

**Act 19/2013, of 9 December, on Transparency, Access to Public Information, and Good Governance<sup>1</sup>**

JUAN CARLOS I

KING OF SPAIN

To all whom these presents shall be seen or understood.

Be it known: That the Parliament has approved and I do enact this Act as follows:

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<sup>1</sup> *This is an unofficial translation of Act 19/2013. It is provided for information purposes only.*

*Reliance may only be placed upon the official Spanish version published in the Official State Gazette*

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## PREAMBLE

### I

Transparency, access to public information and the rules of good governance must be the basic pillars of every political action. Only when the action of public authorities is subjected to scrutiny, when citizens can know how decisions affecting them are made, how public funds are managed, and under what criteria our institutions act, will we be able to speak of the outset of a process in which the public authorities begin to respond to a society that is critical, exacting and demands that public authorities enable participation.

Countries with higher levels of transparency and rules of good governance have stronger institutions, which foster economic growth and social development. In these countries, citizens can judge, more accurately and using better criteria, the capacity of their public authorities and decide accordingly. Better supervision of public activity contributes to the necessary democratic regeneration, promotes the State's efficiency and effectiveness and fosters economic growth.

The present Act has a three-fold purpose: it increases and strengthens transparency in public activity—which is formulated through obligations involving active publicity for all public administrations and entities; it recognizes and guarantees access to information—which is regulated as a right with a far-reaching subjective and objective scope; and it sets forth the good governance obligations to be met by public authorities, as well as the legal consequences of non-compliance—which becomes a requirement of responsibility for all those carrying out activities of public relevance.

In these three aspects, the Act is a significant step forward in this field, and sets forth standards comparable to those of other consolidated democracies. Ultimately, it constitutes a fundamental and necessary step forward, which shall be accompanied in the future by the State's promotion and support of multilateral initiatives in this sphere, and by the signing of international instruments already in place in this area.

### II

Spain's legal system already has sector-based regulations containing specific obligations involving active publicity for certain parties. Thus, for example, with regard to contracts, grants, budgets or activities involving senior officials, our country has an outstanding degree of transparency. However, this regulation is currently insufficient and does not meet the social and political demands of our day. Therefore, this Act moves forward and intensifies the configuration of active publicity obligations which, it is understood, must be binding on a great many parties, including all the Public Administrations, the Legislative and Judiciary bodies as

regards their activities under Administrative Law, as well as other constitutional and statutory bodies. Furthermore, this Act shall be applied to certain entities which, given their particular public relevance or their nature as recipients of public funds, shall be made to strengthen the transparency of their activity.

The Act broadens and strengthens active publicity obligations in different spheres. As regards institutional, organizational and planning information, the Act requires the parties encompassed in its scope of application to publish information about the functions they perform, the regulations applicable to them and their organizational structure, as well as their instruments for planning and assessing compliance. As regards information of legal relevance directly affecting relations between the Administration and citizens, the Act contains an extensive list of documents which, by being made publicly available, will create greater legal certainty. Likewise, as regards information of economic, budgetary and statistical relevance, an extensive catalogue is set forth that should be accessible and comprehensible for citizens, because it is an excellent instrument for monitoring the management and use of public resources. Lastly, the obligation is established to publish all the information which is most often applied for, so that transparency obligations may be harmonized with the citizens' interests.

To channel the publication of such a vast amount of information and facilitate compliance with these active publicity obligations—and bearing in mind that it is not possible to speak of transparency, on the one hand, but not implement the appropriate means to facilitate access to the information published, on the other—the Act envisages the creation and development of a Transparency Portal. Today, new technologies enable us to develop extraordinarily useful instruments to comply with the provisions of the Act, the use of which shall enable citizens to obtain all the information available through a single point of access.

The Act also regulates the right to access public information which, nevertheless, has already been implemented in other provisions of our legal system. Indeed, stemming from the provision contained in Article 105.b) of our Constitution, Act 30/1992 on the Legal System of the Public Administrations and Common Administrative Procedure implements in its Article 37 citizens' right to access records and documents held in administrative archives. But this regulation has a series of shortcomings which have been frequently evidenced, due to the fact that the object of the right to access is not clear, because it is limited to documents contained in administrative procedures that have already concluded, and because its exercise is extraordinarily limited in practice.

Likewise, but with a sector-based scope and resulting from EU Directives, other regulations envisage access to public information. This is the case of Act 27/2006, of 18 July, which regulates the rights to access information, of public participation, and to access justice in the sphere of the environment, and of Act 37/2007, of 16 November, on the reuse of public sector information, which regulates the private use of documents held by the Administrations and other public sector bodies. In addition, Act 11/2007, of 22 June, on citizens' electronic access to public services, while recognizing citizens' right to communicate with the Administration through electronic means, opens a path on which further progress is made with this Act: the implementation of a culture of transparency which demands modernizing the Administration,

cutting red tape, and using electronic means to facilitate participation, transparency and access to information.

The Act, therefore, does not start from scratch nor does it fill a void. Rather, it develops what has already been done, making up for shortcomings, correcting deficiencies, and creating a legal framework in keeping with the times and with the citizens' interests.

From the viewpoint of comparative law, the European Union, as well as most of its Member States, already have in their legal systems specific legislation regulating transparency and the right to access public information. Spain could no longer remain on the sidelines and, taking the models provided by our neighbouring countries as an example, is adopting this new regulation.

As regards good governance, the Act constitutes an extraordinarily significant step forward. Principles that were merely programme-based and not legally binding are now incorporated into an Act, and thereby is the basis for the interpretation and application of a penalty system to which all public authorities are subject; the conduct of public authorities, in the broadest sense of the term, regardless of the government to which they belong or of the public administration in which they perform their duties, and precisely because of these duties, must be exemplary.

### III

Title I of the Act regulates and enhances the transparency of the activity of all those performing public duties or exercising administrative powers through a series of provisions listed in two differentiated chapters, and from a two-fold perspective: active publicity and the right to access public information.

The subjective scope of application of this Title, stated in Chapter I, is very wide-ranging and includes all the Public Administrations, self-governing bodies, State agencies, publicly-owned business entities, and public-law entities, to the extent that they have been granted regulatory or supervisory functions over a certain sector or activity, as well as the public-law entities with their own legal personality, linked or reporting to any of the Public Administrations, including public Universities. With regard to their activities under administrative law, the Act is also applicable to public-law corporations, to the Household of His Majesty The King, to the Congress of Deputies, to the Senate, to the Constitutional Court and to the General Council of the Judiciary, as well as to the Bank of Spain, to the Council of State, to the Ombudsman, to the Court of Accounts, to the Economic and Social Council, and to the equivalent institutions in the Autonomous Communities. It is also applicable to commercial companies in whose share capital the aforementioned entities hold a direct or indirect stake of more than fifty percent, to public-sector foundations, and to associations constituted by the above-mentioned Administrations, bodies and entities. Furthermore, it shall be applicable to political parties, to trade unions and business associations, and to all private entities that receive a certain amount of public grants or subsidies. Finally, persons performing public duties or exercising administrative powers shall also be required to provide to the Administration to which they report, upon request, any information necessary in order for said Administration to comply

with the obligations of this Act. This obligation is equally applicable to awardees of public-sector contracts.

Chapter II, dedicated to active publicity, establishes a series of obligations for the parties included in the scope of application of Title I, which will have to disseminate certain information without waiting for a specific request by citizens. This section includes details on institutional, organizational and planning information, on legally relevant information, and on economic, budgetary and statistical information.

In order to decisively foster access for all to information disseminated, the Transparency Portal shall be created, including not only information regarding which there is an active publicity obligation, but also that which is most frequently requested. The Portal will be a meeting point and dissemination hub, exemplifying a new way of understanding citizens' right to access public information. It is also set forth here that the Central State Administration, the Administrations of the Autonomous Communities, and the entities forming the Local Administration may adopt collaboration measures for compliance with their active publicity obligations.

Chapter III describes comprehensively the right of access to public information, to which all persons are entitled, and which may be exercised without need to justify a request. This right shall only be limited in cases in which this is necessary given the nature of the information—resulting from the provisions of the Spanish Constitution—or when it comes into conflict with other protected interests. In any case, the limits set forth shall be applied on the basis of a test of the harm done (to the interest safeguarded by the limit) and a test of the public interest of dissemination (that in the case in question, public interest in disseminating the information does not prevail), and in a proportionate manner, limited by its aim and purpose. Moreover, and given that access to information may directly affect the protection of personal data, the Act clarifies the relation between the two rights by establishing the necessary balance mechanisms. Thus, on the one hand, to the extent that the information directly affects the body's organization or public activity, access shall prevail, whereas, on the other hand, the Act protects—as it could not be any other way—information classified by regulations as especially protected, access to which shall generally require consent from the title-holder.

In order to facilitate the exercise of the right to access public information, the Act establishes a streamlined procedure, with a short response time, and sets forth the creation of information units in the Central State Administration, enabling citizens to know from which body to request the information, as well as which body is responsible for the process.

