusi
- ONO
- Ocean's Network
- Orange España
- Retevisión
- Sogecable
- Telecable
- Telefónica
- Telegate
- Tenaria
- Telvent
- Terra Networks
- Ufinet
- Vodafone España
- Ya.com
- Yoigo
- Jazztel
- Motorola España
- Nokia Spain
- Siemens

- Ericsson España
- Alcatel-Lucent España
- BT España

As well as in the energy and oil and gas sector, the same could happen with the companies supplying the mentioned companies in this sector, and in consequence, other important number of medium IT companies could require STAR S.L.'s services.

In 2007, the 607 medium companies (50-249 employees) in the sector sold 7.939.945m€ while the 149 big companies (250 employees or more) sold 55.795.336m€ (INE-Sector's Statistics).

In general terms, traditionally first companies implementing CSR policies have been the ones with previous experience on facing environmental issues, which following the trend of expanding the consideration of society's needs and expectations, have transformed their environmental policies into CSR and sustainability programs. That is why CSR practices are already a spread reality in most of the big and medium companies in the energy and oil and gas sector. However, the nature of the IT sector is not so environmentally pollutant intensive as the previous one, and consequently not all the companies have developed yet sophisticated CSR policies. But companies such as Euskaltel, Telefónica, Vodafone, Orange, Arsys, Telvent, Nokia, Siemens, Ericsson and Alcatel-Lucent, have already worked in the field (publication of annual sustainability reports, stakeholder engagement, etc.) probably pushed by the new trend on CSR matters or because they have noticed all the economic, social and environmental benefits this has.

Challenges in the sector:

In order to improve the environmental performance of the IT companies, the energetic efficiency of the products designed, the material selection of the products, and the reduction of resource usage in companies (energy, paper, etc.), should be optimized.

In the social area, the facilitation of all kind of people to technologies, regardless their social and economic conditions, transparency, accessibility to clients and better customer and employee service are the main improvement areas.

Transport and infrastructure sector

Companies in the sector and their situation regarding sustainability and CSR:

It has been consider the transport sector the one that includes airlines, bus and train services, package deliveries and travel organizers.

- Air Europa
- Amadeus
- Iberia
- Metro Madrid
- Spanair
- Transportes Azkar
- Viajes Halcón
- Viajes Marsans
- Alsa
- Renfe
- Chronoexpres
- MRW
- Seur

In the transport infrastructure sector, companies constructing roads, airports, train rails, etc. have been considered:

- Ferrovial
- ACS
- Abertis

In the same way as in the previous sectors, all the big and medium companies supplying the mentioned companies will be considered also potential clients.

In 2007, the 1184 medium companies (50-249 employees) just in the transport sector sold 17.273.233m€ while the 201 big companies (250 employees or more) sold 34.185.671m€ (INE-Sector's Statistics).

Not all the companies above develop nowadays CSR policies, or at least, do not communicate it in their web pages (i.e. Amadeus, Viajes Halcón, Viajes Marsans, Chronoesprés, Seur, Alsa). However, other companies like MRW, Iberia, Air Europa, Metro Madrid, ACS and Spanair, they do publish annual sustainability reports in their websites and communicate the different actions they develop. Another issue identified in the analysis is that in some cases (i.e. Ferrovial, Metro Madrid) the social and environmental fields are considered separately, showing the interest of the companies in the CSR but also the lack of knowledge or deep treatment of the issue, since the ideal is to consider them integrated and under the same policies .

Challenges in the sector:

The high consumption of fuels and logistic improvement can be issues to optimize in the transport companies in the environmental field, while in the infrastructure sector, lowering the environmental impact of the constructions could be the main environmental target. Regarding the social matter, better customer service, accessibility and the consideration of society's needs are the main areas for improvement.

Financial entities

Companies in the sector and their situation regarding sustainability and CSR:

Banks, saving banks, other financial entities have been considered:

- BBVA
- Banco Santander
- Caja Madrid
- Banco Sabadell
- La Caixa
- Banco Popular
- Bankinter
- BBK
- Caja Navarra
- Bancaja
- Caja Mediterraneo
- Caja Galicia
- Barclays
- etc.

In 2007, the 354 companies in the sector sold 129.894 m€ (Memoria de Supervisión Bancaria de España, Banco de España 2007).

Saving banks, due to their business model, contribute with an important percentage of their profit to social matters. Thanks to this, they have noticed the necessity to implement CSR policies in their business and to use it as a competitive advantage. Following this model, in general terms, banks have also developed broad CSR policies. All of the financial entities

mentioned have implemented those policies or at least this is what they publish in their annual sustainability report. In most of the cases, social aspects are more considered than environmental ones, what in an extent is normal due to the nature of the business.

Challenges in the sector:

In the environmental field the responsible utilization of resources like energy and paper are the main concerns, whereas in the social, transparency and responsible investments should be followed.

After this sector analysis it can be concluded that the general trend is that big companies within this four sectors show high interest toward sustainability and CSR and try to reflect it in the actions putting a big effort in making public their activities. Whereas companies of a smaller size (medium) do not show clearly their actions, what this does not mean they do nothing.

Another conclusion of the analysis is that the energy sector is the most mature one on sustainability and CSR, and the rest's awareness and participation is increasing presenting high opportunities for STAR S.L.

Other sectors such as the food and drinks, textiles industries, construction and tourism could be considered as potential clients as well. However, STAR S.L will start focusing in the previously analyzed four sectors in order to limit the initial scope, without forgetting the rest. Consequently the marketing campaign will be more oriented in the beginning to the energy and oil and gas, IT, transport/infrastructure and financial sectors and open to rest in the near future.

Other future target market for STAR S.L is the big and important consultancy firms such as Deloitte, PWC or Indra. As mentioned in Section 2.2.2. of the Sector Analysis, those companies are already working in the field, but could require expertise on CSR and use smaller and more specialized companies like STAR S.L for the development of some of their projects.

2.2.7 Suppliers

STAR S.L's value add comes in the solution offered to our customers in relation with the quality of the suppliers we have. The suppliers depend on client's needs. There are some companies that not only do consulting but will also be doing the physical solutions. This can be seen as a competitive advantage because STAR S.L can monopolize on the best suppliers.

Nonetheless there is a factor that has to be considered; the financial crisis that started in 2007 can be seen as a positive and negative force for suppliers. It is seen as negative, if suppliers are not willing to adapt to our requests but, if they are willing to supply as per our specifications relationships can be made contributing to the societies' demands.

Currently sustainable consulting companies are doing contracts specifying their ethical politics for supplying to their customers. If the supplier does not deliver with these specifications, they try to change their perspective of distribution or they change their suppliers.

2.2.8. Barriers to entry and exit

The barriers to enter refer to the obstacles that a new company faces when entering into a new market. The barriers to enter consequently refer to the obstacles for that same company to leave the market. This analysis identifies the specific obstacles and is therefore an important factor in the Sector Analysis.

Traditionally for consulting firms the barriers to enter have been quite high while the barriers to exit are low. There are seventeen standards used to analyze the barriers to enter, they are the following: advertising, cost advantages independent of scale, customer loyalty, distributor agreements, economy of scale, globalization, government regulations, inelastic demand,

intellectual property, investment, network effect, predatory pricing, restrictive practices, research and development, supplier agreements, sunk costs, vertical integration. There are four barriers to exit: high investment in fixed assets, high redundancy costs, closure costs, potential upturn. In the following section these barriers will be explained in relation to STAR S.L and how it affects the final analysis in barriers to enter and exit.

Barriers to Enter:

Advertising

The main competitors in the market are using the following communication tools: internet blogging, virtual social networking, in print publications, radio and television press, events, and word of mouth. This is a barrier to enter because STAR S.L will need to compete with this advertising that is not only costly but critical for branding which leads to consumer acceptance.

Cost Advantages Independent Scale

Technology, know-how, access to raw materials, favorable geographic location are all indicators of cost advantages. In the Spanish market, there are few consulting companies that are using the same type of technology that STAR S.L is developing. The know-how for the competitors is obviously greater in knowing how to do consulting; however specific know-how to analyze and then create solutions for sustainable problems is not yet seen in the Spanish market. With this taken into consideration, this is a barrier to enter because the competitor know-how is an clear advantage of our competitors.

Customer Loyalty

Many of the competitors that have been outlined have a great reputation not only in Spain but Internationally. Customer loyalty is difficult to analyze because many factors may play a role in this. For instance, good service, competitive prices, personal connections, close location, only provider are some factors that may affect customer loyalty. This loyalty that already exists with our current competitors creates a great barrier to entry.

Distributor agreements:

Two of our competitors are currently offering to provide the services to fix the sustainable problems that are identified through the consultation- EIG and Ashridge- InterfaceRaise. These companies may have some exclusive agreements that would limit STAR S.L ability to have the best suppliers. This is a barrier to enter.

Economies of Scale

Large experienced firms like Garrigues, Euroquality, Auren, KPMG are potentially able to give their services at a lower price because they have more experienced consultants to give their services but at the same time their huge overhead partly compensates this potential advantage. Moreover, advances in technology are known to quickly throw off this “large experience” barrier for new entrants. STAR S.L is not just a consulting company; it has also produced software (sustware) that facilitates the consulting service at the same time reducing the time spent on the consultation. With a reduction of cost due to less time spent on a project, experienced firms and STAR S.L become almost equal. In sum, economies of scale due to STAR S.L usage of technology (sustware) does not illustrate a clear barrier to entry.

Globalization

Globalization allows large firms such as existing competitors like Deloitte and Price Waterhouse Coopers and also potential competitors to quickly enter into the Spanish market. This is a clear barrier to entry for STAR S.L into the Spanish market.

Government Regulations

This is not a barrier to enter so far because for consulting agencies there are no special licenses or permits needed to start. Anyhow, due to the strategic nature of our business, the Government could be tempted to intervene and somehow regulate this sector.

Inelastic Demand

There are some factors that determine the elasticity of demand:

- **Substitutes:** The more substitutes, the higher the elasticity, as people can easily switch from one good to another if a minor price change is made. It is difficult to predict which kind of substitute competitors will appear in the future when STAR S.L is part of a new trend, still not mature. Because at this moment it is difficult to predict, it may be assumed that there are less substitutes, thus it is inelastic, and not a barrier to enter.
- **Percentage of income:** The higher the percentage that the product's price is of the consumers income, the higher the elasticity, as people will be careful with purchasing the good because of its cost. STAR S.L will be offering a competitive price, as so will be inelastic, which is not a barrier to enter.
- **Necessity:** The more necessary a good is, the lower the elasticity, as people will attempt to buy it no matter the price, such as the case of [insulin](#) for those that need it. The current growing trend with sustainability indicates that it is more inelastic, however due to the economic crisis the demand for sustainability consulting may be greatly affected, and so this is a barrier to enter.
- **Duration:** The longer a price change holds, the higher the elasticity, as more and more people will stop demanding the goods (i.e. if you go to the supermarket and find that apples have doubled in price, you'll buy it because you need it this time, but next time you won't, unless the price drops back down again). Most consulting companies have a set price for their services, taking into consideration that the demand is growing for this good, it appears that companies would be willing to pay for sustainability consulting. However, the crisis will play a key role in this, and so it became less inelastic, and therefore is a barrier to enter.
- **Breadth of definition:** The broader the definition, the lower the elasticity. For example, Company X's caramelized apples will have a relatively high elasticity; whereas food in general will have an extremely low elasticity. STAR S.L offers a variety of services within sustainability, but sustainability consultancy is the broader definition, thus is more inelastic, and is not a barrier to enter.

Of the five areas to understand inelastic demand, Substitutes, Percentage of income, and Breadth of definition are identified as not a barrier to enter, and so Inelastic Demand for STAR S.L is not a barrier to enter.

Intellectual Property

Soluziona has launched a C to help their consultancy agency. In Europe software cannot be patented, and therefore companies must use other methods to protect its software (secrecy model or traps in programming). STAR S.L intends to protect its software (Sustware) by using the secrecy model of using a notary to protect this software (Annex 13). Many companies have created a trademark for their company, but this process is not too costly nor a restriction. STAR S.L also plans to create a trademark for the company which will allow STAR S.L to make its distinction among the other competitors (Annex 14 and 15). This is not a barrier to enter.

Investment

All companies in Spain have the same regulations for starting a company. For S.L (Sociedad Limitada) registration costs 3006 euros. STAR S.L plans to be a S.L. thus this is the initial investment needed to legally form our company; however it is convenient to forecast an initial investment to cover the payment of salaries, costs of rentals and working capital for a minimum period. Also it is important to consider that there is currently an economic crisis, and it is more difficult for companies to not only find investors, but also able to get loans from banks. Anyhow, the investment needed do not represent an high barrier to enter a market with the actual business perspectives.

Network Effect

The network effect refers to the difficulties encountered when the service has a value that depends on the number of existing customers (market share). Currently the competitors that have been identified hold x% of market share. Because the success of STAR S.L is dependent on the number of services provided, not getting a sufficient market share poses a real barrier to entry.

Predatory Pricing

Predatory pricing is when a dominant firms sells at a loss to make competition more difficult for firms that can't suffer losses. This is illegal, however difficult to prove. For the consulting agencies that have been identified as competitors, it is unclear that any are currently doing this. It is to say that no company is known as being a price differentiator, so for STAR S.L this is not a barrier to enter.

Restrictive Practices

This does not apply to consulting agencies. An example of a restrictive practice is air transport agreements that make it difficult for new airlines to obtain a landing slot. This is not a barrier to enter for STAR S.L.

Research and Development

For traditional consulting agencies there is typically few R&D needed to enter into the sector. However, STAR S.L is developing software (sustware) that needs to be heavily researched and developed. Anyhow, the investment in this R&D is not very large thus it represents a light barrier to enter.

Supplier Agreements

As mentioned in Distributor Agreements, it is unclear that the suppliers of the competitors identified have exclusivity contracts. Also, one of STAR S.L suppliers is in India because STAR S.L is contracting a company to exclusively create sustainability software. This is not a barrier to enter.

Sunk Costs

Sunk costs are costs that cannot be recovered once they have been incurred. Sunk costs increase the risk and often deter entry. For STAR S.L sunk costs would be the cost of legalizing the company in Spain as a S.L, trademark costs, costs for R& D etcetera. These costs quickly add up, and so may be a potential barrier to entry.

Vertical Integration

Vertical Integration is the idea of having a production process, where the final product is contingent on many steps (that the company is doing itself). Basically this refers to production companies that are in control of all the processes. Although STAR S.L is a consulting company vertical integration may refer to the fact that in order for the consultants to be effective the software must first be manufactured. Because STAR S.L plans on continuously updating the

software, this would be a barrier to enter because the service is always dependant on the software.

The following are the Barriers to Exit:

High investment in non-transferable fixed assets

STAR S.L is a company with very few fixed assets, and the cost of these assets is quite low. Therefore, this is not a substantial barrier to exit.

High redundancy costs

High redundancy costs are described as unnecessary continuously high payments. This is not a barrier to exit for STAR S.L.

Closure Costs

There are minimal closure costs. STAR S.L would not have contracts with suppliers with great penalty costs if contracts are broken. This is not a barrier to exit.

Potential Upturn

Firms may be influenced by the potential of an upturn in their market that may reverse their current financial situation. The trend for sustainability consultancy is growing so this is not a high barrier to exit.

Barriers to Enter and Exit Summary

The clear barriers to enter are as follows: advertising, customer loyalty, globalization, investment, network effect, research and development, sunk costs, and vertical integration. These nine factors (of a possible 12) indicate that there is a high barrier to enter. On the other hand, all four barriers to exit (investment in fixed assets, redundancy costs, closure costs, and potential upturn) indicate a low exit barrier.

2.2.9. Cost Structure

In general in a small consultancy company, the cost structure is as follows:

70-80% of total cost for employees' salary

20-30% of total cost for transport and allowances of employees, office material, outsourced services (accounting, law, etc.) and marketing.

2.2.10. Distribution Channels

STAR S.L may use other more reputable sustainability companies to outsource their services, in which case would distribute services through these companies.

Because STAR S.L will be providing the services to fix the problems that have been identified through the consultancy, there will be a use of local suppliers (local solutions for local problems). These suppliers will be distributed through STAR S.L but will be responsible for their own distribution methods. STAR S.L is only acting as the liaison between the final client (those having consulting services) and the suppliers making sure to deliver to the customer the best and most sustainable solution possible.

2.2.11. Communication

Communication is always the most important tool for the business. Good communication matters because business organizations are made up of people. As Robert Kent, former dean of Harvard Business School has said, "In business, communication is everything."

Communication is a highly creative and dynamic continuous process of sharing of information-offering the product for sale and receiving the response and feedback for post sales strategy and for next generation. Consulting Business is conducted through various channels of communication, including the internet, print, radio, television, events, ambient media, and word of mouth.

Internet: The internet provides an easy to access platform for communication. The Web, blogs, e-mails are most conventional tools of sustainability companies for advertising and communication media. The Web provides an efficient channel for advertising, marketing, social networking and even direct distribution of services. Blogging has been effectively used as a fast, convenient, two way communication channel to customers, and interest groups.

Print (publications): magazines, newsletters, reports, research- papers are indicators of company's strength and are used as effective publicity resources.

Radio, Television, Press: Advertisements by logos, slogans and interviews in media channels easily transmits the mission, vision and philosophy of a company to the stakeholders.

Events: Participation in conferences and global events organizing events gives enormous opportunity to connect and communicate with stakeholders.

Word of Mouth: This communication medium has become an even more powerful and useful resource for clients.

All of our competitors Like Deloitte, Ashridge-Interface Raise, Indra-Euroquality, Red2red Grupo, Eco Intelligence Growth (EIG) and other sustainability sector consultancy companies are using these resources in small or large scale to have a strong presence among clients and other stakeholders.

In the reference to the above communication tools, the following is a detailed report of how STAR S.L competitors are effectively using communication.

Eco Intelligent Growth (EIG):

Located in Barcelona, Spain it is very effective at communicating with stakeholders. Its web page clearly defines the mission and philosophy as well as the business model of company. It is associated with two global organizations: Global footprint Network and Global Eco Forum. EIG is connected with important organizations, for example the US Green Building Council (USGBC). The USGBC are the developers of LEED (The Leadership in Energy and Environmental Design). The USGBC is a nonprofit community of leaders who make and encourage building sustainable green buildings with specific tools and performance criteria. EIG with its association with USGBC offers the LEED certification to products. This connection is clearly advertised in their web page and newsletters to demonstrate the specialization of the company.

EIG has collaboration with MBDC (McDonough Braungart Design Chemistry) for Cradle to Cradle protocols in Spain & Portugal. Cradle to cradle is an innovative process for the sustainable business models. This implies the zero waste concept i.e. use of materials which can be reused. This concept was promoted by Mc Donough and Braugart which placed them as leaders with high reputation in sustainability sector. This agreement gives EIG strategic positioning and the company has added this information in its website for publicity as brand ambassador of MBDC. It enhances the image of company and gives it competitive advantage over competitors.

“By means of events, educational capsules, publications, practical examples, participating in different seminars and forums, our aim is to reach as many people as possible in an entertaining, practical manner.” EIG

Deloitte:

Deloitte is a global company who provides a variety of services including sustainability consultancy. Deloitte follows international communication strategy. Besides Web presence, advertisement logos, slogans, organize and participation in international events, publications, Deloitte has its own TV channel which covers the all important business news and events and the latest Deloitte news. This is an important strategy of company to advertise itself in business world. The latest video is World economic Forum2009, annual meeting at Davos. Some of the important videos talks about the Corporate Social Responsibility activities of company i.e. International Women's Day: focusing on recruiting, and developing and advancing female Talent. Every year in June Deloitte celebrates the Impact Day. The Deloitte member firms and people contributes towards the community-the local people The Company also provides broadcast-standard videos for TV journalists (www.deloitte.com.-Global pressroom)

The Deloitte Global Forum –This is an international Forum presented by Deloitte. This forum organizes Worldwide events on crucial business issues Many business leaders and stakeholders participate in these events .A series of knowledge sharing events have been held to address the most pressing public policy issues in South Korea, Rome, Washington D.C. Shanghai. In June Deloitte Global Forum was organized in Rome highlighting the “economic challenges in Europe” and addressing sustainable business and economic development. Mr. Jose Maria Aznar the former prime minister of Spain the guest speaker of the event. These events gives the company significant publicity in media, business world and among the clients.

Ashridge Interface Raise:

Apart from the above media, they organize two days practical workshops on Business of sustainability for senior business executives and strategic decision makers twice a year. This workshop is an effective platform for knowledge sharing and for Word of Mouth advertising for the company.

Red2red Group:

They share their knowhow and get publicity by different publications also. On its web page the group has displayed more than 50 publications mostly on social, educational and other current issues. These publications communicate the strong knowledge base of the company. It is clear that communication is the most effective tool for a consulting company to reach the customers/clients. Thanks to Information Technology there is a plethora of tools to make it possible. So, it is easy for the company to introduce and launch itself in the market effectively. The company can advertise itself by Web page. It can communicate with clients and interest groups by web2.0.It can launch itself by publishing research papers and by participating in conferences and events.

But the barrier is also huge. It is not easy for a new company to convince the client and make a place in the market through these communication tools as all the competitors are using most of the communication tools - Internet-Web ,blogs, newsletters, events and forums, media etc. for its publicity and interconnection with the customers. But if the new company offers something different and value added services (in our case STAR S.L is offering a software to identify the problem and providing the solution). These communication tools can effectively advertise and mobilize the client.

2.2.12. Innovative trends

The concept of sustainability is as an underlying corporate value is getting recognition in business models. The growing awareness that incorporation of sustainability and corporate social responsibility in strategy and actions of business will create long term value to all the stockholders has led to many innovative trends in sustainability consultancy sector.

These trends can broadly be categorized into two frameworks

One category points out those companies who are the clients of sustainability consultancy companies. These companies are adopting sustainable practices and corporate social

responsibilities because either they are committed to this concept or they want to build an image and differentiation for them. Companies who are being included in Dow Jones sustainability index and Dow Jones STOXX Sustainability Index add huge value to companies' image among the customers. These trends offers huge business opportunities for sustainability consulting sector as these companies require involvement of sustainability consultancy companies firstly identifying the relevant issues and fixing them effectively. For example US based Causemedia company is providing services to Havas.Digital Iberia,Spain for a study regarding CSR of company towards employees.

The second groups of innovative trends are approaches that sustainability companies need to offer as services to the businesses and corporations to perform their operations in a more sustainable and responsible way and give long term benefits to every stakeholders.

The significant trends that in fact, include all other are: Cradle to Cradle, Biomimicry, Natural Capitalism.

Cradle-to-cradle is a mindset to produce goods from materials that can be completely reused or returned to the earth; i.e., there is no long-term disposal issue. This mindset has been promoted by the architect William Mc Donough and chemist Michael Braungrat. According to the authors Cradle-to-cradle design means literally designing waste right out of the lifecycle of the package. Mimicking nature, a package is designed to be either a technical nutrient that can be reused, or truly recycled in tight, closed-loop process with zero loss in material performance, or a biological nutrient that can safely break down into the soil. Cradle-to-cradle says that things that wear out are OK and, as long as the manufacturers have good processes for collecting and recycling/rehabbing/refurbishing them, it's even desirable.

The concept of Biomimicry means imitation of nature. The vision is to use the tools to transform business models by Biomimicry i.e. bring nature' idea into process design. The idea is to imitate a tree and construct a building with such materials that it accrue and store solar energy, purifies its own waste water and release it in a purer form. This is new way of doing business. For example in our conventional business process ,we create a design and exploit resources to produce it.But the innovative trend is collect the material and design the process accordingly.This is a proven process for sustainable development.

Natural Capitalism is the concept of Hawken Paul, Amory Lovins, and Hunter Lovins. In Natural Capitalism the authors see the world's economy as being within the larger economy of natural resources and ecosystem services that sustain us. The authors argue that only through recognizing this essential relationship with the earth's valuable resources can businesses, and the people they support, continue to exist. This means socio, economic and environment sustainability is the new business paradigm.

By practicing these concept the in the business create the emergence of the Next Industrial Revolution rejecting the system that takes, makes, and wastes to new business ideology of interdependence with other living systems, transforming the production and consumption of goods into a regenerative force

These trends are while very desirable, difficult to incorporate in business. It requires a significant culture change in the mindset and this is the role of sustainability consultancy companies to provide knowledge to companies to operate the business with these concepts and add value to stakeholders. These concepts are the innovative trends of sustainability consultancy sector.

2.3 SWOT Analysis

2.3.1 McKinsey Analysis

The McKinsey Analysis is a useful tool to put weighted importance to each element of the SWOT in order to analyze attractiveness of the potential company. STAR S.L has identified four key strengths, weaknesses, opportunities, and threats. After identifying each key factor for success, a relative weighted value of importance has been given followed by a score of 1-4 based on importance. Opportunities and threats are evaluated together as they are external factors. The sum of all 8 external elements of success weighted score equals to 1. Likewise, strengths and weaknesses are evaluated together because they are internal factors. The sum of the 8 key internal elements also equal 1. The score of 1-4 is related to the chances of success. For instance, opportunities and strengths are valued 3 and 4 (4 being of greater importance), whereas threats and weaknesses are valued 1 and 2 (1 indicating big threats).

The following tables and graphs will clearly illustrate the McKinsey tool. This table shows the first step, which is identifying the four most important strengths, weaknesses, opportunities, and threats.

SWOT Analysis	
Opportunities	Threats
1. Increasing market	1. Competitors' response
2. Change in lifestyles (LOHAS)	2. There exists a relevant number of competitors in the consulting sector
3. Creating new segmentation based on demand for consultancy paired with services.	3. Regulations that interfere w/STAR S.L activities
4. Spanish/European government pushing towards sustainability	4. Due to crisis, client's budget for CSR will be decreased, reducing available consumers
Strengths	Weaknesses
1. Company's differentiation- use of technology, consulting and offering solutions	1. High initial inversion to produce software and qualified employees (sunken costs with no current investors)
2. Staff experience, education, motivation (very high and will be monetarily compensated greatly)	2. Lack of national infrastructure (provide services outside Madrid)
3. Possible alliances with prestigious consulting firms that don't have sustainability consulting	3. Vertical infrastructure (dependant on software for services)
4. In-depth knowledge of sector	4. Lack of experience in market

The next step in the McKinsey is to meticulously analyze the external factors (opportunities and threats). Taking into considerations all that is known from doing the external analysis, the following chart illustrates the external elements and what STAR S.L considers to be significant or not.

<i>Evaluation of External Factors (EEF)</i>			
<i>Key Factors for Success</i>	<i>Weight</i>	<i>Score 1 a 4</i>	<i>Weighted Importance</i>
Opportunities			
Increasing market	0,20	4	0,80
Change in lifestyles (LOHAS)	0,15	3	0,45
Creating new segmentation based on demand for consultancy paired with services.	0,20	4	0,80
Spanish/European government pushing towards sustainability	0,15	4	0,60
Threats			
Competitors' response	0,15	1	0,15
There exists a relevant number of competitors in the consulting sector	0,05	2	0,10
Regulations that interfere w/STAR S.L activities	0,05	2	0,10
Due to crisis, client's budget for CSR will be decreased, reducing available consumers	0,05	2	0,10
Total	1,00		3,1

The four most important opportunities are as follows:

- Increasing markets (more companies becoming more sustainably conscious);
- A new change in lifestyles (LOHAS);
- STAR S.L creates a new segmentation in the market based on demand for consultancy paired with services;
- Spanish and European governments are pushing towards sustainability regulations.

Increasing markets and new segmentation are both given the weight .20 (the highest for external factors) because these are considered the most important factors to STAR S.L's success. It comes to no surprise, that these two have the highest weighted importance of .80.

The four most important threats are the following:

- Competitors' response;
- Significant number of competitors in consulting sector;
- Regulations that interfere with STAR S.L activities;
- The crisis' effect on client's ability to purchase.

It is important to note that competitors' response receives a rating of 1 (indicating highest threat) and thus is the most important threat. As mentioned in the sector analysis, there are specific competitors that offer sustainability services in some of their branches and would have the ability to easily respond to the demand in Spain once they realize the success of STAR S.L. The competitors' response score is the highest at .15

Once completing the external analysis, it is then time to analyze the internal factors of STAR S.L. The following table demonstrates the importance of each strength and weakness.

<i>Evaluation of Internal Factors (EIF)</i>			
<i>Key Factors to Success</i>	<i>Weight</i>	<i>Score 1 a 4</i>	<i>Weighted Importance</i>
Strengths			
Company's differentiation- use of technology, consulting and offering solutions	0,20	4	0,80
Staff experience, education, motivation (very high and will be monetarily compensated greatly)	0,15	3	0,45
Possible alliances with prestigious consulting firms that don't have sustainability consulting	0,10	3	0,30
In-depth knowledge of sector	0,10	4	0,40
Weaknesses			
High initial inversion to produce software and qualified employees (sunken costs with no current investors)	0,15	2	0,30
Lack of national infrastructure (provide services outside Madrid)	0,10	2	0,20
Vertical infrastructure (dependant on software for services)	0,10	2	0,20
Lack of experience in market	0,10	2	0,20
Total	1,00		2,85

The four strengths that are key to STAR S.L's success are:

- Differentiation (a combination of technology, consulting, and solutions);
- Highly qualified and motivated staff;
- Possible alliances with other consulting firms that do not offer sustainability consultancy;
- An in-depth knowledge of the sector.

STAR S.L's differentiation is clearly identified as the most important strength that will lead it to success because this differentiation has the highest rating of .4 as well as considered an important factor in success (4). The final score is .8.

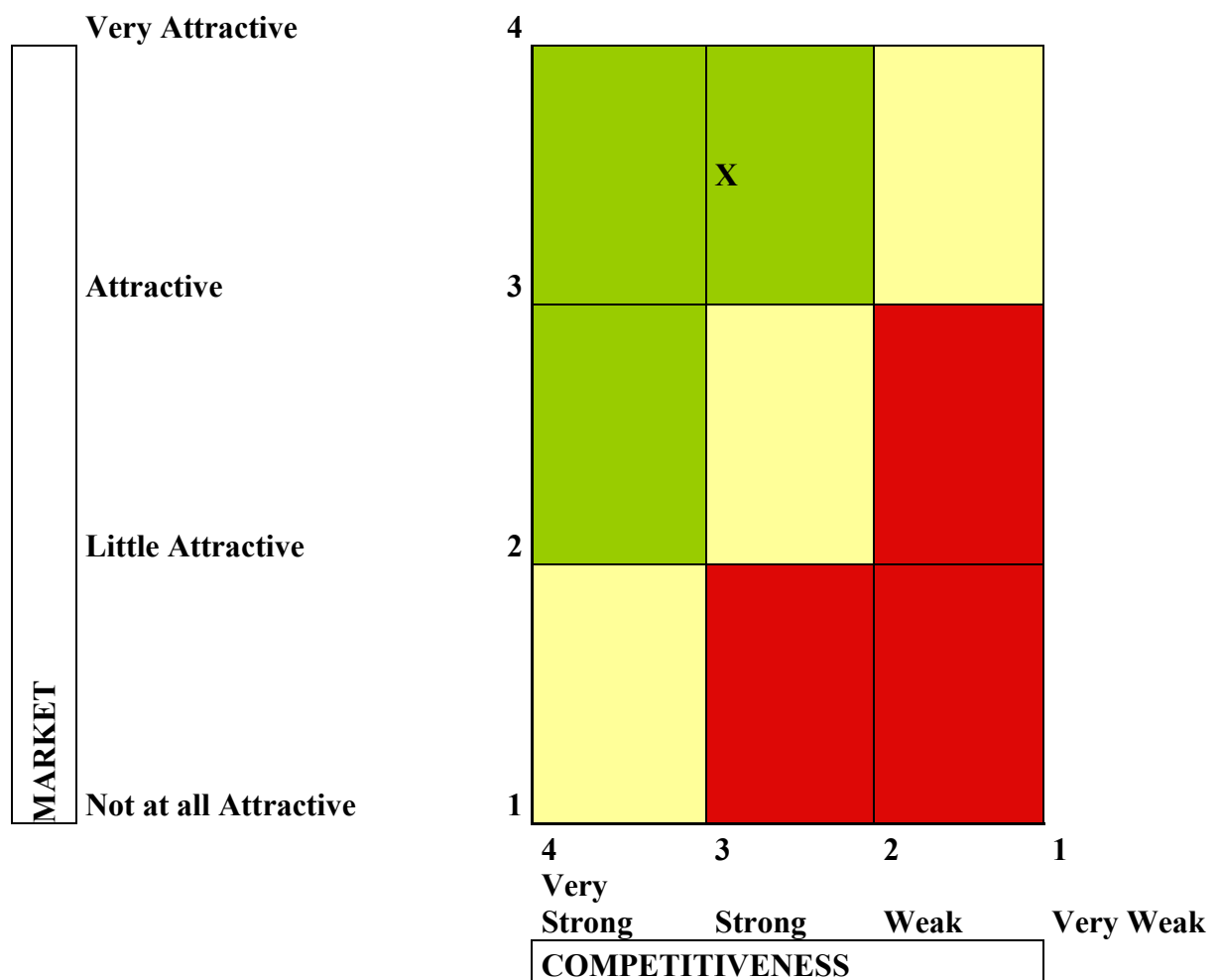
The four weaknesses are identified as:

- High initial inversion to produce software and employ qualified employees (often referred to high sunken costs);
- The lack of nation infrastructure (ability to provide services outside of Madrid);
- Vertical infrastructure (consultancy dependant on software);
- The lack of experience in market.

All but high initial inversion are rated the same (.1) and all are rated as a 2. Of these weaknesses, high initial inversion is a biggest weakness for STAR S.L with a final score of .3

Combining all of these key elements (external and internal factors), the Mckinsey matrix is completed. The below graph is the visual representation of the final McKinsey for STAR S.L.

Matrix Attractiveness / Competitiveness (McKinsey)



As seen, STAR S.L (identified with the X) is classified as Competitive and Attractive, which is a clear indicator to continue with this company.

2.3.2. Tows Analysis

The Tows Matrix is a tool used to create strategies based on the identified strengths, opportunities, weaknesses and threats. The following will describe following strategies: strength-opportunity strategy, strength-threat strategy, weakness-opportunity strategy, and weakness-threat strategy. In each description of the strategy, it is clearly stated which internal

factor (strengths and weaknesses) and external factors (threats and opportunities) are being evaluated to create each strategy.

Strength- Opportunity Strategy:

There are 6 strategies.

- The first is to enter into the market with the company's differentiation as soon as possible, this strategy uses strengths 1 (company's differentiation) and opportunity 1 (increasing market).
- The second strategy is to use impactful communication with stakeholders by participating in conferences and publishing research papers with deep knowledge of sector. This strategy uses strengths 2 and 3 (staff experience and possible alliances) in combination with opportunity 1 (increasing market).
- The third strategy is offer effective, value added services utilizing strengths of highly skilled professionals to companies desiring consulting and solutions. This combines strength 2 (staff experience) with 3 (new segmentation).
- The fourth strategy is collaboration with prestigious firms and uses their brand and image for advertisement and publicity in new segment. This strategy uses strength 3 (possible alliances) with opportunity 1 (increasing market).
- The fifth strategy is to collaborate with government to create new standards for sustainability. This strategy uses strength 4 (in-depth knowledge of sector) with opportunity 4 (government push).
- The sixth and final strategy is show staff as "models" of LOHAS lifestyle: create a new movement. This strategy uses strength 2 (staff experience) with opportunity 2 (change in lifestyle).

Strength- Threat Strategy:

The following explains the four main strategies proposed.

- The first one is to define innovation management process to guarantee continuous innovation of services by motivated and experienced professional, this strategy uses strength 1 (company's differentiation) and 2 (staff experience) to face threats 1 (competitors response) and 2 (number of competitors).
- The second strategy is to offer value added solutions to clients; combining consulting with solution providing that uses strength 1 (company's differentiation) to face threats 1 (competitors response) and 2 (number of competitors).
- The third one is an alliance with adequate and prestigious consulting firms to create space for the company in the sector, that uses strength 3 (alliances with big consulting firms) and threats 1 (competitors response) and 2 (number of competitors).
- The fourth one is to design adequate processes to be aware of and anticipate new regulations and environment changes, which uses strength 4 (in depth knowledge of the market) to face threats 3 (governmental regulations) and 4 (crisis).

Weakness- Opportunity Strategy:

In this case, the strategies proposed are the following:

- The first one is to create a unique image company, with presence in main and relevant places, which uses opportunities 2 (LOHAS) and 3 (new segmentation) to face weakness 4 (lack of experience in the market).

- The second one is to offer training and education activities which will attract investors which uses opportunities 2 (LOHAS) and 4 (government push) to face weakness 1 (high initial inversion).
- The third strategy is to design adequate processes to be aware of and anticipate new legislation changes that uses opportunity 4 (government push) to face weakness 2 (lack of infrastructure) and 4 (lack of experience).

Weakness- Threat Strategy:

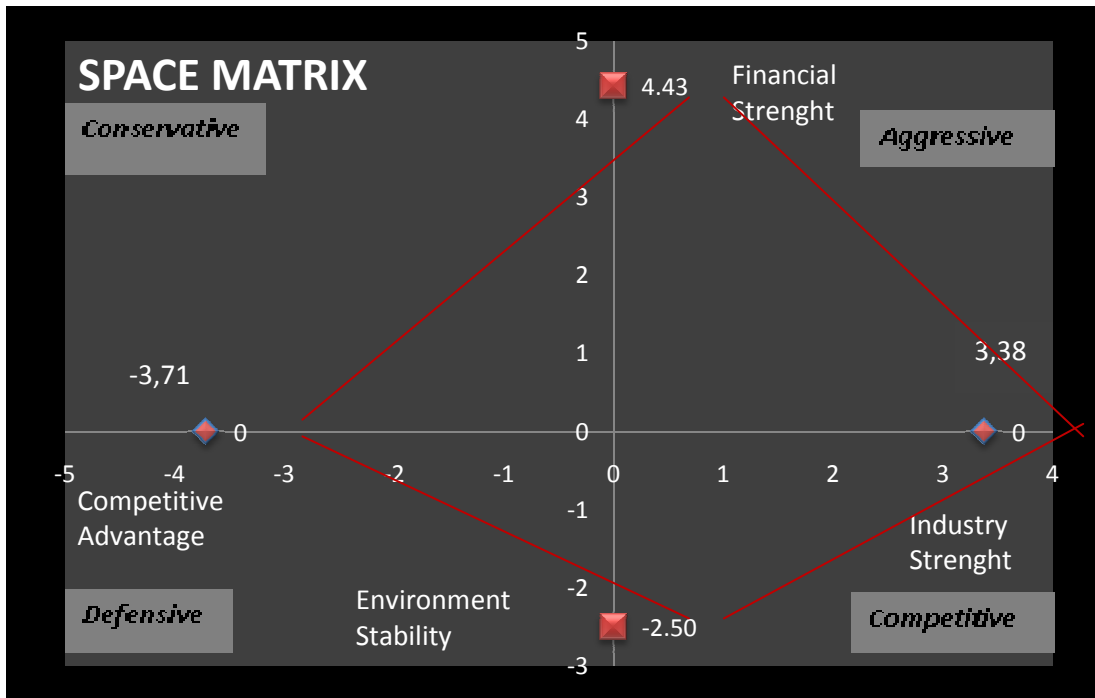
This strategy consists of 3 suggestions.

- The first strategy is the use of specialized training to produce consultants not only in Madrid. This strategy refers to weaknesses 1 (sunken costs in high initial investment), 2 (services outside of Madrid), & 4 (lack of experience in the market) because it takes into consideration all weaknesses and produces one good result and adding to the development and expansion of the business.
- The second strategy uses weaknesses 1 (sunken costs) & 3 (dependence on software) to compensate threats 1 (competitor's response), 2 (number of competitors of consulting in the market), & 4 (crisis' effect on customers' ability to buy) and makes STAR S.L services seem attractive, useful, and affordable.
- The third strategy focuses on reinforcing weakness 4 to face threat 1. Joining these associations makes it possible to know what is going on in the market, anticipate any problems, and find adequate solutions to problems. It also allows STAR S.L to identify the best suppliers and to know what to expect from them.

With the TOWS completed it is clear the main strategies that STAR S.L can follow in order to be a successful company. For a visual representation of TOWS please refer to annex 16.

2.3.3. Space Matrix

This is an appropriate tool to use as a complement of the SWOT analysis in order to define the strategy the company should follow. The different options regarded are: aggressive, conservative, defensive or competitive strategy.



The graph is the result of a deep analysis of the financial and industry strength of the sector, the environmental stability and the competitive advantage of STAR S.L over its competitors. Find all the aspects considered to draw the graph in annex 17 as well as the methodology followed to calculate it.

It can be concluded from the graph above, that STAR S.L emerges in a sector with high strength and potential, with no important financial problems, where the competitive advantage over its competitor is important and the environment is quite unstable. The following points are a more complete analysis:

Financial strength: in principle these kinds of companies (consulting) have no difficulties to exit the market, they do not require much capital and the investment can be returned in a short period of time. However, as a new company, the risk involved can be considered medium.

Industrial strength: as it has been already mentioned, the growth potential in the sector is high, but it is still an unstable market that needs to mature. The technological know-how it is key for success and the productivity or capacity utilization can be really high. The barriers to entry although high for STAR S.L, have a relatively low rate compared to the other factors such as: barriers to exit, buyer power, supplier power, and substitute power. Therefore the barriers to entry do not play a significant role as an obstacle for STAR S.L.

Competitive advantage: the market share reachable in the beginning cannot be very big, but offering quality service, and managing customer loyalty and technological know-how, it is possible to increase the market share without many problems in the long term.

Environment stability: this is the weakest part of the analysis developed. Issues like fast technological changes, potential high competitive pressure, high price elasticity, demand

variability and the current economic and financial instability are the main issues that STAR S.L will face.

In conclusion, and looking at the graph, the quadrant more occupied is the one that recommends a conservative strategy, followed by the aggressive strategy. That is, STAR S.L is in a favorable situation, but it is better to be cautious since its market is still a non mature market, within an unstable and dynamic environment.

2.3.4. Sales and Income Forecasts with different scenarios

To estimate the sales income that STAR S.L expects for the first 5 years, it needs to be taken into consideration the assumptions made in the sector analysis about the market potential and the percentage that each sector can give to develop sustainably in their company. STAR S.L has chosen the realistic scenario for each year, inferring that for years 2009-2013 have the following forecasts for sales.

	2009	2009 (extrapolated)	2010	2011	2012	2013
Sales	215.220,00 €	860.880,00 €	809.742,51 €	1.242.889,20 €	1.894.658,76 €	3.797.208,79 €

2.3.5 General Strategic Aim

It may be clear at this point, but to re-iterate, STAR S.L is sustainability consulting and service providing company based in Spain. STAR S.L will also be developing its software in India (at its branch office).

Positioning Aim: The most transparent Spanish sustainability company that offers not only to identify companies' sustainability problems but more importantly offers long lasting money saving, socially and environmentally friendly solutions, in the quickest and most cost effective way.

2.3.6 Justification to Continue with Project

After analyzing all of the matrixes: McKinsey, Tows, and Space, as well as meticulously analyzing the sales and income forecasts for the next 5 years, it is clear the STAR S.L has a high potential for success. The strengths and opportunities outweigh the threats and weaknesses, and there is a great potential for significant sales, therefore it is evident that STAR S.L should continue in the process of creating this company. In the sections to follow (Marketing Plan) these figures will be reviewed.

3.1 Operational Plan

This section consists of the operational Plan of STAR S.L.. The operational Plan describes the development of product and service, the material resource and human resource required for the production. The plan includes in detail the main processes of the business, the pre sale and after-sales operation processes. Finally it presents the budget required for operational cost and investment.

3.1.1. Product Development:

STAR S.L. not only has consulting services, but also is the direct face for supplying the solutions.

Consulting:

The consulting service is done with the help of the software, *Sustware*, which facilitates the gathering of information that the customers need to manage their economic, social, and environmental impacts in conjunction with their sustainable responsibility. Its aim is to evaluate all different aspects of their business cycle to help improve and incorporate the year end results with CSR. Once the questionnaire is completed, the results are evaluated by STAR S.L.'s

consultancy team to further discuss possible solutions- may it be organizational (strategies) or structural/ materials (building/ materials). Not only will STAR S.L. Consulting identifies these areas where the client needs to manage but it will also help create a communications strategy that clearly speaks about their commitment with stakeholders involved in the business.

If the client needs new strategies designed, the consultants will work out different ideas and delivers the same. While, if the problem is in the structure of the premises or in specific tangible elements of the organization, they are introduced to STAR S.L.'s solutions to get in contact with STAR S.L.'s suppliers.

Solutions:

Between the products that STAR S.L. can provide, its clients might also find the option of not only having the problem recognized but also the solution delivered, which accounts for added value for STAR S.L.'s services .STAR S.L.'s consultants will provide intangible solutions and supply tangible solutions through its supplier companies. Because the STAR S.L. is the direct link between the client and suppliers, the latter are required to align to STAR S.L.'s standards which vary depending on the activity and sector. For this reason, suppliers will need to have STAR S.L.'s credentials for sustainable practices.

Seasonal Nature and Stocks for Software:

The production of STAR S.L. is not a traditional production line of supply and demand, rather the increase of production of the product is related to the new information discovered by the experts. This means that there are no seasonal changes in production that can be forecasted, but it can be said that in the next five years, it is anticipated that there will be many changes in sustainable regulations imposed by the government, as well as stakeholders, thus STAR S.L. anticipates an average of four software updates in a year's time.

Seasonal Nature and Stocks for Consulting Services:

Concurrently with the software the demand of clients will be related to regulation changes and increase demand from their stakeholders to have sustainability reformations that STAR S.L. consulting offers. Therefore, there are no predictable high or low seasons for sustainability changes in companies, rather a gradual growth of demand due to sustainability being not only trendy but being recognized as an economic advantage for sustainable companies.

3.1.2. Manufacture or Production.

Material Resources:

STAR S.L. has a two-fold product: software that is manufactured in India and the consulting services and solutions offered in Spain. Considering these two separate processes, it is best to look at each one separately.

Office in India

STAR S.L. is renting an office in Pune, India's business district. The exact address is kalyani nagar Pune Maharashtra 411006 India. The office space is located inside of Regus Connaught Place. This office space is primarily used for the software programmers to work. . The office size is approximately 32.2 meters squared (347 sq feet). This space is comfortable for the two programmers who will begin working for the first year, with room for growth. Each will have their own desk, chair, and computer. Additionally 3 chairs will also be included. Because of the expense of the office, any printed copies will be outsourced to a local shop. This is not only cost efficient but more sustainable as to ensure that only what is needed is printed as well as not investing in a printer that will be minimally used along with the costs of ink, paper, and electricity used to keep the printer running. As the years go on the number of programmers may need to increase, in which case there is ample space for more people.

The office space will cost 5,281.62 € for years one and two (360,000 Indian Rupee). For years three to five, it will cost 5,809.1096 € per year (396,000 INR). The utility costs of electricity will be approximately 526.7€ per year (36,000 INR). This is an average price, but the cost may be lower considering the fact that STAR S.L. is a sustainable company and will be taking all measures to conserve electricity usage: using environmentally friendly lighting, turning off lights when not in the room, using laptops and only having them plugged in when battery needs recharging etcetera. The cost for the deposit is for six months and it is 2,636.50€ (1 80,000 INR). Onsite services in this building are as follows: 24 hour access, Business Lounge, Meeting Rooms, Parking, Secure underground, Lounge, Elevator, and Temperature Control. The most important feature being temperature control because STAR S.L. will have important computers being left in the office, and we want to make sure it will be safe and secure. The technical facilities are the following: RegusNet high speed internet, video conferencing studio, and voice mail. These technologies will help create a fluid relationship between Madrid and Pune office. (The current conversion rate is the following: 1 EUR = 68.3449 INR).

The pricing for this office space is extremely affordable with the conversion rate of euro to rupee. This office is in the heart of the business district with IT district of Pune and many important commercial hubs nearby such as: Ernst & Young, Price Waterhouse Coopers, KPMG, Philips, Microsoft, ING, and many. The fact that it is near the IT district will allow for easier recruitment of serious and qualified programmers. Also nearby are two five star hotels as well as Wadia College. Another plus is that it is strategically located close to the airport so that when management of the Spain office want to travel there it will be easy. Overall this office space is part of a strategic plan to have the name of STAR S.L. be seen in such a prestigious area, because future business may lead to do consulting in India. In the meantime the brand recognition will increase greatly from just being in this area, at an affordable price (Annex 18 shows more details of the building)

Computer costs will be approximately 900€ each (fixed computers with capacity enough for programming activities). These computers will need to be equipped with oracle operating systems as well as java. Oracle is a complex and fairly expensive operating system but will be needed for the programmers to build the best software possible. The cost of Oracle is approximately 74,310€ (\$100,000). There is also financing option for fast growing businesses, which may be utilized by STAR S.L.. (Annex 19 shows financing options for SME's). Java such as Adobe JRun Enterprise Edition can be purchased online at around 464€ (\$870 on amazon.com in Annex20). There is also a need to purchase a server such as Dell PowerEdge™ 840 at a cost of 1650€. All these tools are necessary for the efficiency and success of creating software. An external storage device is also crucial to this office so that the programmers can save their work in another source.

2 Desks, 5 chairs and basic office supplies (pens and paper) can be purchased online. The total price for the two desks is 500€ and the five chairs 750€. It may be estimated that initial supply of pens and paper is 400€, which increases with inflation and office expansion.

Office premises in Spain:

STAR S.L. is renting an office in Madrid, Spain. It is located in Barrio El Plantío, Distrito Moncloa.

This office space is primarily used for the consultants and managers. The size of the office is **219 m²**. Each will have their own office space -desk, chair, and computer- remaining enough space for further growth of the company. STAR S.L. will have 1 printer in the office.

The cost of renting this office space will be 2,847 € per month. It is located in one of the best zones of La Florida and it is used exclusively for office purposes. There is also the option of having rented parking spaces for 72 € per month per plaza. Refer to Annex 21 for further details.

Human Resources for Main Operation:

The following section will outline the quantitative labor needs, profiles, and general job descriptions of the employees related to operations in India and Spain.

Software Programmers:

Quantitative figures:

Position	Year 1	Year 2	Year 3	Year 4	Year 5
Software Programmer	2	2	2	3	3

The above chart illustrates the quantitative requirements for software programmers in India. The increase in the number of programmers is related to the fact that the experts located in Spain will continuously do a lot of research so that the programmers will have a lot of changes and additions. Also, STAR S.L. has an international plan in year fifth so the additional programmers will be programming software specific to countries other than Spain.

Profile

The profile for these programmers are people with excellent programming skills, software engineer/Master in Computer Application with at least 3 years experience, highly self-motivated, creative, and flexible to changing data.

Job function

These programmers will be in close contact with the experts in social, environmental, and economic sustainability. They will first create the general format of the software from scratch and then start to incorporate the information given to them by the experts. Due to the fact that sustainability issues are becoming more regulated and more desired, it is expected that within the next five years there will be many new regulations that will cause the software to be updated frequently. It may be estimated that the software may change up to four times in a year based on the research the experts do. The transfer of this knowledge will take occur during video conferencing. This is a more sustainable and cost efficient solution opposed to the traditional idea of face to face conferences where the experts would fly to Pune, India.

Once the knowledge transfer is complete the programmers update the software with the new information, which may require additional programming. In the end, the report the software generates is the final product. This report will be used by the consultants when working with a company in order to create solutions of either offering outsourced services and/or working side by side with the client to make strategic changes.

The programmers will design the finest website with the instructions of experts and sales experts, update it, make it very dynamic and to put it on the top list of search engines constantly. They will work consistently with sales experts to create and develop all the internet marketing tools. They will also update the sales expert about the latest development and emerging tools in IT sector.

Consultants:

Consultants' Quantitative figures:

Position	Year 1	Year 2	Year 3	Year 4	Year 5
Senior consultants	2	2	3	3	3
Junior consultants	3	4	5	5	5
Consultants	5	6	8	8	8

The above chart illustrates the quantitative requirements for consultants in Spain. The increase in consultants is related to the increase in projected sales. The more clients STAR S.L. has, the more consultants will be needed

Profile

The senior consultant must be a graduate with 5 years of working experience and 2 years minimum experience in consultancy sector.

The junior consultant may be recently graduated, but 1-2 years of experience in audit will be desirable. They must have command of Spanish and English. But more important is consultants have to be quick learners and passionate about corporate sustainability. They must also demonstrate the following 5 characteristics:

- *Desire to learn and share knowledge:* The consultants will be going through intense and continuous training in order to give the clients the best service. The consultant must possess the abilities to learn quickly and to transfer knowledge to the other consultants and client with ease. They must also be able to use technical resources and tools such as software and expert knowledge in order to give the most effective consultation. They must demonstrate commitment to sustainable methods and assume responsibility for their own learning and ask for help as needed.
- *Contributes to team success:* They must contribute to establish a positive working environment by building solid relationships with team members, clients, and other stakeholders. Also, demonstrate the ability to manage workload, including helping others with additional tasks when appropriate. They should be able to understand team objectives and consistently work with a positive attitude and strong work ethics to achieve goals. They must be able to communicate well with team members in order to create a plan in the case of unexpected events in which a team member is out of the office.
- *Focusing on the client/service oriented:* Consultants should have a clear desire to go above and beyond the services expected by the client. This means delivering above quality work and following company procedures to have consistency among services rendered. Ability to communicate well with clients in order to fully understand their needs and expectations is an essential skill.
- *Apply and Acquire Technical expertise:* Consultants must demonstrate sufficient technical knowledge of business technology. Appropriately apply STAR S.L.'s standard approaches, methodologies and tools in consultations and formal documents such as the "expert opinion" (final report given to client) is a must.
- *Change Agility:* They must maintain performance during periods of changes. Consultants must be able to quickly adapt to new projects, and work simultaneously on multiple projects. They must also seek information when unsure. Demonstrates flexibility and takes responsibility to get things done is highly desirable.

Job function

The consultants will be initially working in Spain. They will be visiting a company, imputing data into the software, generating reports, and creating the "expert opinion". The "expert opinion" refers to the final report given to the client. Once the consultants have given the final report to the client, they are also responsible for the next steps which include creating the connection "solutions" or working on the new strategic plans. In any case, the consultant is responsible for maintenance, and all follow up protocol with the clients. Consultants will undergo an initial intensive training about the procedures of consultation in STAR S.L. as well as all sustainability materials relevant to their work. This implies that there is an initial training about the software as well as continuous training as new software is implemented. The consultants will be responsible as the primary representative of STAR S.L. to the clients, and must report all work to the management of STAR S.L. prior to giving the client the "expert opinion". (Refer to annex 22 for employee contract for consultants)

Senior Consultant:

The senior consultants are the key functionaries who provide and transfer knowledge to the clients. They will identify the critical needs of potential clients and convince the clients that

STAR S.L.'s value proposition can solve their problems to give them long term benefits. They will prepare the "expert opinion." They will impart the services to the clients required for strategic changes and provide the solutions to fix the problems-quality processes and products

Junior consultant:

The junior consultants will assist the senior consultants in all the operations. Junior consultant may work with client's employees to take input information, analyze the inputs for seniors to make "expert opinion". They will be responsible for follow ups and after sales service supports. They will monitor the quality control of the solutions provided by suppliers.

From the fourth year when STAR S.L. will enter the new sectors the senior consultants will focus on new market segments, the junior consultants with their enhanced skills and experience may take charge of senior consultants in the existing sectors. STAR S.L. will hire more junior consultants to assist the senior consultants. This process of empowerment will go on when STAR S.L. will go to international market and senior consultants will move and focus there.

Experts:

Experts' Quantitative figures:

Position	Year 1	Year 2	Year 3	Year 4	Year 5
Experts	3	3	3	6	6

Basically, the amount of experts will remain the same for the first three years. Each expert will be responsible for his expertise: social, economic, or environmental sustainability. The double of experts in year four represents the idea of becoming an international company, which means STAR S.L. will be training and using three experts from another country.

Profile

These experts must have at least a doctorate degree in their respective field of sustainability: social, economic, environmental. The experts must have at least seven years work experience in Spain. They must be active publishers and passionate about their work. They must be self motivated and active in the sustainability network in Spain (highly attractive if experience in other countries). They must possess the ability to efficiently work alone as well as collaborate in knowledge transfer.

From the fourth year, STAR S.L. will contract three new experts with similar qualifications and international knowledge and experience.

Job functions

The experts are one of the most important assets of the company because they bring knowledge to STAR S.L.. The experts will be actively working to create relevant sustainability reports that will be transferred to the programmers in order to create the software. In order to create these reports the experts will be active in field research, conferences, debates, legal regulations, etcetera. They will give the findings, recommendations and detail the information to be included in the reports to the management. The management will decide the contents of report with the objective of creating value to client. The main goal is to have the most up to date knowledge of the sustainability requirements and expectations of companies. The finally approved report will be sent to the programmers to transfer this knowledge into software, but also to the HR expert in order to create proper training for the consultants to effectively do their work.

In sum, the operations of STAR S.L. is highly dependent on knowledge transfer between three main groups of people- the experts to find the knowledge, the programmers to create the software, the consultants ability to understand the knowledge of the experts in order to accurately use and interpret the reports generated by the software. The success of STAR S.L. lies in the ability to create a cohesive system for these three key players to work together. This process will be later discussed in the Human Resources section.

Processes



The above diagram represents the process of the service (consulting) of STAR S.L.. The following will describe in greater detail the processes.

Consultation: The first box labeled consultation refers to the initial consultation with the client. This means that when a client is interested in receiving services from STAR S.L., they will first have an initial analysis of their companies' sustainability in relation to social, environmental and economics. In this initial consultation the experts will be present and the consultants will work with the clients to receive all relevant data in order to input into the software, STAR S.L. has created for internal uses. Once the data has been input into the software, a report will be generated to help analyze the sustainability of the given company. A mock report is illustrated in the following section entitled maintenance and service. At this point the company will decide to continue working with STAR S.L. or not. If the company decides that the report generated accurately represents the needs of their company, the consultants will then begin working on the project once a contract has been signed. (Refer to annex 23 for consulting contract with companies).

Expert Opinion: The second step illustrated with the second box is the "expert opinion. Once the consultants and client sign the contract they will then work for the given time indicated in the contract and deliver the "expert opinion" to the client. This "expert opinion" is the final report in which the consultants clearly explain the problems and the solutions to the problems.

Suppliers: The last step illustrated in the final box is suppliers. If the "expert opinion" indicates that the company will need to fix physical things in the company such as: light bulbs, printers, machinery etcetera; then STAR S.L. will supply the services needed by outsourcing from local companies. In case client companies need to change, incorporate or redesign new processes, materials or equipment, STAR S.L. will provide the solution suggestion and the means for doing so, through the network with other supplier companies. The relationship with these local companies will be very strong as to guarantee quality service at consistent and competitive prices. Supplier companies must be committed to sustainability in their process and product.

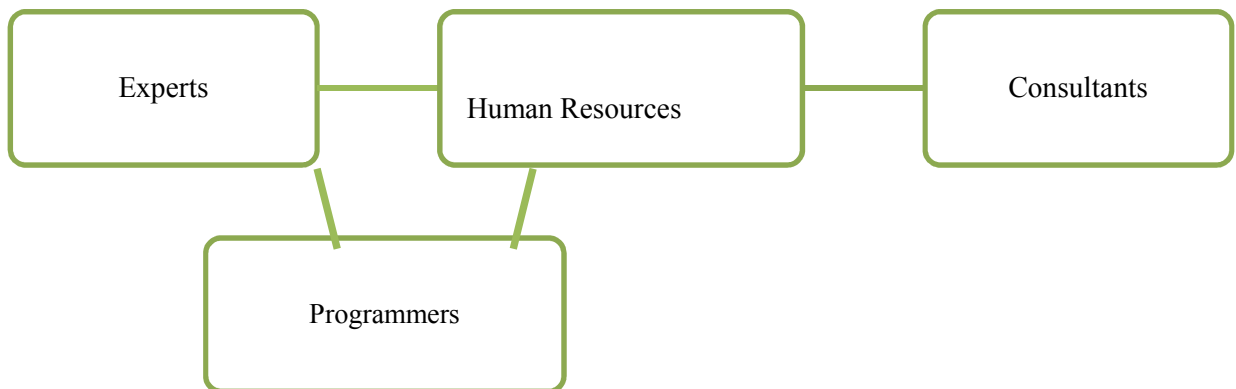
The goal for STAR S.L. is to supply tangible solutions through the local supplier companies to the problems of clients indicated in the final report. The problem of each client will be specific. So the suppliers depend on client's needs. The consultants will identify the requirement of clients and accordingly make a shortlist of potential supplier companies. The suppliers will be selected on the basis of their similar experience in the past as well their quality standard. The suppliers who have certification the ISO 9001:2008 standard will be preferred.

The percentage of solution contract offered to supplier companies would depend on the sector of client. Transport and Energy being a sector of big infrastructure, 60% of solution fee will be assigned for the fixing of tangible solutions, whereas in financial sector and IT sector, this amount will fixed to 50% & 40% respectively, as the clients of these sectors may require more strategic solutions. In all the sectors the 70% of the fee assigned of tangible solution will go to supplier companies. STAR S.L. will make first advance payment of 30% to the suppliers at the beginning of assignment, another

30% at installation and balance 40% after the completion of work and certification of products and processes by the consultants. The suppliers will be paid within 60 days of submission of invoice.

Strategy: Another final process is represented with the box titled strategy. If the "expert opinion" indicates that the company will need to fix strategic policies in a company than STAR S.L. will work to create sustainable strategic plans. An example of this may be how to incorporate training of sustainable energy use in a company. These strategic solutions are custom created for the each company by STAR S.L..

Please note that the Suppliers and Strategy solutions are not mutually exclusive. In other words it is possible, and most likely that STAR S.L. will present an "expert opinion" report including both supplier solutions along with strategic solutions.



The above diagram represents the process of the product (software) of STAR S.L.. The following will describe in greater detail the processes.

Experts: As previously described the experts are a critical part of the process. They will be the ones gathering the information pertinent to the creation of the software. The experts will be transferring this knowledge with written documentation followed by video conferencing with the programmers. Keep in mind the experts will be in the Madrid office while the programmers will be in Pune. Both offices have video-conferencing facilities that allow for this sustainable knowledge transfer to occur. It is anticipated that these conferences will occur roughly 4 times a year.

Programmers: Once the programmers have received the information from the experts, they are able to begin the process of programming all new information. The main goal of the programmers is to fully understand the experts' description and indicators for sustainability issues in order to create easy to use software for the consultants and to create a comprehensive and easy to follow report.

Human Resources Expert: The human resources expert will also be present at the video conferences. The idea here is to receive the knowledge from the experts, and the final product (software) from the programmers. This means that there will be continuous contact with the experts as well as the programmers. All of this is done to create an effective training session for the consultants, since they are the face of STAR S.L.. The human resources expert will create multiple intensive training sessions for the consultants to be properly equipped to answer any sustainable questions as if there were experts, and to efficiently and effectively use the software to give appropriate consultations. The number of training sessions is contingent on the number of software updates and/or new pertinent information discovered by the experts

Consultants: Once the consultants have received proper training they will be able give the proper consultation with experience by having knowledge originating from experts and a tool (software) produced by the programmers.

Quality Control:

STAR S.L. will outsource the service of implanting the Quality Standard (ISO 9001), Environmental Standard (ISO 14001) and CSR Standard (ISO 26000). The standardization process will take place during the initial stages of the company, and internal as well as external reviews will be made in a yearly basis in order to check and improve the company's situation. Consultations made in some companies with similar characteristics show how the implantation of each norm can cost around 6.000 €, and the periodical reviews around 1.800€/year.

3.1.3. Pre-sale, maintenance & after sales service

The maintenance and after sales service involves providing timely value added product and quality service for managing clients loyalty.

Pre-sale:

Since the company is a new brand, processes will start with pre-sales. The presale service includes a demo consulting service, with which consultant will contact the companies. This will include general elements of the software as well and a mock report (Annex 24). This demo is not an interactive demo where the company inputs their own data to generate their own results, rather it is a demo for potential clients to see how the software generates a report that is used by the consultants of STAR S.L. to create a complete analysis of the sustainability reformations of a given company. The demo software will show the clients that the software is a unique and valuable tool used by STAR S.L. to be effective in making decisions that create value and profit.

Maintenance & after-sales service:

The two main processes of STAR S.L. are strategy plan and suppliers/outsourcings. The consultant will be in continuous contact with the client. Once the "expert opinion" has been given, the client opted for STAR S.L.'s services and the desired services imparted the follow up processes for strategic plan and solutions will start.

Maintenance & follow-up services in consulting:

The consultants will periodically visit the customer, interact with them, take their feedback and run simulations to assess the implications of strategic plan provided by STAR S.L.. The results will be reviewed and reality checked with the sector data base. The consultants will be using software to generate many reports on the same company to illustrate to the client that real sustainable solutions have been achieved. The process is iterative and the gap between standards improved and the strategic plan provided by STAR S.L. will converge with additional new inputs.

The important after sales service will be that if STAR S.L. generates new improved version of software application, the consultants will immediately start providing services with the updated software.

A significant tool in the after sales will be feedback and expectations of client. This will include doing a survey or questionnaire of the client so that STAR S.L. can provide a service to satisfy their new needs. Some of these needs may be met by having the client attend conferences, networking with other companies, doing additional trainings.

The scope and frequency of after sales service will be determined by the nature and complexity of project. An effective offer of after sales service for retention of client will be that if there are substantial upgrades in the software due to innovative sustainable practices and new governmental regulations of sustainable standards, the consultants will inform the former client of new available software and consultation options at a reduced rate. The specifics of promotions and after sales will be detailed in the Marketing portion of this business plan. The

consultant will also periodically update the client in the form of newsletters and bulletins to the clients as to keep them aware of new trends, regulations, best practices in the field and expectations of stakeholders in order to generate interest so they will re-contract with STAR S.L..

After-sales service for solutions:

The process for the after sale service for solution will quality assurance of standards of the components and material procured by the client from suppliers. Quality standard norms will be vetted by the consultant and the sustainability of processes and credentials of the supplier will be checked. After the completion of supplier's contract consultant will verify the work done. Corrective measures will be asked if required.

3.1.4. Budget: Cost, expenditure and investment summary

In the following paragraphs, the estimated budgets for the first 5 years of STAR S.L. are presented, both the operational costs and the operational investments

Cost:

Find in the table below the summary of all the operational costs. Those include: salaries of the employees involved in the main operations, office renting fees, office materials, maintenance of the quality, environmental and CSR standards, utilities and transport and allowances.

OPERATIONAL COSTS	Initial	2009	2010	2011	2012	2013
<i>Operational fixed costs</i>						
Renting						
Madrid		17,088 €	34,176 €	34,176 €	34,176 €	34,176 €
Madrid parking		432 €	864 €	1,728 €	1,728 €	2,592 €
India		5,277 €	5,282 €	5,545 €	5,809 €	5,809 €
Office Materials						
Madrid		873 €	1,929 €	2,153 €	3,186 €	3,300 €
India		120 €	360 €	360 €	540 €	540 €
Vehicles renting		1,288 €	3,864 €	7,728 €	7,728 €	11,592 €
Quality/Environment/CSR standards maintenance		0 €	0 €	0 €	1,800 €	1,800 €
<i>Operational variable costs</i>						
Utilities						
Madrid		2,490 €	6,242 €	6,366 €	7,180 €	7,251 €
India		420 €	1,285 €	1,331 €	1,379 €	1,429 €
Transport and allowances						
Madrid/India		2,637 €	7,910 €	7,910 €	9,888 €	9,888 €
Quality/Environment/CSR standards		0 €	0 €	18,000 €	1,800 €	1,800 €
TOTAL		30,625 €	61,913 €	67,298 €	73,415 €	78,377 €

For further details refer to CD excel sheet titled Realistic Scenario tab Operational Costs. However, in the following paragraphs, the main guidelines followed for that are presented.

Offices renting:

Already explained in previous sections.

Office materials:

Approximate price have been taken from “Elcompas” office material supplier (see www.elcompas.com) for the material in the Spanish office. For the Indian office, a rough estimation has been made taking average prices.

Vehicles renting:

Consultants and experts working at STAR S.L. will need cars to visit customers and make research. STAR S.L. will rent one car in the beginning and will rent two more in the following years. The vehicles required are simple and small, as a model taken from Volkswagen (Polo), at a fee rate of 233€/month in case the financing possibilities that a company like Caixa Renting is offering are selected. (See more details about the renting conditions in Annex 25).

Quality/Environmental/CSR standards maintenance:

Already explained in previous sections.

Utilities:

Both the figures for Spain and India have been extracted from average cost of previous bills in offices with similar characteristics. For the calculation of the consumption over the years, the growth of operations intensity and expected inflation have been used.

Transport and allowances

Averaged prices of planes, hotels, restaurants and oil have been considered. It has been assumed that the company approximately will need to pay each employee for taking two planes, two hotel nights, 4 meals and 80 litres of oil per month.

OPERATIONAL INVESTMENTS	Initial	2009	2010	2011	2012	2013
<i>Tangible Assets</i>						
Office equipment						
Spain/India	6,498 €		160 €	591 €	2,182 €	0 €
IT equipment	8,010 €		400 €	400 €	3,200 €	0 €
<i>Intangible Assets</i>						
Software	111,544€	125 €	625 €	625 €	625 €	625 €
Quality/Environment/CSR standards						
TOTAL	126,052€	125 €	1,185 €	1,616 €	6,007 €	625 €

Office equipment:

A rough estimation has been done with prices of equipment taken from www.mobiliariodeoficina.com. This estimation includes 8 chairs, 2 file cabinets, 2 dry erase boards, one projection screen 8 tables, one meeting table and 15 chairs for it and other contingency budget of 500€ apart from the office equipment for India previously detailed.

IT equipment:

Prices from www.dell.com have been taken as reference. The budget includes 2 security servers (one for each office), 2 external storage devices, 8 laptops, one data centre, one networking device, 3 equipped fixed computers (one for Madrid and the other one for India), one multifunction printer, one projector and a contingency budget of 500€. The budget increases according to the increase in personnel in the company and the forecasted inflation rate.

Software:

The company's budget includes an ERP for the financial control, project management to control the number of hours that each employee invests in each project and its profitability and CRM. The one selected is from Openbravo, it is a free software, which adaptation to the company would cost around 35.000€. Other items included: Oracle, Java, Windows Vista Business, and

Microsoft Office SME 2007. Additionally, a contingency budget of 800€ is projected for the first year and of 500€ for the following years.

