FATF

Anti-money laundering and counter-terrorist financing measures

Spain

Mutual Evaluation Report

December 2014

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Executive Summary

1. This report provides a summary of the anti-money laundering (AML) /counter-terrorist financing (CFT) measures in place in Spain as at the date of the on-site visit (21 April to 7 May 2014). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Spain's AML/CFT system, and provides recommendations on how the system could be strengthened. [1]

A. Key Findings

- **Spain has up-to-date laws and regulations** which implement the revised FATF Standards[2], and is compliant or largely compliant with most of the Recommendations.
- **Spain has sound AML/CFT institutions:** the *Commission for the Prevention of Money Laundering and Monetary Offences* is an effective coordination mechanism for AML/CFT policies, and its executive service, SEPBLAC, is a strong financial intelligence unit and supervisor.
- **Spain has a high level of understanding of its ML/TF risks** which is informed by a wide variety of good quality risk assessments. The national AML/CFT strategy actively responds to the risks identified.
- **Spain has demonstrated significant successes in money laundering investigation and prosecution.** Spain's strategy is focused on disrupting and dismantling the financial structure of organised crime groups and drug trafficking organisations. The authorities have demonstrated their ability to work very large and complex money laundering cases successfully through to conviction, and show a very high level of effectiveness in investigations and prosecutions.

2 The FATF Standards comprise the FATF Recommendations and their Interpretive Notes.

1 This evaluation was prepared on the basis of the *2013 FATF Methodology*. This means it is substantially different in nature from previous assessments. It includes the new obligations introduced in the 2012 revision of the *FATF Recommendations*, and therefore the technical compliance assessment is not directly comparable to the previous evaluation. It also assesses the effectiveness of Spain's AML/CFT system on the basis of the new effectiveness methodology, which takes a fundamentally different approach to the technical compliance assessment. It sets out conclusions on how well the AML/CFT measures are working in practice, based on comprehensive analysis of the extent to which the country achieves a defined set of outcomes that are central to a robust AML/CFT system. Both qualitative and quantitative information are used to support that analysis.

- **Nevertheless, the dissuasiveness and proportionality of sanctions for money laundering offences is a concern.** Fines are often in the millions of euro, but the terms of imprisonment being imposed in practice are low, even in serious ML cases, as are the terms of disbarment for professionals found to be complicit money launderers.

- **Authorities have effectively shut down the financing and support networks of ETA, one of the main domestic terrorist threats to Spain.**

- **However, Spain's implementation of targeted financial sanctions relating to terrorism suffers from serious technical and practical deficiencies.** Spain uses procedures set at the EU level that impose an unacceptable delay on the transposition of new designated entities into sanctions lists, and Spain has never proposed or made any designations itself and chooses not to utilise this tool.

- **Policy and operational coordination on combating proliferation financing is weak.** There is coordination on proliferation-related targeted financial sanctions, and some success in uncovering evasion. However, coordination between export control authorities and AML/CFT authorities is lacking.

- **There are significant gaps in the legal obligations regarding wire transfers,** which do not include obligations regarding information on the beneficiary of a wire transfer, and apply very limited requirements for intermediary financial institutions. This reflects the fact that the EU Wire Transfer regulation has not been updated following the revision of the FATF Standards.

- **Lawyers do not adequately apply the required preventive measures.** The profession has limited awareness of their ML/TF risks and obligations, and effective controls are not in place. This is of particular concern given lawyers' role in sophisticated ML networks within Spain.

- **Measures for enabling access to beneficial ownership information, in particular, the notary profession's Single Computerised Index, are an example of good practice in the context of Spain's legal system.**

- **The authorities and the money or value transfer services sector have taken significant steps to mitigate ML/TF risks, particularly those from agents.** These include a register of high risk agents; stronger internal controls; and systematic reporting with ongoing monitoring by the supervisor. **Nevertheless, some weaknesses remain** regarding the identification of unlicensed operators, and the supervision of MVTS operating under EU passporting rules.

B. Risks and General Situation

2. **Spain has done a good job in identifying, assessing and understanding its ML/TF risks and has effective mechanisms in most areas to mitigate these risks. Spain faces a range of money laundering (ML) risks.** Organised criminal groups are active in Spain, including both Spanish nationals and foreign criminals. Spain is a trans-shipment point for cross-border illicit flows of drugs entering Europe from North Africa and South America. Spain remains a logistical hotspot for organised crime groups based in Africa, Latin America and the former Soviet Union, though drug offences and official seizures in Spain have declined slightly in the past several years. The major sources of criminal proceeds are drug offences, organised crime, tax and customs offences, counterfeiting, and human trafficking. The most prominent means of laundering money are through the purchase and sale of real estate; using complex networks of companies and legal arrangements (established with the assistance of professional facilitators); through exploitation of the money or value transfer services (MVTS) sector; and using cash couriers.

3. **Spain also faces significant terrorist and terrorist financing (TF) risks, and has been the victim of terrorist attacks.** These come from two main directions: separatist groups such as Euskadi ta Askatasuna (ETA), and Islamist terrorist groups. ETA was characterised by a sophisticated support structure, including a branch of operations responsible for financing, and has strong ties with the Basque region of France. Spain has effectively dismantled the organisation's economic wing and a cease-fire has held for some years, however ETA has not entirely disappeared and remains a very real risk. Spain also faces a high risk from Islamist terrorist groups that tend to operate through small self-funding cells.

C. Overall Level of Compliance and Effectiveness

4. **The overall picture is positive in Spain, but improvement is needed in a few key areas.** Spain's laws and regulations are technically compliant, or largely compliant, with most of the FATF Recommendations, although there are deficiencies in some areas, most notably regarding targeted financial sanctions and wire transfers. In terms of effectiveness, Spain performs well in some areas, including financial intelligence and confiscation. However, implementation is less effective in some other areas, as noted below.

C.1 Spain has a good understanding of its ML/TF risks

5. **Spain demonstrates a high level of understanding of its ML/TF risks** which is informed by a wide variety of good quality risk assessments from several sources, although these have not been brought together in a single national risk assessment (which is not a deficiency). Spain has developed a sound AML/CFT strategy, using its understanding of the ML/TF risks to inform both its policy and operational objectives and activities. The *Commission for the Prevention of Money Laundering and Monetary Offences (the Commission)* is the main coordination mechanism for developing and coordinating Spain's AML/CFT policies. Specific mechanisms are in place to facilitate operational coordination among Spain's very complex structure of law enforcement agencies (LEAs), but operational coordination in this area is challenging. Some improvement is needed to enhance cooperation between export control authorities and AML/CFT authorities such as SEPBLAC.

C.2 ML cases involving third party laundering and foreign predicates pursued, but sanctions are low

6. **Spanish authorities are strongly focused on pursuing money laundering, both as a principal activity or activity related to another offence.** A number of different types of money laundering cases have been prosecuted, including when it involves third party money laundering, self-laundering, or the laundering of domestic or foreign predicates. Spain has had proven success in disabling criminal enterprises and organised criminal groups by identifying and shutting down their complex money laundering networks of national and international companies. However, the relatively low level of sanctions actually imposed for money laundering offences is a weakness, as is the limited capacity to handle complex ML cases in the judicial system in a timely fashion. SEPBLAC is a strong financial intelligence unit (FIU), and the authorities make good use of financial intelligence when investigating crimes and tracing assets. Its analysis can also be leveraged in its role as AML/CFT supervisor.

7. **Spanish authorities aggressively pursue confiscation of the proceeds of crime using a comprehensive framework of criminal, civil, and administrative procedures.** Confiscation is a key goal of investigators and prosecutors. Spain takes provisional measures at the earliest possible stage, against all types of assets, to preserve them for confiscation. It should be noted that the value of assets such as properties and companies is often significantly depleted by the time of their confiscation for reasons such as the fall in real estate prices. Spain also repatriates and shares frozen/seized assets with other countries, something which is particularly easy to do in the EU context.

C.3 Terrorist organisations and financial flows are disrupted, but targeted financial sanctions are rarely used as a tool to prevent the flow of funds to terrorist groups located abroad

8. **Spain faces high risks from terrorism and terrorist financing, but has a good understanding of those risks.** The national counter-terrorism strategy is focused on disrupting and dismantling terrorist organisations, with a specific focus on the threats to Spain posed by ETA and Islamist terrorist groups. This strategy has worked, particularly against ETA whose financing and support networks have been effectively shut down. Spain has also had some success disrupting outbound financing destined for Islamist terrorist groups in the Maghreb. Spain is one of the most active countries in Europe for terrorism prosecutions, with the highest numbers of individuals in court proceedings for terrorism offences. Spain has obtained numerous convictions for terrorist financing activity, pursuant to its offences of membership in a terrorist organisation and collaboration with a terrorist group. A new stand-alone terrorist financing offence was added to Spain's Penal Code in 2010 which enables terrorist financing activity to be pursued separate from any other collaboration, involvement or membership in a terrorist organisation. No convictions have yet been obtained under this offence, but prosecutions are currently underway. The level of sanctions is acceptable on its face, but in practice, prison sentences being levied against terrorist financiers are low.

9. **However, Spain's implementation of targeted financial sanctions relating to terrorism suffers from serious technical and practical deficiencies.** The EU regulations through which TFS are applied in Spain use procedures that impose an unacceptable delay on the transposition of new designated entities into EU sanctions lists. Spain has recently implemented additional domestic legislation aimed at addressing these gaps, but the new mechanism is not yet tested. Another practical concern is Spain's failure to propose or make any designations pursuant to the UN resolutions, for example, in appropriate circumstances, when a prosecution in Spain is not possible. Similar underlying problems affect TFS regarding proliferation, but are partly mitigated by additional EU measures. Aside from these problems, implementation of TFS by the private sector and supervision for compliance with these requirements is generally satisfactory.

C.4 Implementation of preventive measures by banks and notaries is good, but varies across other sectors

10. **Spain's preventive measures are based on the EU Money Laundering Directive, but Spain has taken the additional step of updating its national laws and regulations to implement the revised FATF Standards, in advance of updated EU instruments.** Implementation of preventive measures is strongest in the banking sector, although some larger banks do not yet oversee their foreign operations to a group-wide standard. Notaries also demonstrate generally good implementation of preventive measures, although customer due diligence (CDD) measures could be improved further. This is noteworthy, given the important role of banks and notaries within the Spanish financial sector. Implementation in the other sectors varies considerably. The insurance and securities sectors have a basic but limited awareness of the risks, follow a rules-based approach, and rely on banks and notaries as their principal AML/CFT safeguard. The money and value transfer sector has voluntarily strengthened its preventive measures in response to past criminal exploitation. Designated non-financial businesses and professions (DNFBPs) generally apply the required measures adequately, but do not follow a risk-based approach. Lawyers are a particular concern, as noted below.

C.5 The system for supervising AML/CFT compliance is strong, but more resources are needed

11. **Spain has a strong system of AML/CFT supervision in the financial sectors.** As the main AML/CFT supervisor, SEPBLAC has a sophisticated approach to risk analysis, which drives both the risk assessment process and the supervisory approach. The Bank of Spain has improved its engagement with the AML/CFT supervisory regime. The prudential supervisors of the insurance and securities sectors take a primarily rules-based approach to their supervision. In some parts of the DNFBP sector, establishing AML/CFT supervision proportionate to the risks is a work in progress, particularly for lawyers, auditors and tax advisers, and the real estate sectors. Coordination between supervisors in Spain generally works well, and is particularly strong between SEPBLAC and the Bank of Spain. However, SEPBLAC will need substantial additional resources to extend AML/CFT supervision to all DNFBP sectors and ensure adequate oversight of high-risk sectors.

C.6 Spain's system for ensuring access to beneficial ownership information on legal persons is an example of good practice

12. **Spain's system is generally effective in ensuring access to basic and beneficial ownership information on legal persons.** Law enforcement authorities have shown that they can successfully investigate complex money laundering networks of legal persons, and can identify and prosecute the beneficial owners in such cases. The authorities have a relatively good understanding of the ML/TF risks and vulnerabilities of legal persons created in Spain. Beneficial ownership information on Spanish companies is easily and rapidly available to competent authorities via the notary profession's Single Computerised Index - an example of good practise which is noted below. Recent changes will further secure Spanish legal persons against criminal misuse, although some specific weaknesses still remain to be addressed.

C.7 International cooperation generally works well, but is challenging with offshore centres, and more resources are needed in the area of confiscation

13. **International cooperation is particularly important given that many of Spain's large ML cases have international links,** and often use complex, opaque structures of legal persons and arrangements, some of them in off-shore centres. LEAs and prosecutorial authorities view international cooperation as a critical matter of high importance, and have achieved success in high profile ML and TF cases. They are focused on both providing mutual legal assistance in a constructive and timely manner, and also proactively seeking international cooperation, as needed. International cooperation is generally effective, although cooperation is more difficult outside an EU context, and Spain experiences particular problems cooperating with some offshore financial centres. There are also capacity constraints affecting cooperation on confiscation issues.

D. Priority Actions

14. The prioritised recommended actions for Spain, based on these findings, are:

- Intensify supervision of lawyers, real estate agents, and TCSPs.
- Fill the gaps in supervision of MVTS operators, through proactive measures to identify and sanction unlicensed MVTS operators; and working with foreign counterparts to ensure adequate supervision of MVTS operating under passporting rules. Conduct outreach to: MVTS on the potential risks posed by their own customers, and how to mitigate them in line with the risk-based approach (RBA); and to banks on where the specific risks lie in Spain's MVTS sector, how to mitigate those risks in line with the RBA, and encouraging them to provide banking services to MVTS on that basis.
- Ensure adequate sanctions, beyond fines, are applied for money laundering offences; and amend the Penal Code to extend the maximum period of disbarment for professionals.

- Apply targeted financial sanctions when appropriate (e.g., when it is not possible to prosecute the offender).
- Increase SEPBLAC's resources for AML/CFT supervision.
- Work through the EU to promptly update the wire transfer regulations, and bring them into line with the revised FATF Recommendations.

Table 1. Effective Implementation of Immediate Outcomes

Effectiveness	
1. Risk, Policy and Coordination	**Substantial**

Overall, Spain has done a good job in identifying, assessing and understanding its ML/TF risks and has effective mechanisms in most areas to mitigate these risks. The competent authorities are engaged, well-led and coordinated by the Commission. Coordination is good at the policy level and among supervisors at the policy and operational levels. However, the number and overlapping responsibilities of LEAs makes de-confliction a necessity and coordination a challenge.

Given the relatively short period of time the risk-based approach has been formalised among obliged entities as a group, the banking sector has the best understanding of the risks and implements a sound risk-based approach. However, the understanding of risk and implementation of risk-based measures is variable in other sectors. There is also some variability in how well Spain uses the risk assessment to address priorities and policies. The system has resulted in some mitigation of ML and TF risks. However, there is inadequate cooperation and coordination between the competent authorities responsible for export control, and other competent authorities (such as SEPBLAC) who can add value in the area of detecting proliferation-related sanctions evasion.

2. International Cooperation	**Substantial**

Spain demonstrates many of the characteristics of an effective system in this area, and only moderate improvements are needed. It generally provides constructive and timely information or assistance when requested by other countries, including: extradition; the identification, freezing, seizing, confiscation and sharing of assets; and providing information (including evidence, financial intelligence, supervisory and available beneficial ownership information) related to ML, TF or associated predicate offences. Some problems have arisen in the context of Spain making requests to and sharing assets with non-EU countries with legal systems which are very different to Spain's. However, these issues do not appear to be overly serious or systemic.

Spain routinely seeks international cooperation to pursue criminals and their assets and, in general, this works well. Cooperation with tax havens presents challenges. However, Spain has had some success in resolving some of these issues (for example, involving international cooperation with Andorra, San Marino and Switzerland). The exception is mutual legal assistance and extradition requests to Gibraltar, with whom Spain deals indirectly through the UK authorities which causes delays.

All of the law enforcement and prosecutorial authorities met with during the on-site visit viewed international cooperation as a critical matter of high importance. They are focused on providing information, evidence and assistance in a constructive and timely manner, and also proactively seeking international cooperation, as needed. Spain relies heavily on cooperation with its foreign counterparts (particularly when pursuing cases involving the laundering of foreign predicate offences, or the activities of trans-national organised crime groups) and has achieved success in high profile ML and TF cases (for example, White Whale, Malaya, dismantling of ETA's economic and financing network).

Spain was also able to provide concrete examples of organised crime groups and financing networks of terrorist groups which have been dismantled through these efforts. This is an important factor in the Spanish context, given the nature of its ML/TF risks.

Effectiveness

It is expected that Spain's focus on international cooperation, and the additional measures that it is taking to increase the transparency of basic and beneficial ownership information (such as implementation of the Financial Ownership File) will be important steps toward making Spain an unattractive location for criminals (including terrorists) to operate in, maintain their illegal proceeds in, or use as a safe haven.

3. Supervision — Substantial

Spain has a strong system of AML/CFT supervision in the financial sectors and has demonstrated that its supervision and monitoring processes have prevented criminals from controlling financial institutions. In addition, the process has also resulted in identifying, remedying and sanctioning violations or failings of risk management processes.

The supervisory approach to parts of the DNFBP sector is a work in progress. Uncertainties about the numbers of lawyers caught by the AML/CFT Law and their lack of understanding of the risks, the level of knowledge in the auditing and tax advisor sectors, and the high risks in the real estate sector all suggest that the authorities need to focus their attention on the sub-sectors lacking supervisors, central prevention units, or where there is higher risk to improve the overall level of effective supervision in the DNFBP sector. However, SEPBLAC is aware of these challenges, and based on SEPBLAC's achievements to date in the financial sector, the assessment team is comfortable that SEPBLAC has the ability to move forward on these issues.

SEPBLAC's approach to risk analysis is elaborate. It drives both the risk assessment process and the supervisory approach. The Bank of Spain has improved its engagement with the AML/CFT supervisory regime. Nevertheless, there are some areas where moderate improvements are needed, as outlined below. Based on the comprehensive risk assessments done by SEPBLAC, its effective partnership with the Bank of Spain in the banking sector, its work in the MVTS sector, its directive stance in the remainder of the financial sectors, and its understanding of the risks in the DNFBP sector which will inform its approach in that sector going forward, Spain has achieved a substantial level of effectiveness for Immediate Outcome 3.

4. Preventive Measures — Moderate

The overall strength of the preventive measures applied by Spain's financial institutions is most notable in the banking sector. The banking sector has developed a good understanding of its ML/TF risks and applies the AML/CFT measures according to the risks. The sector has a low appetite for risk, and seems conscientious in its application of AML/CFT obligations. The controls applied by this key sector are relatively strong, although some improvements are needed.

Consolidation has left Spain's banking sector with fewer, but larger banks, mostly able to implement sophisticated, professional, and risk-based AML/CFT controls - although they have not fully completed the processes of integrating their systems following consolidation and bringing customer files into line with the current legal requirements. Additionally, most banks need to update their procedures to account for the new obligations such as domestic PEPs. There are variations in the effectiveness of group oversight at institutions with branches and operations outside Spain.

Effectiveness

Of the other financial institutions, the MVTS sector has strengthened its preventive measures in response to past criminal exploitation, in particular to mitigate the risk of bad agents by keeping a register of these agents. MVTS providers have been working with the authorities to enhance the AML/CFT measures, such as stronger CDD, lower limits on cash transactions and systematic reporting to the FIU of all transactions. The risk awareness of the MVTS sector is uneven: despite good awareness of the specific risks involved in MVTS operations, the MVTS sector believes its general risk level to be low relative to other sectors. The insurance and securities sectors have a basic but limited awareness of the risks, follow a rules-based approach to the implementation of preventive measures, and most rely on their associated banks and notaries as their principal AML/CFT safeguard.

Of the DNFBPs, the strengthening of the preventive measures is most notable with the notaries sector. The notaries sector has made significant progress as a result of the establishment of the OCP (a centralised prevention unit), which has raised awareness and capacity throughout the sector. Also, the development of elaborate risk indicators and additional STR reporting through the OCP has promoted a good understanding of its ML/TF risks and level of compliance. There is though room to further strengthen the scrutiny notaries give to beneficial ownership and the overall structure of ownership and control.

The effective implementation of preventive measures varies across the other DNFBPs. In general, the real estate sector, accountant and auditors and casinos seem to adequately apply the required measures, but do not have a risk-based or proactive approach. Lawyers seem to be an outlier, with limited awareness of their ML/TF risks and obligations, and little evidence that effective controls are in place. Similarly for TCSPs, as the authorities have not paid any attention to the supervision of TCSPs, their level of understanding of ML/TF risk and AML/CFT compliance will most likely be limited.

The wide variety of understanding of the risks, and the resulting wide variations in how the risks are managed, suggests the obliged sectors exhibit, overall, an uneven range of effectiveness in the implementation of preventative measures. The understanding of the risks and the concomitant controls needed seem strongest in the banking sector, although some larger banks do not yet oversee their foreign operations to a group-wide standard. Notaries have a good understanding of the risks, and have taken adequate mitigating measures, although some CDD measures could be improved further. If assessed separately, both these sectors would be rated higher than all the obliged sectors as a whole. Of all the obliged sectors, the legal sector is at a low level of effectiveness.

For all obliged sectors, there are some systemic issues relating to understanding and mitigating the risks relating to legal arrangements, trustees and lawyers. Measures on high risk countries and domestic PEPs cannot yet be evaluated. Wire transfers are not yet subject to rules compliant with FATF Standards. It therefore seems that overall there is still some way to go before the obliged sectors as a whole exhibit a substantial level of effectiveness.

The assessment team considers the banking and notaries sectors material for the level of compliance of the whole Spanish financial and DNFBPs sectors. In the case of banks this is largely because of the structure of the financial sector where banks, insurance and securities companies are part of a group; and in the case of notaries, it is because they are legally required to be involved

Effectiveness

in a wide range of acts and transactions, including real estate transactions and the formation of legal persons. Nevertheless, also in these two sectors moderate improvements are still necessary.

In all other financial and DNFBP sectors, major improvements with regards to understanding the ML/TF risk and the RBA are required, and with the lawyers and TCSPs even fundamental improvements are necessary.

5. Legal Persons and Arrangements — Substantial

In terms of ensuring access to basic and beneficial ownership information on legal persons, Spain's system is generally effective. Law enforcement authorities have shown that they can successfully investigate money laundering cases which make extensive use of legal persons, and can identify and prosecute the beneficial owners in such cases. Beneficial ownership information on Spanish companies is easily and rapidly available to competent authorities via the notary profession's Single Computerised Index. Spain's measures for managing and enabling access to information are an example of good practice for other countries.

Some weaknesses remain in the implementation of preventive measures against the misuse of legal persons and arrangements, but, overall, appear relatively minor compared to the positive features of the Spanish system. They include: the limited information on beneficial owners of foreign legal arrangements (which is not a frequent occurrence); the limited transparency of transfer of shares on SAs that are not listed in the stock exchange (which is a limited number); the ability of not-yet-registered companies to make financial transactions for up to two months (a problem which is mitigated by the availability of information in the notaries' Single Computerised Index as well as in financial institutions and DNFBPs customer files); and limitations of the extent to which notaries verify the identity of the beneficial owner and the chain of ownership (which is also mitigated by the Single Computerised Index and by the fact that, in most instances, at least one risk indicator is met and triggers the obligation to verify the identity of the beneficial owner). In addition, guidance on conducting CDD of legal arrangements is non-existent, CDD measures in respect of trusts and trustees only took effect during the on-site, and it is too early to assess how the new obligations are implemented in practice.

Spain's system will be strengthened by recent changes to Spain's laws and regulations (in particular corporate criminal liability, and by additional practical measures under development (in particular the financial ownership file and reporting entities' access to the beneficial ownership database). These will, over time, make it significantly more difficult for criminals to misuse Spanish legal persons.

6. Financial Intelligence — High

Spain's use of financial intelligence and other information for ML and TF investigations demonstrates the characteristics of an effective system, and only minor improvements are needed. The competent authorities collect and use a wide variety of financial intelligence and other relevant information (much of which can be accessed directly and in real time by both the FIU and the LEAs) to investigate ML, TF and associated predicate offences. Particularly rich sources of information are to be found in the notaries' Single Computerised Index (described in Box 6), and in the Tax Agency database. This information is generally reliable, accurate, and up-to-date. The competent authorities have the resources and expertise to use this information

Effectiveness

effectively to conduct analysis and financial investigations, identify and trace assets, and develop operational and strategic analysis.

The assessment team weighed the following factors heavily: the numerous case examples and statistics demonstrating how the vast majority of SEPBLAC's analysis is actionable (either initiate investigations or support existing ones); the numerous case examples demonstrating the ability of the LEAs to develop evidence and trace criminal proceeds, based on their own investigations or by using the financial intelligence reports from SEPBLAC; the ability of SEPBLAC to access tax information without prior judicial authorisation; the ability of the LEAs to access, in real time, the notaries' Single Computerised Index which contains verified legal and beneficial ownership information; and SEPBLAC's ability to leverage, in its role as the FIU, information obtained through exercising its supervisory functions (and vice-versa).

7. ML Investigation and Prosecution — Substantial

Spain demonstrates many of the characteristics of an effective system, particularly in relation to its ability and success in investigating and prosecuting ML at all levels, especially cases involving major proceeds-generating offences. The authorities regularly pursue ML as a standalone offence or in conjunction with the predicate offence, third party ML (including by lawyers who are professional money launderers), self-laundering, and the laundering of both domestic and foreign predicates. It is standard procedure to undertake a parallel financial investigation, including in cases where the associated predicate offences occurred outside of Spain. The authorities provided many cases which demonstrate their ability to work large and complex ML cases successfully through to conviction, and the front end of the system (investigations and prosecutions) demonstrates a high level of effectiveness. These factors were weighted very heavily, particularly since the types of cases being pursued through to conviction are in line with the ML risks in Spain and its national priorities.

The only weakness of the system comes at the conclusion of the criminal justice process (sanctions). In particular, there is concern about the level of sanctions (terms of imprisonment and periods of disbarment) actually being imposed in practice in serious ML cases, and their dissuasiveness and proportionality. The average term of imprisonment in 2012 for ML was 2 years. Imprisonment over 5 years is rarely received (4 cases in 2012). Criminal fines appear to be the most utilised type of sanction and are often in the millions of euros. On their face, the fines appear to be sufficiently dissuasive; however, it is not known to what extent they are recovered in practice. Although the dissuasiveness and proportionality of sanctions are always important factors, Spain was also able to provide concrete statistics and information demonstrating that its systems for investigating and prosecuting ML are resulting in the disruption and dismantling of organised criminal groups in Spain. These sorts of results would be expected of a well-performing AML/CFT system and, therefore, mitigate the weight given to the factor.

8. Confiscation — Substantial

Spain's system of provisional measures and confiscation demonstrates many characteristics of an effective system, and only minor improvements are needed. Spain's focus on provisional measures and confiscation reflects its national AML/CFT policies, and particularly its priorities on tackling organised crime, including ML by foreign criminals through the real estate sector, the laundering of proceeds through tax crimes, and bulk cash smuggling. Statistics show that

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organised criminal groups are being dismantled and deprived of their proceeds. This is all in line with the overall ML/TF risks facing Spain, and was an important factor in this assessment.

International cooperation is being both requested and provided by Spain in connection with tracing assets, and taking provisional measures and confiscation. This is particularly important in the Spanish context, given the risk of foreign criminals resident in Spain, and having assets both in the country and abroad. Spain is pursuing high-value assets such as properties and companies which is also a key factor, given that many of the large, complex ML cases involve criminals investing in the Spanish real estate market through complex networks of companies. Other important elements are that provisional measures are pursued in a timely manner.

There is a need to enhance mechanisms for asset sharing and repatriation with other countries (something that works relatively well with other EU countries, but is more challenging with non-EU countries). This issue is mitigated and given less weight in the Spanish context because it actively and regularly pursues ML investigations and prosecutions involving the proceeds of foreign predicate offences (rather than deferring to the more passive approach of responding to international cooperation requests from other countries).

The assessment team gave less weight in this area to statistics of the value of assets confiscated and frozen/seized. More emphasis was placed on statistics of the number and type of assets involved, and qualitative information such as case examples. The reason is that valuations of assets frozen/seized, rarely corresponds with the final value realised by the authorities because the assets depreciate while under management by the authorities. This is a particularly relevant issue in Spain because many of the assets confiscated are properties (Spain suffered a collapse of its property market), and companies and businesses (which are difficult to manage in such a way that there full value is retained, particularly given the timetable to bring complex cases to final conclusion). This is not inconsistent with the main objective of Immediate Outcome 8 which is to deprive criminals of the proceeds of their crimes—a result which is achieved, provided that provisional measures are taken in a timely manner (preventing the criminal from hiding or dissipating the assets) and regardless of whether the government ultimately realises their full value at the time of confiscation (although this is obviously desirable). This is also in line with paragraph 52 and 53 of the Methodology which cautions that the "assessment of effectiveness is not a statistical exercise", and such data should be interpreted "critically, in the context of the country's circumstances".

9. TF Investigation and Prosecution — Substantial

Spain demonstrates many of the characteristics of an effective system, and only moderate improvements are needed. Factors that weighed heavily in this conclusion were Spain's proven success in investigating and prosecuting TF-related activity (both by domestic terrorist groups such as ETA, and others such as Islamist terrorists), giving specific attention to attacking economic, financial and terrorist support networks. This is entirely consistent with Spain's national counter-terrorist strategy. The authorities provided many case examples that demonstrate their significant experience combating terrorism and its financing, based both domestically and overseas, and the support networks associated with terrorist groups. This was supported by statistics, including those demonstrating that Spain is one of the leading countries in Europe in this area, with the highest numbers of individuals in court proceedings for terrorism and TF offences. The operation which successfully dismantled the economic arm of ETA was particularly persuasive, and demonstrated strong use of financial investigations in counter-terrorism operations, and good coordination between the relevant authorities. Another important factor were the cases which

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showed that Spain is very proactive both in providing and requesting international cooperation on TF cases, and has undertaken successful investigations with their foreign counterparts on such cases. Another important feature, particularly given the high TF risks faced by Spain, is that other criminal justice measures to disrupt TF activity are actively pursued where it is not practicable to secure a TF conviction.

The main reason for lowering the rating is that the terms of imprisonment being applied in practice appear to be low. The term of imprisonment applied in recent cases is 3 to 10 years. Sanctions are always an important issue. However, there are some mitigating factors. For example, the types of cases currently before the courts may be of the type that would ordinarily attract sentences in the lower range, in line with ordinary judicial policy. Another mitigating factor is that Spain has been able to impose sanctions (including fines) on terrorist financiers some of which, on their face, would appear to be very dissuasive. Also of concern is that there have been cases where inmates were able to receive funding and continue to operate while in prison. The Spanish authorities have assured the assessment team that strict controls are in place to identify this activity, and leverage it for intelligence purposes when it takes place.

Another reason for lowering the rating is that the effectiveness of the new stand-alone TF offence (article 576bis) is not yet established. This factor was not weighted very heavily because its impact is mitigated by the following factors. First, Spain was able to provide numerous examples of convictions for TF activity under article 576 (collaborating with a terrorist organisation or group), or as "membership of a terrorist organisation"—the offences which were used before article 576bis came into force. Second, on its face, the offence is clear and would appear easy to use. Given the experience and focus of the authorities in this area, there is no apparent reason why future implementation of article 576bis will not be effective. Third, Spain has already begun using the offence, and statistics were provided showing that a number of cases are currently in process.

10. TF Preventive measures & financial sanctions — Moderate

Spain demonstrates many of the characteristics of an effective system in this area. However, one major improvement is needed—effective implementation of targeted financial sanctions. The Methodology deems a system to have a moderate level of effectiveness where major improvements are needed. However, this is somewhat at odds with the Spanish context, given that the system is meeting the fundamental objective of Immediate Outcome 10 which is that TF flows have been reduced which would prevent terrorist attacks.

The following factors are very important and were weighed heavily in coming to this conclusion. Most significant is that Spain has successfully dismantled the economic and financial support network of ETA. This has reduced TF flows and addressed one of the key terrorism risks facing the country. Spain has also had success in identifying and reducing TF flows to other types of terrorist groups, as is demonstrated by case examples.