As regards appeals, an optional, pre-trial complaint procedure is created, which shall be the responsibility of the Council on Transparency and Good Governance, a newly-created independent body. This procedure replaces the administrative appeal procedure.

Title II gives the status of Act to the ethical principles and guidelines that must govern the work of the members of government and of the senior officials and equivalent office holders of the Central State Administration, of the Autonomous Communities, and of the Local Entities. Furthermore, the system of sanctions applicable to these people is clarified and strengthened, in line with their respective responsibility.

The aim of this system is for citizens to have public office holders who act in accordance with the principles of effectiveness, austerity, impartiality and, especially, responsibility. To meet this goal, the Act lays down a system of sanctions structured in three spheres: infringements regarding conflicts of interest, infringements in financial and budgetary management, and disciplinary infringements. Moreover, infringements deriving from non-compliance with Organic Law 2/2012, of 27 April, on Budget Stability and Financial Sustainability, are included. In the financial and budgetary sphere it is worth highlighting that sanctions shall be imposed upon those who make expenditure commitments, settle obligations or order payments without sufficient credit to do so or infringing the provisions of budgetary regulations, or do not justify the investments of funds referred to in the equivalent budgetary regulations. Thus, a fundamental control mechanism is introduced, which will prevent conduct that is irresponsible and unacceptable in a State governed by the rule of law.

Committing the specified infringements shall lead to the imposing of sanctions such as removal from the public offices held by the infringer, to not being paid any compensatory pensions, to the obligation to repay the unduly received amounts, and to the obligation to compensate the Treasury. It must be noted that these sanctions draw their inspiration from those set forth in Act 5/2006, of 10 April, on conflicts of interests involving members of the government and senior officials of the Central State Administration.

Moreover, it is set forth that the perpetrators of very serious infringements may not be appointed to hold certain public offices during a 5-to-10-year period.

Title III of the Act creates and regulates the Council on Transparency and Good Governance, an independent body with responsibilities for promoting the culture of transparency in the activity of the Public Administration, for monitoring compliance with active publicity obligations, as well as for guaranteeing the right of access to public information and the observance of the good governance provisions. A supervisory and monitoring body to guarantee the proper application of the Act is, thus, created.

The Council on Transparency and Good Governance is constituted as an independent body, with full legal capacity and capacity to contract, and has a simple structure which guarantees its specialization and operational capacity while at the same time avoiding the creation of large administrative structures. Its independence and autonomy in the exercise of its functions shall also be guaranteed by the parliamentary support which shall be necessary for appointing its Chair.

In order to respect the Autonomous Communities' powers to the utmost, it is set forth that the Council on Transparency and Good Governance shall only have powers in those Autonomous Communities with which it has signed an agreement to this effect; otherwise, the powers undertaken by the Council on the national level shall be, in the Autonomous Community level, the responsibility of the body designated for this purpose.

The Additional Provisions address diverse issues, such as the application of special regulations of the right of access, the revision and simplification of regulations—on the understanding that clarifying the applicable current regulations is also an exercise in good governance and another expression of transparency—and collaboration between the Council on Transparency and



Good Governance and the Spanish Data Protection Agency in defining the criteria for applying the legal provisions governing the protection of personal data.

The Final Provisions, among other issues, amend the regulation of the right of access to administrative archives and records contained in Act 30/1992, of 26 November, extend the publicity of certain information contained in the Register of assets and property rights of the senior officials of the Central State Administration and the publicity obligation set forth in section 4 of Article 136 of Act 47/2003, of 26 November, on Budgeting.

Finally, the Act stipulates a gradual entry into force, on the basis of the particular circumstances entailed by the application of its different provisions.

## PRELIMINARY TITLE

### Article 1. *Purpose.*

The purpose of this Act is to extend and strengthen the transparency of public activity, to regulate and guarantee the right of access to information about said activity, and to establish the good governance obligations that must be complied with by public officials as well as the consequences resulting from non-compliance.

## TITLE I

### **Transparency of Public Activity**

#### CHAPTER I

### **Subjective Scope of Application**

#### Article 2. *Subjective scope of application.*

1. The provisions of this Title shall be applicable to:

- a) The Central State Administration, the Administrations of the Autonomous Communities and of the Cities of Ceuta and Melilla, and the entities making up the Local Administration.
- b) The management entities and common services of the Social Security System as well as its connected mutual societies for work-related accidents and occupational diseases.
- c) The self-governing bodies, State agencies, publicly-owned business entities and public-law entities which, either functionally independent or with special autonomy recognized by Law, have been granted external regulatory or supervisory functions over a certain sector or activity.
- d) The public-law entities with their own legal personality, linked or reporting to any of the Public Administrations, including public Universities.
- e) Public-law corporations, as regards their activities under Administrative Law.
- f) The Household of His Majesty The King, the Congress of Deputies, the Senate, the Constitutional Court and the General Council of the Judiciary, as well as the Bank of Spain, the

Council of State, the Ombudsman, the Court of Accounts, the Economic and Social Council, and the equivalent institutions in the Autonomous Communities, as regards their activities under Administrative Law.

g) Commercial companies in whose share capital the entities set forth in this Article hold a direct or indirect stake of more than fifty percent.

h) Public-sector foundations set forth in legislation on foundations.

i) Associations constituted by the Administrations, bodies and entities set forth in this Article. Also included are the cooperation bodies set forth in Article 5 of Act 30/1992, of 26 November, on the Legal System of the Public Administrations and Common Administrative Procedure, to the extent that, given their specific nature and absence of an administrative structure of their own, the provisions of this Title are applicable thereto. In these cases, compliance with the obligations deriving from the present Act shall be the responsibility of the Administration holding the position of Secretariat of the cooperation body.

2. For the purposes of the provisions of this Title, Public Administrations shall be understood as the bodies and entities included in items a) to d) of the previous section.

#### Article 3. *Other obliged subjects.*

The provisions of Chapter II of this Title shall also be applicable to:

a) Political parties, trade unions and business associations.

b) Private entities that receive, during a period of one year, public grants or subsidies totalling more than €100,000, or when at least 40% of their annual revenue comes from public grants or subsidies, provided that the amount is at least €5,000.

#### Article 4. *Obligation to provide information.*

Individuals and legal persons other than those listed in the Articles above, performing public duties or exercising administrative powers, shall be required to provide to the Administration, body or entity among those set forth in Article 2.1 to which they report, upon request, any information necessary for compliance with the obligations set forth in this Title. This obligation is equally applicable to awardees of public-sector contracts, in the terms set forth in the respective contract.

## CHAPTER II

### **Active Publicity**

#### Article 5. *General principles.*

1. The subjects listed in Article 2.1 shall publish regular and updated information, knowledge of which is relevant in guaranteeing the transparency of their activity related to the functioning and monitoring of public activity.

2. The transparency obligations contained in this Chapter are understood to be without prejudice to the application of the regulations of the corresponding Autonomous Community or of other specific provisions setting forth a broader publicity system.

3. Also applicable, when appropriate, shall be the limits to the right of access to public information set forth in Article 14 and, especially, those deriving from the protection of personal data, regulated in Article 15. In this regard, when the information contains data that is especially protected, publicity shall only take place after the removal of such data.

4. Information subject to transparency obligations shall be published in the corresponding electronic portals or websites, in a manner that is clear, structured and comprehensible for those concerned, and preferably in reusable formats. The appropriate mechanisms shall be established to enable the accessibility, interoperability, quality and reuse of the information published, as well as its identification and location.

In the case of non-profit-making entities with exclusively social or cultural interest purposes, with a budget of less than €50,000, compliance with the obligations deriving from this Act may be carried out by electronic means made available to them by the Public Administration that is the source of most of the public grants or subsidies received thereby.

5. All the information shall be comprehensible, easily accessible and free of charge, and it shall be available to persons with disabilities through appropriate means or formats, so that they are accessible and comprehensible, in accordance with the principle of universal accessibility and design for all.

*Article 6. Institutional, organizational and planning information.*

1. The parties included in the scope of application of this Title shall publish information about the duties they perform, their applicable regulations, and their organizational structure. For this purpose, they shall include an updated organizational chart that identifies the heads of the different bodies, as well as their profile and career.

2. Public Administrations shall publish the annual and multi-annual plans and programmes in which they establish their specific goals, as well as the activities, resources and deadlines set forth for achieving them. Their degree of compliance and results must be subject to regular evaluation and publication together with the measurement and assessment indicators, in the manner determined by each competent Administration.

At the Central State Administration sphere, the general inspectorates for services are responsible for evaluating compliance with these plans and programmes.