Software registration notary:

As no patent protection exists in Europe for software protection, the software will be deposited approximately, in order to be protected against copying or bad use practices. The price of the notarial deed will be around 125€. (Annex 13)

Quality/Environmental/CSR standards:

Already explained in previous sections.

3.2. Marketing Plan

This section consists of the Marketing Plan of STAR S.L. First, the segmentation, targeting and positioning STAR S.L will use is described, followed by the description of the services offered, the pricing policy, the marketing people, processes followed by them, promotions, post-sales and the marketing communication campaign. Finally, the sales plan STAR S.L is expecting is presented.

3.2.1. Segmentation, Targeting, Positioning

STAR S.L will be doing Business-to-business (B2) activities. As it was analyzed in the Sector analysis, the company will focus mainly on medium and big companies of the following four sectors: energy and oil and gas, IT, transportation and infrastructure and financial entities. In the future other sectors like food and drinks, textiles industries, construction and tourism will be also targeted as well as the big consultancy firms.

In general terms, big companies in all the sectors have their own CSR or sustainability department or people in charge of it, and in contrast, medium companies do not. This implies that the target customer and strategy for each of both cases needs to be different. In the first case, people working at or in charge of the mentioned departments must be targeted, while in the second case, CEOs should be the targeted customers. Also, the type of project designed in each case will be different, since the needs will probably be different.

Customer's purchasing decision factors and positioning of STAR S.L

Apart from the price, in the market of consultancies it is essential to have good reputation and be linked to trustful people. So, basically price, reputation and expertise are the variables in which clients try to find a balance before making any hiring decision. So this will be marketing strategy of STAR S.L: offer a competitive price, while providing customized solutions to clients and try to make alliances with prestigious organizations and create network with renowned people to gain prestige.

In general terms, what companies are looking for by implementing CSR is to add value to their company and to increase the positive perception from customers and investors. That is why the positioning of STAR S.L will be the following: expert sustainable company that aims to help companies to be sustainable, be perceived as sustainable, make them feel part of the new sustainable trend of the market, make them gain customers and other business opportunities, while saving or making more money.

3.2.2. Description of services offered

STAR S.L offers its clients two kinds of services: Consulting and solution services. Solution services are the ones that will provide customers with the required support regarding intangible (strategy) and tangible solution fixing. In case customer companies need to change, incorporate or redesign new processes, materials or equipment, STAR S.L will provide the solution

suggestion and the means for doing so, through the network with other supplier companies. Those changes will be mainly to improve environmental performance including: ecoefficiency improvements, energetic efficiency auditing, environmental impact evaluation, biodiversity, waste and water reutilization, polluted gas and water emissions and soil cleaning, etc.

Intangible (strategy) solutions are the ones related more to the development of new strategies and policies in companies related to sustainability and CSR matters (intangibles). Those services will cover the following different areas:

- Analysis of CSR strategy and management systems: situation diagnosis and evaluation, opportunities and necessities evaluation, detection of improvement areas and design of CSR strategy and policies, benchmark studies, code of conduct
- Management systems certification and/or implementation: environmental, quality and social
- Legal compliance audit and internal audits (internal policies)
- CSR reporting: how to develop a proper CSR report following standards such as Global reporting Initiative (GRI)
- Stakeholder engagement: analysis, identification, prioritising, action plan design, network, dialogue management
- Training and sensibilization plans
- Design and use of CSR indicators
- Organizational change to CSR
- Risk management: environmental and social risks, responsible investment
- Communication and information management (internal and external): CSR communication, public relationship development, responsible image and reputation creation, integration of sustainability stock indexes, responsible marketing
- HR responsible management: gender equity, flexibility, accessibility
- Sustainable economy: ethical investment
- Sustainable supply management

Depending on the sector, the activity, the size, the current situation on CSR matters and the strategic objectives of the company, STAR S.L will customize its services to each customer's needs.

3.2.3. Promotion and processes

In consultancy business the service cannot be separated from its provider. STAR S.L's service providers –experts, consultants, sales experts and programmers etc. will be the part of service. Hence all the employees will be significant for processes. They will be working to reach the target client in their own different activities. But the key functionary is sales expert. The role involves consistent, huge effort to identify the potential client and get the opportunity of personal interaction with C-level personnel of customer companies. The sales expert will gather and analyze all relevant information about the potential client, characteristics and opportunities, needs of their activity, their strength and weakness, opportunities and concerns, possibility of growth etc. This can be tracked by online sources, volume of business, financial capabilities, their market expansions and new ventures, their presence and movements in international and national events, the periodic market reviews and opinions of experts and other acquaintances etc. With this information the sales expert would assess the potential business opportunity for STAR S.L and decide pursuing the client. The sales expert would be enthusiastic and will make rigorous effort for this work attending seminars and trade shows, online networking and making cold calls. But consultancy at the beginning when no references exist needs personal contact to go ahead. So STAR S.L should have someone known at the top with high contacts that can provide a chance to be introduced. STAR S.L will form a high powered advisory panel of prestigious (may be retired) experienced entrepreneurs, advisors, sector specialists, NGO's people who volunteer to help the committed enterprises and to use their time and skills in a

meaningful way, feeling useful to the civil society they participate to build. Monetary benefit is not their motive. STAR S.L's partners and top management will identify and align these business angels to STAR S.L. STAR S.L can nominate them as honorary Directors. Their honoraria will be symbolic and will be related to the profits. Their expenses towards work of STAR S.L will be paid. This panel will advise and guide STAR S.L with their experience .They will promote STAR S.L in among potential clients with their contacts and influence and introduce the STAR S.L team to the key decision makers.

Once the potential client is identified, the sales expert together with consultant (team work) will discover the client's true needs, in detail. The key challenge for the team is to demonstrate how STAR S.L is useful for the customer company and which are the main points STAR S.L should offer and highlight to the company. They will demonstrate effectively how urgently the client requires STAR S.L's services and how those can uniquely meet their needs. The consultant will attract clients' attention and curiosity by offering value proposition with exclusive knowledge of STAR S.L and showing how their services and solutions could resolve their problems and give them long term value. They will try to create a strong interest in the client to hire the services of STAR S.L. Meanwhile the client will also assess the STAR S.L's capabilities, and once he/she is convinced a business relationship beneficial for both will be established.

STAR S.L will offer initial free promotion service to the clients to analyze the companies' sustainability in relation to social, economic and environmental policies. It will also highlight unique software tool, which STAR S.L will use to generate the initial analysis report. This report will attract the client's attention towards status of its company regarding these issues and the corrective measures required. At this point the consultants will convince the client to negotiate a contract the effective and value added services of STAR S.L.

As it will be presented on the sales forecasting it is expected that STAR S.L has a conservative growth rate in the first five years, some medium and big clients but exclusive and focused projects. When such base has been put up, STAR S.L will have a list of medium and big clients as references; STAR S.L will go to the mainstream market and go on for further clients and projects. In this case referrals and word of mouth will be effective for promotion. References should really speak about the services and solutions of STAR S.L. The facts and figures that STAR S.L provides from previous business cases as well as the names of those companies would be worth to attract new clients. Information like how much cost saving did previous client achieved, the knowledge offered by STAR S.L enhanced the previous client's image among different stakeholders, increases on the ratio of employees' satisfaction and retention and the client's a special positioning, would be really attracting information for possible customer companies (always after the approval of the companies).

3.2.4. Human Resources in marketing

As mentioned in the previous section, STAR S.L will require the involvement of all human capital for sales/marketing at one stage or other, but the role of sales expert would be focused on sales/marketing

Sales /Marketing Expert:

The sales experts would specifically focus on primary client facing function initially in Spain. We will have to sales people, one focusing specifically in sales requirements for STAR S.L and the other focusing in sales but including marketing in the goals.

Sales experts' quantitative requirement:

	Year-1	Year-2	Year-3	Year-4	Year-5
Sales/marketing expert	2	2	2	2	2
Sales/Marketing Intern			1	1	1

Total	2	2	3	3	3
-------	---	---	---	---	---

Initially STAR S.L will need two sale/marketing experts, but with the growth it might require one more who can conduct business from the office and the other 2 full time outside exploring the market opportunities. Form the third year the marketing will be outsourced.

Profile:

Sales expert: The sales expert will be graduate with 7 years of experience with minimum 1 year experience in marketing /sales.

Marketing expert: The marketing expert will be MBA with experience in marketing /sales as well as NGO’s experience. These experts must have good command of Spanish and English. They must be very enthusiastic, creative, motivated, and persuasive, with disciplined work style and positive attitude. They must be empathetic, patient, responsive and good listener. They should have good perception of STAR S.L, its differentiation and about the competitors. They need to know about clients and need to have ability to build client relationship. The company will empower them with knowledge and support to be the valued contributor.

Job function:

The main functions of sales/marketing experts would be client oriented. Their job function requires continuous communication and interaction with others. They will have a very active professional life, working in the field and extensive travelling. They will be key functionaries for marketing and sale activities of the company. They will create communication tools and implement all the activities described in of Marketing Plan (previous section). They will build and maintain profitable relationship with existing and potential clients.

One expert will focus on marketing of STAR S.L. He will develop the communication tools of integrated marketing communication program to reach the clients. He will be responsible for holding events for the public, voluntary service for the community, Ad campaign for the potential clients and effective social networking etc (Refer to Marcom plan). He will contact the target groups and to convince them to participate in STAR S.L’s communication programs leading to long term relationship.

The other expert will be involved in selling efforts .He will focus more on clients and market. He will spend most of the time to identify the potential clients and in finding new prospects for business. He will use the communication tools effectively to reach the potential clients and discover their critical needs. He will work in close collaboration with consultant to use this information to impact the client to sell the business. The basic aim of sales experts would be responsible for building and maintaining profitable client relationship with existing and prospective client. They will function in close coordination to produce great impact on client by showing how STAR S.L can help them solve their needs.

With the expansion of business, the sales strategy will diversify from third year. One sales expert will dedicate full time inside the office to conduct sales /marketing activities. He will vigorously use phone, Web 2.0 and other communication tools to reach the potential clients, retain the existing clients and interact with previous clients. He will also analyse the information

gathered regarding market research, business prospects, clients needs etc. and design sales strategy and marketing tools accordingly. He will work in close coordination with the outside /field sales expert to successfully implementing these activities. He will also provide administrative backup to outside sales experts. From fourth year, with STAR S.L's strategy to go global and to outsource marketing, he will explore all the opportunities for global expansion. He will work in close collaboration with marketing consultants.

Intern: Team will include 1 new intern in third year. He must be a graduate with marketing /sales background. He will learn while working under the assistance of sales/marketing experts

3.2.5. Post-sales

Post sale will be focused on building a long-term both party win-win business relationships for repeat business and as important referrals for future clients. Sales experts will continuously communicate with different users of the clients. They will make periodical follow up with the user to make sure that everything proceeds smoothly, meet with them for detailed feedback of performance of services of STAR S.L, check how important they find the service, and ask them for ideas and suggestions about how to introduce to other similar clients. Client's comments will be invaluable for creating or enhancing the market communication, and the identifying a potential future client.

STAR S.L will organize short period events in the client's organization to mobilize and involve the users. STAR S.L team will highlight the best practices its sector and the long term benefits to them. The users will have role to perform. This will be creative and effective for users to get involved and have better prospective, give feedbacks and expectation. It will be fruitful for STAR S.L since it would enhance the perception of the user of the value and quality of its service, as well as close client relationship.

The most important action would be strengthening the relationships with key management personnel to facilitate effective communication and foster client loyalty. The sales expert/consultant will interact with them, satisfy their needs, exceed their expectations, and interview them, create interest in them for dynamic relationship.

The STAR S.L will invite the key management on its events and pursue and ensure their participation. The STAR S.L will present the evolving best practices and new issues of their interest and provide them with insight on the condition of its business and meaningful suggestions for improvement. STAR S.L will also actively participate in the events of clients. STAR S.L will create a community of all stakeholders- clients, suppliers, NGO's, government's representatives, experts of the sector and interest group. It will try to build very interactive communication and relations among them. This community will be linked to the events (communication plan).

Besides above, the expert/consultant will continuously communicate and update the clients through blog, twitter and other social networking.

This ongoing partnership will give STAR S.L with unique insights into customer needs and how they are changing and opportunity to offer future business as per emerging needs of client. As mentioned in the Operational plan (after sales service) the will company keep the clients aware of new trends, regulations, best practices in the field and expectations of stakeholders in order to generate interest so clients will re-contract with STAR S.L for new services.

3.2.6. Marketing communication plan

Description of the marketing communication plan

The Marketing and Communication Plan, which will be referred to as the Marcom plan, consists on a series of activities that STAR S.L considers to be important and necessary for the

development and growth of the company. In the next pages the Marcom plan is presented in table format, followed by the explanation of the main activities presented.

First Phase (Years 2009, 2010, & 211)

Marketing & Communication Plan- Years 1-2-3					
Target	Activity	Goal	When	Money	Metric
1 STAR S.L	Training to experts, consultants, managers, and programmers about sustainability in Spain and countries where initial consultancy is planned.	To know how to recognize the need of each client and be able to sell personalized solutions.	September 2009 (at company start up)	Cost of developing a training plan, which could in turn depend on government interference in this issues.	Clients STAR S.L. get after the initial consultancy.
2 All public that recognizes sustainability problems	Events	Gain respect in this consultancy aspect.	October 2009 (Every Two Months for 2009)- Monthly starting 2010 (Annex 26)	Cost of organizing and developing the event-place, invitations, etc.	Number of people involved in this event and willing to help STAR S.L.
3 Other Consulting Agencies	Networking	Transfer of Knowledge	August 2009		Number of people who respond or make suggestions & comments
4		Contact with people in the field.			
5 Other Consulting Agencies	Blogging	Transfer of Knowledge	August 2009		Number of people who respond or make suggestions & comments
6		Contact with people in the field.			
7 Clients	Ad- campaign	Promote company's services to get loyal clients.	September 2009	Cost of ad campaign	Amount of clients who incorporate into their day to day activities sustainability actions and communicate them.

8	Clients	Free initial consulting	To provide overview of our service being able to reach client's necessities	Beginning September 2009	Cost of developing software and of initial consulting.	Number of clients who accept our proposal and allow STAR S.L to offer solutions.
7	Clients	Offer of New Services to existing clients	To provide overview of our service being able to reach client's necessities	September 2010	Cost of new service	Number of clients who accept new proposal.
9 10	Other Consulting Agencies	Joining or creating a sustainability consulting group.	Transfer of Knowledge Contact with people in the field.	September 2010	Cost of joining or creation.	Possible initiatives in STAR S.L.
11 12	Global Sustainability Consulting Companies	Make alliances with consulting companies incorporated and working abroad	Share experiences and transfer of knowledge R&D	September 2009	Cost of communication Cost of technology and resources.	Problems solved successfully Being able to make contributions in the sector
13			Offer STAR S.L's services globally		Cost of delivering services	Number of increased satisfied clients

Second Phase (Years 2012.2013)

Marketing & Communication Plan- Fourth Year						
Target	Activity	Goal	When	Money	Metric	

1	Potential Employees	Visit to Universities, group dynamics, interviews, and individual cases	To choose between candidates the best ones for STAR S.L	January 2012	Cost of activities	Number of loyal employees
2	STAR S.L	Courses to employees about trends and/or regulations in the sector.	To be able to give good and in track consultancy service.	Quarterly	Cost of courses.	Loyalty of clients.
3	STAR S.L	Group meeting with employees.	Share past experiences to better service.	Annually	Cost of group meetings.	Client's Satisfaction and/or reduction of errors.
4	All Public	Voluntary Actions	To be able to help a community	June 2012	Cost of this action	To be able to successful close the activity
5	All public that recognizes sustainability problems	Events	Gain respect in this consultancy aspect.	Every two months	Cost of organizing and developing the event-place, invitations, etc.	Number of people involved in this event and willing to help STAR S.L.
6			Transfer of Knowledge			
7	All public	Essays in Sustainability Magazines or Websites	Recognition of STAR S.L	Monthly	Cost of time spent & of publishing	Number of positive responses about publication
8	Other Consulting Agencies	Joining or creating a sustainability consulting group.	Transfer of Knowledge	September 2012	Cost of joining or creation.	Possible initiatives in STAR S.L.
9			Contact with people in the field.			
10	Clients	Ad- campaign	Promote company's services to get loyal clients.	Every two months.	Cost of ad campaign	Amount of clients who incorporate into their day to day activities sustainability actions and communicate them.

11	Clients	Offer of New Services to existing clients	Promote company's services to get loyal clients.	September 2012	Cost of new service	Number of clients who accept new proposal.
12	Clients	Visit potential clients to offer free initial consulting	To provide overview of our service being able to reach client's necessities	at least 3 visits per week	Cost of Visit	Number of clients who accept our proposal and allow STAR S.L to offer solutions.
13	Other Consulting Agencies	Blogging	Transfer of Knowledge	Starting August 2009		Number of people who respond or make suggestions & comments
14			Contact with people in the field.			
15	Global Sustainability Consulting Companies	Make alliances with other consulting companies incorporated and working abroad	Share experiences and transfer of knowledge	April 2014	Cost of communication	Problems solved successfully
16			R&D		Cost of technology and resources.	Being able to make contributions in the sector
17			Offer STAR S.L's services globally		Cost of delivering services	Number of increased satisfied clients

First Phase (Years 2009, 2010, & 211)

An important activity will be the organization of events that will be open for all public. The aim is to gain respect in the sustainability consulting area. This activity is set for October 2009 (see Annex 27 for more details). The events will be promoted via e-mail marketing in 2009, while in the following years will appear in STAR S.L's webpage and invitations will be sent to those who are registered in it. STAR S.L will also participate on diverse events of the different sectors targeted.

STAR S.L plans to do networking and blogging with other consulting agencies and people in the sustainability field to be able to transfer knowledge and be able to learn from them. These activities will start in August 2009. They will be measured by the number of responses and/or suggestions we receive.

STAR S.L experts and consultants will also be at economic radio shows in the mornings and/or evenings to talk about any subject regarding sustainability and businesses. This below the line media is a way to increase clients or at least make awareness of the matters being and of the company.

As mentioned in the promotion and processes section, there will be a free initial consulting for potential clients that will provide an overview of the services that STAR S.L offers. The success of this activity will be measured by the number of clients who accept STAR S.L's proposal.

Ad campaigns will also be present in the first year, being one of the most effective marketing tools to capture clients. The most used form of advertisement will be in websites. This will account for 300€ for 12 months.

In September 2010, STAR S.L will join/create a sustainability consulting group as part of their networking activity. The cost will be the one of joining/creating the group which will be measured by the initiatives that arise from this group.

Existing and past clients will be offered new services to be able to gain their trust and loyalty. This activity will begin in September 2010, giving experts and consultants the time to work the personalized strategy for each client.

There will also be the creation of STAR S.L Foundation, which in the first phase will have a cost of 500€. STAR S.L will also have in its hand the search for sponsors who will help in the creation of the elementary group to cooperate with the different communities in need.

One of the main goals of STAR S.L is to have alliances with a sustainability consulting firm located in the European Union. This will provide a step for STAR S.L to reach other markets without having the necessity of investing too much without testing the market but also it will provide with different tools to be able to do research and development and to share the experiences in the field. The cost of this activity will be linked to the cost of the communication- video conferences, mobile, telephone, transportation from one location to the other-, cost of technology and resources, and the cost of delivering these services.

Online social networking is very important and cost effective promotion tool. With STAR S.L's programmers will design finest web site with the instruction of experts and marketing consultant. The website will be attractive, active, and dynamic with value added content and link building. The contents will be updated and changed frequently to attract search engines and customers. It will contain blog, commentary, polls and user generated contents. Crawling to the top of the links of the search engines like Google, msn, yahoo etc is vital for promotion. Consistent efforts will be made to reach and stay there (<http://www.2CreateAWebsite.com>).

Another important activity at this point is the publication of articles in magazines or online newspapers (such as expansion.com) about recent discoveries or trends, or books regarding the subject. This will help give recognition to STAR S.L and its associates. This activity is intended to be done in a monthly basis by the experts in STAR S.L and it will help to keep the

awareness and the importance of the subject and to try to get as much positive responses as possible.

Second Phase (Years 2012.2013)

The fourth year's most important activity will be different voluntary acts involving all public. The idea is to try to involve different communities into all activities and at the same time, trying to find jobs for unemployed who are willing to give help.

In this second phase of the marketing communications plan of STAR S.L, it will focus its attention on gaining a strategic alliance with a sustainability consulting firm located outside of the European Union. This alliance as well will provide a step for STAR S.L to reach other markets without having the necessity of investing too much without testing the market but also it will provide with different tools to be able to do research and development and to share the experiences in the field. The cost of this activity will be linked to the cost of the communication- video conferences, mobile, telephone, transportation from one location to the other-, cost of technology and resources, and the cost of delivering these services.

We can conclude in that STAR S.L will actively make:

- Submission website to search engines like Google, msn, yahoo etc. (Annex 28)
- Creating an article in Wikipedia with all the necessary information and ideas (Annex 29)
- Creating a facebook group/community listing the main ideas and also adding some photos for initial advertisement.
- In the website of the company, creating a different section for contact with the public and media's blog section in the website and a section for the public to comment and give ideas.
- Creating a user account in YouTube and add interesting videos for marketing expand the connection with the public.
- A blog would be created in Twitter and people will be invited to read it and give their opinions.
- By E-mail marketing. It is kind of like sending newsletters, only you are more or less not sending news but rather promoting the latest products and services. The e-mail would be avoided to be sent as a spam. Efforts would be made to make it original and creative.
- Participating in the online forums and other communities similar to ours (joining discussions in other websites) and making comments until we are established as a regular visitor. Hence, when we get enough outlook of the group, discussing with the eager and other active members of the community and invite them to visit our website/group/blog.
- The affiliate marketing technique-It basically works with networking with other website similar in idea or content. This can create a good amount of traffic with creativity and quality.
- A mobile version of the website could be created. Having paid reviews of our website in sites like sponsoredreviews.com. With paid reviews, spotlight will be put on our website which can create a good amount of traffic.

Name and logo of the company

The name of the company will be STAR S.L. which meaning refers to Sustainability-Tailored solutions-Analysis-Responsibility, as it can be seen in the logo bellow. The name truly represent the business of the company. S-Sustainability represents the company's business is in sustainability sector. T-Tailored solution suggest that company will offer customized solution to its client, A-Analysis represents that company will make a thorough analysis of client's problem and possible solutions. R-Responsibility represents that it will provide knowledge to the client to run business in a responsible manner. The colour of the logo is blue since blue is the preferred colour of most of the people.



Sustainability Tailored Solutions Analysis Responsibility

3.2.7. Marketing budget

In the following table all the costs considered for the marketing communication activities as well as for the sales experts are considered.

MARKETING COSTS		2009		2010	2011	2012	2013
Voluntary Actions		500.00	1500.00	518.00	536.65	555.97	575.98
Making alliances							
	Cost of communication	259.50 €	778.50 €	519.00 €	721.50 €	924.00 €	1,126.50 €
	Cost of technology and resources	-					
	Cost of Transportation	960.00 €	2,880.00 €	1,920.00 €	2,400.00 €	2,880.00 €	3,600.00 €
	Airplanes	800.00 €	2,400.00 €	1,600.00 €	2,000.00 €	2,400.00 €	3,000.00 €
	Taxis	160.00 €	480.00 €	320.00 €	400.00 €	480.00 €	600.00 €
Events (Hosting)	(50-100 people)						
	Location						
	Refreshment	31.96 €	95.88 €	31.96 €	31.96 €	31.96 €	31.96 €
	E-mail Marketing	7,000.00 €	21,000.00 €	-	-	-	-
	Total	7,031.96 €	42,191.76 €	31.96 €	31.96 €	31.96 €	31.96 €
Events (Assisting)	Employees Assisting	3		6	8	4	6
	Event Price	2,274.29 €		4,688.64 €	6,476.58 €	3,354.87 €	5,213.46 €
	Plane Ticket	1,458.00 €		6,041.95 €	8,345.95 €	4,323.20 €	6,718.26 €
	Accommodation	1,577.01		1,089.19	1,504.53	779.35 €	100.93 €

		€		€	€		
	Amount assigned for transportation	900.00 €		1,864.80 €	2,575.91 €	1,334.32 €	2,073.54 €
	Amount assigned for Food	1,260.00 €		2,610.72 €	3,606.27 €	1,868.05 €	2,902.95 €
	Total	7,469.29 €		16,295.30 €	22,509.24 €	11,659.79 €	17,009.13 €
	Essays in Sustainability/Bus Magazines						
	writers fees		16,200.00 €				
	publishing fees	5,400.00 €	900.00 €	5,400.00 €	5,400.00 €	5,400.00 €	5,400.00 €
	Websites Ads	300.00 €	1,500.00 €	300.00 €	300.00 €	300.00 €	300.00 €
	Website Page	500.00 €	1,800.00 €	-	-	-	-
	Blogging (giving incentives to writers-Lunches)	600.00 €	4,500.00 €	300.00 €	300.00 €	300.00 €	300.00 €
	Podcasting	1,500.00 €	- €	750.00 €	750.00 €	750.00 €	750.00 €
	TOTAL	24,520.75 €		26,034.26 €	32,949.35 €	22,801.71 €	29,093.57 €
	Percentage/Sales	18.53%		4.59%	3.34%	1.40%	0.93%

3.2.8. Pricing policy and Sales forecast

Pricing Policy

In order to calculate the pricing policy, STAR S.L has analyzed the potential market for the following sectors: IT, Transportation, Financial, and Energy. The following charts show the figures of these sectors respectively:

SECTOR: IT	COMPANY	PROFIT
	TELEFONICA	9.119.000.000,00 €
	VODAFONE	6.200.000.000,00 €
	INDRA	35.700.000,00 €
	HAVASDIGITAL	54.000.000,00 €
	Netzima	304.520,00 €
	LA COMPANYS.L.	119.768,00 €
	ABEN DAS S.L.	6.430.409,00 €
	GESTIONA FACILGLOBALAGENCIA DE SUSCRIPCION S.A.	12.258,00 €
	Average	1.926.945.869,38 €
	Median	21.065.204,50 €

Note the median profit in the IT sector is 21.065.204,50€.

SECTOR: Transportation	COMPANY	PROFIT
	MRW	6.068.090,00 €
	Administrador de Infraestructura Ferroviales (ADIF)	775.000.000,00 €
	Ferrovial	7.337.000.000,00 €
	Metrovacesa	1.255.000.000,00 €
	Autoliv	126.800.000,00 €
	Iberia	32.000.000,00 €
	Fiat	1.721.000,00 €
	CTM Madrid	6.300.000,00 €
	Average	1.192.486.136,25 €
	Median	79.400.000,00 €

Note the median profit in the Transportation sector is 79.400.000€.

SECTOR: Financial	COMPANY	PROFIT
	BBVA	5.020.000.000,00 €
	BSCH-Santander	9.060.000.000,00 €
	Caja Madrid	2.861.000.000,00 €
	La Caixa	2.488.000.000,00 €
	Banco Popular	1.260.200.000,00 €
	Caixa Galicia	401.206.000,00 €
	Bancaja	568.502.000,00 €
	Ibercaja	157.783.000,00 €
	Caja Navarra	175.037.000,00 €
	BBK	307.354.000,00 €
	Average	2.229.908.200,00 €
	Median	914.351.000,00 €

Note the median profit in the financial sector is 914.351.000€.

SECTOR: Energy	COMPANY	PROFIT
	Acciona	277.000.000,00 €
	Cespa	929.700.000,00 €
	Enagas	238.300.000,00 €
	Gas Natural	571.700.000,00 €
	Endesa	4.528.000.000,00 €
	Average	1.308.940.000,00 €
	Median	571.700.000,00 €

Note the median profit in the Energy sector is 571.700.000€.

Considering these four sectors STAR S.L has followed the following methodologies for calculating pricing policies.

1. Finding the median profit of each sector.
2. Taking a 1% of this profit considering it the ROI desired by the companies for the overall consultancy done by STAR S.L.
3. Considering this ROI STAR S.L takes 5% of the anticipated ROI to calculate the cost to the client for variable costs. This is considered the "Solutions cost of the consultancy.
4. Depending on the Sector the Fixed Costs varies but are calculated from billing hours of the Senior and Junior consultants.
5. For the IT and Transportation sector the percentage between Fixed Cost (Initial Consulting) and Variable Costs (Solutions) are approximately 50-50 % of the total fee. Also for these sectors the total billing cost to the client is approximately 10% of total ROI achieved from the services of STAR S.L. This means that for the pricing policy there is a rule that for IT and Transportation the Final Invoice to the client must be around 10% of the ROI achieved by STAR S.L's consultancy.
6. For the Financial and Energy sectors the numbers are different, indicating a slightly different method. Due to the fact that these sectors have a much higher profit, thus higher anticipated ROI, the total ROI given to these clients is higher. Thus, the variable cost at a 5% gives the "Solutions" fee much higher numbers than the Fixed Costs. The proportion for these two sectors is around 10% for Initial Consultation (Fixed Costs) and 90% Solutions (Variable Cost). Also note that for these two sectors the total invoice amount is approximately 6% of the ROI received by STAR S.L's services. Like the pricing policy of IT and Transportation, the Financial and Energy sectors will final a rule that the Final Invoice to the client will be around 6% of the ROI achieved by STAR S.L's consultancy. Note that this method is a part of STAR S.L's strategy because the two most important clients for STAR S.L will be the Financial and Energy. Considering this, STAR S.L has reduced the percentage of the Final Invoice in relation to the ROI received but this will only positively affect the sales because these companies will result in much higher invoicing regardless of a lower percentage.

STAR S.L has done a lot of field research to find out what potential clients are looking for. On one such occasion STAR S.L had an interview with a company called Telegate in which the ideas of the pricing policies previously mentioned were born. The following illustrates that thought process based on Telegates requests of pricing policy.

Step 1: Calculate ROI desired

Company Drivers	
Total ROI Desired	200.000,00 €
Company Profit	20.000.000,00 €
Revenue/ROI	1%

Telegate's annual Profit is 20 Million Euros. A mere 1% of this gives STAR S.L the insight that Telegate would be interested in receiving services that could give a 200.000€ Return on Investment.

Step 2: Calculate Solutions

Variable Costs for Solutions	
ROI	200.000,00 €
Total Fee	10.000,00 €

Now knowing that Telegate is interested in a project with returns of 200.000€ STAR S.L starts by estimating the Solutions cost. The rule followed for all sectors is that the fee for the solutions will be a mere 5% of the ROI desired.

Step 3: Calculate Initial Consultancy

Fixed Costs For Standard Consulting			
Pricing Policy	Rate	Hours	Invoice Amount
Senior Consultant	80 €	120	9,600.00 €
Junior	60 €	60	3,600.00 €
Total	140 €	180	13,200.00 €
Days		7.5	
Working Days		22.5	
approximate Months		1.0	

The Standard Consultation is then calculated based on the assumption of 50/50 % (50% of invoice costs for Standard Consulting and the other 50% towards the Solutions). Therefore, knowing that the Solutions is 10.000€ the Standard Consulting cost must be near 10.000€. Here it is estimated that there will be a total of 180 hours billed, approximately 1 month of work with a final cost to the client of 9.000€.

Step 4: Calculate Final Invoice

Final Invoice		
	Project Fees	% of Total Project
Initial Report	1.000,00 €	5%
Standard Consultation	9.000,00 €	47%
Solutions	10.000,00 €	53%
Total Fee	19.000,00 €	
Total Fee/ ROI Recieved		10%

The above represents the Final Invoice that may be billed to Telegate for STAR S.L's Services. Here It is clear that the Standard Consultation is 9.000€ and the Solutions is 10.000€. STAR S.L believes that the Solutions is the true Added Value of the company and therefore it is illustrated here that for this company the Solutions is slightly higher is Cost. Also note that the Initial Report is 5% of the Total Fee, but that STAR S.L does not charge for the Initial Report if the company decides to go on with using STAR S.L's services. STAR S.L always charges 1.000€ for the Initial Report.

The average for each sector has followed this method. The variation is cost per hour of consultant to calculate Invoice price of STAR S.L increases for the year 4-5. For the years 1-3 the Invoice for senior consultant is 100€ an hour and 60€ an hour for junior consultant. For the year 4-5 Invoice for senior consultant is 120€ an hour and 90€ an hour for junior consultant.

Note that for the IT and Transportation the Total Fee/ROI remains around 10% whereas for the Financial and Energy Sectors this percentage is closer to 6%. Also, the proportion of Standard Consultations to Solutions is no longer 50-50, like for the IT and Transport it is closer to 40-60 and for Financial and Energy it is approximately 10-90 previously mentioned. The Figures for IT, Transportation, Financial, and Energy are in Annexes 30-34 respectively

Sales Forecasting:

Using the pricing methods established for STAR S.L the sales forecasts for the first 5 years (2009-2012) are detailed below.

I T	Transport	Financia l	Energy	Tota l	Sales Year 1	
1	1	1	1	4	Initial Report	4,000.00 €
2	2	1	1	6	Standard Consultation	207,000.00 €
				0	Full Consultation	
					Total Sales	215,220.00 €

In September of 2009 STAR S.L will begin offering its consultancy services to the public. Therefore this first year sales represents 4 months of sales, illustrated in the table above. This year illustrates that 4 Initial Reports will be generated. These Initial Reports indicated in each sector shows that STAR S.L is new and therefore the companies interested do not become too convinced to continue with the services. STAR S.L considers these first 4 Initial Reports as a test in each sector to see what each sector really wants from STAR S.L. It is estimated that these Initial Reports will be achieved soon after the start of the company in August 2009 and therefore STAR S.L will adjust its sales approach and fix its software according to the initial attempts in each sector. Therefore, it is predicted that STAR S.L with hard work will be able to have success in doing the Standard Consultation in 2-2 each in IT & Transport sector and 1-1 each in Financial and Energy resulting in a total of 6 clients. This work will be done calculating hours invoiced to the customer. This graph reflects that the sales for year 1 (4 months) is 215,220.00 € which is feasible because the number of consultants available is 5. For further details refer to CD excel sheet titled Realistic Scenario tab Sales Year 1

IT	Transport	Financial	Energy	Total	Sales Year 2	
1	2	2	3	8	Initial Report	8,000.00 €
4	4	3	3	14	Standard Consultation	519,000.00 €
1	2			3	Full Consultation	266,865.20 €
					Total Sales	809,742.15€

The above table represents the expected sales for year 2 (2010). This year STAR S.L will be focusing on the IT and Transport sector. Thus it is represented that the IT will have 4 Standard Consultations and 1 Full Consultation and transport will have 4 Standard Consultations and 2 Full Consultation. The reason that STAR S.L has focused on IT sector is because the costs to the company are significantly lower thus will be more willing to use our services. Transportation is also shown as a sector that will be using our full services simply because STAR S.L services provide them with quick and efficient transformation of their sustainability problems as well as creating an average ROI of 794.000€ costing these companies 10% of the ROI received- 79,400€. Here it shows that one of the strategies is to go from the least expensive sectors to the more expensive. In sum, the total sales for year 2 is 809,742.15 €. With a total of 6 consultants these sales forecasts are conservative in respect to the possibilities of companies wanting STAR S.L's services and the resources available at STAR S.L(consultants). For further details refer to CD excel sheet titled Realistic Scenario tab Sales Year 2

IT	Transport	Financial	Energy	Total		
					Sales Year 3	
1	1	1	1	4	Initial Report	€ 4,000.00
4	4	4	3	15	Standard Consultation	€ 570,000.00
			1	1	Full Consultation	€ 625,700.00
					Total Sales	1,242,889.20 €

This table represents sales forecasts for year 3(2011). This year there is a strategic focus towards the Energy sector. This represents that for the Energy sector there is minimal resistance continuing from Standard Consultations towards Full Consultation. From year 2 to 3 there is a decrease in the number of Initial Reports invoiced (from 8 to 4) because there are more companies also deciding to have the Standard Consultation. 15 total companies will use the Standard Consultation. The success of year 3 is due to the Energy sectors and the Full Consultation done with 1 company. This year's total sales forecast is 1,242,889.20€. With a total of 8 consultants this is feasible. For further details refer to CD excel sheet titled Realistic Scenario tab Sales Year 3

IT	Transport	Financial	Energy	Total		
					Sales Year 4	
1	1	1	2	5	Initial Report	€ 5,000.00
3	2	2	2	9	Standard Consultation	€ 630,600.00
		1		1	Full Consultation	€ 1,193,221.20
					Total Sales	1,894,658.76 €

The above table reflects sales forecasts for year 4(2012). This year STAR S.L is focusing on having more companies use the Full Consultation. This year reflects that more people are becoming interested in using the Initial reports (1 more than year 3) but for whatever reason decides to not use STAR S.L's services. However this also reflects that year 4 brings a total of 9 companies using the Standard Consultation and that they have become successful in having 1

company use the Full Consultation: Financial sector. This year's final sales is 1,894,658.76. For further details refer to CD excel sheet titled Realistic Scenario tab Sales Year 4

IT	Transport	Financial	Energy	Total		
					Sales Year 5	
1	1	1	2	5	Initial Report	€ 5,000.00
4	2	2	2	10	Standard Consultations	€ 651,600.00
1	1	1	2	5	Full Consultation	€ 3,008,659.45
					Total Sales	€ 3,797,208.79

This tables shows the sales forecasts for year 5 (2013). This year STAR S.L predicts that they will be able to achieve services with all 4 sectors, with a great success in Energy (2 companies using Full Consultation). The final projected sales for year 5 is 3,797,208.79€. For further details refer to CD excel sheet titled Realistic Scenario tab Sales Year 5

This graph illustrates the sales forecasting for five years

	2009	2009 (extrapolated)	2010	2011	2012	2013
Sales	215.220,00 €	860.880,00 €	809.742,51 €	1.242.889,20 €	1.894.658,76 €	3.797.208,79 €

This table represents the forecasting of sales for year 1-5. As seen above there is an increase of sales from year 1 to 2 of approximately 25,41%.. From year 2-3 is a very important transition for STAR S.L because there is a focus towards the Energy sector and anticipation of full sales with an Energy company. For year 2-3 there is a change of sales of approximately 53,49%Year 3-4 also has a relatively high change of approximately 52.44%. This is due to STAR S.L finally getting respect in the market and having an important sale in both the financial and energy sector (full consultancy). Finally year 4-5 shows a more stable growth of approximately 100.42% as STAR S.L grows into the future. The above chart also represents percentage of sales towards marketing

Percentage of Marketing Costs of Sales

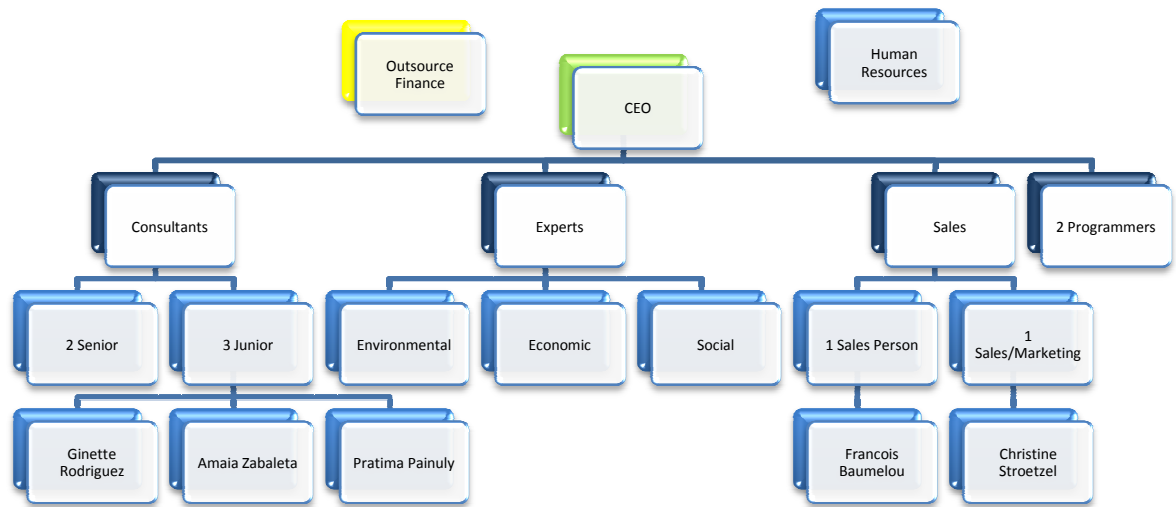
The above table also illustrates the percentage of marketing costs of the sales. Here it is clear that 11% is used for the first year because it is critical for future success of STAR S.L to become known in the market. The second year and third years (2010 and 2011) is at 3% because there will still be a high focus on marketing in order to fulfill goals. Thus in year 4 and 5 there is a reduction of costs to 1% because marketing will no longer be a primary focus for XXX because it will be better known after 5 years of making waves in the sustainability world.

3.3 Organizational and Human Resources Plan

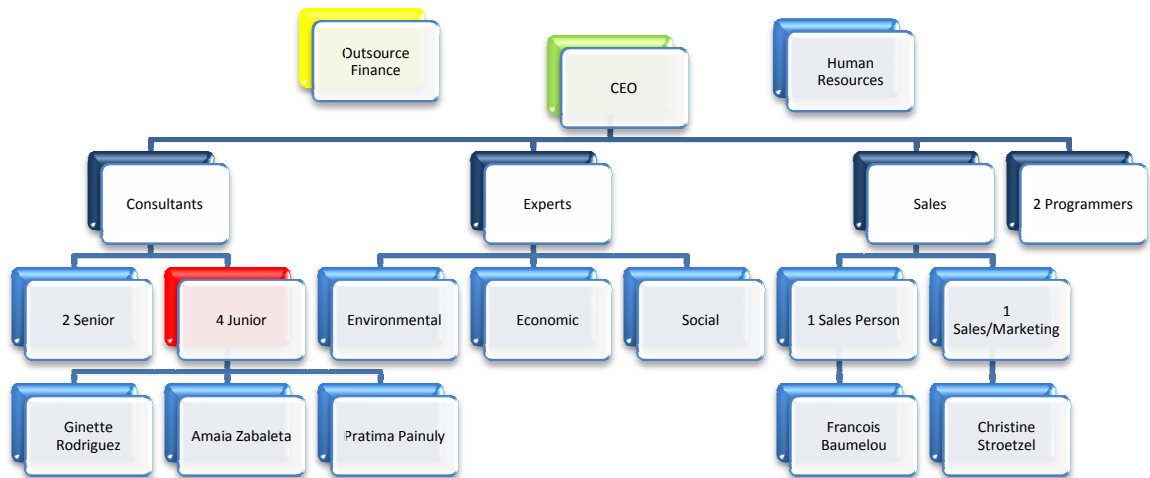
3.3.1 Organizational chart of the company

Below the organizational chart planned for STAR S.L for the following five years since commencement. As human resources are added in the company, please note that the box highlighted in red stresses out this change, while promotions are portrayed in pink.

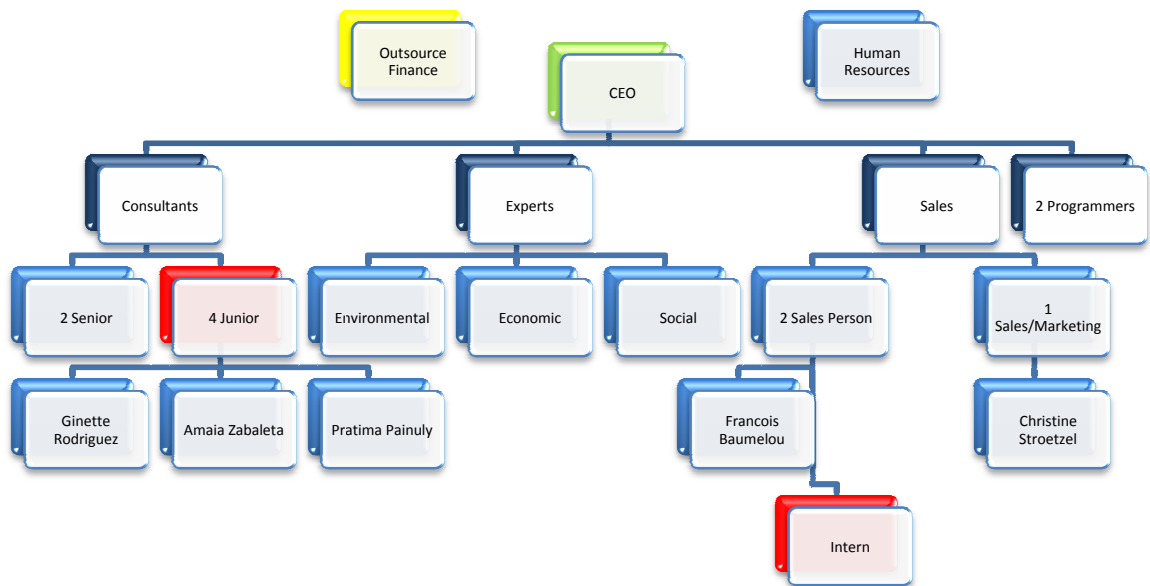
Organization Chart for STAR S.L for Year 1



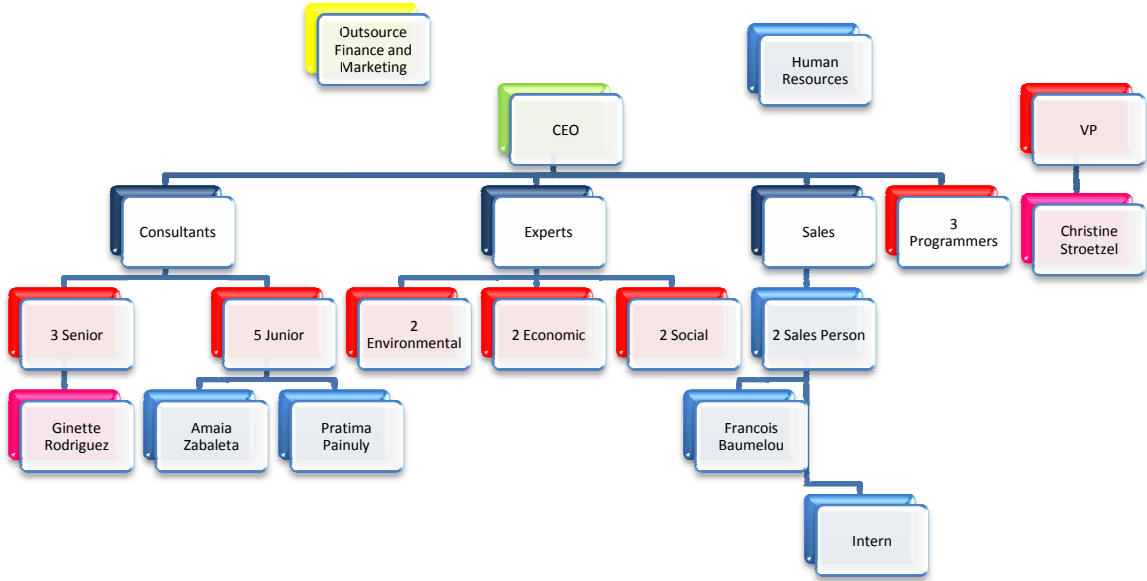
Organization Chart for STAR S.L for Year 2



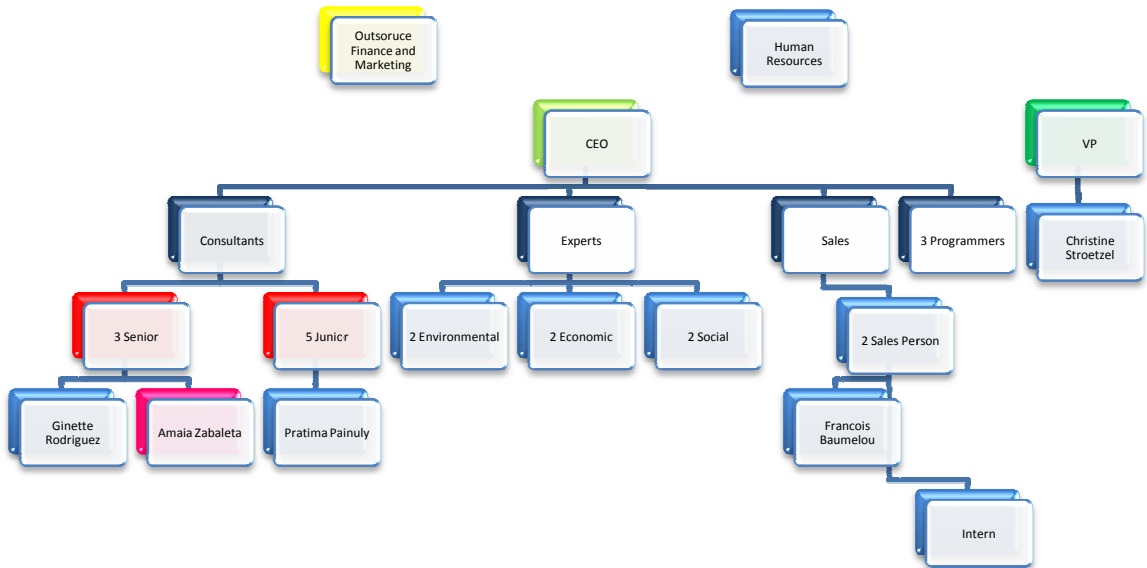
Organization Chart for STAR S.LX for Year 3



Organization Chart for STAR S.L for Year 4



Organization Chart for STAR S.L for Year 5



3.3.2 Description of each function

Chief Executive Officer (CEO):

CEO will be the highest ranking officer of STAR S.L. He will be in charge of total management of the company and the key decision maker.

Profile:

CEO will be Master of Business Administration with minimum 5 years working experience in senior management position. Experience in consultancy is highly required. Multilingual, with a good command of Spanish and English.

Job function:

1. Be the main driver to lead the company according to its mission, vision and objective. Will be responsible to carry out the strategic plans and policies that set the direction for the operations of STAR S.L. He will take major decisions for implementation of business. The experts and senior consultants will advise and assist the CEO to carry out these functions. He will take decisions in consultation with management.

2. He will build a highly motivated team and effectively manage the human resource by compensation, coaching, counseling and providing better training opportunities. Human Resource expert will be responsible for this function.

3. He will oversee business opportunities; clients' needs and expectations monitor marketing, promotion, operations, quality of consultancy services offered. He will consistently endeavor for the growth of STAR S.L and for the benefits of investors He will ask for periodic feedbacks from experts, consultants and sales/marketing experts and give them directions for increasing value proposition to clients and growth.

4. He will effectively present the strong and positive image of STAR S.L to the stakeholders. To successfully impart this function, he will review the stakeholders' expectations and will be involved and participate in the major events of STAR S.L to have direct interaction with them.

5. He will be responsible for raising resources for the company. For this responsibility he will constantly keep in touch with investors and explore for new possibilities. He will hold and preside the Annual general Meeting, present the annual report of company, address the investors' queries and concern and get the audited balance sheet and Income statements, the budget for coming year and other major decision approved in the AGM. The CEO will be assisted by human resource expert /junior consultants in imparting these responsibilities.

Vice President (VP):

With the growth of company, STAR S.L intends to expand in other country in the fourth year. STAR S.L will create a senior management position of Vice president in that year.

Profile:

The Vice President will be Master of Business Administration (MBA) with minimum 3 years working experience in management position. Experience in consultancy is required. He will have a good command of Spanish and English with knowledge of target country / international experience is desirable.

Job function:

Vice president will be in charge/key decision maker of international operations. VP will be responsible for overseas growth of STAR S.L. He will follow the vision of CEO, make business strategy for overseas, brief the CEO about every action and get his approval.

Human Resources Expert or Trainer:

STAR S.L will need one Human Resources expert. This person will have to attend all meetings and inform all relevant parties of new information. The trainer will be developing their own training for consultants and new employees as well as generating a monthly report based on the report of the experts as well as changes in the company. This report will be updated on the website. The Trainer will be responsible for recruiting and training new employees.

Profile:

Human Resource expert will be MBA with at least 3 years of experience in human capital management. He must be very focused, motivated and proactive.

Job function:

Human resource expert will be responsible for management of human capital of STAR S.L. But he will mainly focus on training needs of human resource and imparting training. He will make development plan for training. He will be responsible for proper and effective training of each employee of the company. He will organize different training programs as well as impart trainings. He will be creating a monthly report based on the Programmer Report and after the PEMT (Programmer-Experts-Management- Trainer Meeting) and TE (Trainer- Experts) meeting that will not only be used to train the rest of the employees but also show the stakeholders what STAR S.L is implementing into its services. He will assist CEO in other functions also.

Sales Expert:

The sales experts would specifically focus on primary client facing function initially in Spain. We will have to sales people, one focusing specifically in sales requirements for STAR S.L and the other focusing in sales but including marketing in the goals. Sales experts' quantitative requirement:

Position	Year 1	Year 2	Year 3	Year 4	Year 5
Sales/marketing expert	2	2	2	2	2
Sales/Marketing Intern			1	1	1
total	2	2	3	3	3

Initially STAR S.L will need two sale/marketing experts, but with the growth it might require one more who can conduct business from the office and the other 2 full time outside exploring the market opportunities. From the third year the marketing will be outsourced.

Profile:

The sales expert will be graduate with 7 years of experience with minimum 1 year experience in marketing /sales. Refer to annex 35 for CV of profile.

Marketing expert:

The marketing expert will be MBA with experience in marketing /sales as well as NGO's experience. These experts must have good command of Spanish and English. They must be very enthusiastic, creative, motivated, and persuasive, with disciplined work style and positive attitude. They must be empathetic, patient, responsive and good

listener. They should have good perception of STAR S.L, its differentiation and about the competitors. They need to know about clients and need to have ability to build client relationship. The company will empower them with knowledge and support to be the valued contributor. Refer to annex 36 for CV of profile.

Job function:

The main functions of sales/marketing experts would be client oriented. Their job function requires continuous communication and interaction with others. They will have a very active professional life, working in the field and extensive travelling. They will be key functionaries for marketing and sale activities of the company. They will create communication tools and implement all the activities described in of Marketing Plan (previous section). They will build and maintain profitable relationship with existing and potential clients.

One expert will focus on marketing of STAR S.L. He will develop the communication tools of integrated marketing communication program to reach the clients. He will be responsible for holding events for the public, voluntary service for the community, Ad campaign for the potential clients and effective social networking etc (Refer to Marcom plan). He will contact the target groups and to convince them to participate in STAR S.L’s communication programs leading to long term relationship.

The other expert will be involved in selling efforts .He will focus more on clients and market. He will spend most of the time to identify the potential clients and in finding new prospects for business. He will use the communication tools effectively to reach the potential clients and discover their critical needs. He will work in close collaboration with consultant to use this information to impact the client to sell the business. The basic aim of sales experts would be responsible for building and maintaining profitable client relationship with existing and prospective client. They will function in close coordination to produce great impact on client by showing how STAR S.L can help them solve their needs.

With the expansion of business, the sales strategy will diversify from third year. One sales expert will dedicate full time inside the office to conduct sales /marketing activities. He will vigorously use phone, Web 2.0 and other communication tools to reach the potential clients, retain the existing clients and interact with previous clients. He will also analyse the information gathered regarding market research, business prospects, clients needs etc. and design sales strategy and marketing tools accordingly. He will work in close coordination with the outside /field sales expert to successfully implementing these activities. He will also provide administrative backup to outside sales experts. From fourth year, with STAR S.L’s strategy to go global and to outsource marketing, he will explore all the opportunities for global expansion. He will work in close collaboration with marketing consultants.

Intern:

Team will include 1 new intern in third year .He must be a graduate with marketing /sales background. He will learn while working under the assistance of sales/marketing experts.

Software Programmers:

Quantitative figures:

Position	Year 1	Year 2	Year 3	Year 4	Year 5
Software Programmer	2	2	2	3	3

The above chart illustrates the quantitative requirements for software programmers in India. The increase in the number of programmers is related to the fact that the experts located in Spain will continuously do a lot of research so that the programmers will have a lot of changes and additions. Also, STAR S.L has an international plan in year four so the additional programmers will be programming software specific to countries other than Spain.

Profile:

The profile for these programmers are people with excellent programming skills, at least 3 years experience, software engineer/MCA graduates, highly self-motivated, creative, and flexible to changing data.

Job function:

These programmers will be in close contact with the experts in social, environmental, and economic sustainability. They will first create the general format of the software from scratch and then start to incorporate the information given to them by the experts. Due to the fact that sustainability issues are becoming more regulated and more desired, it is expected that within the next five years there will be many new regulations that will cause the software to be updated frequently. It may be estimated that the software may change up to four times in a year based on the research the experts do. The transfer of this knowledge will take occur during video conferencing. This is a more sustainable and cost efficient solution opposed to the traditional idea of face to face conferences where the experts would fly to Pune, India.

Once the knowledge transfer is complete the programmers update the software with the new information, which may require additional programming. In the end, the report the software generates is the final product. This report will be used by the consultants when working with a company in order to create solutions of either offering outsourced services and/or working side by side with the client to make strategic changes.

The programmers will design the finest website with the instructions of experts and sales experts, update it, make it very dynamic and to put it on the top list of search engines constantly. They will work consistently with sales experts to create and develop all the internet marketing tools. They will also update the sales expert about the latest development and emerging tools in IT sector.

Consultants:

Consultants' Quantitative figures:

Position	Year 1	Year 2	Year 3	Year 4	Year 5
Senior consultants	2	2	2	3	3
Junior consultants	3	4	4	5	5
Consultants	5	6	6	8	8

The above chart illustrates the quantitative requirements for consultants in Spain. The increase in consultants is related to the increase in projected sales. The more clients STAR S.L has, the more consultants will be needed. This is also considering that from fourth year, STAR S.L will be preparing for international expansion.

Profile:

The senior consultant must be a graduate with 5 years of working experience and 2 years minimum experience in consultancy sector.

The junior consultant may be recently graduated, but 1-2 years of experience in audit will be desirable. They must have command of Spanish and English. But more important is consultants have to be quick learners and passionate about corporate sustainability. They must also demonstrate the following 5 characteristics:

Desire to learn and share knowledge: The consultants will be going through intense and continuous training in order to give the clients the best service. The consultant must possess the abilities to learn quickly and to transfer knowledge to the other consultants and client with ease. They must also be able to use technical resources and tools such as software and expert knowledge in order to give the most effective consultation. They must demonstrate commitment to sustainable methods and assume responsibility for their own learning and ask for help as needed.

Contributes to team success: They must contribute to establishing positive working environment by building solid relationships with team members, clients, and other stakeholders. Also, demonstrate the ability to manage workload, including helping others with additional tasks when appropriate. They should be able to understand team objectives and consistently work with a positive attitude and strong work ethics to achieve goals. They must be able to communicate well with team members in order to create a plan in the case of unexpected events in which a team member is out of the office.

Focusing on the client/service oriented: Consultants should have a clear desire to go above and beyond the services expected by the client. This means delivering above quality work and following company procedures to have consistency among services rendered. Ability to communicate well with clients in order to fully understand their needs and expectations is an essential skill.

Apply and Acquire Technical expertise: Consultants must demonstrate sufficient technical knowledge of business technology. Appropriately apply STAR S.L's standard approaches, methodologies and tools in consultations and formal documents such as the "expert opinion" (final report given to client) is a must.

Change Agility: They must maintain performance during periods of changes. Consultants must be able to quickly adapt to new projects, and work simultaneously on multiple projects. They must also seek information when unsure. Demonstrates flexibility and takes responsibility to get things done is highly desirable.

Job function:

The consultants will be initially working in Spain. They will be visiting a company, imputing data into the software, generating reports, and creating the "expert opinion". The "expert opinion" refers to the final report given to the client. Once the consultants have given the final report to the client, they are also responsible for the next steps which include creating the connection "solutions" or working on the new strategic plans. In any case, the consultant is responsible for maintenance, and all follow up protocol with the clients. Consultants will undergo an initial intensive training about the procedures of consultation in STAR S.L as well as all sustainability materials relevant to their work. This implies that there is an initial training about the software as well as continuous training as new software is implemented. The consultants will be responsible as the primary representative of STAR S.L to the clients, and must report all work to the management of STAR S.L prior to giving the client the "expert opinion"

Senior Consultant:

The Senior consultants are the key functionaries who provide and transfer knowledge to the clients. They will identify the critical needs of potential clients and convince the clients that STAR S.L's value proposition can solve their problems to give them long term benefits. They will prepare the "expert opinion." They will impart the services to the clients required for strategic changes and provide the solutions to fix the problems-quality processes and products

Junior consultant:

The Junior consultants will assist the senior consultants in all the operations. Junior consultant may work with client’s employees to take input information, analyze the inputs for seniors to make “expert opinion”. They will be responsible for follow ups and after sales service supports. They will monitor the quality control of the solutions provided by suppliers.

From the fourth year when STAR S.L will enter the new sectors the senior consultants will focus on new market segments, the junior consultants with their enhanced skills and experience may take charge of senior consultants in the existing sectors. STAR S.L will hire more junior consultants to assist the senior consultants. This process of empowerment will go on when STAR S.L will go to international market and senior consultants will move and focus there. Refer to annex 37-39 for CVs of Junior Consultants.

Experts:

Experts’ Quantitative figures:

Position	Year 1	Year 2	Year 3	Year 4	Year 5
Experts	3	3	3	6	6

The above chart illustrates the quantitative requirements for experts. Basically, the amount of experts will remain the same for the first three years. Each expert will be responsible for their expertise: social, economic, or environmental sustainability. STAR S.L is adding 1 expert in each sector in year four to be able to become an international company,

Profile:

These experts must have at least a doctorate degree in their respective field of sustainability: social, economic, environmental. The experts must have at least seven years work experience in Spain. They must be active publishers and passionate about their work. They must be self motivated and active in the sustainability network in Spain (highly attractive if experience in other countries). They must possess the ability to efficiently work alone as well as collaborate in knowledge transfer.

From the fourth year, STAR S.L intends to go international. STAR S.L will contract three new experts with similar qualifications and international knowledge and experience.

Job functions:

The experts are one of the most important assets of the company because they bring knowledge to STAR S.L. The experts will be actively working to create relevant sustainability reports that will be transferred to the programmers in order to create the software. In order to create these reports the experts will be active in field research, conferences, debates, legal regulations. They will give the findings, recommendations and detail the information to be included in the reports to the management. The management will decide the contents of report with the objective of creating value to client. The main goal is to have the most up to date knowledge of the sustainability requirements and expectations of companies. The finally approved report will be sent to the programmers to transfer this knowledge into software, but also to the HR expert in order to create proper training for the consultants to effectively do their work.

In sum, the operations of STAR S.L is highly dependent on knowledge transfer between three main groups of people- the experts to find the knowledge, the programmers to create the software, the consultants ability to understand the knowledge of the experts in order to accurately use and interpret the reports generated by the software. The success of STAR S.L lies in the ability to create a cohesive system for these three key players to work together.

3.3.3 Selection Process

Recruitment process:

India:

The office in Pune, India is strategically located in the business, IT and University district. Therefore STAR S.L plans to use the sheer proximity of its office to attract programmers. Primarily STAR S.L will use online job searching site. If need be, STAR S.L could do personal recruiting on campus done by the CEO. However, currently STAR S.L already has one of these positions filled. In which case, the CEO will fly to India to give the training to this person so that he/she may be able to recruit and train another programmer for the first year. Similarly in year 3, when STAR S.L needs another programmer, the same person will be responsible for recruiting and training.

Spain:

STAR S.L will use mainly its webpage to announce new recruitment needs. The aim is to recruit people fully committed and interested on STAR S.L, that is why the own webpage will be the main via to recruit people. People really interested should be expectant to new job offers in the company. In the web, the job requirements, conditions and functions will be detailed, as well as the explanation of the selection process. The candidates will have the possibility to upload their CVs as well as video CVs.

However, considering that the company is new and in order to cover the needs that this method does not satisfy other webpages such as Monsters, LinkedIn, Hay Selección, InfoJobs, etc. will be used. STAR S.L will be present on online university fairs also (i.e. Universia).

In addition to this, and especially for the recruitment of senior consultants, the CEO will use its contacts on the field to identify people that fit into the profile pursued.

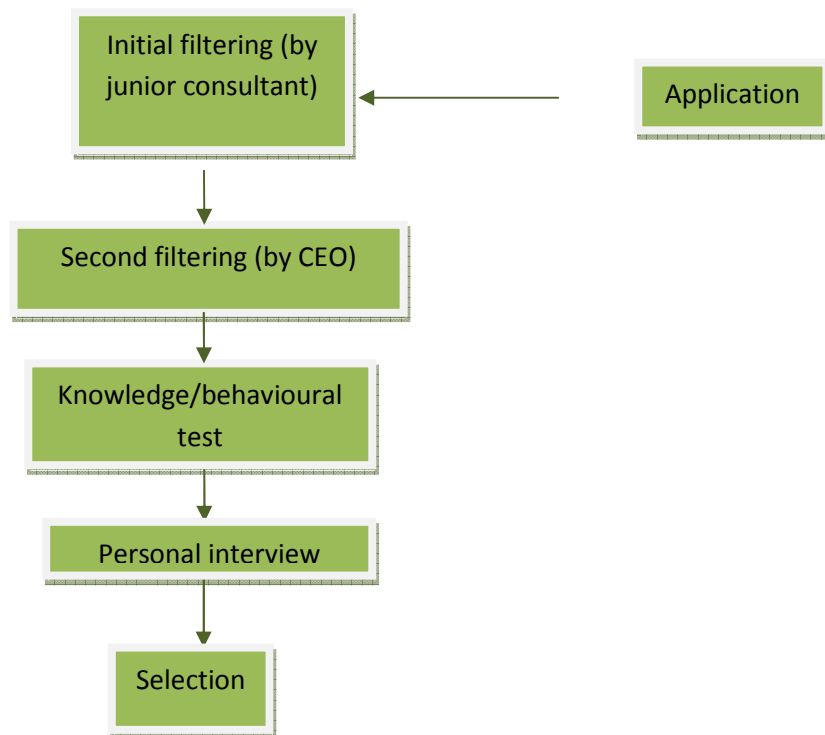
Job postings will be listed on InfoJobs. Once again, the Madrid office is strategically located in the University area of Madrid so that it will be able to facilitate easier recruitment of individuals.

Selection process:

Human resources personnel will be responsible for the selection process hand in hand with the CEO. He/she will be responsible of the initial filtering of candidates. From all the applications received, he/she will choose the ones that fit into the generic profile described for each position. After that, the candidates' CVs will be transferred to the CEO so that he/she makes another filtering and choose the ones that will be accepted to go ahead with the selection process. This process will start with an initial behavioral and knowledge test, useful mainly to reject candidates. This test will be composed by several questions in order to check which solutions candidates propose to issues specific to their job area and also to common daily routine problems. Its aim is to give information of the level on knowledge in the field of each candidate as well as to identify if any of the candidates does not have the right attitude to develop the job. The candidates that pass it will do a personal interview with the CEO.

In case, this interview is not enough before making a decision, another interview will take place. In the interview(s), the CEO (interviewer) will try to get as much information as possible about the candidate mainly through behavioral questions, that is, trying to put candidates in real situations and getting information from past behaviors.

Human Resources will be the person communicating to the candidates whether they pass or not the different steps.



Promotion process:

The main possibility for promotion in the company is going from junior to senior consultant. For that, the candidate for promotion will necessarily fulfil the following requirements:

- Have been working at STAR S.L as junior consultant for at least 3 years
- Have the attributes and attitude adequate to be a successful senior consultant
- Excellence in junior consulting
- Know the business really well

In order to decide which of the different candidates is the most suitable one for promotion, they will be evaluated with a performance appraisal based on the main competencies STAR S.L looks for.

Annex 40 shows a draft of this performance appraisal and note that it will not used only for the evaluation of possible promotion cases, but also for the evaluation of the performance of all the employees:

Employees will be given punctuation according to their performance using the following metrics:

Performance levels		Definitions
Clearly demonstrated	C	The appraised person exceeds positively in his/her displayed behaviour the indicators contained in the behaviour indicator
Demonstrated	D	The appraised person fulfils in his/her displayed behaviour the indicators contained in the behaviour indicator
Needs improvement	N	The appraised person does not achieve in his/her displayed behaviour the indicators contained in the behaviour indicator
No evidence	- -	The behaviour does not apply to this particular situation or has not been observed

3.3.4 Development Plan

As mentioned in the Operations plan an important aspect for STAR S.L is knowledge transfer. Because the Experts will have a lot of experience in the field as well as continuously working, the new information they discover (from seminars, events, research, etcetera) will need to be transferred not only to the programmers in India to create and update the software but also to the rest of the STAR S.L team. Therefore STAR S.L has created a system for knowledge transfer detailed below.

The first step of the Development plan is for the Experts and Management (CEO and or VP) to attend seminars, conferences, and networking events. The Experts and Management will then do different things with this information. The Experts will digest the information and compile all new information (including own research) in a monthly report that will later be used to transfer their knowledge to both the programmers and the consultants (and when relevant to the Sales team). The Management will be focused on networking at events but will benefit from also attending the conferences to decide where the direction of STAR S.L will go based on the new information. Refer to annex 41 for training costs.

The second step is the compilation of reports. The following will go into more detail of the reports STAR S.L will be creating.

Reports (3):

- **Expert Report:**
The Experts will be creating a monthly report of all the new information of that corresponding month. At this point the Management will read the reports and decide which information is useful to add to the software and to share with the rest of the company. This is critical for the Management to decide this, because the experts may be very excited about a new trend and want to include it in the software or consultancy policies but is a trend that is not beneficial to the final client. In the end, the Management will make the decisions based on the expertise of the Experts and with the focus on creating as much value for the client.
- **Programmer Report:**
This monthly report based on the outcome of the expert report (what the Management decides should be implemented) will be sent to the Programmers monthly. The report will be sent 1 week prior to the Programmer-Expert-Manager- Training "PEMT" meeting in order for the programmers to digest all the new information.
- **Trainer Report:**
The Trainer will be creating a monthly report based on the Programmer Report and after the PEMT and Training Expert "TE" meeting that will not only be used to train the rest of the employees but also show the stakeholders what STAR S.L is implementing into its services.

The third step is the development plan is meetings. Once the reports have been administered and read, the meetings will take place. The following are the meetings STAR S.L plans to have.