Another positive factor is that Spain has a solid framework of preventive measures which applies to those NPOs which account for a significant portion of the financial resources under control of the sector, and a substantial share of the sector's international activities. Because it is new, the effectiveness of the supervisory framework for NPOs could not be established. However, the impact of this is somewhat mitigated, given that most of these measures were already being implemented in practice before the new Royal Decree came into force, Spain's close work with the high risk parts of the sector on broader terrorism issues, and its demonstrated ability to

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detect, investigate and prosecute TF activity in the NPO sector. Although the fragmented nature of the NPO registry system creates some challenges for the investigation of NPOs of concern, the authorities have found ways around that problem.

The Spanish authorities consider the use of intelligence, criminal investigation and prosecution to be their strongest tools in preventing terrorist from raising, moving and using funds, and from abusing the NPO sector. This strategy has worked, particularly against ETA whose financing structure has been effectively shut down. Spain has also had some success in shutting down outbound financing destined for Islamist terrorist groups in the Maghreb.

The major improvement needed is Spain's implementation of targeted financial sanctions (TFS). Spain's use of TFS as a tool to combat TF is limited. Spain has never proposed a designation to the UN under resolution 1267 or made its own designations pursuant to resolution 1373. Spanish authorities indicate that they use criminal justice measures instead of designations. Admittedly, TFS may not have been useful in the context of tackling a home-grown separatist terrorist group such as ETA, particularly given Spain's strong international cooperation on this issue with other nearby affected countries (such as France). However, TFS would be a useful approach to take against persons who could not be prosecuted in Spain and were expelled from the country, or against persons serving time in prison who might still be directing terrorist activities. Indeed, TFS are an important global issue, with weaknesses in one country negatively impacting global efforts to prevent the flow of funds to terrorist groups. This is why the obligation to implement TFS is an international obligation at the UN level. In the context of this particular evaluation, the challenge for determining how much this shortcoming should impact the rating is that Spain has met the objective of reducing TF flows through other means.

11. PF Financial sanctions — Moderate

Spain demonstrates some of the characteristics of an effective system in this area. Persons and entities designated under the relevant UN resolutions have been identified through implementation of TFS, and their assets have been frozen. FIs and DNFBPs are monitored for compliance with their obligation to implement TFS, and generally appear to be complying with these obligations. However, there is generally a low level of knowledge of the risks of proliferation-related sanctions evasion, and insufficient guidance and awareness directed to the private sector on those risks, particularly where transactions might involve DPRK, or on the risks of evasion.

Proliferation-related sanctions evasion activity has also been identified by SEPBLAC through its own financial analysis, and these cases have been passed on to the relevant authorities for further investigation and prosecution. However, there is inadequate cooperation and coordination between the relevant authorities to prevent sanctions from being evaded including, for example, export control authorities undertaking licensing activities, and other competent authorities such as SEPBLAC who can add value in this area. This seriously diminishes Spain's ability to identify and prevent proliferation-related sanctions evasion.

Table 2: Compliance with FATF Recommendations

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
1.	**Assessing risks & applying a risk-based approach**	C	
2.	**National cooperation and coordination**	LC	• There is inadequate cooperation and coordination between the competent authorities responsible for export control, and other competent authorities (such as SEPBLAC) who can add value to the detection and investigation of proliferation-related sanctions violations.
3.	**Money laundering offence**	LC	• Sanctions for professional gatekeepers (terms of disbarment) are not sufficiently dissuasive. • Certain State-owned enterprises are exempt from criminal liability.
4.	**Confiscation and provisional measures**	C	
5.	**Terrorist financing offence**	LC	• The TF offence does not cover the financing of an individual terrorist (who is not part of a terrorist organisation/group) for purposes unrelated to the commission of a terrorist act. • The TF offence in article 576bis only covers funds (not assets of every kind). • Certain State-owned enterprises are exempt from criminal liability.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
6.	**Targeted financial sanctions related to terrorism & TF**	PC	• For resolutions 1267/1989 and 1988, implementation of targeted financial sanctions does not occur "without delay", which also raises the question of whether the freezing action, in practice, takes place without prior notice to the designated person/entity. • For resolution 1373: a. there are no clear mechanisms at the EU level for requesting non-EU countries to give effect to the EU list and, no clear channels or procedures at the domestic level for requesting other countries to give effect to actions initiated under the Watchdog Commission freezing mechanism. b. listed EU internals are not subject to the freezing measures of EU Regulation 2580/2001, and domestic measures do not adequately fill this gap. c. the freezing obligation does not cover a sufficiently broad range of assets under the EU framework, and domestic legislation does not fill these gaps d. the prohibitions are not sufficiently broad.
7.	**Targeted financial sanctions related to proliferation**	PC	• Delays in transposing the UN obligations into the EU legal framework mean that targeted financial sanctions are not implemented without delay, which also raises the question of whether the freezing action, in practice, takes place without prior notice to the designated person/entity.
8.	**Non-profit organisations**	LC	• Not all associations are subject to clear policies to promote transparency, integrity, and public confidence in their administration and management. • Spain's extremely fragmented pattern of information held by different registries and authorities may make difficult the effective gathering of general information on the sector and might lead to uneven monitoring.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
9.	**Financial institution secrecy laws**	C	
10.	**Customer due diligence**	LC	• There is no requirement to consider an STR in all cases where CDD cannot be completed, although the general STR and special review obligations do partially address this requirement.
11.	**Record keeping**	C	
12.	**Politically exposed persons**	C	
13.	**Correspondent banking**	C	
14.	**Money or value transfer services**	C	
15.	**New technologies**	C	
16.	**Wire transfers**	PC	• Obligations on ordering FIs do not include requirements relating to information on the beneficiary of a wire transfer. • Obligations on beneficiary FIs do not include requirements relating to information on the beneficiary of a wire transfer. • Intermediary FIs are not required to: a. ensure that all beneficiary information received and accompanying a wire transfer, is kept with the transfer, b. take reasonable measures to identify cross-border wire transfers that lack originator information or required beneficiary information, or c. have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take the appropriate action.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
17.	**Reliance on third parties**	LC	• The level of country risk is not taken into account when considering whether reliance is permitted on a third party in another EU country.
18.	**Internal controls and foreign branches and subsidiaries**	C	
19.	**Higher-risk countries**	C	
20.	**Reporting of suspicious transaction**	C	
21.	**Tipping-off and confidentiality**	C	
22.	**DNFBPs: Customer due diligence**	LC	• The deficiency identified in relation to R.10, relating to failure to complete CDD, also applies in the case of DNFBPs. • The level of country risk is not taken into account when considering whether reliance is permitted on a third party in another EU country—a deficiency identified in relation to R.17 that is only relevant to some types of DNFBP.
23.	**DNFBPs: Other measures**	C	

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
24.	**Transparency and beneficial ownership of legal persons**	LC	• There are no specific mechanisms to ensure the accuracy of declarations by customers, or of the records held by companies on beneficial ownership, such as inspections, or penalties for providing false or incomplete information. • For public companies (SA) which are not publicly listed on a stock exchange, there are insufficient transparency requirements on transfers of shares. • There is no specific liability or sanction in cases where a company fails to maintain accurate information on its beneficial ownership, or where it makes a false or incomplete declaration to a financial institution or DNFBPs, and sanctions for filing false information only exist with respect to information given to tax authorities, notaries, or the CNMV. • Only SEPBLAC assesses the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership information, but the other authorities do not do this in a systematic way, and results are not collated.
25.	**Transparency and beneficial ownership of legal arrangements**	LC	• Specific sanctions for failing to comply with their obligations apply to professional trustees and fiduciarios, but do not apply to non-professional trustees.
26.	**Regulation and supervision of financial institutions**	LC	• For core principles institutions, there are deficiencies in how some core principles relevant to AML/CFT are being implemented. • The prudential supervisors in the insurance and securities sectors do not have a sufficiently well-developed RBA to supervision.
27.	**Powers of supervisors**	C	
28.	**Regulation and supervision of DNFBPs**	LC	• The powers to prevent criminals or their associates from being accredited, or from owning, controlling, or managing a DNFBP are limited.
29.	**Financial intelligence units**	C	

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
30.	**Responsibilities of law enforcement and investigative authorities**	C	
31.	**Powers of law enforcement and investigative authorities**	C	
32.	**Cash couriers**	C	
33.	**Statistics**	C	
34.	**Guidance and feedback**	C	
35.	**Sanctions**	C	
36.	**International instruments**	C	
37.	**Mutual legal assistance**	C	
38.	**Mutual legal assistance: freezing and confiscation**	C	
39.	**Extradition**	LC	• Because Spain has not criminalised the financing of an individual terrorist (who is not part of a terrorist organisation/group) for purposes unrelated to the commission of a terrorist act, extradition to non-EU countries would not be possible in such cases because the dual criminality requirement cannot be met.
40.	**Other forms of international cooperation**	C	

Mutual Evaluation of Report of Spain

Preface

This report summarises the AML/CFT measures in place in Spain as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Spain's AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Spain, and information obtained by the evaluation team during its on-site visit to Spain from 21 April to 7 May 2014.

The evaluation was conducted by an assessment team consisting of: Maud Bökkerink, Dutch Central Bank (DNB), Kingdom of the Netherlands (financial expert); Nicolas Choules-Burbidge, Office of the Superintendent of Financial Institutions, Canada (financial expert); Paul DerGarabedian, Office of Terrorist Financing and Financial Crimes, Department of the Treasury, United States (financial intelligence unit (FIU)/ law enforcement expert); Esteban Fullin, GAFISUD Secretariat (legal expert); Sylvie Jaubert, TRACFIN, France (FIU/law enforcement expert); Davide Quattrocchi, Guardia di Finanza, Italy (law enforcement/legal expert); Nadine Schwarz, Legal Department, International Monetary Fund (IMF) (legal expert); and Rick McDonell, Tom Neylan and Valerie Schilling of the FATF Secretariat. The report was reviewed by: António Folgado, Ministry of Justice (Portugal); John Ringguth (MONEYVAL Secretariat); and Golo Trauzettel, Federal Financial Supervisory Authority (BaFin) (Germany).

Spain previously underwent a FATF mutual evaluation in 2006, conducted according to the 2004 FATF Methodology. The 2006 evaluation and 2010 follow-up report have been published and are available at **www.fatf-gafi.org.** For the sake of brevity, on those topics where there has not been any material change in the situation of Spain or in the requirements of the FATF Recommendations, this evaluation does not repeat the analysis conducted in the previous evaluation, but includes a cross-reference to the detailed analysis in the previous report.

Spain's 2006 mutual evaluation concluded that the country was compliant (C) with 10 Recommendations, largely compliant (LC) with 22 Recommendations, partially compliant (PC) with 12 Recommendations and non-compliant (NC) with 3 Recommendations. Two Recommendations were considered to be not applicable (NA). Spain was rated C or LC with 13 of the 16 Core and Key Recommendations. Spain entered the regular follow-up process which it exited in October 2010, on the basis that it had achieved a sufficient level of compliance with all Core and Key Recommendations, such that all were considered equivalent to at least an LC.

1. ML/TF RISKS AND CONTEXT

1.1. The Kingdom of Spain covers an area of 505 957 square kilometres, including the Balearic Islands, the Canary Islands, two cities in the North of Africa (Ceuta and Melilla) and three small Spanish possessions off the coast of Morocco. Madrid is the capital city. Spain has a population of approximately 46.5 million, and in 2012 its gross domestic product (GDP) was USD 1.3 trillion.

1.2. Spain is a parliamentary monarchy. The Head of State is the King and the government is comprised of the President of the Government and the Council of Ministers designated by the President. Legislative authority lies with the National Assembly *(Las Cortes Generales)* that consists of the Senate *(Senado)* and the Congress of Deputies *(Congreso de los Diputados)*. Spain's legal system is based on civil law with regional applications. Primary legislation is in the form of laws. Secondary legislation is in the form of regulations (including Royal Decrees).

1.3. The structuring of the Spanish State into autonomous communities *(Comunidades Autónomas)* is one of the most important aspects of the Constitution. There are 17 autonomous communities and two autonomous cities. Although the autonomous communities have wide legislative and executive autonomy, anti-money laundering/counter-terrorist financing (AML/CFT) regulatory powers reside at a national level.

1.4. Spain has been a member of the European Union (EU) since 1986, and the EU has a significant influence on Spain's AML/CFT system. EU AML/CFT Regulations directly apply in Spain, along with Spanish measures intended to transpose the *3rd EU Money Laundering Directive* (which implemented the 2003 FATF Standards) into Spanish domestic law. It should be noted that at the time of writing, the *European Commission 4th Anti-Money Laundering Directive* (which will implement the 2012 revision of the FATF Standards) remains at a draft stage, and has not been adopted. Spain's laws therefore comprise a combination of EU measures and new and updated national legislation to implement the 2012 FATF Standards in advance of the *EC 4th Money Laundering Directive*.

1.1 ML/TF Risks[1]

1.5. **Spain faces a range of money laundering (ML) and terrorist financing (TF) risks,** and the following are particularly important in the Spanish context.

1.6. **Organised criminal groups**, comprised of both Spanish nationals and/or foreign criminals, are active in Spain. Criminals from several countries live in Spain, often taking advantage of the sometimes large resident communities of fellow citizens,[2] and may continue their business from Spain, launder the proceeds of crime in Spain, or even invest criminal proceeds in Spain after they have been laundered elsewhere.

1.7. **Real estate transactions** have been involved in recent significant criminal cases and appear to be a major means of ML in Spain. ML through real estate is internationally a subject of concern in its own right. Many cases have involved foreign criminals resident in Spain laundering the proceeds of foreign crime through the Spanish real estate sector. The real estate and construction sectors in Spain underwent a boom in the years before 2009, followed by a significant contraction (during which illicit activity generally becomes more visible). Several high-profile ML cases in recent years (for example, *White Whale*, and *Operation Malaya*) have involved major real estate transactions, including the use of cash purchases, and complex networks of companies (and, on occasion trusts) often constituted abroad in nearby off-shore centres, such as Andorra

1 Some of the information in this section draws on and was corroborated by risk assessments conducted by Spain.

2 More than 10% of the population of Spain are foreign nationals, with the largest communities originating from Romania, Morocco, the United Kingdom (UK), Ecuador and Colombia. Some (albeit not all) of the organised crime groups in Spain are associated or have connections with these countries.

or Gibraltar. There have also been some corruption cases linked to this sector, as described in more detail in paragraph 1.19.

1.8. **Spain is a trans-shipment point for cross-border illicit flows of drugs** entering Europe from North Africa and South America. Criminals also use Spain as a location to launder the proceeds of the crimes committed in Spain prior to transferring them back to their country of origin. The market for illicit drugs remains dynamic within Europe's criminal markets, with approximately one third of European organised crime groups involved in its distribution and production[3]. While drug offences and official seizures in Spain have declined slightly in the past several years, Spain remains a logistical hotspot for African and Latin American organised crime groups[4], with linguistic and cultural ties to the region. While Colombian cocaine dealers represent the traditional threat, Romanian, Nigerian, Mexican and North African groups have recently entered the drug trade. These groups often import synthetic drugs and hashish from Asia and Northern Africa respectively[5].

1.9. Spain's geographic position, including the North African enclaves Melilla and Ceuta, expose it to the risk of ML and TF through **illicit movement of cash** across Spain's borders. The volume of cash movement associated to cross-border trading and to the informal economy across Spain's borders with Morocco in Ceuta and Melilla poses a high risk to camouflage cash flows associated with drug trafficking, tax and customs fraud, counterfeiting and human trafficking.

1.10. The **money or value transfer service (MVTS) sector** has proven vulnerable to exploitation by organised criminal groups seeking to move their illicit gains out of the country.

1.11. Spain's **general economic situation** also affects the ML risks. The recent recession has put pressure on Spain's fiscal position (leading to increased taxation), and has left persistent high unemployment (relative to other EU members). Spain's black economy[6] represents a significant share of economic activity, comparable with other countries in the region. These factors indicate an elevated risk of tax crimes. Tax crimes, including VAT fraud and evasion of customs duties, are a problem, and there have been a number of large cases in this area which highlight the significant scale of tax crimes in Spain.

1.12. **Spain faces significant TF risks**, and has been the victim of terrorist attacks, from two main groups—the home-grown separatist terrorist groups such as *Euskadi ta Askatasuna* (ETA), and Islamist terrorist groups (many of which have links to the al-Qaeda network).

1.13. ETA has been characterised by a sophisticated structure, including a branch of operations responsible for financing its activities. The organisation also has strong ties with the Basque region of France, which adds a trans-national element. ETA's methods of TF have ranged from fundraising through raffles, lotteries, and mobile taverns *(txoznas)*, through to extortion (a so-called revolutionary tax), through to operating a complex network of revenue-generating companies. Some abuse of non-profit organisations (NPOs) has also been observed. Through successful investigations and prosecutions, Spain has effectively dismantled the economic wing of ETA and a cease-fire has held for some years. However, ETA has not entirely disappeared and remains a very real risk in Spain.

1.14. Spain also faces high terrorism and TF risk from Islamist terrorist groups, many of which have links to the al-Qaeda network. Unlike ETA, these groups tend to operate through small cells that are primarily self-funding. Generally, they raise their funds in Spain to fund terrorist activities there, and/or transfer those funds

3 Library of the European Parliament (2013).

4 Global Financial Integrity (2011); UNODC (2013).

5 Europol (2013).

6 There is no official estimate of the size of Spain's black economy. Academic and horizontal studies estimate the size of Spain's black or informal economy as 18.8% (Hazans, M., 2011), and 19.4% (Schneider, F., 2013).

back to neighbouring countries in North Africa and the Maghreb, often using informal MVTS *(hawaladar)* to do so.

1.15. Spain is a major advanced economy with a well-developed financial sector, and is exposed to the same general ML/TF risks that affect other advanced economies. The risks affecting the financial sector are also influenced by the financial crisis of 2009-10, which saw significant consolidation in the banking sector in particular, as discussed below.

1.16. Spain has no official estimate of the overall value of criminal proceeds or specific types of crime. However, Spanish officials estimate that the value of assets held by *high-intensity criminal organisations and standard criminal organisations* is EUR 427 million and EUR 1 billion respectively.

1.2 Materiality

1.17. **Spain's financial system is dominated by banks**, with the insurance and securities sectors being relatively small by comparison. Spanish financial institutions are well-connected with the international financial system, and face the usual risks associated with this (for example, those associated with correspondent banking).[7]

1.18. **The size of the informal economy in Spain** was about 18 to 22% of GDP in 2012, which is comparable with other countries in the region[8]. This is also a significant increase from before the financial crises. Prior to the contraction of the formal economy in 2008, the estimated size of Spain's informal economy was 11.2%.[9] The authorities consider the use of cash as a risk of money laundering, notably related to tax avoidance. Spain has taken some measures to reduce the use of cash in the Spanish economy, including a prohibition on the use of cash for transactions over EUR 2 500 (introduced in *Law 7/2012*). The use of a large sum in cash is treated as a significant risk indicator by financial institutions and designated non-financial businesses and professions (DNFBPs), and cash transportation companies are obliged entities under *Law 10/2010* (the *AML/CFT Law*).

1.19. As a result of the 2008 international financial crisis and its impact on revenues and profitability in the banking sector, failing **Spanish credit institutions and savings banks were consolidated and reduced in number through mergers or take-overs by private banks**. Overall, credit institutions were reduced by 14, and savings banks were reduced by 27 from 2009 to 2010, with bank management functions becoming more concentrated in major cities. This consolidation process raises the issues usually associated with mergers, which could improve overall implementation of AML/CFT measures (as smaller banks with less capacity and/or weaker internal controls are brought within larger banks with stronger implementation of preventive measures), or could weaken their implementation (due to: disruption while merged banks and their systems are integrated; pressure on costs/profitability leading to cutbacks in overhead including AML/CFT units and control; and lack of understanding of the ML/FT risks of the banks which have been taken over).

1.20. As real estate assets continued to decline in value following the crisis, the Spanish government introduced *Law 9/2012*, establishing the Company for the Management of Assets proceeding from Restructuring of the Banking System (SAREB) that enables the segregation of toxic or problematic assets of credit institutions that require public support, so as to remove them from the balance sheet of these institutions. SAREB is responsible for approximately EUR 50 billion worth of real estate assets. This real estate portfolio involves some inherent ML/TF risks which will need to be managed as property is sold. As noted below SAREB is subject to AML/CFT obligations.

7 Spain is one of the 29 jurisdictions whose financial sectors are considered by the IMF to be systematically important (IMF, 2014).

8 European Commission (n.d.). Estimates by other bodies (see the examples in footnote 5) are relatively similar.

9 OECD (2012a).

1.21. In 2009, **Spanish authorities identified large-scale money laundering through money and value transfer services** by persons linked to criminal organisations, including complicit agents of MVTS. Over EUR 600 million was laundered through this route. The investigation led to a successful prosecution, and also triggered significant changes to the supervision of the sector. In light of the scale of the criminal activity identified, the MVTS sector must be considered a very significant risk, and this report considers the response by competent authorities, the vulnerability of the sector, and the adequacy of the new measures put in place since 2009.

1.3 Structural Elements

1.22. **In general, the key structural foundations of an effective AML/CFT system all appear to be present in Spain.** Since the adoption of the Spanish Constitution of October 1978, which established democratic government in Spain, there has been a high degree of political stability, the rule of law, and stable and accountable institutions. There also seems to be a high-level commitment to address ML/TF issues, evidenced by the creation of the Commission for the Prevention of Money Laundering and Monetary Offences (the Commission), chaired by the Secretary of State for the Economy (a Cabinet post). Spain has a capable and independent judicial system, headed by the Supreme Court, which is the country's highest tribunal (except for constitutional questions). The supreme governing and administrative body of the judicial system is the General Council of the Judiciary.

1.4 Other Contextual Factors

1.23. **Spain has a mature and sophisticated AML/CFT regime**, with a correspondingly well-developed legal and institutional framework.

1.24. **Combating corruption is a key priority.** Judicial Police Units are responsible for investigating offences related to corruption and related ML, and some specialised units have been established for this purpose: the Money Laundering and Anti-Corruption Central Investigation Unit *(Brigada Central de Investigación de Blanqueo de Capitales y Anticorrupción),* and the Group of Crimes against the Administration within the Central Operations Unit of the Civil Guard *(Unidad Central Operativa de la Guardia Civil)*. Spain also has a Special Prosecutor against Corruption to deal with this specific type of offence. There have been some corruption cases, often involving town planning and real estate developments, which have resulted in convictions of politicians at the local/municipal level. There is no significant evidence of corruption among judges and prosecutors (other than in a few isolated cases) and, in practice, Spanish prosecutors have shown their willingness and ability to pursue criminal investigations of public officials and notable figures for corruption, up to the highest levels[10]. However, few results are being achieved on foreign bribery side. Almost 13 years after the foreign bribery offence came into force, not a single successful prosecution has been brought[11].

1.5 Scoping of Issues of Increased Focus

1.25. In deciding on which higher risk issues to prioritise, the assessment team reviewed Spain's national and sector assessments of risk and supporting documentation and external sector studies on the risk situation, and consulted Spanish authorities. The assessment team identified, as a starting point for the mutual evaluation, important risks, significant features of Spain's AML/CFT environment, and issues that merited deeper attention given their central role in Spain's AML/CFT system. The issues listed below are the specific higher risk issues that were examined in greater detail in the mutual evaluation report (MER). The

10 GRECO (2013), p.5.

11 OECD (2012b), p.5 and 8.

assessment also considered general ML and TF risks which are not limited to a specific sector, such as ML relating to drug trafficking and domestic crimes.

1.26. Two high-priority risks were given in-depth consideration:

a. **Foreign criminals resident in Spain.** The MER considers two aspects of this issue in more detail. The first issue is ML in Spain by or on behalf of "active" foreign criminals and organised crime groups. The MER reviews major cases in this area; the application of preventive measures; and the investigation of such activity by Spanish authorities. The second issue is the integration of foreign criminal proceeds in Spain, after they have been laundered elsewhere, and activity to trace and confiscate the assets of foreign criminals in Spain. The MER considers this issue in relation to customer due diligence (CDD), in particular regarding the source of funds (where necessary) for higher risk customers, and identification of beneficial ownership.

b. **Real Estate.** Real estate transactions are a major means of ML in Spain, particularly for large-scale laundering. Real estate is also an attractive investment for the proceeds of crime (both foreign and domestic) after they have been laundered, and is therefore linked with the issue of foreign criminals, above. The MER looks in more detail at the application of CDD and other preventive measures in real estate transactions (in particular regarding politically exposed persons (PEPs), due diligence on the source of funds, and identification of beneficial ownership), the supervision of the professions involved, the use of cash, and the additional measures applied by Spanish authorities.

1.27. In addition, the report gives additional attention to four further issues about which there is a high level of interest:

a. **Money and Value Transfer Services.** The recent criminal exploitation of the MVTS sector makes it a cause for concern and it remains a high risk for professional third party money laundering on behalf of organised criminals. In addition, the response from law enforcement, supervisors, policymakers and industry mean that this case, and this sector, comprise an informative case study relevant to many aspects of the assessment.

b. **Cash Smuggling.** Given the nature and significance of the risks, the MER pays additional attention to cash movements over Spain's border, in particular with Morocco.

c. **Tax Crimes.** Combating tax crimes is a high priority for the Spanish authorities. The MER considers how they are addressing tax crimes and the practical effectiveness of their response, including: the identification of suspicious activity relating to tax crimes; the strategies of law enforcement and tax authorities regarding tax crimes and their proceeds; and the outcomes of recent prosecutions. Spain has had some success in prosecuting major cases of tax crimes, including the related ML offences.

d. **Terrorist Financing.** Terrorist separatist groups (e.g., ETA) continue to pose a significant TF risk in Spain. There is also an ongoing threat from Islamist terrorist groups. The MER therefore pays special attention to the methods used by terrorist groups to raise and move money, including the misuse of non-profit organisations (NPOs) and money remitters.

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2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings

Spain faces a range of money laundering (ML) and terrorist financing (TF) risks, and the following are particularly important in the Spanish context:

- Organised criminal groups, comprised of both Spanish nationals and/or foreign criminals, are active in Spain. Real estate transactions have been involved in recent significant criminal cases and appear to be a major means of ML in Spain. Many of these cases have involved foreign criminals resident in Spain laundering the proceeds of foreign predicate offences through Spain.
- The money or value transfer service (MVTS) sector has proven vulnerable to exploitation by organised criminal groups seeking to move their illicit gains out of the country.
- Spain is a trans-shipment point for the illicit flows of drugs entering Europe from North Africa and South America, and their related criminal proceeds are transferred to third countries. Cash smuggling across Spain's borders with Morocco in Ceuta and Melilla have been linked to drug trafficking, evasion of Moroccan customs duties, counterfeiting of goods, and human trafficking.
- Tax crimes, including VAT fraud and evasion of customs duties, are a problem, and there have been a number of large cases in this area.
- Spain has traditionally faced significant TF risks from separatist groups (e.g., ETA), and there is also an ongoing threat from Islamist terrorist groups. These groups use a variety of funding methods including taverns and lotteries (for ETA), and self-funding (for the Islamist cells). Transfers to Algeria, Mali, Pakistan, and (more recently) Syria have also been observed.

Spain has a good understanding of its ML/TF risks, which is the foundation for national strategies across the AML/CFT system.

The Commission for the Prevention of Money Laundering and Monetary Offences (the Commission) enables the key AML/CFT authorities to coordinate in the development and implementation of AML/CFT policies and activities. Additionally, there are numerous interagency working groups and mechanisms to facilitate operational coordination.

2

2.1 Background and Context

(a) Overview of AML/CFT Strategy

2.1. Spain has a national *Strategy for the Prevention of Money Laundering*, agreed by the Commission and based on risk analyses by a number of agencies, which identifies the following as priorities:

a. improvement of the institutional framework, to better assess and understand money laundering and terrorist financing risks and threats in the future

b. reinforcement of compliance by obliged persons including supervision, guidance, and developing proportionate requirements for smaller entities

c. improving the level of transparency (regarding beneficial ownership and bank accounts holdings)

d. actions in specific sectors or areas of concern including movements of cash, money remitters, and real estate, and

e. geographical risks.

2.2. The national *Strategy for the Prevention of Money Laundering* sits alongside national strategies in other areas, notably the *National Security Strategy*, which defines a global and all-embracing frame of reference in security matters, the *Integral Strategy against International Terrorism and Radicalization* (ElCTlR), and the *Strategy to combat organised crime*.

(b) The Institutional Framework

2.3. The FIU and AML/CFT supervisor for all sectors is the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC). In the financial sector, SEPLAC coordinates its supervisory activities with the prudential regulators: the Bank of Spain, Directorate-General for Insurance and Pension Funds (DGSFP), and National Securities Exchange Commission (CNMV).

2.4. Spain has a complex network of law enforcement agencies (LEAs) and intelligence services, including specialised units focused on ML/TF, which are part of the Ministry of the Interior. Two national police forces—the National Police and the Civil Guard—have nation-wide competence to investigate all crimes and handle immigration matters. There are regional police forces in the Basque Country, Catalonia, and Navarre. In addition, there are judicial police: dedicated law enforcement units which support specialised prosecutors and investigating judges who may direct an investigation. The Customs Surveillance authorities are authorised to investigate and pursue certain crimes, and are also part of the judicial police. The Centre of Intelligence against Organised Crime (CICO) is responsible for gathering criminal intelligence and de-conflicting police investigations at the operational level. The country's main intelligence service is the National Intelligence Service (CNI), although the National Police and Civil Guard also have their own information services.

2.5. The Customs authorities are located within the Tax Agency, and the Civil Guard also plays a role in border control. The Customs Surveillance authorities have exclusive jurisdiction over issues involving foreign trade (cargo movements in and out of Spain, including those made by planes and lorries, with countries that are not part of the Customs Territory of the European Union).

2.6. The Public Prosecution is a constitutional body with legal personality, integrated with functional autonomy within the judiciary: *Law 50/1981*. It has both general prosecutors (competent to prosecute all crimes) and specialist prosecutors with particular competencies in financial crimes. The Ministry of Justice is the central authority for mutual legal assistance. There are regional courts throughout the country and a

specialised court, the National High Court, with special jurisdiction to handle all cases involving terrorism and related ML.

(c) Coordination and Cooperation Arrangements

2.7. The main coordination mechanism for developing and coordinating Spain's AML/CFT policies is the Commission for the Prevention of Money Laundering and Monetary Offences (the Commission) which is part of the Ministry of the Economy and is comprised of over 20 key agencies, some of whom also have specific coordination functions. For example, the National Centre for Counter-terrorism Coordination (CNCA) of the Ministry of the Interior is mainly responsible for coordinating counter-terrorism efforts, and the Inter-Ministerial Body on Exports of Defence and Dual-use Materials (JIMDDU) is responsible for counter-proliferation and coordinating the export control regime.

(d) Country's assessment of Risk

2.8. Spain does not have a single integrated national risk assessment for ML, but has prepared a range of risk assessments, including focused assessments of specific sectors or themes, and assessments at the national level of issues relevant to ML and TF. Some of these assessments have a very narrow scope (e.g., a single border crossing), while others are more wide-ranging, although not necessarily limited to ML/TF risks (e.g., assessments of organised crime and associated ML). These assessments were prepared by several agencies including the Commission and its support bodies (Treasury and SEPBLAC), the National Centre for Counter-terrorism Coordination (CNCA), and the Centre of Intelligence against Organized Crime (CICO). Each assessment is different, but in general the assessments use a range of information sources, and benefit from input and review by other relevant agencies, even whilst being issued under the authority of an individual body.

2.9. The conclusions of Spain's various risk assessments are in general reasonable and internally consistent, well-supported by the specific information assessed, and largely accord with the assessment team's analysis of the risks, as set out in the previous chapter.

2.2 Technical Compliance (R.1, R.2, R.33)

Recommendation 1 – Assessing Risks and applying a Risk-Based Approach

2.10. **Spain is compliant with R.1.** Together, the framework of specific risk assessments and operational analyses, and the strategies which are based on them, adequately identify and assess the risks. The Commission has recently strengthened the institutional arrangements for risk assessments through the establishment of a risk committee within the Commission. Spain applies a comprehensive risk-based approach to the scope of ML obligations (which in addition to all sectors specified by the FATF, also apply to real estate developers, art dealers, the national administrator of the Emission Allowance Registry, and SAREB), and addresses preventive measures, supervision, and the work of operational authorities.