*Article 7. Information of legal relevance.*

Public Administrations, within their powers, shall publish:

a) Guidelines, instructions, agreements, circulars or replies to queries from individuals or other bodies, to the extent that they constitute an interpretation of Law or have legal effects.

b) Draft Bills and draft Legislative Decrees that they are responsible for launching, when opinions are requested from the corresponding consultative bodies. In the event that no opinion is required, publication shall take place upon approval of the Bill or Decree.

c) Draft regulations that they are responsible for launching. When requesting opinions is required, publication shall take place once said opinions have been requested from the corresponding consultative bodies, without this necessarily involving initiating a public hearing procedure.

d) Reports forming part of the dossiers for drafting legislative texts, in particular the report on the analysis of legislative impact regulated by Royal Decree 1083/2009, of 3 July.

e) Documents which, pursuant to the current sector legislation, must be submitted to a period of public information during their processing.

*Article 8. Financial, budgetary and statistical information.*

1. The parties included in the scope of application of this Title must make public, at a minimum, information regarding the following administrative actions that have a financial or budget impact:

a) All contracts, indicating their subject matter; duration; the amount tendered and amount awarded; the tender procedure used; the instruments by means of which, if appropriate, the tenders were made public; the number of participants in the tender; and the identity of the awardee, as well as any modifications to the contract. Likewise, decisions on withdrawal and waiver of contracts shall also be made public. Information regarding minor contracts may be made public on a quarterly basis.

Moreover, statistics on the percentage of the total budget of contracts awarded through each one of the procedures stipulated in the laws on public sector contracts shall also be published.

b) The list of agreements signed, mentioning each agreement's signatory parties, purpose, term of duration, amendments made, those required to provide the goods or services, and if applicable, the economic obligations agreed upon. Likewise, the management delegation agreements signed shall also be made public, indicating their purpose, budget, duration, economic obligations, and subcontracting carried out, mentioning the awardees, procedure followed for awarding the contract, and the amount of the contract.

c) Public grants and assistance awarded, specifying their amount, objective, purpose, and beneficiaries.

d) Budgets, including a description of the main budget items and updated, understandable information on the state of implementation and compliance with budget stability and financial sustainability of the Public Administrations.

e) Compulsory annual accounts and the audit and monitoring reports by external supervisory bodies issued regarding the aforesaid.

f) Annual remuneration of senior officials and heads of the entities included in the scope of application of this Title. Likewise, if a post is relinquished, the severance pay received shall be made public, when applicable.

g) Resolutions on authorization or recognition of compatibility affecting public employees, as well as those authorizing senior officials of the Central State Administration, or their equivalents according to Autonomous Community or local regulations, to exercise private activities after relinquishing their posts.

h) Annual statements of property and activities of local representatives, under the terms stipulated in Act 7/1985, of 2 April, Regulating the Bases of Local Government. When the regulations do not stipulate the terms under which these statements must be made public, the provisions of the regulations on conflicts of interest in the scope of the Central State Administration shall be applied. In all cases, information regarding the specific location of real estate shall be omitted, and the privacy and security of their title-holders shall be safeguarded.

i) The statistical information necessary to assess the level of compliance and quality of public services which are their responsibility, in the terms defined by each competent administration.

2. The parties mentioned in Article 3 must make public the information cited in Article 8.1 a) and b) when contracts or agreements entered into with a Public Administration are concerned. The information stipulated in Article 8.1c) regarding grants received must likewise be made public when the awarding body is a Public Administration.

3. Public Administrations shall make public the list of real estate properties to which they hold title or over which they hold any right *in rem*.

#### Article 9. *Oversight.*

1. Compliance on the part of the Central State Administration of all obligations contained in this Chapter shall be subject to oversight by the Council on Transparency and Good Governance.

2. In exercising the authority specified in the previous paragraph, the Council on Transparency and Good Governance, pursuant to the procedure set forth in regulations, may issue decisions establishing the necessary measures in order to put an end to non-compliance and to initiate appropriate disciplinary actions.

3. Repeated non-compliance with the active publicity obligations regulated in this Chapter shall be considered serious infringements for the purposes of application of the disciplinary regime stipulated in the corresponding regulations to the perpetrators.

#### Article 10. *Transparency Portal.*

1. The Central State Administration shall create a Transparency Portal, under the aegis of the Ministry of the Presidency, which shall provide citizens with access to all of the information cited in the previous articles regarding its scope of action.

2. The Transparency Portal shall include, under the terms established in the regulations, access to that information regarding the Central State Administration which is requested most frequently.

3. The Central State Administration, Administrations of the Autonomous Communities and the Cities of Ceuta and Melilla, and the entities comprising the Local Administration may adopt other complementary and cooperative measures in order to comply with the transparency obligations included in this Chapter.

Article 11. *Technical principles.*

The Transparency Portal shall contain information made public in accordance with the technical stipulations established in the regulations, which must respect the following principles:

a) Accessibility: Structured information shall be provided regarding the site's documents and information resources in order to facilitate identifying and searching for information.

b) Interoperability: The information published on the site shall comply with the National Interoperability Format, approved by Royal Decree 4/2010, of 8 January, as well as the technical standards of interoperability.

c) Reuse: In accordance with Act 37/2007, of 16 November, on the reuse of public sector information and its implementing regulations, the use of publication formats that permit reuse shall be fostered.

CHAPTER III

**Right of Access to Public Information**

*Section 1. General rules*

Article 12. *Right of access to public information.*

All persons have the right to access public information, under the terms set forth in Article 105.b) of the Spanish Constitution, as developed by this Act.

Moreover, the corresponding regulations of the Autonomous Communities shall be applicable, within their respective scopes of authority.

Article 13. *Public information.*

Public information is understood to comprise the contents or documents, in whatsoever format or medium, in possession of one of the parties included within the scope of application of this Title, and which have been created or acquired in the course of exercising their responsibilities.

Article 14. *Limits to right of access.*

1. Right of access may be limited when access to certain information may compromise:

- a) National security.
- b) Defence.
- c) Foreign relations.
- d) Public safety.
- e) The prevention or investigation of, or punishment for, illicit criminal, administrative or disciplinary acts.
- f) The equality of the parties in court proceedings and effective judicial protection.
- g) The administrative responsibilities of oversight, inspection and control.
- h) Economic and commercial interests.
- i) Economic and monetary policy.
- j) Professional secrecy and intellectual and industrial property.
- k) Safeguarding confidentiality or secrecy required in decision-making processes.
- l) Environmental protection.

2. The application of limits shall be justified by and proportional to the level of protection required, and shall take into account the circumstances of each specific case, especially the confluence of a higher public or private interest justifying access.

3. The decisions which are taken pursuant to paragraph 2 in application of this Article shall be made public after removal of any personal information they might contain, notwithstanding the provisions of Article 20.3, once the interested parties have been notified.

#### Article 15. *Personal data protection.*

1. If the requested information contains data enjoying special protection under Article 7.2 of Organic Law 15/1999, of 13 December, on Personal Data Protection, access thereto may only be authorized with the express written consent of the affected party, unless said party had publicly disclosed the information prior to the request for access.

If the information includes data enjoying special protection under Article 7.3 of Organic Law 15/1999, of 13 December, or data regarding the commission of a criminal or administrative infringement which do not involve a public reprimand of the transgressor, access may only be authorized with the express consent of the affected party, or if said access is protected by a regulation having the status of Act.

2. In general terms, and unless in a specific case this is prevented by the fact that personal data protection or another constitutionally protected right prevails over the public interest of its disclosure, access shall be granted to information containing mere identification data regarding the organization, operations, or public activities of the body.

3. When the requested information does not contain data enjoying special protection, the body to which the request is made shall grant access after sufficiently considering the public interest of disclosing this information and the rights of the affected party whose data appears in the information requested, particularly their fundamental right to personal data protection.

In making such considerations, the body in question shall particularly take the following criteria into account:

a) The option least detrimental to the affected parties due to the expiration of the statutes of limitation established in Article 57 of Act 16/1985, of 25 June, on Spain's Historical Heritage.

b) The justification on the part of the applicants of their request in the exercise of a right, or the fact that they are researchers with historic, scientific, or statistical motives for seeking said access.

c) The option least detrimental to the rights of the affected parties if the documents contain only data that merely identifies the aforesaid.

d) The option providing the greatest guarantee to the rights of the affected parties if the data contained in the document could affect their privacy, safety or security, or if said data refers to minors.

4. The provisions of the previous paragraphs shall not be applicable if access is granted after removing personal data in such a manner as to prevent the identification of the persons concerned.

5. Regulations on personal data protection shall be applied to the subsequent processing of data obtained through exercising the right of access.

#### Article 16. *Partial access.*

In those cases where application of any of the limits set forth in Article 14 does not affect the totality of the information, partial access shall be granted after removing the information affected by said limit, unless this would result in providing distorted or senseless information. In this case, the applicant must be told that part of the information has been omitted.

### *Section 2. Exercising the Right of Access to Public Information*

#### Article 17. *Request for access to information.*

1. The procedure for exercising the right of access shall begin with the presentation of the corresponding request, which must be sent to the head of the administrative body or entity which possesses the information. In the case of information in the possession of physical or legal persons who are providing public services or exercising administrative authority, the request shall be sent to the Administration, body, or entity established in article 2.1 to which they report.