Meetings (2):

- **Programmer-Experts-Management- Trainer Meeting "PEMT":**
Once a month there will be video-conferencing between the Programmers in India and the Experts in Spain. At these monthly meetings the experts will be detailing any new discoveries and updates for the Programmers to do. This means that the Experts will be creating monthly reports to send to the programmers with the details of the meeting sent 1 week prior to the meeting (this is to ensure that the programmers are able to read the reports and ask the appropriate questions). Also present in the meeting will be the CEO

(for years 1-3) and for the following years the VP will replace the CEO. It is important that the Management is present at these meetings to be up to date with the new revelations of the software since these people will also have direct contact with the clients in the initial client meetings. The more informed the Management team is of the operations of the company and the trends in the sustainability realm, the better equipped to show future clients the benefits of using STAR S.L's services.

Also present in this meeting will be the in-house Trainer of STAR S.L. Due to the fact this training will have a fulltime position this cannot be work distributed to a current employee. Once the trainer has been present at the meeting to overhear the discussion with the experts and the programmers, the trainer will then have a second meeting with the Experts.

- **Trainer- Experts Meeting "TE":**

The report that was given to the Programmers will also be used as a guide for the Trainer. At this meeting the Trainer will be able to ask more details to the Experts about specific revelations. For instance, the Economic Expert may discover a new law regarding CSR or Sustainability affecting the European Union. The details of this law will not be discussed in detail with the programmers, but with the Trainer in order to inform all the consultants of this new change. It is also important that the Trainer knows the details of this information because this information will be important for the Sales Team to know (suppose the law affects the energy sector, the sales team will then be re-focused towards the Energy sector).

The Final Step in the Development Plan is the Training. The following discusses the different trainings that will occur throughout the year at STAR S.L:

Trainings (2):

- **Training for Consultants:**

Once the Trainer has completed both meetings, PEMT and TE, he/she will be able to create an innovative and interactive training session for the Consultants. Considering that it may take about a month for the new software to be developed and ready to use, the trainer will have this time to prepare the training session and administer. It is important for the Trainer to do the training no more than 2 weeks from the implementation of the updated software as to reduce the likelihood of the trainers forgetting from not using immediately. It will also be important for the Management to be at these training sessions for a number of reasons: to create a company culture of knowledge transfer/training for all (everyone needs to be trained), as well as limiting the distance of the Management from the rest of the workers.

The following table illustrates the cost of the training for the first 5 years of STAR S.L. Here it shows that there will be 10 months of training, 1 training per month where the consultants will be given breakfast.

Consultants Training	Number of Trainers	Number of People to Train	Cost per person/ day	Total People	Food Costs	Number of Trainings Per Month	Months for Training	Total Cost
Year 1	1	5	4 €	6	24 €	1	10	240 €
Year 2	1	7	4 €	8	32 €	1	10	320 €
Year 3	1	9	4 €	10	40 €	1	10	400 €
Year 4	1	11	4 €	12	48 €	1	10	480 €
Year 5	1	13	4 €	14	56 €	1	10	560 €

- **Training for New Employees:**

As detailed above, STAR S.L will be growing in the next 5 years. As illustrated some growth is internal (Ie Me to VP, Junior C's to Senior) while including new employees. The training for these new employees will be based on their position (training for

consultants will be different than sales or programmers) Annex 42 refers to mock report for training.

The following table illustrates the cost for new employee training. Note that the training will last 3 days while only 1 day for the Intern, in which they will be given breakfast and lunch. Annex 43 illustrates company contracted for refreshments.

New Employee Training	Number of Trainers	Number of People to Train	Cost per person/day	Total People	Food Costs	Number of Trainings Per Month	Months for Training	Total Cost
Year 1	1	12	12 €	13	156 €	3	1	468 €
Year 2	1	2	12 €	3	36 €	3	1	108 €
Year 3	1	4	12 €	4	48 €	3	1	156 €
Year 4	1	7	12 €	8	96 €	3	1	288 €
Year 5	1	11	12 €	12	144 €	3	1	432 €

- **Internships:**

In year X the diagram illustrates that there is a need for a new Sales person. At this point, STAR S.L plans on having an intern who will be able to learn while working. The goal of this internship will be to have a minimal experienced but highly motivated individual learn the techniques of STAR S.L’s sales approach with hands on experience. In other words, there will be no formal training for the Internships, it will be a “learn as you go” approach. However, the Trainer will give an orientation to the intern in order to give an overview of STAR S.L processes and activities which will be 1 day of training.

To conclude, the development of the employees is based on an interconnected process of knowledge transfer. STAR S.L wants to create a company culture of highly informed employees in a minimal hierarchical setting

3.3.5 Budget for Human Resources

Below budget for human resources for STAR S.L which will be detailed for the first five years. The expected budget for year one is 534.152,94€. For Y-2, the total is 616.963,45€, taking into consideration that two junior consultants are recruited. For Y-3, the budget will be 735.972,84€, when two junior consultants are added and an intern in contracted. For Y-4, total budget is 1.127.430,26€, were two junior consultants, one promotion to senior consultant, one programmer, and a promotion to VP is considered. Finally, for Y-5 total budget is 1.199.560,26€, where one promotion from junior to senior consultant is considered and one junior consultant is added. For more information, please refer to annex 10.

3.4 Financial Plan

3.4.1. Introduction

In the following section, the main points from the financial plan for the company will be analyzed. In annex 1, (the excel file: Realistic Scenario_final), further details about it are given.

The company will start running the 1st of July of 2009, and the financial plan presented goes until the 31st of December of 2013.

3.4.2. Profit and Loss account (P&L account)

Prior to analyzing the P&L account some, clarifications shall be made in order to better understand it.

Sales: all the details about the number and types of projects sold each year, as well as the charging policy has been previously explained in the Sales forecasting located in the Marketing Plan.

Costs: most of the different costs have already been detailed in each specific section, that is, operational costs are explained in the Operational Plan, marketing costs in the Marketing Plan and HR costs in the HR Plan. The rest of the costs which are “Other costs” and “Supplier costs” will be explained in the following paragraphs.

“Other costs”, are the costs related to the fiscal, accounting and labour consultancy services, as well as to the trademark registration fees.

“Supplier costs” are the costs of paying suppliers for the services provided to the company’s customers. The company will pay to suppliers just the 70% of the total amount of tangible or infrastructure solutions provided to customers, and the remaining 30% will be kept by the company as a fee for being the intermediary between customers and suppliers, for suggesting the exact needs that customers have and for having chosen the best suppliers that are able to satisfy those requirements.

Income tax: the company fulfils all the requirements to be considered a SME, more specifically a Small company with less than 50 employees, less than 7 million Euros in annual sales and less than 5 million Euros of assets. Consequently, the company has to pay a 25% of income tax over the first 120.202, 41€ of the taxable basis, and a 30% of the remaining amount.

Note that due to the current economic and financial crisis, the Spanish government has recently approved among all the urgent measurements taken, the possibility to reduce the income tax by a 5%, what would represent an important advantage for the company, but as it is still something under development, so the previous rates will be considered for the calculation of the P&L.

VAT: as established in the regulations, the company applies a 16% over the actual price to its customers, and pays a 16% (normal rate), 7% (transport, restaurants, hotels) or 4% (food) on the items bought in Spain, and a 12,5% (normal rate) and 12% (utilities) for Indian purchases. In India, the office renting has no VAT charge.

Analysis of realistic scenario: P&L and Balance Sheet

Find below the forecast of the P&L account of the company starting on the 1st of July of 2009 and finalizing the 31st of December of 2013.

PROFIT AND LOSS ACCOUNT	2009		2010		2011		2012		2013	
	SALES		215.220		809.743		1.242.889		1.894.659	
FIXED COST	-	322.962	-	768.224	-	829.158	-	1.227.114	-	1.275.789
Operational costs	-	29.857	-	60.134	-	83.348	-	70.692	-	75.564
Marketing costs	-	24.521	-	26.034	-	32.949	-	22.802	-	29.094
HR costs	-	262.516	-	677.448	-	708.020	-	1.127.681	-	1.165.098

	Other costs	-	6.068	-	4.608	-	4.840	-	5.939	-	6.034
VARIABLE COST											
	Supplier costs	-	-	-	75.550	-	248.758	-	318.282	-	965.926
EBITDA		-	107.742	-	34.032	-	164.974	-	349.263	-	1.555.494
DEPRECIATION/AMORTIZATION		-	21.260	-	42.697	-	43.073	-	23.077	-	2.604
EBIT		-	129.002	-	76.729	-	121.901	-	326.186	-	1.552.890
FINANCIAL EXPENSES		-	-	-	2.976	-	2.000	-	900	-	750
FINANCIAL INCOME		-	-	-	-	-	4.931	-	1.884	-	7.486
EARNINGS BEFORE TAXES		-	129.002	-	79.705	-	124.832	-	327.170	-	1.559.626
INCOME TAXES		-	-	-	-	-	-	-	66.978	-	461.878
Other taxes											
	VAT	-	4.105	-	104.540	-	153.860	-	239.209	-	433.879
NET PROFIT		-	133.107	-	184.245	-	29.028	-	20.982	-	663.869

In the table below some of the most significant ratios are presented with the aim of giving a clearer picture of the forecasted company's performance.

RATIOS FROM THE P&L	2009	2010	2011	2012	2013
Sales increase		88%	53%	53%	52%
Fixed cost increase		19%	8%	48%	4%
Variable cost increase		100%	229%	28%	203%
EBITDA/sales	-50,1%	-4,2%	13,3%	18,4%	41,0%
EBIT/sales	-59,9%	-9,5%	9,8%	17,2%	40,9%
Earnings before taxes over sales	-59,9%	-9,8%	10,0%	17,3%	41,1%
Net profit/sales	-61,8%	-22,8%	-2,3%	1,1%	17,5%
Net profit increase/decrease		-38%	84%	172%	3064%

It can be seen how the company has a more or less constant sales increase rate in the last 3 years (around 53%) and a higher one during the first year (88% if the sales of 2009 are extrapolated to a complete year sales).

Fixed costs do not follow a constant trend and they increase depending on each year's specific cost requirements. It is important to highlight the increase in 2012, which is the result of the increase of HR costs as a consequence of the new hires and the corporate strategy of expansion to other countries.

Variable costs or supplier costs depend exclusively on the number and complexity of full consultations. The higher this number and the higher the complexity, the costs of suppliers will be higher (see the Sales Plan in order to understand better the type of sales forecasted for each year).

In general it can be understood how the company would have important losses the first two years (2009 and 2010), and how after one more year with much less losses (2011), the company

would start having a modest profit in 2012, and finally the positive trend would be consolidated in 2013, with sales over 663.000€.

Since the company does not have heavy investments and, as it will be detailed in the Balance Sheet below, it does not depend on huge financial investments, both the effect of depreciation and financial expenses on the P&L account are not very significant, or what is the same, the ratios EBITDA/sales, EBIT/sales and Earnings before taxes/sales are really similar.

3.4.3. Balance Sheet

As with the P&L, before analyzing the Balance Sheet, a few comments will be done in order to clarify the main key points.

Payment phases: it has been assumed that almost all the costs are paid in the same quarter the purchase is done except in operational costs, the office material, transport and allowance costs and quality/environment and CSR standards, in the marketing costs the plane tickets and accommodation, which are paid in the following quarter the purchase is done. In relation with supplier costs, the payment is done in three phases, as follows:

Payment amount to suppliers		% over total amount
1st payment	At the beginning of the project	30%
2nd payment	In the middle of the project	30%
3rd payment	At the end of the project	40%

Charging phases: the way to charge customers is the following:

Charging from customers		% over total amount
1st payment	At the beginning of the project	50%
2nd payment	In the middle of the project	30%
3rd payment	At the end of the project	20%

The length of each project varies with the type of project (initial consultation, standard consultation and full consultation) and the type of customer (IT, transport, financial and energy). Based on that, for each single project the time when the company will pay suppliers and will charge customers will vary, and consequently the account collecting period (ACP) and account payment period (APP).

Depreciation/amortization of assets: different assets are depreciated in a different way. All the software and IT equipment are depreciated at 33% with a maximum of 6 years, and the office furniture at a 10% with a maximum of 20 years.

Note that in order to work in a more clear way, the initially existing assets have been separated from the new investments (Capital Expenditure or CAPEX) for the depreciation/amortization calculations.

Financing: after analyzing the different financing sources the company should use, it has been decided to use two different sources: investors' capital and a bank's loans.

Investors will contribute initially with 300.000€, and the capital is predicted to be increased after one year to 400.000€ in order to be able to sustain the initial losses and accounts receivable.

The loan asked to a bank will be of the amount of 160.000€, to be paid in 3 years (80.000€ in the first year, 50.000€ in the second and 30.000€ in the third), at a yearly interest of EURIBOR + 0,10% the first year and at EURIBOR + 0% the following ones. The opening commission is a 1%. It is a special loan for entrepreneur women, which in some cases may require the formal guarantee of some relative or friend (Conditions taken from Caja Navarra's "Vitacredit Mujer Emprendedora").

Find below the forecast of the Balance Sheet of the company starting on the 1st of July of 2009 and finalizing the 31st of December of 2013.

BALANCE SHEET (AFTER DISTRIBUTION OF RESULTS)							
ASSETS		Initial (Start)	2009	2010	2011	2012	2013
Fixed assets		133.252	112.117	62.040	29.148	12.079	10.100
NET INTANGIBLE FIXED ASSETS		111.544	93.139	56.330	19.520	1.115	1.115
	Software/Licenses	111.544	111.544	111.544	111.544	111.544	111.544
	Accumulated amortization		-18.405	-55.214	-92.024	-110.429	-110.429
NET ASSETS	FIXED	21.708	18.873	4.701	7.535	4.376	3.726
	Office furniture	6.498	6.498	6.498	6.498	6.498	6.498
	IT Equipment Accum.	15.210	15.210	15.210	15.210	15.210	15.210
	Depreciation	0	-2.835	-17.007	-14.173	-17.332	-17.982
CAPEX		0	104	1.009	2.093	6.587	5.259
	Accumulated Invested capital		125	1.310	2.926	8.933	9.558
	Accumulated depreciation		-21	-301	-833	-2.346	-4.299
Current assets		166.748	88.511	239.548	364.541	451.816	610.563
ACCOUNTS RECEIVABLE			19.788	157.888	53.700	238.644	179.208
CASH/BANKS		166.748	68.723	81.660	131.514	144.665	159.132
SHORT TERM INVESTMENTS	FINANCIAL				179.327	68.506	272.223
TOTAL ASSETS		300.000	200.628	301.588	393.689	463.895	620.663
LIABILITIES		Initial (Start)	2009	2010	2011	2012	2013
EQUITY		300.000	166.893	82.647	53.619	64.111	64.111
	Share Capital	300.000	300.000	400.000	400.000	400.000	400.000
	Retained earnings					10.491	10.491
	Accumulated losses			- 133.107	- 317.353	- 346.381	- 346.381
	Losses of the year		133.107	- 184.245	- 29.028		
LIABILITIES							
LONG TERM	LOANS			160.000	80.000	30.000	-
ACCOUNTS PAYABLE			33.735	58.940	260.070	369.784	556.553
SHORT TERM BANK CREDITS							
TOTAL LIABILITIES		300.000	200.628	301.588	393.689	463.895	620.663

According to the balance above, the company would have money to invest in the short term in banks during the last three years. The main reason for this is that the company would need an increase in capital and the long term loan in 2010 to be able to sustain the accumulated losses and the important accounts receivables of that year. And, as in the next years the losses reduce a lot and the account receivables too. The company has enough margin to invest money in banks. It has been assumed that these invests give an interest of EURIBOR -0, 25%.

The company would have possibility to pay its shareholders' dividends only during the last two years (2012 and 2013), in 2012 the 50% and in 2013 the 100% of the year earnings.

In the following table, several economic, financial and other ratios have been calculated.

RATIOS		2009	2010	2011	2012	2013
FINANCIAL RATIOS						
LIQUIDITY RATIOS						
	Current Ratio	2,62	4,06	1,40		1,22 1,10
	Cash Ratio	2,04	1,39	0,51		0,39 0,29
	ACP	33,56	71,17	15,77		45,97 17,23
	APP	38,13	25,50	88,06		87,34 90,62
SOLVENCY RATIOS	Solvency	3,95	0,61	0,40		0,36 0,26
LEVERAGE RATIOS	Leverage	0,20	2,65	6,34		6,24 8,68
	TIER		11,44	82,49	-	388,07 2.073,99
	Debt structure	-	2,71	0,31		0,08 -
STRUCTURE RATIOS	Structure	0,56	0,21	0,07		0,03 0,02
ECONOMIC RATIOS						
	ROA	-66%	-60%	-7%	5%	107%
	ROE	-80%	-223%	-54%	33%	1036%
OTHER RATIOS						
	Net margin (Net profit after tax/net sales)	-0,62	-0,23	-0,02	0,01	0,17
ACTIVITY RATIOS						
	Asset turnover (Net Sales/total assets)	1,07	2,68	3,16	4,08	6,12
	Average sales per day (net credit sales/365)	294,82	2218,47	3405,18	5190,85	10403,31
	Average collecting period (acc rec./sales per day)	67,12	71,17	15,77	45,97	17,23
	FA turnover ratio (net sales/net FA)	2,31	14,38	63,67	1698,58	3404,23

The company would be a liquid company, but with too long ACP during the first two years. It is not a too leveraged company, with a light structure and in which results are improving slowly until they give really good ROE and ROA.

3.4.4. Cash Flows

In the table below the calculations of the company's NPV, IRR and payback periods are presented.

A risk free rate of 5% and risk premium of 6% will be assumed, that is, a discount rate of 11%. In order to be conservative, the risk free rate assumed is slightly higher than the one that treasury bonds are giving nowadays (4, 25%- Tesoro Público, public bonds of 5 years, at 09.06.09). The 6% of risk premium tries to reflect the risk of starting up a new company in the current economic and financial situation, by 4 inexperienced people in a non mature market or sector.

CASH FLOW CALCULATION	Initial	2009	2010	2011	2012	2013				
NET PROFIT		-	133.107	-	184.245	-	29.028	20.982	663.869	
(+) Interest paid			-	2.976		2.000		900	750	
AMORTIZATION/DEPRECIATION			21.260	42.697	43.073	23.077	2.604			
NET INVESTMENTS IN FIXED ASSETS	-	133.252	-	125	-	1.185	-	1.616	-	
INVESTMENTS IN NOF			13.947	-	112.895	305.318	-	75.230	246.205	
	C0	C1	C2	C3	C4	C5				
CASH FLOWS	-	133.252	-	98.025	-	252.653	319.746	-	36.278	912.803
RISK FREE INTEREST EXPENSE	5%	5%	5%	5%	5%	5%	5%	5%	5%	
RISK PREMIUM	6%	6%	6%	6%	6%	6%	6%	6%	6%	
discount rate	11%	11%	11%	11%	11%	11%	11%	11%	11%	
NPV	292.775,91 €									
IRR	32%									
PAY BACK	4 years 2,64 months									

The company has a NPV of 292.775, 91€ with a discount rate of 11% and for 4 years and a half. The IRR is a 32% and it should be taken into consideration that it is a company with little investments; this means that the company is a profitable company.

The payback period of the company is 4 years and 2, 64 months.

3.4.5 Sensitivity Analysis

Sensitivity Analysis of Human Resources: It can be seen that a variation in the number of experts in year 4 and year 5 changes considerably the NPV of XXX. It changes from 361.271,48€ in the optimistic to 221.989,43€ in the pessimistic, being the realistic 292.775,91€. In the IRR the effect is four percentage points; turning from the optimistic of 36% to a realistic of 32% and a pessimistic of 28%. (Refer to Annex 2 and Annex 3)

Sensitivity Analysis of Hour Rate: The variation in charges per hour to customers has a huge effect in the results of the company. Below table with charges for realistic scenario, which in turns gives a NPV of 292.775,91€:

Realistic Hour Rate		
Years 1 & 2	Senior Consultant	100 €
	Junior	60 €
Years 3, 4, & 5	Senior Consultant	120 €
	Junior	90 €

If customers are charged 10€ more per hour, the NPV would be 444.478,81€, while if it is 10€ less, the NPV decreases to 143.929,61€. The IRR also varies in great percentage; being 45% in the optimistic scenario, decreasing to 32% in realistic scenario, turning to 21% in the pessimistic scenario. (for reference in optimistic results turn to annex 4; for reference in pessimistic results take a look at annex 5).

Sensitivity Analysis on Suppliers' Costs: This analysis is done taking into consideration that suppliers will earn 5% more or 5% less to see the effect this cost has over XXX results. The realistic scenario has a NPV of 292.775,91€ and an IRR of 32%. In the optimistic scenario, the NPV is of 329.256,93€ and an IRR of 34%. In the pessimistic scenario, the NPV is of 252.862,43€ and an IRR of 30%. In conclusion, it can be seen that a small variation in the XXX's costs to suppliers reflects in a big change in the company's results. (for reference in optimistic results turn to annex 6; for reference in pessimistic results take a look at annex 7)

Sensitivity Analysis on Number of Projects: In this case, it has only been expected an increase or decrease in the number of projects in years 1, 2, & 3 due to the fact that anything can happen in years 4 and 5, and it is more certain to expect in the immediate future than in the long run with the projects assigned. In the realistic scenario, the NPV is of 292.775,91€ and the IRR is of 32%. In the optimistic, the NPV is of 304.712,53€, while the IRR is of 34%. In the pessimistic, the NPV is of 248.777,44€ and the IRR is of 28%. In conclusion, it can be said that a small

variation in the number of projects has a big effect in the results of the company. (for reference in optimistic results turn to annex 8; for reference in pessimistic results take a look at annex 9)

3.4.6. Optimistic and pessimistic scenario analysis

Optimistic Scenario: The NPV in the optimistic scenario is of 660.119,09€, which means that the reduction is costs (marketing and human resources and suppliers' costs), the difference in payment periods, the increase in price charged to customers and projects per year, and the decrease in inflation has a positive effect by almost 400.000 € in NPV. While the IRR also changes dramatically, from 32% of the realistic to a 57% in the optimistic. (Refer to annex 10)

Pessimistic scenario: The pessimistic scenario's results in a decrease in the NPV of almost 300.000 €, while the IRR goes from 32% to 12%. This means, that if XXX does not meet its expected goals, its results will be significantly low as well as its profits. (refer to annex 11)

Below contingency plan that will be in place if required.

3.4.7 Contingency Plan

Pessimistic scenario: in case this scenario takes place, XXX would need to adjust the number of employees required to offer its services as well as the rest of the costs. The first costs the company should reduce are the ones related to transport and allowances, and also optimize the marketing costs finding the perfect solution to keep attracting customers while reducing the costs. XXX should also test which is the adequate pricing methodology, and check whether the current one is well perceived by customers in terms of price, and payment on instalments. Another issue to look carefully at is the customer needs, since probably what XXX is offering is not exactly what the targeted customers need or want. If so, XXX would need to redesign its offer or its customer target. Other recommendable action would be to negotiate with suppliers to get better prices, reaching different kind of agreements such as exclusivity or priority. If this does not work, XXX would try to increase the income from the rest of services, strengthening the strategic solution offer and even increasing the margin from those services. In case the cost of employees becomes too high for XXX, it could be more profitable to pay extra hours to those employees who would accept it instead of hiring new employees (this would be possible only in the case in which the extra hours required are not too high).

Optimistic scenario: if the sales are higher than the expected ones, XXX would need to hire more consultants and probably redesign its structure. Additionally, XXX would need to increase the supplier portfolio used to be able to satisfy all the demand. XXX should be very careful while facing this super-demand and take advantage of it by increasing the type of services offered, and by continuous innovation. Under this situation, the company should try to expand offering more different products, focusing on different sectors than the initially targeted ones and focusing also in other markets abroad.

4. General Discussions and Conclusions/ Thanks

This business plan would not have been possible without the generous help and advice given to us by professor and advisor Antonio Fontanini. His enthusiasm, insight, and continuous push towards Excellency has allowed STAR S.L to grow into profound depth, realism, and maturity that was not thought possible in the early stages of October 2008.

Others who were critical in our exploration of creating STAR S.L are the following:

- Fernando Díaz Pividal, EOI
- Ignasi Cubina from Eco Intelligent Growth (EIG)
- Fermin Lozano, Consejero Delegado 11811, branch de Telegate
- Maite Seco, EOI
- Eva Curto, EOI
- Ivan Martinez from Atel Media
- John Scade from Mas Business
- Xabier Erize from Caja Navarra

5. Works cited

Auren. 04 Feb. 09 <www.auren.es>. Memoria Corporativa 2006-2007. Rep. 04 Feb. 09 <<http://www.auren.es/BDBinDoc.asp?Id={39337A74-A310-4AA7-B0DD-CF2AD28804D6}>>.

Ashridge-InterfaceRaise. 10 Jan. 09 <<http://www.ashridgeinterfaceraise.com/>>. Nace una consultoría que asesora a las empresas en la implantación de un modelo de negocio >.

Atenea Comunicación. 10 Jan. 09 <<http://www.ateneacm.com/inicio.asp>>.

2008. Atenea Comunicación y Mecenazgo S.A. Informe Financiero. Informa. 3 Feb. 09 <<http://www.informa.es>>.

Bidea. 10 Jan. 09 <<http://www.bideaconsultores.com/index2.html>>. 2009. Bidea Consultores Desarrollo de Empresas Sostenibles S.L. Perfil de Empresa. Einforma. 3 Feb. 09 <http://www.einforma.com>

Deloitte. 7 Feb. 09 <http://www.deloitte.com/dtt/section_node/0,1042,sid%253D101791,00.html>.

EIG-EcoIntelligentGrowth. 29 Dec. 08 <<http://www.ecointelligentgrowth.net/>>. Ignasi Cubiñá.

"EIG-our team meeting (2009 January 28)." Personal interview by Christine Stroetzel, Pratima Painuly, Ginette Rodriguez & Amaia Zabaleta.

Euroquality. 29 Jan. 09 <<http://www.euroquality.es/>>. Indra. 10 Jan. 09 http://www.indra.es/servlet/ContentServer?cid=1082008090443&pagename=IndraES%2FPage%2FEstructSubHomeInstitucional&Language=es_ES&pid=1082008090443&c=Page

Formastur. 10 Jan. 09 <<http://www.formastur.es/formastur/opencms/formastur/index.html>>.

2009. Formastur S.A. Perfil de Empresa. Einforma. 3 Feb. 09 <<http://www.einforma.com>>. Garrigues Medio Ambiente. 30 Jan. 09

<http://www.garrigues.com/esp/areas_02_01.aspx?ep=AreaCorporativa/AreasdePractica/Area_MedioAmbiente>.

2009. Garrigues Medio Ambiente Consultoría Técnica y de Gestión Integrada del Medio Ambiente SLP. Perfil Empresa. Informa. 3 Feb. 09 <<http://www.einforma.com>>.

Hispaval Consultores Asociados. 10 Jan. 09 <<http://www.hispavalconsultores.com/Web/RSC.htm>>.

Lavola. 30 Jan. 09 <http://www.es.lavola.com/nosaltres>
Mas Business. 20 Jan. 09 <<http://www.mas-business.com/>>. 2008.

Moragues and Scade Business S.L. Informe Financiero. Informa. 3 Feb. 09 <<http://www.informa.es>>.

PricewaterhouseCoopers. 07 Feb. 09 <<http://www.pwc.com/es/esp/main/home/index.html>>.

07 Feb. 09 <<http://management.infobaeprofesional.com/notas/77819-PricewaterhouseCoopers-se-queda-con-la-firma-Sustainable-Finance.html?cookie>>.

Red2Red Consulting. 10 Jan. 09 <<http://www.red2red.net/index.php?inc=grupo>>. 2008.

Responsables Consulting S.L. Informe Financiero. Informa. 3 Feb. 09 <<http://www.informa.es>>.

Solinges. 29 Jan. 09 <http://www.solinges.com/innovacion-responsabilidad-social-ingenieria.asp>2009.

Solinges S.L. Perfil Empresa. Informa. 3 Feb. 09 <<http://www.einforma.com>>.

sostenible. Noticias cada día. 10 Jan. 09 <<http://www.noticiascadadia.com/noticias/articulo/nace-una-consultoria-que-asesora-a-las-empresas-en-la-implantacion-de-un-modelo-de-negocio-sosteni.html>>

SustainAbility. 07 Feb. 09 <<http://www.sustainability.com>>.

URS España. 04 Feb. 09 <<http://www.urscorp.eu/local/index.php?co=spain>>.

"Corporate Sustainability- It's all about Attitude." Corporate Sustainability- It's all about Attitude. 14 Feb. 2008. Environmental News Network. 22 Dec. 2008 <http://www.enn.com/top_stories/article/31186>.

E Market Services. 20 May 2008. 11 Jan. 2009 <<http://www.emarketservices.com/start/index.asp?cl=ems&mi=6&mi2=1&mi3=1&so=1&ca=news&ni=1&ci=1618>>.

"Estudio Multisectorial sobre el estado de la RSC de la gran empresa en España"- Enero 2007. Club de excelencia en Sostenibilidad

"Global 100." 22 Dec. 2008 <http://www.global100.org/2008/by_country.asp>.

INE-Sector's Statistics- <http://www.ine.es/jaxiBD/tabla.do?per=12&type=db&divi=EIE&idtab=1> (2009.04.18)

"Inflation is Dead in Spain, Fasten your Seat belts for a Sharp Dose of Deflation" Nov. 12, 2008. <http://spaineconomy.blogspot.com/2008/11/inflation-is-dead-in-spain-fasten-up.html>

Memoria de Supervisión Bancaria de España, Banco de España 2007- <http://www.bde.es/informes/be/supervi/2007/an3.pdf> (2009.04.25)

"Observatory of Sustainability in Spain." European Urban Knowledge Network. 22 Dec. 2008 <http://www.eukn.org/spain/themes/Urban_Policy/Urban_environment/Environmental_sustainability/observatory_sustainability_spain_1336.html>.

"Summary- Global Lifestyle of Health and Sustainability." Aug. 2008. Moxie. 22 Dec. 2008 <http://www.nzbcscd.org.nz/_attachments/GLOHAS_international_publication_FINAL.pdf>.

Tilford, Simon. "The Commission's economic forecasts are still too complacent" Nov. 07, 2008. <http://centreforeuropeanreform.blogspot.com/2008/11/commissions-economic-forecasts-are.html>

"The Global Competitiveness Index rankings and 2007–2008 comparisons" World Economic Forum. <http://www.weforum.org/pdf/gcr/2008/rankings.pdf>

Website of the European Union: www.europa.eu

6. Annexes

Annex 1. Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market

DIRECTIVE 2006/123/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 December 2006

on services in the internal market

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentence of Article 47(2) and Article 55 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) The European Community is seeking to forge ever closer links between the States and peoples of Europe and to ensure economic and social progress. In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of services is ensured. In accordance with Article 43 of the Treaty the freedom of establishment is ensured. Article 49 of the Treaty establishes the right to provide services within the Community. The elimination of barriers to the development of service activities between Member States is essential in order to strengthen the integration of the peoples of Europe and to promote balanced and sustainable economic and social progress. In eliminating such barriers it is essential to ensure that the development of service activities contributes to the fulfilment of the task laid down in Article 2 of the Treaty of promoting throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life and economic and social cohesion and solidarity among Member States.

⁽¹⁾ OJ C 221, 8.9.2005, p. 113.

⁽²⁾ OJ C 43, 18.2.2005, p. 18.

⁽³⁾ Opinion of the European Parliament of 16 February 2006 (not yet published in the Official Journal), Council Common Position of 24 July 2006 (OJ C 270 E, 7.11.2006, p. 1) and Position of the European Parliament of 15 November 2006, Council Decision of 11 December 2006.

(2) A competitive market in services is essential in order to promote economic growth and create jobs in the European Union. At present numerous barriers within the internal market prevent providers, particularly small and medium-sized enterprises (SMEs), from extending their operations beyond their national borders and from taking full advantage of the internal market. This weakens the worldwide competitiveness of European Union providers. A free market which compels the Member States to eliminate restrictions on cross-border provision of services while at the same time increasing transparency and information for consumers would give consumers wider choice and better services at lower prices.

(3) The report from the Commission on 'The State of the Internal Market for Services' drew up an inventory of a large number of barriers which are preventing or slowing down the development of services between Member States, in particular those provided by SMEs, which are predominant in the field of services. The report concludes that a decade after the envisaged completion of the internal market, there is still a huge gap between the vision of an integrated European Union economy and the reality as experienced by European citizens and providers. The barriers affect a wide variety of service activities across all stages of the provider's activity and have a number of common features, including the fact that they often arise from administrative burdens, the legal uncertainty associated with cross-border activity and the lack of mutual trust between Member States.

(4) Since services constitute the engine of economic growth and account for 70 % of GDP and employment in most Member States, this fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs and the movement of workers, and prevents consumers from gaining access to a greater variety of competitively priced services. It is important to point out that the services sector is a key employment sector for women in particular, and that they therefore stand to benefit greatly from new opportunities offered by the completion of the internal market for services. The European Parliament and the Council have emphasised that the removal of legal barriers to the establishment of a genuine internal market is a matter of priority for achieving the goal set by the European Council in Lisbon of 23 and 24 March 2000

of improving employment and social cohesion and achieving sustainable economic growth so as to make the European Union the most competitive and dynamic knowledge-based economy in the world by 2010, with more and better jobs. Removing those barriers, while ensuring an advanced European social model, is thus a basic condition for overcoming the difficulties encountered in implementing the Lisbon Strategy and for reviving the European economy, particularly in terms of employment and investment. It is therefore important to achieve an internal market for services, with the right balance between market opening and preserving public services and social and consumer rights.

- (5) It is therefore necessary to remove barriers to the freedom of establishment for providers in Member States and barriers to the free movement of services as between Member States and to guarantee recipients and providers the legal certainty necessary for the exercise in practice of those two fundamental freedoms of the Treaty. Since the barriers in the internal market for services affect operators who wish to become established in other Member States as well as those who provide a service in another Member State without being established there, it is necessary to enable providers to develop their service activities within the internal market either by becoming established in a Member State or by making use of the free movement of services. Providers should be able to choose between those two freedoms, depending on their strategy for growth in each Member State.
- (6) Those barriers cannot be removed solely by relying on direct application of Articles 43 and 49 of the Treaty, since, on the one hand, addressing them on a case-by-case basis through infringement procedures against the Member States concerned would, especially following enlargement, be extremely complicated for national and Community institutions, and, on the other hand, the lifting of many barriers requires prior coordination of national legal schemes, including the setting up of administrative cooperation. As the European Parliament and the Council have recognised, a Community legislative instrument makes it possible to achieve a genuine internal market for services.
- (7) This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. That framework is based on a dynamic and selective approach consisting in the removal, as a matter of priority, of barriers which may be dismantled quickly and, for the others, the launching of a process of evaluation, consultation and complementary harmonisation of specific issues, which will make possible the progressive and coordinated modernisation of national regulatory systems for service activities which is vital in order to achieve a genuine internal market for services by 2010. Provision should be made for a balanced

mix of measures involving targeted harmonisation, administrative cooperation, the provision on the freedom to provide services and encouragement of the development of codes of conduct on certain issues. That coordination of national legislative regimes should ensure a high degree of Community legal integration and a high level of protection of general interest objectives, especially protection of consumers, which is vital in order to establish trust between Member States. This Directive also takes into account other general interest objectives, including the protection of the environment, public security and public health as well as the need to comply with labour law.

- (8) It is appropriate that the provisions of this Directive concerning the freedom of establishment and the free movement of services should apply only to the extent that the activities in question are open to competition, so that they do not oblige Member States either to liberalise services of general economic interest or to privatise public entities which provide such services or to abolish existing monopolies for other activities or certain distribution services.
- (9) This Directive applies only to requirements which affect the access to, or the exercise of, a service activity. Therefore, it does not apply to requirements, such as road traffic rules, rules concerning the development or use of land, town and country planning, building standards as well as administrative penalties imposed for non-compliance with such rules which do not specifically regulate or specifically affect the service activity but have to be respected by providers in the course of carrying out their economic activity in the same way as by individuals acting in their private capacity.
- (10) This Directive does not concern requirements governing access to public funds for certain providers. Such requirements include notably those laying down conditions under which providers are entitled to receive public funding, including specific contractual conditions, and in particular quality standards which need to be observed as a condition for receiving public funds, for example for social services.
- (11) This Directive does not interfere with measures taken by Member States, in accordance with Community law, in relation to the protection or promotion of cultural and linguistic diversity and media pluralism, including the funding thereof. This Directive does not prevent Member States from applying their fundamental rules and principles relating to the freedom of press and freedom of expression. This Directive does not affect Member State laws prohibiting discrimination on grounds of nationality or on grounds such as those set out in Article 13 of the Treaty.

- (12) This Directive aims at creating a legal framework to ensure the freedom of establishment and the free movement of services between the Member States and does not harmonise or prejudice criminal law. However, Member States should not be able to restrict the freedom to provide services by applying criminal law provisions which specifically affect the access to or the exercise of a service activity in circumvention of the rules laid down in this Directive.
- (13) It is equally important that this Directive fully respect Community initiatives based on Article 137 of the Treaty with a view to achieving the objectives of Article 136 thereof concerning the promotion of employment and improved living and working conditions.
- (14) This Directive does not affect terms and conditions of employment, including maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay as well as health, safety and hygiene at work, which Member States apply in compliance with Community law, nor does it affect relations between social partners, including the right to negotiate and conclude collective agreements, the right to strike and to take industrial action in accordance with national law and practices which respect Community law, nor does it apply to services provided by temporary work agencies. This Directive does not affect Member States' social security legislation.
- (15) This Directive respects the exercise of fundamental rights applicable in the Member States and as recognised in the Charter of fundamental Rights of the European Union and the accompanying explanations, reconciling them with the fundamental freedoms laid down in Articles 43 and 49 of the Treaty. Those fundamental rights include the right to take industrial action in accordance with national law and practices which respect Community law.
- (16) This Directive concerns only providers established in a Member State and does not cover external aspects. It does not concern negotiations within international organisations on trade in services, in particular in the framework of the General Agreement on Trade in Services (GATS).
- (17) This Directive covers only services which are performed for an economic consideration. Services of general interest are not covered by the definition in Article 50 of the Treaty and therefore do not fall within the scope of this Directive. Services of general economic interest are services that are performed for an economic consideration and therefore do fall within the scope of this Directive.
- However, certain services of general economic interest, such as those that may exist in the field of transport, are excluded from the scope of this Directive and certain other services of general economic interest, for example, those that may exist in the area of postal services, are the subject of a derogation from the provision on the freedom to provide services set out in this Directive. This Directive does not deal with the funding of services of general economic interest and does not apply to systems of aids granted by Member States, in particular in the social field, in accordance with Community rules on competition. This Directive does not deal with the follow-up to the Commission White Paper on Services of General Interest.
- (18) Financial services should be excluded from the scope of this Directive since these activities are the subject of specific Community legislation aimed, as is this Directive, at achieving a genuine internal market for services. Consequently, this exclusion should cover all financial services such as banking, credit, insurance, including reinsurance, occupational or personal pensions, securities, investment funds, payments and investment advice, including the services listed in Annex I to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions ⁽¹⁾.
- (19) In view of the adoption in 2002 of a package of legislative instruments relating to electronic communications networks and services, as well as to associated resources and services, which has established a regulatory framework facilitating access to those activities within the internal market, notably through the elimination of most individual authorisation schemes, it is necessary to exclude issues dealt with by those instruments from the scope of this Directive.
- (20) The exclusion from the scope of this Directive as regards matters of electronic communications services as covered by Directives 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) ⁽²⁾, 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) ⁽³⁾, 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and

⁽¹⁾ OJ L 177, 30.6.2006, p. 1.

⁽²⁾ OJ L 108, 24.4.2002, p. 7.

⁽³⁾ OJ L 108, 24.4.2002, p. 21.

- services (Framework Directive) ⁽¹⁾, 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) ⁽²⁾ and 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) ⁽³⁾ should apply not only to questions specifically dealt with in these Directives but also to matters for which the Directives explicitly leave to Member States the possibility of adopting certain measures at national level.
- (21) Transport services, including urban transport, taxis and ambulances as well as port services, should be excluded from the scope of this Directive.
- (22) The exclusion of healthcare from the scope of this Directive should cover healthcare and pharmaceutical services provided by health professionals to patients to assess, maintain or restore their state of health where those activities are reserved to a regulated health profession in the Member State in which the services are provided.
- (23) This Directive does not affect the reimbursement of healthcare provided in a Member State other than that in which the recipient of the care is resident. This issue has been addressed by the Court of Justice on numerous occasions, and the Court has recognised patients' rights. It is important to address this issue in another Community legal instrument in order to achieve greater legal certainty and clarity to the extent that this issue is not already addressed in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community ⁽⁴⁾.
- (24) Audiovisual services, whatever their mode of transmission, including within cinemas, should also be excluded from the scope of this Directive. Furthermore, this Directive should not apply to aids granted by Member States in the audiovisual sector which are covered by Community rules on competition.
- (25) Gambling activities, including lottery and betting transactions, should be excluded from the scope of this Directive in view of the specific nature of these activities, which entail implementation by Member States of policies relating to public policy and consumer protection.
- (26) This Directive is without prejudice to the application of Article 45 of the Treaty.
- (27) This Directive should not cover those social services in the areas of housing, childcare and support to families and persons in need which are provided by the State at national, regional or local level by providers mandated by the State or by charities recognised as such by the State with the objective of ensuring support for those who are permanently or temporarily in a particular state of need because of their insufficient family income or total or partial lack of independence and for those who risk being marginalised. These services are essential in order to guarantee the fundamental right to human dignity and integrity and are a manifestation of the principles of social cohesion and solidarity and should not be affected by this Directive.
- (28) This Directive does not deal with the funding of, or the system of aids linked to, social services. Nor does it affect the criteria or conditions set by Member States to ensure that social services effectively carry out a function to the benefit of the public interest and social cohesion. In addition, this Directive should not affect the principle of universal service in Member States' social services.
- (29) Given that the Treaty provides specific legal bases for taxation matters and given the Community instruments already adopted in that field, it is necessary to exclude the field of taxation from the scope of this Directive.
- (30) There is already a considerable body of Community law on service activities. This Directive builds on, and thus complements, the Community acquis. Conflicts between this Directive and other Community instruments have been identified and are addressed by this Directive, including by means of derogations. However, it is necessary to provide a rule for any residual and exceptional cases where there is a conflict between a provision of this Directive and a provision of another Community instrument. The existence of such a conflict should be determined in compliance with the rules of the Treaty on the right of establishment and the free movement of services.

⁽¹⁾ OJ L 108, 24.4.2002, p. 33.

⁽²⁾ OJ L 108, 24.4.2002, p. 51.

⁽³⁾ OJ L 201, 31.7.2002, p. 37. Directive as amended by Directive 2006/24/EC (OJ L 105, 13.4.2006, p. 54).

⁽⁴⁾ OJ L 149, 5.7.1971, p. 2. Regulation as last amended by Regulation (EC) No 629/2006 of the European Parliament and of the Council (OJ L 114, 27.4.2006, p. 1).

- (31) This Directive is consistent with and does not affect Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ⁽¹⁾. It deals with questions other than those relating to professional qualifications, for example professional liability insurance, commercial communications, multidisciplinary activities and administrative simplification. With regard to temporary cross-border service provision, a derogation from the provision on the freedom to provide services in this Directive ensures that Title II on the free provision of services of Directive 2005/36/EC is not affected. Therefore, none of the measures applicable under that Directive in the Member State where the service is provided is affected by the provision on the freedom to provide services.
- (32) This Directive is consistent with Community legislation on consumer protection, such as Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (the Unfair Commercial Practices Directive) ⁽²⁾ and Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) ⁽³⁾.
- (33) The services covered by this Directive concern a wide variety of ever-changing activities, including business services such as management consultancy, certification and testing; facilities management, including office maintenance; advertising; recruitment services; and the services of commercial agents. The services covered are also services provided both to businesses and to consumers, such as legal or fiscal advice; real estate services such as estate agencies; construction, including the services of architects; distributive trades; the organisation of trade fairs; car rental; and travel agencies. Consumer services are also covered, such as those in the field of tourism, including tour guides; leisure services, sports centres and amusement parks; and, to the extent that they are not excluded from the scope of application of the Directive, household support services, such as help for the elderly. Those activities may involve services requiring the proximity of provider and recipient, services requiring travel by the recipient or the provider and services which may be provided at a distance, including via the Internet.
- (34) According to the case-law of the Court of Justice, the assessment of whether certain activities, in particular activities which are publicly funded or provided by public entities, constitute a 'service' has to be carried out on a case by case basis in the light of all their characteristics, in particular the way they are provided, organised and financed in the Member State concerned. The Court of Justice has held that the essential characteristic of remuneration lies in the fact that it constitutes consideration for the services in question and has recognised that the characteristic of remuneration is absent in the case of activities performed, for no consideration, by the State or on behalf of the State in the context of its duties in the social, cultural, educational and judicial fields, such as courses provided under the national education system, or the management of social security schemes which do not engage in economic activity. The payment of a fee by recipients, for example, a tuition or enrolment fee paid by students in order to make a certain contribution to the operating expenses of a system, does not in itself constitute remuneration because the service is still essentially financed by public funds. These activities are, therefore, not covered by the definition of service in Article 50 of the Treaty and do not therefore fall within the scope of this Directive.
- (35) Non-profit making amateur sporting activities are of considerable social importance. They often pursue wholly social or recreational objectives. Thus, they might not constitute economic activities within the meaning of Community law and should fall outside the scope of this Directive.
- (36) The concept of 'provider' should cover any natural person who is a national of a Member State or any legal person engaged in a service activity in a Member State, in exercise either of the freedom of establishment or of the free movement of services. The concept of provider should thus not be limited solely to cross-border service provision within the framework of the free movement of services but should also cover cases in which an operator establishes itself in a Member State in order to develop its service activities there. On the other hand, the concept of a provider should not cover the case of branches in a Member State of companies from third countries because, under Article 48 of the Treaty, the freedom of establishment and free movement of services may benefit only companies constituted in accordance with the laws of a Member State and having their registered office, central administration or principal place of business within the Community. The concept of 'recipient' should also cover third country nationals who already benefit from rights conferred upon them by Community acts such as Regulation (EEC) No 1408/71, Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents ⁽⁴⁾, Council Regulation (EC) No 859/2003 of 14 May 2003

⁽¹⁾ OJ L 255, 30.9.2005, p. 22.

⁽²⁾ OJ L 149, 11.6.2005, p. 22.

⁽³⁾ OJ L 364, 9.12.2004, p. 1. Regulation as amended by Directive 2005/29/EC.

⁽⁴⁾ OJ L 16, 23.1.2004, p. 44.

extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality ⁽¹⁾ and Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ⁽²⁾. Furthermore, Member States may extend the concept of recipient to other third country nationals that are present within their territory.

be registered as a member of a profession or entered in a register, roll or database, to be officially appointed to a body or to obtain a card attesting to membership of a particular profession. Authorisation may be granted not only by a formal decision but also by an implicit decision arising, for example, from the silence of the competent authority or from the fact that the interested party must await acknowledgement of receipt of a declaration in order to commence the activity in question or for the latter to become lawful.

(37) The place at which a provider is established should be determined in accordance with the case law of the Court of Justice according to which the concept of establishment involves the actual pursuit of an economic activity through a fixed establishment for an indefinite period. This requirement may also be fulfilled where a company is constituted for a given period or where it rents the building or installation through which it pursues its activity. It may also be fulfilled where a Member State grants authorisations for a limited duration only in relation to particular services. An establishment does not need to take the form of a subsidiary, branch or agency, but may consist of an office managed by a provider's own staff or by a person who is independent but authorised to act on a permanent basis for the undertaking, as would be the case with an agency. According to this definition, which requires the actual pursuit of an economic activity at the place of establishment of the provider, a mere letter box does not constitute an establishment. Where a provider has several places of establishment, it is important to determine the place of establishment from which the actual service concerned is provided. Where it is difficult to determine from which of several places of establishment a given service is provided, the location of the provider's centre of activities relating to this particular service should be that place of establishment.

(40) The concept of 'overriding reasons relating to the public interest' to which reference is made in certain provisions of this Directive has been developed by the Court of Justice in its case law in relation to Articles 43 and 49 of the Treaty and may continue to evolve. The notion as recognised in the case law of the Court of Justice covers at least the following grounds: public policy, public security and public health, within the meaning of Articles 46 and 55 of the Treaty; the maintenance of order in society; social policy objectives; the protection of the recipients of services; consumer protection; the protection of workers, including the social protection of workers; animal welfare; the preservation of the financial balance of the social security system; the prevention of fraud; the prevention of unfair competition; the protection of the environment and the urban environment, including town and country planning; the protection of creditors; safeguarding the sound administration of justice; road safety; the protection of intellectual property; cultural policy objectives, including safeguarding the freedom of expression of various elements, in particular social, cultural, religious and philosophical values of society; the need to ensure a high level of education, the maintenance of press diversity and the promotion of the national language; the preservation of national historical and artistic heritage; and veterinary policy.

(38) The concept of 'legal persons', according to the Treaty provisions on establishment, leaves operators free to choose the legal form which they deem suitable for carrying out their activity. Accordingly, 'legal persons', within the meaning of the Treaty, means all entities constituted under, or governed by, the law of a Member State, irrespective of their legal form.

(41) The concept of 'public policy', as interpreted by the Court of Justice, covers the protection against a genuine and sufficiently serious threat affecting one of the fundamental interests of society and may include, in particular, issues relating to human dignity, the protection of minors and vulnerable adults and animal welfare. Similarly, the concept of public security includes issues of public safety.

(39) The concept of 'authorisation scheme' should cover, inter alia, the administrative procedures for granting authorisations, licences, approvals or concessions, and also the obligation, in order to be eligible to exercise the activity, to

(42) The rules relating to administrative procedures should not aim at harmonising administrative procedures but at removing overly burdensome authorisation schemes, procedures and formalities that hinder the freedom of establishment and the creation of new service undertakings therefrom.

⁽¹⁾ OJ L 124, 20.5.2003, p. 1.

⁽²⁾ OJ L 158, 30.4.2004, p. 77.

- (43) One of the fundamental difficulties faced, in particular by SMEs, in accessing service activities and exercising them is the complexity, length and legal uncertainty of administrative procedures. For this reason, following the example of certain modernising and good administrative practice initiatives undertaken at Community and national level, it is necessary to establish principles of administrative simplification, inter alia through the limitation of the obligation of prior authorisation to cases in which it is essential and the introduction of the principle of tacit authorisation by the competent authorities after a certain period of time elapsed. Such modernising action, while maintaining the requirements on transparency and the updating of information relating to operators, is intended to eliminate the delays, costs and dissuasive effects which arise, for example, from unnecessary or excessively complex and burdensome procedures, the duplication of procedures, the 'red tape' involved in submitting documents, the arbitrary use of powers by the competent authorities, indeterminate or excessively long periods before a response is given, the limited duration of validity of authorisations granted and disproportionate fees and penalties. Such practices have particularly significant dissuasive effects on providers wishing to develop their activities in other Member States and require coordinated modernisation within an enlarged internal market of twenty-five Member States.
- (44) Member States should introduce, where appropriate, forms harmonised at Community level, as established by the Commission, which will serve as an equivalent to certificates, attestations or any other document in relation to establishment.
- (45) In order to examine the need for simplifying procedures and formalities, Member States should be able, in particular, to take into account their necessity, number, possible duplication, cost, clarity and accessibility, as well as the delay and practical difficulties to which they could give rise for the provider concerned.
- (46) In order to facilitate access to service activities and the exercise thereof in the internal market, it is necessary to establish an objective, common to all Member States, of administrative simplification and to lay down provisions concerning, inter alia, the right to information, procedures by electronic means and the establishment of a framework for authorisation schemes. Other measures adopted at national level to meet that objective could involve reduction of the number of procedures and formalities applicable to service activities and the restriction of such procedures and formalities to those which are essential in order to achieve a general interest objective and which do not duplicate each other in terms of content or purpose.
- (47) With the aim of administrative simplification, general formal requirements, such as presentation of original documents, certified copies or a certified translation, should not be imposed, except where objectively justified by an overriding reason relating to the public interest, such as the protection of workers, public health, the protection of the environment or the protection of consumers. It is also necessary to ensure that an authorisation as a general rule permits access to, or exercise of, a service activity throughout the national territory, unless a new authorisation for each establishment, for example for each new hypermarket, or an authorisation that is restricted to a specific part of the national territory is objectively justified by an overriding reason relating to the public interest.
- (48) In order to further simplify administrative procedures, it is appropriate to ensure that each provider has a single point through which he can complete all procedures and formalities (hereinafter referred to as 'points of single contact'). The number of points of single contact per Member State may vary according to regional or local competencies or according to the activities concerned. The creation of points of single contact should not interfere with the allocation of functions among competent authorities within each national system. Where several authorities at regional or local level are competent, one of them may assume the role of point of single contact and coordinator. Points of single contact may be set up not only by administrative authorities but also by chambers of commerce or crafts, or by the professional organisations or private bodies to which a Member State decides to entrust that function. Points of single contact have an important role to play in providing assistance to providers either as the authority directly competent to issue the documents necessary to access a service activity or as an intermediary between the provider and the authorities which are directly competent.
- (49) The fee which may be charged by points of single contact should be proportionate to the cost of the procedures and formalities with which they deal. This should not prevent Member States from entrusting the points of single contact with the collection of other administrative fees, such as the fee of supervisory bodies.
- (50) It is necessary for providers and recipients of services to have easy access to certain types of information. It should be for each Member State to determine, within the framework of this Directive, the way in which providers and recipients are provided with information. In particular, the obligation on Member States to ensure that relevant information is easily accessible to providers and recipients and that it can be accessed by the public without obstacle could be fulfilled by making this information accessible through a website. Any information given should be provided in a clear and unambiguous manner.

- (51) The information provided to providers and recipients of services should include, in particular, information on procedures and formalities, contact details of the competent authorities, conditions for access to public registers and data bases and information concerning available remedies and the contact details of associations and organisations from which providers or recipients can obtain practical assistance. The obligation on competent authorities to assist providers and recipients should not include the provision of legal advice in individual cases. Nevertheless, general information on the way in which requirements are usually interpreted or applied should be given. Issues such as liability for providing incorrect or misleading information should be determined by Member States.
- (52) The setting up, in the reasonably near future, of electronic means of completing procedures and formalities will be vital for administrative simplification in the field of service activities, for the benefit of providers, recipients and competent authorities. In order to meet that obligation as to results, national laws and other rules applicable to services may need to be adapted. This obligation should not prevent Member States from providing other means of completing such procedures and formalities, in addition to electronic means. The fact that it must be possible to complete those procedures and formalities at a distance means, in particular, that Member States must ensure that they may be completed across borders. The obligation as to results does not cover procedures or formalities which by their very nature are impossible to complete at a distance. Furthermore, this does not interfere with Member States' legislation on the use of languages.
- (53) The granting of licences for certain service activities may require an interview with the applicant by the competent authority in order to assess the applicant's personal integrity and suitability for carrying out the service in question. In such cases, the completion of formalities by electronic means may not be appropriate.
- (54) The possibility of gaining access to a service activity should be made subject to authorisation by the competent authorities only if that decision satisfies the criteria of non-discrimination, necessity and proportionality. That means, in particular, that authorisation schemes should be permissible only where an a posteriori inspection would not be effective because of the impossibility of ascertaining the defects of the services concerned a posteriori, due account being taken of the risks and dangers which could arise in the absence of a prior inspection. However, the provision to that effect made by this Directive cannot be relied upon in order to justify authorisation schemes which are prohibited by other Community instruments such as Directive 1999/93/EC of the European Parliament and the Council of 13 December 1999 on a Community framework for electronic signatures ⁽¹⁾, or Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce) ⁽²⁾. The results of the process of mutual evaluation will make it possible to determine, at Community level, the types of activity for which authorisation schemes should be eliminated.
- (55) This Directive should be without prejudice to the possibility for Member States to withdraw authorisations after they have been issued, if the conditions for the granting of the authorisation are no longer fulfilled.
- (56) According to the case law of the Court of Justice, public health, consumer protection, animal health and the protection of the urban environment constitute overriding reasons relating to the public interest. Such overriding reasons may justify the application of authorisation schemes and other restrictions. However, no such authorisation scheme or restriction should discriminate on grounds of nationality. Further, the principles of necessity and proportionality should always be respected.
- (57) The provisions of this Directive relating to authorisation schemes should concern cases where the access to or exercise of a service activity by operators requires a decision by a competent authority. This concerns neither decisions by competent authorities to set up a public or private entity for the provision of a particular service nor the conclusion of contracts by competent authorities for the provision of a particular service which is governed by rules on public procurement, since this Directive does not deal with rules on public procurement.
- (58) In order to facilitate access to and exercise of service activities, it is important to evaluate and report on authorisation schemes and their justification. This reporting obligation concerns only the existence of authorisation schemes and not the criteria and conditions for the granting of an authorisation.

⁽¹⁾ OJ L 13, 19.1.2000, p. 12.

⁽²⁾ OJ L 178, 17.7.2000, p. 1.

- (59) The authorisation should as a general rule enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, unless a territorial limit is justified by an overriding reason relating to the public interest. For example, environmental protection may justify the requirement to obtain an individual authorisation for each installation on the national territory. This provision should not affect regional or local competences for the granting of authorisations within the Member States.
- (60) This Directive, and in particular the provisions concerning authorisation schemes and the territorial scope of an authorisation, should not interfere with the division of regional or local competences within the Member States, including regional and local self-government and the use of official languages.
- (61) The provision relating to the non-duplication of conditions for the granting of an authorisation should not prevent Member States from applying their own conditions as specified in the authorisation scheme. It should only require that competent authorities, when considering whether these conditions are met by the applicant, take into account the equivalent conditions which have already been satisfied by the applicant in another Member State. This provision should not require the application of the conditions for the granting of an authorisation provided for in the authorisation scheme of another Member State.
- (62) Where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, a procedure for selection from among several potential candidates should be adopted with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a procedure should provide guarantees of transparency and impartiality and the authorisation thus granted should not have an excessive duration, be subject to automatic renewal or confer any advantage on the provider whose authorisation has just expired. In particular, the duration of the authorisation granted should be fixed in such a way that it does not restrict or limit free competition beyond what is necessary in order to enable the provider to recoup the cost of investment and to make a fair return on the capital invested. This provision should not prevent Member States from limiting the number of authorisations for reasons other than scarcity of natural resources or technical capacity. These authorisations should remain in any case subject to the other provisions of this Directive relating to authorisation schemes.
- (63) In the absence of different arrangements, failing a response within a time period, an authorisation should be deemed to have been granted. However, different arrangements may be put in place in respect of certain activities, where objectively justified by overriding reasons relating to the public interest, including a legitimate interest of third parties. Such different arrangements could include national rules according to which, in the absence of a response of the competent authority, the application is deemed to have been rejected, this rejection being open to challenge before the courts.
- (64) In order to establish a genuine internal market for services, it is necessary to abolish any restrictions on the freedom of establishment and the free movement of services which are still enshrined in the laws of certain Member States and which are incompatible with Articles 43 and 49 of the Treaty respectively. The restrictions to be prohibited particularly affect the internal market for services and should be systematically dismantled as soon as possible.
- (65) Freedom of establishment is predicated, in particular, upon the principle of equal treatment, which entails the prohibition not only of any discrimination on grounds of nationality but also of any indirect discrimination based on other grounds but capable of producing the same result. Thus, access to a service activity or the exercise thereof in a Member State, either as a principal or secondary activity, should not be made subject to criteria such as place of establishment, residence, domicile or principal provision of the service activity. However, these criteria should not include requirements according to which a provider or one of his employees or a representative must be present during the exercise of the activity when this is justified by an overriding reason relating to the public interest. Furthermore, a Member State should not restrict the legal capacity or the right of companies, incorporated in accordance with the law of another Member State on whose territory they have their primary establishment, to bring legal proceedings. Moreover, a Member State should not be able to confer any advantages on providers having a particular national or local socio-economic link; nor should it be able to restrict, on grounds of place of establishment, the provider's freedom to acquire, exploit or dispose of rights and goods or to access different forms of credit or accommodation in so far as those choices are useful for access to his activity or for the effective exercise thereof.
- (66) Access to or the exercise of a service activity in the territory of a Member State should not be subject to an economic test. The prohibition of economic tests as a prerequisite for the grant of authorisation should cover economic tests as such, but not requirements which are objectively justified by overriding reasons relating to the public interest, such as the protection of the urban environment, social policy or public health. The prohibition should not affect the exercise of the powers of the authorities responsible for applying competition law.

- (67) With respect to financial guarantees or insurance, the prohibition of requirements should concern only the obligation that the requested financial guarantees or insurance must be obtained from a financial institution established in the Member State concerned.
- (68) With respect to pre-registration, the prohibition of requirements should concern only the obligation that the provider, prior to the establishment, be pre-registered for a given period in a register held in the Member State concerned.
- (69) In order to coordinate the modernisation of national rules and regulations in a manner consistent with the requirements of the internal market, it is necessary to evaluate certain non-discriminatory national requirements which, by their very nature, could severely restrict or even prevent access to an activity or the exercise thereof under the freedom of establishment. This evaluation process should be limited to the compatibility of these requirements with the criteria already established by the Court of Justice on the freedom of establishment. It should not concern the application of Community competition law. Where such requirements are discriminatory or not objectively justified by an overriding reason relating to the public interest, or where they are disproportionate, they must be abolished or amended. The outcome of this assessment will be different according to the nature of the activity and the public interest concerned. In particular, such requirements could be fully justified when they pursue social policy objectives.
- (70) For the purposes of this Directive, and without prejudice to Article 16 of the Treaty, services may be considered to be services of general economic interest only if they are provided in application of a special task in the public interest entrusted to the provider by the Member State concerned. This assignment should be made by way of one or more acts, the form of which is determined by the Member State concerned, and should specify the precise nature of the special task.
- (71) The mutual evaluation process provided for in this Directive should not affect the freedom of Member States to set in their legislation a high level of protection of the public interest, in particular in relation to social policy objectives. Furthermore, it is necessary that the mutual evaluation process take fully into account the specificity of services of general economic interest and of the particular tasks assigned to them. This may justify certain restrictions on the freedom of establishment, in particular where such restrictions pursue the protection of public health and social policy objectives and where they satisfy the conditions set out in Article 15(3)(a), (b) and (c). For example, with regard to the obligation to take a specific legal form in order to exercise certain services in the social field, the Court of Justice has already recognised that it may be justified to subject the provider to a requirement to be non-profit making.
- (72) Services of a general economic interest are entrusted with important tasks relating to social and territorial cohesion. The performance of these tasks should not be obstructed as a result of the evaluation process provided for in this Directive. Requirements which are necessary for the fulfilment of such tasks should not be affected by this process while, at the same time, unjustified restrictions on the freedom of establishment should be addressed.
- (73) The requirements to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to certain activities to particular providers. These requirements also include obligations on a provider to take a specific legal form, in particular to be a legal person, to be a company with individual ownership, to be a non-profit making organisation or a company owned exclusively by natural persons, and requirements which relate to the shareholding of a company, in particular obligations to hold a minimum amount of capital for certain service activities or to have a specific qualification in order to hold share capital in or to manage certain companies. The evaluation of the compatibility of fixed minimum and/or maximum tariffs with the freedom of establishment concerns only tariffs imposed by competent authorities specifically for the provision of certain services and not, for example, general rules on price determination, such as for the renting of houses.
- (74) The mutual evaluation process means that during the transposition period Member States will first have to conduct a screening of their legislation in order to ascertain whether any of the above mentioned requirements exists in their legal systems. At the latest by the end of the transposition period, Member States should draw up a report on the results of this screening. Each report will be submitted to all other Member States and interested parties. Member States will then have six months in which to submit their observations on these reports. At the latest by one year after the date of transposition of this Directive, the Commission should draw up a summary report, accompanied where appropriate by proposals for further initiatives. If necessary the Commission, in cooperation with the Member States, could assist them to design a common method.
- (75) The fact that this Directive specifies a number of requirements to be abolished or evaluated by the Member States during the transposition period is without prejudice to any infringement proceedings against a Member State for failure to fulfil its obligations under Articles 43 or 49 of the Treaty.

- (76) This Directive does not concern the application of Articles 28 to 30 of the Treaty relating to the free movement of goods. The restrictions prohibited pursuant to the provision on the freedom to provide services cover the requirements applicable to access to service activities or to the exercise thereof and not those applicable to goods as such.
- (77) Where an operator travels to another Member State to exercise a service activity there, a distinction should be made between situations covered by the freedom of establishment and those covered, due to the temporary nature of the activities concerned, by the free movement of services. As regards the distinction between the freedom of establishment and the free movement of services, according to the case law of the Court of Justice the key element is whether or not the operator is established in the Member State where it provides the service concerned. If the operator is established in the Member State where it provides its services, it should come under the scope of application of the freedom of establishment. If, by contrast, the operator is not established in the Member State where the service is provided, its activities should be covered by the free movement of services. The Court of Justice has consistently held that the temporary nature of the activities in question should be determined in the light not only of the duration of the provision of the service, but also of its regularity, periodical nature or continuity. The fact that the activity is temporary should not mean that the provider may not equip itself with some forms of infrastructure in the Member State where the service is provided, such as an office, chambers or consulting rooms, in so far as such infrastructure is necessary for the purposes of providing the service in question.
- (78) In order to secure effective implementation of the free movement of services and to ensure that recipients and providers can benefit from and supply services throughout the Community regardless of borders, it is necessary to clarify the extent to which requirements of the Member State where the service is provided can be imposed. It is indispensable to provide that the provision on the freedom to provide services does not prevent the Member State where the service is provided from imposing, in compliance with the principles set out in Article 16(1)(a) to (c), its specific requirements for reasons of public policy or public security or for the protection of public health or the environment.
- (79) The Court of Justice has consistently held that Member States retain the right to take measures in order to prevent providers from abusively taking advantage of the internal market principles. Abuse by a provider should be established on a case by case basis.
- (80) It is necessary to ensure that providers are able to take equipment which is integral to the provision of their service with them when they travel to provide services in another Member State. In particular, it is important to avoid cases in which the service could not be provided without the equipment or situations in which providers incur additional costs, for example, by hiring or purchasing different equipment to that which they habitually use or by needing to deviate significantly from the way they habitually carry out their activity.
- (81) The concept of equipment does not refer to physical objects which are either supplied by the provider to the client or become part of a physical object as a result of the service activity, such as building materials or spare parts, or which are consumed or left in situ in the course of the service provision, such as combustible fuels, explosives, fireworks, pesticides, poisons or medicines.
- (82) The provisions of this Directive should not preclude the application by a Member State of rules on employment conditions. Rules laid down by law, regulation or administrative provisions should, in accordance with the Treaty, be justified for reasons relating to the protection of workers and be non-discriminatory, necessary, and proportionate, as interpreted by the Court of Justice, and comply with other relevant Community law.
- (83) It is necessary to ensure that the provision on the freedom to provide services may be departed from only in the areas covered by derogations. Those derogations are necessary in order to take into account the level of integration of the internal market or certain Community instruments relating to services pursuant to which a provider is subject to the application of a law other than that of the Member State of establishment. Moreover, by way of exception, measures against a given provider should also be adopted in certain individual cases and under certain strict procedural and substantive conditions. In addition, any restriction of the free movement of services should be permitted, by way of exception, only if it is consistent with fundamental rights which form an integral part of the general principles of law enshrined in the Community legal order.
- (84) The derogation from the provision on the freedom to provide services concerning postal services should cover both activities reserved to the universal service provider and other postal services.

- (85) The derogation from the provision on the freedom to provide services relating to the judicial recovery of debts and the reference to a possible future harmonisation instrument should concern only the access to and the exercise of activities which consist, notably, in bringing actions before a court relating to the recovery of debts.
- (86) This Directive should not affect terms and conditions of employment which, pursuant to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ⁽¹⁾, apply to workers posted to provide a service in the territory of another Member State. In such cases, Directive 96/71/EC stipulates that providers have to comply with terms and conditions of employment in a listed number of areas applicable in the Member State where the service is provided. These are: maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay, including overtime rates, the conditions of hiring out of workers, in particular the protection of workers hired out by temporary employment undertakings, health, safety and hygiene at work, protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth and of children and young people and equality of treatment between men and women and other provisions on non-discrimination. This not only concerns terms and conditions of employment which are laid down by law but also those laid down in collective agreements or arbitration awards that are officially declared or de facto universally applicable within the meaning of Directive 96/71/EC. Moreover, this Directive should not prevent Member States from applying terms and conditions of employment on matters other than those listed in Article 3(1) of Directive 96/71/EC on the grounds of public policy.
- (87) Neither should this Directive affect terms and conditions of employment in cases where the worker employed for the provision of a cross-border service is recruited in the Member State where the service is provided. Furthermore, this Directive should not affect the right for the Member State where the service is provided to determine the existence of an employment relationship and the distinction between self-employed persons and employed persons, including 'false self-employed persons'. In that respect the essential characteristic of an employment relationship within the meaning of Article 39 of the Treaty should be the fact that for a certain period of time a person provides services for and under the direction of another person in return for which he receives remuneration. Any activity which a person performs outside a relationship of subordination must be classified as an activity pursued in a self-employed capacity for the purposes of Articles 43 and 49 of the Treaty.
- (88) The provision on the freedom to provide services should not apply in cases where, in conformity with Community law, an activity is reserved in a Member State to a particular profession, for example requirements which reserve the provision of legal advice to lawyers.
- (89) The derogation from the provision on the freedom to provide services concerning matters relating to the registration of vehicles leased in a Member State other than that in which they are used follows from the case law of the Court of Justice, which has recognised that a Member State may impose such an obligation, in accordance with proportionate conditions, in the case of vehicles used on its territory. That exclusion does not cover occasional or temporary rental.
- (90) Contractual relations between the provider and the client as well as between an employer and employee should not be subject to this Directive. The applicable law regarding the contractual or non contractual obligations of the provider should be determined by the rules of private international law.
- (91) It is necessary to afford Member States the possibility, exceptionally and on a case-by-case basis, of taking measures which derogate from the provision on the freedom to provide services in respect of a provider established in another Member State on grounds of the safety of services. However, it should be possible to take such measures only in the absence of harmonisation at Community level.
- (92) Restrictions on the free movement of services, contrary to this Directive, may arise not only from measures applied to providers, but also from the many barriers to the use of services by recipients, especially consumers. This Directive mentions, by way of illustration, certain types of restriction applied to a recipient wishing to use a service performed by a provider established in another Member State. This also includes cases where recipients of a service are under an obligation to obtain authorisation from or to make a declaration to their competent authorities in order to receive a service from a provider established in another Member State. This does not concern general authorisation schemes which also apply to the use of a service supplied by a provider established in the same Member State.