Recommendation 2 – National Cooperation and Coordination

2.11. **Spain is largely compliant with R.2.** The Commission is the designated authority responsible for coordinating and determining Spain's national AML/CFT policies, and regularly updating them consistent with the ML/TF risks identified: *AML/CFT Law art.44*. There are sufficient mechanisms in place to ensure adequate coordination and cooperation on AML/CFT matters at both the policy making and operational levels. However, coordination mechanisms to combat the financing of proliferation of weapons of mass destruction (WMD) are limited.

2.12. A positive feature is that Spain has imposed specific obligations on the competent authorities aimed at maintaining a collaboration regime. For example, by law, any authority, civil servant, supervisor or judicial body is required to report to the Commission or SEPBLAC any activity that may constitute ML/TF or possible breaches of the AML/CFT obligations which are discovered in the course of their work: AML/CFT Law art.48.1.

Recommendation 33 - Statistics

2.13. **Spain is compliant with R.33.** The Commission is responsible for developing statistics on ML/TF, with input from all relevant competent authorities, and periodically issues a comprehensive ML/TF statistics document: *AML/CFT Law art.44.n*.

2.14. A positive feature is that all competent authorities are required by law to submit statistics to the Commission, and Spain has created the National Commission on Judicial Statistics which is responsible for providing statistical data on judicial proceedings related to crimes of ML or TF: *AML/CFT Law art.44.n*.

2.3 Effectiveness: Immediate Outcome 1 (Risk, Policy and Coordination)

(a) Country's understanding of its ML/TF risks

2.15. **Generally, Spain appears to demonstrate a high level of understanding of its risks.** Spain has articulated a sound AML/CFT strategy and as part of that process has produced a wide variety of risk assessments from several sources addressing aspects of the ML and TF risks in Spain. It identifies real estate and foreign criminals as presenting high levels of risk, and the supervisory and law enforcement agencies (LEAs) seem to be attuned to these risks. As noted in relation to R.1, Spanish authorities have produced a variety of risk assessments focused on: terrorism and its financing; organised crime and the associated ML; the financial and DNFBP sectors; specific types of financial and DNFBP activity; and border-crossing points. The detailed basis for each assessment is different, but in general they use multiple sources of information and data, apply well-developed analytic methods, and have inter-agency input to their conclusions. The assessments share a focus on the practical needs of their users (e.g., for planning related to law enforcement operations or inspections of obliged entities), which is set out below. The risk assessments provided to assessors were high quality, in particular by providing specific and operationally relevant conclusions to their primary users.

(b) National AML/CFT policies and activities to address the ML/TF risks

2.16. **The Commission is the agency responsible for overall coordination of the regime and high-level assessment of risks**, but in practice the Commission as a body mostly approves material given to it by SEPBLAC, the Commission Secretariat, or other Commission members. To date, the Commission has largely not taken an active view on the contributions of agencies, but has taken their conclusions as its starting point. More recently the Commission has become involved in developing the national AML strategy. It is too soon to know what impact this will have on the regime in the longer term (for example, whether there will be more centralised power of direction over the work of individual competent authorities). This work may move the Commission into a more proactive stand of evaluating other agencies' work in terms of assessing whether they are identifying the right risks.

2.17. **SEPBLAC has demonstrated a high level of understanding of the risks.** Risk analysis is sophisticated and appears to drive SEPBLAC's performance of its responsibilities in both its roles as an FIU and a supervisor. In particular, there is a high degree of communication within SEPBLAC between its two key functions (of FIU and AML/CFT supervisory authority), which enhances both its ability to understand the risks and its ability to supervise obliged entities in a risk-based way. SEPBLAC is clearly the driving force behind most of the material and information related to risks presented to and formally approved by the Commission, although other agencies, particularly the Treasury and LEAs, also present their reports.

2.18. **Law enforcement agencies and prosecutors seem to have a sound understanding of the risks** which affect their specific areas of focus. Their understanding is supported by many of the risk assessments undertaken by SEPBLAC and other agencies (which in some cases are targeted on producing analysis to assist operational agencies rather than national policymakers – an approach that should be encouraged). For example, the CICO and the CNCA produce reports examining organised crime groups operating in Spain. These reports go to the Ministry of the Interior which assists the LEAs to better understand risk and how

these criminal groups launder proceeds. These reports are also used by the LEAs for training purposes, and by operational staff who use this information in their daily field work.

2.19. **Spain also recognises the role that prosecutors play in having a comprehensive strategy and approach to addressing risks ML, TF and other security risks:** *Spanish Security Strategy, p.12 & 44*. Some specialised operational units, in particular the specialised prosecutors - are in a position to identify and understand trends in the typologies and methodologies used by criminals to launder money, and present very sophisticated and well-informed views on the key ML and TF risks. This understanding is clearly deployed to good effect in the course of their case work. However, it is not clear that the rich understanding of trends and methods that these specialised units have is being successfully communicated back to national authorities or incorporated into their strategic analysis or risk assessment. There may be room for staff of SEPBLAC and the Commission to improve their understanding of the risks by having greater contact with operational agencies.

2.20. **Terrorism and terrorist financing risks are assessed in an integrated way by the National Centre for Counter-terrorism Coordination (CNCA).** The CNCA seems to have a well-developed understanding of the terrorist threat at a national level, and a very detailed picture of the financial and support structures, methods, and techniques employed by each of the terrorist groups involved. This is based on a wide range of material, and specialised analysts. Indeed, the analysis by CNCA formed the basis of Spain's input to the *Europol TE-SAT 2013 – EU Terrorism Situation and Trend Report* (see section 1.2). One notable strength is that the CNCA's analysis of the financing and facilitation systems of each terrorist group is integrated with its wider analysis to give a complete picture of each active group, which can be used by other operational agencies as a basis for comprehensive strategies to disrupt and dismantle their capability.

2.21. **The risk-based approach applied by supervisors is discussed in more detail under Immediate Outcome 3.** As the main AML/CFT supervisor, SEPBLAC takes a highly sophisticated risk-based approach to supervision across different sectors and within each sector. There is a well-developed risk-based approach in the banking sector, with good coordination between SEPBLAC and the Bank of Spain, which has developed its own risk matrices since the previous evaluation. However, in the securities and insurance sectors, the prudential supervisors seem to have an incomplete understanding of the ML/TF risks and continue to rely on SEPBLAC's risk assessment.

2.22. **The mandate of the Commission and its support functions demonstrate that Spain takes the risks of ML and TF seriously, and many of the risks identified in the various risk assessments are well reflected in the national strategies.** This is visible in particular in the decisions to apply preventive measures obligations to additional entities, beyond those set out in the FATF standards or EU directive, on the basis of identified risks. These additional entities include real estate developers, art dealers, the national administrator of the Emission Allowance Registry, and SAREB, all of which have been identified as posing a high-risk, or having been involved in significant ML cases. Company and land registrars are also subject to AML/CFT preventative measures, including STR reporting requirements, in view of their role and the information they have on companies and real estate transactions.

2.23. **Specific measures applied in other sectors also reflect the results of Spain's risk analysis.** In the case of the MVTS sector, which saw significant criminal misuse a few years ago (see Box 3.2), analysis of past criminal conduct has been used to identify a number of vulnerabilities and risk indicators. Additional measures have been put in place to address these, including requiring the industry to systematically report all transactions in a form which enables data analysis by SEPBLAC so as to identify patterns of activity which may indicate the recurrence of criminal abuse.

(c) Exemptions and application of enhanced measures

2.24. **Spain has only one full exemption from AML obligations:** for money exchange by hotels in tightly limited circumstances: *AML/CFT Law art.2.3, RD 304/2014 art.3.* Spain's *AML/CFT Law* also allows for simplified due diligence involving prescribed categories of clients, locations, and financial products, which are set out in Royal Decree 304/2014 (which entered into force during the onsite visit). The specific categories in Spain's regulations include some which are based: on the categories set out as low-risk examples in the FATF standards (e.g., publicly-owned enterprises); on the existence of a harmonised regulatory framework (e.g., financial institutions or publicly listed companies in EU countries); and/or specifically on

risk assessments, either conducted at the EU level (for the "equivalence list" of countries in which reliance is permitted), or in Spain (e.g., collection of tourism commissions). These derogations, although not explicitly covered in the risk assessment material provided to the assessment team, are generally consistent with them and with the examples forming part of the Methodology.

2.25. **Spain requires enhanced measures to be applied in specific circumstances set out in the *AML/CFT Law* and associated regulation.** These include a range of situations, products, customer characteristics, and geographic factors, which are consistent with the overall and specific risk assessments reviewed by the team. While Spain's risk assessments clearly cover the real estate sector and foreign criminals, these are not required to be subject to enhanced due diligence, although they are covered by a number of risk indicators which may trigger obliged entities themselves to apply enhanced measures.

(d) Objectives and activities of competent authorities

2.26. **Both the objectives and day-to-day activities of the law enforcement and operational authorities reflect the risks that have been identified.** One example is the use of gold which was identified as a new ML risk following the economic crises which resulted in an increase in gold trafficking and VAT fraud. There was also an increase in the number of small shops that buy/sell small amounts of gold, some of which were found to be selling stolen goods, or acquiring gold bars to turn into cash (or vice-versa). In response to these risks, the LEAs have proposed to control these establishments and have increased their investigations of them. SEPBLAC has also been assessing transactions involving the industry, and have sent these reports to the LEAs. Additionally, the authorities provided a case example *(Operation Habanas)* in which the AEAT and the National Police disrupted a network with more than 180 companies involved in tax fraud and ML around the precious metals trade in Spain. The police actions have resulted in limiting the ML activities involving this commodity.

2.27. **For supervisors, there is a high degree of consistency between their objectives and activities in the AML/CFT supervisory space and risk-based national policies.** SEPBLAC's activities and objectives clearly deal with the ML/TF risks. However, there is a difference of approach between the "prudential" supervisors (who focus primarily on the overall risk in a given institution) and SEPBLAC (which focuses on thematic risks common to a number of institutions). The thematic focus of SEPBLAC supervision is a good example of its focus on specific risks (e.g., the work in the MVTS sector noted above demonstrates a strong focus on foreign criminals). Outside the financial sector, the Notaries' Central Prevention Unit (the OCP) has introduced risk indicators and analytical tools focused on the risks involved in the activities reflected in the notarial acts, and is also seeking to address the specific risks around the misuse of legal persons through development of its databases (described in Box 7.1).

(e) Cooperation and coordination

2.28. **The Commission is the overarching coordination body and all the relevant competent authorities are required by legislation to be members of the Commission.** The Commission acts through its Executive Service (SEPBLAC) and its Secretariat (the Sub-directorate General of Inspection and Control of Capital Movements of the Treasury). The structure and the membership of the Commission seem to make it fairly successful as a policy coordination body. However, the role of the Commission is to ensure inter-agency coordination at the level of strategies and policies, and it is not well-suited to facilitating coordination at a practical or operational level. That task is done by other bodies and mechanisms.

2.29. **On terrorism and TF, coordination is done through a dedicated body**: the National Centre for Counter-terrorism Coordination (CNCA). This body has deep operational connections with all the relevant agencies, and is able to effectively coordinate analysis, strategy, and tactical counter-terrorist activity.

2.30. **For criminal cases, Spain has three national law enforcement organisations with powers to investigate money laundering cases** – the National Police, the Customs Surveillance Unit and the Civil Guard. In addition, there are specialised prosecutors and investigating judges who may direct an investigation, and dedicated law enforcement units which support them (e.g., judicial police). The very complex structure of Spain's law enforcement agencies makes de-confliction of their work an important operational priority, and also makes coordination challenging.

2.31. **De-confliction of law enforcement investigations into organised crime is done through the Centre of Intelligence against Organised Crime (CICO)**. All law enforcement agencies are required to submit case information (e.g., names and addresses of suspects) to a CICO database before commencing an investigation. The database registers the agency's interest, and generates an alert in the event that a different law enforcement agency subsequently registers an interest in the same person. When conflicts are identified, they are resolved bilaterally between the interested agencies, normally with the agency that was first to register its interest taking the lead. There are no coordination (or de-confliction) opportunities for cases involving names or major targets that have not been entered into the main database, as these will not be flagged by the system. This mechanism is limited to addressing conflicts between two agencies which have target overlaps, as CICO has more of an analytical role (rather than an operational one). This system seems to be moderately effective at resolving conflicts caused by the complex structure of law enforcement, but efforts are taken to reduce overlapping investigations by different agencies.

2.32. **There is also evidence that Spanish law enforcement agencies are able to coordinate with each other in practice**. The assessment team was provided with several examples in which the Civil Guard, National Police, and Customs Surveillance Unit were working on aspects of the same very large and complex ML cases. Having said that, operational task forces led and coordinated by the investigative judge and involving multiple LEAs are the exception and not the rule.

2.33. **On supervision, there seems to be genuine practical coordination.** SEPBLAC has developed and implemented a sophisticated risk matrix which informs the overall approach to supervision across all sectors, including DNFBPs. SEPBLAC exerts a high degree of oversight and coordination in the supervisory functions at large, and is legally required to provide input on fitness and propriety in all licensing applications. In the banking sector, SEPBLAC works closely with the Bank of Spain to receive and comment on the Bank's AML/CFT examinations as well as conduct thematic examinations itself. In the insurance and securities sectors, SEPBLAC plays a more directive role and ensures the sector supervisors examine the institutions that SEPBLAC is most concerned about. There is ongoing and continuous discussion between SEPBLAC and the sector supervisors at management and working levels. However, there may be room for improvement in the level of engagement by the insurance and securities sectors.

2.34. **On proliferation financing, the picture is mixed**. There are coordination mechanisms regarding the implementation of targeted financial sanctions related to proliferation. In this regard, the Commission acts as a coordination body in this area and its membership has been expanded to include institutions with competence in this field, including the relevant Ministry of Foreign Affairs department. The Secretariat of the Commission is the national authority for the execution of targeted financial sanctions and reports periodically to the Commission. However, Spain's ability to detect attempts to evade sanctions through the use of shell companies, is significantly curtailed by the disconnect between the export control regime and the AML/CFT authorities. There is very limited and irregular exchange of information or coordination between Spain's export control regime and its AML/CFT system; and (except for isolated cases) Spain largely does not make use of opportunities for financial measures or financial intelligence to support the implementation of counter-proliferation activities, or vice-versa.

(f) Awareness of risk in the private sector

2.35. **Most of the risk assessments noted above are not made public**, except in the context of the national strategies based on them, which include risk information only in highly edited form. SEPBLAC is seen as a leader by the private sector even where they sometimes disagree with SEPBLAC's objectives or expectations. Nevertheless, in order to inform the private sector about risk analysis,the Commission also issues and provides the different sectors with "Risk Catalogues"[1] which give guidance to the private sector to help identify high-risk transactions, and "Risk Maps" with strategic analysis of STRs produced by SEPBLAC. However many of these pieces of guidance are "checklists" of red-flag indicators, which are customised for the sector concerned. While these include indicators relating to risks identified by authorities (e.g., the risk

1 The risk catalogues are produced by the Commission, coordinated by the Treasury, and include inputs from different sources (international exercises, private sector inputs, SEPBLAC, experiences from other LEAs).

posed by foreign criminals operating in Spain), they do not set out clearly the nature of the underlying risks or the specific typologies associated with them.

2.36. **Some sectors nevertheless seem to have a good understanding of the risks.** Obliged entities in the banking sector (which sources the majority of STRs) seem reasonably well aware of the ML and TF risks. The banking sector has been exposed to the risk-based approach since prior to its formalisation in the *AML/CFT Law*, and generally shows a more developed approach. External auditors seem to understand the risks in the financial sector well, also because of their legal role in annually reviewing financial institutions' internal controls. Casinos also seem to have a good grasp of the risks and a good working relationship with the authorities. Notaries also have a good understanding of the risks, particularly in relation to real estate transactions and company formation.

2.37. **Obliged entities told the assessment team they were not asked to or able to provide input into risk assessments** conducted by SEPBLAC and others, and they consistently stated that they want and need more information from SEPBLAC. With the exception of the banking sector, obliged entities generally believe the risks to their sector are lower than stated by SEPBLAC or the various risk assessments. In some cases this is very unrealistic (e.g., lawyers). These factors suggest that these sectors may not yet be fully engaged in the process. And, although external auditors understand the risks in the financial sector, they are not so much aware of their own risks as obliged entities themselves.

2.38. **A particular concern is that awareness of ML/TF risks outside the banking sector is often focused on the risks of handling cash and of direct customer contact by banks.** In these sectors, there is a lower level of understanding of the risks (notably in the securities sector, and the legal sector), and as a result, there is a general (erroneous) perception that ML/TF risks reside mainly or only in the banking sector. The fact that Spain has not discussed the overall results of its risk assessments with the private sector seems to reinforce this perception by obliged entities.

Overall conclusions on Immediate Outcome 1

2.39. **Overall, Spain has done a good job in identifying, assessing and understanding its ML/TF risks and has effective mechanisms in most areas to mitigate these risks.** The competent authorities are engaged, well-led and coordinated by the Commission. Coordination is good at the policy level and among supervisors at the policy and operational levels. However, the number and overlapping responsibilities of LEAs makes de-confliction a necessity and coordination a challenge.

2.40. **Given the relatively short period of time the risk-based approach (RBA) has been formalised among obliged entities as a group, the banking sector has the best understanding of the risks and implements a sound risk-based approach.** However, the understanding of risk and implementation of risk-based measures is variable in other sectors. There is also some variability in how well Spain uses the risk assessment to address priorities and policies, and there are also issues about how well Spain coordinates its efforts to combat the threats associated with the financing of WMD proliferation. The system has resulted in some mitigation of ML and TF risks.

2.41. **Overall, Spain shows a substantial level of effectiveness for Immediate Outcome 1.**

2.4 Recommendations on National AML/CFT Policies and Coordination

2.42. A number of moderate improvements are needed to Spain's AML/CFT system:

a. Spain should implement additional coordination measures to combat the proliferation of WMD and the associated financing. In particular, Spain should address the gap between the Commission's mandate and the export controls regime. These measures are described in more detail in the recommendations on IO.11 (paragraph 4.70).

b. Taken together, the risk assessments and their analyses amount to a national risk assessment in practice, but it would be worthwhile working on a strategy to "join up" all these assessments into an overarching risk analysis in which risks known to be associated with each other (for example, the real estate sector and lawyers) could be addressed in a more holistic way.

c. The authorities should take measures to ensure greater participation in the risk assessment process by the obliged sectors and continue to ensure coordinated participation in the risk assessment process by the constituent members of the Commission.

d. Spain should improve guidance for obliged entities about the risks to supplement the catalogues and risk map, and to correct the misunderstanding in some sectors of the nature and level of risks they face. In particular, there should be more focus on the risks posed by foreign criminals and ML through the real estate sector. This could be done through enhanced guidance and typologies for the relevant sectors, which would be of use both to the private sector (suitably sanitised) and government agencies, or through publication of a national assessment.

e. Spain should take measures to encourage the insurance and securities sectors to improve their understanding of the ML/TF risks.

f. The DNFBPs appear to have a low level of understanding of the risks. Aside from the notaries sector, which has developed a Central Prevention Unit (OCP), DNFBP sectors have not been very proactive in addressing risk understanding. Spain should take measures to address these issues in order to improve the overall level of understanding in these sectors.

g. Spain should enhance the use of joint investigative task forces, with a focus on equitable asset sharing, including a fair and balanced recognition and reward system for cooperating agencies. The policy should provide prosecutors and judges with an enhanced role in supervising and coordinating joint investigations, including the management of resources from multiple sources and conflict resolution.

h. To enhance the effectiveness of the risk assessment mechanism, Spain should involve the private sector in the risk assessment process in future and in a manner appropriate to the circumstances. For example, information could be obtained from the private sector directly through consultation during the risk assessment process, or indirectly through the supervisory process and subsequently fed into the risk assessment process.

3. LEGAL SYSTEMS AND OPERATIONAL ISSUES

Key Findings

Spain has a well-functioning FIU (SEPBLAC) which produces high quality operational and strategic analyses. The law enforcement agencies (LEAs) confirm that the financial intelligence reports prepared by SEPBLAC provide good support to their financial investigations and are incorporated into ongoing ML investigations. In some cases, these reports have resulted in new money laundering (ML) and terrorist financing (TF) investigations.

The strategy of the LEAs and prosecutors is directed at the financial structure of organised crime groups and drug trafficking organizations, with the goal of disrupting and dismantling these organisations. The LEAs (the National Police, Civil Guard, and Customs Surveillance Unit) have broad investigative powers, and have proven that they are able to successfully undertake large and complex ML cases through to conviction and confiscation. They have been successful in a number of high-profile cases, disabling complex ML networks and criminal enterprises by identifying and shutting down the networks through which the illicit proceeds were being laundered.

The type of ML being pursued involves mostly large foreign organised crime groups. Special attention is being placed on pursing professional launderers and third party ML targets, and on identifying and tracing assets purchased though legal entities and involving the real estate sector. The laundering of the proceeds from a wide variety of predicate offences (not just drug offences) is pursued, both as stand-alone ML offences and in conjunction with the predicate offence. Spain has also had some success pursuing tax crimes and related ML. All of these cases are complex, multidisciplinary and are conducted in a thorough and professional manner.

Criminal sanctions may not be dissuasive. The majority of natural persons convicted for ML are sentenced in the lower range of six months to two years of imprisonment. Penalties of six or more years imprisonment are rarely imposed, even in cases where there was a professional money launderer involved. This does not appear to be sufficiently dissuasive. However, a strength is that stand-alone ML offenders have been convicted, as have ML accomplices. There are numerous cases where disbarment from exercising a profession (e.g., a lawyer) for five years has been utilised, although given the seriousness of the crimes involved, this period seems short. Fines of one to three times the value of the assets appear to be the most utilised type of sanction. These fines are often in the millions of euros, and are considered by the Spanish authorities to be the most effective sanction.

Another concern is the length of time it takes to adjudicate cases to final conviction. Spain could improve its effectiveness in this area by having more specialised judges (particularly in provincial and regional courts), or greater specialised training for all examining judges. This is an important component for handling evidence and successfully prosecuting these complex ML cases. Spain should consider undertaking a review of its criminal procedure with a view to improving its capacity to undertake judicial investigation of ML offences. Continued focus should also be placed on measures to prevent foreign criminal organisations from operating by strengthening mechanisms to identify foreign criminals entering and settling in the country (e.g., using international information sharing mechanisms).

There is a comprehensive legal framework for confiscation which includes detailed procedures for the management and disposal of assets. The authorities understand the importance of confiscation as an objective, and the legal framework makes it compulsory for criminal offences. Court sentences show that large numbers and values of goods, assets, cash and properties have been confiscated. Additionally, confiscation is pursued when the authorities detect a breach of the obligation to declare cross-border transportations of currency and bearer negotiable instruments.

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3.1 Background and Context

(a) Legal system and offences

3.1. Money laundering (ML) is criminalised in article 301 of the *Penal Code*. All 21 designated categories of offences are predicate offences for ML through an "all crimes" approach which applies to all offences punishable by more than three months imprisonment. The legal basis for confiscating the proceeds of crime is article 127 of the *Penal Code*. Since its last mutual evaluation report (MER), Spain has implemented new legislation to criminalise self-laundering and the possession or use of proceeds, apply criminal liability to legal persons, and strengthen its framework of confiscation and provisional measures.

3.2. Spain's criminal justice system generally works as follows. The police open a preliminary investigation. Once the judicial phase begins, the investigation is directed by an investigating judge. Any court of preliminary investigation has jurisdiction to instigate procedures in relation to ML carried out within the geographical area of the court. The investigating judge is responsible for directing the full investigation, and determining whether there is sufficient evidence to send the case to the Court (Sala) for prosecution. Cases of ML are prosecuted, and the prosecution is led by the Prosecutor´s Office, by either the Provincial Court *(Audiencia Provincia)*, or the National Court *(Audiencia Nacional)* which is a court with national competence (see art. 65 of the Judiciary Organic Act). Each court has its own presiding judges who are responsible for hearing the cases put forward. The Supreme Court has jurisdiction to hear appeals from decisions of the Provincial Courts or National Court.

3.2 Technical Compliance (R.3, R.4, R.29-32)

Money Laundering and Confiscation

Recommendation 3 – Money laundering offence

3.3. **Spain is largely compliant with R.3.** ML is criminalised on the basis of the *Vienna Convention* and the *Palermo Convention*,[1] in a manner which is generally consistent with the *FATF Recommendations*. However, there are concerns that the sanctions are not dissuasive, particularly in the context of terms of disbarment for lawyers, and notaries who play important roles as gatekeepers in complex ML schemes. Another deficiency is that certain State-owned enterprises are exempt from criminal liability (although this exemption does not apply if the legal person in question was formed in order to avoid possible criminal liability): *Penal Code art.31bis(5)*.

3.4. Spain has also criminalised ML perpetrated through serious negligence, where the perpetrators acknowledged and reconciled themselves with the possibility that the property could be the proceeds of crime. The penalties for negligent ML are imprisonment from six months to two years, and a fine of one to three times the value of the assets (for natural persons), and a fine of one to three times the value of the assets (for legal persons): *Penal Code art.301(1) & 301(3)*. This aspect of the system goes further than the *FATF Recommendations* require.

Recommendation 4 – Confiscation and provisional measures

3.5. **Spain is compliant with R.4.** Articles 127(1) to (3) of the *Penal Code* provide for the confiscation of all proceeds, laundered property, instrumentalities of crime, property related to any criminal activities

1 See article 3(1)(b)&(c) of the *Vienna Convention*, and article 6(1) of the *Palermo Convention*.

committed within the context of a criminal or terrorist organisation, and property of equivalent value, regardless of whether the property is held by criminal defendants or third parties.

3.6. The system has two positive features worth noting. First, property is deemed to have been obtained by criminal activity and is subject to confiscation if it is disproportionate in relation to the revenue lawfully obtained by persons who have been found guilty of terrorism offences or felonies committed within a criminal or terrorist organisation/group. Second, even when no punishment is imposed because the person is exempted from criminal accountability or due to the statute of limitations or any other cause of extinction of criminal liability, confiscation may still be ordered, provided that the unlawful status of the assets is proven.

Operational and Law Enforcement

Recommendation 29 – Financial intelligence units

3.7. Spain is compliant with R.29. Spain's FIU is the Executive Service of the Commission (SEPBLAC) which has responsibility for acting as a national centre for receiving and analysing suspicious transaction reports (STRs) and other information relevant to ML, terrorist financing and associated predicate offences, and for disseminating the results of that analysis: *AML/CFT Law art.45(4)*.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

3.8. **Spain is compliant with R.30.** Spain has a comprehensive institutional framework of judicial police, prosecutors and judges who are designated with responsibility for ensuring that ML, TF and predicate offences are properly investigated.

3.9. A positive feature of the system is that Spain has police units, prosecutors and courts that are specialised in ML/TF investigations and prosecutions, highly trained, and strongly focused on pursuing financial crime.

Recommendation 31 – Powers of law enforcement and investigative authorities

3.10. **Spain is compliant with R.31.** The competent authorities conducting investigations of ML, TF and associated predicate offences have comprehensive powers to obtain access to all available documents and information for use in those investigations, prosecutions, and related actions.

3.11. A positive feature of the system is that the LEAs can access directly, in real time, and without prior judicial authorisation, the notaries' Single Computerised Index (described in Box 7.1). With judicial authorisation, they will also access the Financial Ownership File (described in Box 3.1) when it becomes fully operational in 2016: *AML/CFT Law art.43.3.*

Recommendation 32 – Cash couriers

3.12. **Spain is compliant with R.32.** Spain has implemented a declaration system for incoming and outgoing cross-border transportations of currency and bearer negotiable instruments (BNI) made by natural or legal persons acting on their own behalf or for a third party via cash couriers, through the mail, or in cargo.[2]

2 *AML/CFT Law* art.34 & EU Regulation 1889/2005 art.3 (which apply to natural persons), Order of the Ministry of Economy and Finance EHA/1439/2006 art.1 (which applies to both natural and legal persons), RD 304/2014 art.46.

the trial programme to a total of 51 financial institutions. Royal Decree 304/2014 authorised the Minister of Economy and Competitiveness to determine the date the new system will become operational, which will be in the first quarter of 2016.

3.3 Effectiveness: Immediate Outcome 6 (Financial intelligence)

(a) Use of financial intelligence and other relevant information

3.13. **The Spanish authorities have access to a very broad range of financial and other information.** The LEAs can access directly (without prior judicial authorisation): public registries of land (*cadastre*), companies, real estate, and moveable property; the Justice Minister Register on life insurance; the notary profession's Single Computerised Index (which contains reliable and accurate legal and beneficial ownership information, and can be accessed by the LEAs in real time) (described in Box 7.1); the Registry of Social Security (TGSS); the Bank of Spain CIRBE on the Balance of Payments; and (when it becomes fully operational in 2016) the Financial Ownership File (described in Box 3.1). The notaries' Single Computerised Index is seen by the LEAs as an effective way to facilitate the tracing of the beneficial owner(s) of complex, opaque networks of companies (however, there is some concern as to the extent to which those items of information in this Index which derive from declarations by legal persons do set out verified ownership details. For SL, information from declarations is supplemented by verified information based on transfers of ownership: see Immediate Outcome 5). The LEAs can also access tax information and information from reporting entities, with prior judicial authorisation (although they note that this can take some time - 30 days on average). The LEAs also have access to private commercial databases such as Informa. Numerous cases were provided to the assessment team demonstrating the ability of the LEAs to access and use financial intelligence information to further an investigation, both independently and in coordination with SEPBLAC.

3.14. **The FIU (SEPBLAC) has direct access (without prior judicial authorisation) to an even broader range of information** which, in addition to the information noted above, includes STRs and other reports filed by reporting entities, information on cross-border declarations and seizures, criminal records, and supervisory information from the sector supervisors. An important factor which helps to mitigate the ML risks arising from tax crimes is that the FIU has direct access to tax information (without requiring prior judicial authorisation).

Box 3.1. The Financial Ownership File

Article 43 of the *AML/CFT Law* provides for the creation of a "Financial ownership file", or database, which will contain prescribed information on all customers' bank and securities accounts in Spain. The information in the database will be filed by financial institutions, and will include the date of account opening, the name of the account holder, the name of the beneficial owner, the name of the financial institution and the branch location. It will not contain information on the account balance or financial transactions. The database will be established at the Bank of Spain, but be under the control of SEPBLAC. All prescribed financial institutions will be required by law to provide the prescribed database information at regular intervals.

The information in this file will be accessible by examining judges, the Public Prosecutor's Office and (with a court authorisation) other law enforcement authorities. It will allow such authorities to determine whether a specified person has, or controls, a bank account in Spain. Accounts held outside Spain are not covered by the database. Previously, it was very difficult or cumbersome to determine where a person under investigation had an account.

Starting in 2013, SEPBLAC began a trial of the system with the cooperation of nine conglomerate banks. The trial was intended to identify and resolve technical issues. In 2014, SEPBLAC extended

3.15. **SEPBLAC can also request any additional information that it requires from reporting entities through the exercise of its functions as an FIU.** The FIU will exercise its powers when undertaking analytical work and request information from any obliged entity, regardless of whether such entity made any original communication to SEPBLAC. Reporting entities are legally required to put in place systems enabling them to fully and rapidly respond to enquiries from SEPBLAC. Failure to comply with this obligation constitutes an offence: *AML/CFT Law art.21.2 & 52.1.k*. In practice this power enables SEPBLAC to obtain a broad range of additional information from reporting entities in a relatively short period of time.

3.16. **The authorities routinely use financial intelligence and other information for both intelligence and evidentiary purposes, to identify and trace proceeds, and support investigations and prosecutions of ML, TF and associated predicate offences.** All of the LEAs and prosecutors met with by the assessment team are strongly focused on pursuing financial investigations (either stand-alone or in parallel with the predicate offence), and all recognised the value of "following the money". Indeed, developing a financial investigation on the basis of financial intelligence and other relevant information is standard practice for the Spanish authorities: *Penal Code art.301-304 (Receiving and Money Laundering) and art.127-129 (incidental consequences)*. Spain provided numerous case examples of success in tracing assets both domestically and abroad, as described in Boxes 3.3, 3.4, 3.5, and Box 8.2.