2. The request may be presented by any means whereby it is possible to establish:

a) The identity of the applicant.



- b) The information being requested.
- c) A contact address, preferably email, for communication with the applicant.
- d) If applicable, the preferred form of access to the requested information.

3. Applicants are not required to provide grounds for the request to access information. Nevertheless, they may explain their motives for requesting the information, which may be taken into account when the decision is made. However, the absence of grounds may not be the sole reason for rejecting a request.

4. Applicants for information may send their requests to the Public Administrations in any of the languages that are co-official in the territory where the Administration in question is located.

*Article 18. Causes of inadmissibility.*

1. Requests for information shall be denied, providing a substantiated decision, if they:

- a) Refer to information that is being drafted, or for general publication.
- b) Refer to auxiliary or supporting information, such as the content of notes, drafts, opinion papers, summaries, internal communications and reports, or exchanged between administrative bodies or entities.
- c) Refer to information which would require a previous action of redrafting in order to be disclosed.
- d) Were sent to a body which does not possess the information, when the competent body is not known.
- e) Are manifestly reiterated or have an abusive nature which is not justified for the present Act's purpose of transparency.

2. If a request is denied due to the cause set forth in 1.d) above, the body that decided on said denial shall indicate in the decision the body that, in its opinion, has the authority to process the request.

*Article 19. Procedure.*

1. If the request refers to information not in the possession of the body to which it is addressed, said body shall send it on to the competent body, if known, and shall inform the applicant of this situation.

2. When the request does not sufficiently identify the information sought, the applicant shall be asked to specify this within ten days, stating that, if this is not done, the request shall be considered withdrawn, and the period for providing a decision shall be suspended.

3. If the information requested could affect the rights or interests of third parties, duly identified, a period of 15 days shall be granted for them to present the arguments they deem appropriate. The applicant shall be informed of this, as well as of the suspension of the period

for providing a decision until the arguments have been received, or the deadline for their presentation has passed.

4. When the information being requested, even if it is in the possession of the body addressed, has been drafted or generated mainly or in its entirety by a third party, the request shall be sent to said third party for a decision on access.

*Article 20. Decisions.*

1. Decisions in which access is granted or denied must be sent to the applicant and to those affected third parties that have so requested within a maximum of one month after receipt of the request by the body responsible for taking a decision.

This period may be extended by another month if the volume or complexity of the information requested so necessitates, and after notifying the applicant.

2. Decisions denying access shall provide justifying motives, as shall those granting partial access or access in a manner different from that requested, as well as those decisions permitting access when a third party has opposed, in which case, the interested party shall be expressly informed that access may only take place after the period specified in Article 22.2.

3. When the mere indication of the existence or non-existence of certain information would lead to violating any of the limits to access, this circumstance shall be indicated when denying the request.

4. After the deadline for a decision has passed, without a specific decision being made and notified, the request shall thereafter be considered to have been denied.

5. Decisions regarding access to public information may be appealed directly to an Administrative Court, notwithstanding the possibility of lodging the optional appeal stipulated in Article 24.

6. Repeated non-compliance with the obligation to take decisions within a certain number of days shall be considered a serious infraction insofar as application of the disciplinary system set forth in the corresponding regulations to those responsible is concerned.

*Article 21. Information units.*

1. The Public Administrations included within the scope of application of this Title shall establish systems to integrate the management of information requests from the public into their international organization.

2. At the level of the Central State Administration, there shall be special units with the following responsibilities:

a) Collecting and disseminating the information cited in Chapter II of Title I of this Act.

b) Receiving and processing requests for access to information.

- c) Carrying out the internal procedures necessary to provide access to the requested information.
  - d) Monitoring and controlling the correct processing of requests for access to information.
  - e) Keeping a register of requests for access to information.
  - f) Ensuring the availability on the appropriate website of the information to which access is requested most frequently.
  - g) Maintaining an updated content map identifying the different kinds of information held by the body.
  - h) Any others necessary for ensuring the correct implementation of the provisions of this Act.
3. The rest of the entities included within the scope of application of this Title shall clearly identify the competent body responsible for addressing requests for access.

#### *Article 22. Formalization of access.*

1. Access to information shall preferably be given by electronic means, unless this is not possible or the applicant has expressly indicated other means. When access cannot be given at the time of notification, it should be provided, in all cases, within a maximum of ten days.
2. In the case of opposition from a third party, access shall only be given when, after this access has been granted, the period for lodging an appeal to an Administrative Court has expired without such an appeal having been formalized, or if the appeal has been resolved by confirming the right to receive the information.
3. If the information has already been published, the decision may be limited to informing the applicant of how said information may be accessed.
4. Access to this information shall be free of charge. However, the dispatch of copies or transfer of data to a format different from the original may lead to a payment requirement under the terms set forth in Act 8/1989, of 13 April, on Public Fees and Prices, or, when applicable according to the regulations of the Autonomous Community or Local Entity which may be applicable.

#### *Section 3. Legal Challenges*

##### *Article 23. Appeals.*

1. The appeal procedure set forth in the following Article shall be considered to replace administrative appeal procedures pursuant to Article 107.2 of Act 30/1992, of 26 November, on the Legal System of the Public Administrations and Common Administrative Procedure.
2. Notwithstanding the provisions of the previous paragraph, the decisions handed down by the bodies set forth in Article 2.1.f) may only be appealed before an Administrative Court.

##### *Article 24. Appeals to the Council on Transparency and Good Governance.*

1. An optional appeal made be lodged with the Council on Transparency and Good Governance regarding any express or presumed decision regarding access, prior to its being challenged in an Administrative Court.
2. The appeal shall be lodged within one month after the day following that of notification of the decision to be appealed, or the day following that on which the effects of failure to respond begin.
3. The appeals procedure shall follow the provisions on appeals in Act 30/1992, of 26 November, on the Legal System of the Public Administrations and Common Administrative Procedure.

Before a decision is made on the appeal, when denial to access information is based on the protection of the rights or interests of third parties, a hearing shall be offered to those persons who could be affected in order for them to present arguments favouring their case.

4. The maximum period to hand down a decision and provide notification thereof shall be three months, after which the appeal shall be considered dismissed.
5. The decisions of the Council on Transparency and Good Governance shall be made public, omitting any personal data they may contain, by electronic means and under the terms established in the regulations, once the interested parties have been notified.

The Chair of the Council on Transparency and Good Governance shall inform the National Ombudsman of the decisions made in application of this Article.

6. The Council on Transparency and Good Governance is responsible for addressing these appeals, except for those cases in which a given Autonomous Community attributes said responsibility to a specific body, in accordance with Additional Provision 4 of this Act.

## TITLE II

### **Good Governance**

#### *Article 25. Scope of application.*

1. Within the scope of the Central State Administration, the provisions of this Title shall be applied to members of the Government, to Secretaries of State and other senior officials of the Central State Administration and public- or private-law entities of the central public sector, either linked to or reporting to the Central State Administration.

To this end, senior officials shall be considered those who hold this status in application of the regulations on conflicts of interest.

2. This Title shall be applied to senior officials or equivalent office-holders who, pursuant to the applicable regulations of the Autonomous Community or Local Entity, are considered as such, including the members of Governing Councils of Local Entities.

3. Application of the provisions contained in this Title to those parties mentioned in the previous paragraphs shall not, in any case whatsoever, affect their possible status as an elected office-holder.

Article 26. *Principles of good governance.*

1. In carrying out their responsibilities, the persons comprised within the scope of application of this Title shall respect the provisions of the Spanish Constitution and the rest of Spain's laws, and promote respect for fundamental rights and public freedoms.

2. Moreover, they shall act in accordance with the following

a) General principles:

1. They shall act with transparency in the management of public affairs, in accordance with the principles of effectiveness, economy and efficiency, and with the aim of serving the general interest.

2. They shall fulfil their responsibilities with dedication to public service, abstaining from any conduct contrary to these principles.

3. They shall respect the principle of impartiality, so as to follow independent criteria removed from any personal interest.

4. They shall safeguard equal, completely non-discriminatory treatment in fulfilling their responsibilities.

5. They shall exercise due diligence in fulfilling their obligations and promote quality in the provision of public services.

6. They shall behave in a manner befitting their office and treat the public with the utmost courtesy.

7. They shall take responsibility for their own decisions and actions, and those of the bodies they manage, notwithstanding any other responsibilities which might be legally required of them.

b) Principles of action:

1. They shall carry out their duties with full dedication and respect for the regulations on incompatibility and conflicts of interest.

2. They shall maintain due discretion regarding events or information known to them due to or in the course of fulfilling their responsibilities.

3. They shall make known to the competent bodies any irregular action of which they may become aware.

4. They shall exercise the authority attributed to them by the laws in force exclusively to the ends for which this authority was granted, and avoid any action that could put at risk the public interest or the property of the Public Administrations.