⁽¹⁾ OJ L 18, 21.1.1997, p. 1.

- (93) The concept of financial assistance provided for the use of a particular service should not apply to systems of aids granted by Member States, in particular in the social field or in the cultural sector, which are covered by Community rules on competition, nor to general financial assistance not linked to the use of a particular service, for example grants or loans to students.
- (94) In accordance with the Treaty rules on the free movement of services, discrimination on grounds of the nationality of the recipient or national or local residence is prohibited. Such discrimination could take the form of an obligation, imposed only on nationals of another Member State, to supply original documents, certified copies, a certificate of nationality or official translations of documents in order to benefit from a service or from more advantageous terms or prices. However, the prohibition of discriminatory requirements should not preclude the reservation of advantages, especially as regards tariffs, to certain recipients, if such reservation is based on legitimate and objective criteria.
- (95) The principle of non-discrimination within the internal market means that access by a recipient, and especially by a consumer, to a service on offer to the public may not be denied or restricted by application of a criterion, included in general conditions made available to the public, relating to the recipient's nationality or place of residence. It does not follow that it will be unlawful discrimination if provision were made in such general conditions for different tariffs and conditions to apply to the provision of a service, where those tariffs, prices and conditions are justified for objective reasons that can vary from country to country, such as additional costs incurred because of the distance involved or the technical characteristics of the provision of the service, or different market conditions, such as higher or lower demand influenced by seasonality, different vacation periods in the Member States and pricing by different competitors, or extra risks linked to rules differing from those of the Member State of establishment. Neither does it follow that the non-provision of a service to a consumer for lack of the required intellectual property rights in a particular territory would constitute unlawful discrimination.
- (96) It is appropriate to provide that, as one of the means by which the provider may make the information which he is obliged to supply easily accessible to the recipient, he supply his electronic address, including that of his website. Furthermore, the obligation to make available certain information in the provider's information documents which present his services in detail should not cover commercial communications of a general nature, such as advertising, but rather documents giving a detailed description of the services proposed, including documents on a website.
- (97) It is necessary to provide in this Directive for certain rules on high quality of services, ensuring in particular information and transparency requirements. These rules should apply both in cases of cross border provision of services between Member States and in cases of services provided in a Member State by a provider established there, without imposing unnecessary burdens on SMEs. They should not in any way prevent Member States from applying, in conformity with this Directive and other Community law, additional or different quality requirements.
- (98) Any operator providing services involving a direct and particular health, safety or financial risk for the recipient or a third person should, in principle, be covered by appropriate professional liability insurance, or by another form of guarantee which is equivalent or comparable, which means, in particular, that such an operator should as a general rule have adequate insurance cover for services provided in one or more Member States other than the Member State of establishment.
- (99) The insurance or guarantee should be appropriate to the nature and extent of the risk. Therefore it should be necessary for the provider to have cross-border cover only if that provider actually provides services in other Member States. Member States should not lay down more detailed rules concerning the insurance cover and fix for example minimum thresholds for the insured sum or limits on exclusions from the insurance cover. Providers and insurance companies should maintain the necessary flexibility to negotiate insurance policies precisely targeted to the nature and extent of the risk. Furthermore, it is not necessary for an obligation of appropriate insurance to be laid down by law. It should be sufficient if an insurance obligation is part of the ethical rules laid down by professional bodies. Finally, there should be no obligation for insurance companies to provide insurance cover.
- (100) It is necessary to put an end to total prohibitions on commercial communications by the regulated professions, not by removing bans on the content of a commercial communication but rather by removing those bans which, in a general way and for a given profession, forbid one or more forms of commercial communication, such as a ban on all advertising in one or more given media. As regards the content and methods of commercial communication, it is necessary to encourage professionals to draw up, in accordance with Community law, codes of conduct at Community level.

- (101) It is necessary and in the interest of recipients, in particular consumers, to ensure that it is possible for providers to offer multidisciplinary services and that restrictions in this regard be limited to what is necessary to ensure the impartiality, independence and integrity of the regulated professions. This does not affect restrictions or prohibitions on carrying out particular activities which aim at ensuring independence in cases in which a Member State entrusts a provider with a particular task, notably in the area of urban development, nor should it affect the application of competition rules.
- (102) In order to increase transparency and promote assessments based on comparable criteria with regard to the quality of the services offered and supplied to recipients, it is important that information on the meaning of quality labels and other distinctive marks relating to these services be easily accessible. That obligation of transparency is particularly important in areas such as tourism, especially the hotel business, in which the use of a system of classification is widespread. Moreover, it is appropriate to examine the extent to which European standardisation could facilitate compatibility and quality of services. European standards are drawn up by the European standards-setting bodies, the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) and the European Telecommunications Standards Institute (ETSI). Where appropriate, the Commission may, in accordance with the procedures laid down in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations ⁽¹⁾ and of rules on Information Society services, issue a mandate for the drawing up of specific European standards.
- (103) In order to solve potential problems with compliance with judicial decisions, it is appropriate to provide that Member States recognise equivalent guarantees lodged with institutions or bodies such as banks, insurance providers or other financial services providers established in another Member State.
- (104) The development of a network of Member States' consumer protection authorities, which is the subject of Regulation (EC) No 2006/2004, complements the cooperation provided for in this Directive. The application of consumer protection legislation in cross-border cases, in particular with regard to new marketing and selling practices, as well as the need to remove certain specific obstacles to cooperation in this field, necessitates a greater degree of cooperation between Member States. In particular, it is necessary in this area to ensure that Member States require the cessation of illegal practices by operators in their territory who target consumers in another Member State.
- (105) Administrative cooperation is essential to make the internal market in services function properly. Lack of cooperation between Member States results in proliferation of rules applicable to providers or duplication of controls for cross-border activities, and can also be used by rogue traders to avoid supervision or to circumvent applicable national rules on services. It is, therefore, essential to provide for clear, legally binding obligations for Member States to cooperate effectively.
- (106) For the purposes of the Chapter on administrative cooperation, 'supervision' should cover activities such as monitoring and fact finding, problem solving, enforcement and imposition of sanctions and subsequent follow-up activities.
- (107) In normal circumstances mutual assistance should take place directly between competent authorities. The liaison points designated by Member States should be required to facilitate this process only in the event of difficulties being encountered, for instance if assistance is required to identify the relevant competent authority.
- (108) Certain obligations of mutual assistance should apply to all matters covered by this Directive, including those relating to cases where a provider establishes in another Member State. Other obligations of mutual assistance should apply only in cases of cross-border provision of services, where the provision on the freedom to provide services applies. A further set of obligations should apply in all cases of cross-border provision of services, including areas not covered by the provision on the freedom to provide services. Cross-border provision of services should include cases where services are provided at a distance and where the recipient travels to the Member State of establishment of the provider in order to receive services.
- (109) In cases where a provider moves temporarily to a Member State other than the Member State of establishment, it is necessary to provide for mutual assistance between those two Member States so that the former can carry out checks, inspections and enquiries at the request of the Member State of establishment or carry out such checks on its own initiative if these are merely factual checks.
- (110) It should not be possible for Member States to circumvent the rules laid down in this Directive, including the provision on the freedom to provide services, by conducting checks, inspections or investigations which are discriminatory or disproportionate.

⁽¹⁾ OJ L 204, 21.7.1998, p. 37. Directive as last amended by the 2003 Act of Accession.

- (111) The provisions of this Directive concerning exchange of information regarding the good repute of providers should not pre-empt initiatives in the area of police and judicial cooperation in criminal matters, in particular on the exchange of information between law enforcement authorities of the Member States and on criminal records.
- (112) Cooperation between Member States requires a well-functioning electronic information system in order to allow competent authorities easily to identify their relevant interlocutors in other Member States and to communicate in an efficient way.
- (113) It is necessary to provide that the Member States, in cooperation with the Commission, are to encourage interested parties to draw up codes of conduct at Community level, aimed, in particular, at promoting the quality of services and taking into account the specific nature of each profession. Those codes of conduct should comply with Community law, especially competition law. They should be compatible with legally binding rules governing professional ethics and conduct in the Member States.
- (114) Member States should encourage the setting up of codes of conduct, in particular, by professional bodies, organisations and associations at Community level. These codes of conduct should include, as appropriate to the specific nature of each profession, rules for commercial communications relating to the regulated professions and rules of professional ethics and conduct of the regulated professions which aim, in particular, at ensuring independence, impartiality and professional secrecy. In addition, the conditions to which the activities of estate agents are subject should be included in such codes of conduct. Member States should take accompanying measures to encourage professional bodies, organisations and associations to implement at national level the codes of conduct adopted at Community level.
- (115) Codes of conduct at Community level are intended to set minimum standards of conduct and are complementary to Member States' legal requirements. They do not preclude Member States, in accordance with Community law, from taking more stringent measures in law or national professional bodies from providing for greater protection in their national codes of conduct.
- (116) Since the objectives of this Directive, namely the elimination of barriers to the freedom of establishment for providers in the Member States and to the free provision of services between Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures,

in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (117) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.

- (118) In accordance with paragraph 34 of the Interinstitutional Agreement on better law-making ⁽²⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.
2. This Directive does not deal with the liberalisation of services of general economic interest, reserved to public or private entities, nor with the privatisation of public entities providing services.
3. This Directive does not deal with the abolition of monopolies providing services nor with aids granted by Member States which are covered by Community rules on competition.

This Directive does not affect the freedom of Member States to define, in conformity with Community law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to.

4. This Directive does not affect measures taken at Community level or at national level, in conformity with Community law, to protect or promote cultural or linguistic diversity or media pluralism.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

⁽²⁾ OJ C 321, 31.12.2003, p. 1.

5. This Directive does not affect Member States' rules of criminal law. However, Member States may not restrict the freedom to provide services by applying criminal law provisions which specifically regulate or affect access to or exercise of a service activity in circumvention of the rules laid down in this Directive.

6. This Directive does not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with national law which respects Community law. Equally, this Directive does not affect the social security legislation of the Member States.

7. This Directive does not affect the exercise of fundamental rights as recognised in the Member States and by Community law. Nor does it affect the right to negotiate, conclude and enforce collective agreements and to take industrial action in accordance with national law and practices which respect Community law.

Article 2

Scope

1. This Directive shall apply to services supplied by providers established in a Member State.

2. This Directive shall not apply to the following activities:

- (a) non-economic services of general interest;
- (b) financial services, such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice, including the services listed in Annex I to Directive 2006/48/EC;
- (c) electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC;
- (d) services in the field of transport, including port services, falling within the scope of Title V of the Treaty;
- (e) services of temporary work agencies;
- (f) healthcare services whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private;

(g) audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting;

(h) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions;

(i) activities which are connected with the exercise of official authority as set out in Article 45 of the Treaty;

(j) social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State;

(k) private security services;

(l) services provided by notaries and bailiffs, who are appointed by an official act of government.

3. This Directive shall not apply to the field of taxation.

Article 3

Relationship with other provisions of Community law

1. If the provisions of this Directive conflict with a provision of another Community act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provision of the other Community act shall prevail and shall apply to those specific sectors or professions. These include:

(a) Directive 96/71/EC;

(b) Regulation (EEC) No 1408/71;

(c) Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities⁽¹⁾;

(d) Directive 2005/36/EC.

2. This Directive does not concern rules of private international law, in particular rules governing the law applicable to contractual and non contractual obligations, including those which guarantee that consumers benefit from the protection granted to them by the consumer protection rules laid down in the consumer legislation in force in their Member State.

⁽¹⁾ OJ L 298, 17.10.1989, p. 23. Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).

3. Member States shall apply the provisions of this Directive in compliance with the rules of the Treaty on the right of establishment and the free movement of services.

Article 4

Definitions

For the purposes of this Directive, the following definitions shall apply:

- 1) 'service' means any self-employed economic activity, normally provided for remuneration, as referred to in Article 50 of the Treaty;
- 2) 'provider' means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a service;
- 3) 'recipient' means any natural person who is a national of a Member State or who benefits from rights conferred upon him by Community acts, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who, for professional or non-professional purposes, uses, or wishes to use, a service;
- 4) 'Member State of establishment' means the Member State in whose territory the provider of the service concerned is established;
- 5) 'establishment' means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, by the provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out;
- 6) 'authorisation scheme' means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof;
- 7) 'requirement' means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy; rules laid down in collective agreements negotiated by the social partners shall not as such be seen as requirements within the meaning of this Directive;
- 8) 'overriding reasons relating to the public interest' means reasons recognised as such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection

of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives;

- 9) 'competent authority' means any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, including courts acting as such, professional bodies, and those professional associations or other professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof;
- 10) 'Member State where the service is provided' means the Member State where the service is supplied by a provider established in another Member State;
- 11) 'regulated profession' means a professional activity or a group of professional activities as referred to in Article 3(1)(a) of Directive 2005/36/EC;
- 12) 'commercial communication' means any form of communication designed to promote, directly or indirectly, the goods, services or image of an undertaking, organisation or person engaged in commercial, industrial or craft activity or practising a regulated profession. The following do not in themselves constitute commercial communications:
 - (a) information enabling direct access to the activity of the undertaking, organisation or person, including in particular a domain name or an electronic-mailing address;
 - (b) communications relating to the goods, services or image of the undertaking, organisation or person, compiled in an independent manner, particularly when provided for no financial consideration.

CHAPTER II

ADMINISTRATIVE SIMPLIFICATION

Article 5

Simplification of procedures

1. Member States shall examine the procedures and formalities applicable to access to a service activity and to the exercise thereof. Where procedures and formalities examined under this paragraph are not sufficiently simple, Member States shall simplify them.
2. The Commission may introduce harmonised forms at Community level, in accordance with the procedure referred to in Article 40(2). These forms shall be equivalent to certificates, attestations and any other documents required of a provider.

3. Where Member States require a provider or recipient to supply a certificate, attestation or any other document proving that a requirement has been satisfied, they shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied. They may not require a document from another Member State to be produced in its original form, or as a certified copy or as a certified translation, save in the cases provided for in other Community instruments or where such a requirement is justified by an overriding reason relating to the public interest, including public order and security.

The first subparagraph shall not affect the right of Member States to require non-certified translations of documents in one of their official languages.

4. Paragraph 3 shall not apply to the documents referred to in Article 7(2) and 50 of Directive 2005/36/EC, in Articles 45(3), 46, 49 and 50 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽¹⁾, in Article 3(2) of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained ⁽²⁾, in the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community ⁽³⁾ and in the Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State ⁽⁴⁾.

Article 6

Points of single contact

1. Member States shall ensure that it is possible for providers to complete the following procedures and formalities through points of single contact:

- (a) all procedures and formalities needed for access to his service activities, in particular, all declarations, notifications or applications necessary for authorisation from the competent authorities, including applications for inclusion in a register, a roll or a database, or for registration with a professional body or association;

⁽¹⁾ OJ L 134, 30.4.2004, p. 114. Directive as last amended by Commission Regulation (EC) No 2083/2005 (OJ L 333, 20.12.2005, p. 28).

⁽²⁾ OJ L 77, 14.3.1998, p. 36. Directive as amended by the 2003 Act of Accession.

⁽³⁾ OJ L 65, 14.3.1968, p. 8. Directive as last amended by Directive 2003/58/EC of the European Parliament and of the Council (OJ L 221, 4.9.2003, p. 13).

⁽⁴⁾ OJ L 395, 30.12.1989, p. 36.

- (b) any applications for authorisation needed to exercise his service activities.

2. The establishment of points of single contact shall be without prejudice to the allocation of functions and powers among the authorities within national systems.

Article 7

Right to information

1. Member States shall ensure that the following information is easily accessible to providers and recipients through the points of single contact:

- (a) requirements applicable to providers established in their territory, in particular those requirements concerning the procedures and formalities to be completed in order to access and to exercise service activities;
- (b) the contact details of the competent authorities enabling the latter to be contacted directly, including the details of those authorities responsible for matters concerning the exercise of service activities;
- (c) the means of, and conditions for, accessing public registers and databases on providers and services;
- (d) the means of redress which are generally available in the event of dispute between the competent authorities and the provider or the recipient, or between a provider and a recipient or between providers;
- (e) the contact details of the associations or organisations, other than the competent authorities, from which providers or recipients may obtain practical assistance.

2. Member States shall ensure that it is possible for providers and recipients to receive, at their request, assistance from the competent authorities, consisting in information on the way in which the requirements referred to in point (a) of paragraph 1 are generally interpreted and applied. Where appropriate, such advice shall include a simple step-by-step guide. The information shall be provided in plain and intelligible language.

3. Member States shall ensure that the information and assistance referred to in paragraphs 1 and 2 are provided in a clear and unambiguous manner, that they are easily accessible at a distance and by electronic means and that they are kept up to date.

4. Member States shall ensure that the points of single contact and the competent authorities respond as quickly as possible to any request for information or assistance as referred to in paragraphs 1 and 2 and, in cases where the request is faulty or unfounded, inform the applicant accordingly without delay.

5. Member States and the Commission shall take accompanying measures in order to encourage points of single contact to make the information provided for in this Article available in other Community languages. This does not interfere with Member States' legislation on the use of languages.

6. The obligation for competent authorities to assist providers and recipients does not require those authorities to provide legal advice in individual cases but concerns only general information on the way in which requirements are usually interpreted or applied.

Article 8

Procedures by electronic means

1. Member States shall ensure that all procedures and formalities relating to access to a service activity and to the exercise thereof may be easily completed, at a distance and by electronic means, through the relevant point of single contact and with the relevant competent authorities.

2. Paragraph 1 shall not apply to the inspection of premises on which the service is provided or of equipment used by the provider or to physical examination of the capability or of the personal integrity of the provider or of his responsible staff.

3. The Commission shall, in accordance with the procedure referred to in Article 40(2), adopt detailed rules for the implementation of paragraph 1 of this Article with a view to facilitating the interoperability of information systems and use of procedures by electronic means between Member States, taking into account common standards developed at Community level.

CHAPTER III

FREEDOM OF ESTABLISHMENT FOR PROVIDERS

SECTION I

Authorisations

Article 9

Authorisation schemes

1. Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

- (a) the authorisation scheme does not discriminate against the provider in question;
- (b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;

(c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.

2. In the report referred to in Article 39(1), Member States shall identify their authorisation schemes and give reasons showing their compatibility with paragraph 1 of this Article.

3. This section shall not apply to those aspects of authorisation schemes which are governed directly or indirectly by other Community instruments.

Article 10

Conditions for the granting of authorisation

1. Authorisation schemes shall be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 shall be:

- (a) non-discriminatory;
- (b) justified by an overriding reason relating to the public interest;
- (c) proportionate to that public interest objective;
- (d) clear and unambiguous;
- (e) objective;
- (f) made public in advance;
- (g) transparent and accessible.

3. The conditions for granting authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose to which the provider is already subject in another Member State or in the same Member State. The liaison points referred to in Article 28(2) and the provider shall assist the competent authority by providing any necessary information regarding those requirements.

4. The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, including by means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the authorisation to a certain part of the territory is justified by an overriding reason relating to the public interest.

5. The authorisation shall be granted as soon as it is established, in the light of an appropriate examination, that the conditions for authorisation have been met.

6. Except in the case of the granting of an authorisation, any decision from the competent authorities, including refusal or withdrawal of an authorisation, shall be fully reasoned and shall be open to challenge before the courts or other instances of appeal.

7. This Article shall not call into question the allocation of the competences, at local or regional level, of the Member States' authorities granting authorisations.

Article 11

Duration of authorisation

1. An authorisation granted to a provider shall not be for a limited period, except where:

(a) the authorisation is being automatically renewed or is subject only to the continued fulfilment of requirements;

(b) the number of available authorisations is limited by an overriding reason relating to the public interest;

or

(c) a limited authorisation period can be justified by an overriding reason relating to the public interest.

2. Paragraph 1 shall not concern the maximum period before the end of which the provider must actually commence his activity after receiving authorisation.

3. Member States shall require a provider to inform the relevant point of single contact provided for in Article 6 of the following changes:

(a) the creation of subsidiaries whose activities fall within the scope of the authorisation scheme;

(b) changes in his situation which result in the conditions for authorisation no longer being met.

4. This Article shall be without prejudice to the Member States' ability to revoke authorisations, when the conditions for authorisation are no longer met.

Article 12

Selection from among several candidates

1. Where the number of authorisations available for a given activity is limited because of the scarcity of available natural resources or technical capacity, Member States shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.

2. In the cases referred to in paragraph 1, authorisation shall be granted for an appropriate limited period and may not be open to automatic renewal nor confer any other advantage on the provider whose authorisation has just expired or on any person having any particular links with that provider.

3. Subject to paragraph 1 and to Articles 9 and 10, Member States may take into account, in establishing the rules for the selection procedure, considerations of public health, social policy objectives, the health and safety of employees or self-employed persons, the protection of the environment, the preservation of cultural heritage and other overriding reasons relating to the public interest, in conformity with Community law.

Article 13

Authorisation procedures

1. Authorisation procedures and formalities shall be clear, made public in advance and be such as to provide the applicants with a guarantee that their application will be dealt with objectively and impartially.

2. Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures.

3. Authorisation procedures and formalities shall provide applicants with a guarantee that their application will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and made public in advance. The period shall run only from the time when all documentation has been submitted. When justified by the complexity of the issue, the time period may be extended once, by the competent authority, for a limited time. The extension and its duration shall be duly motivated and shall be notified to the applicant before the original period has expired.

4. Failing a response within the time period set or extended in accordance with paragraph 3, authorisation shall be deemed to have been granted. Different arrangements may nevertheless be put in place, where justified by overriding reasons relating to the public interest, including a legitimate interest of third parties.

5. All applications for authorisation shall be acknowledged as quickly as possible. The acknowledgement must specify the following:

(a) the period referred to in paragraph 3;

(b) the available means of redress;

(c) where applicable, a statement that in the absence of a response within the period specified, the authorisation shall be deemed to have been granted.

6. In the case of an incomplete application, the applicant shall be informed as quickly as possible of the need to supply any additional documentation, as well as of any possible effects on the period referred to in paragraph 3.

7. When a request is rejected because it fails to comply with the required procedures or formalities, the applicant shall be informed of the rejection as quickly as possible.

SECTION 2

Requirements prohibited or subject to evaluation

Article 14

Prohibited requirements

Member States shall not make access to, or the exercise of, a service activity in their territory subject to compliance with any of the following:

- 1) discriminatory requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office, including in particular:
 - (a) nationality requirements for the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies;
 - (b) a requirement that the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies be resident within the territory;
- 2) a prohibition on having an establishment in more than one Member State or on being entered in the registers or enrolled with professional bodies or associations of more than one Member State;
- 3) restrictions on the freedom of a provider to choose between a principal or a secondary establishment, in particular an obligation on the provider to have its principal establishment in their territory, or restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary;
- 4) conditions of reciprocity with the Member State in which the provider already has an establishment, save in the case of conditions of reciprocity provided for in Community instruments concerning energy;

5) the case-by-case application of an economic test making the granting of authorisation subject to proof of the existence of an economic need or market demand, an assessment of the potential or current economic effects of the activity or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority; this prohibition shall not concern planning requirements which do not pursue economic aims but serve overriding reasons relating to the public interest;

6) the direct or indirect involvement of competing operators, including within consultative bodies, in the granting of authorisations or in the adoption of other decisions of the competent authorities, with the exception of professional bodies and associations or other organisations acting as the competent authority; this prohibition shall not concern the consultation of organisations, such as chambers of commerce or social partners, on matters other than individual applications for authorisation, or a consultation of the public at large;

7) an obligation to provide or participate in a financial guarantee or to take out insurance from a provider or body established in their territory. This shall not affect the possibility for Member States to require insurance or financial guarantees as such, nor shall it affect requirements relating to the participation in a collective compensation fund, for instance for members of professional bodies or organisations;

8) an obligation to have been pre-registered, for a given period, in the registers held in their territory or to have previously exercised the activity for a given period in their territory.

Article 15

Requirements to be evaluated

1. Member States shall examine whether, under their legal system, any of the requirements listed in paragraph 2 are imposed and shall ensure that any such requirements are compatible with the conditions laid down in paragraph 3. Member States shall adapt their laws, regulations or administrative provisions so as to make them compatible with those conditions.

2. Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with any of the following non-discriminatory requirements:

- (a) quantitative or territorial restrictions, in particular in the form of limits fixed according to population or of a minimum geographical distance between providers;
- (b) an obligation on a provider to take a specific legal form;
- (c) requirements which relate to the shareholding of a company;

- (d) requirements, other than those concerning matters covered by Directive 2005/36/EC or provided for in other Community instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity;
- (e) a ban on having more than one establishment in the territory of the same State;
- (f) requirements fixing a minimum number of employees;
- (g) fixed minimum and/or maximum tariffs with which the provider must comply;
- (h) an obligation on the provider to supply other specific services jointly with his service.

3. Member States shall verify that the requirements referred to in paragraph 2 satisfy the following conditions:

- (a) non-discrimination: requirements must be neither directly nor indirectly discriminatory according to nationality nor, with regard to companies, according to the location of the registered office;
- (b) necessity: requirements must be justified by an overriding reason relating to the public interest;
- (c) proportionality: requirements must be suitable for securing the attainment of the objective pursued; they must not go beyond what is necessary to attain that objective and it must not be possible to replace those requirements with other, less restrictive measures which attain the same result.

4. Paragraphs 1, 2 and 3 shall apply to legislation in the field of services of general economic interest only insofar as the application of these paragraphs does not obstruct the performance, in law or in fact, of the particular task assigned to them.

5. In the mutual evaluation report provided for in Article 39(1), Member States shall specify the following:

- (a) the requirements that they intend to maintain and the reasons why they consider that those requirements comply with the conditions set out in paragraph 3;
- (b) the requirements which have been abolished or made less stringent.

6. From 28 December 2006 Member States shall not introduce any new requirement of a kind listed in paragraph 2, unless that requirement satisfies the conditions laid down in paragraph 3.

7. Member States shall notify the Commission of any new laws, regulations or administrative provisions which set requirements as referred to in paragraph 6, together with the reasons for those requirements. The Commission shall communicate the provisions concerned to the other Member States. Such notification shall not prevent Member States from adopting the provisions in question.

Within a period of 3 months from the date of receipt of the notification, the Commission shall examine the compatibility of any new requirements with Community law and, where appropriate, shall adopt a decision requesting the Member State in question to refrain from adopting them or to abolish them.

The notification of a draft national law in accordance with Directive 98/34/EC shall fulfil the obligation of notification provided for in this Directive.

CHAPTER IV

FREE MOVEMENT OF SERVICES

SECTION 1

Freedom to provide services and related derogations

Article 16

Freedom to provide services

1. Member States shall respect the right of providers to provide services in a Member State other than that in which they are established.

The Member State in which the service is provided shall ensure free access to and free exercise of a service activity within its territory.

Member States shall not make access to or exercise of a service activity in their territory subject to compliance with any requirements which do not respect the following principles:

- (a) non-discrimination: the requirement may be neither directly nor indirectly discriminatory with regard to nationality or, in the case of legal persons, with regard to the Member State in which they are established;
- (b) necessity: the requirement must be justified for reasons of public policy, public security, public health or the protection of the environment;
- (c) proportionality: the requirement must be suitable for attaining the objective pursued, and must not go beyond what is necessary to attain that objective.

2. Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing any of the following requirements:

- (a) an obligation on the provider to have an establishment in their territory;
- (b) an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register or registration with a professional body or association in their territory, except where provided for in this Directive or other instruments of Community law;
- (c) a ban on the provider setting up a certain form or type of infrastructure in their territory, including an office or chambers, which the provider needs in order to supply the services in question;
- (d) the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;
- (e) an obligation on the provider to possess an identity document issued by its competent authorities specific to the exercise of a service activity;
- (f) requirements, except for those necessary for health and safety at work, which affect the use of equipment and material which are an integral part of the service provided;
- (g) restrictions on the freedom to provide the services referred to in Article 19.

3. The Member State to which the provider moves shall not be prevented from imposing requirements with regard to the provision of a service activity, where they are justified for reasons of public policy, public security, public health or the protection of the environment and in accordance with paragraph 1. Nor shall that Member State be prevented from applying, in accordance with Community law, its rules on employment conditions, including those laid down in collective agreements.

4. By 28 December 2011 the Commission shall, after consultation of the Member States and the social partners at Community level, submit to the European Parliament and the Council a report on the application of this Article, in which it shall consider the need to propose harmonisation measures regarding service activities covered by this Directive.

Article 17

Additional derogations from the freedom to provide services

Article 16 shall not apply to:

- 1) services of general economic interest which are provided in another Member State, inter alia:
 - (a) in the postal sector, services covered by Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service ⁽¹⁾;
 - (b) in the electricity sector, services covered by Directive 2003/54/EC ⁽²⁾ of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity;
 - (c) in the gas sector, services covered by Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas ⁽³⁾;
 - (d) water distribution and supply services and waste water services;
 - (e) treatment of waste;
- 2) matters covered by Directive 96/71/EC;
- 3) matters covered by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽⁴⁾;
- 4) matters covered by Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services ⁽⁵⁾;
- 5) the activity of judicial recovery of debts;

⁽¹⁾ OJ L 15, 21.1.1998, p. 14. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 176, 15.7.2003, p. 37. Directive as last amended by Commission Decision 2006/653/EC (OJ L 270, 29.9.2006, p. 72).

⁽³⁾ OJ L 176, 15.7.2003, p. 57.

⁽⁴⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003.

⁽⁵⁾ OJ L 78, 26.3.1977, p. 17. Directive as last amended by the 2003 Act of Accession.

- 6) matters covered by Title II of Directive 2005/36/EC, as well as requirements in the Member State where the service is provided which reserve an activity to a particular profession;
- 7) matters covered by Regulation (EEC) No 1408/71;
- 8) as regards administrative formalities concerning the free movement of persons and their residence, matters covered by the provisions of Directive 2004/38/EC that lay down administrative formalities of the competent authorities of the Member State where the service is provided with which beneficiaries must comply;
- 9) as regards third country nationals who move to another Member State in the context of the provision of a service, the possibility for Member States to require visa or residence permits for third country nationals who are not covered by the mutual recognition regime provided for in Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders ⁽¹⁾ or the possibility to oblige third country nationals to report to the competent authorities of the Member State in which the service is provided on or after their entry;
- 10) as regards the shipment of waste, matters covered by Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community ⁽²⁾;
- 11) copyright, neighbouring rights and rights covered by Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products ⁽³⁾ and by Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases ⁽⁴⁾, as well as industrial property rights;
- 12) acts requiring by law the involvement of a notary;
- 13) matters covered by Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts ⁽⁵⁾;
- 14) the registration of vehicles leased in another Member State;

⁽¹⁾ OJ L 239, 22.9.2000, p. 19. Convention as last amended by Regulation (EC) No 1160/2005 of the European Parliament and of the Council (OJ L 191, 22.7.2005, p. 18).

⁽²⁾ OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2557/2001 (OJ L 349, 31.12.2001, p. 1).

⁽³⁾ OJ L 24, 27.1.1987, p. 36.

⁽⁴⁾ OJ L 77, 27.3.1996, p. 20.

⁽⁵⁾ OJ L 157, 9.6.2006, p. 87.

- 15) provisions regarding contractual and non-contractual obligations, including the form of contracts, determined pursuant to the rules of private international law.

Article 18

Case-by-case derogations

1. By way of derogation from Article 16, and in exceptional circumstances only, a Member State may, in respect of a provider established in another Member State, take measures relating to the safety of services.

2. The measures provided for in paragraph 1 may be taken only if the mutual assistance procedure laid down in Article 35 is complied with and the following conditions are fulfilled:

- (a) the national provisions in accordance with which the measure is taken have not been subject to Community harmonisation in the field of the safety of services;
- (b) the measures provide for a higher level of protection of the recipient than would be the case in a measure taken by the Member State of establishment in accordance with its national provisions;
- (c) the Member State of establishment has not taken any measures or has taken measures which are insufficient as compared with those referred to in Article 35(2);
- (d) the measures are proportionate.

3. Paragraphs 1 and 2 shall be without prejudice to provisions, laid down in Community instruments, which guarantee the freedom to provide services or which allow derogations therefrom.

SECTION 2

Rights of recipients of services

Article 19

Prohibited restrictions

Member States may not impose on a recipient requirements which restrict the use of a service supplied by a provider established in another Member State, in particular the following requirements:

- (a) an obligation to obtain authorisation from or to make a declaration to their competent authorities;

- (b) discriminatory limits on the grant of financial assistance by reason of the fact that the provider is established in another Member State or by reason of the location of the place at which the service is provided.

Article 20

Non-discrimination

1. Member States shall ensure that the recipient is not made subject to discriminatory requirements based on his nationality or place of residence.
2. Member States shall ensure that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, but without precluding the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria.

Article 21

Assistance for recipients

1. Member States shall ensure that recipients can obtain, in their Member State of residence, the following information:
 - (a) general information on the requirements applicable in other Member States relating to access to, and exercise of, service activities, in particular those relating to consumer protection;
 - (b) general information on the means of redress available in the case of a dispute between a provider and a recipient;
 - (c) the contact details of associations or organisations, including the centres of the European Consumer Centres Network, from which providers or recipients may obtain practical assistance.

Where appropriate, advice from the competent authorities shall include a simple step-by-step guide. Information and assistance shall be provided in a clear and unambiguous manner, shall be easily accessible at a distance, including by electronic means, and shall be kept up to date.

2. Member States may confer responsibility for the task referred to in paragraph 1 on points of single contact or on any other body, such as the centres of the European Consumer Centres Network, consumer associations or Euro Info Centres.

Member States shall communicate to the Commission the names and contact details of the designated bodies. The Commission shall transmit them to all Member States.

3. In fulfilment of the requirements set out in paragraphs 1 and 2, the body approached by the recipient shall, if necessary, contact the relevant body for the Member State concerned. The latter shall send the information requested as soon as possible to the requesting body which shall forward the information to the recipient. Member States shall ensure that those bodies give each other mutual assistance and shall put in place all possible measures for effective cooperation. Together with the Commission, Member States shall put in place practical arrangements necessary for the implementation of paragraph 1.

4. The Commission shall, in accordance with the procedure referred to in Article 40(2), adopt measures for the implementation of paragraphs 1, 2 and 3 of this Article, specifying the technical mechanisms for the exchange of information between the bodies of the various Member States and, in particular, the interoperability of information systems, taking into account common standards.

CHAPTER V

QUALITY OF SERVICES

Article 22

Information on providers and their services

1. Member States shall ensure that providers make the following information available to the recipient:
 - (a) the name of the provider, his legal status and form, the geographic address at which he is established and details enabling him to be contacted rapidly and communicated with directly and, as the case may be, by electronic means;
 - (b) where the provider is registered in a trade or other similar public register, the name of that register and the provider's registration number, or equivalent means of identification in that register;
 - (c) where the activity is subject to an authorisation scheme, the particulars of the relevant competent authority or the single point of contact;
 - (d) where the provider exercises an activity which is subject to VAT, the identification number referred to in Article 22(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment ⁽¹⁾;

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/18/EC (OJ L 51, 22.2.2006, p. 12).

- (e) in the case of the regulated professions, any professional body or similar institution with which the provider is registered, the professional title and the Member State in which that title has been granted;
- (f) the general conditions and clauses, if any, used by the provider;
- (g) the existence of contractual clauses, if any, used by the provider concerning the law applicable to the contract and/or the competent courts;
- (h) the existence of an after-sales guarantee, if any, not imposed by law;
- (i) the price of the service, where a price is pre-determined by the provider for a given type of service;
- (j) the main features of the service, if not already apparent from the context;
- (k) the insurance or guarantees referred to in Article 23(1), and in particular the contact details of the insurer or guarantor and the territorial coverage.

2. Member States shall ensure that the information referred to in paragraph 1, according to the provider's preference:

- (a) is supplied by the provider on his own initiative;
- (b) is easily accessible to the recipient at the place where the service is provided or the contract concluded;
- (c) can be easily accessed by the recipient electronically by means of an address supplied by the provider;
- (d) appears in any information documents supplied to the recipient by the provider which set out a detailed description of the service he provides.

3. Member States shall ensure that, at the recipient's request, providers supply the following additional information:

- (a) where the price is not pre-determined by the provider for a given type of service, the price of the service or, if an exact price cannot be given, the method for calculating the price so that it can be checked by the recipient, or a sufficiently detailed estimate;

- (b) as regards the regulated professions, a reference to the professional rules applicable in the Member State of establishment and how to access them;

- (c) information on their multidisciplinary activities and partnerships which are directly linked to the service in question and on the measures taken to avoid conflicts of interest. That information shall be included in any information document in which providers give a detailed description of their services;

- (d) any codes of conduct to which the provider is subject and the address at which these codes may be consulted by electronic means, specifying the language version available;

- (e) where a provider is subject to a code of conduct, or member of a trade association or professional body which provides for recourse to a non-judicial means of dispute settlement, information in this respect. The provider shall specify how to access detailed information on the characteristics of, and conditions for, the use of non-judicial means of dispute settlement.

4. Member States shall ensure that the information which a provider must supply in accordance with this Chapter is made available or communicated in a clear and unambiguous manner, and in good time before conclusion of the contract or, where there is no written contract, before the service is provided.

5. The information requirements laid down in this Chapter are in addition to requirements already provided for in Community law and do not prevent Member States from imposing additional information requirements applicable to providers established in their territory.

6. The Commission may, in accordance with the procedure referred to in Article 40(2), specify the content of the information provided for in paragraphs 1 and 3 of this Article according to the specific nature of certain activities and may specify the practical means of implementing paragraph 2 of this Article.

Article 23

Professional liability insurance and guarantees

1. Member States may ensure that providers whose services present a direct and particular risk to the health or safety of the recipient or a third person, or to the financial security of the recipient, subscribe to professional liability insurance appropriate to the nature and extent of the risk, or provide a guarantee or similar arrangement which is equivalent or essentially comparable as regards its purpose.

2. When a provider establishes himself in their territory, Member States may not require professional liability insurance or a guarantee from the provider where he is already covered by a guarantee which is equivalent, or essentially comparable as regards its purpose and the cover it provides in terms of the insured risk, the insured sum or a ceiling for the guarantee and possible exclusions from the cover, in another Member State in which the provider is already established. Where equivalence is only partial, Member States may require a supplementary guarantee to cover those aspects not already covered.

When a Member State requires a provider established in its territory to subscribe to professional liability insurance or to provide another guarantee, that Member State shall accept as sufficient evidence attestations of such insurance cover issued by credit institutions and insurers established in other Member States.

3. Paragraphs 1 and 2 shall not affect professional insurance or guarantee arrangements provided for in other Community instruments.

4. For the implementation of paragraph 1, the Commission may, in accordance with the regulatory procedure referred to in Article 40(2), establish a list of services which exhibit the characteristics referred to in paragraph 1 of this Article. The Commission may also, in accordance with the procedure referred to in Article 40(3), adopt measures designed to amend non-essential elements of this Directive by supplementing it by establishing common criteria for defining, for the purposes of the insurance or guarantees referred to in paragraph 1 of this Article, what is appropriate to the nature and extent of the risk.

5. For the purpose of this Article

— 'direct and particular risk' means a risk arising directly from the provision of the service,

— 'health and safety' means, in relation to a recipient or a third person, the prevention of death or serious personal injury,

— 'financial security' means, in relation to a recipient, the prevention of substantial losses of money or of value of property,

— 'professional liability insurance' means insurance taken out by a provider in respect of potential liabilities to recipients and, where applicable, third parties arising out of the provision of the service.

Article 24

Commercial communications by the regulated professions

1. Member States shall remove all total prohibitions on commercial communications by the regulated professions.

2. Member States shall ensure that commercial communications by the regulated professions comply with professional rules, in conformity with Community law, which relate, in particular, to the independence, dignity and integrity of the profession, as well as to professional secrecy, in a manner consistent with the specific nature of each profession. Professional rules on commercial communications shall be non-discriminatory, justified by an overriding reason relating to the public interest and proportionate.

Article 25

Multidisciplinary activities

1. Member States shall ensure that providers are not made subject to requirements which oblige them to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership of different activities.

However, the following providers may be made subject to such requirements:

(a) the regulated professions, in so far as is justified in order to guarantee compliance with the rules governing professional ethics and conduct, which vary according to the specific nature of each profession, and is necessary in order to ensure their independence and impartiality;

(b) providers of certification, accreditation, technical monitoring, test or trial services, in so far as is justified in order to ensure their independence and impartiality.

2. Where multidisciplinary activities between providers referred to in points (a) and (b) of paragraph 1 are authorised, Member States shall ensure the following:

(a) that conflicts of interest and incompatibilities between certain activities are prevented;

(b) that the independence and impartiality required for certain activities is secured;

(c) that the rules governing professional ethics and conduct for different activities are compatible with one another, especially as regards matters of professional secrecy.

3. In the report referred to in Article 39(1), Member States shall indicate which providers are subject to the requirements laid down in paragraph 1 of this Article, the content of those requirements and the reasons for which they consider them to be justified.

Article 26

Policy on quality of services

1. Member States shall, in cooperation with the Commission, take accompanying measures to encourage providers to take action on a voluntary basis in order to ensure the quality of service provision, in particular through use of one of the following methods:

- (a) certification or assessment of their activities by independent or accredited bodies;
- (b) drawing up their own quality charter or participation in quality charters or labels drawn up by professional bodies at Community level.

2. Member States shall ensure that information on the significance of certain labels and the criteria for applying labels and other quality marks relating to services can be easily accessed by providers and recipients.

3. Member States shall, in cooperation with the Commission, take accompanying measures to encourage professional bodies, as well as chambers of commerce and craft associations and consumer associations, in their territory to cooperate at Community level in order to promote the quality of service provision, especially by making it easier to assess the competence of a provider.

4. Member States shall, in cooperation with the Commission, take accompanying measures to encourage the development of independent assessments, notably by consumer associations, in relation to the quality and defects of service provision, and, in particular, the development at Community level of comparative trials or testing and the communication of the results.

5. Member States, in cooperation with the Commission, shall encourage the development of voluntary European standards with the aim of facilitating compatibility between services supplied by providers in different Member States, information to the recipient and the quality of service provision.

Article 27

Settlement of disputes

1. Member States shall take the general measures necessary to ensure that providers supply contact details, in particular a postal address, fax number or e-mail address and telephone number to which all recipients, including those resident in another Member State, can send a complaint or a request for information about the service provided. Providers shall supply their legal address if this is not their usual address for correspondence.

Member States shall take the general measures necessary to ensure that providers respond to the complaints referred to in the first subparagraph in the shortest possible time and make their best efforts to find a satisfactory solution.

2. Member States shall take the general measures necessary to ensure that providers are obliged to demonstrate compliance with the obligations laid down in this Directive as to the provision of information and to demonstrate that the information is accurate.

3. Where a financial guarantee is required for compliance with a judicial decision, Member States shall recognise equivalent guarantees lodged with a credit institution or insurer established in another Member State. Such credit institutions must be authorised in a Member State in accordance with Directive 2006/48/EC and such insurers in accordance, as appropriate, with First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance ⁽¹⁾ and Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance ⁽²⁾.

4. Member States shall take the general measures necessary to ensure that providers who are subject to a code of conduct, or are members of a trade association or professional body, which provides for recourse to a non-judicial means of dispute settlement inform the recipient thereof and mention that fact in any document which presents their services in detail, specifying how to access detailed information on the characteristics of, and conditions for, the use of such a mechanism.

CHAPTER VI

ADMINISTRATIVE COOPERATION

Article 28

Mutual assistance – general obligations

1. Member States shall give each other mutual assistance, and shall put in place measures for effective cooperation with one another, in order to ensure the supervision of providers and the services they provide.

2. For the purposes of this Chapter, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States and the Commission. The Commission shall publish and regularly update the list of liaison points.

⁽¹⁾ OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2005/68/EC of the European Parliament and of the Council (OJ L 323, 9.12.2005, p. 1).

⁽²⁾ OJ L 345, 19.12.2002, p. 1. Directive as last amended by Directive 2005/68/EC.

3. Information requests and requests to carry out any checks, inspections and investigations under this Chapter shall be duly motivated, in particular by specifying the reason for the request. Information exchanged shall be used only in respect of the matter for which it was requested.

4. In the event of receiving a request for assistance from competent authorities in another Member State, Member States shall ensure that providers established in their territory supply their competent authorities with all the information necessary for supervising their activities in compliance with their national laws.

5. In the event of difficulty in meeting a request for information or in carrying out checks, inspections or investigations, the Member State in question shall rapidly inform the requesting Member State with a view to finding a solution.

6. Member States shall supply the information requested by other Member States or the Commission by electronic means and within the shortest possible period of time.

7. Member States shall ensure that registers in which providers have been entered, and which may be consulted by the competent authorities in their territory, may also be consulted, in accordance with the same conditions, by the equivalent competent authorities of the other Member States.

8. Member States shall communicate to the Commission information on cases where other Member States do not fulfil their obligation of mutual assistance. Where necessary, the Commission shall take appropriate steps, including proceedings provided for in Article 226 of the Treaty, in order to ensure that the Member States concerned comply with their obligation of mutual assistance. The Commission shall periodically inform Member States about the functioning of the mutual assistance provisions.

Article 29

Mutual assistance – general obligations for the Member State of establishment

1. With respect to providers providing services in another Member State, the Member State of establishment shall supply information on providers established in its territory when requested to do so by another Member State and, in particular, confirmation that a provider is established in its territory and, to its knowledge, is not exercising his activities in an unlawful manner.

2. The Member State of establishment shall undertake the checks, inspections and investigations requested by another Member State and shall inform the latter of the results and, as the case may be, of the measures taken. In so doing, the competent authorities shall act to the extent permitted by the powers

vested in them in their Member State. The competent authorities can decide on the most appropriate measures to be taken in each individual case in order to meet the request by another Member State.

3. Upon gaining actual knowledge of any conduct or specific acts by a provider established in its territory which provides services in other Member States, that, to its knowledge, could cause serious damage to the health or safety of persons or to the environment, the Member State of establishment shall inform all other Member States and the Commission within the shortest possible period of time.

Article 30

Supervision by the Member State of establishment in the event of the temporary movement of a provider to another Member State

1. With respect to cases not covered by Article 31(1), the Member State of establishment shall ensure that compliance with its requirements is supervised in conformity with the powers of supervision provided for in its national law, in particular through supervisory measures at the place of establishment of the provider.

2. The Member State of establishment shall not refrain from taking supervisory or enforcement measures in its territory on the grounds that the service has been provided or caused damage in another Member State.

3. The obligation laid down in paragraph 1 shall not entail a duty on the part of the Member State of establishment to carry out factual checks and controls in the territory of the Member State where the service is provided. Such checks and controls shall be carried out by the authorities of the Member State where the provider is temporarily operating at the request of the authorities of the Member State of establishment, in accordance with Article 31.

Article 31

Supervision by the Member State where the service is provided in the event of the temporary movement of the provider

1. With respect to national requirements which may be imposed pursuant to Articles 16 or 17, the Member State where the service is provided is responsible for the supervision of the activity of the provider in its territory. In conformity with Community law, the Member State where the service is provided:

(a) shall take all measures necessary to ensure the provider complies with those requirements as regards the access to and the exercise of the activity;

(b) shall carry out the checks, inspections and investigations necessary to supervise the service provided.

2. With respect to requirements other than those referred to in paragraph 1, where a provider moves temporarily to another Member State in order to provide a service without being established there, the competent authorities of that Member State shall participate in the supervision of the provider in accordance with paragraphs 3 and 4.

3. At the request of the Member State of establishment, the competent authorities of the Member State where the service is provided shall carry out any checks, inspections and investigations necessary for ensuring the effective supervision by the Member State of establishment. In so doing, the competent authorities shall act to the extent permitted by the powers vested in them in their Member State. The competent authorities may decide on the most appropriate measures to be taken in each individual case in order to meet the request by the Member State of establishment.

4. On their own initiative, the competent authorities of the Member State where the service is provided may conduct checks, inspections and investigations on the spot, provided that those checks, inspections or investigations are not discriminatory, are not motivated by the fact that the provider is established in another Member State and are proportionate.

Article 32

Alert mechanism

1. Where a Member State becomes aware of serious specific acts or circumstances relating to a service activity that could cause serious damage to the health or safety of persons or to the environment in its territory or in the territory of other Member States, that Member State shall inform the Member State of establishment, the other Member States concerned and the Commission within the shortest possible period of time.

2. The Commission shall promote and take part in the operation of a European network of Member States' authorities in order to implement paragraph 1.

3. The Commission shall adopt and regularly update, in accordance with the procedure referred to in Article 40(2), detailed rules concerning the management of the network referred to in paragraph 2 of this Article.

Article 33

Information on the good repute of providers

1. Member States shall, at the request of a competent authority in another Member State, supply information, in conformity with their national law, on disciplinary or administrative actions or criminal sanctions and decisions concerning insolvency or bankruptcy involving fraud taken by their competent authorities in respect of the provider which are directly relevant to the provider's competence or professional reliability. The Member State which supplies the information shall inform the provider thereof.

A request made pursuant to the first subparagraph must be duly substantiated, in particular as regards the reasons for the request for information.

2. Sanctions and actions referred to in paragraph 1 shall only be communicated if a final decision has been taken. With regard to other enforceable decisions referred to in paragraph 1, the Member State which supplies the information shall specify whether a particular decision is final or whether an appeal has been lodged in respect of it, in which case the Member State in question should provide an indication of the date when the decision on appeal is expected.

Moreover, that Member State shall specify the provisions of national law pursuant to which the provider was found guilty or penalised.

3. Implementation of paragraphs 1 and 2 must comply with rules on the provision of personal data and with rights guaranteed to persons found guilty or penalised in the Member States concerned, including by professional bodies. Any information in question which is public shall be accessible to consumers.

Article 34

Accompanying measures

1. The Commission, in cooperation with Member States, shall establish an electronic system for the exchange of information between Member States, taking into account existing information systems.

2. Member States shall, with the assistance of the Commission, take accompanying measures to facilitate the exchange of officials in charge of the implementation of mutual assistance and training of such officials, including language and computer training.

3. The Commission shall assess the need to establish a multi-annual programme in order to organise relevant exchanges of officials and training.

Article 35

Mutual assistance in the event of case-by-case derogations

1. Where a Member State intends to take a measure pursuant to Article 18, the procedure laid down in paragraphs 2 to 6 of this Article shall apply without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation.

2. The Member State referred to in paragraph 1 shall ask the Member State of establishment to take measures with regard to the provider, supplying all relevant information on the service in question and the circumstances of the case.

The Member State of establishment shall check, within the shortest possible period of time, whether the provider is operating lawfully and verify the facts underlying the request. It shall inform the requesting Member State within the shortest possible period of time of the measures taken or envisaged or, as the case may be, the reasons why it has not taken any measures.

3. Following communication by the Member State of establishment as provided for in the second subparagraph of paragraph 2, the requesting Member State shall notify the Commission and the Member State of establishment of its intention to take measures, stating the following:

- (a) the reasons why it believes the measures taken or envisaged by the Member State of establishment are inadequate;
- (b) the reasons why it believes the measures it intends to take fulfil the conditions laid down in Article 18.

4. The measures may not be taken until fifteen working days after the date of notification provided for in paragraph 3.

5. Without prejudice to the possibility for the requesting Member State to take the measures in question upon expiry of the period specified in paragraph 4, the Commission shall, within the shortest possible period of time, examine the compatibility with Community law of the measures notified.

Where the Commission concludes that the measure is incompatible with Community law, it shall adopt a decision asking the Member State concerned to refrain from taking the proposed measures or to put an end to the measures in question as a matter of urgency.

6. In the case of urgency, a Member State which intends to take a measure may derogate from paragraphs 2, 3 and 4. In such cases, the measures shall be notified within the shortest possible period of time to the Commission and the Member State of establishment, stating the reasons for which the Member State considers that there is urgency.

Article 36

Implementing measures

In accordance with the procedure referred to in Article 40(3), the Commission shall adopt the implementing measures designed to amend non-essential elements of this Chapter by supplementing it by specifying the time-limits provided for in Articles 28 and 35. The Commission shall also adopt, in accordance with

the procedure referred to in Article 40(2), the practical arrangements for the exchange of information by electronic means between Member States, and in particular the interoperability provisions for information systems.

CHAPTER VII

CONVERGENCE PROGRAMME

Article 37

Codes of conduct at Community level

1. Member States shall, in cooperation with the Commission, take accompanying measures to encourage the drawing up at Community level, particularly by professional bodies, organisations and associations, of codes of conduct aimed at facilitating the provision of services or the establishment of a provider in another Member State, in conformity with Community law.

2. Member States shall ensure that the codes of conduct referred to in paragraph 1 are accessible at a distance, by electronic means.

Article 38

Additional harmonisation

The Commission shall assess, by 28 December 2010 the possibility of presenting proposals for harmonisation instruments on the following subjects:

- (a) access to the activity of judicial recovery of debts;
- (b) private security services and transport of cash and valuables.

Article 39

Mutual evaluation

1. By 28 December 2009 at the latest, Member States shall present a report to the Commission, containing the information specified in the following provisions:

- (a) Article 9(2), on authorisation schemes;
- (b) Article 15(5), on requirements to be evaluated;
- (c) Article 25(3), on multidisciplinary activities.

2. The Commission shall forward the reports provided for in paragraph 1 to the Member States, which shall submit their observations on each of the reports within six months of receipt. Within the same period, the Commission shall consult interested parties on those reports.

3. The Commission shall present the reports and the Member States' observations to the Committee referred to in Article 40(1), which may make observations.

4. In the light of the observations provided for in paragraphs 2 and 3, the Commission shall, by 28 December 2010 at the latest, present a summary report to the European Parliament and to the Council, accompanied where appropriate by proposals for additional initiatives.

5. By 28 December 2009 at the latest, Member States shall present a report to the Commission on the national requirements whose application could fall under the third subparagraph of Article 16(1) and the first sentence of Article 16(3), providing reasons why they consider that the application of those requirements fulfil the criteria referred to in the third subparagraph of Article 16(1) and the first sentence of Article 16(3).

Thereafter, Member States shall transmit to the Commission any changes in their requirements, including new requirements, as referred to above, together with the reasons for them.

The Commission shall communicate the transmitted requirements to other Member States. Such transmission shall not prevent the adoption by Member States of the provisions in question. The Commission shall on an annual basis thereafter provide analyses and orientations on the application of these provisions in the context of this Directive.

Article 40 **Committee procedure**

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.
3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 41 **Review clause**

The Commission, by 28 December 2011 and every three years thereafter, shall present to the European Parliament and to the Council a comprehensive report on the application of this Directive. This report shall, in accordance with Article 16(4), address in particular the application of Article 16. It shall also consider

the need for additional measures for matters excluded from the scope of application of this Directive. It shall be accompanied, where appropriate, by proposals for amendment of this Directive with a view to completing the Internal Market for services.

Article 42 **Amendment of Directive 98/27/EC**

In the Annex to Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests ⁽¹⁾, the following point shall be added:

- '13. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

Article 43 **Protection of personal data**

The implementation and application of this Directive and, in particular, the provisions on supervision shall respect the rules on the protection of personal data as provided for in Directives 95/46/EC and 2002/58/EC.

CHAPTER VIII FINAL PROVISIONS

Article 44 **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 28 December 2009.

They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

⁽¹⁾ OJ L 166, 11.6.1998, p. 51. Directive as last amended by Directive 2005/29/EC.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 45

Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 46

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 12 December 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

M. PEKKARINEN

Annex 2. Law 15/1999 on Personal Data Protection

La actual Ley Orgánica 15/1999, de 13 de diciembre de Protección de datos de carácter personal adaptó nuestro ordenamiento a lo dispuesto por la Directiva 95/46/CE del Parlamento Europeo y del Consejo de 24 de octubre de 1995, relativa a la protección de las personas físicas en lo que respecta al tratamiento de datos personales y a la libre circulación de estos datos, derogando a su vez la hasta entonces vigente Ley Orgánica 5/1992, de 29 de octubre, de Regulación del tratamiento automatizado de datos de carácter personal.

La nueva ley, que ha nacido con una amplia vocación de generalidad, prevé en su artículo 1 que «tiene por objeto garantizar y proteger, en lo que concierne al tratamiento de los datos personales, las libertades públicas y los derechos fundamentales de las personas físicas, y especialmente de su honor e intimidad personal». Comprende por tanto el tratamiento automatizado y el no automatizado de los datos de carácter personal.

A fin de garantizar la necesaria seguridad jurídica en un ámbito tan sensible para los derechos fundamentales como el de la protección de datos, el legislador declaró subsistentes las normas reglamentarias existentes y, en especial, los reales decretos 428/1993, de 26 de marzo, por el que se aprueba el Estatuto de la Agencia de Protección de Datos, 1332/1994, de 20 de junio, por el que se desarrollan determinados aspectos de la Ley Orgánica 5/1992, de 29 de octubre de Regulación del tratamiento automatizado de los datos de carácter personal y 994/1999, de 11 de junio, por el que se aprueba el Reglamento de Medidas de seguridad de los ficheros automatizados que contengan datos de carácter personal, a la vez que habilitó al Gobierno para la aprobación o modificación de las disposiciones reglamentarias necesarias para la aplicación y desarrollo de la Ley Orgánica 15/1999.

Por otra parte, la Ley 34/2002, de 11 de julio, de Servicios de la sociedad de la información y de comercio electrónico y la Ley 32/2003, de 3 de noviembre, General de Telecomunicaciones atribuyen competencias en materia sancionadora a la Agencia Española de Protección de Datos. Éstas requieren de desarrollo reglamentario con la peculiaridad de que ambas normas se ordenan a la tutela no sólo de los derechos de las personas físicas, sino también de las jurídicas.

II

Este Reglamento comparte con la Ley Orgánica la finalidad de hacer frente a los riesgos que para los derechos de la personalidad pueden suponer el acopio y tratamiento de datos personales. Por ello, ha de destacarse que esta norma reglamentaria nace con la vocación de no reiterar los contenidos de la norma superior y de desarrollar, no sólo los mandatos contenidos en la Ley Orgánica de acuerdo con los principios que emanan de la Directiva, sino también aquellos que en estos años de vigencia de la Ley se ha demostrado que precisan de un mayor desarrollo normativo.

Por tanto, se aprueba este Reglamento partiendo de la necesidad de dotar de coherencia a la regulación reglamentaria en todo lo relacionado con la transposición de la Directiva y de desarrollar los aspectos novedosos de la Ley Orgánica 15/1999, junto con aquellos en los que la experiencia ha aconsejado un cierto grado de precisión que dote de seguridad jurídica al sistema.

III

El reglamento viene a abarcar el ámbito tutelado anteriormente por los reales decretos 1332/1994, de 20 de junio, y 994/1999, de 11 de junio, teniendo en cuenta la necesidad de fijar criterios aplicables a los ficheros y tratamientos de datos personales no automatizados. Por otra parte, la atribución de funciones a la Agencia Española de Protección de Datos por la Ley

34/2002, de 11 de julio, de Servicios de la sociedad de la información y de comercio electrónico y la Ley 32/2003, de 3 de noviembre, General de Telecomunicaciones obliga a desarrollar también los procedimientos para el ejercicio de la potestad sancionadora por la Agencia.

El reglamento se estructura en nueve títulos cuyo contenido desarrolla los aspectos esenciales en esta materia.

El título I contempla el objeto y ámbito de aplicación del reglamento. A lo largo de la vigencia de la Ley Orgánica 15/1999, se ha advertido la conveniencia de desarrollar el apartado 2 de su artículo 2 para aclarar qué se entiende por ficheros y tratamientos relacionados con actividades personales o domésticas, aspecto muy relevante dado que están excluidos de la normativa sobre protección de datos de carácter personal.

Por otra parte, el presente reglamento no contiene previsiones para los tratamientos de datos personales a los que se refiere el apartado 3 del artículo 2 de la ley orgánica, dado que se rigen por sus disposiciones específicas y por lo especialmente previsto, en su caso, por la propia Ley Orgánica 15/1999. En consecuencia, se mantiene el régimen jurídico propio de estos tratamientos y ficheros.

Además, en este título se aporta un conjunto de definiciones que ayudan al correcto entendimiento de la norma, lo que resulta particularmente necesario en un ámbito tan tecnificado como el de la protección de datos personales. Por otra parte, fija el criterio a seguir en materia de cómputo de plazos con el fin de homogeneizar esta cuestión evitando distinciones que suponen diferencias de trato de los ficheros públicos respecto de los privados.

El título II, se refiere a los principios de la protección de datos. Reviste particular importancia la regulación del modo de captación del consentimiento atendiendo a aspectos muy específicos como el caso de los servicios de comunicaciones electrónicas y, muy particularmente, la captación de datos de los menores. Asimismo, se ofrece lo que no puede definirse sino como un estatuto del encargado del tratamiento, que sin duda contribuirá a clarificar todo lo relacionado con esta figura. Las previsiones en este ámbito se completan con lo dispuesto en el título VIII en materia de seguridad dotando de un marco coherente a la actuación del encargado.

El título III se ocupa de una cuestión tan esencial como los derechos de las personas en este ámbito. Estos derechos de acceso, rectificación, cancelación y oposición al tratamiento, según ha afirmado el Tribunal Constitucional en su sentencia número 292/2000, constituyen el haz de facultades que emanan del derecho fundamental a la protección de datos y «sirven a la capital función que desempeña este derecho fundamental: garantizar a la persona un poder de control sobre sus datos personales, lo que sólo es posible y efectivo imponiendo a terceros los mencionados deberes de hacer».

A continuación, los títulos IV a VII permiten clarificar aspectos importantes para el tráfico ordinario, como la aplicación de criterios específicos a determinado tipo de ficheros de titularidad privada que por su trascendencia lo requerían -los relativos a la solvencia patrimonial y crédito y los utilizados en actividades de publicidad y prospección comercial-, el conjunto de obligaciones materiales y formales que deben conducir a los responsables a la creación e inscripción de los ficheros, los criterios y procedimientos para la realización de las transferencias internacionales de datos, y, finalmente, la regulación de un instrumento, el código tipo, llamado a jugar cada vez un papel más relevante como elemento dinamizador del derecho fundamental a la protección de datos.

El título VIII regula un aspecto esencial para la tutela del derecho fundamental a la protección de datos, la seguridad, que repercute sobre múltiples aspectos organizativos, de gestión y aún de inversión, en todas las organizaciones que traten datos personales. La repercusión del deber de

seguridad obligaba a un particular rigor ya que en esta materia han confluído distintos elementos muy relevantes. Por una parte, la experiencia dimanante de la aplicación del Real Decreto 994/1999 permitía conocer las dificultades que habían enfrentado los responsables e identificar los puntos débiles y fuertes de la regulación. Por otra, se reclamaba la adaptación de la regulación en distintos aspectos. En este sentido, el reglamento trata de ser particularmente riguroso en la atribución de los niveles de seguridad, en la fijación de las medidas que corresponda adoptar en cada caso y en la revisión de las mismas cuando ello resulte necesario. Por otra parte, ordena con mayor precisión el contenido y las obligaciones vinculadas al mantenimiento del documento de seguridad. Además, se ha pretendido regular la materia de modo que contemple las múltiples formas de organización material y personal de la seguridad que se dan en la práctica. Por último, se regula un conjunto de medidas destinadas a los ficheros y tratamientos estructurados y no automatizados que ofrezca a los responsables un marco claro de actuación.

Finalmente en el título IX, dedicado a los procedimientos tramitados por la Agencia Española de Protección de Datos, se ha optado por normar exclusivamente aquellas especialidades que diferencian a los distintos procedimientos tramitados por la Agencia de las normas generales previstas para los procedimientos en la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común, cuya aplicación se declara supletoria al presente reglamento.

En su virtud, a propuesta del Ministro de Justicia, con la aprobación previa de la Ministra de Administraciones Públicas, de acuerdo con el Consejo de Estado y previa deliberación del Consejo de Ministros en su reunión del día 21 de diciembre de 2007.

DISPONGO :

Artículo único. Aprobación del reglamento.

Se aprueba el Reglamento de desarrollo de la Ley Orgánica 15/1999, de 13 de diciembre, de Protección de datos de carácter personal, cuyo texto se incluye a continuación.

Disposición transitoria primera. Adaptación de los códigos tipo inscritos en el Registro General de Protección de Datos.

En el plazo de un año desde la entrada en vigor del presente real decreto deberán notificarse a la Agencia Española de Protección de Datos las modificaciones que resulten necesarias en los códigos tipo inscritos en el Registro General de Protección de Datos para adaptar su contenido a lo dispuesto en el título VII del mismo.

Disposición transitoria segunda. Plazos de implantación de las medidas de seguridad.

La implantación de las medidas de seguridad previstas en el presente real decreto deberá producirse con arreglo a las siguientes reglas:

1.ª Respecto de los ficheros automatizados que existieran en la fecha de entrada en vigor del presente real decreto:

a) En el plazo de un año desde su entrada en vigor, deberán implantarse las medidas de seguridad de nivel medio exigibles a los siguientes ficheros:

1.º Aquéllos de los que sean responsables las Entidades Gestoras y Servicios Comunes de la Seguridad Social y se relacionen con el ejercicio de sus competencias.

2.º Aquéllos de los que sean responsables las mutuas de accidentes de trabajo y enfermedades profesionales de la Seguridad Social.

3.º Aquéllos que contengan un conjunto de datos de carácter personal que ofrezcan una definición de las características o de la personalidad de los ciudadanos y que permitan evaluar determinados aspectos de la personalidad o del comportamiento de los mismos, respecto de las medidas de este nivel que no fueran exigibles conforme a lo previsto en el artículo 4.4 del Reglamento de Medidas de seguridad de los ficheros automatizados de datos de carácter personal, aprobado por Real Decreto 994/1999, de 11 de junio.

b) En el plazo de un año desde su entrada en vigor deberán implantarse las medidas de seguridad de nivel medio y en el de dieciocho meses desde aquella fecha, las de nivel alto exigibles a los siguientes ficheros:

1.º Aquéllos que contengan datos derivados de actos de violencia de género.

2.º Aquéllos de los que sean responsables los operadores que presten servicios de comunicaciones electrónicas disponibles al público o exploten redes públicas de comunicaciones electrónicas respecto a los datos de tráfico y a los datos de localización.

c) En los demás supuestos, cuando el presente reglamento exija la implantación de una medida adicional, no prevista en el Reglamento de Medidas de seguridad de los ficheros automatizados de datos de carácter personal, aprobado por Real Decreto 994/1999, de 11 de junio, dicha medida deberá implantarse en el plazo de un año desde la entrada en vigor del presente real decreto.

2.ª Respecto de los ficheros no automatizados que existieran en la fecha de entrada en vigor del presente real decreto:

a) Las medidas de seguridad de nivel básico deberán implantarse en el plazo de un año desde su entrada en vigor.

b) Las medidas de seguridad de nivel medio deberán implantarse en el plazo de dieciocho meses desde su entrada en vigor.

c) Las medidas de seguridad de nivel alto deberán implantarse en el plazo de dos años desde su entrada en vigor.

3.ª Los ficheros, tanto automatizados como no automatizados, creados con posterioridad a la fecha de entrada en vigor del presente real decreto deberán tener implantadas, desde el momento de su creación la totalidad de las medidas de seguridad reguladas en el mismo.

Disposición transitoria tercera. Régimen transitorio de las solicitudes para el ejercicio de los derechos de las personas.

A las solicitudes para el ejercicio de los derechos de acceso, oposición, rectificación y cancelación que hayan sido efectuadas antes de la entrada en vigor del presente real decreto, no les será de aplicación el mismo, rigiéndose por la normativa anterior.

Disposición transitoria cuarta. Régimen transitorio de los procedimientos.

A los procedimientos ya iniciados antes de la entrada en vigor del presente real decreto, no les será de aplicación el mismo, rigiéndose por la normativa anterior.

Disposición transitoria quinta. Régimen transitorio de las actuaciones previas.

A las actuaciones previas iniciadas con anterioridad a la entrada en vigor del presente real decreto, no les será de aplicación el mismo, rigiéndose por la normativa anterior.

El presente real decreto se aplicará a las actuaciones previas que se inicien después de su entrada en vigor.

Disposición derogatoria única. Derogación normativa.

Quedan derogados el Real Decreto 1332/1994, de 20 de junio, por el que se desarrollan determinados aspectos de la Ley Orgánica 5/1992, de 29 de octubre, de Regulación del tratamiento automatizado de los datos de carácter personal, el Real Decreto 994/1999, de 11 de junio, por el que se aprueba el Reglamento de Medidas de seguridad de los ficheros automatizados que contengan datos de carácter personal y todas las normas de igual o inferior rango que contradigan o se opongan a lo dispuesto en el presente real decreto.

Disposición final primera. Título competencial.

El título I, con excepción del apartado c) del artículo 4, los títulos II, III, VII y VIII, así como los artículos 52, 53.3, 53.4, 54, 55.1, 55.3, 56, 57, 58 y 63.3 del reglamento se dictan al amparo de lo dispuesto en el artículo 149.1.1.^a de la Constitución, que atribuye al Estado la competencia exclusiva para la regulación de las condiciones básicas que garanticen la igualdad de todos los españoles en el ejercicio de los derechos y en el cumplimiento de los deberes constitucionales.

Disposición final segunda. Entrada en vigor.

El presente real decreto entrará en vigor a los tres meses de su íntegra publicación en el «Boletín Oficial del Estado».

Dado en Madrid, el 21 de diciembre de 2007.

JUAN CARLOS R.

El Ministro de Justicia,

MARIANO FERNÁNDEZ BERMEJO

REGLAMENTO DE DESARROLLO DE LA LEY ORGÁNICA 15/1999, DE 13 DE DICIEMBRE, DE PROTECCIÓN DE DATOS DE CARÁCTER PERSONAL

Título I. Disposiciones generales.

Artículo 1. Objeto.

Artículo 2. Ámbito objetivo de aplicación.

Artículo 3. Ámbito territorial de aplicación.

Artículo 4. Ficheros o tratamientos excluidos.

Artículo 5. Definiciones.

Artículo 6. Cómputo de plazos.

Artículo 7. Fuentes accesibles al público.

Título II. Principios de protección de datos.

Capítulo I. Calidad de los datos.

Artículo 8. Principios de calidad de los datos.

Artículo 9. Tratamiento con fines estadísticos, históricos o científicos.

Artículo 10. Supuestos que legitiman el tratamiento o cesión de los datos.

Artículo 11. Verificación de datos en solicitudes formuladas a las Administraciones Públicas.

Capítulo II. Consentimiento para el tratamiento de los datos y deber de información.

Sección Primera. Obtención del consentimiento del afectado.