(b) Types of reports received and requested

3.17. **SEPBLAC receives STRs, cross-border declarations, and a broad range of other reports** as more fully described above. SEPBLAC advises that, in general, these reports are of high quality, have usable in-depth content, and are used to support its strategic and operational analysis functions. This view is substantiated through a number of factors. (i) SEPBLAC has issued numerous sector-specific guidance papers and catalogues on how to identify ML/TF risk factors, review transactions exhibiting those factors to determine whether they are suspicious, and what to report to the FIU. This guidance is clear, straightforward, and easy for reporting entities to understand and use (although the guidance needs improvement to address high risks identified in Spain's risk assessment). (ii) The private sector representatives with whom the assessment team met appeared, for the most part, to understand their obligation to report suspicious and other transactions (although there is some variation in understanding among the sectors described under Immediate Outcome 4). (iii) SEPBLAC is both an FIU and the AML/CFT supervisor, so it is able to apply the outcomes of its strategic and operational analysis to feedback mechanisms, and take supervisory action, as needed, to address reporting issues. (iv) Obliged entities are required to undertake a structured *special review* process before filing an STR, with a view to ensuring that their own analysis is sound before filing the STR with the FIU: *AML/CFT Law art.17, RD 304/2014 art.25*.

3.18. **SEPBLAC also receives STRs from a broad range of public authorities** who are under a general obligation report any facts that may constitute evidence of ML/TF, or are themselves obliged entities (registrars of property, trade, personal property, and emissions allowances) required to file STRs: *AML/CFT Law art.2 and 48*. SEPBLAC received 27 of such reports in 2010, 24 in 2011, and 41 in 2012.

3.19. **SEPBLAC receives directly reports on inbound/outbound cross-border transportations of currency and bearer negotiable instruments** (BNI).[3] Cross-border declaration reports that could be relevant for fiscal purposes are provided directly to the Tax Agency, which then undertakes its own investigations. The National Police (CNP) and the Civil Guard can also access cross-border declaration reports with prior judicial authorisation. The authorities provided several ML cases which demonstrated the usefulness of cross-border declaration reports in further ML/TF investigations. For example, see *Sentence AN No.26/2013* which involved a smuggling ring, breaches of the declaration obligation, and subsequent seizures and confiscations.

3.20. **SEPBLAC also receives systematic reports** on: domestic cash movements of EUR 100 000 or more; transfers exceeding EUR 30 000 to/from designated territories or countries (high-risk jurisdictions, including the tax havens listed in Royal Decree 1080/1991); transactions involving the physical movement of cash or

3 For these purposes, an "inbound" or "outbound" movement is a border crossing to a foreign country, including another European Union member state.

BNI exceeding EUR 30 000 or more (as reported by banks); and aggregate information on the international transfers of credit institutions (broken down by country of origin or destination). MVTS report all money transfers on a monthly basis, including systematic reporting of money transfers involving cash or bearer negotiable instruments of EUR 1 500 or more: *AML/CFT Law art.34(1)(b), RD 304/2014 art.27*.

Table 3.1. Reports received and requested by SEPBLAC

	2010	2011	2012
Number of STRs received from financial institutions	2 411	2 313	2 449
Number of STRs received from non-financial institutions	580	537	488
Number of STRs received from other sources, including domestic and foreign supervisory bodies, other individuals, and corporations	180	125	121
Total number of STRs received by SEPBLAC	**3 171**	**2 975**	**3 058**
Number of cross-border declaration reports showing cash movements exceeding EUR 10 000 (inbound & outbound)	9 213	9 236	10 604
Number of bank deposits in cash exceeding EUR 100 000	12 781	10 694	15 261
Number of bank withdrawals in cash exceeding EUR 100 000	16 740	14 001	14 695
Number of transfers exceeding EUR 30 000 to designated high risk jurisdictions and tax havens	309 117	305 858	300 068
Number of unrecorded cash transactions exceeding EUR 30 000 (reported by banks) and exceeding EUR 3 000 (reported by MVTS and currency exchange providers)	180 867	207 627	209 831

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 1 (p.9), Table 10 (p.19), Tables 11 & 12 (p.20), and Table 13 (p.21).

(c) FIU analysis and dissemination

3.21. **On average, SEPBLAC disseminates more than 1 600 financial intelligence reports each year (around 80% of the reports received) to LEAs and other authorities**—only about 20% of which are found to have no relation to ML or TF.[4] About 6.75% of the financial intelligence reports disseminated lead to initiating an investigation, more than 40% are incorporated into currently open investigations (in most cases ML investigations), and the remainder are filed for intelligence purposes. The majority of disseminations are made to the CNP, with significant numbers going to the Civil Guard, the Tax Agency, and the Customs authorities. Some are also disseminated directly to the Special Prosecutors, judicial authorities, or other government bodies, as needed.[5]

3.22. 96. **SEPBLAC has state-of-the-art software, analytical and data-mining tools.** It also has a multi-disciplinary team of highly trained analysts who are able to develop high quality financial intelligence, on the basis of this information, even in the most complex ML schemes. There are officers from the CNP, Civil Guard, Tax Agency, and Customs administration working within SEPBLAC who share their expertise with a view to ensuring that SEPBLAC's outputs can usefully support the operational needs of other competent authorities. As well, SEPBLAC can request further information from obliged entities, including on what other accounts or business relationships a customer may have, and incorporate this into a its analysis. Together, these factors enable SEPBLAC, through its analysis, to add value to the STR information it receives.

4 Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 9 (p.18).

5 Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 7 (p.17).

3.23. **All of the LEAs met with by the assessment team praised the value and usefulness of SEPBLAC's financial intelligence reports for initiating investigations and supporting ongoing ones**. These assertions are supported by numerous cases provided to the assessment team (for example, *Operation Wasp* in Box 8.1, and *Operation Emperador* in Box 2*)* and statistics demonstrating that a relatively high number of investigations are initiated by SEPBLAC reports, and a positive outcome is achieved in the majority of those cases.

Table 3.2. Results of disseminations from SEPBLAC to LEAs

	2010	2011	2012
Number of financial intelligence reports supplied to police forces	1 942	1 499	1 466
Police investigations prompted by SEPBLAC reports			
Investigations targeting ML alone	32	46	45
Investigations targeting ML linked to other offences	27	25	21
Investigations targeting ML linked to drug trafficking	22	21	16
Investigations targeting TF	5	5	1
Investigations targeting drug trafficking	21	22	48
Investigations targeting other offences (tax fraud, common fraud, accounting fraud, counterfeiting of currency)	75	67	51
Total number police investigations prompted by SEPBLAC reports (including TF)	182	186	172
Outcomes of investigations prompted by SEPBLAC reports			
Number of police investigations prompted by reports, which achieved outcomes	167	144	124
Number of arrests made in the course of police operations prompted by SEPBLAC reports	1 126	1 088	740

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 41 (p.57), Tables 42 & 43 (p.58), and Table 44 (p.59).

3.24. **SEPBLAC's outputs may be used only as financial intelligence (they have no evidentiary value).** The LEAs use them as a source of information through which to develop evidence and trace criminal proceeds. The LEAs are well-equipped to do this effectively because they have specialised units with expertise in conducting financial investigations, and have access to a broad range of financial information, as noted above. The authorities also provided numerous case examples to illustrate this point, including in the TF context. For example, in *Sentence AN No.1943/2011*, the authorities were able to trace the links between the people involved in the 11 March 2004 train bombing in Madrid (known as the 11-M attack) and their location through information communicated by an MVTS provider on transfers of funds from Spain to other countries.

3.25. **Financial intelligence and other information are put to broad use, as was demonstrated by a case involving the MVTS sector.** After concerns were triggered by STR reporting, SEPBLAC conducted a strategic analysis of the sector, taking into account STR information and other information gathered by the Bank of Spain. This analysis was aimed at: assessing the actual level of risk in the sector, detecting ML patterns, distinguishing ML from legitimate financial activity, identifying trends in the sector, explaining certain market behaviour which had been observed, and identifying and confirming financial crimes occurring within the sector. The results of this strategic analysis led to supervisory action against several MVTS operators, some successful criminal cases (which were also supported by financial intelligence and other information), the closing down of some MVTS and their agents, and concrete action by the sector itself aimed at preventing further abuse.

Box 3.2. Addressing the ML/TF risks: The MVTS "bad agents" case (Operation Emperador)

Starting in 2009, SEPBLAC (as the FIU) received STRs related to large payments of cash being remitted to China through payment institutions. Starting in 2011, all payment institutions were required to provide SEPBLAC with monthly statistical data on the amounts transferred and the number of transactions carried out, broken-down by country and agent, in order to enable SEPBLAC to conduct a strategic analysis on the money remittance sector. Information was also provided by the Bank of Spain.

The findings of this strategic analysis were used to implement additional risk-based supervisory measures, selecting the targets according to the level of risk detected in the analysis, to elaborate a specific guidance for the sector, to provide feedback to payment institutions, to collaborate with the sector associations and to adapt SEPBLAC's operational analysis to be more useful for competent authorities. As part of this work, SEPBLAC inspected three Payment Institutions, two of which are still being inspected. One inspection led to a sanction for shortcomings in the AML/CFT legislation in July 2013.

In addition, SEPBLAC disseminated information to the police and Customs authorities on large amounts of cash transferred to China through Chinese nationals acting as agents for payment institutions. These authorities opened an investigation on these "bad agents'" networks, in cooperation with international counterparts and Interpol. In October 2012, Spanish media revealed the results of this investigation, known as "*Operacion Emperador*". This large ML network is currently being prosecuted in Spain. A total of 110 people are being prosecuted in Spain, Germany and Italy and EUR 11.6 million in cash and EUR 11 million in bank accounts have been seized. The case involved laundering the proceeds of numerous predicate offences, including smuggling (undeclared or undervalued goods imported) and fiscal crimes.

In 2013, SEPBLAC measured the impact of the decisions and measures taken as a result of its strategic analysis, and established that the total amount of high risk transactions in the money remittance sector has considerably decreased.

3.26. **The competent authorities have strong expertise and proven ability to work complex financial cases through to conviction, and trace the related proceeds.** This is an important factor which helps to mitigate the risks that Spain faces from large volumes of money, including the proceeds of foreign predicate offences, being laundered in the country through very complex and sophisticated means.

(d) Cooperation and exchange of information

3.27. **The FIU and other competent authorities cooperate and exchange information and financial intelligence on a regular basis.** Officers from CNP, Civil Guard, Tax Agency, and Customs administration work within SEPBLAC—an arrangement that facilitates cooperation and information exchange between the FIU and these agencies. While all of the LEAs have access to Tax Data, with judicial authorisation to avoid misuse of this data, some minor improvements could be made. In order to improve ML investigations which also involve the tax offence other LEAs should consider implementing mechanisms that would enable them to work together with the non-LEA Tax Agency agents (i.e., those agents who are not part of the Customs section of the Tax Agency which is a law enforcement agency) in criminal investigations. For example, such mechanisms could include using Tax Agency agents as "auxiliaries" or "tax experts" (i.e., as they already act in the Spanish Courts), or by sharing investigative information with the Tax Agency (provided that this could be structured in a way that does not breach the legal requirements of investigative secrecy). This may result in specific ML convictions in addition to convictions of other crimes.

3.28. **The FIU and LEAs use secure channels for exchanging information, and protect the confidentiality of information exchanged or used.** Although there were some problems in the past,

following an unauthorised disclosure which resulted in a counterpart FIU suspending relations with SEPBLAC, these issues have been addressed[6]. SEPBLAC significantly enhanced its controls and developed specific procedures (based on article 46 of the *AML/CFT Law*) governing the exchange and subsequent use of information from foreign counterparts. As a result of these measures, the counterpart FIU reopened relations with SEPBLAC in July 2013, and no further incidents have been reported.

Overall conclusions on Immediate Outcome 6

3.29. **Spain's use of financial intelligence and other information for ML and TF investigations demonstrates the characteristics of an effective system, and only minor improvements are needed.** The competent authorities collect and use a wide variety of financial intelligence and other relevant information (much of which can be accessed directly and in real time by both the FIU and the LEAs) to investigate ML, TF and associated predicate offences. Particularly rich sources of information are to be found in the notaries' Single Computerised Index (described in Box 7.1), and in the Tax Agency database. This information is generally reliable, accurate, and up-to-date. The competent authorities have the resources and expertise to use this information effectively to conduct analysis and financial investigations, identify and trace assets, and develop operational and strategic analysis.

3.30. **The assessment team weighed the following factors heavily**: the outputs of the system, particularly the numerous case examples and statistics demonstrating how the vast majority of SEPBLAC's analysis is actionable (either initiate investigations or support existing ones); the numerous case examples demonstrating the ability of the LEAs to develop evidence and trace criminal proceeds, based on their own investigations or by using the financial intelligence reports from SEPBLAC; the ability of SEPBLAC to access tax information without prior judicial authorisation; the ability of the LEAs to access, in real time, the notaries' Single Computerised Index which contains verified legal and beneficial ownership information; and SEPBLAC's ability to leverage, in its role as the FIU, information obtained through exercising its supervisory functions (and vice-versa).

3.31. **Overall, Spain has achieved a high level of effectiveness with Immediate Outcome 6.**

3.4 Effectiveness: Immediate Outcome 7 (ML investigation and prosecution)

(a) Circumstances in which ML is being identified and investigated

3.32. **Spanish LEAs have sufficient expertise and resources to identify and investigate ML, even in very complex ML cases, and parallel financial investigations are conducted as a matter of course in almost every asset-generating investigation.** The objective of the financial investigation is three-fold: i) to identify the financial infrastructure of the criminal organisation, including those who facilitate and move the proceeds of crime (i.e., with a view to identifying additional persons as targets for investigation); ii) to gather evidence of ML or any related predicate offences; and iii) to identify and trace assets that may be subject to confiscation: *Penal Code art.301-304 (Receiving and Money Laundering) and art.127-129 (incidental consequences)*.

3.33. **Spain has a complicated network of LEAs**, including the National Police, Civil Guard, and Customs Surveillance Unit of the Tax Agency, all of which are mandated to investigate ML (in the case of the latter, this mandate is limited to investigating ML related to tax offences). Operational coordination of the law enforcement agencies is managed by CICO (for ML and organised crime) and the CNCA (for terrorism). CICO uses the electronic Coordination of Investigation System (SCI) to coordinate (and de-conflict) the different investigative units at the national level. No investigation can be legally led without the LEAs entering the case into this central database. The system alerts every authority to any current or past investigation on the same

6 CICAD *(nd)*

target. The most appropriate manner of coordination is then decided on a case-by-case basis, depending on the circumstances, and may include joint operations, coordinated operations, irrelevant coincidences, transfer of data from one agency to another, etcetera. Where there is a conflict or jurisdictional disagreement between two services, CICO proposes the criteria of coordination and possible action to investigate the case. Complex ML cases are often investigated by multi-disciplinary task forces which include prosecutors, the FIU and police and tax agencies. The assessment team were not able to identify any significant differences in approach or effectiveness between ML investigations led by the National Police or judicial police of the Tax Agency, and those led by the Civil Guard. The analysis below therefore applies to all the law enforcement agencies equally.

3.34. **The following statistics demonstrate Spain's ability to identify and investigate ML**, both as a principal activity or as an activity related to another offence.

Table 3.3. Money Laundering Investigations

	2010	2011	2012
Total number of ML investigations launched annually	**430**	**452**	**436**
Number of persons investigated for ML as a principal activity	1 097	663	1 452
Number of persons investigated for ML as a related activity	5 772	7 275	4 742
Total number of persons investigated for ML	**6 869**	**7 938**	**6 194**
Number of organised groups investigated for ML as a principal activity	22	26	35
Number of organised groups investigated for ML as an activity associated with other offences	97	117	111
Total number of organised groups investigated	**119**	**143**	**146**
Number of arrests for ML as a principal activity	180	161	436
Number of arrests for ML as a related activity	1 310	1 438	1 428
Total number of arrests for ML	1 490	1 599	1 864

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Tables 15 and 16 (p.25), Table 17 (p.27), and Table 18 (p.28).

(b) Consistency with Spain's threat and risk profile, and national AML/CFT policies:

3.35. **The types of ML being investigated and prosecuted are consistent with the threats and risk profile of Spain, and its national AML/CFT policies.**

3.36. **National AML/CFT policies:** Spain's national strategy is focused on attacking the financial structure of organised crime groups and drug trafficking organisations (a "follow-the-money" approach), with the goal of disrupting and dismantling these organisations. Spain prioritises the investigation and disruption of *high-intensity criminal organisations* (significant transnational criminal organisations with vast, complex, entrenched infrastructures that generate and launder significant volumes of proceeds, principally from drug trafficking and human trafficking). In 2012, 37 such high-intensity groups were detected, of which 22% were dismantled completely, and partial results were obtained against 67%. Operations targeting these groups arrested 854 individuals, and an estimated EUR 143 million was seized (just over 33% of the estimated assets of these groups). LEAs and prosecutors have demonstrated examples of disabling organised criminal groups by identifying and shutting down their complex ML networks of national and international companies.

3.37. **Organised crime, including foreign criminals and ML through the real estate sector:** the type of ML being pursued involves mostly large foreign organised crime groups, with a priority on pursuing activities related to drugs, corruption, and related ML. Special attention is placed on identifying and tracing assets purchased though legal entities and involving the real estate sector, even where the predicate offence occurred in another country, which helps to mitigate the risk (noted above) of foreign criminals laundering

in Spain the proceeds of offences committed abroad. Numerous case examples were provided showing that Spain is successful in its investigations and prosecutions of these types of cases.

Box 3.3. Examples of ML involving foreign criminals and laundering proceeds through the real estate sector

Operation Troika: Cross-border organised crime groups from the Republic of Georgia and other countries of the former Soviet Union set up residence in Spain, and created complex networks of companies to launder the proceeds of foreign predicate offences, primarily through the purchase of a large number of properties, rural and urban real estate, bars, restaurant chains, and vehicles. Operation Troika resulted in the dismantling of the Tambovskaya-Malyshevskaya organisation in Spain (which had been operating since the end of the 1990s). Over 20 members of the various criminal organisations were arrested. Around EUR 17 million, luxury properties, jewels, over 20 luxury vehicles, luxury yachts, and high quality art works (including a painting by Dalí) were seized. There were further arrests and seizures in Germany resulting from the same operation.

Rafael Bornia - Sentence AN 3584/2012: A criminal organisation involved in drug trafficking established an entire company infrastructure to launder money and move it abroad to other countries such as Georgia and Costa Rica where it was invested. A significant amount of illicit proceeds were also invested in Spanish real estate. Significant assets were confiscated including over 35 commercial properties and residential properties, the current account balances and equity of companies in the ML network, and 4 luxury vehicles. Eight people were convicted of ML. All were sentenced to varying terms of imprisonment and criminal fines totalling almost EUR 223.5 million:

- Head of the criminal organisation – 7 years & 6 months jail, and a EUR 70 million fine.
- Six individuals who played key roles in the ML scheme by setting up companies in the ML network, and acting as majority shareholders, intermediaries in the property purchase, etc. – From two years to seven years jail, and fines from EUR 40 million to EUR 6.985 million.
- One lawyer who participated in the ML scheme as a member of the criminal organisation – five years jail, a fine of EUR 13.5 million, and a five-year disbarment from the practice of law.

3.38. **The cases provided also indicate that it takes a long time for ML cases to come to trial, particularly in the more complex cases, and that trials and appeal processes are also time consuming.** It is not unusual for 6-8 years to pass between arrest and the completion of legal proceedings: *Supreme Court Judgement 974/2012, White Whale, Judgment AP 535/2013, Malaya*.

3.39. ***Laundering through the MVTS sector:*** Spain also provided examples of successful investigations and prosecutions of ML activities involving organised crime groups laundering proceeds through the MVTS sector (e.g. *Operation Emperador*, described above in Box 3.2), and by cash smuggling (e.g. *Sentence AN 26/2013*, which convicted 19 individuals, including a lawyer and a financial broker, of money laundering offences for their involvement in bulk cash smuggling of EUR 14 million proceeds of drug trafficking to Colombia over a 2-year period). Special attention is being placed on the professional launderer and third party ML targets.

Box 3.4. Dismantling Third Party Money Laundering (3PML) Networks – The Malaya Case

Sentence AP535/2013: A large ML network was prosecuted in Spain in 2013. A total of 18 people were found guilty of money laundering (including lawyers, financial advisors, front men, a bank manager, a jeweller, several real estate developers and two art dealers). The case involved numerous predicate offences including corruption, bribery and embezzlement. This professional ML network was led by a Marbella Town Councillor who was helped by lawyers to establish 71 companies, some located abroad, for the sole purpose of disguising unlawful profits from criminal activities.

The judgment involved various terms of imprisonment (ranging from one to five years); criminal fines totalling over EUR 520 million and those professionals being banned from carrying on their professional activities (for five years). In addition, significant assets were confiscated including: 55 current accounts in Spain and three in Switzerland; EUR 220 000 cash; 120 apartments, buildings, and plots of land; 11 luxury vehicles; and a bull-fighting ranch.

This case is illustrative of the special attention Spain gives to pursuing professional money laundering networks and confiscation and their extensive efforts to identify and trace assets purchased through legal entities and the real estate sector.

3.40. **Laundering the proceeds of tax crimes:** A significant number of cases involving trade-based money laundering (TBML) have been identified, particularly related to tax and VAT fraud. In 2011, the AEAT referred 1 014 accusations of tax crimes (involving EUR 909 million) to the Prosecutor Office. In 2012, the AEAT referred 652 accusations (involving EUR 604 million). The roots of this problem stem from the dramatic rise of the real estate and construction sectors from 2000 to 2007. The use of cash in this sector led the Tax Agency to pursue EUR 500 bank note transactions—an initiative that resulted in the Tax Agency recovering EUR 1.6 billion in four years, and new legislation (which came into force in 2012) to prohibit cash payments over EUR 2 500.

3.41. Tax crimes are predicate offences for ML (which was confirmed by the Spanish courts in *White Whale, STS 974/2012*. There is a very important legal stream which allows the Tax Agency to accuse for the crime of ML together with the predicate tax crime. Spain actively pursues this type of ML activity. A number of case examples where provided to the assessment team which include *Operation Habanas (DP 3304/2013), Operation Basile (DP 107/208) Operation Marcianitos (DP 2120/2012)*.

(c) Different types of ML cases pursued

3.42. **Spain has extensive experience in prosecuting and obtaining convictions in complex cases that involve the laundering of foreign predicates** (often through the real estate sector), third party laundering (including by organised groups of professional launderers), ML as a stand-alone offence, and self-laundering. Special attention is being placed on the professional launderer and third party ML targets. As it is not necessary to prove a link to a specific predicate offence, there have been cases where stand-alone ML offenders have been convicted, although they have received very low sentences (*e.g., Malaya Case*).

3.43. In 2011 and 2012, the National Court (*Audiencia Nacional,* which is the only court with judges specialised in hearing cases involving ML and financial crime), Provincial Courts and High Courts of the Autonomous Communities convicted 206 persons of ML, and imposed criminal fines of almost EUR 740 million.

Box 3.5. Example of depriving criminals of the proceeds of tax crimes (Operation Raspa)

The organisation investigated acted as an intermediary in the fuel business and is estimated to have defrauded more than EUR 10 million in Spain by appropriating the VAT charged on the supply of fuel to petrol stations. In their endeavour to have this go undetected, the fraudsters replaced the companies used every few months and placed front men at the head of the companies. The appropriation of the VAT meant that they were able to sell their product to retailers at lower prices than operators that were complying with their obligation to pay over to the Spanish tax authorities the VAT they charged to their clients. In this respect, liability could be sought against the retailers who purchased fuel from this or other schemes at significantly below-market prices.

In the operation a total of EUR 700 000 in cash was seized, the scheme's bank accounts were blocked, more than a million litres of fuel was immobilised in Barcelona, Huelva and Bilbao and an order prohibiting disposal of assets was made on eight properties, all located in Catalonia. Abundant documentation was also seized, as were various computers from which data will be downloaded and analysed. The Tax Agency mobilised 32 Customs Surveillance officers from Catalonia and Castellon in the operation, along with 17 inspectors, experts and IT experts, and received the support of officers in Andalusia and the Basque Country for immobilisation of the fuel held in tax warehouses.

Table 3.4. Money laundering prosecutions – Criminal trials completed annually for ML offences[1]

	2010	2011	2012
Total number of ML trials completed annually	**46**	**36**	**75**
Provincial court trials *(Audiencia Provincial)*	30	28	58
National court *(Audiencia Nacional)*	16	8	16
Total number of individuals indicted	**152**	**154**	**204**
ML (related to another offence)	28	18	64
ML only	124	136	140
Cases in which evidence of an underlying criminal organisation was found	14	16	17
Total number of convictions	**31**	**20**	**45**
Total number of convictions for self-laundering	**24**	**12**	**33**
Total number of individuals convicted	**97**	**95**	**111**
Handed down by the National Court	13	5	12
Handed down by the Provincial Courts	18	15	32
Handed down by High Courts of the Autonomous Communities	0	0	1[2]
Total number of individuals convicted	**97**	**95**	**111**
Money self-laundering (related to another offence)	24	12	33

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 20 & 22 (p.30, 31).

Table Notes:

1. This data comes from the National Court, Provincial Courts and Regional Courts which have been completed through to conviction or acquittal. These statistics do not include offences attracting less than five years imprisonment.
2. Although the High Courts of the Autonomous Communities (*Tribunales Superiores de Justicia – TSJ de las CCAA*) have only had one ML conviction in the past three years (*Statistics Report 2010-2012 Table 22 p.33*) this is because they have very limited jurisdiction to pursue criminal matters (only very specific cases of person with parliamentary privileges can be tried by those courts).

(d) Extent to which sanctions are applied, and are effective, proportionate and dissuasive:

3.44. **A weak spot in the system is the level of sanctions and their effectiveness.** The majority of natural persons generally convicted for ML in the most complex cases are sanctioned within the lower range of the scale and receive sentences ranging from six months to two years imprisonment. Even professional money launderers who have laundered millions of euros rarely receive the maximum of six years imprisonment. However, it should be noted that normal judicial practice in Spain is to apply a sentence at the lower end of the range of penalties set out for the offence. Higher penalties may be applied, but in practice are only used in exceptional circumstances. The low ML sentences received are not very dissuasive and not very proportionate to the severity and complexity of these cases, and the length of time and resources needed to investigate and prosecute them through to final conviction. Since the 2010 reform of the *Penal Code*, tougher sentences have been imposed in practice, but remain very low. In 2011, the average sentence for ML overall (taking into account both serious offences and more minor ML offences) was 1 year, 8 months and 20 days.[7] In 2012, the average sentence increased to almost 2 years. The maximum sentences also increased during the same period: from 5 years, 6 months (2011) to 7 years, 6 months (2012).[8] When imposing sentences, judges must take into account mitigating and aggravating circumstances, and the general and special rules for the application of penalties: *Penal Code art.21, 22, 61-79.* The maximum six year penalty could be elevated up to nine years if it is a continuing offence (art.302 *Penal Code*). Also the penalty for bosses, managers or officers or organisations dedicated to money laundering is six to nine years (art. 302 *Penal Code*). The application of these two provisions could potentially increase ML penalties to 13 years and 6 months if utilised. It is hard to understand why the upper range of sentences is not being imposed in more serious cases.

3.45. **Six lawyers were convicted for ML between 2010 and 2012, and an additional eight were convicted in 2013.** There are numerous cases where disbarment from exercising a profession for five years have been utilised against lawyers, which is the maximum disbarment period allowable for these professions. These sanctions do not seem very proportionate to the gravity of the offences, given the important role that these professions play as facilitators in complex ML schemes. Moreover, three years is not a very long period, and the prosecutors admit that these penalties are not effective as these professionals are able to return to their ML activities after serving their sentences.

3.46. **Fines of one to three times the value of the assets appear to be used often as a sanction for ML, and on their face, these sanctions would appear to be very dissuasive.** Convicts who do not pay voluntarily are subject to subsidiary personal liability or by enforcement set out in the sentence (which is usually an additional period of imprisonment): *Penal Code art.50-57*. Additionally, any gains obtained from committing ML shall be seized pursuant to article 127. Legal persons convicted of ML are subject to a fine of one to three times the value of the assets, and/or temporary or permanent closure of the establishment or premises. Persons held criminally liable may also incur civil liability if their actions caused damages or losses.[9] The number of people sanctioned with criminal fines was 96 in 2010, 92 in 2011, and 80 in 2013. Of these, the number of people sanctioned with fines of EUR 3 million or more was 27 (28%) in 2010, 29 (36%) in 2011, and 24 (30%) in 2012. No statistics are available on the amount of money ultimately recovered by the authorities in relation to criminal fines.

3.47. **Despite concerns over the dissuasiveness of sanctions** (particularly the low terms of imprisonment), the authorities were able to provide some statistics to show that **some criminal organisations have been entirely dismantled in Spain**.

7 Some fines in the Penal Code are expressed in terms of days, months and years. In such cases, the daily quota is from EUR 2 to EUR 400 for natural persons, and from EUR 30 to EUR 5 000 for legal persons. The judge will determine the daily quota to be applied, taking into account the financial situation of the convict, deducting revenue, financial obligations, charges and other personal circumstances from his/her assets: *Penal Code art.50*.

8 Committee for the Prevention of Money Laundering and Monetary Offences (2013), pages 60-61.

9 *Penal Code* art.301(1), (2), (3) & (5), and art.116.

(e) Extent to which other criminal justice measures are applied where conviction is not possible

3.48. **Confiscation is the main criminal justice measure which may be applied where conviction is not possible.** Up until 2010, Spanish law did not provide for corporate criminal liability, so it was not possible to secure a ML conviction against a legal person. Nevertheless, Spain applied other criminal justice measures in such cases (some of which were provided to the assessment team) which led to confiscation of the business/company:

a. associations pursuing goals or using means criminalised in the *Penal Code* are outlawed: *Constitution art.22*

b. when determining whether a legal person's purposes are lawful or simply concealing the commission of crimes, the corporate veil may be lifted to reach the natural persons behind it

c. anyone representing or acting on behalf of a legal person in committing a felony or misdemeanour may be held personally liable: *Penal Code art.31,* and

d. if a felony or misdemeanour is committed within or through, in collaboration with, or by means of a legal person, that legal person may be subject to accessory penalties, including the dissolution of the legal person: *Penal Code art.129 and 520.*

3.49. **In 2011 and 2012, a total of 91 businesses and companies were confiscated, based on actions which began before legal persons became subject to corporate criminal liability.** Following amendments to the *Penal Code* in 2012 which established corporate criminal liability, about 10 companies were indicted, and these cases are ongoing. The authorities are optimistic that corporate criminal liability will be a powerful tool in helping to make it unprofitable to launder proceeds in Spain, though it is not yet clear how this new criminal law principle will be applied in practice.

3.50. **When no conviction can be obtained because a natural person is exempted from criminal accountability or due to the statute of limitations, confiscation may still be ordered**, provided that the unlawful status of the assets is proven. For example, see *Judge's Resolution in Preliminary Proceedings 373/06-L* in which the seizure of assets was ordered after the death of the accused. Definitive confiscation has not yet been ordered as the trial has not yet concluded.

3.51. It should also be noted that, even before the 2010 legal reforms, the Spanish courts had recognised self-laundering as an autonomous criminal activity: *e.g., Sentences STS 1597/2005, STS 974/2012*, and *STS 228/2013*.

3.52. **Few other alternative measures** are available because, according to the principle of legality in Spain, preliminary measures must be stopped if there is insufficient evidence of ML, or when the charges are dismissed without an indictment. As well, plea bargaining is not an option when a ML conviction cannot be secured since, once an indictment exists, the trial must take place.

3.53. **Overall, it should be noted that little weight is given to this particular issue** because, overall, Spain has a strong success rate in achieving convictions (the assessment team were told by a judge that the conviction rate is about 90%). In that context, the limited alternatives to apply other criminal justice measures in cases where a ML investigation has been pursued but where it is not possible, for justifiable reasons, to secure a ML conviction have little impact on the overall effectiveness of Spain's system.

Overall conclusions on Immediate Outcome 7

3.54. **Spain demonstrates many of the characteristics of an effective system, particularly in relation to its ability and success in investigating and prosecuting ML at all levels**, especially cases involving major proceeds-generating offences. The authorities regularly pursue ML as a standalone offence or in conjunction with the predicate offence, third party ML (including by lawyers and notaries who are professional money launderers), self-laundering, and the laundering of both domestic and foreign predicates. It is standard procedure to undertake a parallel financial investigation, including in cases where the associated predicate offences occurred outside of Spain. The authorities provided many cases which demonstrate their ability to work large and complex ML cases successfully through to conviction, and the front end of the system (investigations and prosecutions) demonstrates a high level of effectiveness. These factors were weighted very heavily, particularly since the types of cases being pursued through to conviction are in line with the ML risks in Spain and its national priorities.

