

I. GENERAL PROVISIONS

MINISTRY OF FINANCE AND PUBLIC FUNCTION

3433 *Royal Decree 105/2018, of 9 March, amending the Organic Statute of the Independent Authority for Fiscal Responsibility, approved by Royal Decree 215/2014, of 28 March.*

The principles of public sector budgetary stability and financial sustainability are fundamental pillars of economic growth and social welfare in accordance with article 135 of the Spanish Constitution and with Organic Law 2/2012, of 27 April, on Budgetary Stability and Financial Sustainability.

In this sense, the European Union has implemented several reforms to strengthen the mechanisms for coordination, monitoring and surveillance of the budgetary and macroeconomic policies of the Member States, including, among others, the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed in Brussels on 2 March 2012; Regulation 473/2013, of 21 May 2013, on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area, or Directive 2011/85/EU of the Council of 8 November 2011, on the requirements for budgetary frameworks of the Member States.

In this context, and in accordance with the recommendations made by the European Union, Spain approved Organic Law 6/2013, of 14 November, establishing the Independent Authority for Fiscal Responsibility, which configures the Authority as a body with functional autonomy and independence whose ultimate objective is to contribute to the effective implementation by the Public Administrations of the principle of budgetary stability provided for in article 135 of the Spanish Constitution through the continuous evaluation of the budgetary cycle, public debt and the analysis of economic forecasts.

Subsequently, in compliance with the legal mandate contained in article 8.2 of the Organic Law 6/2013, of 14 November, Spain approved Royal Decree 215/2014, of 28 March, approving the Organic Statute of the Independent Authority for Fiscal Responsibility, developing its internal organisation and operation.

The legal regime of the Independent Authority for Fiscal Responsibility was completed with the approval of Mandate HAP/1287/2015, of 23 June, determining the information and referral procedures that the Ministry of Finance and Public Administrations will permanently make available to the Independent Authority for Fiscal Responsibility, and partially repealed by Mandate HFP/232/2017, of 14 March, partially revoking Mandate HAP/1287/2015, of 23 June, determining the information and referral procedures that the Ministry of Finance and Public Administrations will permanently make available to the Independent Authority for Fiscal Responsibility.

In response to the Government's desire to ensure the independence of the Independent Authority for Fiscal Responsibility in the exercise of its duty, it was proposed to amend the Organic Statute of the Independent Authority for Fiscal Responsibility, approved by Royal Decree 215/2014, of 28 March, in order to facilitate access by the Independent Authority for Fiscal Responsibility to all information that may be necessary for the exercise of its functions.

This amending Royal Decree is composed of a single article that amends Articles 4, 6, 22, 24, 25, 41 and 44 of the Organic Statute of the Independent Authority for Fiscal Responsibility approved by Royal Decree 215/2014, of 28 March.

The amendment of articles 4, 24, 25 and 41 is intended to correct certain errors detected in the Organic Statute of the Independent Authority for Fiscal Responsibility.

For its part, article 6 is amended in order to eliminate the existing limitation so that the Authority is able to request auxiliary or supporting information. This ensures the full adaptation of Spanish law to the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, in particular with regard to the principles that should govern the definition of budgetary correction mechanisms and the functions and independence of monitoring institutions.

Article 22 is amended to clarify the information that the Independent Authority for Fiscal Responsibility needs to issue an opinion on the Pension Revaluation Index regulated by said article.

Finally, article 44, concerning the budgetary arrangements of the Independent Authority for Fiscal Responsibility, is amended to include the same wording contained in Organic Law 6/2013, of 24 November, regarding the drafting of the Authority's budget.

In this context, another step is taken towards perfecting the incorporation into the Spanish legal framework of the provisions contained in the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, the principles of which establish that the Public Administrations should publicly explain exactly their decision to not follow the recommendations made by the independent monitoring institutions. To this end, article 5.1 of Organic Law 6/2013, of 14 November, already establishes that if the Administration or the entity receiving a report from the Independent Authority for Fiscal Responsibility departs from the recommendations contained therein, they must specify the reasons and include said report in the corresponding files. Although it is never expressly mentioned that these reasons must be published.

For this reason, based on the authorisation conferred in the fourth final provision of the Organic Law 6/2013, of 14 November, this precept of article 5.1 of the Organic Law is put in place in the sole additional provision.