Artículo 12. Principios generales.

Artículo 13. Consentimiento para el tratamiento de datos de menores de edad.

Artículo 14. Forma de recabar el consentimiento.

Artículo 15. Solicitud del consentimiento en el marco de una relación contractual para fines no relacionados directamente con la misma.

Artículo 16. Tratamiento de datos de facturación y tráfico en servicios de comunicaciones electrónicas.

Artículo 17. Revocación del consentimiento.

Sección Segunda. Deber de información al interesado.

Artículo 18. Acreditación del cumplimiento del deber de información.

Artículo 19. Supuestos especiales.

Capítulo III. Encargado del tratamiento.

Artículo 20. Relaciones entre el responsable y el encargado del tratamiento.

Artículo 21. Posibilidad de subcontratación de los servicios.

Artículo 22. Conservación de los datos por el encargado del tratamiento.

Título III. Derechos de acceso, rectificación, cancelación y oposición.

Capítulo I. Disposiciones generales.

Artículo 23. Carácter personalísimo.

Artículo 24. Condiciones generales para el ejercicio de los derechos de acceso, rectificación, cancelación y oposición.

Artículo 25. Procedimiento.

Artículo 26. Ejercicio de los derechos ante un encargado del tratamiento.

Capítulo II. Derecho de acceso.

Artículo 27. Derecho de acceso.

Artículo 28. Ejercicio del derecho de acceso.

Artículo 29. Otorgamiento del acceso.

Artículo 30. Denegación del acceso.

Capítulo III. Derechos de rectificación y cancelación.

Artículo 31. Derechos de rectificación y cancelación.

Artículo 32. Ejercicio de los derechos de rectificación y cancelación.

Artículo 33. Denegación de los derechos de rectificación y cancelación.

Capítulo IV. Derecho de oposición.

Artículo 34. Derecho de oposición.

Artículo 35. Ejercicio del derecho de oposición.

Artículo 36. Derecho de oposición a las decisiones basadas únicamente en un tratamiento automatizado de datos.

Título IV. Disposiciones aplicables a determinados ficheros de titularidad privada.

Capítulo I. Ficheros de información sobre solvencia patrimonial y crédito.

Sección Primera. Disposiciones generales.

Artículo 37. Régimen aplicable.

Sección Segunda. Tratamiento de datos relativos al cumplimiento o incumplimiento de obligaciones dinerarias facilitados por el acreedor o por quien actúe por su cuenta o interés.

Artículo 38. Requisitos para la inclusión de los datos.

Artículo 39. Información previa a la inclusión.

Artículo 40. Notificación de inclusión.

Artículo 41. Conservación de los datos.

Artículo 42. Acceso a la información contenida en el fichero.

Artículo 43. Responsabilidad.

Artículo 44. Ejercicio de los derechos de acceso, rectificación, cancelación y oposición.

Capítulo II. Tratamientos para actividades de publicidad y prospección comercial.

Artículo 45. Datos susceptibles de tratamiento e información al interesado.

Artículo 46. Tratamiento de datos en campañas publicitarias.

Artículo 47. Depuración de datos personales.

Artículo 48. Ficheros de exclusión del envío de comunicaciones comerciales.

Artículo 49. Ficheros comunes de exclusión del envío de comunicaciones comerciales.

Artículo 50. Derechos de acceso, rectificación y cancelación.

Artículo 51. Derecho de oposición.

Título V. Obligaciones previas al tratamiento de los datos.

Capítulo I. Creación, modificación o supresión de ficheros de titularidad pública.

Artículo 52. Disposición o Acuerdo de creación, modificación o supresión del fichero.

Artículo 53. Forma de la disposición o acuerdo.

Artículo 54. Contenido de la disposición o acuerdo.

Capítulo II. Notificación e inscripción de los ficheros de titularidad pública o privada.

Artículo 55. Notificación de ficheros.

Artículo 56. Tratamiento de datos en distintos soportes.

Artículo 57. Ficheros en los que exista más de un responsable.

Artículo 58. Notificación de la modificación o supresión de ficheros.

Artículo 59. Modelos y soportes para la notificación.

Artículo 60. Inscripción de los ficheros.

Artículo 61. Cancelación de la inscripción.

Artículo 62. Rectificación de errores.

Artículo 63. Inscripción de oficio de ficheros de titularidad pública.

Artículo 64. Colaboración con las Autoridades de Control de las Comunidades Autónomas.

Título VI. Transferencias internacionales de datos.

Capítulo I. Disposiciones generales.

Artículo 65. Cumplimiento de las disposiciones de la Ley Orgánica 15/1999, de 13 de diciembre.

Artículo 66. Autorización y notificación.

Capítulo II. Transferencias a estados que proporcionen un nivel adecuado de protección.

Artículo 67. Nivel adecuado de protección acordado por la Agencia Española de Protección de Datos.

Artículo 68. Nivel adecuado de protección declarado por Decisión de la Comisión Europea.

Artículo 69. Suspensión temporal de las transferencias.

Capítulo III. Transferencias a estados que no proporcionen un nivel adecuado de protección.

Artículo 70. Transferencias sujetas a autorización del Director de la Agencia Española de Protección de Datos.

Título VII. Códigos tipo.

Artículo 71. Objeto y naturaleza.

Artículo 72. Iniciativa y ámbito de aplicación.

Artículo 73. Contenido.

Artículo 74. Compromisos adicionales

Artículo 75. Garantías del cumplimiento de los códigos tipo.

Artículo 76. Relación de adheridos.

Artículo 77. Depósito y publicidad de los códigos tipo.

Artículo 78. Obligaciones posteriores a la inscripción del código tipo.

Título VIII. De las medidas de seguridad en el tratamiento de datos de carácter personal.

Capítulo I. Disposiciones generales.

Artículo 79. Alcance.

Artículo 80. Niveles de seguridad.

Artículo 81. Aplicación de los niveles de seguridad.

Artículo 82. Encargado del tratamiento.

Artículo 83. Prestaciones de servicios sin acceso a datos personales.

Artículo 84. Delegación de autorizaciones.

Artículo 85. Acceso a datos a través de redes de comunicaciones.

Artículo 86. Régimen de trabajo fuera de los locales del responsable del fichero o encargado del tratamiento.

Artículo 87. Ficheros temporales o copias de trabajo de documentos.

Capítulo II. Del documento de seguridad.

Artículo 88. El documento de seguridad.

Capítulo III. Medidas de seguridad aplicables a ficheros y tratamientos automatizados.

Sección Primera. Medidas de seguridad de nivel básico.

Artículo 89. Funciones y obligaciones del personal.

Artículo 90. Registro de incidencias.

Artículo 91. Control de acceso.

Artículo 92. Gestión de soportes.

Artículo 93. Identificación y autenticación.

Artículo 94. Copias de respaldo y recuperación.

Sección Segunda. Medidas de seguridad de nivel medio.

Artículo 95. Responsable de seguridad.

Artículo 96. Auditoría.

Artículo 97. Gestión de soportes.

Artículo 98. Identificación y autenticación.

Artículo 99. Control de acceso físico.

Artículo 100. Registro de incidencias.

Sección Tercera. Medidas de seguridad de nivel alto.

Artículo 101. Gestión y distribución de soportes.

Artículo 102. Copias de respaldo y recuperación.

Artículo 103. Registro de accesos.

Artículo 104. Telecomunicaciones.

Capítulo IV. Medidas de seguridad aplicables a los ficheros y tratamientos no automatizados.

Sección Primera. Medidas de seguridad de nivel básico.

Artículo 105. Obligaciones comunes.

Artículo 106. Criterios de archivo.

Artículo 107. Dispositivos de almacenamiento.

Artículo 108. Custodia de los soportes.

Sección Segunda. Medidas de seguridad de nivel medio.

Artículo 109. Responsabilidad de seguridad.

Artículo 110. Auditoría.

Sección Tercera. Medidas de seguridad de nivel alto.

Artículo 111. Almacenamiento de la información.

Artículo 112. Copia o reproducción.

Artículo 113. Acceso a la documentación.

Artículo 114. Traslado de documentación.

Título IX. Procedimientos tramitados por la Agencia Española de Protección de Datos.

Capítulo I. Disposiciones generales.

Artículo 115. Régimen aplicable.

Artículo 116. Publicidad de las resoluciones

Capítulo II. Procedimiento de tutela de los derechos de acceso, rectificación, cancelación y oposición.

Artículo 117. Instrucción del procedimiento.

Artículo 118. Duración del procedimiento y efectos de la falta de resolución expresa.

Artículo 119. Ejecución de la resolución.

Capítulo III. Procedimientos relativos al ejercicio de la potestad sancionadora.

Sección Primera. Disposiciones Generales.

Artículo 120. Ámbito de aplicación.

Artículo 121. Inmovilización de ficheros.

Sección Segunda. Actuaciones previas.

Artículo 122. Iniciación.

Artículo 123. Personal competente para la realización de las actuaciones previas.

Artículo 124. Obtención de información.

Artículo 125. Actuaciones presenciales.

Artículo 126. Resultado de las actuaciones previas.

Sección Tercera Procedimiento Sancionador.

Artículo 127. Iniciación del procedimiento.

Artículo 128. Plazo máximo para resolver.

Sección Cuarta. Procedimiento de declaración de infracción de la Ley Orgánica 15/1999, de 13 de diciembre, por las Administraciones Públicas.

Artículo 129. Disposición general.

Capítulo IV. Procedimientos relacionados con la inscripción o cancelación de ficheros.

Sección Primera. Procedimiento de inscripción de la creación, modificación o supresión de ficheros.

Artículo 130. Iniciación del procedimiento.

Artículo 131. Especialidades en la notificación de ficheros de titularidad pública.

Artículo 132. Acuerdo de inscripción o cancelación.

Artículo 133. Improcedencia o denegación de la inscripción.

Artículo 134. Duración del procedimiento y efectos de la falta de resolución expresa.

Sección Segunda. Procedimiento de cancelación de oficio de ficheros inscritos.

Artículo 135. Iniciación del procedimiento.

Artículo 136. Terminación del expediente.

Capítulo V. Procedimientos relacionados con las transferencias internacionales de datos.

Sección Primera. Procedimiento de autorización de transferencias internacionales de datos.

Artículo 137. Iniciación del procedimiento.

Artículo 138. Instrucción del procedimiento.

Artículo 139. Actos posteriores a la resolución.

Artículo 140. Duración del procedimiento y efectos de la falta de resolución expresa.

Sección Segunda. Procedimiento de suspensión temporal de transferencias internacionales de datos.

Artículo 141. Iniciación.

Artículo 142. Instrucción y resolución.

Artículo 143. Actos posteriores a la resolución.

Artículo 144. Levantamiento de la suspensión temporal.

Capítulo VI. Procedimiento de inscripción de códigos tipo.

Artículo 145. Iniciación del procedimiento.

Artículo 146. Análisis de los aspectos sustantivos del código tipo.

Artículo 147. Información pública.

Artículo 148. Mejora del código tipo.

Artículo 149. Trámite de audiencia.

Artículo 150. Resolución.

Artículo 151. Duración del procedimiento y efectos de la falta de resolución expresa.

Artículo 152. Publicación de los códigos tipo por la Agencia Española de Protección de Datos.

Capítulo VII. Otros procedimientos tramitados por la Agencia Española de Protección de Datos.

Sección Primera. Procedimiento de exención del deber de información al interesado

Artículo 153. Iniciación del procedimiento.

Artículo 154. Propuesta de nuevas medidas compensatorias

Artículo 155. Terminación del procedimiento.

Artículo 156. Duración del procedimiento y efectos de la falta de resolución expresa.

Sección Segunda. Procedimiento para la autorización de conservación de datos para fines históricos, estadísticos o científicos.

Artículo 157. Iniciación del procedimiento.

Artículo 158. Duración del procedimiento y efectos de la falta de resolución expresa.

Disposición adicional única. Productos de software.

Disposición final única. Aplicación supletoria.

TÍTULO I

Disposiciones generales

Artículo 1. Objeto.

1. El presente reglamento tiene por objeto el desarrollo de la Ley Orgánica 15/1999, de 13 de diciembre, de Protección de datos de carácter personal.

2. Asimismo, el capítulo III del título IX de este reglamento desarrolla las disposiciones relativas al ejercicio por la Agencia Española de Protección de Datos de la potestad sancionadora, en aplicación de lo dispuesto en la Ley Orgánica 15/1999, de 13 de diciembre, en el título VII de la Ley 34/2002, de 11 de julio, de Servicios de la sociedad de la información y de comercio electrónico, y en el título VIII de la Ley 32/2003, de 3 de noviembre, General de Telecomunicaciones.

Artículo 2. Ámbito objetivo de aplicación.

1. El presente reglamento será de aplicación a los datos de carácter personal registrados en soporte físico, que los haga susceptibles de tratamiento, y a toda modalidad de uso posterior de estos datos por los sectores público y privado.

2. Este reglamento no será aplicable a los tratamientos de datos referidos a personas jurídicas, ni a los ficheros que se limiten a incorporar los datos de las personas físicas que presten sus servicios en aquéllas, consistentes únicamente en su nombre y apellidos, las funciones o puestos desempeñados, así como la dirección postal o electrónica, teléfono y número de fax profesionales.

3. Asimismo, los datos relativos a empresarios individuales, cuando hagan referencia a ellos en su calidad de comerciantes, industriales o navieros, también se entenderán excluidos del régimen de aplicación de la protección de datos de carácter personal.

4. Este reglamento no será de aplicación a los datos referidos a personas fallecidas. No obstante, las personas vinculadas al fallecido, por razones familiares o análogas, podrán dirigirse a los responsables de los ficheros o tratamientos que contengan datos de éste con la finalidad de notificar el óbito, aportando acreditación suficiente del mismo, y solicitar, cuando hubiere lugar a ello, la cancelación de los datos.

Artículo 3. Ámbito territorial de aplicación.

1. Se regirá por el presente reglamento todo tratamiento de datos de carácter personal:

a) Cuando el tratamiento sea efectuado en el marco de las actividades de un establecimiento del responsable del tratamiento, siempre que dicho establecimiento se encuentre ubicado en territorio español.

Cuando no resulte de aplicación lo dispuesto en el párrafo anterior, pero exista un encargado del tratamiento ubicado en España, serán de aplicación al mismo las normas contenidas en el título VIII del presente reglamento.

b) Cuando al responsable del tratamiento no establecido en territorio español, le sea de aplicación la legislación española, según las normas de Derecho internacional público.

c) Cuando el responsable del tratamiento no esté establecido en territorio de la Unión Europea y utilice en el tratamiento de datos medios situados en territorio español, salvo que tales medios se utilicen únicamente con fines de tránsito.

En este supuesto, el responsable del tratamiento deberá designar un representante establecido en territorio español.

2. A los efectos previstos en los apartados anteriores, se entenderá por establecimiento, con independencia de su forma jurídica, cualquier instalación estable que permita el ejercicio efectivo y real de una actividad.

Artículo 4. Ficheros o tratamientos excluidos.

El régimen de protección de los datos de carácter personal que se establece en el presente reglamento no será de aplicación a los siguientes ficheros y tratamientos:

a) A los realizados o mantenidos por personas físicas en el ejercicio de actividades exclusivamente personales o domésticas.

Sólo se considerarán relacionados con actividades personales o domésticas los tratamientos relativos a las actividades que se inscriben en el marco de la vida privada o familiar de los particulares.

b) A los sometidos a la normativa sobre protección de materias clasificadas.

c) A los establecidos para la investigación del terrorismo y de formas graves de delincuencia organizada. No obstante el responsable del fichero comunicará previamente la existencia del mismo, sus características generales y su finalidad a la Agencia Española de Protección de Datos.

Artículo 5. Definiciones.

1. A los efectos previstos en este reglamento, se entenderá por:

a) Afectado o interesado: Persona física titular de los datos que sean objeto del tratamiento.

b) Cancelación: Procedimiento en virtud del cual el responsable cesa en el uso de los datos. La cancelación implicará el bloqueo de los datos, consistente en la identificación y reserva de los mismos con el fin de impedir su tratamiento excepto para su puesta a disposición de las Administraciones públicas, Jueces y Tribunales, para la atención de las posibles responsabilidades nacidas del tratamiento y sólo durante el plazo de prescripción de dichas responsabilidades. Transcurrido ese plazo deberá procederse a la supresión de los datos.

c) Cesión o comunicación de datos: Tratamiento de datos que supone su revelación a una persona distinta del interesado.

d) Consentimiento del interesado: Toda manifestación de voluntad, libre, inequívoca, específica e informada, mediante la que el interesado consienta el tratamiento de datos personales que le conciernen.

e) Dato disociado: aquél que no permite la identificación de un afectado o interesado.

f) Datos de carácter personal: Cualquier información numérica, alfabética, gráfica, fotográfica, acústica o de cualquier otro tipo concerniente a personas físicas identificadas o identificables.

g) Datos de carácter personal relacionados con la salud: las informaciones concernientes a la salud pasada, presente y futura, física o mental, de un individuo. En particular, se consideran datos relacionados con la salud de las personas los referidos a su porcentaje de discapacidad y a su información genética.

h) Destinatario o cesionario: la persona física o jurídica, pública o privada u órgano administrativo, al que se revelen los datos.

Podrán ser también destinatarios los entes sin personalidad jurídica que actúen en el tráfico como sujetos diferenciados.

i) Encargado del tratamiento: La persona física o jurídica, pública o privada, u órgano administrativo que, solo o conjuntamente con otros, trate datos personales por cuenta del responsable del tratamiento o del responsable del fichero, como consecuencia de la existencia de una relación jurídica que le vincula con el mismo y delimita el ámbito de su actuación para la prestación de un servicio.

Podrán ser también encargados del tratamiento los entes sin personalidad jurídica que actúen en el tráfico como sujetos diferenciados.

j) Exportador de datos personales: la persona física o jurídica, pública o privada, u órgano administrativo situado en territorio español que realice, conforme a lo dispuesto en el presente Reglamento, una transferencia de datos de carácter personal a un país tercero.

k) Fichero: Todo conjunto organizado de datos de carácter personal, que permita el acceso a los datos con arreglo a criterios determinados, cualquiera que fuere la forma o modalidad de su creación, almacenamiento, organización y acceso.

l) Ficheros de titularidad privada: los ficheros de los que sean responsables las personas, empresas o entidades de derecho privado, con independencia de quien ostente la titularidad de su capital o de la procedencia de sus recursos económicos, así como los ficheros de los que sean responsables las corporaciones de derecho público, en cuanto dichos ficheros no se encuentren estrictamente vinculados al ejercicio de potestades de derecho público que a las mismas atribuye su normativa específica.

m) Ficheros de titularidad pública: los ficheros de los que sean responsables los órganos constitucionales o con relevancia constitucional del Estado o las instituciones autonómicas con funciones análogas a los mismos, las Administraciones públicas territoriales, así como las entidades u organismos vinculados o dependientes de las mismas y las Corporaciones de derecho público siempre que su finalidad sea el ejercicio de potestades de derecho público.

n) Fichero no automatizado: todo conjunto de datos de carácter personal organizado de forma no automatizada y estructurado conforme a criterios específicos relativos a personas físicas, que permitan acceder sin esfuerzos desproporcionados a sus datos personales, ya sea aquél centralizado, descentralizado o repartido de forma funcional o geográfica.

ñ) Importador de datos personales: la persona física o jurídica, pública o privada, u órgano administrativo receptor de los datos en caso de transferencia internacional de los mismos a un tercer país, ya sea responsable del tratamiento, encargada del tratamiento o tercero.

o) Persona identificable: toda persona cuya identidad pueda determinarse, directa o indirectamente, mediante cualquier información referida a su identidad física, fisiológica, psíquica, económica, cultural o social. Una persona física no se considerará identificable si dicha identificación requiere plazos o actividades desproporcionados.

p) Procedimiento de disociación: Todo tratamiento de datos personales que permita la obtención de datos disociados.

q) Responsable del fichero o del tratamiento: Persona física o jurídica, de naturaleza pública o privada, u órgano administrativo, que sólo o conjuntamente con otros decida sobre la finalidad, contenido y uso del tratamiento, aunque no lo realizase materialmente.

Podrán ser también responsables del fichero o del tratamiento los entes sin personalidad jurídica que actúen en el tráfico como sujetos diferenciados.

r) Tercero: la persona física o jurídica, pública o privada u órgano administrativo distinta del afectado o interesado, del responsable del tratamiento, del responsable del fichero, del encargado del tratamiento y de las personas autorizadas para tratar los datos bajo la autoridad directa del responsable del tratamiento o del encargado del tratamiento.

Podrán ser también terceros los entes sin personalidad jurídica que actúen en el tráfico como sujetos diferenciados.

s) Transferencia internacional de datos: Tratamiento de datos que supone una transmisión de los mismos fuera del territorio del Espacio Económico Europeo, bien constituya una cesión o comunicación de datos, bien tenga por objeto la realización de un tratamiento de datos por cuenta del responsable del fichero establecido en territorio español.

t) Tratamiento de datos: cualquier operación o procedimiento técnico, sea o no automatizado, que permita la recogida, grabación, conservación, elaboración, modificación, consulta, utilización, modificación, cancelación, bloqueo o supresión, así como las cesiones de datos que resulten de comunicaciones, consultas, interconexiones y transferencias.

2. En particular, en relación con lo dispuesto en el título VIII de este reglamento se entenderá por:

a) Accesos autorizados: autorizaciones concedidas a un usuario para la utilización de los diversos recursos. En su caso, incluirán las autorizaciones o funciones que tenga atribuidas un usuario por delegación del responsable del fichero o tratamiento o del responsable de seguridad.

b) Autenticación: procedimiento de comprobación de la identidad de un usuario.

c) Contraseña: información confidencial, frecuentemente constituida por una cadena de caracteres, que puede ser usada en la autenticación de un usuario o en el acceso a un recurso.

- d) Control de acceso: mecanismo que en función de la identificación ya autenticada permite acceder a datos o recursos.
- e) Copia de respaldo: copia de los datos de un fichero automatizado en un soporte que posibilite su recuperación.
- f) Documento: todo escrito, gráfico, sonido, imagen o cualquier otra clase de información que puede ser tratada en un sistema de información como una unidad diferenciada.
- g) Ficheros temporales: ficheros de trabajo creados por usuarios o procesos que son necesarios para un tratamiento ocasional o como paso intermedio durante la realización de un tratamiento.
- h) Identificación: procedimiento de reconocimiento de la identidad de un usuario.
- i) Incidencia: cualquier anomalía que afecte o pudiera afectar a la seguridad de los datos.
- j) Perfil de usuario: accesos autorizados a un grupo de usuarios.
- k) Recurso: cualquier parte componente de un sistema de información.
- l) Responsable de seguridad: persona o personas a las que el responsable del fichero ha asignado formalmente la función de coordinar y controlar las medidas de seguridad aplicables.
- m) Sistema de información: conjunto de ficheros, tratamientos, programas, soportes y en su caso, equipos empleados para el tratamiento de datos de carácter personal.
- n) Sistema de tratamiento: modo en que se organiza o utiliza un sistema de información. Atendiendo al sistema de tratamiento, los sistemas de información podrán ser automatizados, no automatizados o parcialmente automatizados.
- ñ) Soporte: objeto físico que almacena o contiene datos o documentos, u objeto susceptible de ser tratado en un sistema de información y sobre el cual se pueden grabar y recuperar datos.
- o) Transmisión de documentos: cualquier traslado, comunicación, envío, entrega o divulgación de la información contenida en el mismo.
- p) Usuario: sujeto o proceso autorizado para acceder a datos o recursos. Tendrán la consideración de usuarios los procesos que permitan acceder a datos o recursos sin identificación de un usuario físico.

Artículo 6. Cómputo de plazos.

En los supuestos en que este reglamento señale un plazo por días se computarán únicamente los hábiles. Cuando el plazo sea por meses, se computarán de fecha a fecha.

Artículo 7. Fuentes accesibles al público.

1. A efectos del artículo 3, párrafo j) de la Ley Orgánica 15/1999, se entenderá que sólo tendrán el carácter de fuentes accesibles al público:

- a) El censo promocional, regulado conforme a lo dispuesto en la Ley Orgánica 15/1999, de 13 de diciembre.

b) Las guías de servicios de comunicaciones electrónicas, en los términos previstos por su normativa específica.

c) Las listas de personas pertenecientes a grupos de profesionales que contengan únicamente los datos de nombre, título, profesión, actividad, grado académico, dirección profesional e indicación de su pertenencia al grupo. La dirección profesional podrá incluir los datos del domicilio postal completo, número telefónico, número de fax y dirección electrónica. En el caso de Colegios profesionales, podrán indicarse como datos de pertenencia al grupo los de número de colegiado, fecha de incorporación y situación de ejercicio profesional.

d) Los diarios y boletines oficiales.

e) Los medios de comunicación social.

2. En todo caso, para que los supuestos enumerados en el apartado anterior puedan ser considerados fuentes accesibles al público, será preciso que su consulta pueda ser realizada por cualquier persona, no impedida por una norma limitativa, o sin más exigencia que, en su caso, el abono de una contraprestación.

TÍTULO II

Principios de protección de datos

CAPÍTULO I

Calidad de los datos

Artículo 8. Principios relativos a la calidad de los datos.

1. Los datos de carácter personal deberán ser tratados de forma leal y lícita. Se prohíbe la recogida de datos por medios fraudulentos, desleales o ilícitos.

2. Los datos de carácter personal sólo podrán ser recogidos para el cumplimiento de finalidades determinadas, explícitas y legítimas del responsable del tratamiento.

3. Los datos de carácter personal objeto de tratamiento no podrán usarse para finalidades incompatibles con aquellas para las que los datos hubieran sido recogidos.

4. Sólo podrán ser objeto de tratamiento los datos que sean adecuados, pertinentes y no excesivos en relación con las finalidades determinadas, explícitas y legítimas para las que se hayan obtenido.

5. Los datos de carácter personal serán exactos y puestos al día de forma que respondan con veracidad a la situación actual del afectado. Si los datos fueran recogidos directamente del afectado, se considerarán exactos los facilitados por éste.

Si los datos de carácter personal sometidos a tratamiento resultaran ser inexactos, en todo o en parte, o incompletos, serán cancelados y sustituidos de oficio por los correspondientes datos rectificados o completados en el plazo de diez días desde que se tuviese conocimiento de la inexactitud, salvo que la legislación aplicable al fichero establezca un procedimiento o un plazo específico para ello.

Cuando los datos hubieran sido comunicados previamente, el responsable del fichero o tratamiento deberá notificar al cesionario, en el plazo de diez días, la rectificación o cancelación efectuada, siempre que el cesionario sea conocido.

En el plazo de diez días desde la recepción de la notificación, el cesionario que mantuviera el tratamiento de los datos, deberá proceder a la rectificación y cancelación notificada.

Esta actualización de los datos de carácter personal no requerirá comunicación alguna al interesado, sin perjuicio del ejercicio de los derechos por parte de los interesados reconocidos en la Ley Orgánica 15/1999, de 13 de diciembre.

Lo dispuesto en este apartado se entiende sin perjuicio de las facultades que a los afectados reconoce el título III de este reglamento.

6. Los datos de carácter personal serán cancelados cuando hayan dejado de ser necesarios o pertinentes para la finalidad para la cual hubieran sido recabados o registrados.

No obstante, podrán conservarse durante el tiempo en que pueda exigirse algún tipo de responsabilidad derivada de una relación u obligación jurídica o de la ejecución de un contrato o de la aplicación de medidas precontractuales solicitadas por el interesado.

Una vez cumplido el período al que se refieren los párrafos anteriores, los datos sólo podrán ser conservados previa disociación de los mismos, sin perjuicio de la obligación de bloqueo prevista en la Ley Orgánica 15/1999, de 13 de diciembre, y en el presente reglamento.

7. Los datos de carácter personal serán tratados de forma que permitan el ejercicio del derecho de acceso, en tanto no proceda su cancelación.

Artículo 9. Tratamiento con fines estadísticos, históricos o científicos.

1. No se considerará incompatible, a los efectos previstos en el apartado 3 del artículo anterior, el tratamiento de los datos de carácter personal con fines históricos, estadísticos o científicos.

Para la determinación de los fines a los que se refiere el párrafo anterior se estará a la legislación que en cada caso resulte aplicable y, en particular, a lo dispuesto en la Ley 12/1989, de 9 de mayo, Reguladora de la función estadística pública, la Ley 16/1985, de 25 junio, del Patrimonio histórico español y la Ley 13/1986, de 14 de abril de Fomento y coordinación general de la investigación científica y técnica, y sus respectivas disposiciones de desarrollo, así como a la normativa autonómica en estas materias.

2. Por vía de excepción a lo dispuesto en el apartado 6 del artículo anterior, la Agencia Española de Protección de Datos o, en su caso, las autoridades de control de las comunidades autónomas podrán, previa solicitud del responsable del tratamiento y conforme al procedimiento establecido en la sección segunda del capítulo VII del título IX del presente reglamento, acordar el mantenimiento íntegro de determinados datos, atendidos sus valores históricos, estadísticos o científicos de acuerdo con las normas a las que se refiere el apartado anterior.

Artículo 10. Supuestos que legitiman el tratamiento o cesión de los datos.

1. Los datos de carácter personal únicamente podrán ser objeto de tratamiento o cesión si el interesado hubiera prestado previamente su consentimiento para ello.

2. No obstante, será posible el tratamiento o la cesión de los datos de carácter personal sin necesidad del consentimiento del interesado cuando:

a) Lo autorice una norma con rango de ley o una norma de derecho comunitario y, en particular, cuando concurra uno de los supuestos siguientes:

El tratamiento o la cesión tengan por objeto la satisfacción de un interés legítimo del responsable del tratamiento o del cesionario amparado por dichas normas, siempre que no prevalezca el interés o los derechos y libertades fundamentales de los interesados previstos en el artículo 1 de la Ley Orgánica 15/1999, de 13 de diciembre.

El tratamiento o la cesión de los datos sean necesarios para que el responsable del tratamiento cumpla un deber que le imponga una de dichas normas.

b) Los datos objeto de tratamiento o de cesión figuren en fuentes accesibles al público y el responsable del fichero, o el tercero a quien se comuniquen los datos, tenga un interés legítimo para su tratamiento o conocimiento, siempre que no se vulneren los derechos y libertades fundamentales del interesado.

No obstante, las Administraciones públicas sólo podrán comunicar al amparo de este apartado los datos recogidos de fuentes accesibles al público a responsables de ficheros de titularidad privada cuando se encuentren autorizadas para ello por una norma con rango de ley.

3. Los datos de carácter personal podrán tratarse sin necesidad del consentimiento del interesado cuando:

a) Se recojan para el ejercicio de las funciones propias de las Administraciones públicas en el ámbito de las competencias que les atribuya una norma con rango de ley o una norma de derecho comunitario.

b) Se recaben por el responsable del tratamiento con ocasión de la celebración de un contrato o precontrato o de la existencia de una relación negocial, laboral o administrativa de la que sea parte el afectado y sean necesarios para su mantenimiento o cumplimiento.

c) El tratamiento de los datos tenga por finalidad proteger un interés vital del interesado en los términos del apartado 6 del artículo 7 de la Ley Orgánica 15/1999, de 13 de diciembre.

4. Será posible la cesión de los datos de carácter personal sin contar con el consentimiento del interesado cuando:

a) La cesión responda a la libre y legítima aceptación de una relación jurídica cuyo desarrollo, cumplimiento y control comporte la comunicación de los datos. En este caso la comunicación sólo será legítima en cuanto se limite a la finalidad que la justifique.

b) La comunicación que deba efectuarse tenga por destinatario al Defensor del Pueblo, el Ministerio Fiscal o los Jueces o Tribunales o el Tribunal de Cuentas o a las instituciones autonómicas con funciones análogas al Defensor del Pueblo o al Tribunal de Cuentas y se realice en el ámbito de las funciones que la ley les atribuya expresamente.

c) La cesión entre Administraciones públicas cuando concurra uno de los siguientes supuestos:

Tenga por objeto el tratamiento de los datos con fines históricos, estadísticos o científicos.

Los datos de carácter personal hayan sido recogidos o elaborados por una Administración pública con destino a otra.

La comunicación se realice para el ejercicio de competencias idénticas o que versen sobre las mismas materias.

5. Los datos especialmente protegidos podrán tratarse y cederse en los términos previstos en los artículos 7 y 8 de la Ley Orgánica 15/1999, de 13 de diciembre.

En particular, no será necesario el consentimiento del interesado para la comunicación de datos personales sobre la salud, incluso a través de medios electrónicos, entre organismos, centros y servicios del Sistema Nacional de Salud cuando se realice para la atención sanitaria de las personas, conforme a lo dispuesto en el Capítulo V de la Ley 16/2003, de 28 de mayo, de cohesión y calidad del Sistema Nacional de Salud.

Artículo 11. Verificación de datos en solicitudes formuladas a las Administraciones públicas.

Cuando se formulen solicitudes por medios electrónicos en las que el interesado declare datos personales que obren en poder de las Administraciones públicas, el órgano destinatario de la solicitud podrá efectuar en el ejercicio de sus competencias las verificaciones necesarias para comprobar la autenticidad de los datos.

CAPÍTULO II

Consentimiento para el tratamiento de los datos y deber de información

Sección 1.ª Obtención del consentimiento del afectado

Artículo 12. Principios generales.

1. El responsable del tratamiento deberá obtener el consentimiento del interesado para el tratamiento de sus datos de carácter personal salvo en aquellos supuestos en que el mismo no sea exigible con arreglo a lo dispuesto en las leyes.

La solicitud del consentimiento deberá ir referida a un tratamiento o serie de tratamientos concretos, con delimitación de la finalidad para los que se recaba, así como de las restantes condiciones que concurran en el tratamiento o serie de tratamientos.

2. Cuando se solicite el consentimiento del afectado para la cesión de sus datos, éste deberá ser informado de forma que conozca inequívocamente la finalidad a la que se destinarán los datos respecto de cuya comunicación se solicita el consentimiento y el tipo de actividad desarrollada por el cesionario. En caso contrario, el consentimiento será nulo.

3. Corresponderá al responsable del tratamiento la prueba de la existencia del consentimiento del afectado por cualquier medio de prueba admisible en derecho.

Artículo 13. Consentimiento para el tratamiento de datos de menores de edad.

1. Podrá procederse al tratamiento de los datos de los mayores de catorce años con su consentimiento, salvo en aquellos casos en los que la Ley exija para su prestación la asistencia de los titulares de la patria potestad o tutela. En el caso de los menores de catorce años se requerirá el consentimiento de los padres o tutores.

2. En ningún caso podrán recabarse del menor datos que permitan obtener información sobre los demás miembros del grupo familiar, o sobre las características del mismo, como los datos relativos a la actividad profesional de los progenitores, información económica, datos sociológicos o cualesquiera otros, sin el consentimiento de los titulares de tales datos. No obstante, podrán recabarse los datos de identidad y dirección del padre, madre o tutor con la única finalidad de recabar la autorización prevista en el apartado anterior.

3. Cuando el tratamiento se refiera a datos de menores de edad, la información dirigida a los mismos deberá expresarse en un lenguaje que sea fácilmente comprensible por aquéllos, con expresa indicación de lo dispuesto en este artículo.

4. Corresponderá al responsable del fichero o tratamiento articular los procedimientos que garanticen que se ha comprobado de modo efectivo la edad del menor y la autenticidad del consentimiento prestado en su caso, por los padres, tutores o representantes legales.

Artículo 14. Forma de recabar el consentimiento.

1. El responsable del tratamiento podrá solicitar el consentimiento del interesado a través del procedimiento establecido en este artículo, salvo cuando la Ley exija al mismo la obtención del consentimiento expreso para el tratamiento de los datos.

2. El responsable podrá dirigirse al afectado, informándole en los términos previstos en los artículos 5 de la Ley Orgánica 15/1999, de 13 de diciembre y 12.2 de este reglamento y deberá concederle un plazo de treinta días para manifestar su negativa al tratamiento, advirtiéndole de que en caso de no pronunciarse a tal efecto se entenderá que consiente el tratamiento de sus datos de carácter personal.

En particular, cuando se trate de responsables que presten al afectado un servicio que genere información periódica o reiterada, o facturación periódica, la comunicación podrá llevarse a cabo de forma conjunta a esta información o a la facturación del servicio prestado, siempre que se realice de forma claramente visible.

3. En todo caso, será necesario que el responsable del tratamiento pueda conocer si la comunicación ha sido objeto de devolución por cualquier causa, en cuyo caso no podrá proceder al tratamiento de los datos referidos a ese interesado.

4. Deberá facilitarse al interesado un medio sencillo y gratuito para manifestar su negativa al tratamiento de los datos. En particular, se considerará ajustado al presente reglamento los procedimientos en el que tal negativa pueda efectuarse, entre otros, mediante un envío prefranqueado al responsable del tratamiento, la llamada a un número telefónico gratuito o a los servicios de atención al público que el mismo hubiera establecido.

5. Cuando se solicite el consentimiento del interesado a través del procedimiento establecido en este artículo, no será posible solicitarlo nuevamente respecto de los mismos tratamientos y para las mismas finalidades en el plazo de un año a contar de la fecha de la anterior solicitud.

Artículo 15. Solicitud del consentimiento en el marco de una relación contractual para fines no relacionados directamente con la misma.

Si el responsable del tratamiento solicitase el consentimiento del afectado durante el proceso de formación de un contrato para finalidades que no guarden relación directa con el mantenimiento, desarrollo o control de la relación contractual, deberá permitir al afectado que manifieste expresamente su negativa al tratamiento o comunicación de datos.

En particular, se entenderá cumplido tal deber cuando se permita al afectado la marcación de una casilla claramente visible y que no se encuentre ya marcada en el documento que se le entregue para la celebración del contrato o se establezca un procedimiento equivalente que le permita manifestar su negativa al tratamiento.

Artículo 16. Tratamiento de datos de facturación y tráfico en servicios de comunicaciones electrónicas.

La solicitud del consentimiento para el tratamiento o cesión de los datos de tráfico, facturación y localización por parte de los sujetos obligados, o en su caso la revocación de aquél, según la legislación reguladora de las telecomunicaciones se someterá a lo establecido en su normativa específica y, en lo que no resulte contrario a la misma, a lo establecido en la presente sección.

Artículo 17. Revocación del consentimiento.

1. El afectado podrá revocar su consentimiento a través de un medio sencillo, gratuito y que no implique ingreso alguno para el responsable del fichero o tratamiento. En particular, se considerará ajustado al presente reglamento el procedimiento en el que tal negativa pueda efectuarse, entre otros, mediante un envío prefranqueado al responsable del tratamiento o la llamada a un número telefónico gratuito o a los servicios de atención al público que el mismo hubiera establecido.

No se considerarán conformes a lo dispuesto en la Ley Orgánica 15/1999, de 13 de diciembre, los supuestos en que el responsable establezca como medio para que el interesado pueda manifestar su negativa al tratamiento el envío de cartas certificadas o envíos semejantes, la utilización de servicios de telecomunicaciones que implique una tarificación adicional al afectado o cualesquiera otros medios que impliquen un coste adicional al interesado.

2. El responsable cesará en el tratamiento de los datos en el plazo máximo de diez días a contar desde el de la recepción de la revocación del consentimiento, sin perjuicio de su obligación de bloquear los datos conforme a lo dispuesto en el artículo 16.3 de la Ley Orgánica 15/1999, de 13 de diciembre.

3. Cuando el interesado hubiera solicitado del responsable del tratamiento la confirmación del cese en el tratamiento de sus datos, éste deberá responder expresamente a la solicitud.

4. Si los datos hubieran sido cedidos previamente, el responsable del tratamiento, una vez revocado el consentimiento, deberá comunicarlo a los cesionarios, en el plazo previsto en el apartado 2, para que éstos, cesen en el tratamiento de los datos en caso de que aún lo mantuvieran, conforme al artículo 16.4 de la Ley Orgánica 15/1999, de 13 de diciembre.

Sección 2.^a Deber de información al interesado

Artículo 18. Acreditación del cumplimiento del deber de información.

1. El deber de información al que se refiere el artículo 5 de la Ley Orgánica 15/1999, de 13 de diciembre, deberá llevarse a cabo a través de un medio que permita acreditar su cumplimiento, debiendo conservarse mientras persista el tratamiento de los datos del afectado.

2. El responsable del fichero o tratamiento deberá conservar el soporte en el que conste el cumplimiento del deber de informar. Para el almacenamiento de los soportes, el responsable del fichero o tratamiento podrá utilizar medios informáticos o telemáticos. En particular podrá proceder al escaneado de la documentación en soporte papel, siempre y cuando se garantice que en dicha automatización no ha mediado alteración alguna de los soportes originales.

Artículo 19. Supuestos especiales.

En los supuestos en que se produzca una modificación del responsable del fichero como consecuencia de una operación de fusión, escisión, cesión global de activos y pasivos, aportación o transmisión de negocio o rama de actividad empresarial, o cualquier operación de reestructuración societaria de análoga naturaleza, contemplada por la normativa mercantil, no se producirá cesión de datos, sin perjuicio del cumplimiento por el responsable de lo dispuesto en el artículo 5 de la Ley Orgánica 15/1999, de 13 de diciembre.

CAPÍTULO III

Encargado del tratamiento

Artículo 20. Relaciones entre el responsable y el encargado del tratamiento.

1. El acceso a los datos por parte de un encargado del tratamiento que resulte necesario para la prestación de un servicio al responsable no se considerará comunicación de datos, siempre y cuando se cumpla lo establecido en la Ley Orgánica 15/1999, de 13 de diciembre y en el presente capítulo.

El servicio prestado por el encargado del tratamiento podrá tener o no carácter remunerado y ser temporal o indefinido.

No obstante, se considerará que existe comunicación de datos cuando el acceso tenga por objeto el establecimiento de un nuevo vínculo entre quien accede a los datos y el afectado.

2. Cuando el responsable del tratamiento contrate la prestación de un servicio que comporte un tratamiento de datos personales sometido a lo dispuesto en este capítulo deberá velar por que el encargado del tratamiento reúna las garantías para el cumplimiento de lo dispuesto en este Reglamento.

3. En el caso de que el encargado del tratamiento destine los datos a otra finalidad, los comunique o los utilice incumpliendo las estipulaciones del contrato al que se refiere el apartado 2 del artículo 12 de la Ley Orgánica 15/1999, de 13 de diciembre, será considerado, también, responsable del tratamiento, respondiendo de las infracciones en que hubiera incurrido personalmente.

No obstante, el encargado del tratamiento no incurrirá en responsabilidad cuando, previa indicación expresa del responsable, comunique los datos a un tercero designado por aquél, al que hubiera encomendado la prestación de un servicio conforme a lo previsto en el presente capítulo.

Artículo 21. Posibilidad de subcontratación de los servicios.

1. El encargado del tratamiento no podrá subcontratar con un tercero la realización de ningún tratamiento que le hubiera encomendado el responsable del tratamiento, salvo que hubiera obtenido de éste autorización para ello. En este caso, la contratación se efectuará siempre en nombre y por cuenta del responsable del tratamiento.

2. No obstante lo dispuesto en el apartado anterior, será posible la subcontratación sin necesidad de autorización siempre y cuando se cumplan los siguientes requisitos:

a) Que se especifiquen en el contrato los servicios que puedan ser objeto de subcontratación y, si ello fuera posible, la empresa con la que se vaya a subcontratar.

Cuando no se identificase en el contrato la empresa con la que se vaya a subcontratar, será preciso que el encargado del tratamiento comunique al responsable los datos que la identifiquen antes de proceder a la subcontratación.

b) Que el tratamiento de datos de carácter personal por parte del subcontratista se ajuste a las instrucciones del responsable del fichero.

c) Que el encargado del tratamiento y la empresa subcontratista formalicen el contrato, en los términos previstos en el artículo anterior.

En este caso, el subcontratista será considerado encargado del tratamiento, siéndole de aplicación lo previsto en el artículo 20.3 de este reglamento.

3. Si durante la prestación del servicio resultase necesario subcontratar una parte del mismo y dicha circunstancia no hubiera sido prevista en el contrato, deberán someterse al responsable del tratamiento los extremos señalados en el apartado anterior.

Artículo 22. Conservación de los datos por el encargado del tratamiento.

1. Una vez cumplida la prestación contractual, los datos de carácter personal deberán ser destruidos o devueltos al responsable del tratamiento o al encargado que éste hubiese designado, al igual que cualquier soporte o documentos en que conste algún dato de carácter personal objeto del tratamiento.

No procederá la destrucción de los datos cuando exista una previsión legal que exija su conservación, en cuyo caso deberá procederse a la devolución de los mismos garantizando el responsable del fichero dicha conservación.

2. El encargado del tratamiento conservará, debidamente bloqueados, los datos en tanto pudieran derivarse responsabilidades de su relación con el responsable del tratamiento.

TÍTULO III

Derechos de acceso, rectificación, cancelación y oposición

CAPÍTULO I

Disposiciones generales

Artículo 23. Carácter personalísimo.

1. Los derechos de acceso, rectificación, cancelación y oposición son personalísimos y serán ejercidos por el afectado.

2. Tales derechos se ejercitarán:

a) Por el afectado, acreditando su identidad, del modo previsto en el artículo siguiente.

b) Cuando el afectado se encuentre en situación de incapacidad o minoría de edad que le imposibilite el ejercicio personal de estos derechos, podrán ejercitarse por su representante legal, en cuyo caso será necesario que acredite tal condición.

c) Los derechos también podrán ejercitarse a través de representante voluntario, expresamente designado para el ejercicio del derecho. En ese caso, deberá constar claramente acreditada la identidad del representado, mediante la aportación de copia de su Documento Nacional de Identidad o documento equivalente, y la representación conferida por aquél.

Cuando el responsable del fichero sea un órgano de las Administraciones públicas o de la Administración de Justicia, podrá acreditarse la representación por cualquier medio válido en derecho que deje constancia fidedigna, o mediante declaración en comparecencia personal del interesado.

3. Los derechos serán denegados cuando la solicitud sea formulada por persona distinta del afectado y no se acredite que la misma actúa en representación de aquél.

Artículo 24. Condiciones generales para el ejercicio de los derechos de acceso, rectificación, cancelación y oposición.

1. Los derechos de acceso, rectificación, cancelación y oposición son derechos independientes, de tal forma que no puede entenderse que el ejercicio de ninguno de ellos sea requisito previo para el ejercicio de otro.

2. Deberá concederse al interesado un medio sencillo y gratuito para el ejercicio de los derechos de acceso, rectificación, cancelación y oposición.

3. El ejercicio por el afectado de sus derechos de acceso, rectificación, cancelación y oposición será gratuito y en ningún caso podrá suponer un ingreso adicional para el responsable del tratamiento ante el que se ejercitan.

No se considerarán conformes a lo dispuesto en la Ley Orgánica 15/1999, de 13 de diciembre, y en el presente Reglamento los supuestos en que el responsable del tratamiento establezca como medio para que el interesado pueda ejercitar sus derechos el envío de cartas certificadas o semejantes, la utilización de servicios de telecomunicaciones que implique una tarificación adicional al afectado o cualesquiera otros medios que impliquen un coste excesivo para el interesado.

4. Cuando el responsable del fichero o tratamiento disponga de servicios de cualquier índole para la atención a su público o el ejercicio de reclamaciones relacionadas con el servicio prestado o los productos ofertados al mismo, podrá concederse la posibilidad al afectado de ejercer sus derechos de acceso, rectificación, cancelación y oposición a través de dichos servicios. En tal caso, la identidad del interesado se considerará acreditada por los medios establecidos para la identificación de los clientes del responsable en la prestación de sus servicios o contratación de sus productos.

5. El responsable del fichero o tratamiento deberá atender la solicitud de acceso, rectificación, cancelación u oposición ejercida por el afectado aún cuando el mismo no hubiese utilizado el procedimiento establecido específicamente al efecto por aquél, siempre que el interesado haya utilizado un medio que permita acreditar el envío y la recepción de la solicitud, y que ésta contenga los elementos referidos en el párrafo 1 del artículo siguiente.

Artículo 25. Procedimiento.

1. Salvo en el supuesto referido en el párrafo 4 del artículo anterior, el ejercicio de los derechos deberá llevarse a cabo mediante comunicación dirigida al responsable del fichero, que contendrá:

a) Nombre y apellidos del interesado; fotocopia de su documento nacional de identidad, o de su pasaporte u otro documento válido que lo identifique y, en su caso, de la persona que lo represente, o instrumentos electrónicos equivalentes; así como el documento o instrumento electrónico acreditativo de tal representación. La utilización de firma electrónica identificativa del afectado eximirá de la presentación de las fotocopias del DNI o documento equivalente.

El párrafo anterior se entenderá sin perjuicio de la normativa específica aplicable a la comprobación de datos de identidad por las Administraciones Públicas en los procedimientos administrativos.

b) Petición en que se concreta la solicitud.

c) Dirección a efectos de notificaciones, fecha y firma del solicitante.

d) Documentos acreditativos de la petición que formula, en su caso.

2. El responsable del tratamiento deberá contestar la solicitud que se le dirija en todo caso, con independencia de que figuren o no datos personales del afectado en sus ficheros.

3. En el caso de que la solicitud no reúna los requisitos especificados en el apartado primero, el responsable del fichero deberá solicitar la subsanación de los mismos.

4. La respuesta deberá ser conforme con los requisitos previstos para cada caso en el presente título.

5. Corresponderá al responsable del tratamiento la prueba del cumplimiento del deber de respuesta al que se refiere el apartado 2, debiendo conservar la acreditación del cumplimiento del mencionado deber.

6. El responsable del fichero deberá adoptar las medidas oportunas para garantizar que las personas de su organización que tienen acceso a datos de carácter personal puedan informar del procedimiento a seguir por el afectado para el ejercicio de sus derechos.

7. El ejercicio de los derechos de acceso, rectificación, cancelación y oposición podrá modularse por razones de seguridad pública en los casos y con el alcance previsto en las Leyes.

8. Cuando las leyes aplicables a determinados ficheros concretos establezcan un procedimiento especial para la rectificación o cancelación de los datos contenidos en los mismos, se estará a lo dispuesto en aquéllas.

Artículo 26. Ejercicio de los derechos ante un encargado del tratamiento.

Cuando los afectados ejercitasen sus derechos ante un encargado del tratamiento y solicitasen el ejercicio de su derecho ante el mismo, el encargado deberá dar traslado de la solicitud al responsable, a fin de que por el mismo se resuelva, a menos que en la relación existente con el responsable del tratamiento se prevea precisamente que el encargado atenderá, por cuenta del responsable, las solicitudes de ejercicio por los afectados de sus derechos de acceso, rectificación, cancelación u oposición.

CAPÍTULO II

Derecho de acceso

Artículo 27. Derecho de acceso.

1. El derecho de acceso es el derecho del afectado a obtener información sobre si sus propios datos de carácter personal están siendo objeto de tratamiento, la finalidad del tratamiento que, en su caso, se esté realizando, así como la información disponible sobre el origen de dichos datos y las comunicaciones realizadas o previstas de los mismos.

2. En virtud del derecho de acceso el afectado podrá obtener del responsable del tratamiento información relativa a datos concretos, a datos incluidos en un determinado fichero, o a la totalidad de sus datos sometidos a tratamiento.

No obstante, cuando razones de especial complejidad lo justifiquen, el responsable del fichero podrá solicitar del afectado la especificación de los ficheros respecto de los cuales quiera ejercitar el derecho de acceso, a cuyo efecto deberá facilitarle una relación de todos ellos.

3. El derecho de acceso es independiente del que otorgan a los afectados las leyes especiales y en particular la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común.

Artículo 28. Ejercicio del derecho de acceso.

1. Al ejercitar el derecho de acceso, el afectado podrá optar por recibir la información a través de uno o varios de los siguientes sistemas de consulta del fichero:

a) Visualización en pantalla.

b) Escrito, copia o fotocopia remitida por correo, certificado o no.

c) Telecopia.

d) Correo electrónico u otros sistemas de comunicaciones electrónicas.

e) Cualquier otro sistema que sea adecuado a la configuración o implantación material del fichero o a la naturaleza del tratamiento, ofrecido por el responsable.

2. Los sistemas de consulta del fichero previstos en el apartado anterior podrán restringirse en función de la configuración o implantación material del fichero o de la naturaleza del tratamiento, siempre que el que se ofrezca al afectado sea gratuito y asegure la comunicación escrita si éste así lo exige.

3. El responsable del fichero deberá cumplir al facilitar el acceso lo establecido en el Título VIII de este Reglamento.

Si tal responsable ofreciera un determinado sistema para hacer efectivo el derecho de acceso y el afectado lo rechazase, aquél no responderá por los posibles riesgos que para la seguridad de la información pudieran derivarse de la elección.

Del mismo modo, si el responsable ofreciera un procedimiento para hacer efectivo el derecho de acceso y el afectado exigiese que el mismo se materializase a través de un procedimiento que

implique un coste desproporcionado, surtiendo el mismo efecto y garantizando la misma seguridad el procedimiento ofrecido por el responsable, serán de cuenta del afectado los gastos derivados de su elección.

Artículo 29. Otorgamiento del acceso.

1. El responsable del fichero resolverá sobre la solicitud de acceso en el plazo máximo de un mes a contar desde la recepción de la solicitud. Transcurrido el plazo sin que de forma expresa se responda a la petición de acceso, el interesado podrá interponer la reclamación prevista en el artículo 18 de la Ley Orgánica 15/1999, de 13 de diciembre.

En el caso de que no disponga de datos de carácter personal de los afectados deberá igualmente comunicárselo en el mismo plazo.

2. Si la solicitud fuera estimada y el responsable no acompañase a su comunicación la información a la que se refiere el artículo 27.1, el acceso se hará efectivo durante los diez días siguientes a dicha comunicación.

3. La información que se proporcione, cualquiera que sea el soporte en que fuere facilitada, se dará en forma legible e inteligible, sin utilizar claves o códigos que requieran el uso de dispositivos mecánicos específicos.

Dicha información comprenderá todos los datos de base del afectado, los resultantes de cualquier elaboración o proceso informático, así como la información disponible sobre el origen de los datos, los cesionarios de los mismos y la especificación de los concretos usos y finalidades para los que se almacenaron los datos.

Artículo 30. Denegación del acceso.

1. El responsable del fichero o tratamiento podrá denegar el acceso a los datos de carácter personal cuando el derecho ya se haya ejercitado en los doce meses anteriores a la solicitud, salvo que se acredite un interés legítimo al efecto.

2. Podrá también denegarse el acceso en los supuestos en que así lo prevea una Ley o una norma de derecho comunitario de aplicación directa o cuando éstas impidan al responsable del tratamiento revelar a los afectados el tratamiento de los datos a los que se refiera el acceso.

3. En todo caso, el responsable del fichero informará al afectado de su derecho a recabar la tutela de la Agencia Española de Protección de Datos o, en su caso, de las autoridades de control de las comunidades autónomas, conforme a lo dispuesto en el artículo 18 de la Ley Orgánica 15/1999, de 13 de diciembre.

CAPÍTULO III

Derechos de rectificación y cancelación

Artículo 31. Derechos de rectificación y cancelación.

1. El derecho de rectificación es el derecho del afectado a que se modifiquen los datos que resulten ser inexactos o incompletos.

2. El ejercicio del derecho de cancelación dará lugar a que se supriman los datos que resulten ser inadecuados o excesivos, sin perjuicio del deber de bloqueo conforme a este reglamento.

En los supuestos en que el interesado invoque el ejercicio del derecho de cancelación para revocar el consentimiento previamente prestado, se estará a lo dispuesto en la Ley Orgánica 15/1999, de 13 de diciembre y en el presente reglamento.

Artículo 32. Ejercicio de los derechos de rectificación y cancelación.

1. La solicitud de rectificación deberá indicar a qué datos se refiere y la corrección que haya de realizarse y deberá ir acompañada de la documentación justificativa de lo solicitado.

En la solicitud de cancelación, el interesado deberá indicar a qué datos se refiere, aportando al efecto la documentación que lo justifique, en su caso.

2. El responsable del fichero resolverá sobre la solicitud de rectificación o cancelación en el plazo máximo de diez días a contar desde la recepción de la solicitud. Transcurrido el plazo sin que de forma expresa se responda a la petición, el interesado podrá interponer la reclamación prevista en el artículo 18 de la Ley Orgánica 15/1999, de 13 de diciembre.

En el caso de que no disponga de datos de carácter personal del afectado deberá igualmente comunicárselo en el mismo plazo.

3. Si los datos rectificadas o cancelados hubieran sido cedidos previamente, el responsable del fichero deberá comunicar la rectificación o cancelación efectuada al cesionario, en idéntico plazo, para que éste, también en el plazo de diez días contados desde la recepción de dicha comunicación, proceda, asimismo, a rectificar o cancelar los datos.

La rectificación o cancelación efectuada por el cesionario no requerirá comunicación alguna al interesado, sin perjuicio del ejercicio de los derechos por parte de los interesados reconocidos en la Ley Orgánica 15/1999, de 13 de diciembre.

Artículo 33. Denegación de los derechos de rectificación y cancelación.

1. La cancelación no procederá cuando los datos de carácter personal deban ser conservados durante los plazos previstos en las disposiciones aplicables o, en su caso, en las relaciones contractuales entre la persona o entidad responsable del tratamiento y el interesado que justificaron el tratamiento de los datos.

2. Podrá también denegarse los derechos de rectificación o cancelación en los supuestos en que así lo prevea una ley o una norma de derecho comunitario de aplicación directa o cuando éstas impidan al responsable del tratamiento revelar a los afectados el tratamiento de los datos a los que se refiera el acceso.

3. En todo caso, el responsable del fichero informará al afectado de su derecho a recabar la tutela de la Agencia Española de Protección de Datos o, en su caso, de las autoridades de control de las Comunidades Autónomas, conforme a lo dispuesto en el artículo 18 de la Ley Orgánica 15/1999, de 13 de diciembre.

CAPÍTULO IV

Derecho de oposición

Artículo 34. Derecho de oposición.

El derecho de oposición es el derecho del afectado a que no se lleve a cabo el tratamiento de sus datos de carácter personal o se cese en el mismo en los siguientes supuestos:

- a) Cuando no sea necesario su consentimiento para el tratamiento, como consecuencia de la concurrencia de un motivo legítimo y fundado, referido a su concreta situación personal, que lo justifique, siempre que una Ley no disponga lo contrario.
- b) Cuando se trate de ficheros que tengan por finalidad la realización de actividades de publicidad y prospección comercial, en los términos previstos en el artículo 51 de este reglamento, cualquiera que sea la empresa responsable de su creación.
- c) Cuando el tratamiento tenga por finalidad la adopción de una decisión referida al afectado y basada únicamente en un tratamiento automatizado de sus datos de carácter personal, en los términos previstos en el artículo 36 de este reglamento.

Artículo 35. Ejercicio del derecho de oposición.

1. El derecho de oposición se ejercitará mediante solicitud dirigida al responsable del tratamiento.

Cuando la oposición se realice con base en la letra a) del artículo anterior, en la solicitud deberán hacerse constar los motivos fundados y legítimos, relativos a una concreta situación personal del afectado, que justifican el ejercicio de este derecho.

2. El responsable del fichero resolverá sobre la solicitud de oposición en el plazo máximo de diez días a contar desde la recepción de la solicitud. Transcurrido el plazo sin que de forma expresa se responda a la petición, el interesado podrá interponer la reclamación prevista en el artículo 18 de la Ley Orgánica 15/1999, de 13 de diciembre.

En el caso de que no disponga de datos de carácter personal de los afectados deberá igualmente comunicárselo en el mismo plazo.

3. El responsable del fichero o tratamiento deberá excluir del tratamiento los datos relativos al afectado que ejercite su derecho de oposición o denegar motivadamente la solicitud del interesado en el plazo previsto en el apartado 2 de este artículo.

Artículo 36. Derecho de oposición a las decisiones basadas únicamente en un tratamiento automatizado de datos.

1. Los interesados tienen derecho a no verse sometidos a una decisión con efectos jurídicos sobre ellos o que les afecte de manera significativa, que se base únicamente en un tratamiento automatizado de datos destinado a evaluar determinados aspectos de su personalidad, tales como su rendimiento laboral, crédito, fiabilidad o conducta.

2. No obstante, los afectados podrán verse sometidos a una de las decisiones contempladas en el apartado 1 cuando dicha decisión:

- a) Se haya adoptado en el marco de la celebración o ejecución de un contrato a petición del interesado, siempre que se le otorgue la posibilidad de alegar lo que estimara pertinente, a fin de defender su derecho o interés. En todo caso, el responsable del fichero deberá informar previamente al afectado, de forma clara y precisa, de que se adoptarán decisiones con las características señaladas en el apartado 1 y cancelará los datos en caso de que no llegue a celebrarse finalmente el contrato.

b) Esté autorizada por una norma con rango de Ley que establezca medidas que garanticen el interés legítimo del interesado.

TÍTULO IV

Disposiciones aplicables a determinados ficheros de titularidad privada

CAPÍTULO I

Ficheros de información sobre solvencia patrimonial y crédito

Sección 1.^a Disposiciones generales

Artículo 37. Régimen aplicable.

1. El tratamiento de datos de carácter personal sobre solvencia patrimonial y crédito, previsto en el apartado 1 del artículo 29 de la Ley Orgánica 15/1999, de 13 de diciembre, se someterá a lo establecido, con carácter general, en dicha ley orgánica y en el presente reglamento.

2. El ejercicio de los derechos de acceso, rectificación, cancelación y oposición en el caso de los ficheros a que se refiere el apartado anterior, se rige por lo dispuesto en los capítulos I a IV del título III del presente reglamento, con los siguientes criterios:

a) Cuando la petición de ejercicio de los derechos se dirigiera al responsable del fichero, éste estará obligado a satisfacer, en cualquier caso, dichos derechos.

b) Si la petición se dirigiera a las personas y entidades a las que se presta el servicio, éstas únicamente deberán comunicar al afectado aquellos datos relativos al mismo que les hayan sido comunicados y a facilitar la identidad del responsable para que, en su caso, puedan ejercitar sus derechos ante el mismo.

3. De conformidad con el apartado 2 del artículo 29 de la Ley Orgánica 15/1999, de 13 de diciembre, también podrán tratarse los datos de carácter personal relativos al cumplimiento o incumplimiento de obligaciones dinerarias facilitados por el acreedor o por quien actúe por su cuenta o interés.

Estos datos deberán conservarse en ficheros creados con la exclusiva finalidad de facilitar información crediticia del afectado y su tratamiento se regirá por lo dispuesto en el presente reglamento y, en particular, por las previsiones contenidas en la sección segunda de este capítulo.

Sección 2.^a Tratamiento de datos relativos al cumplimiento o incumplimiento de obligaciones dinerarias facilitados por el acreedor o por quien actúe por su cuenta o interés

Artículo 38. Requisitos para la inclusión de los datos.

1. Sólo será posible la inclusión en estos ficheros de datos de carácter personal que sean determinantes para enjuiciar la solvencia económica del afectado, siempre que concurren los siguientes requisitos:

a) Existencia previa de una deuda cierta, vencida, exigible, que haya resultado impagada y respecto de la cual no se haya entablado reclamación judicial, arbitral o administrativa, o tratándose de servicios financieros, no se haya planteado una reclamación en los términos

previstos en el Reglamento de los Comisionados para la defensa del cliente de servicios financieros, aprobado por Real Decreto 303/2004, de 20 de febrero.

b) Que no hayan transcurrido seis años desde la fecha en que hubo de procederse al pago de la deuda o del vencimiento de la obligación o del plazo concreto si aquella fuera de vencimiento periódico.

c) Requerimiento previo de pago a quien corresponda el cumplimiento de la obligación.

2. No podrán incluirse en los ficheros de esta naturaleza datos personales sobre los que exista un principio de prueba que de forma indiciaria contradiga alguno de los requisitos anteriores.

Tal circunstancia determinará asimismo la cancelación cautelar del dato personal desfavorable en los supuestos en que ya se hubiera efectuado su inclusión en el fichero.

3. El acreedor o quien actúe por su cuenta o interés estará obligado a conservar a disposición del responsable del fichero común y de la Agencia Española de Protección de Datos documentación suficiente que acredite el cumplimiento de los requisitos establecidos en este artículo y del requerimiento previo al que se refiere el artículo siguiente.

Artículo 39. Información previa a la inclusión.

El acreedor deberá informar al deudor, en el momento en que se celebre el contrato y, en todo caso, al tiempo de efectuar el requerimiento al que se refiere la letra c) del apartado 1 del artículo anterior, que en caso de no producirse el pago en el término previsto para ello y cumplirse los requisitos previstos en el citado artículo, los datos relativos al impago podrán ser comunicados a ficheros relativos al cumplimiento o incumplimiento de obligaciones dinerarias.

Artículo 40. Notificación de inclusión.

1. El responsable del fichero común deberá notificar a los interesados respecto de los que hayan registrado datos de carácter personal, en el plazo de treinta días desde dicho registro, una referencia de los que hubiesen sido incluidos, informándole asimismo de la posibilidad de ejercitar sus derechos de acceso, rectificación, cancelación y oposición, en los términos establecidos por la Ley Orgánica 15/1999, de 13 de diciembre.

2. Se efectuará una notificación por cada deuda concreta y determinada con independencia de que ésta se tenga con el mismo o con distintos acreedores.

3. La notificación deberá efectuarse a través de un medio fiable, auditable e independiente de la entidad notificante, que la permita acreditar la efectiva realización de los envíos.

4. En todo caso, será necesario que el responsable del fichero pueda conocer si la notificación ha sido objeto de devolución por cualquier causa, en cuyo caso no podrá proceder al tratamiento de los datos referidos a ese interesado.

No se entenderán suficientes para que no se pueda proceder al tratamiento de los datos referidos a un interesado las devoluciones en las que el destinatario haya rehusado recibir el envío.

5. Si la notificación de inclusión fuera devuelta, el responsable del fichero común comprobará con la entidad acreedora que la dirección utilizada para efectuar esta notificación se corresponde con la contractualmente pactada con el cliente a efectos de comunicaciones y no procederá al tratamiento de los datos si la mencionada entidad no confirma la exactitud de este dato.

Artículo 41. Conservación de los datos.

1. Sólo podrán ser objeto de tratamiento los datos que respondan con veracidad a la situación de la deuda en cada momento concreto.

El pago o cumplimiento de la deuda determinará la cancelación inmediata de todo dato relativo a la misma.

2. En los restantes supuestos, los datos deberán ser cancelados cuando se hubieran cumplido seis años contados a partir del vencimiento de la obligación o del plazo concreto si aquella fuera de vencimiento periódico.

Artículo 42. Acceso a la información contenida en el fichero.

1. Los datos contenidos en el fichero común sólo podrán ser consultados por terceros cuando precisen enjuiciar la solvencia económica del afectado. En particular, se considerará que concurre dicha circunstancia en los siguientes supuestos:

a) Que el afectado mantenga con el tercero algún tipo de relación contractual que aún no se encuentre vencida.

b) Que el afectado pretenda celebrar con el tercero un contrato que implique el pago aplazado del precio.

c) Que el afectado pretenda contratar con el tercero la prestación de un servicio de facturación periódica.

2. Los terceros deberán informar por escrito a las personas en las que concurran los supuestos contemplados en las letras b) y c) precedentes de su derecho a consultar el fichero.

En los supuestos de contratación telefónica de los productos o servicios a los que se refiere el párrafo anterior, la información podrá realizarse de forma no escrita, correspondiendo al tercero la prueba del cumplimiento del deber de informar.

Artículo 43. Responsabilidad.

1. El acreedor o quien actúe por su cuenta o interés deberá asegurarse que concurren todos los requisitos exigidos en los artículos 38 y 39 en el momento de notificar los datos adversos al responsable del fichero común.

2. El acreedor o quien actúe por su cuenta o interés será responsable de la inexistencia o inexactitud de los datos que hubiera facilitado para su inclusión en el fichero, en los términos previstos en la Ley Orgánica 15/1999, de 13 de diciembre.

Artículo 44. Ejercicio de los derechos de acceso, rectificación, cancelación y oposición.

1. El ejercicio de los derechos de acceso, rectificación, cancelación y oposición se rige por lo dispuesto en los capítulos I a IV del título III de este reglamento, sin perjuicio de lo señalado en el presente artículo.

2. Cuando el interesado ejercite su derecho de acceso en relación con la inclusión de sus datos en un fichero regulado por el artículo 29.2 de la Ley Orgánica 15/1999, de 13 de diciembre, se tendrán en cuenta las siguientes reglas:

1.^a Si la solicitud se dirigiera al titular del fichero común, éste deberá comunicar al afectado todos los datos relativos al mismo que obren en el fichero.

En este caso, el titular del fichero común deberá, además de dar cumplimiento a lo establecido en el presente reglamento, facilitar las evaluaciones y apreciaciones que sobre el afectado se hayan comunicado en los últimos seis meses y el nombre y dirección de los cesionarios.

2.^a Si la solicitud se dirigiera a cualquier otra entidad participante en el sistema, deberá comunicar al afectado todos los datos relativos al mismo a los que ella pueda acceder, así como la identidad y dirección del titular del fichero común para que pueda completar el ejercicio de su derecho de acceso.

3. Cuando el interesado ejercite sus derechos de rectificación o cancelación en relación con la inclusión de sus datos en un fichero regulado por el artículo 29.2 de la Ley Orgánica 15/1999, de 13 de diciembre, se tendrán en cuenta las siguientes reglas:

1.^a Si la solicitud se dirige al titular del fichero común, éste tomará las medidas oportunas para trasladar dicha solicitud a la entidad que haya facilitado los datos, para que ésta la resuelva. En el caso de que el responsable del fichero común no haya recibido contestación por parte de la entidad en el plazo de siete días, procederá a la rectificación o cancelación cautelar de los mismos.

2.^a Si la solicitud se dirige a quien haya facilitado los datos al fichero común procederá a la rectificación o cancelación de los mismos en sus ficheros y a notificarlo al titular del fichero común en el plazo de diez días, dando asimismo respuesta al interesado en los términos previstos en el artículo 33 de este reglamento.

3.^a Si la solicitud se dirige a otra entidad participante en el sistema, que no hubiera facilitado al fichero común los datos, dicha entidad informará al afectado sobre este hecho en el plazo máximo de diez días, proporcionándole, además, la identidad y dirección del titular del fichero común para, que en su caso, puedan ejercitar sus derechos ante el mismo.

CAPÍTULO II

Tratamientos para actividades de publicidad y prospección comercial

Artículo 45. Datos susceptibles de tratamiento e información al interesado.