3.55. **The only weakness of the system comes at the conclusion of the criminal justice process (sanctions).** In particular, there is concern about the level of sanctions (terms of imprisonment and periods of disbarment) actually being imposed in practice in serious ML cases, and their dissuasiveness and proportionality. Criminal fines appear to be the most utilised type of sanction and are often in the millions of euros. On their face, the fines appear to be sufficiently dissuasive; however, it is not known to what extent they are recovered in practice. Although the dissuasiveness and proportionality of sanctions are always important factors, Spain was also able to provide concrete statistics and information demonstrating that its systems for investigating and prosecuting ML are resulting in the disruption and dismantling of organised criminal groups in Spain. These sorts of results would be expected of a well-performing AML/CFT system and, therefore, mitigate the weight given to the factor.

3.56. **Overall, Spain has achieved a substantial level of effectiveness with Immediate Outcome 7.**

3.5 Effectiveness: Immediate Outcome 8 (Confiscation)

(a) Confiscation as a policy objective

3.57. **Spain's national strategy is aimed at confiscating proceeds, the instrumentalities and property of equivalent value, particularly to dismantle the financial support of organised crime groups.** The confiscation and securing of funds/assets through provisional measures are specific objectives in the *Action Plans Against Economic Crime and Money Laundering* of the LEAs, and in their operational guidance.[10] Confiscation is compulsory for all criminal offences, and so is actively pursued as a policy objective. It is only optional in the case of crimes of negligence (*delito imprudente*). The authorities consider the "follow-the-money" approach to be one of their most effective tools to disrupt criminal organisations.

(b) Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad

3.58. **In practice, when investigating proceeds-generating offences, the LEAs begin parallel financial investigations as a matter of course, to identify assets which may be subject to confiscation**. Provisional measures are undertaken at the earliest possible opportunity to secure such assets. The authorities are strongly focused on confiscation of all types of assets (not just cash and bank accounts), and this focus is supported by a strong legal framework that provides for provisional measures and confiscation, including in the absence of a conviction. Numerous examples were provided of cases involving significant seizures of high value properties, vehicles, jewellery, art, businesses and companies, and these case examples (see Boxes 3.3, 3.4, 3.5 and 8.2) were backed up with statistics, and demonstrate that the results of Spain's confiscation efforts are consistent with the criminal lifestyles reflected in the large third party ML cases: *see also Sentence*

10 For example, see the *Operational Handbook* issued by the General Division of the Judicial Police.

AN 39/2012 (Oubiña). The authorities are very much focused on making crime unprofitable because, in their view, this is more effective and dissuasive than terms of imprisonment. The willingness of the authorities to go after assets such as high value properties is important in the Spanish context, given the high risks faced by foreign criminals who often launder the proceeds of their foreign predicates in Spain by purchasing real estate.

3.59. **The proceeds, instrumentalities of crime, and property of an equivalent value, involving domestic and foreign predicate offences and proceeds which have been moved to other countries are routinely confiscated.** Spain provided many court sentences showing a high number of goods, assets and properties, worth millions of euros, being confiscated in relation to ML offences. Some of these cases involved laundering the proceeds from domestic predicate offences, but many of the largest cases involved laundering the proceeds of foreign predicate offences which is consistent with Spain's risk profile. For example, in *Operation Majestic,* National Police and Civil Guard are collaborating on an operation involving ML by way of 200 properties. Assets seized, include 230 properties, 165 bank accounts 22 vehicles and 2 aircraft. In *Operation Casablanca,* the authorities have seized/blocked: 12 properties (among them an estate valued at EUR 2.5 million), watches and luxury goods valued at over EUR 600 000, EUR 50 000 cash, 76 bank accounts, 26 luxury vehicles, and 2 boats. Confiscation will be sought at the end of these proceedings.

3.60. **The following statistics show the number and type of assets that were confiscated by the National Court and Provincial Courts under convictions for ML.** This data does not include other confiscated property such as phones, laptops, cameras, weighing scales, or assets of which the value is not measurable on the basis of the information provided in court judgements (e.g. jewels, objects of art). The chart below does not contain values of the non-cash assets confiscated.

Table 3.5. Number and type of asset confiscated under convictions for ML

	2010	2011	2012
Cash (in EUR)	4.8 million	4.4 million	16.5 million
Current accounts and securities accounts	41	67	123
Businesses and companies	8	35	56
Total number of properties/real estate confiscated	**31**	**150**	**122**
Urban and rustic properties	16	35	29
Buildings/housing	15	65	83
Undeveloped real estate plots & warehouses	-	6	1
Commercial premises	-	23	3
Garage spaces, storage rooms & berths in marinas	-	21	6
Total number of vehicles & vessels confiscated	**79**	**83**	**129**
Cars	58	64	69
Sport utility vehicles	-	1	5
Lorries	-	1	3
Motorcycles	8	5	15
Industrial vehicles, vans & tractors	-	2	14
Personal watercraft & vessels	13	10	23
Other			
Weapons (handguns, shotguns, rifles)	4	2	13
Horses …	-	-	23

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 24 (p.36).

Table Note: The monetary values in this table are approximate (the figures have been rounded up/down).

3.61. **The next chart shows the number and types of assets frozen/seized in relation to predicate offences, for this same period.** The number of freezing orders and police seizures in connection with predicate offences was 1 019 (in 2011) and 839 (in 2012).[11] Provisional measures were applied across the full range of predicate offences, with the majority of cases involving the predicate offences of organised crime (45%) and drug offences (25%), consistent with Spain's risk profile.

Table 3.6. Assets frozen or seized in relation to predicate offences

	2010	2011	2012
Cash (in EUR)	6.6 million	35.7 million	23 million
Houses and real estate plots	83	88	67
Businesses	1	13	53
Vehicles (boats, cars, lorries, caravans, etc)	479	499	1 576

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013),Table 49 (p.65).

Table Note: The monetary values in this table are approximate (the figures have been rounded up/down). This chart does not contain values of the non-cash assets frozen/seized.

3.62. **Spain provided global information on the amounts that are paid or confiscated in favour of the Treasury by judicial sentences, and paid into the Treasury's Judicial Appropriations Account** (*Cuenta de consignaciones judiciales*): EUR 157.7 million (2010), EUR 223.2 million (2011), and EUR 147.1 million (2012). Into this account are paid sums recovered through confiscations (including from civil, labour or administrative judicial sentences), confiscated fees, penalties and other deposits. It is not possible to get an exact figure of the amount confiscated for all criminal offences; however, the authorities estimate that about 33% of the deposits made into the Judicial Appropriations Account come from the Criminal Courts. In the context of pursuing large, transnational, "high-intensity" organised crime groups (which is a Spanish priority), it is estimated that over 30% of their assets (not including drugs) are ultimately seized for confiscation.[12] Spain´s Treasury has a separate account for confiscations from drug-trafficking offenses (not included in the Treasury's Judicial Appropriations Account): EUR 33.6 million (2010), EUR 21.2 million (2011) and EUR 21.8 million (2012). Confiscations resulting from undeclared cross-border movements in cash over EUR 10 000, and undeclared internal movements in cash over EUR 100 000 (after penalty) are also held separately: EUR 17.9 million (2010), EUR 17.5 million (2011), and EUR 18.2 million (2012).

3.63. **Spain has a comprehensive legal framework of asset management procedures,** and through experience, the authorities continue to improve their ability to manage assets which pose particular preservation challenges (e.g., businesses, vessels, animals). Nevertheless, drops in market value (a factor which is out of the authorities' control) can sometimes wipe out the value of a confiscated asset before it can be disposed of at auction (as has happened in relation to seized real estate following the crash of Spain's real estate market). The authorities provided some examples of steps taken in particular cases to preserve and manage frozen/seized assets, with the aim of preserving their value for confiscation. For example, in one case the court ordered the timely sale of a functioning company, whose line of business was the operation of a public parking lot, so that the parking company could be sold, thereby realising its value. The authorities also provided examples in which significant amounts of precious metals were seized (*Operation Habanas*), and business premises, real estate and safety deposit boxes were blocked (*Operation Marcianitos, Operation Basile*). The authorities acknowledged, however, that it is not always possible to realise the value of seized property. For example, the Spanish real estate market crash has significantly lowered the values of

11 Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 48 (p.63).

12 These statistics do not include the values recovered in ML cases for other types of assets such as properties or vehicles.

confiscated properties, with the result that it is difficult or impossible to recover at auction the maintenance and administrative costs which were incurred during the period properties were held by the authorities.

3.64. **The following chart shows the value of assets confiscated in connection with drug trafficking which is a major ML predicate in Spain,** calculated on the basis of the price earned at auction, less any amounts paid under court orders for restitution.

Table 3.7. Breakdown of funds confiscated in connection with drug trafficking offences (amounts realised after auction), in EUR[1]

	2010	2011	2012
Auctions of personal property (vehicles, jewels, vessels)	1.3 million	1.5 million	1.4 million
Real property confiscations and auctions	32.6 million	20.2 million	21.2 million
Total value of court-ordered confiscations in connection with drug trafficking offences	**33.7 million**	**21.2 million**	**21.9 million**

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 24a (p.37) and Table 22 (p.33).

Table Note: The monetary values in this table are approximate (the figures have been rounded up/down).

3.65. The *Report on the Management of the Asset Confiscated Fund*, published annually by the National Drug Control Plan, contains a statistical study on the confiscations carried out annually in relation to drug offences. The following statistics demonstrate how the Adjudication Committee (which manages the Asset Confiscated Fund) decided to dispose of the confiscated assets.

Table 3.8. Measures used to dispose of assets confiscated in relation to drug trafficking offences

	2010	2011	2012
Property transfers (disposal by public auction or direct sale to the public)	469	740	375
Definitive allocation (disposal by allocating the asset to an LEA or the Tax Agency for use in subsequent investigations (often used for vehicles & vessels)	96	125	182
Relinquishment (destruction or scrapping when, for example, the asset has limited value or high maintenance costs making it inefficient to transfer ownership)	995	923	1 590
Unavailable goods (where the good was destroyed or stolen prior to the confiscation order being issued)	198	325	344
Total number of disposals	**1 758**	**2 113**	**2 491**

3.66. **Confiscation is also pursued in terrorism and TF cases, as described in Immediate Outcome 10.**

3.67. **Spain also repatriates and shares frozen/seized assets with other countries, something which is particularly easy to do in the EU context.** Repatriation and asset sharing is more challenging with non-EU countries because, although there is a legal basis upon which to do so, the procedural framework is less well-developed and sometimes hindered by inherent differences in legal systems. Ultimately, the aim of the Spanish authorities is to make crime unprofitable and reduce both predicate crimes and ML. Cases involving foreign predicate offences are often supported by international cooperation to assist in identifying and tracing of assets. Spain provided numerous examples of cases in which it requested and obtained freezing and confiscation orders from other countries, where the assets in question are located abroad: *for example, see Operation Champi (Box 8.2), Fórum Fliatélico, and Operation Malaya (Box 3.4).*

3.68. **Spain is also regularly requested to provide other countries with assistance in freezing/confiscating assets located in Spain.** For example, in 2011-2012, Spain was in the top 11 countries for outgoing requests by the United Kingdom concerning overseas assets. Asset sharing was a feature of some of these cases. The UK authorities report very good cooperation with Spanish law enforcement, and are working to deepen their cooperation in this area. Spain provided numerous examples of its ability to provide international cooperation country. For example, in *Letter Rogatory 11/09 (Comisión Rogatoria CR 11/09)*, the Spanish authorities, acting at the request of the Italian authorities, identified and enforced a non-conviction based administrative confiscation (a *misure di prevenzione*) against a property in Málaga which was subsequently sold, and the proceeds shared as stipulated *ad hoc* between the respective Spanish and Italian Ministries of Justice. Likewise, in *Letter Rogatory 19/13,* Spain provided banking information and seized assets (properties, shares, and account balances) at the request of the Netherlands; *see also para.414*.

3.69. **Spain estimates that the value of assets traced in response to foreign requests was over EUR 28 million in 2011, over EUR 56 million in 2012, and over EUR 79 million in 2013.** The estimated value of assets traced by other countries at the request of Spain was over EUR 1 million in 2012, and over EUR 6 million in 2013: *CICO ARO statistics (25/08/2014)*. It should also be noted that Spain is an active member of the following international asset recovery initiatives: ARO Platform, Centres of Excellence in Asset Recovery and Training (CEART Project), Camden Assets Recovery Inter-Agency Network (CARIN), World Bank and UNODC Stolen Asset Recovery (StAR) Initiative, AMON Network, GAFISUD Network of Recovery Assets (RRAG), and the Asset Recovery Group of the United Nations Convention Against Corruption.

(c) Confiscation of falsely or undeclared cross-border transportations of currency/BNI

3.70. **The cross-border declaration system is generating good results.** Both inbound and outbound transportations are being reported, and the authorities are making seizures and confiscations in relation to currency/BNI that is not declared or falsely declared. The authorities can seize cash at the border. The authorities also provided some specific examples of large border operations conducted by the Civil Guard and customs authorities that were successful in detecting large-scale cash smuggling through Morocco and the Spanish enclaves of Ceuta and Melilla, and Andorra. For example, in the case of Andorra, targeted efforts to detect cash smuggling have resulted in the detection of 263 travellers carrying more than EUR 7.2 million. Of these, 17 outflows involved more than EUR 600 000, with the largest single movement being EUR 86 000. There were 215 actions taken against undeclared inflows focused on Spanish citizens, amounting to EUR 5.3 million. One action discovered a traveller carrying EUR 515 500. There were seven detections of travellers carrying above EUR 100 000 (totalling EUR 975 000), and 27 detections of amounts over EUR 30 000 (totalling EUR 1.32 million). The majority of the cash smuggling to/from Andorra is related to tax offences.

3.71. **Where breaches of the declaration obligation are discovered or where there is a suspicion of ML/TF, all of the currency/BNI are seized and kept throughout the administrative procedure and may subsequently be confiscated.** The outcome of the administrative procedure determines whether 100% of the funds initially seized (or some lesser or greater amount) will be confiscated. A greater amount will be confiscated if the authorities decide to apply an additional sanction which can be up to hundred per cent of the seized money. The level of the sanction imposed in each case depends on the circumstances of the specific movement (for example, whether the funds were concealed, the coherence between the amount of money kept by the courier and its professional activity, and whether this is a repeat offence, in which case up to 200% of the amount being transported may be confiscated). The authorities provided the follows statistics which demonstrate the results being generated by the system.

Table 3.9. Confiscations and seizures related to breaches of the cross-border declaration obligation

	2010	2011	2012
Cross-border cash movements exceeding EUR 10 000 (with an S1 report)			
Inbound	3 499	3 277	4 235
Amount	EUR 290 million	EUR 221 million	EUR 234 million
Outbound	5 714	5 959	6 369
Amount	EUR 261 million	EUR 260 million	EUR 208 million
Orders for the seizure of cash at border checkpoints for a value exceeding EUR 10 000 (without S1 report)			
Number of sanctions imposed for not/falsely declaring	593	566	533
Number of sanctions relating to inbound transportations	120	128	139
Number of sanctions relating to outbound transportations	473	438	394
Amounts seized at the border	EUR 22.5 million	EUR 18.5 million	EUR 18.5 million
Amounts confiscated by way of sanctions	EUR 13 million	EUR 11 million	EUR 10.7 million

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 25 (p.38) and Chapter B2.4 (*Confiscations in connection with TF*) (p.38).

(d) Extent to which confiscation results reflect ML/TF risks and national policies and priorities

3.72. **The confiscation results reflect the assessments of ML/TF risks and national AML/CFT policies and priorities to a very large extent.** One of the main risks identified in Spain is that large volumes of money are laundered through the real estate sector (including by foreign criminals residing in Spain). And, in almost all ML cases, a legal person (or a network of legal persons) is involved. The cases provided (for example *Operation Malaya* and *Operation Emperador*) and the supporting statistics demonstrate that the Spanish authorities are actively pursuing the confiscation of real estate (properties of all kinds have been confiscated) and companies. Between 2010 and 2012, a total of 303 properties, and 99 businesses and companies were confiscated in ML cases alone. The cases also demonstrate a focus on pursuing provisional measures and confiscation in cases involving the laundering of proceeds of tax offences: *for example, see Operation Raspa in Box 3.5.*

3.73. **Confiscation of proceeds is undertaken through criminal processes** (conviction-based confiscation and non-confiscation based confiscation in certain specific circumstances), **civil processes** (persons held criminally liable may also incur civil liability if their actions caused damages or losses and administrative), **and administrative processes** (confiscation of assets not truthfully declared pursuant to the cross-border declaration requirements).

Overall conclusions on Immediate Outcome 8

3.74. **Spain's system of provisional measures and confiscation demonstrates many characteristics of an effective system, and only minor improvements are needed.** Spain's focus on provisional measures and confiscation reflects its national AML/CFT policies, and particularly its priorities on tackling organised crime, including ML by foreign criminals through the real estate sector, the laundering of proceeds through tax crimes, and bulk cash smuggling. Statistics show that organised criminal groups are being dismantled and deprived of their proceeds. This is all in line with the overall ML/TF risks facing Spain, and was an important factor in this assessment.

3.75. **International cooperation is being both requested and provided by Spain in connection with tracing assets, and taking provisional measures and confiscation.** This is particularly important in the Spanish context, given the risk of foreign criminals resident in Spain, and having assets both in the country and abroad. Spain is pursuing high-value assets such as properties and companies which is also a key factor, given that many of the large, complex ML cases involve criminals investing in the Spanish real estate market through complex networks of companies. Other important elements are that provisional measures are pursued in a timely manner.

3.76. **There is a need to enhance mechanisms for asset sharing and repatriation with other countries (something that works relatively well with other EU countries, but is more challenging with non-EU countries).** This issue is mitigated and given less weight in the Spanish context because it actively and regularly pursues ML investigations and prosecutions involving the proceeds of foreign predicate offences (rather than deferring to the more passive approach of responding to international cooperation requests from other countries).

3.77. **The assessment team gave less weight in this area to statistics of the value of assets confiscated and frozen/seized.** More emphasis was placed on statistics of the number and type of assets involved, and qualitative information such as case examples. The reason is that valuations of assets frozen/seized, rarely corresponds with the final value realised by the authorities because the assets depreciate while under management by the authorities. This is a particularly relevant issue in Spain because many of the assets confiscated are properties (Spain suffered a collapse of its property market), and companies and businesses (which are difficult to manage in such a way that there full value is retained, particularly given the timetable to bring complex cases to final conclusion). This is not inconsistent with the main objective of Immediate Outcome 8 which is to deprive criminals of the proceeds of their crimes—a result which is achieved, provided that provisional measures are taken in a timely manner (preventing the criminal from hiding or dissipating the assets) and regardless of whether the government ultimately realises their full value at the time of confiscation (although this is obviously desirable). This is also in line with paragraph 52 and 53 of the *Methodology* which cautions that the "assessment of effectiveness is not a statistical exercise", and such data should be interpreted "critically, in the context of the country's circumstances".

3.78. **Overall, Spain has achieved a substantial level of effectiveness with Immediate Outcome 8.**

3.6 Recommendations on legal system and operational issues

Recommendations on IO.6

3.79. Spain should reinforce the dialogue between competent authorities and the private sector in order to ensure that the private sector already has a general understanding of what type of information is needed, in what format, and what the urgency might be, before they are in the position of responding to a specific request.

3.80. The LEAs already have access to tax and customs information, with prior judicial authorisation. In order to improve ML investigations which also involve the tax offence, other LEAs should consider implementing mechanisms that would enable them to work together with the non-LEA Tax Agency agents (i.e., those agents who are not part of the Customs section of the Tax Agency which is a law enforcement agency) in criminal investigations, which may result in specific ML convictions in addition to convictions of other crimes: *see paragraph 3.27 for some examples of such mechanisms*.

3.81. The Financial Ownership File will be a valuable tool for tracing information on the holder of bank and securities accounts. The authorities should ensure that work to make this database fully operational in 2016, as scheduled, remains a priority.

Recommendations on IO.7

3.82. The sanctions (terms of imprisonment) which are actually being applied in large and complex ML cases are not very proportionate or dissuasive. Recently, there has been a trend of higher sanctions being imposed, but the reasons for this are not clear. Spain should consider exploring whether sentencing guidelines would be useful for presiding judges, or whether other measures might be taken which could encourage the recent trend, particularly in the most serious ML cases.

3.83. Spain has faced many cases involving lawyers who were either complicit or used, and several involving notaries who were used in setting up and managing complex ML schemes. Despite their important role as gatekeepers, the maximum term of disbarment is only three years, which can be raised according to Penal Code art.21, 22, 61-79 and 302, but is not a very dissuasive sanction. Spain should amend the *Penal Code* to extend the maximum period of disbarment for lawyers, notaries, and trust/company service providers (e.g. to 10 years), or require re-qualification before a disbarred professional can resume practicing. This would be consistent with the maximum period of disbarment available for certain other professions (entrepreneurs, financial sector intermediaries, medical practitioners, civil servants, social workers, teachers or educators) who commit ML offences while carrying out their professional duties, and with the *Spanish Constitution* (which does not allow disbarments for life to be imposed).

3.84. No matter how long the period of disbarment, there remains the possibility that a professional who is a money launderer may return to criminal activity once the period of disbarment is over. Spain should take measures to mitigate this risk by, for example, increasing supervision of lawyers who have been previously disbarred. As well, where a lawyer's conduct falls short of professional requirements and permits ML to occur, but was not intended to aid in ML, SEPBLAC (as the AML/CFT supervisor) and/or the relevant bar association should take disciplinary or remedial action.

3.85. The majority of the complex ML cases are tried at the National Court which has six investigating judges and twenty presiding (examining) judges who are specialised in financial crimes. Neither the presiding judges, nor the investigating judges in the provincial levels are specialised in financial crimes. Instead, they have general knowledge of criminal law to handle all the different types of crimes presented to them. Having more specialised investigative judges, or providing additional specialised training for more of the presiding judges, would be an important component to making it easier to successfully prosecute more complex ML cases, although it should be noted that Spain is nevertheless achieving convictions in such cases. Any training or expertise should be focused on how to assess and use circumstantial evidence in financial crimes cases, and on understanding ML typologies.

3.86. Spain should continue to place great focus on preventing foreign criminal organisations from operating in Spain. Such measures could include, for example, encouraging the ongoing process of strengthening cooperation between law enforcement and judicial authorities at the EU level.

3.87. The authorities expressed concerns about the length of time that it takes to successfully prosecute ML cases. Some of these difficulties are an inherent feature of the Spanish legal system. For example, any party to a case has the right to appeal any aspect of the case, which can cause significant delays in complex fraud cases involving hundreds or thousands of defendants. In addition to the use of specialised judges (above), Spain should consider undertaking a review of its criminal procedure with a view to streamlining the appeal process.

Recommendations on IO.8

3.88. Spain should clarify procedures and provide more guidance on how, in practice, asset sharing is to be undertaken with non-EU countries, particularly those with non-civil law legal systems, and should consider adopting general legal provisions on how assets should be shared in the absence of a bilateral agreement. Spain should provide more resources to the judicial ARO to manage the coordination and processing of confiscation requests sent to/received by other countries. Currently, this role is managed by a single person who is the contact point within the Special Prosecutor Against Drugs, with support from CICO and the International Prosecutor Cooperation Office. However, given large number of requests dealt with by Spain annually, more staff are needed to perform the contact point function.

3.89. Spain should consider ways to increase the volume and value of confiscated assets. For example, Spain should develop indicators that could better demonstrate the system's level of effectiveness, and could be used to improve management of the confiscation system. These indicators should differentiate between: the value of assets frozen/seized and their value at the time of confiscation; and the value of assets being confiscated pursuant to domestic proceedings, and those being confiscated pursuant to the execution of foreign confiscation orders. These indicators should also include additional ways of determining a factual basis for significant asset depreciations, which could be used to enhance mechanisms for managing and disposing of frozen, seized or confiscated assets.

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4 TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings

Spain investigates and prosecutes all types of activity related to terrorist financing (TF), and has provided many case examples of combating terrorism and its support networks. The main goal of these investigations is on disrupting and dismantling terrorist groups. A measure of success is the dismantling of the ETA support structure and permanent ceasefire of this organisation.

Every terrorism investigation involves a parallel financial investigation. Identifying the financial role that an individual plays within the terrorist organisation is a key component to Spain's larger counter-terrorism strategy. Spanish authorities have been able to identify donors, fundraisers and the self-funded terrorist. Attention is given to attacking financial and support networks to include donors and a variety of fundraising mechanisms.

Spain has imposed sanctions (including fines) on those who have directly and indirectly supported terrorist groups. The authorities believe that these sanctions are very dissuasive. That said, it is a concern that prison sentences for terrorist financiers are low. Also of concern are inmates who are often able to receive funding and continue to operate while in prison. Spain also uses other criminal justice measures to disrupt TF activities, including a procedure for expelling foreign citizens involved in activities against the public or national security.

There is a need to consider alternative options for penalties which may have a greater dissuasive effect. Civil liability is subject to statutory limitations. Changes should be considered to extend the period of time during which civil liability exists.

Spain has a significant exposure to proliferation financing (PF) risk because of its financial sector, and because Spanish manufacturers produce a wide range of controlled military and dual-use goods. The financial sector is focused on screening against sanctions lists, but there is limited awareness of PF risks from dual-use goods, or of the potential for sanctions evasion. The financial sector should be made aware of these risks.

There is a disconnect between the agencies responsible for export control and other aspects of the system (particularly SEPBLAC). There is adequate coordination on the implementation of financial sanctions, but there is no regular exchange of information on wider measures (e.g., to detect attempts to evade sanctions through the use of shell companies), and Spain does not make use of opportunities for financial measures or financial intelligence to support the implementation of counter-proliferation activities, or vice-versa. Nevertheless, SEPBLAC does conduct some analysis of PF-related activity, and has had some successes in developing financial intelligence in this area, despite the institutional problems. Competent authorities should establish effective co-operation mechanisms between the authorities and activities responsible for export controls, and those responsible for the AML/CFT system. Better lines of communication to co-ordinate the implementation of measures to prevent the avoidance of controls should be developed.

There are delays in the implementation of targeted financial sanctions (TFS). Spain applies TFS pursuant to United Nations (UN) resolutions on terrorist financing and the proliferation of weapons of mass destruction through European Union (EU) instruments. However, at EU level, there is a delay between freezing action by the UN and transposition into EU law, which can take up to two months. Measures exist in Spanish law and EU regulation which could bridge this gap, but at the time of the evaluation there had been no opportunity to use these in practise. Action should be taken to reduce the delay in transposing entities subject to UN sanctions into EU sanctions lists, and in the interim, Spain should use alternative powers to implement sanctions during the period between UN designation and EU designation.

4.1 Background and Context

4.1. Spain faces high risks of terrorism and terrorist financing from both domestic separatist groups such as the ETA (whose members have been known to take refuge in neighbouring countries, particularly France) and from Islamist terrorist groups (some of whom have links to al-Qaeda, and who have strong links to countries in the nearby North African and Maghreb regions). Over the past 50 years, Spain has been the victim of terrorist attacks from ETA, and during the last 20 years, mainly the last decade, also suffered terrorist attacks from Jihadist groups. As well, some instances of NPO abuse have been linked to ETA. These factors were weighted heavily in the assessment of Immediate Outcome 10.

4.2. Terrorist financing is criminalised as a stand-alone offence in article 576bis of the *Penal Code* which came into force in 2010. Before that, Spain successfully prosecuted TF activity through other terrorism offences, particularly article 576 (collaboration with a terrorist organisation or group).

4.3. Targeted financial sanctions related to terrorism and proliferation are implemented mainly through the EU legal framework set out in Council Regulations 881/2002 and 753/2011 (for resolution 1267), 2580/2001 (for resolution 1373), 329/2007 (for resolution 1718), and 267/2012 (for resolution 1737). Spain has also implemented domestic legislation (some of which came into force just before the end of the onsite visit) which is aimed at addressing serious gaps in the EU framework: *Law 12/2003, RD 304/2014*.

4.4. A number of departments and ministries support and coordinate investigative efforts related to terrorism and TF. In particular, the National Centre for Counter-terrorism Coordination (CNCA), National Intelligence Centre (CNI), the Commission, and SEBPLAC play a valuable role in supporting the national strategy and working with the Civil Guard and National Police (CNP) to implement it.

4.2 Technical Compliance (R.5-8)

Recommendation 5 – Terrorist financing offence

4.5. **Spain is largely compliant with R.5.** The offence in article 576bis covers the financing of a terrorist act and the material support of a terrorist organisation for any purpose. The financing of an individual terrorist (who is not otherwise part of a terrorist group) for purposes completely unrelated to a terrorist act is not covered, but such situations rarely arise in practice. Article 576bis covers TF through the provision and collection of funds, but not other types of property which does occur, albeit less often.

Recommendation 6 – Targeted financial sanctions related to terrorism and terrorist financing

4.6. **Spain is partially compliant with R.6.** Spain relies on the EU framework, supplemented by domestic measures, for its implementation of R.6. UN designations pursuant to resolution 1267/1989 (on al-Qaeda) and resolution 1988 (on the Taliban) are transposed into the EU legal framework through Council Regulations

881/2002, 1286/2009 and 754/2011 (on al-Qaeda), and 753/2011 (on the Taliban). However, delays in transposing the UN obligations into the EU legal framework mean that targeted financial sanctions (TFS) are often not implemented without delay, which is a serious deficiency. The freezing obligations of resolution 1373 are implemented at the EU level through Council Regulation 2580/2001. The freezing obligations do not apply to EU internals, even though the *Treaty of Lisbon (2007)* provides a legal basis to introduce a mechanism to do so, because the EU has not yet implemented such a mechanism. There is no clear channel through which other countries can approach Spain directly with a request to take freezing action pursuant to resolution 1373. These are also serious deficiencies.

4.7. Spain's implementation of R.6 has two positive features. First, at the EU level, there is a publicly-available consolidated list of designated persons and entities which are subject to TFS pursuant to the UN resolutions related to terrorism, proliferation, and other sanctions regimes.[1] This consolidated list presents all of the relevant identifier information in a consistent format, and is a useful tool that facilitates implementation of these requirements by financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs). Second, although the decision to initiate a freezing action is not conditional upon the existence of a criminal proceeding, when such proceedings exist, the Watchdog Commission must notify the criminal court, and aid the court and the Public Prosecutor. This requirement allows the measures for implementing TFS and prosecuting terrorist activity to leverage off of and be informed by each other: *Law 12/2003 art.3*.

Recommendation 7 – Targeted financial sanctions related to proliferation

4.8. **Spain is partially compliant with R.7.** Spain primarily relies on the EU framework for its implementation of R.7. UN resolution 1718 on the Democratic People's Republic of Korea (DPRK) and UN resolution 1737 on Iran are transposed into the EU legal framework through Council Regulations 329/2007 and 267/2012 respectively. Delays in transposing the UN obligations into the EU legal framework mean that, in practice, TFS are often not implemented without delay and without prior notice to the designated person/entity. However, the EU regime for proliferation-related TFS mitigates this problem to a limited extent. The ability to freeze without delay is fundamental to the purpose and value of TFS, so this is a significant deficiency

Recommendation 8 – Non-profit organisations

4.9. **Spain is largely compliant with R.8.** The NPO sector in Spain includes foundations, associations, and religious entities, each with a different status, and subject to different preventive measures. Spanish authorities have a sound understanding of the risks in the NPO sector, and the requirements in place on NPOs were recently expanded to give associations and foundations specific AML/CFT obligations, including adding to a previous requirement to identify all their beneficiaries, and all donors of more than EUR 100. Nevertheless, some gaps remain in the requirements. The main technical concern is that Spain has a very complex institutional system for the oversight of NPOs, with 8 national and 76 regional bodies involved in overseeing the sector, which might lead to uneven monitoring. Spain has extensive domestic cooperation arrangements, but the extremely fragmented institutional arrangements may make the effective exchange of general information on TF aspects at the preventive level difficult.