5. They shall not become involved in situations, activities or interests incompatible with their responsibilities, and shall refrain from intervening in affairs involving issues that could affect their objectivity.

6. They shall not accept gifts beyond those of normal social courtesy, nor favours or services under advantageous terms which could condition the fulfilment of their duties. In the case of gifts with greater institutional relevance, these shall become property of the corresponding Public Administration.

7. They shall carry out their duties with transparency.

8. They shall appropriately manage, protect and preserve public resources, which may not be used for activities that are not permitted by the applicable laws.

9. They shall not use their position in the Administration to obtain personal advantages or material gain.

3. The principles established in this Article shall form a basis for the interpretation and application of the sanctions system regulated in this Title.

*Article 27. Conflicts of interest: infractions and sanctions.*

Any violation of the rules on conflicts of interest or the statements to be made by the individuals falling within the scope of this Title shall be sanctioned pursuant to the legislation on conflicts of interest in the Central State Administration and, where the case may be, the legislation applicable to the other Administrations.

*Article 28. Infractions in financial and budgetary management.*

It constitutes a very serious infraction to be found guilty of:

a) Causing the unexplained absence of an amount of a public fund under one's management when the acts cannot be subsumed under any of the infractions described in the points below.

b) Failing to adhere to the legal provisions governing Treasury settlements, collections or deposits in the management of Treasury resources and other rights.

c) Committing to an expense, recognizing an obligation, or ordering a payment without sufficient credit or in breach of the terms of Act 47/2003 of 26 November, on Budgeting, the annual Budget Act, or other applicable budgetary legislation.

d) Failing to conduct a prior audit—where mandatory—of expenses, obligations or payments, or failing to conduct the procedure for settling discrepancies when the verdict from said audit includes a qualification with suspensive effect, pursuant to budgetary legislation.

e) Failing to justify the investment of any of funds covered by Articles 78 and 79 of Act 47/2003 of 26 November, on Budgeting, or, as the case may be, equivalent budgetary legislation in the case of Administrations other than the Central State Administration.

f) Violating the obligation to use all above-budget income to reduce public debt as stipulated by Article 12.5 of Organic Law 2/2012, of 27 April, on Budget Stability and Financial Sustainability, or failing to observe the obligation to use any budget surplus to reduce net indebtedness in the terms set forth in Article 32 of said Organic Law.

g) Performing a credit transaction or issuing debt without the necessary authorization, failing to adhere to the terms of any such authorization given, or exceeding the limits set forth in Organic Law 2/2012, of 27 April; Organic Law 8/1980, of 22 September, on the Financing of the Autonomous Communities; or the Consolidated Text of the Act Regulating Local Tax Authorities passed via Royal Legislative Decree 2/2004, of 5 March.

h) Failing to adopt the measures necessary to mitigate default risk promptly when warning has been given as provided for in Article 19 of Organic Law 2/2012, of 27 April.

i) Entering into a collaboration agreement or awarding a grant to a Public Administration without first obtaining a report approving the measure from the Ministry of the Treasury and Public Administrations, as required by Article 20.3 of Organic Law 2/2012, of 27 April.

j) Failing to present the financial plan or rebalancing plan required by Article 23 of Organic Law 2/2012, of 27 April, or failing to implement said plans in a timely manner.

k) Violating the duty to publish or supply information provided for in budgetary or—when a formal request has been issued—financial legislation.

l) Failing to justify budget variance or, when requested to do so, failing to introduce new measures into the financial plan or rebalancing plan pursuant to Article 24.3 of Organic Law 2/2012, of 27 April.

m) Failing to adopt the measures set forth in the financial plan or rebalancing plan, as appropriate, pursuant to Articles 21 and 22 of Organic Law 2/2012, of 27 April.

n) Failing to resolve to render funds unavailable or failing to create a deposit when requested to do so pursuant to Article 25 of Organic Law 2/2012, of 27 April.

ñ) Failing to resolve to render funds unavailable, to create a deposit when requested to do so, or to implement the measures proposed by the Expert Committee when formally requested to do so by the Government, as provided in Article 26.1 of Organic Law 2/2012, of 27 April.

o) Disobeying Government instructions to execute the measures provided for in Article 26.1 of Organic Law 2/2012, of 27 April.

p) Violating the duty of accountability set forth in Article 137 of Act 47/2003, of 26 November, on Budgeting, or other applicable budgetary legislation.

#### Article 29. *Disciplinary infractions.*

1. The following constitute very serious infractions:

a) Failing to observe the duty of respect for the Constitution and the respective Statutes of Autonomy of the Autonomous Communities and the Autonomous Cities of Ceuta and Melilla in the discharge of one's duties.

b) Perpetrating any act that constitutes discrimination on the grounds of racial or ethnic origin, religion or beliefs, disability, age or sexual orientation, language, opinion, place of birth or residence, gender or any other personal or social condition or circumstance; harassment on the grounds of racial or ethnic origin, religion or beliefs, disability, age or sexual orientation; or bullying, sexual harassment or gender-based harassment.

c) Adopting patently illegal decisions that cause serious harm to the Administration or citizens.

d) Publishing or making improper use of the documentation or information accessed by virtue of one's position or duties.

e) Negligence in the custody of information that has been legally declared or classified as an official secret, resulting in the publication, dissemination or undue knowledge of such information.

f) Blatantly failing to discharge the essential duties inherent to one's assigned position or role.

g) Breaching the duty of impartiality, using the powers vested to influence election processes of any kind or with any scope.

h) Availing oneself of one's position as a holder of senior office to obtain an undue benefit for oneself or for another person.

i) Obstructing the exercise of civil liberties and trade union rights.

j) Performing any act aimed at restricting the free exercise of the right to strike.

k) Workplace harassment.

l) Committing a serious infraction when one has already been sanctioned for two serious infractions over the preceding year and all administrative remedies have been exhausted.

2. The following constitute serious infractions:

a) Abusing authority in the exercise of a position.

b) Intervening in administrative proceedings in any of the circumstances in which one is legally bound to abstain.

c) Issuing a report or adopting a patently illegal decision that causes harm to the Administration or to citizens and does not constitute a very serious infraction.

d) Failing to preserve due secrecy regarding matters of which one gains knowledge by virtue of one's position when harm is caused to the Administration or the knowledge is used for personal gain.



e) Failing to observe the deadlines or other provisions governing conflict of interest proceedings, provided that the conflict of interest does not continue to exist as a result.

f) Committing a minor infraction when one has already been sanctioned for two minor infractions over the preceding year and no administrative remedies are possible against such sanctions.

3. The following constitute minor infractions:

a) Discourtesy towards superiors, colleagues or staff.

b) Carelessness or negligence in the discharge of one's duties or failing to adhere to the principles of action set forth in Article 26.2.b), provided that doing so does not constitute a serious or very serious infraction or the conduct is not categorized in another rule.

Article 30. *Sanctions.*

1. Minor infractions shall be sanctioned with an official reprimand.

2. Any of the following sanctions shall be imposed on the perpetrator of a serious infraction:

a) Official announcement of the infraction and publication in the "Official State Gazette" or pertinent official gazette.

b) Non-payment of any severance compensation that would otherwise be receivable.

3. The sanctions provided in the preceding section shall always be imposed for very serious infractions.

4. Anyone sanctioned for a very serious infraction shall be dismissed from any position they hold, unless they have already been removed therefrom, and barred from appointment to any senior office or equivalent position for between five and ten years, following the criteria set forth in the next section.

5. Very serious, serious and minor infractions shall be sanctioned following the criteria set forth in Article 131.3 of Act 30/1992, of 26 November, on the Legal System of the Public Administrations and the Common Administrative Procedure, and considering:

a) The nature and significance of the infraction.

b) The gravity of the danger or harm caused.

c) Any gains obtained as a result of the acts or omissions constituting the infraction.

d) The negative consequences of the events for the pertinent Treasury.

e) Whether the perpetrator, at his or her own initiative, has remedied the violation.

f) The reparation of the damage caused.

Any damage to public interests, repercussion of the conduct on citizens and, as the case may be, amounts unduly received for carrying out public activities in breach of the rules on conflicts of interest shall be taken into account when gauging the sanction to be imposed.

6. When the infractions could constitute a criminal offence, the Administration shall inform the Public Prosecutor General of the events and abstain from continuing with the disciplinary proceedings until the judicial authority has handed down the decision concluding the criminal case.

7. If the acts are classified as an infraction in a specific administrative rule, the Administration with the authority to conduct the corresponding disciplinary proceedings shall be informed and action suspended until said proceedings have been concluded. The provisions of Act 47/2003, of 26 November, on Budgeting, shall not be considered a “specific administrative rule” where the infractions provided for in its Article 28 are concerned, so proceedings to pay compensation for the damage caused can be conducted at the same time as the disciplinary proceedings.