1. Quienes se dediquen a la recopilación de direcciones, reparto de documentos, publicidad, venta a distancia, prospección comercial y otras actividades análogas, así como quienes realicen estas actividades con el fin de comercializar sus propios productos o servicios o los de terceros, sólo podrán utilizar nombres y direcciones u otros datos de carácter personal cuando los mismos se encuentren en uno de los siguientes casos:

a) Figuren en alguna de las fuentes accesibles al público a las que se refiere la letra j) del artículo 3 de la Ley Orgánica 15/1999, de 13 de diciembre y el artículo 7 de este reglamento y el interesado no haya manifestado su negativa u oposición a que sus datos sean objeto de tratamiento para las actividades descritas en este apartado.

b) Hayan sido facilitados por los propios interesados u obtenidos con su consentimiento para finalidades determinadas, explícitas y legítimas relacionadas con la actividad de publicidad o prospección comercial, habiéndose informado a los interesados sobre los sectores específicos y concretos de actividad respecto de los que podrá recibir información o publicidad.

2. Cuando los datos procedan de fuentes accesibles al público y se destinen a la actividad de publicidad o prospección comercial, deberá informarse al interesado en cada comunicación que se le dirija del origen de los datos y de la identidad del responsable del tratamiento así como de los derechos que le asisten, con indicación de ante quién podrán ejercitarse.

A tal efecto, el interesado deberá ser informado de que sus datos han sido obtenidos de fuentes accesibles al público y de la entidad de la que hubieran sido obtenidos.

Artículo 46. Tratamiento de datos en campañas publicitarias.

1. Para que una entidad pueda realizar por sí misma una actividad publicitaria de sus productos o servicios entre sus clientes será preciso que el tratamiento se ampare en alguno de los supuestos contemplados en el artículo 6 de la Ley Orgánica 15/1999, de 13 de diciembre.

2. En caso de que una entidad contrate o encomiende a terceros la realización de una determinada campaña publicitaria de sus productos o servicios, encomendándole el tratamiento de determinados datos, se aplicarán las siguientes normas:

a) Cuando los parámetros identificativos de los destinatarios de la campaña sean fijados por la entidad que contrate la campaña, ésta será responsable del tratamiento de los datos.

b) Cuando los parámetros fueran determinados únicamente por la entidad o entidades contratadas, dichas entidades serán las responsable del tratamiento.

c) Cuando en la determinación de los parámetros intervengan ambas entidades, serán ambas responsables del tratamiento.

3. En el supuesto contemplado en el apartado anterior, la entidad que encargue la realización de la campaña publicitaria deberá adoptar las medidas necesarias para asegurarse de que la entidad contratada ha recabado los datos cumpliendo las exigencias establecidas en la Ley Orgánica 15/1999, de 13 de diciembre, y en el presente reglamento.

4. A los efectos previstos en este artículo, se consideran parámetros identificativos de los destinatarios las variables utilizadas para identificar el público objetivo o destinatario de una campaña o promoción comercial de productos o servicios que permitan acotar los destinatarios individuales de la misma.

Artículo 47. Depuración de datos personales.

Cuando dos o más responsables por sí mismos o mediante encargo a terceros pretendieran constatar sin consentimiento de los afectados, con fines de promoción o comercialización de sus productos o servicios y mediante un tratamiento cruzado de sus ficheros quiénes ostentan la condición de clientes de una u otra o de varios de ellos, el tratamiento así realizado constituirá una cesión o comunicación de datos.

Artículo 48. Ficheros de exclusión del envío de comunicaciones comerciales.

Los responsables a los que el afectado haya manifestado su negativa a recibir publicidad podrán conservar los mínimos datos imprescindibles para identificarlo y adoptar las medidas necesarias que eviten el envío de publicidad.

Artículo 49. Ficheros comunes de exclusión del envío de comunicaciones comerciales.

1. Será posible la creación de ficheros comunes, de carácter general o sectorial, en los que sean objeto de tratamiento los datos de carácter personal que resulten necesarios para evitar el envío de comunicaciones comerciales a los interesados que manifiesten su negativa u oposición a recibir publicidad.

A tal efecto, los citados ficheros podrán contener los mínimos datos imprescindibles para identificar al afectado.

2. Cuando el afectado manifieste ante un concreto responsable su negativa u oposición a que sus datos sean tratados con fines de publicidad o prospección comercial, aquél deberá ser informado de la existencia de los ficheros comunes de exclusión generales o sectoriales, así como de la identidad de su responsable, su domicilio y la finalidad del tratamiento.

El afectado podrá solicitar su exclusión respecto de un fichero o tratamiento concreto o su inclusión en ficheros comunes de excluidos de carácter general o sectorial.

3. La entidad responsable del fichero común podrá tratar los datos de los interesados que hubieran manifestado su negativa u oposición al tratamiento de sus datos con fines de publicidad o prospección comercial, cumpliendo las restantes obligaciones establecidas en la Ley Orgánica 15/1999, de 13 de diciembre, y en el presente Reglamento.

4. Quienes pretendan efectuar un tratamiento relacionado con actividades de publicidad o prospección comercial deberán previamente consultar los ficheros comunes que pudieran afectar a su actuación, a fin de evitar que sean objeto de tratamiento los datos de los afectados que hubieran manifestado su oposición o negativa a ese tratamiento.

Artículo 50. Derechos de acceso, rectificación y cancelación.

1. El ejercicio de los derechos de acceso, rectificación y cancelación en relación con los tratamientos vinculados a actividades de publicidad y prospección comercial se someterá a lo previsto en los capítulos I a IV del título III de este reglamento.

2. Si el derecho se ejercitase ante una entidad que hubiese encargado a un tercero la realización de una campaña publicitaria, aquélla estará obligada, en el plazo de diez días, desde la recepción de la comunicación de la solicitud de ejercicio de derechos del afectado, a comunicar la solicitud al responsable del fichero a fin de que el mismo otorgue al afectado su derecho en el plazo de diez días desde la recepción de la comunicación, dando cuenta de ello al afectado.

Lo dispuesto en el párrafo anterior se entenderá sin perjuicio del deber impuesto a la entidad mencionada en el apartado anterior, en todo caso, por el párrafo segundo del artículo 5.5 de la Ley Orgánica 15/1999, de 13 de diciembre.

Artículo 51. Derecho de oposición.

1. Los interesados tendrán derecho a oponerse, previa petición y sin gastos, al tratamiento de los datos que les conciernan, en cuyo caso serán dados de baja del tratamiento, cancelándose las informaciones que sobre ellos figuren en aquél, a su simple solicitud.

La oposición a la que se refiere el párrafo anterior deberá entenderse sin perjuicio del derecho del interesado a revocar cuando lo estimase oportuno el consentimiento que hubiera otorgado, en su caso, para el tratamiento de los datos.

2. A tal efecto, deberá concederse al interesado un medio sencillo y gratuito para oponerse al tratamiento. En particular, se considerará cumplido lo dispuesto en este precepto cuando los derechos puedan ejercitarse mediante la llamada a un número telefónico gratuito o la remisión de un correo electrónico.

3. Cuando el responsable del fichero o tratamiento disponga de servicios de cualquier índole para la atención a sus clientes o el ejercicio de reclamaciones relacionadas con el servicio prestado o los productos ofertados al mismo, deberá concederse la posibilidad al afectado de ejercer su oposición a través de dichos servicios.

No se considerarán conformes a lo dispuesto en la Ley Orgánica 15/1999, de 13 de diciembre, los supuestos en que el responsable del tratamiento establezca como medio para que el interesado pueda ejercitar su oposición el envío de cartas certificadas o envíos semejantes, la utilización de servicios de telecomunicaciones que implique una tarificación adicional al afectado o cualesquiera otros medios que impliquen un coste excesivo para el interesado.

En todo caso, el ejercicio por el afectado de sus derechos no podrá suponer un ingreso adicional para el responsable del tratamiento ante el que se ejercitan.

4. Si el derecho de oposición se ejercitase ante una entidad que hubiera encomendado a un tercero la realización de una campaña publicitaria, aquella estará obligada, en el plazo de diez días, desde la recepción de la comunicación de la solicitud de ejercicio de derechos del afectado, a comunicar la solicitud al responsable del fichero a fin de que el mismo atienda el derecho del afectado en el plazo de diez días desde la recepción de la comunicación, dando cuenta de ello al afectado.

Lo dispuesto en el párrafo anterior se entenderá sin perjuicio del deber impuesto a la entidad mencionada en el apartado anterior, en todo caso, por el párrafo segundo del artículo 5.5 de la Ley Orgánica 15/1999, de 13 de diciembre.

TÍTULO V

Obligaciones previas al tratamiento de los datos

CAPÍTULO I

Creación, modificación o supresión de ficheros de titularidad pública

Artículo 52. Disposición o Acuerdo de creación, modificación o supresión del fichero.

1. La creación, modificación o supresión de los ficheros de titularidad pública sólo podrá hacerse por medio de disposición general o acuerdo publicados en el «Boletín Oficial del Estado» o diario oficial correspondiente.

2. En todo caso, la disposición o acuerdo deberá dictarse y publicarse con carácter previo a la creación, modificación o supresión del fichero.

Artículo 53. Forma de la disposición o acuerdo.

1. Cuando la disposición se refiera a los órganos de la Administración General del Estado o a las entidades u organismos vinculados o dependientes de la misma, deberá revestir la forma de orden ministerial o resolución del titular de la entidad u organismo correspondiente.

2. En el caso de los órganos constitucionales del Estado, se estará a lo que establezcan sus normas reguladoras.

3. En relación con los ficheros de los que sean responsables las comunidades autónomas, entidades locales y las entidades u organismos vinculados o dependientes de las mismas, las universidades públicas, así como los órganos de las comunidades autónomas con funciones análogas a los órganos constitucionales del Estado, se estará a su legislación específica.

4. La creación, modificación o supresión de los ficheros de los que sean responsables las corporaciones de derecho público y que se encuentren relacionados con el ejercicio por aquéllas de potestades de derecho público deberá efectuarse a través de acuerdo de sus órganos de gobierno, en los términos que establezcan sus respectivos Estatutos, debiendo ser igualmente objeto de publicación en el «Boletín Oficial del Estado» o diario oficial correspondiente.

Artículo 54. Contenido de la disposición o acuerdo.

1. La disposición o acuerdo de creación del fichero deberá contener los siguientes extremos:

a) La identificación del fichero o tratamiento, indicando su denominación, así como la descripción de su finalidad y usos previstos.

b) El origen de los datos, indicando el colectivo de personas sobre los que se pretende obtener datos de carácter personal o que resulten obligados a suministrarlos, el procedimiento de recogida de los datos y su procedencia.

c) La estructura básica del fichero mediante la descripción detallada de los datos identificativos, y en su caso, de los datos especialmente protegidos, así como de las restantes categorías de datos de carácter personal incluidas en el mismo y el sistema de tratamiento utilizado en su organización.

d) Las comunicaciones de datos previstas, indicando en su caso, los destinatarios o categorías de destinatarios.

e) Las transferencias internacionales de datos previstas a terceros países, con indicación, en su caso, de los países de destino de los datos.

f) Los órganos responsables del fichero.

g) Los servicios o unidades ante los que pudiesen ejercitarse los derechos de acceso, rectificación, cancelación y oposición.

h) El nivel básico, medio o alto de seguridad que resulte exigible, de acuerdo con lo establecido en el título VIII del presente reglamento.

2. La disposición o acuerdo de modificación del fichero deberá indicar las modificaciones producidas en cualquiera de los extremos a los que se refiere el apartado anterior.

3. En las disposiciones o acuerdos que se dicten para la supresión de los ficheros se establecerá el destino que vaya a darse a los datos o, en su caso, las previsiones que se adopten para su destrucción.

CAPÍTULO II

Notificación e inscripción de los ficheros de titularidad pública o privada

Artículo 55. Notificación de ficheros.

1. Todo fichero de datos de carácter personal de titularidad pública será notificado a la Agencia Española de Protección de Datos por el órgano competente de la Administración responsable del fichero para su inscripción en el Registro General de Protección de Datos, en el plazo de treinta días desde la publicación de su norma o acuerdo de creación en el diario oficial correspondiente.

2. Los ficheros de datos de carácter personal de titularidad privada serán notificados a la Agencia Española de Protección de Datos por la persona o entidad privada que pretenda crearlos, con carácter previo a su creación. La notificación deberá indicar la identificación del responsable del fichero, la identificación del fichero, sus finalidades y los usos previstos, el sistema de tratamiento empleado en su organización, el colectivo de personas sobre el que se obtienen los datos, el procedimiento y procedencia de los datos, las categorías de datos, el servicio o unidad de acceso, la indicación del nivel de medidas de seguridad básico, medio o alto exigible, y en su caso, la identificación del encargado del tratamiento en donde se encuentre ubicado el fichero y los destinatarios de cesiones y transferencias internacionales de datos.

3. Cuando la obligación de notificar afecte a ficheros sujetos a la competencia de la autoridad de control de una comunidad autónoma que haya creado su propio registro de ficheros, la notificación se realizará a la autoridad autonómica competente, que dará traslado de la inscripción al Registro General de Protección de Datos.

El Registro General de Protección de Datos podrá solicitar de las autoridades de control de las comunidades autónomas el traslado al que se refiere el párrafo anterior, procediendo, en su defecto, a la inclusión de oficio del fichero en el Registro.

4. La notificación se realizará conforme al procedimiento establecido en la sección primera del capítulo IV del título IX del presente reglamento.

Artículo 56. Tratamiento de datos en distintos soportes.

1. La notificación de un fichero de datos de carácter personal es independiente del sistema de tratamiento empleado en su organización y del soporte o soportes empleados para el tratamiento de los datos.

2. Cuando los datos de carácter personal objeto de un tratamiento estén almacenados en diferentes soportes, automatizados y no automatizados o exista una copia en soporte no automatizado de un fichero automatizado sólo será precisa una sola notificación, referida a dicho fichero.

Artículo 57. Ficheros en los que exista más de un responsable.

Cuando se tenga previsto crear un fichero del que resulten responsables varias personas o entidades simultáneamente, cada una de ellas deberá notificar, a fin de proceder a su inscripción en el Registro General de Protección de Datos y, en su caso, en los Registros de Ficheros creados por las autoridades de control de las comunidades autónomas, la creación del correspondiente fichero.

Artículo 58. Notificación de la modificación o supresión de ficheros.

1. La inscripción del fichero deberá encontrarse actualizada en todo momento. Cualquier modificación que afecte al contenido de la inscripción de un fichero deberá ser previamente notificada a la Agencia Española de Protección de Datos o a las autoridades de control autonómicas competentes, a fin de proceder a su inscripción en el registro correspondiente, conforme a lo dispuesto en el artículo 55.

2. Cuando el responsable del fichero decida su supresión, deberá notificarla a efectos de que se proceda a la cancelación de la inscripción en el registro correspondiente.

3. Tratándose de ficheros de titularidad pública, cuando se pretenda la modificación que afecte a alguno de los requisitos previstos en el artículo 55 o la supresión del fichero deberá haberse adoptado, con carácter previo a la notificación la correspondiente norma o acuerdo en los términos previstos en el capítulo I de este título.

Artículo 59. Modelos y soportes para la notificación.

1. La Agencia Española de Protección de Datos publicará mediante la correspondiente Resolución del Director los modelos o formularios electrónicos de notificación de creación, modificación o supresión de ficheros, que permitan su presentación a través de medios telemáticos o en soporte papel, así como, previa consulta de las autoridades de protección de datos de las comunidades autónomas, los formatos para la comunicación telemática de ficheros públicos por las autoridades de control autonómicas, de conformidad con lo establecido en los artículos 55 y 58 del presente reglamento.

2. Los modelos o formularios electrónicos de notificación se podrán obtener gratuitamente en la página web de la Agencia Española de Protección de Datos.

3. El Director de la Agencia Española de Protección de Datos podrá establecer procedimientos simplificados de notificación en atención a las circunstancias que concurran en el tratamiento o el tipo de fichero al que se refiera la notificación.

Artículo 60. Inscripción de los ficheros.

1. El Director de la Agencia Española de Protección de Datos, a propuesta del Registro General de Protección de Datos, dictará resolución acordando, en su caso, la inscripción, una vez tramitado el procedimiento previsto en el capítulo IV del título IX.

2. La inscripción contendrá el código asignado por el Registro, la identificación del responsable del fichero, la identificación del fichero o tratamiento, la descripción de su finalidad y usos previstos, el sistema de tratamiento empleado en su organización, en su caso, el colectivo de personas sobre el que se obtienen los datos, el procedimiento y procedencia de los datos, las categorías de datos, el servicio o unidad de acceso, y la indicación del nivel de medidas de seguridad exigible conforme a lo dispuesto en el artículo 81.

Asimismo, se incluirán, en su caso, la identificación del encargado del tratamiento en donde se encuentre ubicado el fichero y los destinatarios de cesiones y transferencias internacionales.

En el caso de ficheros de titularidad pública también se hará constar la referencia de la disposición general por la que ha sido creado, y en su caso, modificado.

3. La inscripción de un fichero en el Registro General de Protección de Datos, no exime al responsable del cumplimiento del resto de las obligaciones previstas en la Ley Orgánica 15/1999, de 13 de diciembre, y demás disposiciones reglamentarias.

Artículo 61. Cancelación de la inscripción.

1. Cuando el responsable del tratamiento comunicase, en virtud de lo dispuesto en el artículo 58 de este reglamento, la supresión del fichero, el Director de la Agencia Española de Protección de Datos, previa la tramitación del procedimiento establecido en la sección primera del capítulo IV del título IX, dictará resolución acordando la cancelación de la inscripción correspondiente al fichero.

2. El Director de la Agencia Española de Protección de Datos podrá, en ejercicio de sus competencias, acordar de oficio la cancelación de la inscripción de un fichero cuando concurren circunstancias que acrediten la imposibilidad de su existencia, previa la tramitación del procedimiento establecido en la sección segunda del capítulo IV del título IX de este reglamento.

Artículo 62. Rectificación de errores.

El Registro General de Protección de Datos podrá rectificar en cualquier momento, de oficio o a instancia de los interesados, los errores materiales, de hecho o aritméticos que pudieran existir en las inscripciones, de conformidad con lo dispuesto en el artículo 105 de la Ley 30/1992, de 26 de noviembre.

Artículo 63. Inscripción de oficio de ficheros de titularidad pública.

1. En supuestos excepcionales con el fin de garantizar el derecho a la protección de datos de los afectados, y sin perjuicio de la obligación de notificación, se podrá proceder a la inscripción de oficio de un determinado fichero en el Registro General de Protección de Datos.

2. Para que lo dispuesto en el apartado anterior resulte de aplicación, será requisito indispensable que la correspondiente norma o acuerdo regulador de los ficheros que contengan datos de carácter personal haya sido publicado en el correspondiente diario oficial y cumpla los requisitos establecidos en la Ley Orgánica 15/1999, de 13 de diciembre, y el presente reglamento.

3. El Director de la Agencia Española de Protección de Datos podrá, a propuesta del Registro General de Protección de Datos, acordar la inscripción del fichero de titularidad pública en el Registro, notificándose dicho acuerdo al órgano responsable del fichero.

Cuando la inscripción se refiera a ficheros sujetos a la competencia de la autoridad de control de una comunidad autónoma que haya creado su propio registro de ficheros, se comunicará a la referida autoridad de control autonómica para que proceda, en su caso, a la inscripción de oficio.

Artículo 64. Colaboración con las autoridades de control de las comunidades autónomas.

El Director de la Agencia Española de Protección de Datos podrá celebrar con los directores de las autoridades de control de las comunidades autónomas los convenios de colaboración o acuerdos que estime pertinentes, a fin de garantizar la inscripción en el Registro General de Protección de Datos de los ficheros sometidos a la competencia de dichas autoridades autonómicas.

TÍTULO VI

Transferencias internacionales de datos

CAPÍTULO I

Disposiciones generales

Artículo 65. Cumplimiento de las disposiciones de la Ley Orgánica 15/1999, de 13 de diciembre.

La transferencia internacional de datos no excluye en ningún caso la aplicación de las disposiciones contenidas en la Ley Orgánica 15/1999, de 13 de diciembre, y en el presente reglamento.

Artículo 66. Autorización y notificación.

1. Para que la transferencia internacional de datos pueda considerarse conforme a lo dispuesto en la Ley Orgánica 15/1999, de 13 de diciembre, y en el presente Reglamento será necesaria la autorización del Director de la Agencia Española de Protección de Datos, que se otorgará en caso de que el exportador aporte las garantías a las que se refiere el artículo 70 del presente reglamento.

La autorización se otorgará conforme al procedimiento establecido en la sección primera del capítulo V del título IX de este reglamento.

2. La autorización no será necesaria:

a) Cuando el Estado en el que se encontrase el importador ofrezca un nivel adecuado de protección conforme a lo previsto en el capítulo II de este título.

b) Cuando la transferencia se encuentre en uno de los supuestos contemplados en los apartados a) a j) del artículo 34 de la Ley Orgánica 15/1999, de 13 de diciembre.

3. En todo caso, la transferencia internacional de datos deberá ser notificada a fin de proceder a su inscripción en el Registro General de Protección de Datos, conforme al procedimiento establecido en la sección primera del capítulo IV del título IX del presente reglamento.

CAPÍTULO II

Transferencias a estados que proporcionen un nivel adecuado de protección

Artículo 67. Nivel adecuado de protección acordado por la Agencia Española de Protección de Datos.

1. No será precisa autorización del Director de la Agencia Española de Protección de Datos a una transferencia internacional de datos cuando las normas aplicables al Estado en que se encontrase el importador ofrezcan dicho nivel adecuado de protección a juicio del Director de la Agencia Española de Protección de Datos.

El carácter adecuado del nivel de protección que ofrece el país de destino se evaluará atendiendo a todas las circunstancias que concurren en la transferencia o categoría de transferencia de datos. En particular, se tomará en consideración la naturaleza de los datos, la finalidad y la duración del tratamiento o de los tratamientos previstos, el país de origen y el país de destino final, las normas de Derecho, generales o sectoriales, vigentes en el país tercero de que se trate, el contenido de los informes de la Comisión de la Unión Europea, así como las normas profesionales y las medidas de seguridad en vigor en dichos países.

Las resoluciones del Director de la Agencia Española de Protección de Datos por las que se acordase que un determinado país proporciona un nivel adecuado de protección de datos serán publicadas en el «Boletín Oficial del Estado».

2. El Director de la Agencia Española de Protección de Datos acordará la publicación de la relación de países cuyo nivel de protección haya sido considerado equiparable conforme a lo dispuesto en el apartado anterior.

Esta lista se publicará y mantendrá actualizada asimismo a través de medios informáticos o telemáticos.

Artículo 68. Nivel adecuado de protección declarado por Decisión de la Comisión Europea.

No será necesaria la autorización del Director de la Agencia Española de Protección de Datos para la realización de una transferencia internacional de datos que tuvieran por importador una persona o entidad, pública o privada, situada en el territorio de un Estado respecto del que se haya declarado por la Comisión Europea la existencia de un nivel adecuado de protección.

Artículo 69. Suspensión temporal de las transferencias.

1. En los supuestos previstos en los artículos precedentes, el Director de la Agencia Española de Protección de Datos, en uso de la potestad que le otorga el artículo 37.1 f) de la Ley Orgánica 15/1999, de 13 de diciembre, podrá acordar, previa audiencia del exportador, la suspensión temporal de la transferencia de datos hacia un importador ubicado en un tercer Estado del que se haya declarado la existencia de un nivel adecuado de protección, cuando concurra alguna de las circunstancias siguientes:

a) Que las autoridades de Protección de Datos del Estado importador o cualquier otra competente, en caso de no existir las primeras, resuelvan que el importador ha vulnerado las normas de protección de datos establecidas en su derecho interno.

b) Que existan indicios racionales de que se estén vulnerando las normas o, en su caso, los principios de protección de datos por la entidad importadora de la transferencia y que las autoridades competentes en el Estado en que se encuentre el importador no han adoptado o no van a adoptar en el futuro las medidas oportunas para resolver el caso en cuestión, habiendo sido advertidas de la situación por la Agencia Española de Protección de Datos. En este caso se podrá suspender la transferencia cuando su continuación pudiera generar un riesgo inminente de grave perjuicio a los afectados.

2. La suspensión se acordará previa la tramitación del procedimiento establecido en la sección segunda del capítulo V del título IX del presente reglamento.

En estos casos, la decisión del Director de la Agencia Española de Protección de Datos será notificada a la Comisión Europea.

CAPÍTULO III

Transferencias a Estados que no proporcionen un nivel adecuado de protección

Artículo 70. Transferencias sujetas a autorización del Director de la Agencia Española de Protección de Datos.

1. Cuando la transferencia tenga por destino un Estado respecto del que no se haya declarado por la Comisión Europea o no se haya considerado por el Director de la Agencia Española de Protección de Datos que existe un nivel adecuado de protección, será necesario recabar la autorización del Director de la Agencia Española de Protección de Datos.

La autorización de la transferencia se tramitará conforme al procedimiento establecido en la sección primera del capítulo V del título IX del presente reglamento.

2. La autorización podrá ser otorgada en caso de que el responsable del fichero o tratamiento aporte un contrato escrito, celebrado entre el exportador y el importador, en el que consten las necesarias garantías de respeto a la protección de la vida privada de los afectados y a sus derechos y libertades fundamentales y se garantice el ejercicio de sus respectivos derechos.

A tal efecto, se considerará que establecen las adecuadas garantías los contratos que se celebren de acuerdo con lo previsto en las Decisiones de la Comisión Europea 2001/497/CE, de 15 de Junio de 2001, 2002/16/CE, de 27 de diciembre de 2001, y 2004/915/CE, de 27 de diciembre de 2004 o de lo que dispongan las Decisiones de la Comisión que den cumplimiento a lo establecido en el artículo 26.4 de la Directiva 95/46/CE.

3. En el supuesto contemplado en el apartado anterior, el Director de la Agencia Española de Protección de Datos podrá denegar o, en uso de la potestad que le otorga el artículo 37.1 f) de la Ley Orgánica 15/1999, de 13 de diciembre, suspender temporalmente, previa audiencia del exportador, la transferencia, cuando concurra alguna de las circunstancias siguientes:

a) Que la situación de protección de los derechos fundamentales y libertades públicas en el país de destino o su legislación impidan garantizar el íntegro cumplimiento del contrato y el ejercicio por los afectados de los derechos que el contrato garantiza.

b) Que la entidad destinataria haya incumplido previamente las garantías establecidas en cláusulas contractuales de este tipo.

c) Que existan indicios racionales de que las garantías ofrecidas por el contrato no están siendo o no serán respetadas por el importador.

d) Que existan indicios racionales de que los mecanismos de aplicación del contrato no son o no serán efectivos.

e) Que la transferencia, o su continuación, en caso de haberse iniciado, pudiera crear una situación de riesgo de daño efectivo a los afectados.

La suspensión se acordará previa la tramitación del procedimiento establecido en la sección segunda del capítulo V del título IX del presente reglamento.

Las resoluciones del Director de la Agencia Española de Protección de Datos por las que se deniegue o suspenda una transferencia internacional de datos en virtud de las causas a las que se refiere este apartado serán notificadas a la Comisión de las Comunidades Europeas cuando así sea exigible.

4. También podrá otorgarse la autorización para la transferencia internacional de datos en el seno de grupos multinacionales de empresas cuando hubiesen sido adoptados por los mismos normas o reglas internas en que consten las necesarias garantías de respeto a la protección de la vida privada y el derecho fundamental a la protección de datos de los afectados y se garantice asimismo el cumplimiento de los principios y el ejercicio de los derechos reconocidos en la Ley Orgánica 15/1999, de 13 de diciembre, y el presente reglamento.

En este caso, para que proceda la autorización del Director de la Agencia Española de Protección de Datos será preciso que las normas o reglas resulten vinculantes para las empresas del Grupo y exigibles conforme al ordenamiento jurídico español.

En todo caso, la autorización del Director de la Agencia Española de Protección de Datos implicará la exigibilidad de lo previsto en las normas o reglas internas tanto por la Agencia como por los afectados cuyos datos hubieran sido objeto de tratamiento.

TÍTULO VII

Códigos tipo

Artículo 71. Objeto y naturaleza.

1. Los códigos tipo a los que se refiere el artículo 32 de la Ley Orgánica 15/1999, de 13 de diciembre, tienen por objeto adecuar lo establecido en la citada Ley Orgánica y en el presente reglamento a las peculiaridades de los tratamientos efectuados por quienes se adhieren a los mismos.

A tal efecto, contendrán reglas o estándares específicos que permitan armonizar los tratamientos de datos efectuados por los adheridos, facilitar el ejercicio de los derechos de los afectados y favorecer el cumplimiento de lo dispuesto en la Ley Orgánica 15/1999, de 13 de diciembre, y el presente reglamento.

2. Los códigos tipo tendrán el carácter de códigos deontológicos o de buena práctica profesional y serán vinculantes para quienes se adhieran a los mismos.

Artículo 72. Iniciativa y ámbito de aplicación.

1. Los códigos tipo tendrán carácter voluntario.

2. Los códigos tipo de carácter sectorial podrán referirse a la totalidad o a parte de los tratamientos llevados a cabo por entidades pertenecientes a un mismo sector, debiendo ser formulados por organizaciones representativas de dicho sector, al menos en su ámbito territorial de aplicación, y sin perjuicio de la potestad de dichas entidades de ajustar el código tipo a sus peculiaridades.

3. Los códigos tipo promovidos por una empresa deberán referirse a la totalidad de los tratamientos llevados a cabo por la misma.

4. Las Administraciones públicas y las corporaciones de Derecho Público podrán adoptar códigos tipo de acuerdo con lo establecido en las normas que les sean aplicables.

Artículo 73. Contenido.

1. Los códigos tipo deberán estar redactados en términos claros y accesibles.

2. Los códigos tipo deben respetar la normativa vigente e incluir, como mínimo, con suficiente grado de precisión:

a) La delimitación clara y precisa de su ámbito de aplicación, las actividades a que el código se refiere y los tratamientos sometidos al mismo.

- b) Las previsiones específicas para la aplicación de los principios de protección de datos.
- c) El establecimiento de estándares homogéneos para el cumplimiento por los adheridos al código de las obligaciones establecidas en la Ley Orgánica 15/1999, de 13 de diciembre.
- d) El establecimiento de procedimientos que faciliten el ejercicio por los afectados de sus derechos de acceso, rectificación, cancelación y oposición.
- e) La determinación de las cesiones y transferencias internacionales de datos que, en su caso, se prevean, con indicación de las garantías que deban adoptarse.
- f) Las acciones formativas en materia de protección de datos dirigidas a quienes los traten, especialmente en cuanto a su relación con los afectados.
- g) Los mecanismos de supervisión a través de los cuales se garantice el cumplimiento por los adheridos de lo establecido en el código tipo, en los términos previstos en el artículo 74 de este reglamento.

3. En particular, deberán contenerse en el código:

- a) Cláusulas tipo para la obtención del consentimiento de los afectados al tratamiento o cesión de sus datos.
- b) Cláusulas tipo para informar a los afectados del tratamiento, cuando los datos no sean obtenidos de los mismos.
- c) Modelos para el ejercicio por los afectados de sus derechos de acceso, rectificación, cancelación y oposición.
- d) Modelos de cláusulas para el cumplimiento de los requisitos formales exigibles para la contratación de un encargado del tratamiento, en su caso.

Artículo 74. Compromisos adicionales.

1. Los códigos tipo podrán incluir cualquier otro compromiso adicional que asuman los adheridos para un mejor cumplimiento de la legislación vigente en materia de protección de datos.

2. Además podrán contener cualquier otro compromiso que puedan establecer las entidades promotoras y, en particular, sobre:

- a) La adopción de medidas de seguridad adicionales a las exigidas por la Ley Orgánica 15/1999, de 13 de diciembre, y el presente Reglamento.
- b) La identificación de las categorías de cesionarios o importadores de los datos.
- c) Las medidas concretas adoptadas en materia de protección de los menores o de determinados colectivos de afectados.
- d) El establecimiento de un sello de calidad que identifique a los adheridos al código.

Artículo 75. Garantías del cumplimiento de los códigos tipo.

1. Los códigos tipo deberán incluir procedimientos de supervisión independientes para garantizar el cumplimiento de las obligaciones asumidas por los adheridos, y establecer un régimen sancionador adecuado, eficaz y disuasorio.

2. El procedimiento que se prevea deberá garantizar:

a) La independencia e imparcialidad del órgano responsable de la supervisión.

b) La sencillez, accesibilidad, celeridad y gratuidad para la presentación de quejas y reclamaciones ante dicho órgano por los eventuales incumplimientos del código tipo.

c) El principio de contradicción.

d) Una graduación de sanciones que permita ajustarlas a la gravedad del incumplimiento. Esas sanciones deberán ser disuasorias y podrán implicar la suspensión de la adhesión al código o la expulsión de la entidad adherida. Asimismo, podrá establecerse, en su caso, su publicidad.

e) La notificación al afectado de la decisión adoptada.

3. Asimismo, y sin perjuicio de lo dispuesto en el artículo 19 de la Ley Orgánica 15/1999, de 13 de diciembre, los códigos tipo podrán contemplar procedimientos para la determinación de medidas reparadoras en caso de haberse causado un perjuicio a los afectados como consecuencia del incumplimiento del código tipo.

4. Lo dispuesto en este artículo se aplicará sin perjuicio de las competencias de la Agencia Española de Protección de Datos y, en su caso, de las autoridades de control de las comunidades autónomas.

Artículo 76. Relación de adheridos.

El código tipo deberá incorporar como anexo una relación de adheridos, que deberá mantenerse actualizada, a disposición de la Agencia Española de Protección de Datos.

Artículo 77. Depósito y publicidad de los códigos tipo.

1. Para que los códigos tipo puedan ser considerados como tales a los efectos previstos en el artículo 32 de la Ley Orgánica 15/1999, de 13 de diciembre, y el presente reglamento, deberán ser depositados e inscritos en el Registro General de Protección de Datos de la Agencia Española de Protección de Datos o, cuando corresponda, en el registro que fuera creado por las comunidades autónomas, que darán traslado para su inclusión al Registro General de Protección de Datos.

2. A tal efecto, los códigos tipo deberán ser presentados ante la correspondiente autoridad de control, tramitándose su inscripción, en caso de estar sometidos a la decisión de la Agencia Española de Protección de Datos, conforme al procedimiento establecido en el capítulo VI del título IX de este reglamento.

3. En todo caso, la Agencia Española de Protección de Datos dará publicidad a los códigos tipo inscritos, preferentemente a través de medios informáticos o telemáticos.

Artículo 78. Obligaciones posteriores a la inscripción del código tipo.

Las entidades promotoras o los órganos, personas o entidades que al efecto se designen en el propio código tipo tendrán, una vez el mismo haya sido publicado, las siguientes obligaciones:

a) Mantener accesible al público la información actualizada sobre las entidades promotoras, el contenido del código tipo, los procedimientos de adhesión y de garantía de su cumplimiento y la relación de adheridos a la que se refiere el artículo anterior.

Esta información deberá presentarse de forma concisa y clara y estar permanentemente accesible por medios electrónicos.

b) Remitir a la Agencia Española de Protección de Datos una memoria anual sobre las actividades realizadas para difundir el código tipo y promover la adhesión a éste, las actuaciones de verificación del cumplimiento del código y sus resultados, las quejas y reclamaciones tramitadas y el curso que se les hubiera dado y cualquier otro aspecto que las entidades promotoras consideren adecuado destacar.

Cuando se trate de códigos tipo inscritos en el registro de una autoridad de control de una comunidad autónoma, la remisión se realizará a dicha autoridad, que dará traslado al registro General de Protección de Datos.

c) Evaluar periódicamente la eficacia del código tipo, midiendo el grado de satisfacción de los afectados y, en su caso, actualizar su contenido para adaptarlo a la normativa general o sectorial de protección de datos existente en cada momento.

Esta evaluación deberá tener lugar, al menos, cada cuatro años, salvo que sea precisa la adaptación de los compromisos del código a la modificación de la normativa aplicable en un plazo menor.

d) Favorecer la accesibilidad de todas las personas, con especial atención a las que tengan alguna discapacidad o de edad avanzada a toda la información disponible sobre el código tipo.

TÍTULO VIII

De las medidas de seguridad en el tratamiento de datos de carácter personal

CAPÍTULO I

Disposiciones generales

Artículo 79. Alcance.

Los responsables de los tratamientos o los ficheros y los encargados del tratamiento deberán implantar las medidas de seguridad con arreglo a lo dispuesto en este Título, con independencia de cual sea su sistema de tratamiento.

Artículo 80. Niveles de seguridad.

Las medidas de seguridad exigibles a los ficheros y tratamientos se clasifican en tres niveles: básico, medio y alto.

Artículo 81. Aplicación de los niveles de seguridad.

1. Todos los ficheros o tratamientos de datos de carácter personal deberán adoptar las medidas de seguridad calificadas de nivel básico.

2. Deberán implantarse, además de las medidas de seguridad de nivel básico, las medidas de nivel medio, en los siguientes ficheros o tratamientos de datos de carácter personal:

a) Los relativos a la comisión de infracciones administrativas o penales.

b) Aquellos cuyo funcionamiento se rija por el artículo 29 de la Ley Orgánica 15/1999, de 13 de diciembre.

c) Aquellos de los que sean responsables Administraciones tributarias y se relacionen con el ejercicio de sus potestades tributarias.

d) Aquéllos de los que sean responsables las entidades financieras para finalidades relacionadas con la prestación de servicios financieros.

e) Aquéllos de los que sean responsables las Entidades Gestoras y Servicios Comunes de la Seguridad Social y se relacionen con el ejercicio de sus competencias. De igual modo, aquellos de los que sean responsables las mutuas de accidentes de trabajo y enfermedades profesionales de la Seguridad Social.

f) Aquéllos que contengan un conjunto de datos de carácter personal que ofrezcan una definición de las características o de la personalidad de los ciudadanos y que permitan evaluar determinados aspectos de la personalidad o del comportamiento de los mismos.

3. Además de las medidas de nivel básico y medio, las medidas de nivel alto se aplicarán en los siguientes ficheros o tratamientos de datos de carácter personal:

a) Los que se refieran a datos de ideología, afiliación sindical, religión, creencias, origen racial, salud o vida sexual.

b) Los que contengan o se refieran a datos recabados para fines policiales sin consentimiento de las personas afectadas.

c) Aquéllos que contengan datos derivados de actos de violencia de género.

4. A los ficheros de los que sean responsables los operadores que presten servicios de comunicaciones electrónicas disponibles al público o exploten redes públicas de comunicaciones electrónicas respecto a los datos de tráfico y a los datos de localización, se aplicarán, además de las medidas de seguridad de nivel básico y medio, la medida de seguridad de nivel alto contenida en el artículo 103 de este reglamento.

5. En caso de ficheros o tratamientos de datos de ideología, afiliación sindical, religión, creencias, origen racial, salud o vida sexual bastará la implantación de las medidas de seguridad de nivel básico cuando:

a) Los datos se utilicen con la única finalidad de realizar una transferencia dineraria a las entidades de las que los afectados sean asociados o miembros.

b) Se trate de ficheros o tratamientos no automatizados en los que de forma incidental o accesoria se contengan aquellos datos sin guardar relación con su finalidad.

6. También podrán implantarse las medidas de seguridad de nivel básico en los ficheros o tratamientos que contengan datos relativos a la salud, referentes exclusivamente al grado de discapacidad o la simple declaración de la condición de discapacidad o invalidez del afectado, con motivo del cumplimiento de deberes públicos.

7. Las medidas incluidas en cada uno de los niveles descritos anteriormente tienen la condición de mínimos exigibles, sin perjuicio de las disposiciones legales o reglamentarias específicas vigentes que pudieran resultar de aplicación en cada caso o las que por propia iniciativa adoptase el responsable del fichero.

8. A los efectos de facilitar el cumplimiento de lo dispuesto en este título, cuando en un sistema de información existan ficheros o tratamientos que en función de su finalidad o uso concreto, o de la naturaleza de los datos que contengan, requieran la aplicación de un nivel de medidas de seguridad diferente al del sistema principal, podrán segregarse de este último, siendo de aplicación en cada caso el nivel de medidas de seguridad correspondiente y siempre que puedan delimitarse los datos afectados y los usuarios con acceso a los mismos, y que esto se haga constar en el documento de seguridad.

Artículo 82. Encargado del tratamiento.

1. Cuando el responsable del fichero o tratamiento facilite el acceso a los datos, a los soportes que los contengan o a los recursos del sistema de información que los trate, a un encargado de tratamiento que preste sus servicios en los locales del primero deberá hacerse constar esta circunstancia en el documento de seguridad de dicho responsable, comprometiéndose el personal del encargado al cumplimiento de las medidas de seguridad previstas en el citado documento.

Cuando dicho acceso sea remoto habiéndose prohibido al encargado incorporar tales datos a sistemas o soportes distintos de los del responsable, este último deberá hacer constar esta circunstancia en el documento de seguridad del responsable, comprometiéndose el personal del encargado al cumplimiento de las medidas de seguridad previstas en el citado documento.

2. Si el servicio fuera prestado por el encargado del tratamiento en sus propios locales, ajenos a los del responsable del fichero, deberá elaborar un documento de seguridad en los términos exigidos por el artículo 88 de este reglamento o completar el que ya hubiera elaborado, en su caso, identificando el fichero o tratamiento y el responsable del mismo e incorporando las medidas de seguridad a implantar en relación con dicho tratamiento.

3. En todo caso, el acceso a los datos por el encargado del tratamiento estará sometido a las medidas de seguridad contempladas en este reglamento.

Artículo 83. Prestaciones de servicios sin acceso a datos personales.

El responsable del fichero o tratamiento adoptará las medidas adecuadas para limitar el acceso del personal a datos personales, a los soportes que los contengan o a los recursos del sistema de información, para la realización de trabajos que no impliquen el tratamiento de datos personales.

Cuando se trate de personal ajeno, el contrato de prestación de servicios recogerá expresamente la prohibición de acceder a los datos personales y la obligación de secreto respecto a los datos que el personal hubiera podido conocer con motivo de la prestación del servicio.

Artículo 84. Delegación de autorizaciones.

Las autorizaciones que en este título se atribuyen al responsable del fichero o tratamiento podrán ser delegadas en las personas designadas al efecto. En el documento de seguridad deberán constar las personas habilitadas para otorgar estas autorizaciones así como aquellas en las que recae dicha delegación. En ningún caso esta designación supone una delegación de la responsabilidad que corresponde al responsable del fichero.

Artículo 85. Acceso a datos a través de redes de comunicaciones.

Las medidas de seguridad exigibles a los accesos a datos de carácter personal a través de redes de comunicaciones, sean o no públicas, deberán garantizar un nivel de seguridad equivalente al correspondiente a los accesos en modo local, conforme a los criterios establecidos en el artículo 80.

Artículo 86. Régimen de trabajo fuera de los locales del responsable del fichero o encargado del tratamiento.

1. Cuando los datos personales se almacenen en dispositivos portátiles o se traten fuera de los locales del responsable de fichero o tratamiento, o del encargado del tratamiento será preciso que exista una autorización previa del responsable del fichero o tratamiento, y en todo caso deberá garantizarse el nivel de seguridad correspondiente al tipo de fichero tratado.

2. La autorización a la que se refiere el párrafo anterior tendrá que constar en el documento de seguridad y podrá establecerse para un usuario o para un perfil de usuarios y determinando un periodo de validez para las mismas.

Artículo 87. Ficheros temporales o copias de trabajo de documentos.

1. Aquellos ficheros temporales o copias de documentos que se hubiesen creado exclusivamente para la realización de trabajos temporales o auxiliares deberán cumplir el nivel de seguridad que les corresponda conforme a los criterios establecidos en el artículo 81.

2. Todo fichero temporal o copia de trabajo así creado será borrado o destruido una vez que haya dejado de ser necesario para los fines que motivaron su creación.

CAPÍTULO II

Del documento de seguridad

Artículo 88. El documento de seguridad.

1. El responsable del fichero o tratamiento elaborará un documento de seguridad que recogerá las medidas de índole técnica y organizativa acordes a la normativa de seguridad vigente que será de obligado cumplimiento para el personal con acceso a los sistemas de información.

2. El documento de seguridad podrá ser único y comprensivo de todos los ficheros o tratamientos, o bien individualizado para cada fichero o tratamiento. También podrán elaborarse distintos documentos de seguridad agrupando ficheros o tratamientos según el sistema de tratamiento utilizado para su organización, o bien atendiendo a criterios organizativos del responsable. En todo caso, tendrá el carácter de documento interno de la organización.

3. El documento deberá contener, como mínimo, los siguientes aspectos:

a) Ámbito de aplicación del documento con especificación detallada de los recursos protegidos.

b) Medidas, normas, procedimientos de actuación, reglas y estándares encaminados a garantizar el nivel de seguridad exigido en este reglamento.

c) Funciones y obligaciones del personal en relación con el tratamiento de los datos de carácter personal incluidos en los ficheros.

d) Estructura de los ficheros con datos de carácter personal y descripción de los sistemas de información que los tratan.

e) Procedimiento de notificación, gestión y respuesta ante las incidencias.

f) Los procedimientos de realización de copias de respaldo y de recuperación de los datos en los ficheros o tratamientos automatizados.

g) Las medidas que sea necesario adoptar para el transporte de soportes y documentos, así como para la destrucción de los documentos y soportes, o en su caso, la reutilización de estos últimos.

4. En caso de que fueran de aplicación a los ficheros las medidas de seguridad de nivel medio o las medidas de seguridad de nivel alto, previstas en este título, el documento de seguridad deberá contener además:

a) La identificación del responsable o responsables de seguridad.

b) Los controles periódicos que se deban realizar para verificar el cumplimiento de lo dispuesto en el propio documento.

5. Cuando exista un tratamiento de datos por cuenta de terceros, el documento de seguridad deberá contener la identificación de los ficheros o tratamientos que se traten en concepto de encargado con referencia expresa al contrato o documento que regule las condiciones del encargo, así como de la identificación del responsable y del período de vigencia del encargo.

6. En aquellos casos en los que datos personales de un fichero o tratamiento se incorporen y traten de modo exclusivo en los sistemas del encargado, el responsable deberá anotarlo en su documento de seguridad. Cuando tal circunstancia afectase a parte o a la totalidad de los ficheros o tratamientos del responsable, podrá delegarse en el encargado la llevanza del documento de seguridad, salvo en lo relativo a aquellos datos contenidos en recursos propios. Este hecho se indicará de modo expreso en el contrato celebrado al amparo del artículo 12 de la Ley Orgánica 15/1999, de 13 de diciembre, con especificación de los ficheros o tratamientos afectados.

En tal caso, se atenderá al documento de seguridad del encargado al efecto del cumplimiento de lo dispuesto por este reglamento.

7. El documento de seguridad deberá mantenerse en todo momento actualizado y será revisado siempre que se produzcan cambios relevantes en el sistema de información, en el sistema de tratamiento empleado, en su organización, en el contenido de la información incluida en los ficheros o tratamientos o, en su caso, como consecuencia de los controles periódicos realizados. En todo caso, se entenderá que un cambio es relevante cuando pueda repercutir en el cumplimiento de las medidas de seguridad implantadas.

8. El contenido del documento de seguridad deberá adecuarse, en todo momento, a las disposiciones vigentes en materia de seguridad de los datos de carácter personal.

CAPÍTULO III

Medidas de seguridad aplicables a ficheros y tratamientos automatizados

Sección 1.ª Medidas de seguridad de nivel básico

Artículo 89. Funciones y obligaciones del personal.

1. Las funciones y obligaciones de cada uno de los usuarios o perfiles de usuarios con acceso a los datos de carácter personal y a los sistemas de información estarán claramente definidas y documentadas en el documento de seguridad.

También se definirán las funciones de control o autorizaciones delegadas por el responsable del fichero o tratamiento.

2. El responsable del fichero o tratamiento adoptará las medidas necesarias para que el personal conozca de una forma comprensible las normas de seguridad que afecten al desarrollo de sus funciones así como las consecuencias en que pudiera incurrir en caso de incumplimiento.

Artículo 90. Registro de incidencias.

Deberá existir un procedimiento de notificación y gestión de las incidencias que afecten a los datos de carácter personal y establecer un registro en el que se haga constar el tipo de incidencia, el momento en que se ha producido, o en su caso, detectado, la persona que realiza la notificación, a quién se le comunica, los efectos que se hubieran derivado de la misma y las medidas correctoras aplicadas.

Artículo 91. Control de acceso.

1. Los usuarios tendrán acceso únicamente a aquellos recursos que precisen para el desarrollo de sus funciones.

2. El responsable del fichero se encargará de que exista una relación actualizada de usuarios y perfiles de usuarios, y los accesos autorizados para cada uno de ellos.

3. El responsable del fichero establecerá mecanismos para evitar que un usuario pueda acceder a recursos con derechos distintos de los autorizados.

4. Exclusivamente el personal autorizado para ello en el documento de seguridad podrá conceder, alterar o anular el acceso autorizado sobre los recursos, conforme a los criterios establecidos por el responsable del fichero.

5. En caso de que exista personal ajeno al responsable del fichero que tenga acceso a los recursos deberá estar sometido a las mismas condiciones y obligaciones de seguridad que el personal propio.

Artículo 92. Gestión de soportes y documentos.

1. Los soportes y documentos que contengan datos de carácter personal deberán permitir identificar el tipo de información que contienen, ser inventariados y solo deberán ser accesibles por el personal autorizado para ello en el documento de seguridad.

Se exceptúan estas obligaciones cuando las características físicas del soporte imposibiliten su cumplimiento, quedando constancia motivada de ello en el documento de seguridad.

2. La salida de soportes y documentos que contengan datos de carácter personal, incluidos los comprendidos y/o anejos a un correo electrónico, fuera de los locales bajo el control del responsable del fichero o tratamiento deberá ser autorizada por el responsable del fichero o encontrarse debidamente autorizada en el documento de seguridad.

3. En el traslado de la documentación se adoptarán las medidas dirigidas a evitar la sustracción, pérdida o acceso indebido a la información durante su transporte.

4. Siempre que vaya a desecharse cualquier documento o soporte que contenga datos de carácter personal deberá procederse a su destrucción o borrado, mediante la adopción de medidas dirigidas a evitar el acceso a la información contenida en el mismo o su recuperación posterior.

5. La identificación de los soportes que contengan datos de carácter personal que la organización considerase especialmente sensibles se podrá realizar utilizando sistemas de etiquetado comprensibles y con significado que permitan a los usuarios con acceso autorizado a los citados soportes y documentos identificar su contenido, y que dificulten la identificación para el resto de personas.

Artículo 93. Identificación y autenticación.

1. El responsable del fichero o tratamiento deberá adoptar las medidas que garanticen la correcta identificación y autenticación de los usuarios.

2. El responsable del fichero o tratamiento establecerá un mecanismo que permita la identificación de forma inequívoca y personalizada de todo aquel usuario que intente acceder al sistema de información y la verificación de que está autorizado.

3. Cuando el mecanismo de autenticación se base en la existencia de contraseñas existirá un procedimiento de asignación, distribución y almacenamiento que garantice su confidencialidad e integridad.

4. El documento de seguridad establecerá la periodicidad, que en ningún caso será superior a un año, con la que tienen que ser cambiadas las contraseñas que, mientras estén vigentes, se almacenarán de forma ininteligible.

Artículo 94. Copias de respaldo y recuperación.

1. Deberán establecerse procedimientos de actuación para la realización como mínimo semanal de copias de respaldo, salvo que en dicho período no se hubiera producido ninguna actualización de los datos.

2. Asimismo, se establecerán procedimientos para la recuperación de los datos que garanticen en todo momento su reconstrucción en el estado en que se encontraban al tiempo de producirse la pérdida o destrucción.

Únicamente, en el caso de que la pérdida o destrucción afectase a ficheros o tratamientos parcialmente automatizados, y siempre que la existencia de documentación permita alcanzar el objetivo al que se refiere el párrafo anterior, se deberá proceder a grabar manualmente los datos quedando constancia motivada de este hecho en el documento de seguridad.

3. El responsable del fichero se encargará de verificar cada seis meses la correcta definición, funcionamiento y aplicación de los procedimientos de realización de copias de respaldo y de recuperación de los datos.

4. Las pruebas anteriores a la implantación o modificación de los sistemas de información que traten ficheros con datos de carácter personal no se realizarán con datos reales, salvo que se asegure el nivel de seguridad correspondiente al tratamiento realizado y se anote su realización en el documento de seguridad.

Si está previsto realizar pruebas con datos reales, previamente deberá haberse realizado una copia de seguridad.

Sección 2.ª Medidas de seguridad de nivel medio

Artículo 95. Responsable de seguridad.

En el documento de seguridad deberán designarse uno o varios responsables de seguridad encargados de coordinar y controlar las medidas definidas en el mismo. Esta designación puede ser única para todos los ficheros o tratamientos de datos de carácter personal o diferenciada según los sistemas de tratamiento utilizados, circunstancia que deberá hacerse constar claramente en el documento de seguridad.

En ningún caso esta designación supone una exoneración de la responsabilidad que corresponde al responsable del fichero o al encargado del tratamiento de acuerdo con este reglamento.

Artículo 96. Auditoría.

1. A partir del nivel medio los sistemas de información e instalaciones de tratamiento y almacenamiento de datos se someterán, al menos cada dos años, a una auditoría interna o externa que verifique el cumplimiento del presente título.

Con carácter extraordinario deberá realizarse dicha auditoría siempre que se realicen modificaciones sustanciales en el sistema de información que puedan repercutir en el cumplimiento de las medidas de seguridad implantadas con el objeto de verificar la adaptación, adecuación y eficacia de las mismas. Esta auditoría inicia el cómputo de dos años señalado en el párrafo anterior.

2. El informe de auditoría deberá dictaminar sobre la adecuación de las medidas y controles a la Ley y su desarrollo reglamentario, identificar sus deficiencias y proponer las medidas correctoras o complementarias necesarias. Deberá, igualmente, incluir los datos, hechos y observaciones en que se basen los dictámenes alcanzados y las recomendaciones propuestas.

3. Los informes de auditoría serán analizados por el responsable de seguridad competente, que elevará las conclusiones al responsable del fichero o tratamiento para que adopte las medidas correctoras adecuadas y quedarán a disposición de la Agencia Española de Protección de Datos o, en su caso, de las autoridades de control de las comunidades autónomas.

Artículo 97. Gestión de soportes y documentos.

1. Deberá establecerse un sistema de registro de entrada de soportes que permita, directa o indirectamente, conocer el tipo de documento o soporte, la fecha y hora, el emisor, el número de documentos o soportes incluidos en el envío, el tipo de información que contienen, la forma de envío y la persona responsable de la recepción que deberá estar debidamente autorizada.

2. Igualmente, se dispondrá de un sistema de registro de salida de soportes que permita, directa o indirectamente, conocer el tipo de documento o soporte, la fecha y hora, el destinatario, el número de documentos o soportes incluidos en el envío, el tipo de información que contienen, la forma de envío y la persona responsable de la entrega que deberá estar debidamente autorizada.

Artículo 98. Identificación y autenticación.

El responsable del fichero o tratamiento establecerá un mecanismo que limite la posibilidad de intentar reiteradamente el acceso no autorizado al sistema de información.

Artículo 99. Control de acceso físico.

Exclusivamente el personal autorizado en el documento de seguridad podrá tener acceso a los lugares donde se hallen instalados los equipos físicos que den soporte a los sistemas de información.

Artículo 100. Registro de incidencias.

1. En el registro regulado en el artículo 90 deberán consignarse, además, los procedimientos realizados de recuperación de los datos, indicando la persona que ejecutó el proceso, los datos restaurados y, en su caso, qué datos ha sido necesario grabar manualmente en el proceso de recuperación.

2. Será necesaria la autorización del responsable del fichero para la ejecución de los procedimientos de recuperación de los datos.

Sección 3.ª Medidas de seguridad de nivel alto

Artículo 101. Gestión y distribución de soportes.

1. La identificación de los soportes se deberá realizar utilizando sistemas de etiquetado comprensibles y con significado que permitan a los usuarios con acceso autorizado a los citados soportes y documentos identificar su contenido, y que dificulten la identificación para el resto de personas.

2. La distribución de los soportes que contengan datos de carácter personal se realizará cifrando dichos datos o bien utilizando otro mecanismo que garantice que dicha información no sea accesible o manipulada durante su transporte.

Asimismo, se cifrarán los datos que contengan los dispositivos portátiles cuando éstos se encuentren fuera de las instalaciones que están bajo el control del responsable del fichero.

3. Deberá evitarse el tratamiento de datos de carácter personal en dispositivos portátiles que no permitan su cifrado. En caso de que sea estrictamente necesario se hará constar motivadamente en el documento de seguridad y se adoptarán medidas que tengan en cuenta los riesgos de realizar tratamientos en entornos desprotegidos.

Artículo 102. Copias de respaldo y recuperación.

Deberá conservarse una copia de respaldo de los datos y de los procedimientos de recuperación de los mismos en un lugar diferente de aquel en que se encuentren los equipos informáticos que los tratan, que deberá cumplir en todo caso las medidas de seguridad exigidas en este título, o

utilizando elementos que garanticen la integridad y recuperación de la información, de forma que sea posible su recuperación.

Artículo 103. Registro de accesos.

1. De cada intento de acceso se guardarán, como mínimo, la identificación del usuario, la fecha y hora en que se realizó, el fichero accedido, el tipo de acceso y si ha sido autorizado o denegado.

2. En el caso de que el acceso haya sido autorizado, será preciso guardar la información que permita identificar el registro accedido.

3. Los mecanismos que permiten el registro de accesos estarán bajo el control directo del responsable de seguridad competente sin que deban permitir la desactivación ni la manipulación de los mismos.

4. El período mínimo de conservación de los datos registrados será de dos años.

5. El responsable de seguridad se encargará de revisar al menos una vez al mes la información de control registrada y elaborará un informe de las revisiones realizadas y los problemas detectados.

6. No será necesario el registro de accesos definido en este artículo en caso de que concurran las siguientes circunstancias:

a) Que el responsable del fichero o del tratamiento sea una persona física.

b) Que el responsable del fichero o del tratamiento garantice que únicamente él tiene acceso y trata los datos personales.

La concurrencia de las dos circunstancias a las que se refiere el apartado anterior deberá hacerse constar expresamente en el documento de seguridad.

Artículo 104. Telecomunicaciones.

Cuando, conforme al artículo 81.3 deban implantarse las medidas de seguridad de nivel alto, la transmisión de datos de carácter personal a través de redes públicas o redes inalámbricas de comunicaciones electrónicas se realizará cifrando dichos datos o bien utilizando cualquier otro mecanismo que garantice que la información no sea inteligible ni manipulada por terceros.

CAPÍTULO IV

Medidas de seguridad aplicables a los ficheros y tratamientos no automatizados

Sección 1.ª Medidas de seguridad de nivel básico

Artículo 105. Obligaciones comunes.

1. Además de lo dispuesto en el presente capítulo, a los ficheros no automatizados les será de aplicación lo dispuesto en los capítulos I y II del presente título en lo relativo a:

a) Alcance.

- b) Niveles de seguridad.
- c) Encargado del tratamiento.
- d) Prestaciones de servicios sin acceso a datos personales.
- e) Delegación de autorizaciones.
- f) Régimen de trabajo fuera de los locales del responsable del fichero o encargado del tratamiento.
- g) Copias de trabajo de documentos.
- h) Documento de seguridad.

2. Asimismo se les aplicará lo establecido por la sección primera del capítulo III del presente título en lo relativo a:

- a) Funciones y obligaciones del personal.
- b) Registro de incidencias.
- c) Control de acceso.
- d) Gestión de soportes.

Artículo 106. Criterios de archivo.

El archivo de los soportes o documentos se realizará de acuerdo con los criterios previstos en su respectiva legislación. Estos criterios deberán garantizar la correcta conservación de los documentos, la localización y consulta de la información y posibilitar el ejercicio de los derechos de oposición al tratamiento, acceso, rectificación y cancelación.

En aquellos casos en los que no exista norma aplicable, el responsable del fichero deberá establecer los criterios y procedimientos de actuación que deban seguirse para el archivo.

Artículo 107. Dispositivos de almacenamiento.

Los dispositivos de almacenamiento de los documentos que contengan datos de carácter personal deberán disponer de mecanismos que obstaculicen su apertura. Cuando las características físicas de aquéllos no permitan adoptar esta medida, el responsable del fichero o tratamiento adoptará medidas que impidan el acceso de personas no autorizadas.

Artículo 108. Custodia de los soportes.

Mientras la documentación con datos de carácter personal no se encuentre archivada en los dispositivos de almacenamiento establecidos en el artículo anterior, por estar en proceso de revisión o tramitación, ya sea previo o posterior a su archivo, la persona que se encuentre al cargo de la misma deberá custodiarla e impedir en todo momento que pueda ser accedida por persona no autorizada.

Sección 2.ª Medidas de seguridad de nivel medio

Artículo 109. Responsable de seguridad.

Se designará uno o varios responsables de seguridad en los términos y con las funciones previstas en el artículo 95 de este reglamento.

Artículo 110. Auditoría.

Los ficheros comprendidos en la presente sección se someterán, al menos cada dos años, a una auditoría interna o externa que verifique el cumplimiento del presente título.

Sección 3.ª Medidas de seguridad de nivel alto

Artículo 111. Almacenamiento de la información.

1. Los armarios, archivadores u otros elementos en los que se almacenen los ficheros no automatizados con datos de carácter personal deberán encontrarse en áreas en las que el acceso esté protegido con puertas de acceso dotadas de sistemas de apertura mediante llave u otro dispositivo equivalente. Dichas áreas deberán permanecer cerradas cuando no sea preciso el acceso a los documentos incluidos en el fichero.

2. Si, atendidas las características de los locales de que dispusiera el responsable del fichero o tratamiento, no fuera posible cumplir lo establecido en el apartado anterior, el responsable adoptará medidas alternativas que, debidamente motivadas, se incluirán en el documento de seguridad.

Artículo 112. Copia o reproducción.

1. La generación de copias o la reproducción de los documentos únicamente podrá ser realizada bajo el control del personal autorizado en el documento de seguridad.

2. Deberá procederse a la destrucción de las copias o reproducciones desechadas de forma que se evite el acceso a la información contenida en las mismas o su recuperación posterior.

Artículo 113. Acceso a la documentación.

1. El acceso a la documentación se limitará exclusivamente al personal autorizado.

2. Se establecerán mecanismos que permitan identificar los accesos realizados en el caso de documentos que puedan ser utilizados por múltiples usuarios.

3. El acceso de personas no incluidas en el párrafo anterior deberá quedar adecuadamente registrado de acuerdo con el procedimiento establecido al efecto en el documento de seguridad.

Artículo 114. Traslado de documentación.

Siempre que se proceda al traslado físico de la documentación contenida en un fichero, deberán adoptarse medidas dirigidas a impedir el acceso o manipulación de la información objeto de traslado.

TÍTULO IX

Procedimientos tramitados por la Agencia Española de Protección de Datos

CAPÍTULO I

Disposiciones generales

Artículo 115. Régimen aplicable.

1. Los procedimientos tramitados por la Agencia Española de Protección de Datos se registrarán por lo dispuesto en el presente título, y supletoriamente, por la Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común.
2. Específicamente serán de aplicación las normas reguladoras del procedimiento administrativo común al régimen de representación en los citados procedimientos.

Artículo 116. Publicidad de las resoluciones.

1. La Agencia Española de Protección de Datos hará públicas sus resoluciones, con excepción de las correspondientes a la inscripción de un fichero o tratamiento en el Registro General de Protección de Datos y de aquéllas por las que se resuelva la inscripción en el mismo de los códigos tipo, siempre que se refieran a procedimientos que se hubieran iniciado con posterioridad al 1 de enero de 2004, o correspondan al archivo de actuaciones inspectoras incoadas a partir de dicha fecha.
2. La publicación de estas resoluciones se realizará preferentemente mediante su inserción en el sitio web de la Agencia Española de Protección de Datos, dentro del plazo de un mes a contar desde la fecha de su notificación a los interesados.
3. En la notificación de las resoluciones se informará expresamente a los interesados de la publicidad prevista en el artículo 37.2 de la Ley Orgánica 15/1999, de 13 de diciembre.
4. La publicación se realizará aplicando los criterios de disociación de los datos de carácter personal que a tal efecto se establezcan mediante Resolución del Director de la Agencia.

CAPÍTULO II

Procedimiento de tutela de los derechos de acceso, rectificación, cancelación y oposición

Artículo 117. Instrucción del procedimiento.

1. El procedimiento se iniciará a instancia del afectado o afectados, expresando con claridad el contenido de su reclamación y de los preceptos de la Ley Orgánica 15/1999, de 13 de diciembre, que se consideran vulnerados.
2. Recibida la reclamación en la Agencia Española de Protección de Datos, se dará traslado de la misma al responsable del fichero, para que, en el plazo de quince días, formule las alegaciones que estime pertinentes.
3. Recibidas las alegaciones o transcurrido el plazo previsto en el apartado anterior, la Agencia Española de Protección de Datos, previos los informes, pruebas y otros actos de instrucción pertinentes, incluida la audiencia del afectado y nuevamente del responsable del fichero, resolverá sobre la reclamación formulada.

Artículo 118. Duración del procedimiento y efectos de la falta de resolución expresa.

1. El plazo máximo para dictar y notificar resolución en el procedimiento de tutela de derechos será de seis meses, a contar desde la fecha de entrada en la Agencia Española de Protección de Datos de la reclamación del afectado o afectados.

2. Si en dicho plazo no se hubiese dictado y notificado resolución expresa, el afectado podrá considerar estimada su reclamación por silencio administrativo positivo.

Artículo 119. Ejecución de la resolución.

Si la resolución de tutela fuese estimatoria, se requerirá al responsable del fichero para que, en el plazo de diez días siguientes a la notificación, haga efectivo el ejercicio de los derechos objeto de la tutela, debiendo dar cuenta por escrito de dicho cumplimiento a la Agencia Española de Protección de Datos en idéntico plazo.

CAPÍTULO III

Procedimientos relativos al ejercicio de la potestad sancionadora

Sección 1.ª Disposiciones generales

Artículo 120. Ámbito de aplicación.

1. Las disposiciones contenidas en el presente capítulo serán de aplicación a los procedimientos relativos al ejercicio por la Agencia Española de Protección de Datos de la potestad sancionadora que le viene atribuida por la Ley Orgánica 15/1999, de 13 de diciembre, de Protección de datos de carácter personal, en la Ley 34/2002, de 11 de julio, de Servicios de la sociedad de la información y de comercio electrónico, y en la Ley 32/2003, de 3 de noviembre, General de Telecomunicaciones.

2. No obstante, las disposiciones previstas en el artículo 121 y en la sección cuarta de este capítulo únicamente serán aplicables a los procedimientos referidos al ejercicio de la potestad sancionadora prevista en la Ley Orgánica 15/1999, de 13 de diciembre.

Artículo 121. Inmovilización de ficheros.

1. En el supuesto previsto como infracción muy grave en la Ley Orgánica 15/1999, de 13 de diciembre, consistente en la utilización o cesión ilícita de los datos de carácter personal en la que se impida gravemente o se atente de igual modo contra el ejercicio de los derechos de los ciudadanos y el libre desarrollo de la personalidad que la Constitución y las leyes garantizan, el Director de la Agencia Española de Protección de Datos podrá, en cualquier momento del procedimiento, requerir a los responsables de ficheros o tratamientos de datos de carácter personal, tanto de titularidad pública como privada, la cesación en la utilización o cesión ilícita de los datos.

2. El requerimiento deberá ser atendido en el plazo improrrogable de tres días, durante el cual el responsable del fichero podrá formular las alegaciones que tenga por convenientes en orden al levantamiento de la medida.

3. Si el requerimiento fuera desatendido, el Director de la Agencia Española de Protección de Datos podrá, mediante resolución motivada, acordar la inmovilización de tales ficheros o tratamientos, a los solos efectos de restaurar los derechos de las personas afectadas.

Sección 2.ª Actuaciones previas

Artículo 122. Iniciación.

1. Con anterioridad a la iniciación del procedimiento sancionador, se podrán realizar actuaciones previas con objeto de determinar si concurren circunstancias que justifiquen tal iniciación. En especial, estas actuaciones se orientarán a determinar, con la mayor precisión posible, los hechos que pudieran justificar la incoación del procedimiento, identificar la persona u órgano que pudiera resultar responsable y fijar las circunstancias relevantes que pudieran concurrir en el caso.
2. Las actuaciones previas se llevarán a cabo de oficio por la Agencia Española de Protección de Datos, bien por iniciativa propia o como consecuencia de la existencia de una denuncia o una petición razonada de otro órgano.
3. Cuando las actuaciones se lleven a cabo como consecuencia de la existencia de una denuncia o de una petición razonada de otro órgano, la Agencia Española de Protección de Datos acusará recibo de la denuncia o petición, pudiendo solicitar cuanta documentación se estime oportuna para poder comprobar los hechos susceptibles de motivar la incoación del procedimiento sancionador.
4. Estas actuaciones previas tendrán una duración máxima de doce meses a contar desde la fecha en la que la denuncia o petición razonada a las que se refiere el apartado 2 hubieran tenido entrada en la Agencia Española de Protección de Datos o, en caso de no existir aquéllas, desde que el Director de la Agencia acordase la realización de dichas actuaciones.

El vencimiento del plazo sin que haya sido dictado y notificado acuerdo de inicio de procedimiento sancionador producirá la caducidad de las actuaciones previas.

Artículo 123. Personal competente para la realización de las actuaciones previas.

1. Las actuaciones previas serán llevadas a cabo por el personal del área de la Inspección de Datos habilitado para el ejercicio de funciones inspectoras.
2. En supuestos excepcionales, el Director de la Agencia Española de Protección de Datos podrá designar para la realización de actuaciones específicas a funcionarios de la propia Agencia no habilitados con carácter general para el ejercicio de funciones inspectoras o a funcionarios que no presten sus funciones en la Agencia, siempre que reúnan las condiciones de idoneidad y especialización necesarias para la realización de tales actuaciones. En estos casos, la autorización indicará expresamente la identificación del funcionario y las concretas actuaciones previas de inspección a realizar.
3. Los funcionarios que ejerzan la inspección a los que se refieren los dos apartados anteriores tendrán la consideración de autoridad pública en el desempeño de sus cometidos.

Estarán obligados a guardar secreto sobre las informaciones que conozcan en el ejercicio de las mencionadas funciones, incluso después de haber cesado en las mismas.