4.3 Effectiveness: Immediate Outcome 9 (TF investigation and prosecution)

(a) Extent to which terrorist financing is pursued, consistent with the country's risk profile

4.10. **Spain provided specific case examples that demonstrate its ability to successfully prosecute and convict offenders of all different types of TF activity, including the collection, movement and use**

1 This consolidated list was set up in a database by the EU Credit Sector Federations (European Banking Federation, European Savings Banks Group, European Association of Co-operative Banks, and European Association of Public Banks) for the European Commission which hosts and maintains the database and keeps it up to date.

of funds. In the following judgements of the National Court, defendants were convicted of a wide range of different types of TF activity, including:

a. collecting funds for a terrorist organisation (ETA) through mobile taverns (*txoznas*) and raffles (*Sentence AN No.39/2008*), lotteries (*Sentence AN No.4382/2010* which was a case of attempted TF), and through carrying out an extortion campaign to collect a so-called "revolutionary tax" (*Sentence AN No.3108/2011*)

b. collecting funds for a terrorist organisation (Al Ansar which is related to al-Qaeda) through alms collection (*Sentence AN No.5304/2011*)

c. coordinating and managing a business group which was responsible for financing a terrorist organisation (ETA) through a complex network of large companies and profitable business, including a travel agency, a party supply rental company, a financial management company, and an insurance company (*Sentence AN No.73/2007*)

d. funding travel expenses and providing material support (such as accommodation) for an Islamist terrorist movement (*Sentence AN No.1943/2011* which was also a case of self-funding)

e. moving money through a hawaladar to Algeria on behalf of Islamist terrorist groups (*Sentence AN No.2591/2010*) and through MVTS and cash couriers to various North African countries (*Sentence AN No.1943/2011*)

f. moving funds to commit a terrorist attack (a car bombing against a synagogue on the island of Djerba in Tunisia) (*Sentence AN No.6284/2006*), and

g. using funds to help the terrorists who fled after committing the 11-M train bombing attacks in Madrid (*Sentence AN No.1943/2011*).

4.11. **Many of these cases were pursued as part of a strategy of dismantling ETA's organisational and support network.** These cases are consistent with Spain's risk profile which is at high risk for TF activity related to home grown terrorists such as the ETA which had a highly sophisticated economic arm to finance its operations, and Islamist terrorists who generally rely more on funds raised in Spain (e.g., through alms collection). The cases are also consistent with the vulnerabilities in Spain which show that MVTS are at high risk for ML/TF.

(b) Extent to which terrorist financing is identified and investigated

4.12. **The Spanish authorities have been successful in identifying TF in a number of ways, including through intelligence, STRs, and in the course of broader terrorism investigations**.

4.13. **Once TF activity is identified, the authorities investigate** using the full range of investigative tools and sources of information available to them, including the full range of financial intelligence described above in Immediate Outcome 6 and in cooperation with other countries, as described below in Immediate Outcome 2.

4.14. Every terrorism investigation involves a parallel investigation of TF, as a matter of course. The above cases demonstrate that, **through these investigations, the authorities are often successful in identifying the specific role being played by the terrorist financier**—whether it be a *hawaladar* complicit in moving funds, a cash courier, a fund raiser, an alms collector, a manager of a terrorist funding network, or a terrorist self-funding his own activities.

4.15. **SEPBLAC advises that the STRs related to terrorism and its financing are generally of high quality, are particularly useful**, and can be instrumental in initiating an investigation or supporting an existing investigation. The authorities attribute the number and quality of TF-related STRs to the general awareness of the terrorism risk within Spanish society and reporting entities, as well as a clear focus on this

issue by the relevant competent authorities. From 2010 to 2012, eleven TF investigations were generated by SEPBLAC reports.

4.16. **According to a 2013 and 2014 Europol report, Spain is one of the leading countries in Europe for terrorism prosecutions,** with the highest numbers of individuals in court proceedings for terrorism and TF offences. Statistics were provided which demonstrate the authorities' focus on investigating and prosecuting TF activity.

Table 4.1. Terrorist financing investigations

	2010	2011	2012
Proceedings under art.576bis (the TF offence which came into force in 2010)			
TF investigations pursuant to art.576bis	8	9	7
Number of arrests on TF charges pursuant to art.576bis	2	6	7
Number of TF prosecutions under art.576bis	3	3	2
Number of individuals covered by prosecutions under art.576bis	7	6	59
Number of convictions under art.576bis (no prosecutions under this offence have yet completed)	0	0	0
Proceedings in relation to TF conduct which falls within the scope of other offences, such as article 576 "collaborating with or assisting a terrorist organisation", "membership of an armed gang" or "advocacy for terrorism", or court proceedings that were initiated before 2010 (when art.576bis came into force)			
Number of individuals indicted on TF charges	N/A	N/A	121
Number of preliminary proceedings related to TF	N/A	N/A	276
Number of trials related to TF	N/A	N/A	30
Number of judgments issued by the National Court for TF offences	10	9	7
Number of convictions issued by the National Court for TF offences	7	5	4

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 29 (p.29)

4.17. **There have been recent changes to the TF offence in Spain.** Prior to 2010, the authorities pursued TF activity using offences such as article 576 (collaborating with or assisting a terrorist organisation), or the separate offences of "membership of an armed gang" (articles 516.1 or 516.2) or "advocacy for terrorism" which might also involve TF as a related activity. The Spanish courts were particularly successful using article 576 because financing or providing economic aid to a terrorist organisation was regularly recognised by the courts to be an act of collaboration or assistance[2].

4.18. **In 2010, the new TF offence in article 576bis came into force which criminalised the wilful or seriously negligent financing of a terrorist act, or financing of a terrorist group for any purpose.** Using article 576bis, Spanish authorities are now able to prosecute those who indirectly support terrorist groups, and finance terrorism through serious negligence. This is a positive addition to the existing range of offences through which TF activity may be prosecuted as a stand-alone offence, rather than as an ancillary offence. On its face, the new offence appears to be clear and easy to use; however, it is not yet known how effective it will be since no prosecutions have yet been completed. As the above statistics show, the authorities have already undertaken investigations, made arrests, and started prosecutions using article 576bis. Although none of these cases have yet concluded, the authorities are confident that article 576bis gives them a stronger tool to pursue types of TF activity which could not be captured under the previous range of offences, including

2 For example, see *Sentence AN No.6284/2005*, *Sentence AN No.73/2007*, *Sentence AN No.2591/2010*, and *Sentence AN No.5304/2011*.

articles 516.1, 516.2 and 576. Nevertheless, none of these cases has yet been concluded, so it is not known how effective the article 576bis offence will be in practice.

4.19. **Given that Spain has suffered numerous terrorist attacks over the past two decades, the authorities are strongly focused on this issue, and there is a significant amount of political support for disrupting and dismantling terrorist groups.** The permanent cease-fire declared by ETA in 2011 following sustained action by Spanish authorities to dismantle the organisation's support network could also be seen as an indication of effectiveness in this area (see Box 4.2).

(c) Extent to which terrorist financing investigations support national strategies

4.20. **The information provided to the assessment team on investigations and prosecutions appears to be generally consistent and integrated with Spain's national counter-terrorism strategy.** Spain's national counter-terrorism strategy is focused on disrupting and dismantling terrorist organisations and groups, with a specific focus on the threats to Spain posed by the ETA and Islamist groups coming from the Maghreb[3]. In relation to disruption, the strategy is to trace financial trails in order to prevent terrorist attacks. The LEAs use intelligence, and enhance their investigations with other financial information. Spain's strategy in this area recognises the importance of international cooperation, particularly with France (in relation to ETA) and the North African countries (in relation to Islamist terrorists).

4.21. **In every terrorism case, a parallel terrorist financing investigation is undertaken.** The full range of financial intelligence and other information described in Immediate Outcome 6 is used to support both counter-terrorism and CFT investigations.

4.22. **Spain's dismantling the economic financing arm of ETA (see Box 4.2) is a good example** of how Spain's efforts to investigate TF have supported its overall counter-terrorism strategy to disrupt terrorist organisations.

(d) Sanctions

4.23. **In general, the sanctions being levied against terrorist financiers appear to be low.** The average term of imprisonment being applied in recent cases (5 to 10 years) appears to be decreasing compared to the average terms that were applied previously (6 to 14 years).

4.24. **As noted in Immediate Outcome 7, normal judicial practice in Spain is to apply a sentence at the lower end of the range of penalties set out for the offence.** Higher penalties may be applied, but in practice are only used in exceptional circumstances. As there have been no successful terrorist attacks in Spain in recent years, following the decline in terrorist activity by ETA, there may be fewer cases involving loss of life (which are the ones attracting the highest penalties) before the courts. There is also some question as to whether these sanctions are adequate to disrupt or dissuade TF activity, as there are known examples of persons continuing to direct terrorist/TF activity from their jail cells. Fines are also being imposed, and some of these appear to be dissuasive on their face. However, with respect to civil liability (for harm sustained in terrorist acts), there are statutory limitations, and there have been cases where it has been impossible to make a convicted terrorist pay compensation to victims after an extended period of time.

3 *Spanish Security Strategy*, pages 27-28, and 44-48.

Box 4.1. Examples of convictions for TF activity under the collaboration and membership in a terrorist organisation offences

Sentence AN 73/2007: Defendants operated the economic arm of ETA, which was comprised of a network of large and smaller companies and profitable businesses whose profits were funnelled to ETA to finance its political and terrorist activities. Their roles involved establishing and managing companies, and financing ETA's activities.

- 31 individuals were convicted under article 516.1 and 516.2 of the Penal Code (membership of a terrorist organisation). For 30 of them, sentences ranged from 14 years jail (for the leader) to 11 years jail, and fines. One defendant who played a very minor role in the organisation was sentenced to 2 years jail.
- 14 individuals were convicted under article 576 of the Penal Code (collaboration with a terrorist organisation). Sentences ranged from 9 to 10 years jail, and fines.
- 4 of the above individuals were also convicted under articles 257 and 574 of the Penal Code (criminal insolvency committed in order to favour a terrorist organisation). All four were sentenced to 4 years jail, and fines.
- And, 3 of the above individuals were also convicted under articles 74 and 310(b), (c) and (d) of the Penal Code (continued falsification of accounts). All three were sentenced to 15 weekends in jail, and fines.
- Criminal fines of over EUR 1.2 million were imposed against the defendants.

Sentence AN 2591/2010: The defendants were part of a group dedicated to obtaining economic resources for a terrorist group in Algeria. The funds were sent from Spain to Algeria by a hawaladar. For this TF activity, the defendant was convicted of collaborating with a terrorist group (art.576). Sentence: 5 years jail, and EUR 2 700 fine.

(e) Other criminal justice measures to disrupt terrorist financing activities

4.25. **Spain has a number of tools through which it can disrupt terrorists and their financiers where it is not practicable to secure a TF conviction.** For example, Spain can freeze any type of financial flow or account in order to prevent the funds from being used to commit terrorist actions: *Law 12/2003*. Judges may apply a wide range of precautionary measures to ensure that arrested persons do not pose a risk for the community, including seizing funds and assets, and making orders of "preventive" or "provisional prison": *Law 2/1992*. Spain provided some examples where such measures were taken[4]. Also, Spain can expel foreign citizens under certain circumstances, using an administrative order of expulsion, if their activities are contrary to public or national security: *RD 557/2011 art.234*. The authorities indicate that this is their preferred method of dealing with terrorists and their financiers, if they cannot otherwise be prosecuted in Spain. A recent example was provided in which this procedure was used to expel a Moroccan citizen (an Islamic imam and director of a foundation) who was responsible for threatening the national security of Spain and jeopardising its relationships with third countries.

4 *Operation Herrira* (freezing an association's funds as a precautionary measure), *Operation ECOFIN "Marea"* (dismantling a business network of companies), *Operation ECOFIN "Moctezuma"* (freezing bank transfers), *Operation Faisan* (blocking an extortion network's funds), *Operation Datil* (freezing funds and companies).

Overall conclusions on Immediate Outcome 9

4.26. **Spain demonstrates many of the characteristics of an effective system, and only moderate improvements are needed.** Factors that weighed heavily in this conclusion were Spain's proven success in investigating and prosecuting TF-related activity (both by domestic terrorist groups such as ETA, and others such as Islamist terrorists), giving specific attention to attacking economic, financial and terrorist support networks. This is entirely consistent with Spain national counter-terrorist strategy. The authorities provided many case examples that demonstrate their significant experience combating terrorism and its financing, based both domestically and overseas, and the support networks associated with terrorist groups. This was supported by statistics, including those demonstrating that Spain is one of the leading countries in Europe in this area, with the highest numbers of individuals in court proceedings for terrorism and TF offences. The operation which successfully dismantled the economic arm of ETA was particularly persuasive, and demonstrated strong of financial investigations in counter-terrorism operations, and good coordination between the relevant authorities. Another important factor were the cases which showed that Spain is very proactive both in providing and requesting international cooperation on TF cases, and has undertaken successful investigations with their foreign counterparts on such cases. Another important feature, particularly given the high TF risks faced by Spain, is that other criminal justice measures to disrupt TF activity are actively pursued where it is not practicable to secure a conviction.

4.27. **The main reason for lowering the rating is that the terms of imprisonment being applied in practice appear to be low. Sanctions are always an important issue.** However, there are some mitigating factors. For example, the types of cases currently before the courts may be of the type that would ordinarily attract sentences in the lower range, in line with ordinary judicial policy. Another mitigating factor is that Spain has been able to impose sanctions (including fines) on terrorist financiers some of which, on their face, would appear to be very dissuasive. Also of concern is that there have been cases where inmates were able to receive funding and continue to operate while in prison. The Spanish authorities have assured the assessment team that strict controls are in place to identify this activity, and leverage it for intelligence purposes when it takes place.

4.28. **Another reason for lowering the rating is that the effectiveness of the new stand-alone TF offence (article 576bis) is not yet established. This factor was not weighted very heavily** because its impact is mitigated by the following factors. First, Spain was able to provide numerous examples of convictions for TF activity under article 576 (collaborating with a terrorist organisation or group), or as "membership of a terrorist organisation"—the offences which were used before article 576bis came into force. Second, on its face, the offence is clear and would appear easy to use. Given the experience and focus of the authorities in this area, there is no apparent reason why future implementation of article 576bis will not be effective. Third, Spain has already begun using the offence, and statistics were provided showing that a number of cases are currently in process.

4.29. **Overall, Spain has achieved a substantial level of effectiveness with Immediate Outcome 9.**

4.4 Effectiveness: Immediate Outcome 10 (TF preventive measures and financial sanctions)

(a) Extent to which terrorists are deprived of assets and instrumentalities

4.30. **Dismantling the financing and facilitation networks that support terrorist groups is a central element of Spain's strategy against terrorism.** The authorities are focused on achieving this, in part through depriving terrorist groups of their financial and economic resources and capabilities. The authorities pursue this objective through a range of tools (including investigation, prosecution, preventive measures in the NPO sector, and implementation of targeted financial sanctions). These efforts are consistent with the risks faced by Spain from separatist groups such as ETA which use funding methods such as lotteries, and Islamist terrorists who are self-funding and have been observed sending transfers to Algeria, Mali, Pakistan, and (more recently) Syria.

Box 4.2. Funding mechanisms for ETA

ETA provides a perfect example of a traditional financial support system for terrorist organisations, and how the different financial sources for support evolved during the years.

It started its terrorist activities in the beginning of the sixties. The first major source of funds was through racketeering, particularly from the collection of the so-called "Revolutionary Tax". During the 1970s almost half of its funding was raised through this practice in which businessmen from the region are forced to pay a sum of money to the organisation under the threat of being kidnapped and murdered. The rest came from bank robberies, looting, and other extortion schemes.

Investigations also revealed funding from printing and publishing ventures, real estate and entertainment, including the creation of a lottery to help fundraising for the organisation.

Like other terrorist groups, ETA diversified into other low-level crimes as well. In a smaller scale, the exchange of drugs for weapons was sometimes used. Later they developed different sources of funding both legal and illegal.

In the eighties, ETA established an intricate financial network and divided its financial support into different organisations such as KAS, and EKIN. Among these organisations was a well-established plan for fundraising coordinated by a committee. The organization provided funding for terrorist acts, but also developed different channels for propaganda, recruitment and support for convicted terrorists.

During these years, ETA changed its TF strategies moving away from "unpopular" sources to other more tolerated ones. For example, they gave up kidnapping for ransom and bank robberies because the negative impact on the public was greater than the financial revenue. In particular, one case of kidnapping resulted in a drop in support from local Basque people. A businessman was murdered for standing up to the "revolutionary tax" collection, leading a number of businesses to move out of the region making the tax and its collectors profoundly unpopular. They also build a strong link with political separatist parties.

It is worth mentioning the creation of a Network of "*Herriko Tabernas*" (taverns). These bars were established as NPOs, adopting the legal status of cultural associations. They provided not only funds from their business, but also gave financial support to their members directly by hiring them in the bars and providing loans. Later the network spread to Hotels and other licit business such as the fishing industry.

In combating ETA, the authorities adapted their efforts to tackle that organisation's evolving methods of financing (which ranged from thefts, kidnapping and extortion of citizens, through to financing through companies, social organizations and cultural associations) and ultimately deprive ETA of its resources and ability to raise funds.

The different measures applied to combat TF described in this report proved to aide in stopping the misuse of the financial sector and to provide a legal and operational framework to reduce the source of funds available for ETA. In particular banning the political party (Batasuna) that supported ETA in 2002 and the inclusion of it and its members in the EU list of terrorists in 2003 and 2008 aided the implementation of the law approved in 2003. In 2010, ETA declared a cease of the use of violent methods.

4.31. **Spain uses criminal justice measures where possible to prevent terrorists, terrorist organisations, and their financiers from raising, moving, and using funds.** Spain has achieved a substantial level of effectiveness investigating and prosecuting TF offences, and a high level of effectiveness in confiscating the proceeds and instrumentalities of crime, as described above in relation to Immediate Outcomes 9 and 8. Both of these factors are directly relevant to Spain's ability to deprive terrorist of their assets and instrumentalities through criminal investigations, prosecutions, and confiscations. While the effectiveness of these tools is analysed above in relation to IO.8 and IO.9, their contribution to achieving the objectives of IO.10 is set out below.

4.32. **Every terrorism investigation involves a parallel financial investigation, and confiscation is pursued whenever there is a conviction.** The authorities provided numerous cases which demonstrate Spain's ability to successfully use these tools to prevent terrorists from raising, moving and using their funds. For example:

- **a.** In relation to ETA, the assets of 9 legal persons were confiscated, and a further fine of over EUR 5 million was imposed in a single case (*Sentence 73/2007*), and in three other ongoing cases, provisional measures have been taken to seize over EUR 2 million and freeze 23 bank accounts, with the ultimate aim of confiscating these assets if possible.
- **b.** Between the years 2004 to 2013, there were over 19 cases in which the financing of activities of Islamist terrorist cells were dismantled.
- **c.** An example of a joint investigation involving Spanish, Belgian and French authorities was provided in which smaller amounts of funds were seized and confiscated from natural persons.

4.33. Confiscation is pursued in terrorism and TF cases, as demonstrated by case examples showing convictions for TF activity under the article 576 of the *Penal Code* collaboration offence and other terrorism offences.

Box 4.3. Examples of confiscations in TF cases under the membership and collaboration offences

Sentence AN 73/2007: Defendants operated the economic arm of ETA (see Box 4.2). 9 companies in the TF network were ordered to be wound up, and their assets seized and liquidated. All cash seized from the individual defendants was seized.

Sentence AN 39/2008: Defendant was a member of ETA. His role was to operate the economic arm of ETA, including through the collection of donations and charity through special tavernas (txoznas), raffles, etc. For this TF activity, the defendant was convicted for membership of a terrorist organisation (art.576). Sentence: 10 years in jail, and special disqualification from public office or employment for 12 years. Two companies were declared illegal and their dissolution and liquidation of assets ordered.

Sentence AN1943/2011: The defendants financed the escape of some of the terrorists who had taken part in the 2004 attacks in Madrid. The TF activity involved providing them with accommodation and financing their travel expenses. The defendants were convicted of belonging to a terrorist network. The court confirmed that such membership "implies the provision of a service of some kind for the purposes of the group, in the ideological, economic, logistics of supply fields or in executing objectives". Sentences ranged from 6 to 10 years imprisonment, and bans from holding public office or employment for the same period. All funds intercepted in this operation were ordered to be confiscated.

4.34. **Statistics were also provided showing the number of provisional measures that have been taken in relation to recent cases brought under the new TF offence of article 576bis.** No convictions or confiscations have yet been obtained under the new TF offence of art.576bis which came into force in 2010. However, some cases are underway, and the authorities provided statistics to demonstrate that provisional measures have been taken to preserve these assets. The authorities confirmed that confiscation will be actively pursued in these cases (should they result in conviction), which is consistent with their approach to ML and predicate offences.

Table 4.2. Freezing orders and seizures in connection with TF under art.576bis

	2011	2012
Frozen current accounts	10	2
Euros	EUR 45 000	EUR 14 000
Cars	4	-
Real property	1	-

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 25 (p.38), and Chapter B2.4 (Confiscations in connection with TF) (p.38).

Table Note: The monetary values in this table are approximate (the figures have been rounded up/down).

(b) Implementation of targeted financial sanctions

4.35. **The major weakness in Spain's CFT regime is its implementation of targeted financial sanctions (TFS)** which is ineffective, mainly because of serious technical deficiencies that are inherent within the framework of applicable EU regulations (as described above under the discussion of R.6), and Spain's failure to use either mechanism to propose or make designations.

4.36. **TFS pursuant to UNSCR 1267 are not implemented without delay due to the overly long time taken to transpose UN designations into the EU legal framework.** This is a serious impediment to Spain's effectiveness in preventing terrorists from moving funds, particularly given the risk that Spain faces from Islamist terrorist groups, some of which are known to have links to al-Qaeda. New legislation came into force just before the end of the onsite visit which is aimed at addressing this problem. However, the effectiveness of this new mechanism is not established because it is not yet tested.

4.37. The Spanish authorities explained that, in practice, most of the reporting entities check and rely on the UN lists before they are transposed into the EU legislation. This was confirmed by private sector representatives from major banks and MVTS providers met with during the on-site who do this for reputational reasons and because they work with non-European countries. However, this practice is not necessarily followed consistently by smaller FIs or by DNFBPs who have no international business presence, and are unwilling to risk civil liability for taking freezing action in relation to a customer's funds/assets before having a firm legal basis upon which to do so.

4.38. **Spain has no clear channels or procedures for directly receiving foreign requests to take freezing action pursuant to resolution 1373.** All such requests are received indirectly through the regular EU channels. The authorities explained that, in practice, Spain has never directly received a foreign 1373 request (although it directly and regularly receives foreign requests to undertake judicial or other types of international cooperation on matters related to terrorism and TF).

4.39. **Spain has never designated a person/entity or requested another country to take freezing action pursuant to UNSCR 1373, even though the implementation of TFS is an important issue for all countries.** The authorities explain that their approach is to undertake judicial cooperation with their foreign counterparts (rather than designate) because successful investigation and prosecution of TF activity can be effectively undertaken in Spain's particular context, and a designation might jeopardise an ongoing investigation. It is true that Spain has had great success investigating and prosecuting TF activity, and stopping terrorist financing flows in such cases. However, Spain's efforts to stop terrorist financing flows would be even more effective if TFS were used in appropriate instances where investigation and prosecution is not possible. For example, there have been instances where it has not been possible for Spain to prosecute, and in such instances, alternative measures (such as expulsion from the country) have been used, as described in Immediate Outcome 9. Spain has also had instances of terrorists continuing to direct their activities once imprisoned. Designating such a person (under 1267 or 1373, as appropriate) would help to prevent such activity, and use of this tool would strengthen Spain's system in this area.

4.40. **The freezing obligations of resolution 1373 do not apply to EU internals, although the Treaty of Lisbon (2007) provides a legal basis to introduce a mechanism to do so.** Not only is this a serious technical deficiency, but it also impacts effectiveness, particularly in the Spanish context. Spain has home-grown terrorists (such as ETA) which are not captured under the relevant EU regulation.

4.41. **Two aspects of TFS implementation do appear to be working well—supervision and implementation in the financial/DNFBP sectors.** Comprehensive guidance to reporting entities to assist their implementation of TFS has been published on the Treasury website. SEPBLAC supervises for compliance with these requirements (in coordination with the prudential supervisors for Core Principles institutions) and, if appropriate, competent authorities will undertake an administrative sanction procedure against any reporting entity found to be wilfully or negligently not complying with TFS. Indeed, during the onsite visit, one such procedure was in process in relation to a sanctions regime which is not within the scope of R.6. However, overall, SEPBLAC reports that implementation of these requirements is generally good.

4.42. **Since the adoption of Security Council resolutions 1267 and 1373, several proceedings have been implemented in Spain, but the analysis showed they were related to homonymy and were not, in fact, real matches.** In 2013, a freezing order was issued pursuant to UNSCR 1267.

(c) Abuse of the non-profit sector

4.43. **Spain has implemented measures to prevent the abuse of NPOs by terrorist and their financiers.**

4.44. **The Treasury published a best practices paper regarding the prevention of the misuse of NPOs for ML/FT, and some of the elements in the paper are now present in the new regulation:** *RD 304/2014*. The NPO sector representatives met during the on site visit were aware of this guidance, and also appeared to have an adequate understanding of their TF risks. Outreach to the NPO sector on TF risk has been undertaken in the context of broader outreach on the wider terrorism risks associated with NPOs. Additionally, the LEAs cooperate closely with certain high risk parts of the NPO sector to promote awareness of radicalisation and the risks of terrorism and to ensure that funds are not being channelled into activities that support them.

4.45. **Up until recently, preventative measures were weak, and supervision of the sector was not focused on the risks of terrorism and its financing.** A new regulation was enacted just before the end of the on-site which significantly strengthens the preventive measures (including rules aimed at "knowing your beneficiaries and associated NPOs"), and appoints the Protectorates responsible for supervising compliance with these new requirements: *RD 304/2014 art.42*. Although the Royal Decree is relatively new, most of the measures introduced by it were already being implemented in practice at the time of the on-site (e.g., through industry best practices, and a code of conduct developed under the CONGDE self-regulatory initiative). However, it is too soon to assess whether supervision of the NPO sector for compliance with these requirements will be effective.

4.46. **Some of the sector-specific guidance on STR reporting addresses the potential risks posed by NPO abuse.** For example, see paragraph 4(f) of the *Sample Catalogue of Risk Transactions Related to ML & TF for Credit Institutions*. The credit institutions met during the onsite visit demonstrated good knowledge of this risk, and had implemented specific measures to address it.

4.47. **Information on NPOs is scattered across 84 separate national and regional registers.** There are centralised registries for religious entities and specific registries for NGOs providing international cooperation. The authorities have found ways to get around the challenges of obtaining information on NPOs of concern in this fragmented system. Information on associations can be easily obtained by LEAs, directly or indirectly, through The National Registry of Associations which holds information on associations working nationally, and indicates in which regional registry full information on associations working at the regional level can be found. The authorities also use the notaries' Single Computerised Index to get around the fragmentation of registries of foundations. All relevant information on foundations can be found in the Single Computerised Index, since all relevant acts by a foundation require the intervention of a notary: *Law 50/2002 art.9-11, 15, 29-31 and Additional Disposition 5*. Any information obtained through these channels may be used domestically, or shared with foreign counterparts, as appropriate.

4.48. **Spain has been successful in investigating and prosecuting activity connected to the collection and movement of terrorist funds through the NPO sector.** This was demonstrated through a number of cases involving cultural associations (for example, see *Sentence AN No.73/2007*) which were an important part of ETA's distinctive fundraising and support network, and which law enforcement and counter-terrorism authorities therefore targeted specifically. Additionally, Spain successfully prosecuted a TF case involving the financing of a terrorist and his family through alms-giving (albeit the alms were paid to a private individual, not an NPO): *Sentence AN 5304/2011*.

(d) Extent to which measures are consistent with the country's overall risk profile

4.49. **In most respects (other than in the area of TFS), the measures being taken are consistent with Spain's overall TF risk profile.** Spain is targeting its investigation and prosecution efforts on its areas of highest risks (terrorist groups such as ETA and Islamist terrorist groups). Spain has taken a targeted approach to ensuring that NPOs are not abused for the purposes of terrorism, focusing its outreach on the very highest risk parts of the sector. The recent implementation of stronger measures in the NPO sector will enable Spain to better mitigate these risks, but broader outreach to the sector on the risks of terrorism and its financing are needed. The most serious gap lies in the shortcomings related to the implementation of TFS. In particular, the failure to propose/make designations pursuant to resolutions 1267 and 1373 seems inconsistent with Spain's overall TF risk profile, and raises concerns because Spanish authorities make a conscious decision not to make use of this tool for combating the financing of terrorism. The lack of any designations by Spain pursuant to resolutions 1267 and 1373 is a concern. The alternative measures which authorities have used, appear to have been adequate in the specific cases reviewed by assessors. However, the use of these alternative measures means that Spain cannot provide any examples which demonstrate effective implementation of its powers to designate pursuant to resolutions 1267 and 1373 - and weakness in that area could represent a real vulnerability in cases where Spain's alternative measures were inapplicable or insufficient.

Overall conclusions on Immediate Outcome 10

4.50. **Spain demonstrates many of the characteristics of an effective system in this area. However, one major improvement is needed—effective implementation of targeted financial sanctions.** The *Methodology* deems a system to have a *moderate level of effectiveness* where major improvements are needed. However, this is somewhat at odds with the Spanish context, given that the system is meeting the fundamental objective of Immediate Outcome 10 which is that TF flows have been reduced which would prevent terrorist attacks.

4.51. **The following factors are very important and were weighed heavily in coming to this conclusion. Most significant is that Spain has successfully dismantled the economic and financial support network of ETA.** This has reduced TF flows and addressed one of the key terrorism risks facing the country. Spain has also had success in identifying and reducing TF flows to other types of terrorist groups, as is demonstrated by case examples.

4.52. **Another positive factor is that Spain has a solid framework of preventive measures which applies to those NPOs which account for a significant portion of the financial resources under control of the sector, and a substantial share of the sector's international activities.** Because it is new, the effectiveness of the supervisory framework for NPOs could not be established. However, the impact of this is somewhat mitigated, given that most of these measures were already being implemented in practice before the new Royal Decree came into force, Spain's close work with the high risk parts of the sector on broader terrorism issues, and its demonstrated ability to detect, investigate and prosecute TF activity in the NPO sector. Although the fragmented nature of the NPO registry system creates some challenges for the investigation of NPOs of concern, the authorities have found ways around that problem.

4.53. **The Spanish authorities consider the use of intelligence, criminal investigation and prosecution to be their strongest tools** in preventing terrorist from raising, moving and using funds, and from abusing the NPO sector. This strategy has worked, particularly against ETA whose financing structure

has been effectively shut down. Spain has also had some success in shutting down outbound financing destined for Islamist terrorist groups in the Maghreb.

4.54. **The major improvement needed is Spain's implementation of targeted financial sanctions.** Although it is important for all countries to implement TFS, Spain's use of TFS as a tool to combat TF is limited. Spain has never proposed a designation to the UN under resolution 1267 or made its own designations pursuant to resolution 1373. Instead, the Spanish authorities consider the use of intelligence, criminal investigation and prosecution, supported by international cooperation, to be their strongest tools in preventing terrorist from raising, moving and using funds, and from abusing the NPO sector. Admittedly, TFS may not have been useful in the context of tackling a home-grown separatist terrorist group such as ETA, particularly given Spain's strong international cooperation on this issue with other nearby affected countries (such as France). However, TFS would be a useful approach to take against persons who could not be prosecuted in Spain and were expelled from the country, or against persons serving time in prison who might still be directing terrorist activities. Indeed, TFS are an important global issue, with weaknesses in one country negatively impacting global efforts to prevent the flow of funds to terrorist groups. This is why the obligation to implement TFS is an international obligation at the UN level. Consequently, even though Spain has had success in stopping terrorist financing flows through criminal investigations and prosecutions, its failure to implement TFS effectively, in appropriate circumstances, is considered to be a serious deficiency.