During the processing of this Royal Decree, in accordance with the provisions of Organic Law 6/2013, of 14 November, a report has been requested from the Independent Authority for Fiscal Responsibility.

Finally, it should be noted that this Royal Decree is in line with the principles of good regulation contained in Article 129 of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, principles of necessity, effectiveness, proportionality, legal certainty, transparency and efficiency. While the same Decree pursues a general interest in seeking to ensure the proper exercise of the functions entrusted to the Independent Authority for Fiscal Responsibility, there is no regulatory alternative less restrictive of rights, therefore it is consistent with the legal system, introducing no new administrative burdens and allowing more efficient management of public resources. In the same way, during the procedure for the drafting of the regulation, the regions and local corporations have been consulted and the objectives pursued by this Royal Decree are justified in the preamble.

By virtue thereof, on the proposal of the Minister of Finance and Public Function, in accordance with the Council of State, and following deliberation by the Council of Ministers at its meeting held on 9 March 2018,

I HEREBY DECREE:

Sole article. *Amendment of the Organic Statute of the Independent Authority for Fiscal Responsibility, approved by Royal Decree 215/2014, of 28 March, approving the Organic Statute of the Independent Authority for Fiscal Responsibility.*

The Organic Statute of the Independent Authority for Fiscal Responsibility, approved by the sole article of Royal Decree 215/2014, of 28 March, approving

the Organic Statute of the Independent Authority for Fiscal Responsibility, is hereby amended as follows:

One. The third paragraph of Article 4 shall read as follows:

"3. Exceptionally, for the implementation of the activities that entail the issuance of a report, opinion or study, the Authority may enter into service contracts for the implementation of activities of a material, technical or service nature. In the event that this may involve access to non-public information, said access shall be subject to the provisions of article 6.10."

Two. Article 6 shall read as follows:

"Article 6. *Powers and duty to collaborate in the transfer of information.*

1. In order to properly carry out its functions, the Independent Authority for Fiscal Responsibility, upon request, shall have access to the economic and financial information corresponding to any one of the subjects referred to in article 2 of Organic Law 2/2012, of 27 April, and prepared in compliance with the Law or other statutory or regulatory provisions.

2. The documentation and information shall be sent to the Independent Authority for Fiscal Responsibility in Spanish through electronic means, unless the Authority authorises sending by other means or in other languages for exceptional and justified reasons.

3. To this end, the Economic-Financial Information Centre of the Public Administrations shall grant the Authority access to all available information, for which simplified channels and procedures may be set up in order to ensure the provision of such information in a flexible, streamlined and integrated manner. For this purpose, opportune collaboration mechanisms may be created to specify and clarify the content and deadlines for the referral of the information, as well as to address specific aspects to be assessed in different reports.

4. A Mandate from the Minister of Finance and Public Function, following a report from the Independent Authority for Fiscal Responsibility, will determine the data, documents and referral procedures that the Ministry of Finance and Public Function will make permanently available to the Authority. The above shall be understood to be independent of the requirements for additional information that may be required by the Authority for the proper exercise of its functions and that may not be explicitly provided for in the Mandate.

5. The President of the Independent Authority for Fiscal Responsibility may request information from any Public Administration, of those referred to in Article 2.1 of Organic Law 2/2012, of 27 April, to whose scope of application the requested information refers, or from the Council for Fiscal and Financial Policy and from the National Commission of Local Administrations, for which it will identify the necessary documentation and the deadline for its sending, which, except for justified reasons, may not be less than five days or more than fifteen days.

In the event that the information refers to any of the entities listed in Article 2.2 of Organic Law 2/2012, of 27 April, the request will be directed to the Public Administration to which it belongs.

6. Failure to provide the documentation in a timely manner may be considered a breach of the duty of collaboration, in the terms set forth in Article 4 of Organic Law 6/2013, of 14 November, and in this Statute, in which case the Independent Authority for Fiscal Responsibility shall post a public warning of said circumstance on its website.

The President of the Independent Authority for Fiscal Responsibility is responsible for determining whether this is a serious or repeated breach, in which case he shall inform the National Government and the *Cortes Generales*.