Artículo 124. Obtención de información.

Los inspectores podrán recabar cuantas informaciones precisen para el cumplimiento de sus cometidos. A tal fin podrán requerir la exhibición o el envío de los documentos y datos y examinarlos en el lugar en que se encuentren depositados, como obtener copia de los mismos, inspeccionar los equipos físicos y lógicos, así como requerir la ejecución de tratamientos y programas o procedimientos de gestión y soporte del fichero o ficheros sujetos a investigación, accediendo a los lugares donde se hallen instalados.

Artículo 125. Actuaciones presenciales.

1. En el desarrollo de las actuaciones previas se podrán realizar visitas de inspección por parte de los inspectores designados, en los locales o sede del inspeccionado, o donde se encuentren ubicados los ficheros, en su caso. A tal efecto, los inspectores habrán sido previamente autorizados por el Director de la Agencia Española de Protección de Datos.

Las inspecciones podrán realizarse en el domicilio del inspeccionado, en la sede o local concreto relacionado con el mismo o en cualquiera de sus locales, incluyendo aquéllos en que el tratamiento sea llevado a cabo por un encargado.

La autorización se limitará a indicar la habilitación del inspector autorizado y la identificación de la persona u órgano inspeccionado.

2. En el supuesto contemplado en el apartado anterior, las inspecciones concluirán con el levantamiento de la correspondiente acta, en la que quedará constancia de las actuaciones practicadas durante la visita o visitas de inspección.

3. El acta, que se emitirá por duplicado, será firmada por los inspectores actuantes y por el inspeccionado, que podrá hacer constar en la misma las alegaciones o manifestaciones que tenga por conveniente.

En caso de negativa del inspeccionado a la firma del acta, se hará constar expresamente esta circunstancia en la misma. En todo caso, la firma por el inspeccionado del acta no supondrá su conformidad, sino tan sólo la recepción de la misma.

Se entregará al inspeccionado uno de los originales del acta de inspección, incorporándose el otro a las actuaciones.

Artículo 126. Resultado de las actuaciones previas.

1. Finalizadas las actuaciones previas, éstas se someterán a la decisión del Director de la Agencia Española de Protección de Datos.

Si de las actuaciones no se derivasen hechos susceptibles de motivar la imputación de infracción alguna, el Director de la Agencia Española de Protección de Datos dictará resolución de archivo que se notificará al investigado y al denunciante, en su caso.

2. En caso de apreciarse la existencia de indicios susceptibles de motivar la imputación de una infracción, el Director de la Agencia Española de Protección de Datos dictará acuerdo de inicio de procedimiento sancionador o de infracción de las Administraciones públicas, que se tramitarán conforme a lo dispuesto, respectivamente, en las secciones tercera y cuarta del presente capítulo.

Sección 3.ª Procedimiento sancionador

Artículo 127. Iniciación del procedimiento.

Con carácter específico el acuerdo de inicio del procedimiento sancionador deberá contener:

a) Identificación de la persona o personas presuntamente responsables.

b) Descripción sucinta de los hechos imputados, su posible calificación y las sanciones que pudieran corresponder, sin perjuicio de lo que resulte de la instrucción.

c) Indicación de que el órgano competente para resolver el procedimiento es el Director de la Agencia Española de Protección de Datos.

d) Indicación al presunto responsable de que puede reconocer voluntariamente su responsabilidad, en cuyo caso se dictará directamente resolución.

e) Designación de instructor y, en su caso, secretario, con expresa indicación del régimen de recusación de los mismos.

f) Indicación expresa del derecho del responsable a formular alegaciones, a la audiencia en el procedimiento y a proponer las pruebas que estime procedentes.

g) Medidas de carácter provisional que pudieran acordarse, en su caso, conforme a lo establecido en la sección primera del presente capítulo.

Artículo 128. Plazo máximo para resolver.

1. El plazo para dictar resolución será el que determinen las normas aplicables a cada procedimiento sancionador y se computará desde la fecha en que se dicte el acuerdo de inicio hasta que se produzca la notificación de la resolución sancionadora, o se acredite debidamente el intento de notificación.

2. El vencimiento del citado plazo máximo, sin que se haya dictada y notificada resolución expresa, producirá la caducidad del procedimiento y el archivo de las actuaciones.

Sección 4.^a Procedimiento de declaración de infracción de la Ley Orgánica 15/1999, de 13 de diciembre, por las administraciones públicas

Artículo 129. Disposición general.

El procedimiento por el que se declare la existencia de una infracción de la Ley Orgánica 15/1999, de 13 de diciembre, cometida por las Administraciones públicas será el establecido en la sección tercera de este capítulo.

CAPÍTULO IV

Procedimientos relacionados con la inscripción o cancelación de ficheros

Sección 1.^a Procedimiento de inscripción de la creación, modificación o supresión de ficheros

Artículo 130. Iniciación del procedimiento.

1. El procedimiento se iniciará como consecuencia de la notificación de la creación, modificación o supresión del fichero por el interesado o, en su caso, de la comunicación efectuada por las autoridades de control de las comunidades autónomas, a la que se refiere el presente reglamento.

2. La notificación se deberá efectuar cumplimentando los modelos o formularios electrónicos publicados al efecto por la Agencia Española de Protección de Datos, en virtud de lo dispuesto en el apartado 1 del artículo 59 de este reglamento.

Tratándose de la notificación de la modificación o supresión de un fichero, deberá indicarse en la misma el código de inscripción del fichero en el Registro General de Protección de Datos.

3. La notificación se efectuará en soporte electrónico, ya mediante comunicación electrónica a través de Internet mediante firma electrónica o en soporte informático, utilizando al efecto el programa de ayuda para la generación de notificaciones que la Agencia pondrá a disposición de los interesados de forma gratuita.

Será igualmente válida la notificación efectuada en soporte papel cuando para su cumplimentación hayan sido utilizados los modelos o formularios publicados por la Agencia.

4. En la notificación, el responsable del fichero deberá declarar un domicilio a efectos de notificaciones en el procedimiento.

Artículo 131. Especialidades en la notificación de ficheros de titularidad pública.

1. Cuando se trate de la notificación de ficheros de titularidad pública, deberá acompañarse a la notificación una copia de la norma o acuerdo de creación, modificación o supresión del fichero a que hace referencia el artículo 52 del presente reglamento.

Cuando el diario oficial en el que se encuentre publicada la citada norma o acuerdo sea accesible a través de Internet, bastará con indicar en la notificación la dirección electrónica que permita su concreta localización.

2. Recibida la notificación, si la misma no contuviera la información preceptiva o se advirtieran defectos formales, el Registro General de Protección de Datos requerirá al responsable del fichero para que complete o subsane la notificación. El plazo para la subsanación o mejora de la solicitud será de tres meses, en el caso de que se precise la modificación de la norma o acuerdo de creación del fichero.

Artículo 132. Acuerdo de inscripción o cancelación.

Si la notificación referida a la creación, modificación o supresión del fichero contuviera la información preceptiva y se cumplieran las restantes exigencias legales, el Director de la Agencia Española de Protección de Datos, a propuesta del Registro General de Protección de Datos, acordará, respectivamente, la inscripción del fichero, asignando al mismo el correspondiente código de inscripción, la modificación de la inscripción del fichero o la cancelación de la inscripción correspondiente.

Artículo 133. Improcedencia o denegación de la inscripción.

El Director de la Agencia Española de Protección de Datos, a propuesta del Registro General de Protección de Datos, dictará resolución denegando la inscripción, modificación o cancelación cuando de los documentos aportados por el responsable del fichero se desprenda que la notificación no resulta conforme a lo dispuesto en la Ley Orgánica 15/1999, de 13 de diciembre.

La resolución será debidamente motivada, con indicación expresa de las causas que impiden la inscripción, modificación o cancelación.

Artículo 134. Duración del procedimiento y efectos de la falta de resolución expresa.

1. El plazo máximo para dictar y notificar resolución acerca de la inscripción, modificación o cancelación será de un mes.

2. Si en dicho plazo no se hubiese dictado y notificado resolución expresa, se entenderá inscrito, modificado o cancelado el fichero a todos los efectos.

Sección 2.ª Procedimiento de cancelación de oficio de ficheros inscritos

Artículo 135. Iniciación del procedimiento.

El procedimiento de cancelación de oficio de los ficheros inscritos en el Registro General de Protección de Datos se iniciará siempre de oficio, bien por propia iniciativa o en virtud de denuncia, por acuerdo del Director de la Agencia Española de Protección de Datos.

Artículo 136. Terminación del expediente.

La resolución, previa audiencia del interesado, acordará haber lugar o no a la cancelación del fichero.

Si la resolución acordase la cancelación del fichero, se dará traslado de la misma al Registro General de Protección de Datos, para que proceda a la cancelación.

CAPÍTULO V

Procedimientos relacionados con las transferencias internacionales de datos

Sección 1.ª Procedimiento de autorización de transferencias internacionales de datos

Artículo 137. Iniciación del procedimiento.

1. El procedimiento para la obtención de la autorización para las transferencias internacionales de datos a países terceros a las que se refiere el artículo 33 de la Ley Orgánica 15/1999, de 13 de diciembre, y el artículo 70 de este reglamento se iniciará siempre a solicitud del exportador que pretenda llevar a cabo la transferencia.

2. En su solicitud, además de los requisitos legalmente exigidos, el exportador deberá consignar, en todo caso:

a) La identificación del fichero o ficheros a cuyos datos se refiera la transferencia internacional, con indicación de su denominación y código de inscripción del fichero en el Registro General de Protección de Datos.

b) La transferencia o transferencias respecto de las que se solicita la autorización, con indicación de la finalidad que la justifica.

c) La documentación que incorpore las garantías exigibles para la obtención de la autorización así como el cumplimiento de los requisitos legales necesarios para la realización de la transferencia, en su caso.

Cuando la autorización se fundamente en la existencia de un contrato entre el exportador y el importador de los datos, deberá aportarse copia del mismo, acreditándose asimismo la concurrencia de poder suficiente en sus otorgantes.

Si la autorización se pretendiera fundar en lo dispuesto en el apartado 4 del artículo 70, deberán aportarse las normas o reglas adoptadas en relación con el tratamiento de los datos en el seno del grupo, así como la documentación que acredite su carácter vinculante y su eficacia dentro

del grupo. Igualmente deberá aportarse la documentación que acredite la posibilidad de que el afectado o la Agencia Española de Protección de Datos puedan exigir la responsabilidad que corresponda en caso de perjuicio del afectado o vulneración de las normas de protección de datos por parte de cualquier empresa importadora.

Artículo 138. Instrucción del procedimiento.

1. Cuando el Director de la Agencia Española de Protección de Datos acuerde, conforme a lo dispuesto en el artículo 86.1 de la Ley 30/1992, de 26 de noviembre, la apertura de un período de información pública, el plazo para la formulación de alegaciones será de diez días a contar desde la publicación en el «Boletín Oficial del Estado» del anuncio previsto en dicha Ley.

2. No será posible el acceso a la información del expediente en que concurran las circunstancias establecidas en el artículo 37.5 de la Ley 30/1992, de 26 de noviembre.

3. Transcurrido el plazo previsto en el apartado 1, en caso de que se hubieran formulado alegaciones, se dará traslado de las mismas al solicitante de la autorización, a fin de que en el plazo de diez días alegue lo que estime procedente.

Artículo 139. Actos posteriores a la resolución.

1. Cuando el Director de la Agencia Española de Protección de Datos resuelva autorizar la transferencia internacional de datos, se dará traslado de la resolución de autorización al Registro General de Protección de Datos, a fin de proceder a su inscripción.

El Registro General de Protección de Datos inscribirá de oficio la autorización de transferencia internacional.

2. En todo caso, se dará traslado de la resolución de autorización o denegación de la autorización de la transferencia internacional de datos al Ministerio de Justicia, al efecto de que se proceda a su notificación a la Comisión Europea y a los demás Estados miembros de la Unión Europea de acuerdo a lo previsto en el artículo 26.3 de la Directiva 95/46/CE.

Artículo 140. Duración del procedimiento y efectos de la falta de resolución expresa.

1. El plazo máximo para dictar y notificar resolución será de tres meses, a contar desde la fecha de entrada en la Agencia Española de Protección de Datos de la solicitud.

2. Si en dicho plazo no se hubiese dictado y notificado resolución expresa, se entenderá autorizada la transferencia internacional de datos.

Sección 2.ª Procedimiento de suspensión temporal de transferencias internacionales de datos

Artículo 141. Iniciación.

1. En los supuestos contemplados en el artículo 69 y en el apartado 3 del artículo 70, el Director de la Agencia Española de Protección de Datos podrá acordar la suspensión temporal de una transferencia internacional de datos.

2. En tales supuestos, el Director dictará acuerdo de inicio referido a la suspensión temporal de la transferencia. El acuerdo deberá ser motivado y fundarse en los supuestos previstos en este reglamento.

Artículo 142. Instrucción y resolución.

1. Se dará traslado del acuerdo al exportador, a fin de que en el plazo de quince días formule lo que a su derecho convenga.
2. Recibidas las alegaciones o cumplido el plazo señalado, el Director dictará resolución acordando, en su caso, la suspensión temporal de la transferencia internacional de datos.

Artículo 143. Actos posteriores a la resolución.

1. El Director de la Agencia Española de Protección de Datos dará traslado de la resolución al Registro General de Protección de Datos, a fin de que la misma se haga constar en el registro.

El Registro General de Protección de Datos inscribirá de oficio la suspensión temporal de la transferencia internacional.

2. En todo caso, se dará traslado de la resolución al Ministerio de Justicia, al efecto de que se proceda a su notificación a la Comisión Europea y a los demás Estados miembros de la Unión Europea de acuerdo a lo previsto en el artículo 26.3 de la Directiva 95/46/CE.

Artículo 144. Levantamiento de la suspensión temporal.

1. La suspensión se levantará tan pronto como cesen las causas que la hubieran justificado, mediante resolución del Director de la Agencia Española de Protección de Datos, del que se dará traslado al exportador.

2. El Director de la Agencia Española de Protección de Datos dará traslado de la resolución al Registro General de Protección de Datos, a fin de que la misma se haga constar en el Registro.

El Registro General de Protección de Datos hará constar de oficio el levantamiento de la suspensión temporal de la transferencia internacional.

3. El acuerdo será notificado al exportador y al Ministerio de Justicia, al efecto de que se proceda a su notificación a la Comisión Europea y a los demás Estados miembros de la Unión Europea de acuerdo a lo previsto en el artículo 26. 3 de la Directiva 95/46/CE.

CAPÍTULO VI

Procedimiento de inscripción de códigos tipo

Artículo 145. Iniciación del procedimiento.

1. El procedimiento para la inscripción en el Registro General de Protección de Datos de los códigos tipo se iniciará siempre a solicitud de la entidad, órgano o asociación promotora del código tipo.

2. La solicitud, que deberá reunir los requisitos legalmente establecidos, habrá de acompañarse de los siguientes documentos:

a) Acreditación de la representación que concurra en la persona que presente la solicitud.

b) Contenido del acuerdo, convenio o decisión por la que se aprueba, en el ámbito correspondiente el contenido del código tipo presentado.

- c) En caso de que el código tipo proceda de un acuerdo sectorial o una decisión de empresa certificación referida a la adopción del acuerdo y legitimación del órgano que lo adoptó.
- d) En el supuesto contemplado en la letra anterior, copia de los estatutos de la asociación, organización sectorial o entidad en cuyo marco haya sido aprobado el código.
- e) En caso de códigos tipo presentados por asociaciones u organizaciones de carácter sectorial, documentación relativa a su representatividad en el sector.
- f) En caso de códigos tipo basados en decisiones de empresa, descripción de los tratamientos a los que se refiere el código tipo.
- g) Código tipo sometido a la Agencia Española de Protección de Datos.

Artículo 146. Análisis de los aspectos sustantivos del código tipo.

1. Durante los treinta días siguientes a la notificación o subsanación de los defectos el Registro General de Protección de Datos podrá convocar a los solicitantes, a fin de obtener aclaraciones o precisiones relativas al contenido sustantivo del código tipo.
2. Transcurrido el plazo señalado en el apartado anterior, el Registro General de Protección de Datos elaborará un informe sobre las características del proyecto de código tipo.
3. La documentación presentada y el informe del Registro serán remitidos al Gabinete Jurídico, a fin de que por el mismo se informe acerca del cumplimiento de los requisitos establecidos en el Título VII de este Reglamento.

Artículo 147. Información pública.

1. Cuando el Director de la Agencia Española de Protección de Datos acuerde, conforme a lo dispuesto en el artículo 86.1 de la Ley 30/1992, de 26 de noviembre, la apertura de un período de información pública, el plazo para la formulación de alegaciones será de diez días a contar desde la publicación en el «Boletín Oficial del Estado» del anuncio previsto en dicha ley.
2. No será posible el acceso a la información del expediente en que concurran las circunstancias establecidas en el artículo 37.5 de la Ley 30/1992, de 26 de noviembre.

Artículo 148. Mejora del código tipo.

Si durante la tramitación del procedimiento resultase necesaria la aportación de nuevos documentos o la modificación del código tipo presentado, la Agencia Española de Protección de Datos podrá requerir al solicitante, a fin de que en el plazo de treinta días introduzca las modificaciones que sean precisas, remitiendo el texto resultante a la Agencia Española de Protección de Datos.

Se declarará la suspensión del procedimiento en tanto el solicitante no dé cumplimiento al requerimiento.

Artículo 149. Trámite de audiencia.

En caso de que durante el trámite previsto en el artículo 148 se hubieran formulado alegaciones, se dará traslado de las mismas al solicitante de la autorización, a fin de que en el plazo de diez días alegue lo que estime procedente.

Artículo 150. Resolución.

1. Cumplidos los términos establecidos en los artículos precedentes, el Director de la Agencia resolverá sobre la procedencia o improcedencia de la inscripción del código tipo en el Registro General de Protección de Datos.
2. Cuando el Director de la Agencia Española de Protección de Datos resuelva autorizar la inscripción del código tipo, se dará traslado de la resolución al Registro General de Protección de Datos, a fin de proceder a su inscripción.

Artículo 151. Duración del procedimiento y efectos de la falta de resolución expresa.

1. El plazo máximo para dictar y notificar resolución será de seis meses, a contar desde la fecha de entrada de la solicitud en la Agencia Española de Protección de Datos.
2. Si en dicho plazo no se hubiese dictado y notificado resolución expresa, el solicitante podrá considerar estimada su solicitud.

Artículo 152. Publicación de los códigos tipo por la Agencia Española de Protección de Datos.

La Agencia Española de Protección de Datos dará publicidad al contenido de los códigos tipo inscritos en el Registro General de Protección de Datos, utilizando para ello, con carácter preferente, medios electrónicos o telemáticos.

CAPÍTULO VII

Otros procedimientos tramitados por la agencia española de protección de datos

Sección 1.ª Procedimiento de exención del deber de información al interesado

Artículo 153. Iniciación del procedimiento.

1. El procedimiento para obtener de la Agencia Española de Protección de Datos la exención del deber de informar al interesado acerca del tratamiento de sus datos de carácter personal cuando resulte imposible o exija esfuerzos desproporcionados, prevista en el apartado 5 del artículo 5 de la Ley Orgánica 15/1999, de 13 de diciembre, se iniciará siempre a petición del responsable que pretenda obtener la aplicación de la exención.
2. En el escrito de solicitud, además de los requisitos recogidos en el art. 70 de la Ley 30/1992, de 26 de noviembre, el responsable deberá:
 - a) Identificar claramente el tratamiento de datos al que pretende aplicarse la exención del deber de informar.
 - b) Motivar expresamente las causas en que fundamenta la imposibilidad o el carácter desproporcionado del esfuerzo que implicaría el cumplimiento del deber de informar.
 - c) Exponer detalladamente las medidas compensatorias que propone realizar en caso de exoneración del cumplimiento del deber de informar.
 - d) Aportar una cláusula informativa que, mediante su difusión, en los términos que se indiquen en la solicitud, permita compensar la exención del deber de informar.

Artículo 154. Propuesta de nuevas medidas compensatorias.

1. Si la Agencia Española de Protección de Datos considerase insuficientes las medidas compensatorias propuestas por el solicitante, podrá acordar la adopción de medidas complementarias o sustitutivas a las propuestas por aquél en su solicitud.

2. Del acuerdo se dará traslado al solicitante, a fin de que exponga lo que a su derecho convenga en el plazo de quince días.

Artículo 155. Terminación del procedimiento.

Concluidos los trámites previstos en los artículos precedentes, el Director de la Agencia dictará resolución, concediendo o denegando la exención del deber de informar. La resolución podrá imponer la adopción de las medidas complementarias a las que se refiere el artículo anterior.

Artículo 156. Duración del procedimiento y efectos de la falta de resolución expresa.

1. El plazo máximo para dictar y notificar resolución en el procedimiento será de seis meses, a contar desde la fecha de entrada en la Agencia Española de Protección de Datos de la solicitud del responsable del fichero.

2. Si en dicho plazo no se hubiese dictado y notificado resolución expresa, el afectado podrá considerar estimada su solicitud por silencio administrativo positivo.

Sección 2.^a Procedimiento para la autorización de conservación de datos para fines históricos, estadísticos o científicos

Artículo 157. Iniciación del procedimiento.

1. El procedimiento para obtener de la Agencia Española de Protección de Datos la declaración de la concurrencia en un determinado tratamiento de datos de valores históricos, científicos o estadísticos, a los efectos previstos en la Ley Orgánica 15/1999, de 13 de diciembre, y en el presente Reglamento, se iniciará siempre a petición del responsable que pretenda obtener la declaración.

2. En el escrito de solicitud, el responsable deberá:

a) Identificar claramente el tratamiento de datos al que pretende aplicarse la excepción.

b) Motivar expresamente las causas que justificarían la declaración.

c) Exponer detalladamente las medidas que el responsable del fichero se propone implantar para garantizar el derecho de los ciudadanos.

3. La solicitud deberá acompañarse de cuantos documentos o pruebas sean necesarios para justificar la existencia de los valores históricos, científicos o estadísticos que fundamentarían la declaración de la Agencia.

Artículo 158. Duración del procedimiento y efectos de la falta de resolución expresa.

1. El plazo máximo para dictar y notificar resolución en el procedimiento será de tres meses, a contar desde la fecha de entrada en la Agencia Española de Protección de Datos de la solicitud del responsable del fichero.

2. Si en dicho plazo no se hubiese dictado y notificado resolución expresa, el afectado podrá considerar estimada su solicitud.

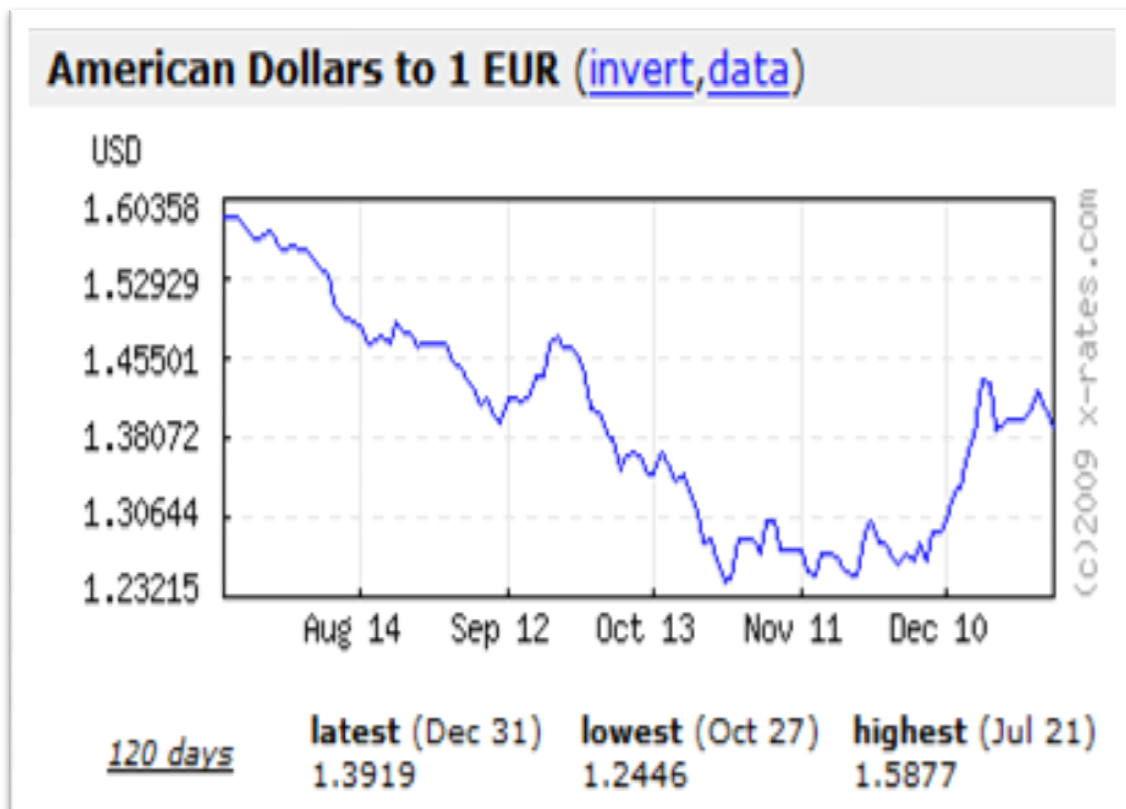
Disposición adicional única. Productos de software.

Los productos de software destinados al tratamiento automatizado de datos personales deberán incluir en su descripción técnica el nivel de seguridad, básico, medio o alto, que permitan alcanzar de acuerdo con lo establecido en el título VIII de este reglamento.

Disposición final única. Aplicación supletoria.

En lo no establecido en el capítulo III del título IX serán de aplicación a los procedimientos sancionadores tramitados por la Agencia Española de Protección de Datos las disposiciones contenidas en el Reglamento del Procedimiento para el ejercicio de la potestad sancionadora, aprobado por Real Decreto 1398/1993, de 4 de agosto.

Annex 3: Exchange Rate Dollar to Euro



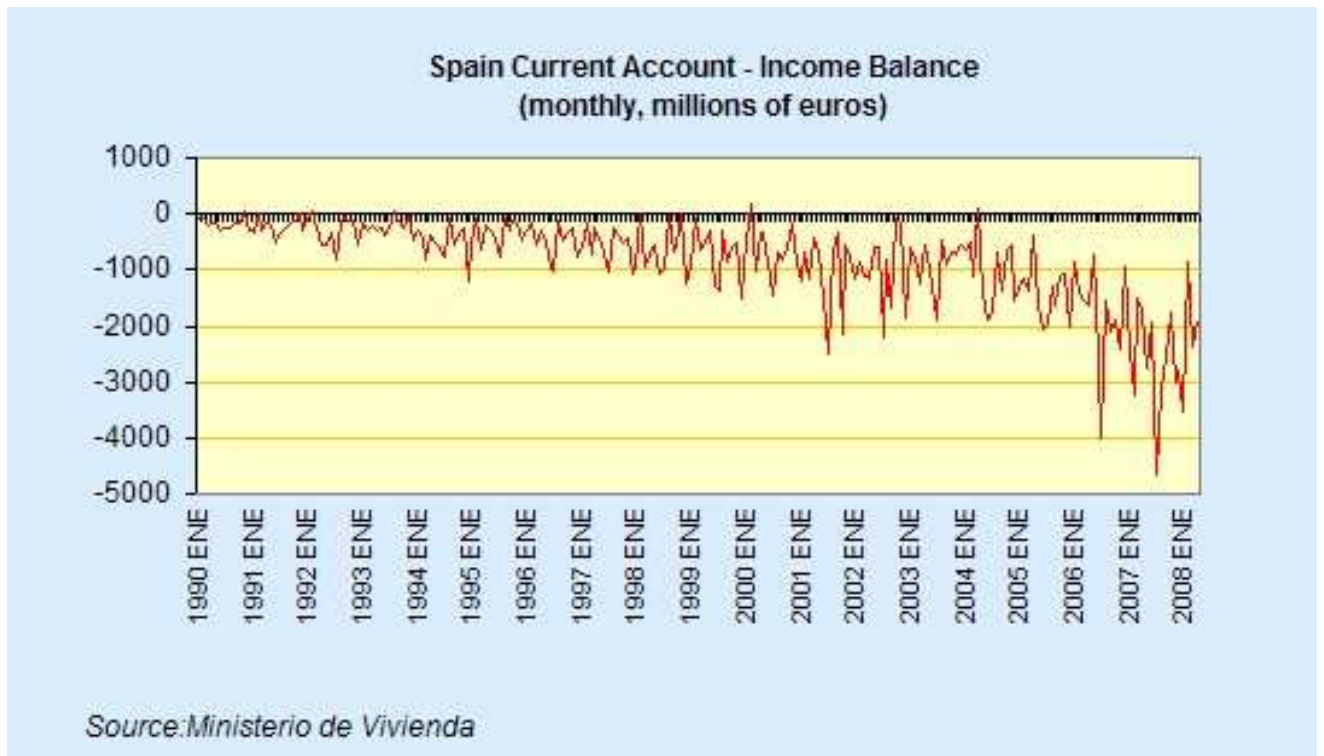
Annex 4: Spain Seasonality Adjusted



Annex 5: Spain Unemployment



Annex 6: Spain Current Account



Annex 7: Spain GDP



Annex 8: Global Competitiveness Index

The Global Competitiveness Index rankings and 2007–2008 comparisons

Country/Economy	GCI 2008–2009		GCI 2008–2009 rank (among 2007 countries)*	GCI 2007–2008 rank
	Rank	Score		
United States	1	5.74	1	1
Switzerland	2	5.61	2	2
Denmark	3	5.58	3	3
Sweden	4	5.53	4	4
Singapore	5	5.53	5	7
Finland	6	5.50	6	6
Germany	7	5.46	7	5
Netherlands	8	5.41	8	10
Japan	9	5.38	9	8
Canada	10	5.37	10	13
Hong Kong SAR	11	5.33	11	12
United Kingdom	12	5.30	12	9
Korea, Rep.	13	5.28	13	11
Austria	14	5.23	14	15
Norway	15	5.22	15	16
France	16	5.22	16	18
Taiwan, China	17	5.22	17	14
Australia	18	5.20	18	19
Belgium	19	5.14	19	20
Iceland	20	5.05	20	23
Malaysia	21	5.04	21	21
Ireland	22	4.99	22	22
Israel	23	4.97	23	17
New Zealand	24	4.93	24	24
Luxembourg	25	4.85	25	25
Qatar	26	4.83	26	31
Saudi Arabia	27	4.72	27	35
Chile	28	4.72	28	26
Spain	29	4.72	29	29
China	30	4.70	30	34
United Arab Emirates	31	4.68	31	37
Estonia	32	4.67	32	27
Czech Republic	33	4.62	33	33
Thailand	34	4.60	34	28
Kuwait	35	4.58	35	30
Tunisia	36	4.58	36	32
Bahrain	37	4.57	37	43
Oman	38	4.55	38	42
Brunei Darussalam	39	4.54	n/a	n/a
Cyprus	40	4.53	39	55
Puerto Rico	41	4.51	40	36

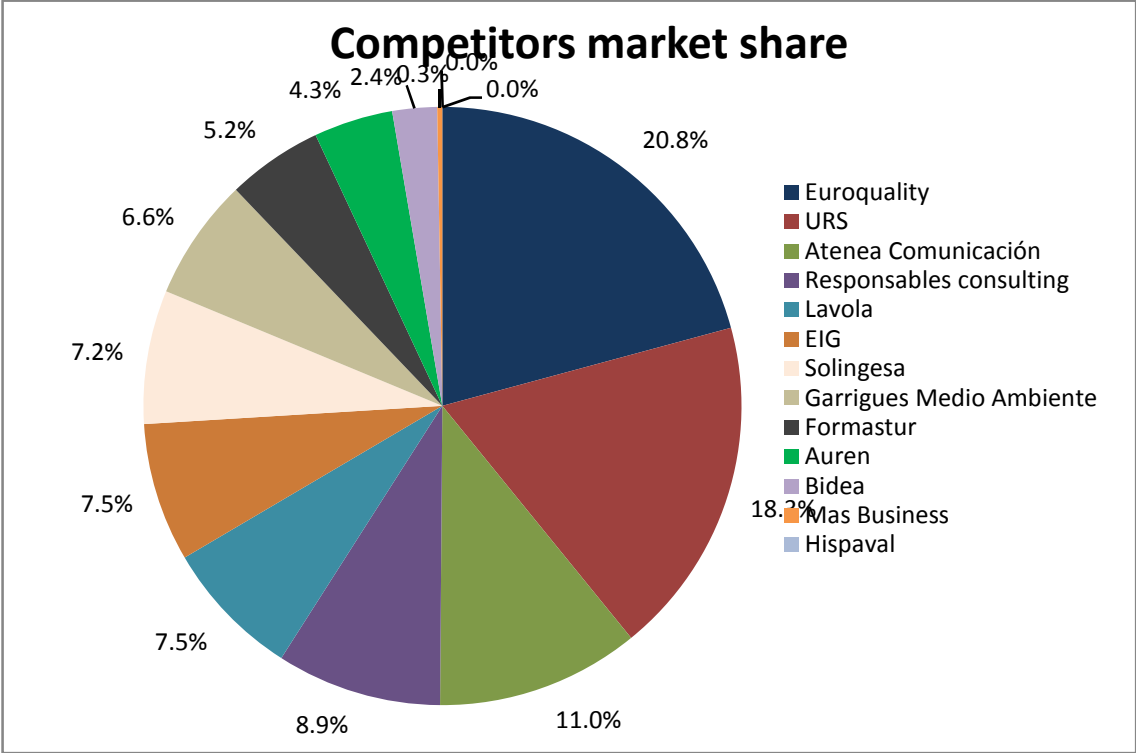
Annex 9: Population Statistics in Spain

City	City Population	City Rank	Pop	Urban Area Population	Urban Area Rank
Madrid	2905100	56		5078100	52
Barcelona	1497700	143		3871400	72
Valencia	741900	378		1406600	277
Sevilla	704500	404		1135600	345
Zaragoza	607000	470		607000	674
Malaga	539300	544		748200	558
Murcia	366300	855		366300	996
Las Palmas	366000	857		366000	998
Bilbao	351100	892		879300	481
Palma	350700	896		350700	1030
Valladolid	319400	993		319400	1107
Cordoba	316100	1003		316100	1115
Vigo	287800	1123		287800	1219
Alacant	283600	1142		283600	1234
Gijon	268300	1200		268300	1284
Granada	244900	1317		244900	1390
A Coruna	241000	1340		241000	1410
Santa Cruz de Tenerife	220700	1488		220700	1542
Vitoria	218400	1503		218400	1556
Oviedo	200700	1649		200700	1689
Elx	199800	1655		199800	1695
Iruna	191900	1731		191900	1768
Jerez	186000	1779		186000	1813
Santander	184800	1788		184800	1822
Cartagena	184700	1789		184700	1823
Donostia	181900	1814		181900	1846
Almeria	171000	1918		171000	1947
Burgos	164400	1991		164400	2017
Salamanca	158600	2059		158600	2082
Albacete	153200	2122		153200	2143
Castello	146700	2216		146700	2235
Huelva	142200	2285		142200	2303
Cadiz	138900	2332		138900	2348
Badajoz	137000	2358		137000	2374
Leon	136500	2370		136500	2386
Logrono	130500	2465		130500	2481

San Cristobal de la Laguna	130200	2467	130200	2483
Tarragona	116200	2727	116200	2742
Jaen	113200	2798	113200	2814
Lleida	112600	2814	112600	2830
Marbella	109500	2901	109500	2915
Ourense	109200	2911	109200	2925
Algeciras	106100	2989	106100	3004

Information found on <http://www.irantour.org/spain/spainpopulation.html>

Annex 10: Competitors Market Share



Annex 11: Market Size Calculated

Methodology used to calculate the potential market size/demand

1. Identification of the net profit of some companies in each sector (of different sizes) taken as reference
2. Identification of the number of companies in each sector
3. Assumption: the 1% of companies in each sector are big companies (except in the textile sector that it has been assumed that only the 0,06% are big-referring to Inditex) and the remaining 99% SMEs. Based on the information found in the book “La responsabilidad Social de la Empresa en la gestión de Pymes. Jaime Urceley. Colección EOI Empresas”, from all the SMEs in 2005 in Spain the 84,6% are small companies and the 15,4% medium.
4. With the number of companies in the sector and the percentage of if kind of company taken (point 3), the number of companies of each size in each sector has been calculated.
5. With the information of the profit of different size companies taken as reference in each sector and the number of companies in each, the average profit that the companies do in each sector that been calculated
6. Identification of the percentage profit that companies invest in CSR
7. Assumption: the 3% of the total money they invest in CSR, it is going to be considered potential income for XXX
8. Calculation of the potential income in each sector for XXX
9. Adding the figures calculated in point 8, the potential income for XXX has been calculated

Assumptions- Market size of each sector

Banks

The number of banks in Spain is 68 according to the Asociación Española de Banca. No specific data has been found for saving banks, but it will be assumed that they is at least one per Comunidad Autónoma (17) and some more, that is, it will be consider that approximately 90 possible clients can be for XXX in this sector.

Asociación Española de la Banca. 07 Feb. 09 <<http://www.aebanca.es/>>.

Textile

According to the Centro de Información textil y de la confección, 5900 companies were in Spain in the sector, being mainly small companies. The sector contributes to the 3,5% of the total industrial product.

Sector textil y de confección en España 2008. 07 Feb. 09
<<http://www.cityc.es/docs/CITYC%20TRIPTIC%202008%20castellano>>.

IT

The AETIC (Asociación de Empresas de Electrónica, Tecnologías de la Información y Telecomunicaciones de España) has 500 company members, being the main IT companies in the Spanish market.

AETIC. Asociación de Empresas de Electrónica, Tecnologías de la Información y Telecomunicaciones de España. 08 Feb. 09 <http://www.aetic.es/es/inicio/corporativo/156/contenido.aspx>

Transport

Approximately 310 companies.

Energy

Approximately 200 companies.

Annex 12: Porter Analysis

Below a detailed analysis of Porters five forces revealing important information about the sector analysis of the industry and its competitiveness.

Barriers to Entry	Weight	1	2	3	4	Total
Advertisement	15%				4	0,6
Cost Advantages						
Independent Scale	5%			3		0,15
Customer Loyalty	5%	1				0,05
Distributor Agreement	7%		2			0,14
Economies of Scale	5%		2			0,1
Globalization	7%		2			0,14
Government Regulations	4%	1				0,04
Inelastic Demand	5%		2			0,1
Intellectual Property	2%			3		0,06
Investment	5%	1				0,05
Network Effect	10%				4	0,4
Predatory Pricing	5%	1				0,05
Restrictive Practices	4%	1				0,04
R&D	4%		2			0,08
Sunk Costs	7%	1				0,07
Suppliers Agreements	5%			3		0,15
Vertical Integration	5%			3		0,15
Total	100%					2,37

Barriers to Exit	Weight	1	2	3	4	Total
High investment in non-transferable fixed assets	25%	1				0,25
High redundancy costs	25%	1				0,25
Closure Costs	25%		2			0,5
Potential Upturn	25%		2			0,5
Total	100%					1,50

Competitive Rivalry	Weight	1	2	3	4	Total
Number of Competitors	40%		2			0,8
Market Growth	35%		2			0
Importance on Brand	25%			3		0,75
Total	100%					1,55

Substitutes	Weight	1	2	3	4	Total
Substitutes Aggresivity	25%				4	1
Cost/Benefit Relation	35%		2			0,7
Quantity of substitutes	40%			3		1,2
Total	100%					2,90

Suppliers Bargaining Power	Weight	1	2	3	4	Total
Number of Suppliers of Product	25%		2			0,5
Number of Suppliers of Raw Material	35%	1				0,35
Threats of Suppliers Integration	40%	1				0,4
Total	100%					1,25

Consumer Bargaining Power	Weight	1	2	3	4	Total
Available Consumers	25%		2			0,5
Substitute Availability	25%			3		0,75
Cost of Change	25%			3		0,75
Consumer's Rentability	25%			3		0,75
Total	100%					2,75

Industry Attractiveness Factor	Weight	1	2	3	4	Total
Barriers to Entry	25%		2,37			0,59
Barriers to Exit	10%		1,50			0,15
Competitors' Rivalry	20%		1,55			0,31
Substitute Products	15%			2,90		0,44
Suppliers Bargaining Power	15%	1,25				0,19
Consumers Bargaining Power	15%			2,75		0,41
	100%					2,09

Annex 13: Patent Protection

We the Owners of Star S.L are indicating on this day January 21, 2009 that our software named Sustware has been made by Star S.L with the function of generating reports that assist in the consultancy for Star S.L. We are indicating that this product is complete and from this day forward will be used in all Star S.L consulting activities. The purpose of this document is to illustrate that our product is in full working capabilities as to which we want to indicate that we are the first in the market to create this software and want to protect ourselves from copiers without giving away our secrets, and thus this product is not and will not be officially registered and patented in order to keep this secrecy.

Signed by:

Amaia Zabaleta _____

Christine Stroetzel _____

Ginette Rodriguez _____

Pratima Painuly _____

Annex 14: Trademark Registration

Spain Trademark Registration Costs and Registration Procedures

Spain Trademark Registration Costs and Registration Procedures

Spain Trademark Registration Fees

Step 1: Pre-filing Search		
		USD
	One Class	160
	Per Additional Class	160
Delivery: 5 working days; Search report delivered by email.		
Step 2: Trademark Registration Request		
		USD
	One Class	836
	Per Additional Class	576
Step 3: Registration Certificate		
		USD
	One Class	200
	Per Additional Class	200
Fees: The fees stated above are applicable to both domestic and foreign applicants. Fees do not cover delivery fee.		

Search report will be sent by email; certificate will be sent by registered mail.

Note 1: Pre-filing search here is limited to search performed on the Spain Intellectual Property Office's database only.

Example 1 : If you want to apply to have your trademark "ABC" registered in Class 7 (machines and machine tools etc), that is, one mark one class, the total fees for both trademark pre-filing search and registration request

and certificate are:

Search: USD160
Request for registration: USD836
Certificate: USD200
TOTAL: USD1196

Example 2 : If you want to apply to have your trademark "ABC" registered in Class 7 (machines and machine tools etc) and Class 25 (clothing, footwear, headgear), that is, one mark two classes, the total fees for both trademark pre-filing search and registration request and certificate are:

Search: USD320
Request for registration: USD1412
Certificate: USD400
TOTAL: USD2132

Example 3 : If you want to apply to have your trademarks "ABC" and "DEF" registered in Class 7 (machines and machine tools etc), that is, two marks one class, the total fees for both trademark pre-filing searches and registration requests and certificates are:

Search: USD320
Request for registration: USD1672
Certificate: USD400
TOTAL: USD2392

Clients need to provide the following materials:

1. A Power of Attorney executed by the applicant (Kaizen will provide and prepare the PoA)
2. A soft copy of the trademark.
3. A detailed list of products or services to be covered in the application.
4. Certified copy of the priority document when priority is claimed and its translation in Plain Spanish.

Step by Step Registration Procedures:

Step 1: Clients send to Kaizen (by email or fax or post) a specimen of the trademark, a detailed list of products to be covered by the trademark and at the same time make payment for the pre-filing search to Kaizen by remittance or check;

Step 2: Kaizen conduct the pre-filing search and prepare search report and email the search reports to clients;

Step 3: (If the search results indicate that the application is likely to be accepted and clients decide to proceed) Clients send us the Photostat copy of identity proof (passport copy for individual and Certificate of Incorporation or Business Registration License) and at the same time make payment for the filing to Kaizen by remittance or check;

Step 4: Kaizen prepare the registration application forms and Power of Attorney (PoA) and deliver them to clients for execution;

Step 5: Clients send the duly executed PoA and registration forms back to us;

Step 6: Kaizen submit the application documents to the Spain Trademark Office;

Step 7: The Registry of Trade Marks Intellectual Property Office of Spain perform examination and other procedures; if no objection received, the Registry of Trade Marks then issues the Certificate of Registration;

Step 8: Kaizen forward the Certificate of Registration to clients.

Time Scale

Currently it is taking approximately 8-10 months to get a trademark in Spain .

Period of Protection

10 years.

For further information or assistance, please call us:

Hong Kong Office: +852 2341 1444
Shenzhen Office: +86 755 8268 4480
Shanghai Office: +86 21 6439 4114
Beijing Office: +86 10 6874 8420

or send email to enquiries@bycpa.com.

Source <http://www.by-cpa.com/html/news/20082/1310.html>

MADRID AGREEMENT AND PROTOCOL CONCERNING
INTERNATIONAL REGISTRATION OF MARKS

APPLICATION FOR INTERNATIONAL REGISTRATION

GOVERNED BY BOTH THE MADRID AGREEMENT AND THE MADRID PROTOCOL

(Rule 9 of the Common Regulations)

MM3(E)

**APPLICATION FOR INTERNATIONAL REGISTRATION
GOVERNED BY BOTH THE MADRID AGREEMENT AND THE MADRID PROTOCOL**

<p>For use by the applicant</p> <p>This international application includes the following number of:</p> <ul style="list-style-type: none"> - continuation sheet(s): - MM17 form(s): 	<p>For use by the applicant/Office</p> <p>Applicant's reference:</p> <p>Office's reference:</p>
---	---

1 CONTRACTING STATE WHOSE OFFICE IS THE OFFICE OF ORIGIN

MADRID, SPAIN

2 APPLICANT

(a) Name: Christine Stroetzel

(b) Address: Ferrer del rio, 11 3EI Madrid, Spain 28028

(c) Address for correspondence: same as B

(d) Telephone : 622 78 68 05..... Fax:

E-mail address: lovebeagles@hotmail.com

(e) Preferred language for correspondence: English French Spanish

(f) Other indications (as may be required by certain designated Contracting Parties; for example, if the **United States of America** designated, it is necessary to include these indications):

(i) if the applicant is a natural person, nationality of applicant:

(ii) if the applicant is a legal entity:

- legal nature of the legal entity:
- State and, where applicable, territorial unit within that State, under the law of which the legal entity is organized:

3

ENTITLEMENT TO FILE

(a) Check the appropriate box:

- (i) the applicant has a real and effective industrial or commercial establishment in the Contracting State mentioned in item 1;
- (ii) if there is no such establishment in a Contracting State of the Agreement, the applicant is domiciled in the Contracting State mentioned in item 1;
- (iii) if there is no such establishment or domicile in a Contracting State of the Agreement, the applicant is a national of the Contracting State mentioned in item 1.

(b) Where the address of the applicant, given in item 2(b), is not in the territory of the Contracting State mentioned in item 1, indicate in the space provided below:

- (i) if the box corresponding to paragraph (a)(i) of the present item has been checked, the address of the applicant's industrial or commercial establishment in that State, or,
- (ii) if the box corresponding to paragraph (a)(ii) of the present item has been checked, the domicile of the applicant in that State

.....
.....
.....

4

APPOINTMENT OF A REPRESENTATIVE (if any)

Name:

Address:

.....

Telephone: Fax:

E-mail address:

5

BASIC REGISTRATION

Basic registration number: X5337856.....

Date of the basic registration: 28/01/2009..... (dd/mm/yy)

6

PRIORITY CLAIMED

The applicant claims the priority of the earlier filing mentioned below:

Office of earlier filing:

Number of earlier filing (if available):

Date of earlier filing: (dd/mm/yy)

If the earlier filing does not relate to all the goods and services listed in item 10 of this form, indicate in the space provided below goods and services to which it does relate:

.....
.....

If several priorities are claimed, check box and use a continuation sheet giving the above required information for each priority claimed.

7

THE MARK

(a) Place the reproduction of the mark, as it appears in the basic registration, in the square below.

(b) Where the reproduction in item (a) is in black and white and color is claimed in item 8, place a color reproduction of the mark in the square below.

(c) The applicant declares that he wishes the mark to be considered as a mark in standard characters.

(d) The mark consists of a color or a combination of colors as such

Where the Office of origin has addressed this form by facsimile, the present space must be completed before addressing the origin of this page to the International Bureau.

Number of basic registration or Office reference as shown on the first page of this form:

Signature by the Office of origin:

8

COLOR(S) CLAIMED

(a) The applicant claims color as a distinctive feature of the mark.

Color or combination of colors claimed: green and yellow.....
.....
.....

(b) Indication, for each color, of the principal parts of the mark that are in that color (as may be required by certain designated Contracting Parties):

The letters s.t.r. s.l are noted in yellow with the green represented as a star which is green.....
.....
.....

9

MISCELLANEOUS INDICATIONS

(a) Transliteration of the mark (this information is compulsory where the mark consists of or contains matter in characters other than Latin characters, or numerals other than Arabic or Roman numerals):

Groudy.....
.....

(b) Translation of the mark (as may be required by certain designated Contracting Parties):

(i) into English:

(ii) into French: *étoile*.....

(iii) into Spanish: *estrella*.....

(c) The words contained in the mark have no meaning (and therefore cannot be translated).

(d) Where applicable, check the relevant box or boxes below:

Three-dimensional mark

Sound mark

Collective mark, certification mark, or guarantee mark

(e) Description of the mark (where applicable):

The letters s.t.r. s.l are noted in yellow with the green represented as a star which is green.....
.....

(f) Verbal elements of the mark (where applicable):
.....
.....

(g) The applicant declares that he wishes to disclaim protection for the following element(s) of the mark:
.....
.....
.....

- (a) Indicate below the goods and services for which the international registration is sought:
Please use font “Courier New” or “Times New Roman”, size 12 pt, or above

Class	Goods and services
35	Business Consulting(professional)
42	Consultancy (computer software)

- (b) The applicant wishes to **limit** the list of goods and services in respect of one or more designated Contracting Parties, as fo
Please use font “Courier New” or “Times New Roman”, size 12 pt, or above

Contracting Party	Class(es) or list of goods and services for which
protection is sought in this Contracting Party	

11**DESIGNATED CONTRACTING PARTIES**

(Information concerning national or regional procedures for each Contracting Party designated may be found at the following website: http://www.wipo.int/madrid/en/members/ipoffices_info.html. Additional information may be found in the information notices available at: <http://www.wipo.int/madrid/en/notices/>)

Check the corresponding boxes:

- | | | | |
|---|---|--|---|
| <input type="checkbox"/> AG Antigua and Barbuda | <input type="checkbox"/> DZ Algeria | <input type="checkbox"/> KR Republic of Korea | <input type="checkbox"/> RO Romania |
| <input type="checkbox"/> AL Albania | <input type="checkbox"/> EE Estonia | <input type="checkbox"/> KZ Kazakhstan | <input type="checkbox"/> RS Serbia |
| <input type="checkbox"/> AM Armenia | <input type="checkbox"/> EG Egypt | <input type="checkbox"/> LI Liechtenstein | <input type="checkbox"/> RU Russian Federation |
| <input type="checkbox"/> AN Netherlands Antilles | <input checked="" type="checkbox"/> EM European Community ¹ | <input type="checkbox"/> LR Liberia | <input type="checkbox"/> SD Sudan |
| <input type="checkbox"/> AT Austria | <input type="checkbox"/> ES Spain | <input type="checkbox"/> LS Lesotho | <input type="checkbox"/> SE Sweden |
| <input type="checkbox"/> AU Australia | <input type="checkbox"/> FI Finland | <input type="checkbox"/> LT Lithuania | <input type="checkbox"/> SG Singapore ² |
| <input type="checkbox"/> AZ Azerbaijan | <input type="checkbox"/> FR France | <input type="checkbox"/> LV Latvia | <input type="checkbox"/> SI Slovenia |
| <input type="checkbox"/> BA Bosnia and Herzegovina | <input type="checkbox"/> GB United Kingdom ² | <input type="checkbox"/> MA Morocco | <input type="checkbox"/> SK Slovakia |
| <input type="checkbox"/> BG Bulgaria | <input type="checkbox"/> GE Georgia | <input type="checkbox"/> MC Monaco | <input type="checkbox"/> SL Sierra Leone |
| <input type="checkbox"/> BH Bahrain | <input type="checkbox"/> GH Ghana ⁴ | <input type="checkbox"/> MD Republic of Moldova | <input type="checkbox"/> SM San Marino |
| <input type="checkbox"/> BT Bhutan | <input type="checkbox"/> GR Greece | <input type="checkbox"/> ME Montenegro | <input type="checkbox"/> ST Sao Tome and Principe |
| <input type="checkbox"/> BW Botswana | <input type="checkbox"/> HR Croatia | <input type="checkbox"/> MG Madagascar | <input type="checkbox"/> SY Syrian Arab Republic |
| <input type="checkbox"/> BX Benelux | <input type="checkbox"/> HU Hungary | <input type="checkbox"/> MK The former Yugoslav Rep. of Macedonia | <input type="checkbox"/> SZ Swaziland |
| <input type="checkbox"/> BY Belarus | <input type="checkbox"/> IE Ireland ² | <input type="checkbox"/> MN Mongolia | <input type="checkbox"/> TJ Tajikistan |
| <input type="checkbox"/> CH Switzerland | <input type="checkbox"/> IR Iran (Islamic Republic of) | <input type="checkbox"/> MZ Mozambique | <input type="checkbox"/> TM Turkmenistan |
| <input type="checkbox"/> CN China | <input type="checkbox"/> IS Iceland | <input type="checkbox"/> NA Namibia | <input type="checkbox"/> TR Turkey |
| <input type="checkbox"/> CU Cuba ⁴ | <input type="checkbox"/> IT Italy | <input type="checkbox"/> NO Norway | <input type="checkbox"/> UA Ukraine |
| <input type="checkbox"/> CY Cyprus | <input type="checkbox"/> JP Japan ⁴ | <input type="checkbox"/> OM Oman | <input checked="" type="checkbox"/> US United States of America ³ |
| <input type="checkbox"/> CZ Czech Republic | <input type="checkbox"/> KE Kenya | <input type="checkbox"/> PL Poland | <input type="checkbox"/> UZ Uzbekistan |
| <input type="checkbox"/> DE Germany | <input type="checkbox"/> KG Kyrgyzstan | <input type="checkbox"/> PT Portugal | <input type="checkbox"/> VN Viet Nam |
| <input type="checkbox"/> DK Denmark | <input type="checkbox"/> KP Democratic People's Republic of Korea | <input type="checkbox"/> ZM Zambia | |

Others:

¹ If the **European Community** is designated, it is compulsory to indicate a second language before the Office of the European Community, among the following (check one box only): French German Italian Spanish

Moreover, if the applicant wishes to claim the seniority of an earlier mark registered in, or for, a Member State of the European Community, the official form MM17 must be annexed to the present international application.

² By designating **Ireland, Singapore** or the **United Kingdom**, the applicant declares that he has the intention that the mark will be used by him or with his consent in that country in connection with the goods and services identified in this application.

³ If the **United States of America** is designated, it is compulsory to annex to the present international application the official form (MM18) containing a declaration of intention to use the mark required by this Contracting Party.

⁴ **Cuba, Ghana** and **Japan** have made a notification under Rule 34(3)(a) of the Common Regulations. Their respective **individual fees are payable in two parts**. Therefore, if **Cuba, Ghana** or **Japan** is designated, only the first part of the applicable individual fee is payable at the time of filing the present international application. The second part will have to be paid only if the Office of the Contracting Party concerned is satisfied that the mark which is the subject of the international registration qualifies for protection. The date by which the second part must be paid, and the amount due, will be notified to the holder of the international registration at a later stage.

12

SIGNATURE BY THE APPLICANT OR HIS REPRESENTATIVE

(if required or allowed by the Office of origin)

..... (dd/mm/yy)

13

CERTIFICATION AND SIGNATURE OF THE INTERNATIONAL APPLICATION BY THE OFFICE OF ORIGIN

(a) Certification

The Office of origin certifies

(i) that the request to present this application was received, or, as provided in Rule 11(1) of the Regulations, is deemed to have been received, on 28/01/2009..... (dd/mm/yyyy).

(ii) that the applicant named in item 2 is the same as the holder named in the basic registration mentioned in item 5, that any indication given in item 7(d), 9(d) or 9(e) appears also in the basic registration, that the mark in item 7(a) is the same as in the basic registration, that, if color is claimed as a distinctive feature of the mark in the basic registration, the same claim is included in item 8 or 9, if color is claimed in item 8 without having been claimed in the basic registration, the mark in the basic registration is in fact the color or combination of colors claimed, and that the goods and services listed in item 10 are covered by the list of goods and services appearing in the basic registration.

Where the international application is based on two or more basic registrations, the above declaration shall be deemed to apply to all those basic registrations.

(b) Office's signature:

Date of signature: (dd/mm/yy)

FEE CALCULATION SHEET

(a) INSTRUCTIONS TO DEBIT FROM A CURRENT ACCOUNT

The International Bureau is hereby instructed to debit the required amount of fees from a current account opened with the International Bureau (if this box is checked, it is not necessary to complete (b)).

Holder of the account: Christine Stroetzel..... Account number: X3349 3492034 2349023.....

Identity of the party giving the instructions:

(b) AMOUNT OF FEES (see Fee Calculator: www.wipo.int/madrid/en/fees/calculator.jsp)

Basic fee: 653 Swiss francs if the reproduction of the mark is in black and white only and 903 Swiss francs if there is a reproduction in color. *(For international applications filed by applicants whose country of origin is a Least Developed Country, in accordance with the list established by the United Nations (www.wipo.int/ldcs/en/country), 65 Swiss francs if the reproduction is in black and white only and 90 Swiss francs if there is a reproduction in color.)*

Complementary and supplementary fees:

Number of designations for which complementary fee is applicable		Complementary fee		Total amount of the complementary fees	
.....	x	100 Swiss francs	=	=>

Number of classes of goods and services beyond three		Supplementary fee		Total amount of the supplementary fees	
.....	x	100 Swiss francs	=	=>

Individual fees (Swiss francs):

Designated Contracting Parties	Individual fee	Designated Contracting Parties	Individual fee
.....
.....
.....
.....
.....

Total individual fees

=>

.....

GRAND TOTAL (Swiss francs)

.....

(c) METHOD OF PAYMENT

Identity of the party effecting the payment:

WIPO receipt number

Payment received and acknowledged by WIPO

.....

Payment made to WIPO bank account

IBAN No. CH51 0483 5048 7080 8100 0

Payment identification

dd/mm/yyyy

Credit Suisse, CH-1211 Geneva 70

.....

Swift/BIC: CRESCHZZ80A

Payment made to WIPO postal account

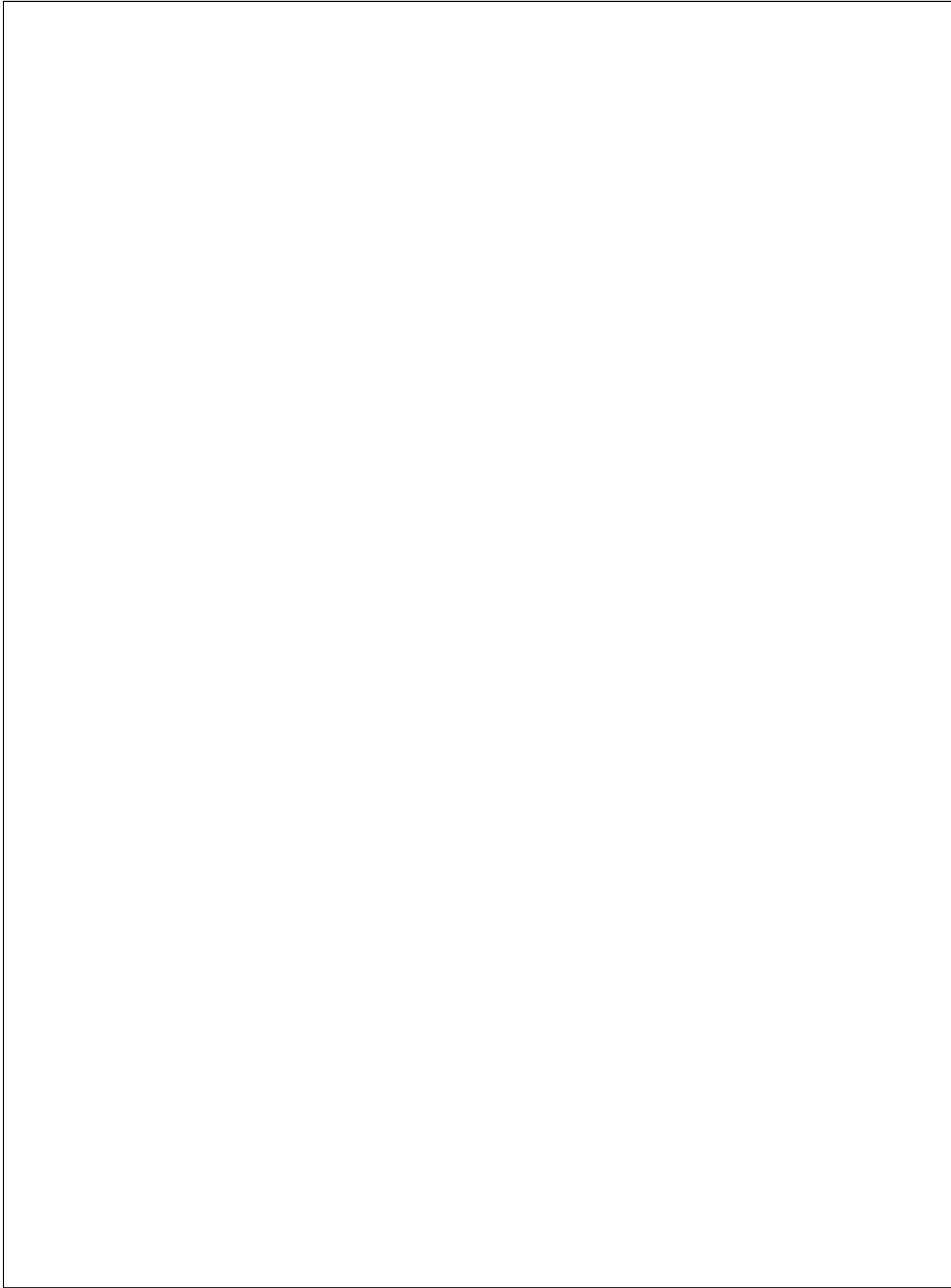
IBAN No. CH03 0900 0000 1200 5000 8

Payment identification

dd/mm/yyyy

Swift/BIC: POFICHBE

.....



Annex 16: Tows Matrix

	TOWS MATRIX	
	<p style="text-align: center;">Opportunity</p> <ol style="list-style-type: none"> 1. Increasing Market 2. Change in Lifestyles (LOHAS) 3. New Segmentation 4. Government Push 	<p style="text-align: center;">Threat</p> <ol style="list-style-type: none"> 1. Competitors' response 2. There exists a relevant number of competitors in the sector of Consulting 3. Governmental Regulations 4. Crisis affect on clients ability to buy
<p style="text-align: center;">Strengths</p> <ol style="list-style-type: none"> 1. Company's differentiation-use of technology, consulting and offering solutions 2. Staff experience, education, motivation (very high and will be monetarily compensated greatly) 3. Possible Alliances with prestigious consulting firms that don't have Sustainability Consulting 4. In-depth knowledge of sector 	<ol style="list-style-type: none"> 1. Enter the market with company's differentiation product and services. 2. Impactful communication with stakeholders by participating in conferences and publishing research papers with deep knowledge of sector. 3. Offer effective, value added services utilizing strength of highly skilled professionals to companies desiring consulting and solutions. 4. Collaboration with prestigious firm and use their brand and image for advertisement and publicity in new segment. 5. Collaborate with government to create new standards for sustainability. 6. Show staff as "models of LOHAS lifestyle: create a new movement. 	<ol style="list-style-type: none"> 1. Define innovation management process to guarantee continuous innovation of services by motivated and experienced professional 2. Offer value added solutions to clients; combining consulting with solution providing 3. Alliance with adequate prestigious consulting firms to create space for the company in the sector. 4. Design adequate processes to be aware of and anticipate to new regulations and environment changes.
<p style="text-align: center;">Weakness</p> <ol style="list-style-type: none"> 1. High Initial Inversion to produce software and qualified employees (sunken costs with no current investors) 2. Lack of national infrastructure (provide services outside Madrid) 3. Vertical Infrastructure (dependant on software for services) 4. Lack of experience in market 	<ol style="list-style-type: none"> 1. Create a unique image company, with presence in main and relevant places 2. Offer training and education activities. 3. Design adequate processes to be aware of and anticipate to new legislation changes. 	<ol style="list-style-type: none"> 1. Use of high initial investment in training to produce regional consultants. 2. Sell XXX's service, by doing a free tryout of our software so that possible clients can see our competences. 3. Join associations that focus on sustainability consulting to be able to do networking with competitors and in this way capture information & knowledge of the market.

Annex 17: Space Matrix (1/2)

Environment and stability									
Technological change	many	0	1	2	3	4	5	6	few
Rate of inflation	high	0	1	2	3	4	5	6	low
Demand variability	large	0	1	2	3	4	5	6	small
Price range of competing products	wide	0	1	2	3	4	5	6	narrow
Barriers to entry into market	few	0	1	2	3	4	5	6	many
Competitive pressure	high	0	1	2	3	4	5	6	low
Price elasticity of demand	elastic	0	1	2	3	4	5	6	inelastic
-2,50									

Industry strength									
Growth potential	low	0	1	2	3	4	5	6	high
Profit stability	low	0	1	2	3	4	5	6	high
Financial stability	low	0	1	2	3	4	5	6	high
Technological know-how	simple	0	1	2	3	4	5	6	complex
Resource utilization	inefficient	0	1	2	3	4	5	6	efficient
Capital intensity	high	0	1	2	3	4	5	6	low
Ease of entry into market	easy	0	1	2	3	4	5	6	difficult
Productivity, capacity utilization	low	0	1	2	3	4	5	6	high
3,38									

Competitive advantage									
Market share (potential)	small	0	1	2	3	4	5	6	large
Product/service quality	inferior	0	1	2	3	4	5	6	superior
Product/service life cycle	late	0	1	2	3	4	5	6	early
Product replacement cycle	variable	0	1	2	3	4	5	6	fixed
Customer loyalty	low	0	1	2	3	4	5	6	high
Competitor's capacity utilization	low	0	1	2	3	4	5	6	high
Technological know-how	low	0	1	2	3	4	5	6	high
Vertical integration	low	0	1	2	3	4	5	6	high
-3,71									

Financial strength									
Return on investment	low	0	1	2	3	4	5	6	high
Leverage	imbalanced	0	1	2	3	4	5	6	balanced
Liquidity	imbalanced	0	1	2	3	4	5	6	balanced
Capital required/ capital available	high	0	1	2	3	4	5	6	low
Cash flow	low	0	1	2	3	4	5	6	high
Ease of exit from market	difficult	0	1	2	3	4	5	6	easy
Risk involvement in business	much	0	1	2	3	4	5	6	little
4,43									

Annex 17: Space Matrix (2/2)

Methodology: to each of the items of the standard list used, a score has been given according to the specific case of XXX. At the end the average score has been calculated for each of the groups of items and finally the graph has been drawn.

Annex 18: Details of India office building, Pune

Talk to a Regus representative

In India:

+91 (0)22 4026 0000

Pune Connaught Place

[Photo gallery](#)



[Virtual tour](#)[Building floor plan](#)

Level 2, Connaught Place
Bund Garden Road
Pune 411001
India

Main tel: +91 20 40147575
Main fax: +91 20 40147576

[Contact us now](#)

[Schedule a visit](#)

- **About this centre**

- Pricing
- Map & directions
- Local amenities
- Nearby centres

Regus Connaught Place, Pune is located in the Central Business District of Pune on Bund Garden Road. This is one of the most important commercial hubs of Pune and houses corporates like Ernst & Young, Price Waterhouse Coopers, KPMG, Philips, Microsoft, ING, and many others. The centre is located with excellent connectivity to the Airport and IT districts of Pune. There are a number of Hotels within easy reach.

It is a stand alone building of 121,000 sq ft with retail on the ground floor.

View all [Regus India locations.](#)

On Site

- 24 hour access
- Business Lounge
- Meeting Rooms
- Parking
- Secure underground parking
- Lounge area
- Elevator
- Temp control

Technical Facilities

- RegusNet high speed internet access
- Videoconferencing studio
- Voicemail

[Find a different location](#)

[Site Map](#) | [Privacy Policy](#) | [Terms and Conditions](#) | [Regus India Locations](#)



Copyright © 2008 Regus plc. All rights reserved.
Reproduction in whole or in part in any form or medium without express written permission of
Regus plc is prohibited.

Source: <http://offices.regus.co.in/locations/IN/Pune/PuneConnaughtPlace.htm>



Oracle Financing Solutions for Fast-Growing Companies

Reduce Costs, Improve Cash Flow and Increase Your Purchasing Power

While capital constraints and cash flow concerns are a fact of life for most Fast-Growing Companies, these issues should not prevent you from acquiring and implementing the IT solutions you need to grow and succeed. Oracle Financing provides payment solutions that bring the power of Oracle's Enterprise-class software and services to Fast-Growing Companies around the world.

Expertise and Experience for Business Success

For nearly twenty years, Oracle Financing has helped thousands of Fast-Growing Companies with flexible payment solutions to support critical business objectives. Oracle's single payment facility can optimize your IT budget—reducing total cost of acquisition and ownership for Oracle and third-party software, hardware, and services.