4.55. **Overall, Spain has achieved a moderate level of effectiveness with Immediate Outcome 10.**

4.5 Effectiveness: Immediate Outcome 11 (PF Financial Sanctions)

4.56. **Spain has a significant exposure to the risk of proliferation-related sanctions evasion, principally in relation to Iran.** In addition to its financial sector, Spanish manufacturers produce a wide range of controlled military and dual-use goods. The value of Spanish actual exports of defence materials in 2013 was EUR 3.9 billion and EUR 151.6 million corresponding to dual-use goods. Iran was the second largest destination for goods licensed by Spain's export-control authorities, with a value of EUR 21.5 million in 2013. However, this does not indicate a large volume of exports of dual-use goods, but rather the precautionary approach to all business with Iran by exporters and their banks, who seek an official license for exports even when this is not required based on the nature of the goods. By contrast, total Spanish exports of all goods to DPRK were EUR 0.51 million in 2010 and EUR 1.25 million in 2011

4.57. **Spain implements proliferation-related TFS through the framework of EU regulations:** *Council Regulation 267/2012 on Iran, and Council Regulation 329/2007 on the Democratic People's Republic of Korea (DPRK)*. These regulations apply freezing and other measures to a full range of funds and other assets, and provide comprehensive due process provisions to protect human rights. This system suffers from a technical deficiency in the length of time it takes to transpose UN designations into the European legal framework, which in some cases can take up to two months. However, the EU sanctions regime designates many entities which are not subject to designation under UN resolutions. The EU authorisation process established for transactions with Iranian entities (article 30 of Regulation 267/2012, which implements the separate financial vigilance provisions of UN Resolution 1929), also potentially allows the authorities to prevent the execution of transactions with designated entities during the period between their UN listing and the EU transposition. In addition, Spain enacted a new regulation (RD 304/2014), just prior to the end of the onsite visit, which gives the Council of Ministers its own asset freezing powers and is aimed at addressing this problem, although the new mechanism is untested, in part because there have been no recent additions to the list of entities designated by the UN, so its level of effectiveness remains unknown. Spain has mechanisms for proposing designations to the UN in the proliferation context, and these are the same as those described in the Technical Compliance Annex for R.6. However, Spain has never used these mechanisms in practice.

4.58. **Spain has had some success in identifying the funds/other assets of designated persons and entities, and preventing such persons and entities from operating or executing financial transactions related to proliferation.** Financial institutions screen against the UN/EU lists of designated persons/entities prior to performing any type of transactions, and larger FIs routinely do so even before those lists are transposed into EU regulation. This has resulted in freezing action being taken in relation to UN

resolution 1737 on Iran and related EU designations. SEPBLAC is responsible for monitoring and ensuring compliance with these obligations, the supervisory regime is generally sound, and failure to comply with these requirements is punishable by administrative and criminal sanctions, as described in criterion 7.3 of the Technical Compliance Annex. Spain provided the following statistics which demonstrate freezing orders pursuant to TFS regimes related to proliferation.

Table 4.3. Freezing orders pursuant to Council Regulation 267/2012 on Iran

	2010	2011	2012
Number of freezing orders	75	65	82
Number of designated persons & entities	11	8	7
Value of frozen assets	EUR 20 million	EUR 51.2 million	EUR 173 million

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 26 (p. 39).

4.59. **Additionally, SEPBLAC does work to analyse the transfers and transactions in its database, with a view to detecting activities intended to evade TFS and/or export control requirements.** SEPBLAC has had some success in uncovering TFS evasion and has subsequently passed these cases on to the relevant operational agencies for investigation and prosecution. In particular, SEPBLAC has identified cases in which producers of dual-use goods who had been previously denied licences to export these items to end-users in Iran, subsequently sought to export the same items via a false end-user in a third country, and divert them to the original Iranian customer. In other words, they were seeking to evade TFS by using an intermediary country to avoid the presence of a designated person/entity. This case is still ongoing.

4.60. **Despite these successes, Spain's ability to enforce financial sanctions, and in particular to detect attempts to evade sanctions through the use of shell companies, is significantly curtailed by the disconnect between the export control regime and other aspects of the system (such as SEPBLAC).** Spain's export control regime is overseen by the *Junta Interministerial Reguladora del Comercio Exterior de Material de Defensa y de Doble Uso* (JIMDDU) which is in charge of registering all companies that produce or deal with dual-use materials and approving any transaction related to the export of these materials from Spain. The JIMDDU evaluates every export license request, and only approves exports to end-users where there is no risk of such exports being diverted to military use or use in the manufacture of weapons of mass destruction. Spain also participates in multilateral export control arrangements. Some exchange of information on operational issues takes place through the units of the National Police and Civil Guard with responsibility for investigating export control breaches—since both organisations are members of both the JIMDDU and the ML Commission. However, the JIMDDU does not exchange any information with SEPBLAC or the financial sector, even where this is relevant to managing risks of PF and sanctions evasion (such as information on Spanish manufacturers of controlled goods). Spain does not actively coordinate the licensing activities of its export control regime and its AML/CFT system, and (except for the case noted above) Spain does not make use of opportunities for financial measures or financial intelligence to support the implementation of activities aimed at detecting/preventing proliferation-related sanctions evasion, or vice-versa.

4.61. **Larger international FIs understand their general obligations to implement TFS, and are supervised for compliance with these requirements.** However, lack of appreciation for and limited understanding of the risks of proliferation-related sanctions evasion negatively impact effectiveness in this area. Moreover, smaller FIs and DNFBPs do not seem to have a strong level of awareness of their obligations to implement PF-related sanctions.

4.62. **The Secretary of the Treasury has issued detailed public guidance on how to implement TFS**. The Spanish regime is comprised of two main obligations: (i) to freeze the assets and not provide services to any matching person/entity on the lists (or any entity owned or controlled by a designated person/entity); and (ii) to notify the Treasury and obtain authorisation for any transaction involving a party related to or resident in Iran. However, the guidance does not adequately address the potential for proliferation-related sanctions evasion, particularly through the use of persons/entities owned or controlled by a designated person/entity. In such cases, FIs/DNFBPs must rely on the controls implemented for CDD purposes which are aimed at identifying the beneficial owner. The representatives from the financial sector met with during the onsite

visit had the perception that proliferation-related transactions can be prevented by screening against the relevant sanctions lists issued by the UN and EU, and through implementation of the export control regime for military goods (which some FIs use in their screening process). However, the potential for sanctions evasion (particularly through the use of persons/entities owned or controlled by a designated person/entity) is not well appreciated, and awareness of the dual-use goods regime is limited.

4.63. **All of the guidance which has been issued in this area focuses on UN resolution 1737 on Iran, with no mention of the TFS relating to persons/entities connected to DPRK, on the basis that Spanish entities do not generally have any commercial relationships with that country.** Spain conducts almost no direct trade with DPRK (as noted above, Spanish exports to DPRK are very limited), and financial institutions take a cautious approach to those commercial relationships which do exist. DPRK recently opened an embassy in Madrid, which could increase the risk of indirect exports to that country[5]. Spanish financial institutions are highly cautious about business with entities from Iran and DPRK, including their embassies. The DPRK embassy was able to open a bank account only following intervention by Spanish authorities, and remains subject to special controls. This mitigates many of the risks associated with the embassy.

4.64. **SEPBLAC monitors and ensures compliance by FIs and DNFBPs with their obligations regarding proliferation related TFS.** For Core Principles institutions, SEPBLAC does this in coordination with the respective prudential supervisor. The competent authorities report that, in general, the TFS are being implemented well by obliged entities. No specific sanctions have been applied for breaches of PF-related TFS requirements, although one administrative proceeding was underway during the on-site visit.

4.65. **The larger banks (who provide trade finance services) also have procedures to check for sanctioned countries and embargoed goods.** One insurance company also indicated that it has procedures in place to check for this for their non-life insurance products. Another insurance company did not seem aware of its legal obligations in its non-life business with respect to EU sanctions.

Overall conclusions on Immediate Outcome 11

4.66. **Spain demonstrates some of the characteristics of an effective system in this area, but major improvements are needed.** Persons and entities designated under the relevant UN resolutions have been identified through implementation of TFS, and their assets have been frozen. FIs and DNFBPs are monitored for compliance with their obligation to implement TFS, and generally appear to be complying with these obligations. However, there is generally a low level of knowledge of the risks of proliferation-related sanctions evasion, and insufficient guidance and awareness directed to the private sector on those risks, particularly where transactions might involve DPRK, or on the risks of evasion.

4.67. **Proliferation-related sanctions evasion activity has also been identified by SEPBLAC through its own financial analysis, and these cases have been passed on to the relevant authorities for further investigation and prosecution.** However, there is inadequate cooperation and coordination between the relevant authorities to prevent sanctions from being evaded including, for example, export control authorities undertaking licensing activity, and other competent authorities, such as SEPBLAC, who can add value in this area. This is assessed under IO.1, but in practice also seriously diminishes Spain's ability to identify and prevent proliferation-related sanctions evasion.

4.68. **Overall, Spain has achieved a moderate level of effectiveness with Immediate Outcome 11**.

5 As noted in OP 24 of UNSCR 2094 which "*calls upon States to exercise enhanced vigilance over DPRK diplomatic personnel so as to prevent such individuals from contributing to the DPRK's nuclear or ballistic missile programmes, or other activities prohibited*" by United Nations Security Council Resolutions.

4.6 Recommendations on Terrorist Financing and Financing of Proliferation

Recommendations on IO.9

4.69. Though Spain has a substantial level of effectiveness in this area, it could consider additional means to dissuade terrorist financing, by amending its legislation to ensure that civil liability (the obligation to pay compensation) for offences related to terrorism or its financing is not extinguished by the statute of limitations. It should also extend the TF offence to cover the financing of an individual terrorist (who is not otherwise part of a terrorist group) for any purpose (i.e., unrelated to a terrorist act).

Recommendations on IO.10

4.70. Spain should ensure that the new Council of Ministers mechanism operates quickly, thereby enabling TFS pursuant to UNSCR1267 to be implemented without delay.

4.71. Spain should implement clear channels for receiving foreign requests related to UNSCR1373, as a matter of priority. (A draft regulation is currently under discussion.)

4.72. Spain should exercise its ability, in appropriate cases, to propose designations to the UN under resolution 1267 or to make its own designations pursuant to resolution 1373. Circumstances in which the exercise of such power would be particularly useful are instances when the person/entity cannot be prosecuted in Spain and/or has been expelled from the country, or when the person is serving time in prison and might nevertheless still be directing terrorist activities, and a designation would not otherwise jeopardise an ongoing investigation.

4.73. Spain should consider applying TFS in appropriate cases when it is not possible to prosecute the offender in order to give notice to other countries (including those in which terrorists takes refuge), and further disrupt their ability to raise and move funds for international terrorist networks, especially Islamist terrorists. The authorities explained that designation would have been counterproductive in the fight against ETA.

4.74. Spain should centralise the information on foundations acting at the national level (for example, through the creation of a national registry). For foundations acting at the regional level, Spain should ensure that there are mechanisms enabling the quick identification of the regional registry where detailed information can be found.

Recommendations on IO.11

4.75. Spain should ensure that the new Council of Ministers mechanism operates quickly, thereby enabling TFS pursuant to resolutions 1718 and 1737 to be implemented without delay.

4.76. Recent cases demonstrate the potential value of financial intelligence and investigative techniques, and of export control information (such as information gathered through the licensing process) to strengthening the implementation of proliferation-related targeted financial sanctions. For this purpose, and to implement the recommended additional coordination measures noted in relation to IO.1 (paragraph 2.42(a)), Spain should establish effective co-operation and, where appropriate, co-ordination mechanisms between the authorities and activities responsible for export controls, and those responsible for AML/CFT system. Both competent authorities should develop lines of communication to co-ordinate the implementation of measures to prevent the avoidance of proliferation-related financial sanctions. Through such mechanisms, SEPBLAC should be made aware of any permission granted or denied for the export of relevant materials. Such measures should be consistent with the *FATF Best Practices Paper on Recommendation 2: Sharing among domestic competent authorities information related to the financing of proliferation*.

4.77. SEPBLAC and the JIMDDU should cooperate in raising awareness and issuing guidance particularly in the financial sector, of the specific risks of proliferation-related target financial sanctions evasion, and providing financial institutions with information on entities registered as producers of controlled materials. Such guidance should be consistent with the FATF *Guidance on The Implementation of Financial Provisions of*

United Nations Security Council Resolutions to Counter the Proliferation of Weapons of Mass Destruction). As well, awareness raising and guidance should extend beyond the Iran TFS regime, and should also cover risks relating to DPRK.

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5. PREVENTIVE MEASURES

Key Findings

The risk-based approach to AML/CFT was introduced in Spain in 2010 and the initial supervisory findings since its introduction appear to be generally positive. Most obliged entities have a historically-based culture of compliance, and tend to approach the risk-based AML/CFT obligations in a rules-based manner, though there is visible progress in adapting to the risk-based approach (albeit mostly in larger banks).

The banking sector is the key gatekeeper to the financial system in Spain. Banks are well aware of their AML/CFT obligations and have a low risk appetite when implementing AML/CFT measures. Consolidation in the banking sector has also resulted in better systems and a more professional attitude towards AML/CFT compliance. While there is generally a high level of compliance and awareness among the financial institutions and most DNBFPs, there are several weaknesses noted by the supervisors – though these do not seem to be systemic.

Supervisory work by SEPBLAC triggered the detection of major criminal abuse of the MVTS sector by complicit agents in recent years. This has led to a number of criminal convictions of agents, the exit of some providers from the sector, and a comprehensive response from supervisors, operational authorities, and the industry. The sector has been very active over the past years in raising awareness and ensuring compliance, for instance by setting up a register of high risk agents. Supervisors have also intensified their supervision of (licensed) MVTS and indirectly their agents. This has caused a cleansing effect in the sector with less money transfers to certain countries. Sustained efforts are necessary given the very high risks in this sector. However, ongoing monitoring for unregistered MVTS operators is at a very low level.

Notaries have a critical gatekeeper role in Spain. The profession has actively worked with the authorities to develop systems to effectively analyse potentially suspicious activity and to provide relevant information to the authorities. They also play a key role in ensuring the transparency of legal persons and arrangements, as noted below. Nevertheless, there have been cases where notaries were used by criminal organisations.

Lawyers have a low level of awareness of ML/TF risks. Lawyers do not recognise the ML/TF risks in their profession and feel the AML/CFT obligations pose an unnecessary burden, despite the role of lawyers in high-profile ML networks. Supervisors should intensify inspections of this sector, and in particular raise awareness of risks among members of the profession.

5.1 Background and Context

(a) Financial Sector and DNFBPs

5.1. **Spain has a significant financial sector, which is dominated by banks.** Total banking sector assets (excluding foreign branches) amount to about 320% of GDP (over EUR 3 trillion). Spanish financial institutions are well-connected with the international financial system, and operate within the context of EU single market rules and the passporting scheme. Conglomerate banks operate branches and subsidiaries outside the EU, most notably in Latin America and Asia. As a result of the 2008 international financial crisis, Spanish credit institutions and savings banks were consolidated and reduced in number through mergers and take-overs, with bank management functions becoming more concentrated in major cities. Currently the five largest banks account for more than 70% of total banking sector assets.

5.2. Spain has the sixth largest insurance sector in Europe with gross premium income of approximately EUR 58.5 billion in 2010 of which EUR 27.4 billion (46.27%) corresponds to life insurance. Nevertheless, **both the insurance and the securities sectors are significantly smaller than Spain's banking sector in terms of the assets under management** - less than EUR 250 billion and about EUR 45.7 billion respectively.[1] The insurance market is dominated by a few large players (including some from other EU member states) with the top 5 life insurers holding 37.5% of the market assets. In 2011, there were 113 life insurers operating in Spain (including from most of the major international groups), 171 non-life insurers, 2 reinsurance companies, 77 foreign branches, 89 811 licensed insurance agents, and 4 660 licensed insurance brokers.[2]

5.3. **As for the securities sector**, in December 2011, there were 94 investment firms (49 broker dealers and 45 brokers), and 187 banks and other credit institutions authorised to carry out investment services in Spain. The securities sector is dominated by bank-owned broker dealers that account for about 72% of all commissions earned from investment services.[3]

5.4. **Spain's retail financial sector is dominated by integrated financial groups, with securities and insurance products sold through the associated bank branch networks.** In the securities sector banks account for about 72% of all commissions earned from investment services. Because of the degree to which Spain's financial sector is integrated within banking groups, the banks perform an important risk management function with respect to other types of financial service.

5.5. **The total volume of money value transfers is conducted by 25 payment institutions that are licensed by the Bank of Spain to provide such services.** (There are more payment institutions that are licensed in Spain to provide other types of payment services). As an EU Member State, Spain permits financial institutions from the EU to provide services in Spain (under EU single market rules and the passporting scheme), which potentially raises some risks relating to supervision and information exchange regarding non-resident financial institutions. Passported entities are nevertheless subject to Spain's *AML/CFT Law* with regards to their activities conducted in Spain: *art.2.2.* The MVTS sector principally processes remittances from Spain to the home countries of foreign workers, such as Romania and Colombia. The sector has changed significantly following a 2009 case in which Spanish authorities identified large-scale money laundering using MVTS (described in Box 3.2).

5.6. **There is a range of designated non-financial businesses and professions (DNFBP) doing business in Spain.** There are about 3 000 **notaries** active in Spain, all of which have the status of public functionaries. Notaries play a particularly important role in the Spanish context because their involvement is mandatory in most types of transactions involving company formation and the transfer of real estate, which are high risk areas. Spain also has a large number of **lawyers**: as of 2006, there were over 150 000 lawyers

1 IMF (2012a), pages 7, 10 and 43.

2 IMF (2012b), p.8 and 10.

3 IMF (2012c), p.8.

registered in Spain (almost 115 000 of which were in active practice). Spain has 1 115 **accountants and tax advisors** operating in the country, as well as 1 400 natural persons and 1 203 firms providing **auditing services**. There is also a small sector of **trust and company service providers (TCSPs)** operating in Spain (who are not otherwise notaries, lawyers or accountants) comprised of 19 entities. Although it is not known exactly what percentage of TSCP activities these 19 entities account for, their relative importance is not considered to be significant because Spanish law requires a notary to be involved in company formation and share transfers, and does not recognise trusts. Although trustees are subject to AML/CFT obligations, no information was available on how frequently trusts are used, although the authorities are aware that trusts hold real estate and process transactions. Based on high profile ML cases, lawyers and notaries are exposed to ML risks and in some cases lawyers and notaries have been complicit, or were used, in ML operations.

5.7. **Real estate agents and developers** are a significant DNFBP sector in Spain and at high risk of ML. Real estate transactions are a major mechanism for ML in Spain, particularly for large-scale ML. Property in Spain is an attractive investment for criminals (from Spain and other countries) to make using their proceeds. Several major cases of corruption in local government have been related to permissions for real-estate development. It is notable that in addition to real estate agents, developers, and land registrars are also obliged entities under Spain's *AML/CFT Law*. Spain has 4 227 real estate agents.

5.8. The **casino and gambling sector** is quite small with 51 authorised gaming operators (offering games of poker, betting, casinos and bingos) and two authorised lottery operators. Spain has 39 casinos which attracted EUR 3.3 million visitors in 2006. In 2013, the on-line gaming market amounted to EUR 5.48 million in bets with EUR 5.25 million in prizes. There are 2 507 **dealers in precious metals and stones** doing business in Spain, of which 53 comprise over 50% of the sector activity.

(b) Preventive Measures

5.9. **Spain has revised almost all elements of the preventive regime for AML/CFT since the last evaluation in 2006. The key element of the regime is the *AML/CFT Law*** which establishes the scope of AML/CFT obligations, the core requirements for CDD, other preventive measures, suspicious transaction reporting, and supervision of these obligations. The law was amended in December 2013 to incorporate additional requirements (reflecting changes made to the FATF Standards in 2012). The law is supplemented by a regulation (*RD 304/2014*) which was adopted and entered into force on 6 May 2014 (i.e., during the on-site visit). This regulation sets out further detail on several requirements, and addresses some remaining elements of the FATF Standards which had not yet been incorporated in Spanish law.

5.10. **Spain's laws and regulations were originally based on the *EU 3rd Money Laundering Directive*, and the updates since 2010 have been very closely based on the *FATF Recommendations* and interpretive notes.** As a result, there is a high degree of consistency between Spain's preventive regime and the FATF Standards. Overall Spain has a good level of compliance with CDD and record-keeping requirements, additional measures for PEPs, correspondent banking, MVTS, etc. Spain applies the same preventive measures to DNFBPs as to financial institutions (with some limited exceptions and adaptations), so the level of technical compliance is also generally high for the DNFBP sectors.

5.11. **There is one area where the laws and regulations applicable in Spain have not been updated: wire transfers remain governed by the *2006 EU Wire Transfer Regulation*, which has not yet been updated to reflect the changes to the *FATF Recommendations* in 2012.** This means that Spain has significant deficiencies relating to information on the beneficiaries of wire transfers, and obligations on intermediary financial institutions.

(c) Risk-Based Exemptions or extensions of preventive measures

5.12. **Spain gives specific exemptions from AML/CFT obligations for foreign exchange by hotels (subject to additional restrictions and thresholds), and opens the possibility of giving future exemptions for notaries when performing acts with no economic or patrimonial content**: *RD 304/2014 art.3.2*. Additionally, smaller institutions are exempt from the more detailed aspects of the internal control requirements: *RD 304/2014 art.31.*

5.2 Technical compliance (R.9-23)

Recommendation 9 – Financial institution secrecy laws

5.13. **Spain is compliant with R.9.** Financial institution secrecy laws do not appear to inhibit the implementation of AML/CFT measures, and there are extensive provisions in law to ensure that adequate information can be shared.

Recommendation 10 – Customer due diligence

5.14. **Spain is largely compliant with R.10.** All of the required sectors and activities are included and, following the adoption of Royal Decree 304/2014, most elements of R.10 are in place. As noted above Spain has extended the CDD obligations beyond those entities and persons set by the *FATF Recommendations*. There is a minor deficiency remaining, which relates to the requirement to consider an STR in all cases where CDD cannot be completed.

Recommendation 11 – Record-keeping

5.15. **Spain is compliant with R.11.** Spain requires documentation gathered for compliance with AML/CFT obligations is retained for a minimum of ten years, including copies of documents obtained through the CDD process, and records of transactions and their participants.

Additional Measures for specific customers and activities

Recommendation 12 – Politically exposed persons

5.16. **Spain is compliant with R.12.** Spain passed amendments to the *AML/CFT Law* in December 2013 reflecting the revised FATF requirements on PEPs. Spain's law closely follows the *FATF Recommendations*, using the language of the *FATF Methodology*. Spain's definition of domestic PEPs includes mayors of towns with a population of more than 50,000. All criteria are met in a way that is consistent with the Recommendation and (where relevant) with the FATF's guidance on this issue.

Recommendation 13 – Correspondent banking

5.17. **Spain is compliant with R.13.** Spain's law closely follows the requirements of R.13. The only significant difference is that Spain does not apply additional safeguards to payable-through accounts, but instead prohibits such accounts altogether.

Recommendation 14 – Money or value transfer services

5.18. **Spain is compliant with R.14.** MVTS providers and their agents are required to be registered, and are listed in a publicly available register, with measures in place for internal controls, and monitoring.

Recommendation 15 – New technologies

5.19. **Spain is compliant with R.15.** Financial institutions are required to pay special attention to ML/TF threats arising from products or transactions that favour anonymity, and to assess or mitigate the risks associated with new products before they are launched. Competent authorities have conducted a preliminary risk assessment of new payment methods, and have systems in place to identify and respond to emerging vulnerabilities.

Recommendation 16 – Wire transfers

5.20. **Spain is partially compliant with R.16.** Spain implements the requirements on wire transfers primarily through the *EU Regulation on Wire Transfers* (1781/2006/EC). This Regulation does not include all the requirements of R.16. Most significantly, there are no obligations to obtain, verify, attach, retain, and

record information on the beneficiary of a wire transfer. There are also only very limited requirements for intermediary financial institutions in executing a wire transfer. Both these requirements were added to the Recommendation in 2012, and have not yet been transposed into the applicable EU regulation.

Reliance, Controls and Financial Groups

Recommendation 17 – Reliance on third parties

5.21. **Spain is largely compliant with R.17.** Spain broadly meets the criteria, following the introduction of several specific provisions in May 2014: *RD 304/2014*. One specific element remains missing: the level of country risk is not taken into account when considering whether reliance is permitted on a third party in another EU country.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

5.22. **Spain is compliant with R.18.** There are comprehensive requirements for internal control procedures and centralised internal control units.

Recommendation 19 – Higher-risk countries

5.23. **Spain is compliant with R.19.** Financial institutions are required to take enhanced measures in relation to six defined types of high risk countries. Competent authorities have powers to apply a range of countermeasures and have mechanisms to advise financial institutions on country risks.

Reporting of Suspicious Transactions

Recommendation 20 – Reporting of suspicious transactions

5.24. **Spain is compliant with R.20.** Spain has enacted new suspicious transaction reporting requirements: *AML/CFT Law art.2.5 & 17-18*. Financial institutions are required to notify SEPBLAC of any (attempted) act or transaction showing any indication or certainty that it bears a relation to a full range of ML/TF offences, covering all 21 designated categories of predicate offences, including tax crimes: *AML/CFT Law art.2.5 & 17-18, RD 304/2014 art.23-25*. A positive feature is that the reporting obligation has also been extended to SAREB, and also to the national administrator of the emission allowance registry which was established in 2005 to regulate the system for trading greenhouse gas emission allowances, given the risks of ML and VAT fraud through this sector.[4]

Recommendation 21 – Tipping-off and confidentiality

5.25. **Spain is compliant with R.21.** Financial institutions, and their directors and employees are protected from liability when disclosing information to the competent authorities in good faith under the *AML/CFT Law*: *art.23*. A positive feature is that Spain has also enacted exceptions to the disclosure prohibition in order to facilitate intra-group exchange of information and contribute to the effective prevention and detection of suspicious transactions: *AML/CFT Law art.24*.

5.26. Financial institutions, and their directors and employees are prohibited from disclosing to the customer or third persons the fact that information has been transmitted to the FIU or is (or may be) under review for AML/CFT purposes. A positive feature is that Spain has implemented specific measures to protect obliged persons, their directors, employees or agents. For example, under no circumstance can the FIU or any other competent authority or civil servant having access to such information reveal the identity of a reporting

4 The risks of money laundering through carbon trading is discussed in the *Guide to Carbon Trading Crime* (INTERPOL, 2013).

director, employee, or agent. Likewise, the results of the FIU's analyses disseminated to law enforcement authorities cannot be directly incorporated into the judicial proceedings because it could infer who the reporting party is: *AML/CFT Law art.46*. Another positive feature is that the law clarifies how the prohibition on conducting any suspicious transaction applies in the context of notaries and registrars who, as public officers, are generally not entitled to refuse or turn away a customer and have a different notion of customer: *AML/CFT Law art.19*.

Designated non-financial businesses and professions

Recommendation 22 – DNFBPs: Customer due diligence

5.27. **Spain is largely compliant with R.22.** Spain applies largely the same AML/CFT requirements to both financial institutions and DNFBPs. The scope of the AML/CFT obligations includes all of the types of DNFBPs and activities set out in Recommendation 22. Spain also extends these obligations to art dealers and property developers. While there are no deficiencies relating specifically to the CDD regime for DNFBPs, there are technical deficiencies with Spain's implementation of Recommendations 10 and 17 noted above, and these problems impact the DNFBP sector as well as financial institutions.

Recommendation 23 – DNFBPs: Other measures

5.28. **Spain is compliant with R.23.** Spain applies largely the same AML/CFT requirements to both financial institutions and DNFBPs. The scope of the AML/CFT obligations includes all of the types of DNFBPs and activities set out in Recommendation 23. There are some specific measures relating to DNFBPs - notably the use of Centralised Prevention Bodies to consider and submit STRs on behalf of collegiate professions (Notaries and Registrars). There are no deficiencies relating specifically to the measures for DNFBPs, and no significant technical deficiencies in Spain's implementation of Recommendations 18, 19, 20 and 21.

5.3 Effectiveness: Immediate Outcome 4 (Preventive Measures)

(a) Understanding of ML/TF risks & AML/CFT obligations, and application of mitigating measures

5.29. **The risk-based approach was introduced in Spain in 2010 and the supervisory findings since its introduction appear to be generally positive.** Following some high profile ML/TF cases, the Spanish authorities have put in a lot of effort in identifying generic ML/TF risks and have informed the financial institutions and DNFBPs of those risks. In general, financial institutions and DNFBPs accept the understanding of the risk as set out by the authorities and in the law. However, there are differing levels of implementation amongst sectors. Financial institutions and DNFBPs are obliged to make a risk assessment of the specific risks they face and the adequacy of their risk mitigation measures: *AML/CFT Law art.5, 6 and 7*. More detailed requirements for this were set out in Royal Decree 304/2014, which entered into force during the on-site. Therefore, at the time of the assessment, not all FIs and DNFBPs had completed such assessments, and it was not possible for the assessment team to fully evaluate how the private sector is implementing the newest legal obligations. Overall, the understanding of ML/TF risks and obligations seems strongest among the key sectors (banks and notaries), with other financial institutions and DNFBP sectors having a less well-developed understanding.

5.30. **Most obliged entities have a culture of compliance, and a low appetite for ML/TF risks. For this reason, they still approach their AML/CFT obligations in a rule-based manner.** The risk-based approach represents a substantial change from the previous rules-based *AML/CFT Law*. However, obliged entities appear to apply standard measures consistently to all customers and business lines, including those which are low-risk. In some instances they have shown a preference for avoiding business with certain high-risk customers (for example, some MVTS providers), rather than applying graduated measures or enhanced CDD. There has been visible progress in adapting to the changes, mostly by the larger banks. Though there

is generally a high level of awareness among the financial institutions and most DNBFPs, there are several weaknesses noted by the supervisors, though these do not seem to be systemic.

5.31. **Banks are aware of the ML/TF risks and their AML/CFT obligations and have a low risk appetite when implementing AML/CFT measures.** All banks have a good idea of the ML/TF risks concerning their customers, products and geographies, and according to the Bank of Spain, the quality of risk assessments by banks is improving. Large banks have elaborate systems for profiling and managing ML/TF risks for their worldwide operations and implement group-wide measures tailored to those specific risks. These larger banks also have more sophisticated understanding of the risks, and the capacity to develop their own risk models and indicators, in addition to using those included in the risk catalogues produced by the Commission. Other financial institutions' risk assessments mainly use the same high risk identifiers which have been identified in the risk catalogues produced by the Commission (i.e., there is less independent risk-analysis undertaken in these sectors). Risk classification of customers at larger banks is based on automated scoring systems.

5.32. The consolidation in the banking sector has resulted in better systems and a more professional attitude towards AML/CFT compliance. Nevertheless, there remains room for improvement: only some of the larger banks take into account the ML/TF risks from new or emerging technologies (e.g., arising from new types of payment service providers). Smaller banks have not assessed the risks of new products such as pre-paid cards, even when they offer those products themselves. Finally, as noted elsewhere more focused guidance and typologies are needed for the obliged sectors on laundering in the real estate sector by foreign criminals.

5.33. **Major criminal abuse of the money and value transfer service (MVTS) sector in recent years has led to significant improvements in preventive measures.** Box 3.2 describes a major case involving money laundering by complicit agents of MVTS providers. This case has led to a number of criminal convictions of agents, and the exit of several providers from the sector. It has also triggered a comprehensive response from supervisory and operational authorities, and the industry itself.

5.34. MVTS providers are aware of the specific risks they face, and the controls they need to address these risks, particularly those arising from their use of agent networks and from the fact that their business is cash-based. They are also highly aware of the attention being paid to them by the authorities, who have made an extensive risk analysis of the MVTS sector, and put them under significant supervisory pressure. Nevertheless, despite good awareness of specific risks within the sector, the MVTS sector believes its general risk level to be low relative to other sectors given the supervisory and voluntary measures implemented; their transactions are generally processed through banks; and that remittance volumes are small compared to the estimated volumes of criminal proceeds laundered in Spain. MVTS providers and the authorities have been working together to address and mitigate the specific risks. Measures implemented include:

- **a.** an industry-held register of high risk agents (or the so-called "bad agents"), through which MVTS providers can share alerts with each other about potential bad actors
- **b.** applying stronger CDD measures than the minima required by law, regardless of the size of transaction, source of funds or the financial situation of clients
- **c.** applying lower limits on cash transactions
- **d.** requiring systematic reporting to the FIU of all MVTS transactions on a monthly basis, which are screened by the FIU to identify suspicious transactions or patterns of activity, and
- **e.** strengthened internal controls within the sector, in particular for taking-on and training agents, and transaction monitoring systems.