8. In any case, perpetrating the infractions set forth in Article 28 shall entail the following consequences:

a) Any amounts unduly received or paid shall be reimbursed.

b) Compensation shall be paid to the Treasury as set forth in Article 176 of Act 47/2003, of 26 November, on Budgeting.

*Article 31. Competent body and proceedings.*

1. Disciplinary proceedings shall be initiated without prompting, or at the decision of the competent body (either on its own motion or as a result of an order from a superior), or a justified request from another body, or a complaint from citizens.

The perpetrator shall be held liable via administrative proceedings conducted to that end, without prejudice to the requirement to also inform the Court of Auditors of the events should the proceedings for holding the perpetrator financially accountable apply in the circumstances.

2. The competent body for ordering the initiation of such proceedings shall be:

a) The Council of Ministers, at the proposal of the Minister of the Treasury and Public Administrations, when the proceedings concern a member of the Government or Secretary of State.

b) The Minister of the Treasury and Public Administrations, when the alleged perpetrator is a civil servant or employee of the Central State Administration other than the above.

c) When the alleged perpetrator is a civil servant or employee of an Autonomous Community or of a Local Administration, the body in which the power to initiate such proceedings is vested in application of the disciplinary rules of the Autonomous Community or Local Entity in question.

3. In the cases provided for in a) and b) of the preceding section, the corresponding proceedings shall be conducted by the Conflicts of Interest Office. In the circumstances set forth in c), the proceedings shall be conducted by the competent body pursuant to the disciplinary rules of the Autonomous Community or Local Entity in question.

4. Authority to impose sanctions shall lie with:

a) The Council of Ministers, when the proceedings concern a member of the Government or Secretary of State.

b) The Minister of the Treasury and Public Administrations, when the perpetrator is a civil servant or employee of the Central State Administration other than the above.

c) When the proceedings are conducted against holders of senior office in an Autonomous Community or Local Entity, the bodies in which disciplinary powers are vested in application of the disciplinary rules of the Administration in which the officer is a civil servant or employee, or, as the case may be, the Governing Council of the Autonomous Community or the Plenary Governing Council of the Local Entity in question.

5. Decisions handed down in application of the disciplinary proceedings regulated in this Title shall be appealable before the Administrative Courts.

*Article 32. Limitation periods.*

1. The limitation period for the infractions provided for in this Title shall be five years for very serious infractions, three years for serious infractions and one year for minor infractions.

2. The sanctions imposed for the perpetration of very serious infractions shall have a five-year limitation period; those imposed for serious infractions shall have a three-year limitation period; and those resulting from the perpetration of minor infractions shall have a one-year limitation period.

3. For the purposes of counting the limitation periods provided for in the two previous sections—as well as determining the causes for interruption of such periods—Article 132 of Act 30/1992, of 30 November, on the Legal System of the Public Administrations and the Common Administrative Procedure, shall apply.

TITLE III

### **The Council on Transparency and Good Governance**

*Article 33. The Council on Transparency and Good Governance.*

1. The Council on Transparency and Good Governance is hereby established as one of the public authorities classified in Additional Provision Ten of Act 6/1997, of 14 April, on the Organization and Operation of the Central State Administration. Said Council shall be attached to the Ministry of the Treasury and Public Administrations.

2. The Council on Transparency and Good Governance possesses legal personality and has full capacity to contract. It acts autonomously and is fully independent in fulfilling its purposes.

Article 34. *Purposes.*

The purposes of the Council on Transparency and Good Governance are to promote the transparency of public activity, to ensure that information is duly made publicly available as required, to safeguard the right of access to public information, and to guarantee the observance of legal provisions on good governance.

Article 35. *Composition.*

The Council on Transparency and Good Governance shall consist of:

- a) The Commission on Transparency and Good Governance.
- b) The Chair of the Council on Transparency and Good Governance, who shall also chair the Commission.

Article 36. *The Commission on Transparency and Good Governance.*

1. The Commission on Transparency and Good Governance shall exercise all the powers assigned to it herein and in the implementing regulations hereof.

2. The Commission shall comprise:

- a) The Chair.
- b) A Member of the Congress of Deputies.
- c) A Senator.
- d) A representative from the Court of Accounts.
- e) A representative from the Ombudsman's Office.
- f) A representative from the Spanish Data Protection Agency.
- g) A representative from the State Secretariat for Public Administrations.
- h) A representative from the Independent Authority for Fiscal Accountability.

3. Exclusive dedication shall not be required of members of the Commission on Transparency and Good Governance, who shall not be entitled to any remuneration, with the exception of the terms of the next Article.

4. At least once per year, the Commission on Transparency and Good Governance shall call a meeting of the representatives of any bodies with similar functions to those of the Commission created by the Autonomous Communities in exercise of the powers vested therein. A representative from the Local Administrations, proposed by the Spanish Federation of Municipalities and Provinces, may also be summoned to this meeting.

Article 37. *The Chair of the Council on Transparency and Good Governance.*

1. The Chair of the Council on Transparency and Good Governance shall be appointed for a non-renewable five-year term through a Royal Decree. The Minister of the Treasury and Public Administrations shall select a candidate of recognized standing and professional ability for this office, and said candidate shall appear before the pertinent Committee of the Congress of Deputies. The Congress, via the competent Committee, shall endorse the appointment of the proposed candidate with absolute majority within one calendar month of communication thereof.

2. The Chair of the Council on Transparency and Good Governance shall step down from office on completion of his or her term, and may also step down voluntarily. In the event of a serious failure to discharge his or her duties, permanent incapacity to hold office, an unforeseen conflict of interest, or a conviction for a criminal offence committed with wilful intent, the Government may decide to remove the Chair from office once the Minister of the Treasury and Public Administrations has conducted the pertinent investigatory proceedings.

3. The Chair of the Council on Transparency and Good Governance shall be remunerated pursuant to Royal Decree 451/2012, of 5 March, on the remuneration framework of the most senior officials and management in the publicly-owned business sector and other entities.

#### Article 38. *Duties.*

1. To fulfil its purposes, the Council on Transparency and Good Governance shall:

- a) Adopt recommendations for a more effective fulfilment of the obligations set forth herein.
- b) Provide advice on the subject of transparency, access to public information, and good governance.
- c) Draw up mandatory reports on national-level draft legislation implementing this Act or relating to the subject matter hereof.
- d) Evaluate the extent of application hereof. To this end, the Board shall draw up an annual report including information on the fulfilment of the obligations set forth herein, which shall be presented before Parliament.
- e) Foster the drafting of recommendations, guidelines and rules for the implementation of best practices in transparency, access to public information, and good government.
- f) Promote training and awareness-raising activities to improve knowledge of the subjects regulated herein.
- g) Collaborate with similar bodies on matters within its scope of authority.
- h) Perform any other duties assigned to it by rules set forth in an Act of Parliament, Regulation, or statute of equivalent rank in the legislative hierarchy.

2. The Chair of the Council on Transparency and Good Governance shall:

- a) Adopt criteria for a uniform interpretation of the obligations set forth herein.

- b) Ensure compliance with the publicity obligations defined in Title I, Chapter II hereof, as required by Article 9.
- c) Hear any complaints lodged in application of Article 24 hereof.
- d) Respond to possible enquiries submitted by the bodies responsible for processing and deciding on applications for access to information.
- e) Urge the initiation of the disciplinary proceedings provided for in Title II hereof. The competent body shall justify any decision not to initiate such proceedings.
- f) Approve the preliminary draft budget.
- g) Perform any other duties assigned to him or her by rules set forth in an Act of Parliament, Regulation, or statute of equivalent rank in the legislative hierarchy.

Article 39. *Legal framework.*

1. In addition to the provisions hereof, the Council on Transparency and Good Governance shall also be governed by:

- a) Any applicable provisions of Act 47/2003, of 26 November, on Budgeting. It shall annually draw up a preliminary draft budget, using the structure established by the Ministry of the Treasury and Public Administrations, for subsequent submission to the Government and inclusion in the National Budget.
- b) The Consolidated Text of the Public Sector Contracts Act passed in Royal Legislative Decree 3/2011, of 14 November.
- c) Act 33/2003, of 3 November, on Public Administration Property and, for aspects of property acquisitions not governed therein, private law.
- d) Act 7/2007, of 12 April, the Basic Statute of Public Employees, and other rules applicable to civil servants of the Central State Administration, for matters relating to human resources.
- e) Act 30/1992, of 26 November, on the Legal System of the Public Administrations and the Common Administrative Procedure, and other applicable legislation for those matters of the performance of public duties not regulated herein.

2. The Council of Ministers shall approve the Council on Transparency and Good Governance's Statute, stipulating its organization, structure and functioning, as well as any aspects necessary for the discharge of its duties, via Royal Decree.