Streamlined Processes and Quick Approvals

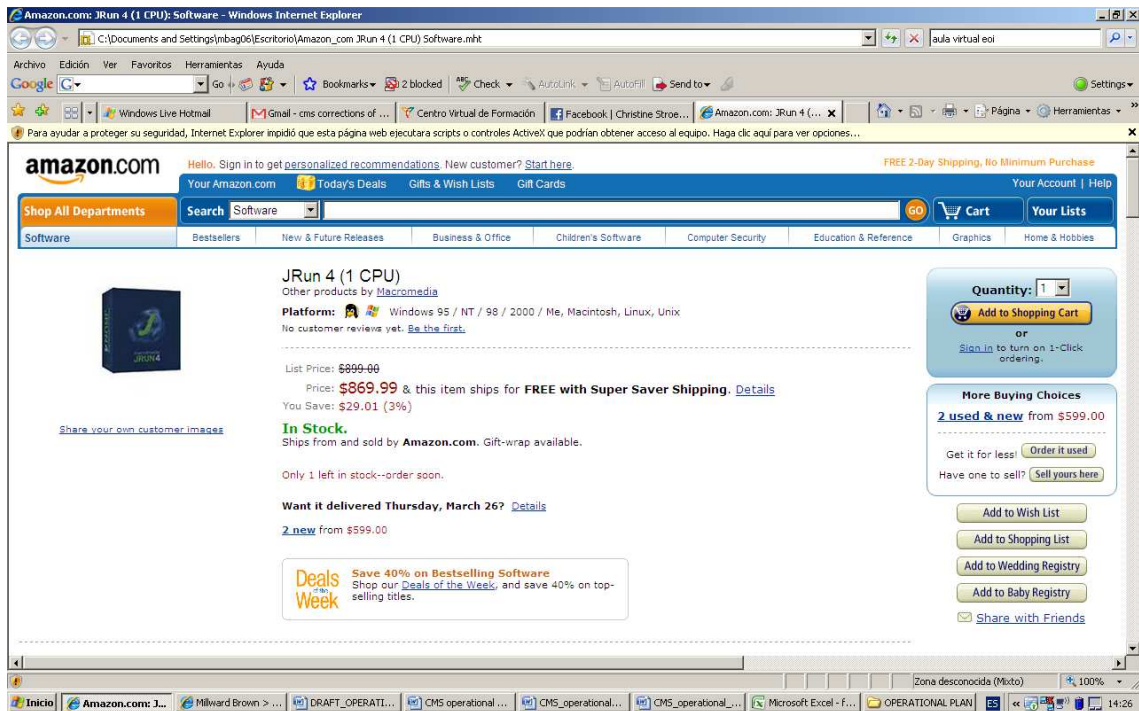
Oracle Financing provides online tools and streamlined approval and documentation processes that simplify IT purchasing for Fast-Growing Companies. Whether buying directly from Oracle or from an Oracle partner, Oracle Financing can help you meet your objectives and accelerate the benefits of your Oracle solution.

BENEFITS

- Access the lowest price point for Oracle and related products with lease options
- Improve cash flow with reduced upfront investment requirements and payments spread over time
- Adapt to business change with flexible payment structures mapped to your needs
- Increase purchasing power with predictable and affordable monthly payments
- Competitive rates provide an alternative source of capital to help you preserve credit lines

Source: <http://www.oracle.com/financing/small-medium-business.html>

Annex 20: Detail information about purchase of Java script



Source:

http://www.amazon.com/dp/B000068U36/ref=asc_df_B000068U36752988?smid=ATVDPKIKX0DER&tag=shopzilla_rev_400-20&linkCode=asn

Annex 21: Details of Renting of office in Madrid, Spain

Barrio de el plantío, Madrid
2.847 euros/mes, 219m²

2.847 euros/month, **474.000 pts/month**

13,0 euros/mes/m²

oficina de 219 m² exterior

2nd Floor

Specific Characteristics

- 219 m² constructed
- Second hand
- Central heater distribution
- Central hot wáter distribution
- Air conditioner
- For exclusive use for office or entrepreneur
- Community included in Price
- 2 toilet
-
- Optional parking space for 72Contact: Borja Sánchez - 915 649 204 working hours
idealista.com OP764218 el plantío, moncloa, madrid

Source:

<http://www.idealista.com/pagina/inmueble?codigoinmueble=OP0000000764218&numInm=6&edd=list>

EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is made this 1st day of July, 2009 by and between COMPANY, with its principal place of business at (“COMPANY” or “Company”) and Itziar Sanchez, an individual residing at C/ Aleman, 11 3E, Madrid, Espana, 28028 (“Employee”).

WHEREAS, Company is in the business of, among other things, providing consultancy services for various companies and institutions;

WHEREAS, Employee desires;

WHEREAS, COMPANY is willing to provide certain confidential and proprietary information to Employee for the limited purpose of enabling Employee to carry out duties in connection with Employee’s employment by Company, and under the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

- 1. Title; Exclusivity.** As of January 28, 2009, COMPANY will employ and Employee will accept employment by COMPANY in the position of Assistant. At all times during the Term, Employee shall devote all of Employee’s working ability, time and attention to Company’s business to the exclusion of all other business activities, without Company’s prior written consent, which may be withheld in its sole discretion.
- 2. Base Salary.** Employee’s base salary shall be Thirty Thousand Euros €30.000 gross per annum, payable monthly. Employee agrees that salary payments shall be subject the availability of adequate cash to make salary payments without adversely affecting the operations of the Company. Unpaid salary shall accrue and shall be distributed to Employee when COMPANY determines, in its reasonable discretion, that adequate cash is readily available for payment of accrued balances. Annual increases of base salary shall be determined on a calendar year basis, and are subject to the sole discretion of Company’s Board of Directors
- 3. Benefits.** Employee will be eligible for health and insurance benefits if and when offered to other regular full time employees in accordance with Company policy; as such benefits may be modified from time to time, in Company’s sole discretion.

4. **Term Employment.** The Parties agree that Employee is being employed for a period of twelve (12) months from the date hereof (the “Term”) and shall not be terminated, constructively or otherwise, other than “for cause” by the Company’s Board of Directors. For the purpose of this Agreement, the term “for cause” shall mean willful misconduct, gross negligence, criminal acts or omissions criminal acts or omissions, breach of fiduciary duties, violations of any federal, state or local laws, or repeated occurrences of negligence or incompetent acts or omissions that result in liability, damage or loss for the Company. Notwithstanding the foregoing, this Agreement shall be subject to automatic renewal for successive one (1) year periods unless, either Party gives the other no less than thirty (30) days’ prior written notice of its intent not renew this Agreement. Sections 6, 7, 8, 9, 14, 15 and 16.

5. **Confidential Information and Trade Secret.** “Confidential Information” shall mean any and all information and materials that are proprietary to COMPANY or to any third-party licensor, the same having been acquired through the expenditure of time, effort and money, including, but not limited to the following items, and other items of a similar nature considered by the Company to be confidential and/or in the nature of trade secrets, whether or not reduced to a tangible medium; business and marketing plans, scouting reports, films, records, contracts, pricing policies, market studies, financial and technical information, customer names, client contact information, business relationships, markets, developments, inventions, laboratory notebooks, formulas, technology, designs, drawings, engineering, marketing, licenses, finances, budgets, business information and other information relating to, among other things, customers, supplier’s names, discoveries, algorithms, data structures, concepts, product plans in any stage of development, specifications, techniques, models, data, manuals, research and development materials, processes, procedures and know-how (collectively, “Confidential Information”). Confidential Information shall not include any information publicly or generally known.

(a) Confidential Information received by Employee shall be held by Employee in secrecy and confidence, and shall not be disclosed by Employee to any person or other entity.

(b) Employee shall not remove from Company’s premises or make any copies of the Confidential Information.

Upon termination of this Agreement, Employee shall return to COMPANY any and all Confidential Information received from COMPANY which is written or computer readable form, together with a letter certifying that the information contained therein has in no way been reproduced, copied or disclosed in an unauthorized manner.

(d) The provisions of this Agreement regarding Confidential Information and trade secrets shall survive termination of this Agreement.

(e) Employee agrees that any violation or threatened violation of this Section 5 may cause irreparable injury to Company, entitling COMPANY to seek *ex parte* injunctive relief without the need of posting bond, in addition to all legal remedies. The party prevailing in such a suit shall be entitled to reasonable attorney’s fees and court costs.

6. **Non-Solicitation:** In consideration of Company paying Employee the severance compensation set forth in Section 8 below, and the disclosure of Company's Confidential Information, at any time during the Term (or any extensions thereof), and for a period of three (3) calendar years after termination or expiration of this Agreement, Employee will not:

(a) soliciting, either directly or indirectly, through associates, successor employers or otherwise attempting to divert business from Company with clients or vendors of Company or any of Company's Branches, or their respective affiliates;

(b) soliciting, either directly or indirectly, through associates, successor employers or otherwise with any person or firm, including, without limitation, clients of COMPANY or its affiliates, with whom the Employee has made contact concerning the performance of services or potential clients for the Company; or

(c) As a basis to preserve the good will of Company and ensure that the protection of Company's trade secrets, Employee shall not engage in any business dealings whatsoever, either directly or indirectly, through associates, successor employers or otherwise that relates to sports agency and management services for any sport or athletes all over the world.

Employee agrees that he will be entrusted with Confidential Information during the course of his employment, and further acknowledges that Company will be expending significant resources and capital to acquire its client base and develop good will associated with the Company and associated services. EMPLOYEE COMPANY'S ACKNOWLEDGES AND AGREES THAT ANY BREACH OF THE AFOREMENTIONED PROVISION WOULD LIKELY INVOLVE THE DISSEMINATION OF VALUABLE COMPANY'S TRADE SECRET INFORMATION, IN WHICH THE LEVEL OF DAMAGES WOULD BE DIFFICULT TO ASCERTAIN. THEREFORE, EMPLOYEE AGREES THAT COMPANY SHALL BE ENTITLED TO RECEIVE, AS A PENALTY, AND IN ADDITION TO LIQUIDATED DAMAGES: (1) TEN TIMES THE AMOUNT OF NET COMPENSATION (AS DEFINED BELOW) EMPLOYEE RECEIVED BY COMPANY DURING EMPLOYEE'S LAST YEAR OF EMPLOYMENT, PLUS (2) PAYMENT OF ALL GROSS REVENUES RECEIVED BY EMPLOYEE OR EMPLOYEE'S SUCCESSOR EMPLOYER AS A RESULT OF A BREACH OF THIS PROVISION. EMPLOYEE FURTHER AGREES THAT THE AFOREMENTIONED AMOUNT IS A FAIR ASSESSMENT OF THE AMOUNT OF DAMAGES LIKELY TO BE SUSTAINED BY COMPANY DUE TO A BREACH OF THIS SECTION, WITHOUT REQUIRING FURTHER PROOF THEREOF.

7. **Inventions and Intellectual Property.** All work performed by Employee and all materials, products, deliverables, inventions, software, ideas, disclosures and improvements, whether patented or unpatented, and copyrighted material, made or conceived by Employee during Employee's engagement with COMPANY or upon Company's behalf (collectively referred to as "inventions") which (i) relate to methods apparatuses, designs, products, marketing materials, business plans, processes or devices sold, licensed, used or under development by Company, (ii) otherwise relate to

or pertain to any present, proposed or contemplated business, functions or operations of Company (iii) relate to Company's actual or anticipated research or development, (iv) involve the use of Company's assets, information, inventions or the like, are Confidential Information, are the property of COMPANY and shall be deemed to be a work made for hire. To the extent that title to any of the foregoing shall not, by operation of law, vest in Company, all right title and interest therein are hereby irrevocably assigned to Company Further, Employee hereby appoints COMPANY as its power of attorney to execute all necessary documents, and Employee agrees to give COMPANY or any person or entity designated by COMPANY reasonable assistance required to perfect Company's rights therein.

8. **Severance:** In the event that Employee is terminated by Company, other than for cause, or the employee leaves the company or this Agreement expires, for a period of three (3) calendar years after termination or expiration of this Agreement, Employee shall receive the equivalent of fifty percent (50%) of Employee's Net Compensation (as such term is defined below) for each of the three (3) years of severance coverage if the company decides to execute the Non Solicitation clause described in section 8.

9. **Expense Reimbursement:** COMPANY will reimburse Employee for normal and customary business expenses consistent with Company's policies. These reimbursable expenses will include mobile phone, travel and similar business expenses. Employee will make reasonable efforts to control expenses in light of the benefits to be obtained by Company.

10. **Non-Solicitation.** Employee agrees that, while an employee of COMPANY and for a period of two (2) years thereafter, Employee shall not, either directly or indirectly, or on behalf of any entity, solicit for employment any person who is, or was, within twelve (12) months of Employee's termination, an employee of COMPANY or its affiliates. EMPLOYEE ACKNOWLEDGES AND AGREES THAT COMPANY HAS INVESTED SIGNIFICANT RESOURCES IN TRAINING ITS EMPLOYEES AND CONSULTANTS, AS WELL AS DISCLOSED CONFIDENTIAL TRADE SECRETS. IN THE EVENT OF A BREACH OF THIS SECTION 10 BY EMPLOYEE, EMPLOYEE AGREES TO PAY COMPANY TWO HUNDRED PERCENT (200%) OF THE SOLICITED PERSON'S TOTAL ANNUAL GROSS COMPENSATION OFFERED BY EMPLOYEE, OR ANY ENTITY THAT SUBSEQUENTLY EMPLOYS EMPLOYEE.

11. **Outside Contracting.** Employee shall not enter into any agreements to provide services of any nature to any company, person or organization outside of Employee's employment with Company.

12. **Information Belonging to Former Employers.** Employee acknowledges that Employer has informed Employee not to utilize in Employee's employment with Company, any trade secrets, or confidential information of any of Employee's former

employers. As such, Employee shall neither bring nor provide to COMPANY any confidential information belonging to any former employers, including, without limitation, any confidential customer lists, sales information, or the like. In addition Employee shall neither bring nor provide COMPANY with any materials or non-confidential information of any former employer, including, without limitation, lists of sales prospects, office equipment, vendor information and the like.

13. Vacation: Employee will be allocated 23 days paid vacation per year with additional time to be agreed, to be scheduled in advance and agreed upon by Company's President.

14. Resolving disputes: binding arbitration and attorney's fees. In the event of any claim, dispute or controversy between the parties hereto and relating to the validity, construction, performance, breach, enforcement, or termination hereof, or otherwise, both parties agree to submit such claim, dispute or controversy to binding arbitration by a single arbitrator at _____, _____ in accordance to the following procedures and rules:

14.1 Demand for Arbitration

The demanding party must provide written notification of the nature of its grievance to the responding party, setting forth with specificity all allegations, claims, and damages and provide a list of three prospective arbitrators that are members in good standing with a reputable Arbitration service provider and are duly qualified in hearing such matters.

14.2 Response

The responding party must furnish a responsive answer to the demanding party's allegations within twenty (20) days, including all counter claims and defenses, and may choose one of the three prospective arbitrators proposed by the demanding party. In the event that the responsive party does not wish to select one of the three proposed candidates, the responsive party must furnish the demanding party with three alternates, whom comply with the criteria set forth in the above Paragraph, with its responsive answer. The demanding party may then select one of the three alternates to serve as the arbitrator.

14.3 Rejection of Alternates

In the event that the demanding party refuses to accept any of the alternates proposed by the responding party, the demanding party must provide written notification of its refusal within five (5) days. Each of the Parties shall then select one of their three candidates, whom will select a third candidate not included on either of the proposed lists. This third candidate shall then be designated as the single arbitrator to hear the dispute.

14.4 Finality of Adjudication

The Parties agree to accept the decision of said single arbitrator as final, and shall have no right to appeal the decision unless the arbitrator's award constitutes a clear and

wanton abuse of discretion. The arbitrator shall have no right to award punitive, multiple, statutory or special damages against either party.

14.5 Procedure

The Parties agree to the procedures of the Spanish Government

14.6 Best Offer or “baseball” Arbitration Award

Prior to the introduction of evidence, each of the Parties shall submit a sealed “best offer” to the arbitrator for the purpose of making an award. The Parties agree that the arbitrator shall be bound to choose between one of the two offers proposed by the Parties on the basis of the weighted facts, the evidence presented, the merits of each Party’s case, and the reasonableness of the offer.

14.7 Attorney Fees, Arbitrator Fees and Expenses

The party prevailing in such action shall be entitled to a reasonable sum for reasonable attorney’s fees, arbitrator’s fees and any incurred costs, such as may be determined by the arbitrator, or in court pursuant to said arbitration or in a separate action brought for that purpose.

14.8 Remedies

The remedies provided for herein or otherwise available to the parties shall be cumulative and no one remedy shall be exclusive of any other. Also, the exercise of one remedy shall not preclude the exercise, or be deemed a waiver, of any other remedy nor, shall the specification of any remedy exclude, or be deemed a waiver of any right or remedy at law or in equity which may be available to any party hereunder including any rights to damages, restitution and injunctive relief.

15. **Miscellaneous**

15.1 No license. Nothing contained in this Agreement shall be construed as granting or conferring upon Employee a license of any patents, trademarks or copyrights of Copyrights, and no such license of other rights shall arise from this Agreement or from any acts, statements or course of conduct related to it.

- 15.2 Entire Agreement. This Agreement embodies the entire understandings and obligations of the parties with respect to the subject matter of this Agreement, and it supersedes all prior agreements or understandings pertaining thereto, whether written or oral.
- 15.3 Waiver; Modification. No amendment or modification of this Agreement shall be valid or binding upon the parties unless made in writing and signed on behalf of each of their respective representatives, duly authorized.
- 15.4 Severability. If any provision or sub-provision of this Agreement shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms, provisions and sub-provisions of this Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provisions or sub-provisions had not been contained herein.
- 15.5 Governing Law; Venue. This Agreement shall be governed by, and construed in accordance with the laws of Spain without regard to the principle of conflicts of law and, each party consents to the state and federal courts located in Madrid, Spain as the exclusive jurisdiction for any and actions, proceedings, or claims.

16. Indemnification

Employee shall defend, indemnify, and hold Company, its affiliates, and their respective agents, officers, directors, employees, shareholders and attorneys (collectively, the “Indemnified Parties”) harmless from all liabilities, damages, losses, and expenses (including without limitation attorney’s fees and court costs) owed to any third party arising from claims (collectively, “Claims”) against the Indemnified Parties as a result of the Employee’s negligence, willful misconduct, criminal acts, or failure to perform or comply with any of Employee’s covenants, obligations, representations, or warranties hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the date set forth above.

COMPANY PRESIDENT

EMPLOYEE

By: _____
CHRISTINE STROETZEL

ITZIAR SANCHEZ

NIF: _____

Annex 23: Consulting contract with companies

PRIVATE & CONFIDENTIAL

Madrid , 28 January, 2009

SPAIN
C/ Ferrer del Rio, 11
28028, Madrid

To the kind attention of Mrs. Katherine Lytch

Dear Sirs,

Following our recent contacts, we are pleased to submit our proposal to provide the professional services (“the Services”) set out below. This letter (“Engagement Letter”) outlines the terms and conditions for the performance of the Engagement and is composed of the Letter of Engagement, the Fee Letter and the attached Terms of Business (together the “Contract”).

1. Object and scope of the Engagement

The Engagement will focus on the review of all sustainability mater in order be to express a professional opinion on the sustainability and profitability of the incorporation of the consultation and reports given by Star S.L.

2. Procedures

The procedures that we will follow will likely include, but will not be limited to, the following:

Analysis of general market data, including economic ,environmental and social factors, that may affect the main economic and financial value drivers;

1. Discussions with all the Advisors/subjects involved in the rational and structure of the current methods and policies ;
2. Discussions with the Advisors involved in the process concerning the history and future operations of the companies;
3. Analysis of the performance of current activities with consideration of economic, environmental, and social factors,
4. Discussions with the Client to obtain an explanation and clarification of data provided regarding the current Business Plan;
5. Analysis of companies financial and operating projections including revenues, operating margins and investments based on historical operating results, industry results and expectations, and management representations;

6. Analysis of the most updated interim 2009 accounts that will be prepared by Client's Accounting Consultants;
7. Discussions with the Client's Advisors concerning all tax issues and any impact they may have on the consolidated Business Plan;
8. Analysis of sensitivity of the financial projections to changes in the key operating assumptions;
9. Analysis of other facts and data considered pertinent to our engagement which might have an impact on it;
10. Preparation of our Opinion ("the Expert Opinion") detailing our procedures and the results of our work.

Our timetable and fees estimate has been made under the hypothesis that the following preliminary data are available soon:

- approved, detailed and updated business plan of COMPANY;
- narrative description of the commercial figures, projects and cash flows assumptions;
- any contractual information behind COMPANY cash flows projections;
- latest and updated funding structure;
- latest sources & uses of funds scheme with all the details regarding rates and tenor;
- legal papers (Directors report);
- any other pertinent data relevant to our consultancy

At the conclusion of the Engagement, we will prepare a draft Opinion detailing our procedures and the results of our work. Once you have read the draft report and we have received your comments on it, we will issue our final Opinion bearing the firm's signature.

Any advice given or report issued by us is provided solely for your use and benefit and only in connection with the purpose in respect of which the Services are provided. Unless required by law, you shall not provide such report to any third party, or refer to us or the Services without our prior written consent which we may at our discretion grant, withhold or grant subject to conditions.

You agree to indemnify us, other Star S.L branches and our respective Employees, and hold each of us harmless against any liabilities, losses, expenses and other costs we may reasonably incur in connection with any third party claim (whether in contract, tort, or otherwise) arising out of or in connection with any disclosure by you of our Opinion to a third party (whether or not such disclosure was permitted by us in writing) and, in any case, arising out of or in connection with the Services. Disclaimers to this effect may be included in our Opinion. This indemnity will not apply to the extent that the third party claim is finally determined to have resulted from the fraud or gross negligence of the firm or person indemnified.

3. The Team

The Engagement will be performed by the personnel team of Star S.L specialized in providing assistance to its client with sustainability consultancy.

Christine Stroetzel, Star S.L partner, will be responsible for the Services and an expert manager will be the operating manager of this project.

Should it be required during the performance of the Engagement, we reserve the right to change staff above mentioned, but we will only do so after full discussion with you.

4. Activities outside the scope of this Engagement

The Services do not include the provision of legal and/or tax advice, therefore, Star S.L does not assume any liability related to legal and/or tax issues or contractual interpretation. In any case, if requested, we would be pleased to co-operate with legal and tax consultant of your trust.

5. Timetable

We agree that after we have received the list of preliminary documentation showed in paragraph 2. We foresee to provide the results of our analyses within the 28 of March 2009. Such estimate is based on the availability of the information required to perform our work.

The issuance of our Opinion will be subject to the approval of this engagement letter.

In order to meet such a deadline we assume full collaboration from all the parties involved. In the event that we anticipate that the timetable cannot be met, we shall notify you and your Advisors as soon as reasonably practicable and an adjusted timetable will be agreed.

6. Fees

Our fees related to the Engagement will be due and settled on the basis of a separate agreement (Fee Letter).

7. Acknowledgement and acceptance

We, the Partners and employees of Star, S.L, greatly appreciate the opportunity to present this proposal and trust that it conveys our sincere interest and enthusiasm in assisting you with this important matter.

If the scope and terms of our proposal as described in the Contract are consistent with your understanding of the Engagement, please return one copy of the Contract, signed in each page and executed in the intended parts, for acceptance of the provision therein contained.

We should be very grateful if you would accept this proposal and look forward to working with you and your staff.

Yours faithfully

Star S.L

Christine Stroetzel

(Partner)

Confirmation of the terms and conditions

Having read and understood the content of the Letter of Engagement dated January 28, 2009 as well as of its attachments, among which, the Fee Letter and the Terms of Business, we confirm you our full acceptance of the Contract and agrees to entrust Star S.L of the Engagement therein described.

Signed:

Name and position:

On behalf of

Date:

According to and for the purpose of articles 1341 and 1342, Spanish civil code, the following provisions are expressly approved:

- paragraphs of the Letter of Engagement 2 (Procedures) and 5 (Timetable);
- paragraphs of the attached Terms of Business 1) The Services, 2) Report, 3) Privacy, 4) Confidentiality, related matters and money laundering prevention law, 5) Electronic Communications, 6) Fees, 7) Changes, termination and survival, 8) Liability, 9) Third Parties, 10) General, 11) Resolving Disputes and 12) Definitions.

Signed:

Name and position:

On behalf of

Date:

STRICTLY PRIVATE & CONFIDENTIAL

Madrid, January 28, 2009

SPAIN
C/ Ferrer del Rio,11
28028, Madrid

To the kind attention of Mrs. Katherine Lytch

Dear Sirs

This letter (the “Fee Letter”) refers to and complete the Letter of Engagement dated January 28, 2009 related to the performance of the professional services requested by you .

Therefore, the definition in the Engagement Letter shall have the same meaning of those used in the Fee Letter.

Fees estimation

Our fees for the Services to be provided reflect the nature and the complexity of the Engagement and the level of the staff engaged and will amount to Euro 10.000,00 (ten thousand/00). In addition to the fees outlined above we will charge out-of-pocket expenses incurred and, if applicable, VAT.

This estimate does not include any subsequent consultations after the issuance of our final Opinion and the inability to supply us with the agreed upon information in a useable form within an agreed timetable may increase fees. In the event unforeseen complications are encountered which would significantly increase fees, we would discuss these with you and await your approval before proceeding.

Possible external companies or professionals fees that, if necessary, will be involved as support in obtaining data, information or assessments, will be separately authorized by you.

According to the usual administrative procedure, our fees will be payable 50% at the acceptance of the proposal and 50% after the release of the final report. All fees and expenses billed will be due and payable within **30 days of the date of the invoice.**

We expect that the Engagement could be carried out as planned. In the event that we anticipate that the timetable cannot be met, we shall notify you as soon as reasonably practicable and an adjusted timetable will be agreed.

Yours faithfully

Star S.L

Christine Stroetzel

(Partner)

Confirmation of the Fee Letter

Having read and understood this letter (Fee Letter) and the Letter of Engagement dated January 28, 2009, as well as of its attachments, among which the Terms of Business, we confirm its full acceptance.

Signed:

Name and position:

On behalf of

Date:

Signed:

Name and position:

On behalf of

Annex 24: Demo Mock Report for pre-sales

Name of the Company
Registrarion #
Contact Person
Telephone #
Address of Company
How many employees does the company have?
How many non-fixed employees does the company have?

What % of budget is invested in CSR?
Participation with Sustainability Forums.
Participation with NGO's.

How much is spent in electricity?
Number of Lightbulbs in Office
How much is spent in average in lightbulbs (last three years)?
What type of lightbulbs is the company using?

Number of printers
Types of printers
Cartidges used

How much money has been used in cartidges (last three years)?
Type of paper used
How much money is spent monthly in paper?

How many pens are requested (monthly)?
What type of pens are used?
How much is spent in pens?

Approximately what % of employees turn off their computer when leaving the office?

Approximately what % of employees turn off the lights when leaving the office?

Does the company recycle?
If any, what materials are recycled?

How high is the heating set?
How high is the air conditioner set?

What functions are outsourced?
How much money is spent in the outsourcing of each function?

Relationship/Involvement with Government?

Does the company have handicap accesability?

Ofertas



ESCOGE TU OFERTA (IVA no incluido):

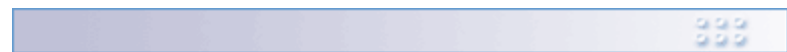
10.000 Km - 36 meses - 268,28 Euros

Solicitar

Exterior



Interior



VOLKSWAGEN POLO UNITED 1.4 80 CV 5 PUERTAS

Por sólo **278 euros/mes** IVA no incluido.

322 euros/mes con IVA incluido

La cuota mensual incluye:

- Alquiler del vehículo durante 48 meses y 15.000 km/año
- Seguro todo riesgo sin franquicia sistema *bonus/malus*
- Mantenimiento
- Reparaciones
- Cambio de neumáticos
- Asistencia en carretera
- Impuesto de circulación

Validez de la oferta:
hasta el 31-5-2009 o agotar existencias en Península y Baleares

Plazo de entrega estimado:
30 días para las 50 u. disponibles, resto según fabricante.

Características de la oferta (Disponible para otros plazos y kilometrajes):

- Abono por km no recorrido (a partir del kilómetro 48.000): 0,0057 € (iva no incluido)
- Coste por km adicional al contratado hasta el kilómetro 72.000: 0,0249 € (iva no incluido)
- Coste por km adicional al contratado a partir del kilómetro 72.001: 0,0498 € (iva no incluido)



Las fotografías pueden no coincidir con la versión o el equipamiento del vehículo ofertado.

- Precio opción de compra al vencimiento:
5.521 € (impuestos y cambio de nombre no incluidos)

Opcionales del vehículo (no modificable):

- Paquete Sport (Climatic, radio CD mp3 con 4 altavoces, computadora de a bordo, retrovisores eléctricos y térmicos, airbag acompañante desconectable, llantas de aleación Misano 14", faros antiniebla)
- Pintura color Negro Mágico efecto perla

Principales características del vehículo:

- Potencia: 80 CV
- Cilindrada: 1.390 cc
- Combustible: Gasolina
- Transmisión: Manual de 5 velocidades
- Tracción: Delantera
- Ayudas a la conducción: ABS, EBV, ESP
- Cristales tintados
- Airbags para conductor y acompañante
- Cierre centralizado
- Dirección asistida

¡Solicita *on-line* ahora mismo tu Volkswagen con estas fantásticas condiciones!

ESCOGE TU OFERTA (IVA no incluido):

15.000 Km - 48 meses - 277,37 Euros

Solicitar

Y si te gusta otro vehículo en renting, utiliza el cotizador *on-line* para calcular tu cuota mensual

Annex 26: Information of marketing event via e-mail

The screenshot shows the website for the Opportunity Green Conference, held from November 7-8, 2009, in Los Angeles. The browser window is titled "Opportunity Green Conference - November 7-8, 2009 | Sustainability Conference | Los Angeles | U - Windows Internet Explorer". The website features a navigation menu with links for Home, About, Agenda, Speakers, Venue, Testimonials, Hotel, Sponsor, Contact Us, and Register, along with a "Get our Newsletter" button. The main content area includes a banner for the conference with the tagline "being green + being profitable" and a photo of a panel discussion featuring speakers Graham Hill and Gunther Lie. Below the banner, there is a section titled "Karen Solomon chosen as one of Glamour's 70 Women in Green" with a video player and a link to "See the video. Click Here.". A central text block states: "Opportunity Green is a convergence of the prime movers & shakers and the up & coming innovators driving today's new green economy." and provides details about the two-day forum. To the right, a "Early Registration!" box offers a 50% discount and a "Click Here to Register" button. The "2008 Speakers:" section lists Rick Ridgeway (VP of Environmental Programs and Communication, Patagonia) and Jane Savage (Director, Category Integration, Nike). The presenting sponsor is Patagonia, and platinum sponsors are listed below. The browser's taskbar at the bottom shows several open applications, including Internet Explorer, Microsoft Office, and a folder named "Marketing Plan".

Source: <http://www.opportunitygreen.com/>

Espacios Eventos

IFEMA

Tipo de espacio: Centro de congreso / Auditorio / Teatro

Tipo de evento: Seminario, capacitación, congresos, simpósiums, Conferencia, convención, juntas, asambleas, Ferias, exposiciones y salones

Capacidad :1 a 500 p.

Espacio(s)

seleccionado(s)

Persona de contacto

Dirección: Av de la capital de España de Madrid

CP: 28042

Ciudad: Madrid

Provincia : Madrid

Comunidad Autónoma/
Región : Comunidad de Madrid

País:

ESPAÑA

Nombre y apellido:

Dirección : Av de la capital de España de Madrid 28042 Madrid

Teléfono: 902 22 15 15

Fax: (34) 91 722 58 01

Email: convenciones@ifema.es

Url: www.ifema.es

Presentación general: fema- Feria de Madrid es uno de los emblemas del Madrid de los negocios y un exponente de la vitalidad de la economía española y de la región. Desde su nacimiento en 1980, ha seguido una trayectoria ascendente, tanto por el apoyo de las instituciones fundadoras -Comunidad de Madrid, Ayuntamiento de Madrid, Cámara de Comercio e Industria de Madrid y Caja de Madrid- como por las propias características de la ciudad -dinamismo, extraordinarias infraestructuras y una atractiva oferta cultural y de ocio- que constituyen un entorno inmejorable para la celebración de ferias internacionales.

El espacio no ha facilitado todavía el precio de la sala .

Equipo técnico

Proyección de Videos, Materiales de cómputo, Controles técnicos integrados

Source: <http://www.espacioseventos.com/default.php?mio=ss4&id=695>

Annex 28: Getting Listed in Search engine sites

Why	Won't	Google	Rank	My	Site?
A discussion on how to get Google to love your site.					

Getting listed in Google and the other popular search engines is one of the most effective ways of directing free, targeted traffic to your web site.

Below you'll discover what the search engines look for when determining your page rank so you can optimize your pages for best results. This is often called SEO or search engine optimization.

How Search Engines Determine Your Rank

Before you try to add your site to the search engines, you should understand what they look for when they decide how to rank your site. Just because you're listed doesn't mean you'll get traffic. You have to make sure your site is search engine ready.

The general rule of thumb is that most engines use a "formula" to determine keyword relevancy. The technical term is called an "algorithm", and each search engine has its own unique algorithm that it uses to rank pages.

Generally, this magic formula consists of your page title, overall body content and the number and quality of links pointing back to your site, how long people stay on your site, etc.

It's important to note that every engine is different. Some may look at inbound links (number of people linking to you), others may place more emphasis on your body content. These days, meta tag content is becoming less and less important.

In case you don't know, meta tags are hidden descriptors that appear at the beginning of your HTML code, inside your <head> tag. They may be invisible to your visitor's eyes, but search engine spiders can read them.

They usually consist of a title, description, and keyword tag and they look something like this:

```
<head>

<title>Title of Your Site</title>

<meta name="description" content="Description of your site here.">

<meta name="keywords" content="keywords separated by commas">

</head>
```

Because of abuse, many search engines no longer use these tags to help rank pages, but you should still include them because they do use them to display information about your site.

For example, whatever is inside the <title> tag is what the search engine will use as the title of your site in the search results.

Watch a Video on Adding Meta Tags

What You Need to Know About SEO

Don't stress out over the meta tags. You should definitely use them on every page. Just understand that how well you rank depends on how popular your site becomes over time. Watch the video below for more info on how to rank well for competitive keywords.

The Big 3 Engines - Google, Yahoo and MSN (Live)

There are a handful of engines out there that bring traffic, but the reality is a very large percentage of search engine traffic comes from Google, Yahoo and MSN. Yes, there are other engines like AOL, Netscape etc., but they pull their results from the Big 3.

So in other words, once you start getting traffic from Google, Yahoo and MSN, you'll rank well in the others automatically.

How to Get Listed In Google

There are three ways to list your site with Google, but I will warn you that using any one of these 3 methods no longer guarantees your site will be listed.

Google is getting more and more selective about who gets in, and the first step is ensuring that your site is full of useful, unique content.

After that, work on getting quality, relevant sites to link back to you. These days those two steps are the best ways to find your site in the almighty Google.

Having said that, here are some methods that may also get you in...

1) Get your site listed in The Open Directory - www.dmoz.org.

This is a directory that is managed by volunteers that act as "category editors." To list your site, simply go to the most appropriate category for your web site, then drill down to the relevant subcategory and select the "Add URL" link at the top of that category's page.

Wait about a month to see if your site appears. If it does not, I recommend emailing one of the category editors and asking for advice on how to get your site listed. If you're lucky, you'll receive a helpful response, but most of the category managers do not answer emails.

Sometimes it may take up to one year for an editor to review and list your site and other times it may only take a couple of weeks. Be patient and please don't keep submitting!

Unfortunately since DMOZ is run by volunteers, the time it takes to get your site reviewed really depends on the availability of the volunteers. Sometimes they may not check the submissions for weeks, which can be quite frustrating for people trying to get listed.

Lately, it seems to be more and more difficult to get in, but the good news is this is not the only way to get into Google. Years ago this was one of the fastest ways to get listed and ranked. Fortunately there are other options that are just as effective, and I'll discuss those below.

Warning: Don't try to submit to The Open Directory unless you have enough useful information on your site. If your site is only one or two pages long, then you won't likely get listed. They want medium to large sized web sites with useful and unique content. Strive for at least 15 pages.

If you need more content, articlecity.com has some free articles you can post on your site. Simply find the category that closely matches your theme and add them. Be careful though, don't use too many articles because the engines may penalize your site if you have too much duplicate content.

2) The second way to get listed in Google is to use their own Add URL form located here <http://www.google.com/addurl.html>. This method is not as dependable as listing with The Open Directory, but it can get you in. Google admits that they may not add every site, so don't be surprised if this does not work for you.

3) The third way to get listed is to be linked from another web site that is already in Google. That way, when Google's spider goes to visit that site for updates, it will pick up the link to your site and add it. This method does not always work, but many sites do get in this way.

Getting into Yahoo and Live (Formerly MSN)

Most websites get into Yahoo and Live by getting spidered from other sites. Meaning if you're already linked from another site or web directory, Live and Yahoo's robots will eventually find you when they update their search index.

If you don't want to wait to get spidered, you can submit directly to Live by going here <http://search.msn.com/docs/submit.aspx>.

Do not keep re-submitting your site. It will not speed up the process of getting listed and may even get you banned.

Yahoo's direct submission site is <https://siteexplorer.search.yahoo.com/submit>.

The Yahoo Directory

Not to be confused with the regular Yahoo search function, the Yahoo directory is also a place you can add your site.

When you go to Yahoo.com and enter a search into the box, you are using their regular search engine, not the directory. So it is possible to be included in Yahoo's regular search index and not be included in their directory.

The Yahoo directory is actually a categorical listing of sites located here <http://dir.yahoo.com> and it's not used very much by web surfers.

The real benefit to being listed here is to have a high quality link pointing to your site. Many search engines look at who is linking to you and if you have a link from the Yahoo directory, it may give you some "credibility" points.

Some believe that having a listing in the directory will help boost your rank in Google and other engines. There is no solid proof of this, however. Yahoo also states that if you are listed in their directory, it does not have any effect on your position in their regular search results.

If your site is commercial it will cost you \$299 per year to be included in Yahoo's directory. So if you can justify/afford the cost, I would still recommend getting into Yahoo just to have the high-quality link pointing to your site - but don't expect a lot of traffic from the actual page you'll be listed on.

It's up to you to decide if it's worth it or not. Many webmasters do quite well in the "Big 3" search engines without a listing in the Yahoo directory.

A Powerful Search Engine Traffic Generation Tool

If you're building money making website then free search engine traffic is an absolute must. It's the reason my sites became successful, and ultimately the reason I was able to quit my job.



Site Build It is a great choice if you want to learn the right ways to master the major engines.

It's only getting tougher out here to master Google (and other engine's) algorithm and so many people are doing it wrong as they sit and wonder why they can't find their site in the results. SBI ensures you do it right without wasting money in the process.

I can say this with confidence because I use it now. I bought it to see if the hype over SBI was worth it. After 11 months, my other website, www.flat-stomach-exercises.com, earned \$700 per month in AdSense income alone, and 90% the traffic comes from Google.

At the time I'm writing this, I'm ranked on the first page for the keyword phrases flat stomach and ab crunches.

SBI actually coaches me as I build every page to make sure it's completely optimized for the best possible results in the search engines. Then it automatically submits your pages ONLY when necessary.

Now, when I say "coach", I don't mean they teach how to "trick" or "cheat" the search engines. You will learn how to build content-focused pages that search engines will love for the long haul.

It amazes me when I hear of big businesses and dot com start-ups spending thousands of dollars a month on advertising while first-time web site builders are getting more traffic, just from using a web host like SBI.

Read this next paragraph carefully . . .

Over half of SBI customers rank within the top 3% visited web sites on the net because of their excellent search engine rankings. There are over 56 million web sites on the Internet right now, and to say that over half of their customer base ranks in the top 3% for traffic say a heck of a lot about this tool.

See for yourself.

Let's not forget who's benefiting from SBI. There are sites created by stay-at-home moms, retired school teachers, aspiring entrepreneurs, full-time workers looking for part-time income, etc. Most of these people who are succeeding with SBI have no previous website building experience whatsoever.

I wouldn't recommend SBI if I didn't use it myself. And I'm not the only one with a success story. Check out these customers who have made videos showing how SBI changed their lives.

Annex 29: To create a web page in Wikipedia

This is the page where to start from.

The user must have a registered account in Wikipedia. This is easy. You just have to create your account in Wikipedia like you do for other websites such as yahoo or hotmail.

- Some guidelines to be followed before creating the article-
1. Try editing existing articles to get a feel for writing and for using the mark-up language in use at Wikipedia.
 2. Search Wikipedia first to make sure that an article does not *already exist* on the subject, perhaps under a different title. If the article already exists, feel free to make any constructive edits you feel are necessary.
 3. Gather references both to use as source(s) of your information and also to demonstrate notability of your article's subject matter. References to blogs, personal websites and MySpace don't count—we need reliable sources.
 4. Consider requesting feedback. You can request feedback on articles you would like to create in a number of places, including the talk page of a related WikiProject or the Drawing Board.
 5. Consider creating the article first in your user space as a registered user, you have your own user space. You can start your new article there, on a subpage; you can get it in shape, take your time, ask other editors to help work on it, and only move it into the "live" Wikipedia once it is ready to go. To create your own subpage, see here. When your new article is ready for "prime time", you can move it into the main area.

Remember the article you create will be deleted quickly if it is not acceptable. Wikipedia has a new pages patrol division where people check your new articles shortly after you create them.

- Articles that do not meet notability by citing reliable published sources are likely to be deleted.
- Do not create pages about yourself, your company, your band or your friends, pages that advertise, personal essays or other articles you would not find in an encyclopedia.
- Be careful about the following: copying things, controversial material, extremely short articles, and local-interest articles.

CREATING A PAGE

http://en.wikipedia.org/wiki/Wikipedia:Your_first_article

- Open this link. Under the title “How to create a page”, you will find a search box. In the search box below, type the title of your article, then click Go. If the Search page reports "No page with that title exists" then you can click the red "Create the page" link to start editing your article.
- The very first thing which should be written is the list of sources from which the information has been taken.

- It is advised to create a subpage under the main page. Take as long as you need to make it a good article, and then move it to the main article space.
- To know steps of creating a subpage, http://en.wikipedia.org/wiki/Wikipedia:User_page#How_do_I_create_a_user_subpage. ^{3F} click here.
- Also, try to check by searching different keywords if anything majorly related to the article already exists.
- To make sure that the article meets Wikipedia's notability guidelines, check this link out. <http://en.wikipedia.org/wiki/Wikipedia:CORP> There are a lot of rules and regulations to follow. But the procedure is not complicated, it's just lengthy.
- Make sure that the article is verifiable and contains published sources. Without independent sources your article will be declined. If you have any question regarding verifiability, check out this link <http://en.wikipedia.org/wiki/Wikipedia:Verifiability>
- In the final step, click the CONTINUE button. Please keep in mind that *there are a lot of article submissions*, and established users *may not have time to immediately review your article*. Sometimes, due to a large backlog, a submission may not be declined or accepted for some time

Source: http://en.wikipedia.org/wiki/Wikipedia:Articles_for_creation/Wizard-Introduction

Annex 30: Pricing policy of IT sector

Company Drivers	
Total ROI Desired	210,652 €
Company Profit	21,065,205 €
Revenue/ROI	1%

Variable Costs for Solutions	
ROI	210,652.05 €
Total Fee	21,065.20 €

Fixed Costs For Standard Consulting			
Pricing Policy	Rate	Hours	Invoice Amount
Senior Consultant	80 €	75	6,000 €
Junior	60 €	125	7,500 €
Total	140 €	200	13,500 €
Days		8	
Working Days		25	
Approximate Months		1	

Final Invoice		
	Project Fees	% of Total Project
Initial Consultation	1,000 €	3%
1st Consultation	13,500 €	39%
Solutions	21,065 €	61%
Total Fee	34,565 €	
Total Fee/ ROI Recieved		16%

rates for year 4 and 5

Variable Costs for Solutions	
ROI	210,652.05 €
Total Fee	25,278.25 €

rates for year 4 and 5

Fixed Costs For Standard Consulting			
Pricing Policy	Rate	Hours	Invoice Amount
Senior Consultant	100 €	100	10,000 €
Junior	80 €	100	8,000 €
Total	180 €	200	18,000 €
Days		8	
Working Days		25	
Approximate Months		1	

rates for year 4 and 5

Final Invoice		
	Project Fees	% of Total Project
Initial Consultation	1,000 €	2%
1st Consultation	18,000 €	42%
Solutions	25,278 €	58%
Total Fee	43,278 €	
Total Fee/ ROI Recieved		21%

Supplier cost
8,847.39 €

Annex 31 : Pricing policy of Transportation Sector

Company Drivers	
Total ROI Desired	794,000.00 €
Company Profit	79,400,000.00 €
Revenue/ROI	1%

Rates for year 1-3

Variable Costs for Solutions			
ROI	794,000.00 €		
Total Fee	79,400.00 €		
Fixed Costs For Initial consulting			
Pricing Policy	Rate	Hours	Invoice Amount
Senior Consultant	80 €	150	12,000 €
Junior	60 €	350	21,000 €
Total	140 €	500	33,000 €
Days		21	
Working Days		63	
Approximate Months		3	
Final Invoice			
	Project Fees	% of Total Project	
Initial Consultation	1,000 €	1%	
1st Consultation	€ 33,000	29%	
Solutions	€ 79,400	71%	33,348 €
Total Fee	€ 112,400		
Total Fee/ ROI Recieved		14%	

rates for year 4 and 5

Variable Costs for Solutions	
ROI	794,000.00 €
Total Fee	95,280.00 €

rates for year 4 and 5

Fixed Costs For Initial consulting			
Pricing Policy	Rate	Hours	Invoice Amount
Senior Consultant	100 €	330	33,000 €
Junior	80 €	380	30,400 €
Total	180 €	710	63,400 €
Days		30	
Working Days		89	
Approximate Months		4	

rates for year 4 and 5

Final Invoice		
	Project Fees	% of Total Project
Initial Consultation	1,000 €	1%
1st Consultation	63,400 €	40%
Solutions	95,280 €	60%
Total Fee	158,680 €	
Total Fee/ ROI Recieved		20%

40,018 €

Annex 32: Pricing policy of Financial Sector

Company Drivers	
Total ROI Desired	9,143,510 €
Company Profit	914,351,000 €
Revenue/ROI	1%

For year 1-3

Variable Costs for Solutions	
ROI	9,143,510.00 €
Total Fee	274,305.30 €

Fixed Costs For Initial Consulting			
Pricing Policy	Rate	Hours	Invoice Amount
Senior Consultant	80 €	300	24,000 €
Junior	60 €	350	21,000 €
Total	140 €	650	45,000 €
Days		27	
Working Days		81	
Approximate Months		4	

Final Invoice		
	Project Fees	% of Total Project
Initial Consultation	1,000 €	0 €
1st Consultation	45,000 €	14%
Solutions	274,305 €	86%
Total	319,305 €	
Total Fee/ ROI Recieved		3%

76,805 €

For the year 4-5(rate of consultant hour is 100€ & 80€)

Variable Costs for Solutions	
ROI	9,143,510.00 €
Total Fee	1,097,221.20 €

Rates for year 4 and 5

Fixed Costs For Initial Consulting			
Pricing Policy	Rate	Hours	Invoice Amount
Senior Consultant	100 €	500	50,000 €
Junior	60 €	600	36,000 €
Total	160 €	1100	86,000 €
Days		46	
Working Days		138	
Approximate Months		6	

rates for year 4 and 5

Final Invoice		
	Project Fees	% of Total Project
Initial Consultation	1,000 €	0 €
1st Consultation	86,000 €	7%
Solutions	1,097,221 €	93%
Total	1,183,221 €	
Total Fee/ ROI Recieved		13%

Suppliercost 307,222 €

Annex 33: Pricing policy for Energy Sector

Company Drivers	
Total ROI Desired	5,717,000 €
Company revenue	571,700,000 €
Revenue/ROI	1%

For the year 1-3

Variable Costs for Solutions	
ROI	5,717,000 €
Total Fee	571,700 €

Fixed Costs For Initial Consulting			
Pricing Policy	Rate	Hours	Invoice Amount
Senior Consultant	80 €	300	24,000 €
Junior	60 €	400	24,000 €
Total	140 €	700	48,000 €
Days		29	
Working Days		88	
Approximate Months		4	

Final Invoice		
	Project Fees	% of Total Project
Initial Consultation	€ 1,000	0%
1st Consultation	€ 48,000	8%
Solutions	€ 571,700	92%
Total Fee	€ 619,700	
Total Fee/ ROI Recieved		11%

240,114 €

For the year 4-5(rate of consultant hour is 100€ & 80€)

Variable Costs for Solutions	
ROI	5,717,000 €
Total Fee	686,040 €

rates for year 4 and 5

Fixed Costs For Initial Consulting			
Pricing Policy	Rate	Hours	Invoice Amount
Senior Consultant	100 €	500	50,000 €
Junior	80 €	600	48,000 €
Total	180 €	1100	98,000 €
Days		46	
Working Days		138	
Approximate Months		6	

Annex 34: Sales plans additional information

Inflation Rates	
Year	%
2009/2010	2%
2010-2012	3,60%

The sales figures also include the above inflation rates.

Position	Year 1	Year 2	Year 3	Year 4	Year 5
Senior consultants	2	2	3	3	3
Junior consultants	3	4	5	5	5
Consultants	5	6	8	8	8

The above chart shows the number of consultants (Junior and Senior) for years 1-5.

The following charts show hours of services per year


Services Yr 1	Hours Needed
Standard	2750
Full	0
Hours Rendered	2750
Hours Available	3520
Gap	770
Consultants Information	
Months Available	4
Consultants	5

Services Yr 2	Hours Needed
Standard	6850.00
Full	1408.00
Hours Rendered	8258.00
Hours Available	12672.00
Gap	4414.00
Consultants Information	
Months Available	12
Consultants	6

Services Yr 3	Hours Needed
Standard	7500.00
Full	1056.00
Hours Rendered	8556.00
Hours Available	12672.00
Gap	4116.00
Consultants Information	
Months Available	12
Consultants	6

Services Yr 4	Hours Needed
Standard	4300.00
Full	1936.00
Hours Rendered	6236.00
Hours Available	16896.00
Gap	10660.00
Consultants Information	
Months Available	12
Consultants	8

Services Yr 5	Hours Needed
Standard	4500.00
Full	2398.00
Hours Rendered	6898.00
Hours Available	16896.00
Gap Hours	9998.00
Consultants Information	
Months Available	12
Consultants	8

<p>François BAUMELOU 56, blvd de la Tour Maubourg, 75007 Paris - France</p> <p>+33.6.18.83.67.12 +33.1.73.75.54.77 francois.baumelou@gmail.com</p>	<ul style="list-style-type: none"> ▪ 9 years expertise in management and sales ▪ 6 years in an international environment ▪ French (mother tongue) - English (fluent) ▪ German (moderate) - Spanish (basic) ▪ International MBA (Reims MS - France / E.O.I. - Espana) ▪ International Mobility 	
--	---	---

STRATEGY – DEVELOPMENT – SALES MANAGER

EDUCATION

<p>Mar. 2009 / July 2009</p>	<p>Global MBA – E.O.I. Madrid (Spain)</p>
<p>Sept. 2008 / Mar. 2009</p>	<p>International MBA – Reims Management School (France) Concentrations: Strategy, Finance and Merger & acquisition</p>
<p>Sept. 1998 / July 2000</p>	<p>I.U.T. Paris V (Sales – Marketing)</p>

WORKING EXPERIENCE (10 years)

<p>Profit Center Manager Feb. 2006 / Sept. 2008 DELBARD (France) Specialized retailer 800 employees 90 M€ turnover</p>	<ul style="list-style-type: none"> ▪ Supervision of 25 people ▪ Turnover up to 4,5M€ ▪ Increase the profitability of the profit centre ▪ Improvement of the financial situation (from -180K€ up to break even) ▪ Decrease of general expenses (-20K€ out of 80K€) ▪ Recruitment of new employees ▪ Promotion of the brand - raise of customers through local advertising (+4,8%)
<p>Key account manager Nov. 2003 / Jan 2006 SMK (Japan – Belgium) Electronic manufacturer 5000 employees 650 M\$ turnover (2005)</p>	<ul style="list-style-type: none"> ▪ Sales Engineer (15 customers – 3 millions USD / Year) ▪ Key contact (customers/R&D/production) ▪ In charge of Audio/video and automotive French market ▪ Canvassing new customers ▪ Follow up ▪ Development and launch custom made products
<p>Nov. 2000 / Nov. 2003 Sales Manager Assistant SMK (French office)</p>	<ul style="list-style-type: none"> ▪ Follow up of the French area ▪ Organization of the production's planning for the plants ▪ Negotiation with the customers ▪ Establishing the contracts ▪ Revivals suppliers ▪ Set up of the French's network
<p>Jan. 2000 / Oct. 2000</p>	<p>Manager assistant of a franchisee MAIL. BOXE ETC</p>
<p>Sept. 1998 / July 1999</p>	<p>Cashier in "CREDIT AGRICOLE BANK"</p>

MISCELLANEOUS

<p>Leisure and hobbies Miscellaneous</p>	<p>Ski (Competition), Violin (8 years) Boys scout during 10 years, including 3 years as chief « Action against hunger» 2003/2004 (Introduction and canvassing new participants)</p>
<p>Driving licenses</p>	<p>A (Motorbikes) and B (cars)</p>

Christine Marie Stroetzel

Lugar y año de nacimiento: Hawaii, EEUU, 1984

Nacionalidad: Americana, Residente en Madrid

Formación Académica y Postgrado

2008-2009 **GLOBAL MBA.** 900 horas. EOI Escuela de Negocios.

2003-2007 **Licenciatura en Sociología e Español.** Universidad de Loyola Chicago

Tercer año cursado en Madrid, La Complutense.

Proyecto Fin de Carrera: "La Construcción de La Identidad Latina en EEUU".

Formación Complementaria

2009 40 Horas **International Management:** How to do business in Latin America. Instituto Tecnológico de Buenos Aires

2009 40 Horas **International Management:** How to do business in China. Universidad International de Estudios de Shanghai. China.

Experiencia Profesional

2008-2009 **VARIAS EMPRESAS EN MADRID.** Profesora del Inglés. Preparación e impartición de clases del inglés a profesionales (de diferentes niveles).

2007-2008 **INTERLANGUA.** Ejecutivo de Cuentas. Captación de nuevos clientes y atención y asesoramiento de la cartera de clientes de la empresa.

2003-2006 **NATIONAL STUDENT PARTNERSHIPS.** Directora Local. Dirigida del oficina en Chicago

Idiomas

Inglés	Lengua Materna
Español	Alto escrito y hablado. DELE (Nivel Intermedio) & Cámara (Certificado Básico) en 2006
Italiano	Medio escrito y hablado

Informática

Ofimática	Office 2007: Word, Excel, Access, PowerPoint, SPSS. Nivel Avanzado
Internet	Uso diario de correo electrónico. Navegación Web. Nivel Avanzado

Otros Datos de Interés

- Alternative Break Immersion Program 2007 (voluntariado)
- Logros deportivos: 10 años practicando Karate, con un cinturón negro. Medallista en más de 15 competiciones de Karate (incluso internacionales), Certificado para enseñar diferentes tipos de artes marciales. 3 años practicando Yoga.
- Miembro de asociaciones académicas o profesionales: Magis Scholars & National Society of Collegiate Scholars.
- Disponibilidad para viajar/ cambiar de lugar de residencia (preferencia: Roma).

Ginette Nathalie Rodríguez Camejo

Lugar de Nacimiento: República Dominicana

Teléfonos: 69 59 98 775

Fecha de Nacimiento: 1984

Edad: 24 años

Educación:

Universidad: 2008-Actual. Escuela de Negocios EOI, Madrid.
Global MBA.
2007-2008 Pontificia Universidad Católica Madre y Maestra (PUCMM) Recinto Santo Domingo; Segundo Semestre; Especialidad en Finanzas Corporativas.
2002-2006 Pontificia Universidad Católica Madre y Maestra (PUCMM) Recinto Santo Domingo; Cuarto Verano; Licenciada en Economía.
Veranos 2003 y 2004 Tompkins Cortland Community College Programa Conexiones Globales- Asociado en Negocios Internacionales.

Secundaria: 1998-2002 The Americas Bicultural Academy
Institución Bilingüe
Dominio Perfecto del Inglés
Vicepresidenta de Promoción

Otros Cursos Realizados y Actividades Extracurriculares:

- Study Trip in Argentina.
- Programa: Educando Jóvenes Emprendedores. Cursos: Pre-Primario y Primero. Fundación Escuela con Junior Achievement Dominicana.
- Miembro Activo de “*Voice of the Customer*” para mejoras operacionales.
- 17 de Noviembre de 2007: Participación en el Día del Voluntariado; Reparación de Viviendas.
- Mayo-Noviembre 2005 Societa Dante Alghieri. Dominio Básico del Italiano.
- 6, 7, y 8 de Mayo de 2005 Participación en el I Congreso de Economía PUCMM. “Forjando Líderes para una Economía Cambiante”.
- Agosto de 2004 Participación en el XI Simposio de Ingeniería Industrial. “Estrategias Efectivas ante la Necesidad de un Cambio”.
- Mayo 2002 Participación en el Modelo de las Naciones Unidas Pace University. New York Metropolitan Area, Estados Unidos. Sede de la ONU.
- 1997-2000 Alianza Francesa. Dominio Básico del Francés

Experiencia Laboral:

Citibank, República Dominicana

Documentation & Implementation Support

Global Transaction Services & Commercial Bank

Septiembre 2007-Septiembre 2008

Funciones Principales:

Servir de guía para el pre llenado de contratos de servicios de los diferentes segmentos para productos a los clientes. Servir de soporte para los Oficiales de cuentas y, de la misma manera, asegurar que la documentación este en orden. Consolidar y analizar la información sobres los beneficios por cliente, así como dar seguimiento a todos los productos para lograr mantener los balances necesarios en la empresa. Realizar reporte semanal sobre los balances y las variaciones existentes por cliente, haciendo énfasis en los mayores y menores balances para asegurar seguimiento necesario.

Citibank, República Dominicana

Service Assistant

Global Transaction Services & Commercial Bank

Diciembre 2006-Septiembre 2007

Funciones Principales:

Asistir tanto a los clientes como a los oficiales de cuenta en las actividades del día a día. Asegurar que los prestamos sean desembolsados según solicitud del cliente siempre y cuando la documentación necesaria este en orden. Realizar renovación de pagares; aperturar de cartas de crédito y consolidar garantías.

Cemex Dominicana

Asistente de Planificación Estratégica

Agosto 2006-Diciembre 2006

Funciones Principales:

Asistente en proyectos. Reunir data para el análisis de proyectos. Mantener una base de datos de los cambios en precios de los diferentes productos ofrecidos así como de sus sustitutos. Investigación y seguimiento a los movimientos en el mercado de los productos.

Refinería Dominicana de Petróleo

Pasante en Economía y Suministros

Octubre 2004-Febrero 2005

Funciones Principales:

Presupuestar, planificar y dar seguimiento a los buques para lograr abastecimiento del crudo y analizar posibles demoras, asegurando que el pago se haga efectivo siempre y cuando el análisis realizado indique irrevocabilidad. Recolección de la data necesaria para el cálculo semanal de los precios del combustible.

Amaia Zabaleta Sainz de Ugarte

Lugar y fecha de nacimiento: Estella (Navarra), 1985

Nacionalidad y residencia: española, residente en Madrid

Formación académica y postgrado

- 2008-2009 **Máster Global MBA.** 900 horas, íntegramente en inglés. EOI Escuela de Negocios (Madrid)
Study abroad periods en ITBA, Buenos Aires (How to do business in Latin America) and SISU, Shanghai (How to do business in China)
- 2003-2008 **Ingeniería Química con intensificación en Ingeniería Medio Ambiental; especialidad en Contaminación Atmosférica y Gestión Medio Ambiental**
Universidad País Vasco (UPV)-Escuela Ingeniería de Bilbao
5º curso y Proyecto Fin de Carrera (PFC) cursado en Royal Institute of Technology KTH, Estocolmo (Suecia) con beca Erasmus, íntegramente en inglés
PFC: *Sustainability Indicators for Municipal Solid Waste Treatment. Case Study The City of Stockholm: landfill vs. incineration.*

Formación complementaria

- | | | |
|------|------|---|
| 2007 | 12h | Seminario "Ingeniería de Procesos". Escuela Superior de Ingeniería de Bilbao-UPV |
| 2006 | 40h | Curso de Universidad de Verano (UEU): "Industria Química y Medio Ambiente" |
| 2006 | 45h | Curso "Los nuevos combustibles. Aspectos Medio Ambientales del Refino del Petróleo". Escuela Superior de Ingeniería de Bilbao-UPV |
| 2005 | 40 h | Curso de Universidad de Verano (UEU): "Química y Medio Ambiente" |

Experiencia profesional

- 2008 Hotel Palacio de Pujadas (Viana-Navarra). Auxiliar de Recepción, 2 meses
- 2007 **Centro de Investigación, Desarrollo e Innovación en Medio Ambiente IDIMA (Estella-Navarra).** Prácticas, 2 meses; colaboración en el desarrollo de diferentes proyectos sobre tecnologías ambientales

2004-2006 Profesora de apoyo para estudiantes de E.S.O. y Bachiller en Matemáticas, Química y Física

Idiomas

Euskera	Bilingüe. Formación escolar en el idioma.
Inglés	Nivel alto hablado y escrito. Intermediate Technical English course (KTH-Stockholm) y diversas estancias en el extranjero.
Francés	Nivel básico. Asignatura escolar durante 5 años.

Informática

Ofimática	Office (Word, Excel, PowerPoint, Outlook): nivel alto usuario
Otros	Aspen Plus, Matlab, Solid Edge: nivel básico
Internet	Muy familiarizada con uso de internet y correo electrónico

Otros datos de interés

- Permiso de conducir B-1
- Dinámica, responsable y con gran capacidad de trabajo; experiencia en trabajar en equipos multiculturales
- Disponibilidad para viajar y cambiar de lugar de residencia

Curriculum vitae

Data personal:

Name: Pratima Painuly.

Dirección: Calle Arzobispo Morcillo, N°12, 6ºD, 28029 – Madrid.

Date of Birth: 29/3/1960

Nationality: Indian

Resident: Spain

Téléphone: 639928150

E-mail: pratima.painuly@hotmail.com

Academic Qualifications:

Master of Arts (Ancient History) from Allahabad University, India (year 1980):

Global MBA from Escuela de Negocios EOI, Madrid, Spain

Languages:

English, Hindi: Advance speaking & writing.

Spanish: beginner

Experience professional:

(1987-2007)

Worked in public sector finance department in India in various capacities as

Drawing-Dispersing Officer (DDO), Budget officer,

Senior Finance Officer in European Commission Funded and World Bank funded Watershed Development projects

Joint director (pensions) Govt of Uttaranchal, India.

As DDO I was in charge of establishment/Administration/budget control as well as purchase/expenditure of the department.

In World Bank project was a key member of project implementation team, for finalizing work plan and periodic monitoring of targets and achievements. Was responsible for Financial Management and procurement of goods and services had the responsibility of budget allotment and monitoring of expenditures of field divisions.

After 20 years of professional work, back to business school in Madrid (where my husband is working for a multinational Spanish company) with the objective to enhance my skills and to learn new emerging tools .I am pursuing Global MBA form Escuela de Negocias. Madrid. During this Masters I had an opportunity to visit Buenos Aires on study Trip, and learn business in Latin America with specific focus on Argentina.

I am ambitious and flexible person with positive attitude. I always endeavor to explore new opportunities for life and for my career. I am learning Spanish and desire to learn many European languages.

I have good English reading & writing skill.

I am looking for a position in a company having international operations where I can contribute in the arena of strategy, planning, monitoring, financial or procurement management.

Annex 40: Performance Appraisal

PERFORMANCE APPRAISAL FOR XXX		
	Competences	Behavioural indicators
Customer		
Customer orientation	Patient Respectful Listening skills	Shows ability to fulfil clients needs in a calm and organized way Attends to clients in a polite, respectful and kind way Anticipates to customers needs
Quality service delivery	Quality of projects Personalized attention	Prepares projects according to customer requirements Shows ability to deal with customers needs
People		
Personal skills and abilities	Flexible Working & learning ability Independence in decision making	Shows ability to adapt to client's schedule & requirements; commitment & availability. Applies the knowledge of training in a fast and suitable way Demonstrates ability for decision making
Teamwork	Empathy Proactive Communication	Cooperates w/other team members in work performing & work solving Shows capacity for suggestion making & effective contribution Transmits know-how in internal decision making
Leadership	Problems solving Feedback giving Time Management Solving	Shows ability to delegate & assign tasks Demonstrates capacity to reward & guide people Looks able to make timely decisions
Company		
Identification with the company	Strategic Commitment Expense Commitment	Shows interest towards sustainability issues Shows ability to remain alligned to company's budget.
Results orientation	Growth	Shows commitment to increase company's growth
Adaptability	Commitment to Learning & Self-Improvement Innovation & Creativity	Shows high level of participation and good results in Training & Development processes Delivers high Quantity & Quality proposals
Professional		
Professional skills and abilities	Decision Makers Challenge Taking	Shows ability to decide independently. Shows willingness to grow professionally.
Other specific skills: technical skills for the business	<i>Consultant</i> Knowledge on strategic and solution projects	Shows increasing expertise on preparing projects
	<i>Experts</i> Knowledge on environmental/social/economic issues	Shows ability to bring useful information for the company and to transmit it in the company
	<i>Sales experts</i> Knowledge on customers	Demonstrates ability to sale projects and to capture information about market needs
	<i>Programmers</i> Kwoledge on programming	Demonstrate ability to programme according to company's needs

Annex 41: Training Costs

SPAIN									
Consultants Training	Number of Trainers	Number of People to Train	Cost per person/ day	Total People	Food Costs	Number of Trainings Per Month	Months for Training	Total Cost	
Year 1	1	5	4 €	6	24 €	1	10	240 €	
Year 2	1	7	4 €	8	32 €	1	10	320 €	
Year 3	1	9	4 €	10	40 €	1	10	400 €	
Year 4	1	11	4 €	12	48 €	1	10	480 €	
Year 5	1	13	4 €	14	56 €	1	10	560 €	

New Employee Training	Number of Trainers	Number of People to Train	Cost per person/day	Total People	Food Costs	Number of Trainings Per Month	Months for Training	Total Cost	
Year 1	1	12	12 €	13	156 €	5	1	780 €	
Year 2	1	2	12 €	3	36 €	5	1	180 €	
Year 3	1	4	12 €	4	48 €	5	1	252 €	
Year 4	1	7	12 €	8	96 €	5	1	480 €	
Year 5	1	11	12 €	12	144 €	5	1	720 €	

INDIA									
Programmer Training	Number of Trainers	Number of People to Train	Cost per person/ day	Total People	Food Costs	Number of Trainings Per Month	Months for Training	Total Cost	
Year 1	1	2	4 €	3	12 €	3	1	36 €	
Year 2	0	0	4 €	0	0 €	3	1	0 €	
Year 3	0	0	4 €	0	0 €	3	1	0 €	
Year 4	1	1	4 €	2	8 €	3	1	24 €	
Year 5	0	0	4 €	0	0 €	3	1	0 €	

Annex 42: Mock Training for New Employees

Day 1: Who is Star S.L

9-11:30: Intro to company

11:30-12: Coffee Break

12-14: Details of policies, processes, procedures

14-16: Lunch break

16-18: Q & A Session

Day 2: What do you do here?

9-11:30: Overview of job description

11:30-12: Coffee Break

12-14: Role Playing

14-16: Lunch Break

16-18: Q&A

Day 3: Meet your Team

9-11:30: What is your department like

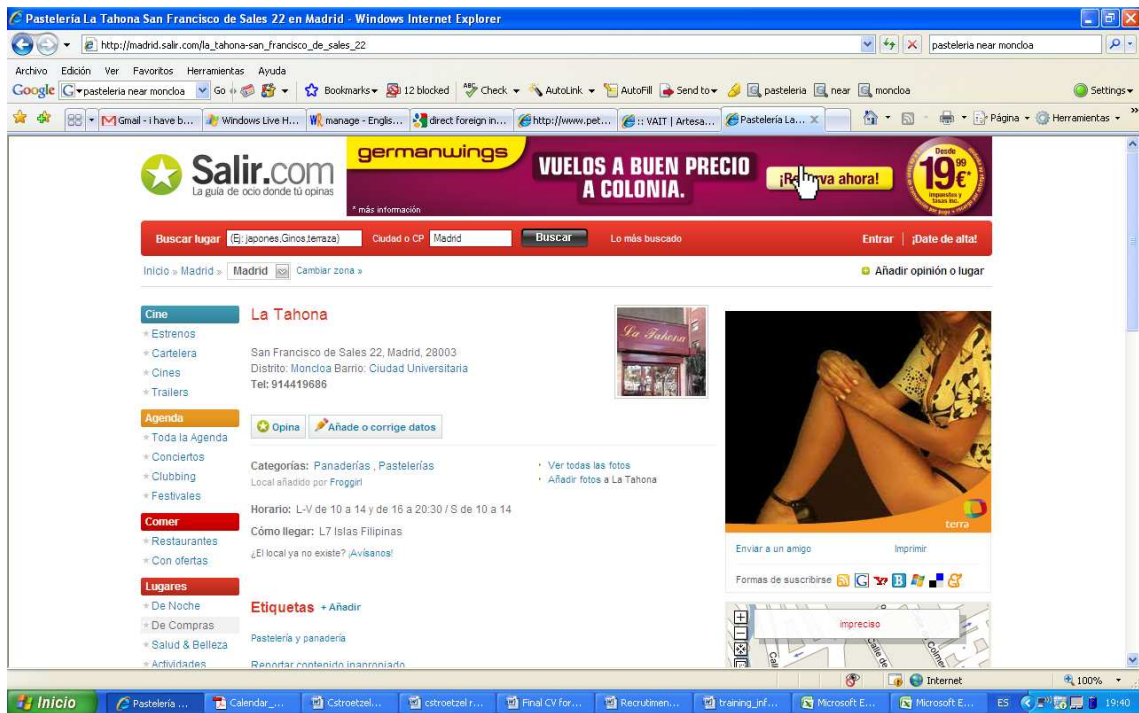
11.30-12: Coffee Break

12-14: Meet the CEO and Upper Management

14-16: Lunch Break

16-18: Q & A

Annex 43: Bar Catering from La Tahona



http://madrid.salir.com/la_tahona-san_francisco_de_sales_22

Annex numbers for Final excel sheet

TABS	ANNEX NAME
Control Panel	Annex 1: Control Panel
IT	Annex 2: IT
Transportation	Annex 3: Transportation
Financial	Annex 4: Financial
Energy	Annex 5: Energy
Yr 1 Sales	Annex 6: Year 1 Sales
Yr 2 Sales	Annex 7: Year 2 Sales
Yr 3 Sales	Annex 8: Year 3 Sales
Yr 4 Sales	Annex 9: Year 4 Sales
Yr 5 Sales	Annex 10: Year 5 Sales
Operational Costs	Annex 11: Operational Costs
Marketing	Annex 12: Marketing
Other Costs	Annex 13: Other Costs
Cost of HR	Annex 14: Cost of HR
Assets	Annex 15: Assets
Liabilities	Annex 16: Liabilities
P&L, BS	Annex 17: P&L, BS
Cash Control	Annex 18: Cash Control
VAT	Annex 19: VAT