7. The Independent Authority for Fiscal Responsibility may enforce, in accordance with the subjects mentioned in this article, simplified information access or transfer procedures, as well as the approval of units for liaison with the corresponding Public Administrations. Likewise, the Authority, in agreement with the Ministry of Finance and Public Function, may define and require that the information requested be provided in a specific format in order to facilitate its processing and analysis.

In order to achieve better coordination for the proper exercise of their respective powers, the Authority and the Ministry of Finance and Public Function will share the information provided upon request.

8. All the entities included within the scope of action of the Independent Authority for Fiscal Responsibility must provide it with the required support, assistance and collaboration, providing the documentation necessary for the proper performance of its duties.

9. By Resolution of its President, the Independent Authority for Fiscal Responsibility, may approve an official list of required information for each of the reports to be issued, which will include the list of documents and information to be submitted or made available specifically for the issuance of the said reports, without prejudice to other supplementary information that may be required later in the performance of its work.

10. The Independent Authority for Fiscal Responsibility may only transfer non-public information provided by subjects that fall within its scope of action to third parties with the prior consent of the entity that provided the information.

11. In the exercise of its functions the Technical Committee on National Accounts will provide the reports issued for information purposes, where appropriate, to the Independent Authority for Fiscal Responsibility."

Three. Paragraph 5 of article 22 shall read as follows:

"5. In application of articles 58.6 and 212.7 of the new consolidated text of the General Social Security Law, approved by Royal Legislative Decree No. 8/2015, of 30 October, the Independent Authority for Fiscal Responsibility shall issue an opinion regarding the values calculated by the Ministry of Employment and Social Security to determine the Pension Revaluation Index for each year and the sustainability factor.

To this end, the Ministry of Employment and Social Security shall publish or provide the Independent Authority for Fiscal Responsibility with macroeconomic and budgetary assumptions, as well as the methodology and the foundations for the forecasts and simulations of the variables involved in the calculation of the Pension Revaluation Index."

Four. Paragraph 8 of article 24 shall read as follows:

"8. A Cabinet reports directly to the President as his immediate assistance body."

Five. Paragraph l) of article 25 shall read as follows:

"l) To carry out the information requirements to the public-sector subjects according to the terms of article 4 of Organic Law 6/2013, of 14 November."

Six. Paragraph 1 of article 41 shall read as follows:

"1. In accordance with the provisions established in article 4.4 of Organic Law 6/2013, of November 14, and in article 35.6 of the Statute, confidential information revealed to the personnel of the Independent Authority for Fiscal Responsibility in the exercise of its functions or knowledge that is

obtained by any relationship with said Authority, must be treated in respect of the limits and in accordance with the legal regulations governing the access and dissemination thereof.”

Seven. Paragraph 1 of article 44 shall read as follows:

“1. The Independent Authority for Fiscal Responsibility shall draft and approve, on an annual basis, a preliminary draft budget, the appropriations of which will be limiting, and will send said budget to the Ministry of Finance and Public Function for its subsequent integration into the General State Budgets, in accordance with the provisions of the General Budgetary Law 47/2003, of 26 November.”

Sole additional provision. *Monitoring of the recommendations made by the Independent Authority for Fiscal Responsibility.*

1. If the Administration or the entity receiving a report from the Independent Authority for Fiscal Responsibility departs from the recommendations contained therein, it must specify the reasons and include said report in the corresponding file. This report shall be made public through the Economic-Financial Information Centre of the Public Administrations.

2. The Administration or the entity receiving a report from the Independent Authority for Fiscal Responsibility that decides to address the recommendations contained therein shall inform the Authority of the measures to be taken in this regard as well as the expected time frame, provided that the nature and scope of the recommendation allows it.

3. The Independent Authority for Fiscal Responsibility shall publish, through its website, the monitoring of compliance with the recommendations contained in its reports.

First final provision. *Regulatory references.*

The references made to the Ministry of Finance and Public Administrations in Royal Decree 215/2014, of 28 March, shall be construed as references to the Ministry of Finance and Public Function.

Second Final Disposition. *Entry into force.*

This Royal Decree shall enter into force on the 20th day following its publication in the "Official State Gazette".

Issued in Madrid, 9 March 2018.

FELIPE R.

The Minister of Finance and Public Function,
CRISTÓBAL MONTORO ROMERO