3. In general, offices within the Council on Transparency and Good Governance shall be held by civil servants, pursuant to Act 7/2007, of 12 April, on the Basic Statute of Public Employees, and the civil service rules applicable to the civil servants of the Central State Administration. Positions may be held by hired employees where permissible under the legislation governing the civil service of the Central State Administration. Any personnel seconded to a position in the Council on Transparency and Good Governance through the applicable staff provision

procedures of the Central State Administration shall retain their previous status as a civil servant or hired employee, pursuant to applicable legislation.

4. To fulfil its purposes, the Council on Transparency and Good Governance shall have the following property and financial resources:

- a) Amounts assigned to it annually under the National Budgets.
- b) Its assets, comprising property and securities and any returns or income yielded thereon.
- c) Any other property or resources legally assigned to it.

*Article 40. Relationship with Parliament.*

The Council on Transparency and Good Governance shall submit an annual report to Parliament on its activities and the extent of compliance with the provisions set forth herein. The Chair of the Council on Transparency and Good Governance shall appear before the corresponding parliamentary committee to defend said report as many times as he or she is summoned to appear.

*Additional Provision One. Special regulations regarding the right of access to public information.*

1. The regulations governing the corresponding administrative procedure shall be those applicable to access to the documents contained in an ongoing administrative procedure by those classed as “interested parties” in said procedure.
2. In matters for which there is a specific legal framework on access to information, said specific legislation shall prevail, this Act being applicable in a supplementary capacity.
3. When not provided for in the respective regulations, the Act shall apply to access to environmental information and information for reuse.

*Additional Provision Two. Revision and simplification of regulations.*

1. The Central State Administration shall undertake a regulatory revision, simplification and, if applicable, a consolidation of its legal system. In order to do so, it shall carry out the corresponding studies, repeal any obsolete rules and, as the case may be, determine the need to introduce amendments, novelties or propose the preparation of a Consolidated Text, pursuant to the legal and constitutional provisions on competence and procedure, based on the status of the rules so affected.
2. To this end, the State Secretariat for Relations with the Parliament shall draw up a Regulatory Quality and Simplification Plan and shall be in charge of coordinating the regulatory revision and simplification process with the other Ministerial Departments
3. The Technical General Secretariats of the different Ministerial Departments shall carry out the revision and simplification process in their respective areas of jurisdiction. They may coordinate their activity with the competent bodies of the Autonomous Communities that, in

exercising their jurisdiction and pursuant to the principle of administrative cooperation, are carrying out a revision process of their respective legal systems.

*Additional Provision Three. Public-law corporations.*

In order to comply with the obligations set forth in Title I of this Act, public-law corporations may enter into collaboration agreements with the corresponding Public Administration or, if applicable, with the body in charge of representation in its specific area of activity

*Additional Provision Four. Complaints.*

1. The settlement of complaints described in Article 24 shall, in the case of decisions issued by the Administrations of the Autonomous Communities and their public sector, and by the Local Entities included in their territorial jurisdiction, pertain to an independent body to be determined by the Autonomous Communities

Notwithstanding the above paragraph, only administrative appeals shall be applicable in the case of decisions handed down by the Legislative Assemblies and equivalent institutions to the Council of State, the Economic and Social Council, the Court of Auditors and the Ombudsman.

2. Autonomous Communities may confer jurisdiction to the Council on Transparency and Good Governance for the settlement of the complaints set forth in Article 24. To this aim, they must enter into a specific agreement with the Central State Administration, in which they establish the conditions under which the Autonomous Community shall pay the costs arising from assuming such jurisdiction.

3. Cities with a Statute of Autonomy may either designate their own independent bodies or confer jurisdiction to the Council on Transparency and Good Governance, to which end they shall enter into an Agreement under the terms set forth in the previous paragraph

*Additional Provision Five. Cooperation with the Spanish Data Protection Agency.*

The Council on Transparency and Good Governance and the Spanish Data Protection Agency shall jointly adopt the implementation criteria, in their sphere of action, for the rules contained in Article 15 of this Act, specifically regarding the assessment of public interest in access to information and guaranteeing the rights of the parties concerned whose data are contained therein, pursuant to this Act and Organic Law 15/99 of December 13.

*Additional Provision Six. Information on His Majesty The King's Household.*

The General Secretariat of the Presidency of the Government shall be the competent body for processing the procedure whereby access to information in the power of His Majesty The King's Household is requested, in addition to deciding upon any other question that may arise from this body's implementation of the provisions of this Act.

*Additional Provision Seven.*

The Government shall approve a training plan in transparency for Central State Administration civil servants and personnel, together with an information campaign for citizens. The



Government shall include the national public sector in The National Corporate Social Responsibility Plan.

Additional Provision Eight.

The Congress of Deputies, the Senate and the Legislative Assemblies of the Autonomous Communities shall regulate the specific implementation of the provisions of this Act in their respective regulations.

Final Provision One. *Amendment of Act 30/1992, of 26 November, on the Legal System of the Public Administrations and Common Administrative Procedure.*

Act 30/1992, of 26 November, on the Legal System of the Public Administrations and Common Administrative Procedure is amended under the following terms:

One. Article 35.h) becomes:

"h) Access to public information, archives and registries"

Two. Article 37 becomes:

"Article 37. *The right to access public information*

Citizens have the right to access public information, archives and registries under the terms and conditions set forth in the Constitution, the Act on Transparency, Access to Public Information and Good Governance and other applicable laws."

Final Provision Two. *Amendment of Act 5/2006, of 10 April, regulating the conflicts of interest of members of the Government and senior officials of the Central State Administration.*

Act 5/2006, of 10 April, regulating the conflicts of interest of Government members and senior officials of the Central State Administration, is amended as follows:

Section 4 of Article 14 becomes:

"4. The contents of the disclosure of assets and property rights by Government Members and Secretaries of State and other senior officials included in Article 3 of this Act shall be published in the *Official State Gazette*, as regulated. With regard to assets, a comprehensive disclosure of the assets of these senior officials shall be published, omitting the data relative to their location and safeguarding the privacy and security of their holders."

Final Provision Three. *Amendment of Act 47/2003, of 26 November, on Budgeting.*

Section 4, Article 136 of Act 47/2003, of 26 November, on Budgeting, is amended as follows:

"Institutions that must apply public accounting standards, as well as others that are not under the obligation to publish their accounts in the Company Registry, shall annually publish their balance sheet and economic outturn account, a summary of the remaining statements that make up the annual accounts, and the accounts audit report in the *Official State Gazette*. To this end, the Comptroller General's Office shall determine the minimum information content to be published."

Final Provision Four. *Amendment of Additional Provision Ten of Act 6/1997, of 14 April, on the Organization and Operation of the Central State Administration.*

Section 1 of Additional Provision Ten of Act 6/1997, of 14 April, on the Organization and Operation of the Central State Administration, is hereby modified as follows:

“1. The National Securities Market Commission, the Nuclear Safety and Security Council, non-devolved Universities, the Spanish Data Protection Agency, the Canary Islands’ Special Area Consortium, the National Markets and Competition Commission, the Council on Transparency and Good Governance, the Prado National Museum and the National Art Centre Museum Reina Sofia shall be governed by legislation specific to them, supplemented by this Act.”

Final Provision Five.

The Government shall adopt the necessary measures to streamline the use of technical and human resources allocated to the Council on Transparency and Good Governance.

Final Provision Six. *Amendment of Act 10/2010, of 28 April, on the Prevention of Money Laundering and Terrorist Financing.*

Act 10/2010, of 28 April, on the Prevention of Money Laundering and Terrorist Financing is hereby amended as follows:

One. A section 5 is added to Article 2, as follows:

“5. The obligations for information and internal control contained in Chapters III and IV of this Act shall be applicable to the national administrator of the emissions rights register established by Act 1/2005, of 9 March, regulating greenhouse gas emissions rights trading, with the exceptions to be determined by regulation.”

Two. A section 6 is added to Article 7, as follows:

“6. Regulations may authorize the non-implementation of some or all of the measures of due diligence or of conservation of documents regarding occasional operations that do not exceed a quantitative threshold, whether individually or accumulated over a certain time period.”

Three. Article 9 is reworded as follows:

*“Article 9. Simplified due diligence measures.*

Obligated subjects may apply, in the cases and conditions to be determined by regulation, simplified due diligence measures to clients, products or operations that entail reduced risk of money laundering or terrorist financing.”

Four. Article 10 is reworded as follows:

*“Article 10. Application of simplified due diligence measures.*

The graduated application of simplified due diligence measures shall be risk-based, pursuant to the following criteria:

a) Prior to the application of simplified due diligence measures to a certain client, product or operation established by regulation, obligated subjects shall ascertain that there is indeed reduced risk of money laundering or terrorist financing.

b) The application of simplified due diligence measures shall in any event be consistent with the risk. Obligated subjects shall not apply or shall cease to apply simplified due diligence measures as soon as they establish that a client, product or operation does not carry reduced risk of money laundering and terrorist financing.

c) Obligated subjects shall in any event carry out sufficient ongoing monitoring to identify operations susceptible to special examination pursuant to Article 17.”

Five. Article 14 is reworded as follows:

“Article 14. Politically Exposed Persons

1. Obligated subjects shall apply enhanced due diligence measures described in this Article in business relationships of and operations by politically exposed persons.

The following shall be considered to be politically exposed persons:

a) Those who perform or have performed important public duties by election, appointment or investiture in other Member States of the European Union or third countries, such as Heads of State, Heads of Government, Ministers or other members of Government, Secretaries of State or Under-Secretaries; parliamentarians; judges of supreme courts, constitutional courts or other high judicial bodies whose decisions are unappealable, except in exceptional circumstances, including equivalent members of the Public Prosecutor’s Office; the members of courts of auditors or central bank governing councils; ambassadors and chargés d’affaires; senior-ranking military personnel of the Armed Forces; members of bodies of administration, management or supervision of publicly-owned companies.

b) Those who perform or have performed important public duties in the State of Spain, such as senior officials in accordance with what is described in the regulations on conflicts of interest of the General State Administration; both national and European Parliament parliamentarians; judges of the Supreme Court and the Constitutional Court, including equivalent members of the Public Prosecutor’s Office; Members of the Court of Auditors and council members of the Bank of Spain; ambassadors and chargés d’affaires; senior-ranking military personnel of the Armed Forces; managers, assistant managers and members of the board of directors, or equivalent roles, of an international organization, including the European Union.

c) In addition, the following shall be considered as politically exposed persons: people who perform or have performed important public duties in the Spanish Autonomous Communities, such as Presidents and regional Ministers and other members of the Governing Councils, in addition to senior officials and Autonomous Community parliamentarians and, at the Spanish local government level, the local entity mayors, councillors and other senior officials of the municipalities which are province capitals or Autonomous Community capitals with a population of over 50,000, and senior management in Spanish trade unions, business organizations or political parties.

None of these categories shall include intermediate- or lower-ranking public employees.

2. With regard to clients or beneficial owners who perform or have performed important public duties by election, appointment or investiture in other European Union Member States or a third country, the obliged subjects, in addition to the normal due diligence measures, must in any event:

a) Implement appropriate risk-management procedures to determine whether a client or beneficial owner is a politically exposed person. These procedures shall be included in the customer acceptance policy described in Article 26.1.

b) Obtain approval from at least the immediate senior manager, before establishing or maintaining business relationships.

c) Take the appropriate measures to establish the source of wealth and funds.

d) Conduct enhanced ongoing monitoring of the business relationship.

3. In addition to the normal due diligence measures, obliged subjects must apply reasonable due diligence measures to determine whether the client or the beneficial owner performs or has performed any of the duties described in paragraphs b) and c) under section one of this Article.

The review, in accordance with the risk factors present in each case, of the information obtained during the due diligence process shall be considered reasonable measures.

In the case of higher-risk business relationships, the obliged parties shall apply the measures described in paragraphs b), c) and d) in the preceding section.

4. Obligated subjects shall apply the measures established in the two above sections to the family members and other close associates of politically exposed persons.

For the purposes of this Article a family member shall be considered to be the spouse or the person who is a stable partner in an emotionally analogous relationship, as well as parents and children, and the children's spouses or persons who are the stable partners in emotionally analogous relationships.

A close associate shall be considered to be any natural person who is known to hold the ownership or control of an instrument or legal person jointly with a politically exposed person, or with whom he or she has other close business relationships, or who holds the ownership or control of an instrument or legal person who is known to have been established in his or her benefit.

5. Obligated subjects shall apply reasonable measures to determine whether the beneficiary of a life insurance policy or, where appropriate, the beneficial owner, is a politically exposed person prior to the payment of the benefit arising from the contract or to the exercise of the rights of redemption, advance payment or pledge conferred by the policy.

In the event of identifying greater risks, the obliged subjects, in addition to the normal due diligence measures, must:

a) Report to, at least, the immediate senior manager, before proceeding to payment, redemption, advance payment or pledge.

b) Conduct an enhanced examination of the entire business relationship with the policy holder.

c) Conduct the special review described in Article 17 so as to determine whether communication based on circumstantial evidence is in order pursuant to Article 18.

6. Without prejudice to compliance with the above paragraphs, when, because the circumstances described in Article 17 have arisen, it is in order to conduct a special examination, obliged subjects shall take the appropriate measures to determine the possible participation in the events or operation of someone who is or has been in Spain a representative public official or senior official of the Public Administrations, or of their family members or close associates.

7. Without prejudice to Article 11, when the persons described in the preceding sections have ceased to perform their duties, the obliged subjects shall continue to apply the measures described in this Article for two years.”

Six. Article 26, section 4, is reworded as follows:

“4. Internal control measures shall be established at group level, with the specifications to be determined by regulation. Regarding the definition of group, it shall be as defined in Article 42 of the Code of Commerce.”

Seven. Article 42 is reworded as follows:

“Article 42. *International Financial Sanctions and Countermeasures.*

1. The application of financial sanctions established by United Nations Security Council Resolutions relating to the prevention and suppression of terrorism and terrorist financing, and the prevention, suppression and disruption of the proliferation of weapons of mass destruction and their financing shall be compulsory for any natural or legal person under the terms set forth by EU regulations or by a Cabinet decision, adopted at the proposal of the Minister of the Economy and Competitiveness.

2. Without prejudice to the direct effect of EU regulations, the Cabinet, at the proposal of the Minister of the Economy and Competitiveness, may decide to apply financial countermeasures to third countries that pose a higher risk of money laundering, terrorist financing or financing of the proliferation of weapons of mass destruction.

The Cabinet decision, which can be adopted autonomously or implementing decisions or recommendations by international organizations, institutions or groups, may impose the following financial countermeasures, among others:

a) Ban, restrict or condition capital movements and their corresponding collection and payment operations, as well as transfers, to and from a third country or by its nationals and residents.

- b) Submit capital movements and their corresponding collection and payment operations to prior authorization, as well as transfers, to and from a third country or by its nationals and residents.
- c) Agree to the freezing or blocking of funds and economic resources that are owned, held or controlled by natural or legal persons who are nationals or residents of this third country.
- d) Ban making available funds or economic resources that are owned, held or controlled by natural or legal persons who are nationals or residents of this third country.
- e) Require the conduct of enhanced due diligence measures in business relationships of or operations by nationals or residents of this third country.
- f) Establish the systematic communication of operations by nationals or residents of the third country or entailing financial movements to and from the third country.
- g) Ban, restrict or condition the establishment or maintenance of subsidiaries, branch offices or representation offices of financial institutions of the third country.
- h) Ban, restrict or condition the establishment or maintenance of subsidiaries, branch offices or representation offices of financial institutions in the third country.
- i) Ban, restrict or condition business relationships or financial operations with the third country or with its nationals and residents.
- j) Ban obliged subjects from accepting due diligence measures conducted by institutions located in the third country.
- k) Require financial institutions to revise, modify and, if applicable, end their correspondent relationship with financial institutions of the third country.
- l) Subject subsidiaries or branch offices of financial institutions of the third country to enhanced supervision or external audit or examination.
- m) Impose enhanced reporting or external auditing requirements regarding any subsidiary or branch office located or operating in the third country.

3. The Executive Service of the Commission shall be in charge of supervising and inspecting compliance with the provisions of this Article.”

Eight. Article 52.1.u) is reworded as follows:

“u) Failure to comply with the obligation of implementing international sanctions or financial countermeasures, under the terms of Article 42.”

Final Provision Seven. *Regulatory development.*

The Government, within the sphere of its powers, may adopt any necessary provisions for the enforcement and development of the contents of this Act.

The Cabinet shall approve a Royal Decree approving the Organic Statute of the Council on Transparency and Good Governance within three months of the publishing of this Act in the *Official State Gazette*.

Final Provision Eight. *Regulatory authorization*.

The present Act is enacted pursuant to the provisions of Articles 149.1.1.<sup>ª</sup>, 149.1.13.<sup>ª</sup> and 149.1.18.<sup>ª</sup> of the Constitution. Exception is made of the provisions of the second paragraph of section 2 of Article 6, Article 9, sections 1 and 2 of Article 10, Article 11, section 2 of Article 21, section 1 of Article 25, Title III and Additional Provision Two.

Final Provision Nine. *Entry into force*.

This Act shall enter into force pursuant to the following rules:

- The provisions of Title II shall enter into force the day after they have been published in the *Official State Gazette*.
- The Preliminary Title, Title I and Title III shall enter into force one year after they have been published in the *Official State Gazette*.
- Bodies of the Autonomous Communities and Local Entities shall have a maximum period of two years to adapt to the obligations contained in this Act.

Therefore,

I order all Spaniards, private citizens and authorities, to abide by and enforce this Act.

Madrid, 9 December 2013.

JUAN CARLOS R.

The President of the Government

MARIANO RAJOY BREY