5.35. These measures, and intensified supervision by SEPBLAC, appear to have had a cleansing effect in the sector. There has been a drop in the volume of funds transferred to certain high-risk countries. As well, the sector is now very aware of the risks posed by bad agents, and has taken the mitigating measure of establishing a register of "bad agents". However, the assessment team was told by representatives of the

sector that overall given the relatively low volumes of transactions processed by them compared to the total estimated criminal proceeds laundered in Spain, MVTS operators (other than agents) as a sector should be considered to be low risk, particularly since their business ultimately goes through banks. Sustained efforts are therefore necessary to ensure that the MVTS sector understands the risks that can be posed by certain of their own customers. Representatives from the MVTS sector also highlighted their concerns that the perceived high risk of MVTS by banks is leading them to be more cautious in providing their services. In a few isolated cases, this has led the banks to refuse services to the sector as a whole, rather than taking into account, on a case-by-case basis, the level of risk of individual MVTS customers or risk mitigation measures. This is not a correct implementation of the RBA, and is not in line with the FATF standard. MVTS providers are reliant on access to the banking system in order to continue operating. They are concerned that this behaviour by banks is closing the sector to new entrants and, in the long term, this could choke the MVTS sector altogether and drive remittance flows underground to unregistered and informal channels.

5.36. As for banks, because MVTS have been identified by SEPBLAC as a high risk sector, some banks told the assessors that they would not accept an MVTS as a new customer, suggesting there is some justification for concern on the part of the MVTS sector. Those banks still providing services to MVTS customers consistently treat them as high risk. The Spanish authorities indicate that it is not the intention of government policy to exclude MVTS operators from the banking market. The authorities believe that high risk MVTS customers need to be monitored appropriately, and not automatically excluded from access to the banking sector. The assessment team were presented with details of a case where a MVTS operator successfully sued a bank to restore banking services.

5.37. **There is limited awareness in the securities sector of ML/TF risks related to all types of securities transactions.** Firms therefore do not pay adequate attention to the higher-risk business lines in the sector, including equity management and collective investment schemes, which are considered high-risk by at least one of the supervisors (SEPBLAC). In general, the securities sector follows those higher risk categories identified in the law or in the risk catalogues. All types of institutions involved in securities comply with their AML/CFT obligations in a formal, rules-based way. A risk-based approach to AML/CFT compliance has not yet been implemented in the sector. The securities sector sees itself as low risk, on the basis that most business is done in the context of a financial group and does not therefore involve direct contact with clients or handling cash.

5.38. **The insurance companies have not conducted a risk assessment of their inherent risks and instead use the risk indicators in the law, or the risk catalogues issued by the Commission, to assess customer risks.** Insurance companies have systems in place to determine customer risk and to monitor for unusual transactions or changes in the customer profile. However, the thresholds (of premium or insured amount) which can be reached before enhanced due diligence is applied are very high. Insurance firms also consider themselves to be medium or low risk, for the same general reason: reliance on the banking sector.

5.39. **Consumer Credit providers** provide consumer loans linked to goods purchases, averaging EUR 12 000 for cars and EUR 2 000 for other items. The sector considers itself low-risk for structural reasons, but applies mitigating measures to the repayment of loans, which are permitted only through a direct debit from a bank account in Spain (with monitoring of any changes in the bank account used).

5.40. **Lawyers have a low level of awareness of ML/TF risks, do not recognise the level of risk in their profession, and feel that their AML/CFT obligations pose an unnecessary burden.** Legal professional bodies consider the ML risks faced by non-complicit lawyers to be low, as they are not normally involved in higher-risk types of business (e.g., real estate transactions, which are done by notaries instead), but they work closely with their clients, and therefore are in a position to identify suspicious activity. Lawyers have played a central role in establishing and operating the organised ML networks which have been at the centre of a number of high-profile ML prosecutions (e.g., *Malaya* and *White Whale* cases). However, the involvement of lawyers in these cases is not seen as representative of the risks: the lawyers involved are considered as complicit criminals (*Malaya*) or as acting recklessly (*White Whale*).

5.41. Spain had approximately 150 000 lawyers in 2006 of which about 115 000 were in active practice. There seem to be several structural and practical reasons for the low level of awareness of ML/TF risks and obligations in the legal profession. Legal professional organisations are very fragmented (Spain has

83 separate Bar Associations throughout the country) which complicates the potential availability of advice and training. The number of lawyers per capita in Spain is one of the highest in the EU,[5] and AML/CFT supervision of the legal profession commenced very recently and remains minimal. In addition, it is not clear how many lawyers provide services that fall under the scope of the *AML/CFT Law*. The sector itself estimates this is as low as 400; however, no further details are available to substantiate this estimate.

5.42. **Notaries are very aware of their significant gatekeeper role, as well as of the importance of the information they hold, and have actively worked with the authorities to develop systems to open up their wealth of information for the authorities.** Generally, the profession seems to have a good awareness of the ML/TF risks faced by notaries in the course of their normal business. The Notarial profession has a centralised prevention body (the OCP), which has developed a comprehensive list of risk indicators which is used by all notaries. The OCP also has the function of examining potentially suspicious activity, or patterns of activity, conducted through notaries. Because of their role in particular in relation to legal persons and real estate transactions, notaries are a critically important gatekeeper in Spain. It is therefore a concern that there have been rare cases where notaries were used in criminal money laundering operations.

5.43. **Other DNFBPs seem in general to have a sound understanding of the particular ML/TF risks**, and to have implemented appropriate mitigating measures:

a. **Casinos** have historically been tightly controlled in Spain, and remain a small and closely-supervised sector. Based on this, and the low average amount spent (EUR 80) and the high taxes on winnings (50%), the sector does not see itself as a high risk of ML/TF. Casinos will only pay out in cash. Paying out by cheque is only allowed a few times per year and remittances into a bank account occur rarely. However, the assessment team do not fully share this view, given that cases of ML through the Spanish casino sector have been detected. For example, see *Vulnerabilities of Casinos* (FATF and APG, 2009) Cases 8, 10, 16 & 18. Moreover, even though there are tight controls, including on licensing or changes of shareholders, a ML/TF risk remains, especially when criminals set up a casino or invest in casinos. As referred to in *Judgment AN 3584/2012*, there has been a case where a criminal organisation invested illicit funds in companies in Spain and abroad to acquire boats, real estate properties, and conducted investments in casinos.

b. **Online gambling** has only recently been legalised in Spain, and remains subject to strict supervision. Given the heightened risks of online gambling, Spain has introduced centralised systems for identifying and verifying the identity of customers, based on national identity information held by the supervisor. Online gambling firms are also aware of specific risks, e.g., of the use of pre-paid cards.

c. In the **real estate sector**, both agents and developers are obliged entities under the *AML/CFT Law*. They use the risk indicators provided by the Commission, and supplement these with risk indicators based on the characteristics and behaviour of the client. Major real estate agents and developers seem to have a good understanding of the risks. However, their understanding has been developed internally by the real estate firm, as the sector has limited supervision and no national bodies which could raise awareness or provide advice, good practices, risk indicators, and training. It is therefore unlikely that smaller-scale agents and developers have the same level of understanding of the risk or apply equivalent controls.

d. **Accountants and auditors** comply in a formal way with their AML/CFT obligations, and show a low awareness of ML/TF cases they may detect while performing their work. Accountants are also hired as external experts to audit the AML/CFT system of obliged entities. In that capacity they show a high level of knowledge of the level of compliance in the various sectors. Forensic accountants that investigate fraud cases do not consider that

5 Yarrow, G., Prof. and Dr. C. Deckert (2012).

fraud is linked to ML.

e. **Trust and Company Service Providers** are considered very high risk sector by SEPBLAC in their supervisory risk assessment (given the risks associated with the use of shell companies). This relatively small sector (19 entities) is not subject to intensive supervision, but its risks are mitigated because the transactions related to the services they provide have to go through notaries who are subject AML/CFT supervision. Since SEPBLAC has not yet focused its supervisory attention on TCSPs, there is no information available on the level of compliance in this sector.

(b) CDD and Record-Keeping

5.44. **Most sectors take a formal approach to compliance with the CDD and record-keeping requirements.** The risk-based approach in this area is focused on profiling the risk posed by customers, taking into account the products or services involved, and any general indicators (e.g., if non-resident customers or high risk countries are involved in the business relationship). Large banks have a more sophisticated approach to risk, whilst smaller banks, securities and insurance companies apply the law and guidance in more of a "checklist" approach, and will hardly take a risk-based approach except for those instances allowed by law. In general the risk appetite is very conservative. Obliged entities indicated a high level of support for preventative measures, but a lower level of knowledge of risk generally, suggesting that some risks may not be adequately understood and therefore mitigated inadequately, and *vice versa*.

5.45. **All obliged entities interviewed by the assessment team normally perform basic CDD using the documents prescribed by law**, check the purpose and nature of the business relationship by closely following the risk indicators from the *catalogues* (often importing these risk indicators directly into their policies and procedures or using it as a checklist), and (where necessary) check the source of funds by way of documented proof of source. Most non-bank financial institutions and DNFBPs rely to some extent on banks as a gatekeeper, for example, many securities and insurance firms' products are sold to customers through their associated bank, and some obliged entities will not always look into the legitimacy of the source of funds and merely check that the money is transferred via a bank.

5.46. **Supervisors have identified some deficiencies in the implementation of CDD measures.** In the banking sector these mainly result from the consolidation process, as customer files and IT systems were found to be incomplete or out of date following mergers and take-over of some smaller banks. Some shortcomings have also been detected, concerning information on the customer's beneficial owner and the level of detail in customer files kept by banks. These problems led the Bank of Spain to order several banks to remedy CDD deficiencies by reviewing the customer files and bringing them into line with current legal requirements by the end of 2014.

5.47. **There seem to be no significant issues with record keeping, which is normally required for ten years.** Authorities report that they have good access to information. SEPBLAC indicated that with a few DNFBPs, such as jewellers and real estate agents, they have found some deficiencies with respect to record keeping, but these do not seem to be system-wide problems.

5.48. **Ongoing monitoring is also a routine activity for obliged entities.** Entities conducting more than 10 000 transactions per year are required to have an automated system for monitoring and generating alerts: *RD 304/2014 art.23*. Banks use either in-house or commercially-developed transaction monitoring systems, which may trigger more detailed monitoring (e.g., a review of the source of funds), based on the risk profile and activities of the customer. Insurance companies also use automatic systems to monitor customers' activities and transactions.

5.49. **All obliged entities are aware that information on the beneficial owner needs to be obtained and generally do so in the manner prescribed by the law, albeit unevenly across the different professions** despite the fact that the current requirements were introduced in 2010.

5.50. **The notary profession's Single Computerised Index (described in Box 7.1) represents real progress in this key gatekeeper sector**. Set up in 2004, the Index contains a wealth of information, including

(since March 2014) the names of beneficial owners of new Spanish companies and other companies that conduct an act before a notary. This recent initiative focuses more on recording the ultimate beneficial owner and less on the intervening entities or arrangements that stand between the corporation and its beneficial owners. It does not include so much information on the overall structure of ownership and control although information on intervening or intermediary entities may still be obtained through the record of transfers of shares in the case of Spanish companies. This is less of an issue for law enforcement where beneficial ownership is Spanish than where a foreign entity or a legal arrangement is present and it remains a challenge for Spain (as for other countries) to meet the requirements to identify the beneficial owner.

5.51. **There is nevertheless scope to strengthen the CDD conducted by notaries on the beneficial ownership of companies.** Notaries are required in all cases to identify and record the beneficial owner of a newly incorporated entity or of an entity that intervenes in a notarial act, on the basis of a declaration made by the company's representative. In practice, the identity of the beneficial owner is only verified when two or more risk indicators are met using a copy of an identification document instead of original documentation or of information from reliable independent sources. Due diligence conducted by an individual notary does not normally include verification of the status of the beneficial owner, or examination of the chain of ownership to the ultimate beneficial owner. This could indicate that customer due diligence is conducted in a formalistic way rather than on the basis of a clear understanding and assessment of the facts, and that beneficial ownership information declared by the company may be included in the Single Computerised Index without full verification by notaries that it is correct. This is compensated to some extent by the fact that CDD by notaries is complemented by other information already available in the notarial database (e.g., information on transfers of shares of SLs). Recently issued procedures establish the measures that notaries should take to verify the identity and status of the beneficial owner in instances where one or more risk indicators are met. However, considering that they were issued after the onsite mission, these procedures cannot be taken into account for rating purposes in the context of the current assessment.

5.52. **The real estate sector indicated that customers from tax havens are often reluctant to provide information on the beneficial owner or the source of funds.** They experience problems in obtaining the right information from clients and attribute this to the fact that clients are not (yet) accustomed to providing information to real estate agents (in contrast to banks where there is a more established culture of providing information). In those cases where information cannot be obtained, the client will be refused service, which is in line with the standards.

5.53. **The authorities have issued little or no guidance to the obliged sectors relating to trusts, despite the use in recent ML cases of complex networks of companies and trusts constituted in nearby off-shore centres.** LEAs confirmed that these cases, although few in number, were frustrating to investigate because of the difficulty in obtaining further information from the relevant authorities. Royal Decree 304/2014 requires obliged persons to identify and verify the identity of "*the settlor, the trustees, the protector, the beneficiaries and of any other natural person who exercises ultimate effective control over Anglo-Saxon trusts, even through a chain of control or ownership*". This also applies to other similar legal arrangements. However, because trusts and other legal arrangements are not enforceable in Spanish courts, the obliged sectors do not often encounter them and therefore do not appear to focus on determining whether customers may be acting in a trustee capacity. Royal Decree 304/2014 also introduces a direct obligation on trustees (of express trusts) to disclose to obliged entities their status as such when opening a business relationship or participating in a transaction. This obligation entered into force during the on-site visit and thus the assessment team was not able to assess its implementation.

5.54. **Some specific measures to deal with high-risk activities or entities generally seem to be well observed by the financial and DNFBP sectors - though in this area, more detailed requirements in Spain were updated (in some cases significantly) during the onsite.** This means implementation of some measures was incomplete. In addition, as noted above, other measures are not yet fully developed into guidance.

5.55. **With respect to the implementation of preventive measures applicable to PEPs, the picture is mixed.** Requirements for foreign PEPs are being implemented without significant problems, although in some cases financial institutions check whether a customer is a PEP only after their acceptance. However, the requirement to identify domestic PEPs is a new feature in the law, introduced in December 2013. All

institutions indicated having major problems with these requirements, stating that commercial PEP databases do not have information on domestic (or international institution PEPs). It appears that many obliged entities are not yet aware of the risk-based approach taken by Spain to domestic PEPs. The inclusion of mayors is a partial response to the risks (particularly of corruption related to land development). As mentioned in Box 7.1, work is underway by the OCP to develop a database of domestic PEPs. The OCP indicated that they will also be able to add close associates based on the fact that since 2004, every politician has had an opportunity to visit a notary and from that information the OCP will have information on close associates. Additionally, from the civil and birth registry family members can be added.

5.56. **The requirements relating to correspondent banking and new technologies appear to be implemented without any difficulties, with appropriate measures in place to mitigate these risks.** This includes requirements for MVTS to make their transfers through bank accounts both in the destination country and in any other in which the overseas correspondents or intermediate clearing systems operate. All FIs and DNFBPs interviewed take account in practice of higher risk countries as indicated by the FATF as well as the tax havens indicated in Royal Decree 1080/1991, and these are integrated into customer risk profiling systems. Several banks and MVTS indicated that they also have identified other high risk countries for which they will apply enhanced measures. Pre-paid cards have been identified as higher-risk technology, as have some internet payment systems. However, one bank that the team met with was not aware that it issues pre-paid cards itself. It is therefore questionable whether the banking sector is sufficiently aware of the ML/TF risk of new technologies.

5.57. **With respect to higher risk countries, legislation defining these came into effect during the on-site visit (RD 304/2014) and therefore the assessment team were unable to evaluate how well the new legal requirement is being implemented.** However, there is a widely held view in the private sector that customers and transactions originating outside Spain present higher risks.

5.58. **The legal framework for wire transfers, as noted above, suffers from major gaps because the current EU Regulation does not require the details of beneficiaries to be included in transfers.** The assessment team understands that some payment systems and financial messaging services (including SWIFT and TARGET2) have updated their messaging systems to require all sending financial institutions to enter some beneficiary information in every wire transfer, although only the IBAN (international bank account number) of the beneficiary is required, and other information (including the beneficiary name) is not mandatory. However, SWIFT does not screen or check wire transfers for the validity of beneficiary information. Hence, provided that any text (even meaningless spaces or symbols) is inserted in the appropriate fields, the transfer will go through (as these are processed in real time).

5.59. **All the obliged entities the team met with screen their customers' names periodically against the sanctions lists.** SEPBLAC has done a thematic inspection of 15 banks for compliance with sanctions obligations, and identified some issues with providing information on alerts to SEPBLAC. External auditors have also indicated that some improvements could be made with respect to the timely screening of customers against the sanctions list, since (as with PEPs) in some banks, screening is done only after acceptance of the customer.

(c) Reporting suspicious transactions

5.60. **In general, suspicious transaction reporting from obliged entities appears to be satisfactory.** There is some variance in levels and quality of reporting between sectors and the absolute number of STRs is relatively low for a country of Spain's size. However, in general reports are considered to be useful, and a high proportion of STRs are disseminated (noted under IO.6), so a low absolute volume perhaps does not indicate a problem, and may instead reflect the *special review* which obliged entities are required to conduct before filing an STR. The special review involves a structured analysis of the potentially suspicious activity along with all related operations, all parties involved in the transaction and all relevant information held by the obliged entity or group, and a decision by the reporting officer on whether an STR should be submitted. This process seems to help eliminate "false positives" and defensive reporting, and to facilitate the aggregation of information into a single STR: *AML/CFT law art.17 and RD 304/2014 art.25*. The statistics showing the number of STRs filed are not reflective of the number of individual transactions that each STR represents. Given the comprehensive nature of the special review process, the reports filed with SEPBLAC routinely

involve a high number of individual transactions (e.g., STR 3310/2014 involves 153 separate transactions), which means that the level of STR reporting is not as low as it might otherwise appear. Some obliged entities will focus more on cash or foreigners than others, and some mainly file reports originating from their automated monitoring systems, while others rely on manual reports from employees. Nevertheless, the high quality of STRs is accredited by the low percentage of archiving by SEPBLAC (below 20%), and the high exploitation rate of SEPBLAC reports by LEAs, both quantitatively (over 40%) and qualitatively (several of the most significant ML/TF investigations have been driven by SEPBLAC's financial intelligence reports which are based on the STRs filed by FIs and DNFBPs.

5.61. STR reporting relating to TF is seen as high quality. Spain has had several TF cases in which STRs played an important role. Banks show a high awareness with respect to terrorism and TF, for instance by only allowing payments from government into NGOs. Spain is to be commended for this.

5.62. **Notaries use a central prevention body (the OCP), allowed in Law 10/2010, as an intermediary step in considering the submission of an STR.** All notaries must upload all notarial acts and all relevant information into the OCP's centralised database (the Single Computerised Index - see Box 10) which includes a comprehensive list of risk indicators established by the OCP and SEPBLAC. Any transaction that includes risk indicators is reported to the OCP, which reviews the transaction using its own databases and analytical tools, and advises the notary on whether an STR should be submitted. The OCP also monitors all transactions entered in the central system to detect unusual transactions or groups of transactions. Approximately 40% of notaries' STRs come from this automated risk alert system, and 60% of STRs are reported by the notaries directly.

5.63. **The following statistics show the number of STRs received annually by SEPBLAC in the past three years.** More than 75% of STRs are generated by financial institutions. As a result of the recent consolidation of Spain's banking sector, the number of savings banks dropped significantly (from 44 in 2010, to 6 in 2012) and the number of commercial banks reporting rose (from 33 in 2010, to 43 in 2012), which explains the reporting fluctuations in these sectors. The number of reports from payment entities has continued to rise, mainly in response to an intensive campaign of supervisory and awareness-raising activities in response to the identified risk of ML through money transfers.

5.64. **Most of the reporting in the DNFBP sectors comes from notaries and registrars.** Overall, reporting has decreased in these sectors (by 7.4% in 2011, and by a further 9.1% in 2012). The authorities attribute this to the economic downturn which caused a collapse of the Spanish real estate market and reduced company activity. One missing source of reports is from forensic accountants that investigate fraud cases, who do not consider that fraud is linked to ML.

Table 5.1. STRs received by SEPBLAC

	2010	2011	2012
Breakdown by type of financial institution			
Banks	1 062	1 258	1 792
Savings banks	822	448	13
Credit cooperatives	138	139	128
Spain-based branches of EU-registered financial institutions	51	51	36
Spain-based branches of non-EU financial institutions	3	5	10
Lending establishments	6	13	12
Payment entities (including MVTS/currency exchange managers)	286	372	441
Investment services firms and their branch offices	15	9	4
Life assurance companies	11	16	10

Table 5.1. STRs received by SEPBLAC (continued)

	2010	2011	2012
Insurance brokers	0	0	1
Collective investment institution management companies	4	0	2
Mutual guarantee companies	1	0	0
Private equity management companies (SGECRs)	1	0	0
Credit card issuers	11	2	0
Total number of STRs received by financial institutions	2 411	2 313	2 449
Breakdown by type of DNFBP			
Notaries	247	182	182
Registrars of land, companies and personal property	98	200	129
Lawyers	39	31	25
Auditors/accountants/tax advisors	6	5	8
Gambling establishments	7	2	5
Operators of lotteries and other games of chance	0	0	1
Property developers, brokers, and dealers	23	18	15
Jewellers	9	21	20
Art and antiques	5	0	1
Cash transport professionals	26	39	73
Postal services (international giros cash or transfers)	120	39	14
Trading in goods and assets (Article 2.1W)	0	0	13
Companies under Article 2.1(o)	0	0	2
Total number of STRs received by non-financial institutions	580	537	488
Total number of STRs received by other sources, including domestic and foreign supervisory bodies, other individuals and corporations	180	125	121
Total number of STRs received by SEPBLAC	3 171	2 975	3 058

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2012) at Table 1 (Total STRs received annually by SEPBLAC) (p.9), Table 4 (Distribution of STRs received from financial institutions by type of entity subject to the reporting duty) (p.12), Table 5 (Distribution of STRs received from non-financial entities by type of entity subject to the reporting duty) (p.14).

5.65. **Tipping off does not seem to be a major problem, but there are some concerns**. Obliged entities generally have policies regarding tipping off. When a court order is classified secret, they will keep the information request from the branches in order to avoid any possibility of tipping off. In addition, prosecutors are concerned about the possibility of tipping off when information is obtained from banks, especially if the central compliance unit in a bank must contact the local branch to collect all the requested data. Police also commented on a few minor ML investigations (e.g., local, small scale investigations) where tipping off had occurred.

(d) Internal controls

5.66. **Obliged entities (with some exceptions for smaller entities) are required to have internal controls and procedures.** These are a key focus of guidance and inspection by supervisors. SEPBLAC has drawn up recommendations on internal AML/CFT control measures, and conducted outreach to inform financial institutions and DNFBPs of them.

5.67. **Among financial institutions, internal controls are the main focus of AML/CFT inspections by the Bank of Spain, CNMV and DGSFP.** Some shortcomings have also been detected concerning information on the customer's beneficial owner and the level of detail in customer files kept by banks. Weaknesses have been identified in the process for reviewing and updating CDD records and bringing the information held up to the level required by current law. These problems are largely attributed to difficulties integrating and harmonising IT systems, controls procedures, and training following mergers and acquisitions within the banking sector. Insurance supervisors have also found that deficiencies identified during their AML/CFT inspections were caused by a lack of internal controls.

5.68. **Financial institutions, including those with operations outside the EU, told the assessment team that they extend their internal controls to such operations.** They indicated that it was difficult to obtain from their branches or subsidiaries in some countries, the information needed to verify compliance with their standards (due to privacy or data protection laws), which made the implementation of internal controls group-wide more complex. Where the risks were too difficult to mitigate, one bank exited a country where it was particularly problematic to apply Spanish standards effectively. Finally, the extent to which large banks oversee their foreign operations varies. One such bank indicated that their head office does not audit their foreign operations.

Overall conclusions on Immediate Outcome 4

5.69. **The overall strength of the preventive measures applied by Spain's financial institutions is most notable in the banking sector.** The banking sector has developed a good understanding of its ML/TF risks and applies the AML/CFT measures according to the risks. The sector has a low appetite for risk, and seems conscientious in its application of AML/CFT obligations. The controls applied by this key sector seems to be relatively strong, although some improvements are needed.

5.70. Consolidation has left Spain's banking sector with fewer, but larger banks, mostly able to implement sophisticated, professional, and risk-based AML/CFT controls - although they have not fully completed the processes of integrating their systems following consolidation and bringing customer files into line with the current legal requirements. Additionally, most banks need to update their procedures to account for the new obligations such as domestic PEPs. There are variations in the effectiveness of group oversight at institutions with branches and operations outside Spain.

5.71. **Of the other financial institutions, the MVTS sector has strengthened its preventive measures in response to past criminal exploitation, in particular to mitigate the risk of bad agents by keeping a register of these agents.** MVTS providers have been working with the authorities to enhance the AML/CFT measures, such as stronger CDD, lower limits on cash transactions and systematic reporting to the FIU of all transactions. The risk awareness of the MVTS sector is uneven: despite good awareness of specific risks involved in MVTS operations, the MVTS sector believes its general risk level to be low relative to other sectors. The insurance and securities sectors have a basic but limited awareness of the risks, follow a rules-based approach to the implementation of preventive measures, and most rely on their associated banks and on notaries as their principal AML/CFT safeguard.

5.72. **Of the DNFBPs, the strengthening of the preventive measures is most notable within the notaries sector.** The notaries sector has made significant progress as a result of the establishment of the OCP (a centralised prevention unit), which has raised awareness and capacity throughout the sector. Also, the development of elaborate risk indicators and additional STR reporting through the OCP has promoted a good understanding of its ML/TF risks and level of compliance. Although they generally conduct adequate CDD and

know who the ultimate beneficial owner is, there is some room to further strengthen the scrutiny notaries give to beneficial ownership and the overall structure of ownership and control.[6]

5.73. The effective implementation of preventive measures varies across the other DNFBP sectors. In general, the real estate, accountant and auditors and casino sectors seem to adequately apply the required measures, but do not have a risk-based or proactive approach. Lawyers seem to be an outlier, with limited awareness of their ML/TF risks and obligations, and little evidence that effective controls are in place. The authorities have not paid any attention to the supervision of TCSPs, and therefore their level of understanding of ML/TF risk and AML/CFT compliance is likely limited.

5.74. **The wide variety of understanding of the risks, and the resulting wide variations in how the risks are managed, suggests the obliged sectors exhibit, overall, an uneven range of effectiveness in the implementation of preventative measures.** The understanding of the risks and the concomitant controls needed seem strongest in the banking sector, although some larger banks do not yet oversee their foreign operations to a group-wide standard. Notaries have a good understanding of the risks, and have taken adequate mitigating measures, although some CDD measures could be improved further. If assessed separately, both these sectors would be rated higher than all the obliged sectors as a whole. Of all the obliged sectors, the legal sector is at a low level of effectiveness.

5.75. **For all obliged sectors, there are some systemic issues relating to understanding and mitigating the risks relating to legal arrangements, trustees and lawyers.** Measures on high risk countries and domestic PEPs cannot yet be evaluated. Wire transfers are not yet subject to rules compliant with FATF Standards. It therefore seems that overall there is still some way to go before the obliged sectors as a whole exhibit a substantial level of effectiveness.

5.76. **The assessment team weighted the banking and notaries sectors as most material for the level of compliance of all obliged sectors.** In the case of banks this is largely because of their understanding of the risks, and to some extent the structure of the financial sector where banks, insurance and securities companies are part of a conglomerate group; and in the case of notaries, it is because they are legally required to be involved in a wide range of acts and transactions, including real estate transactions and the formation of legal persons. Nevertheless, even in these two sectors moderate improvements are still necessary.

5.77. **In all other financial and DNFBP sectors, major improvements with regard to understanding the ML/TF risk and the RBA are required**, and with the lawyers and TCSPs even more fundamental improvements are necessary.

5.78. **The overall rating is moderate for Immediate Outcome 4.**

5.4 Recommendations on Preventive Measures

5.79. Reflecting the relative strength of AML/CFT controls applied by the banking sector and notaries, Spain should prioritise measures to improve AML/CFT controls in the other sectors, particularly among the DNFBPs.

5.80. Spain should enhance its dialogue with the MVTS sectors to enable operators to better understand the risks to which they may be exposed by certain types of customer and business, and how to mitigate those risks in line with the RBA. Spain should also conduct outreach to the banking sector to ensure that there is a good understanding of the specific risks and risk mitigation measures in Spain's MVTS sector, and to

6 As mentioned above, additional scrutiny is now required when one or more risk indicators are met, but, because the additional requirements came into force after the onsite mission, their impact could not be tested and cannot be taken into account for the purposes of the current assessment.

encourage banks to continue to provide banking services and apply AML/CFT controls to the relationships with MVTS providers commensurate with the level of identified risks, and in line with the RBA.

5.81. Spain should encourage the non-bank financial sectors and DNFBPs to broaden their understanding of the RBA, and conduct outreach to improve their understanding of the risks.

5.82. SEPBLAC and the Centralised Prevention Unit of the notaries should ensure effective implementation of the new procedures (that were introduced following the on-site visit) for notaries when verifying the identity of high-risk customers and beneficial owners of legal persons, by requiring the use of external sources of information and recording of the ownership structure of the company, including enhanced verification procedures in high risk operations (i.e., where more than one risk indicator is present): *RD 304/2014 art.9.2*.

5.83. Spain's legal system has historically not recognised the concept of trusts and such arrangements are not enforceable in Spanish courts. For these reasons, foreign trusts and legal arrangements, as well as the Spanish *fiducia*, are not very frequently used. The obliged sectors (except for the banking sector) met with by the assessment team have little to no experience in dealing with customers who may be acting as trustees. Spain has introduced an explicit obligation on trustees of express trusts[7] to self-identify when dealing as such with obliged entities or participating in transactions. This measure may potentially mitigate the risk that obliged entities may not adequately ascertain that they are dealing with trustees. In addition, trustees are subject to the AML/CFT obligations in their own right. Spain is to be commended for introducing these explicit obligations on legal arrangements into its *AML/CFT Law*. However, given there remains a lack of experience in Spain in dealing with trusts (including the fact that trusts cannot be formed under Spanish law), the authorities should develop and issue guidance for the financial and DNFBP sectors on beneficial ownership by trusts, trustees and legal arrangements. Further, as noted in the recommendations under Immediate Outcome 7, Spain has faced many cases involving lawyers who are complicit in setting up and managing complex ML schemes. Given the nature of trustees' responsibilities, it is likely that lawyers will most often be acting in the role of trustee where a trustee in Spain is appointed. Guidance should therefore also be considered for trustees on their general and disclosure obligations.

5.84. Supervisors should intensify outreach and inspection of the legal and TCSP sectors, and in particular raise awareness of risks and AML/CFT obligations among members of these professions. Authorities should work with the representative associations of these professions to consider how to do this.

5.85. Anti-tipping off measures and awareness should be strengthened within FIs and DNFBPs to ensure that information on STRs and police investigations is not communicated to the subjects under investigation.

5.86. Spain should prioritise guidance on high-risk countries, territories and jurisdictions and other regulatory changes including domestic PEPs following the coming into force of provisions in Royal Decree 304/2014 relating to these.

5.87. Spain should work through the EU to promptly update the wire transfer regulations to implement new obligations enforceable in Spain relating to information on the beneficiary and the responsibilities of intermediary financial institutions.

7 These are called "Anglo-Saxon trusts" in Spain's law.

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6. SUPERVISION

Key Findings

In general Spain has a strong system of supervision. Spain has a single supervisor (SEPBLAC) responsible for AML/CFT supervision of the financial sector, in cooperation with sector prudential supervisors. Spain has also shown that its financial supervision and monitoring processes have prevented criminals from controlling financial institutions. The supervisory process has also resulted in identifying, remedying and sanctioning violations of obligations, and failings of AML/CFT risk management processes. The types and range of remedial actions and sanctions applied in the obliged sectors appear to be satisfactory.

SEPBLAC's approach to risk analysis is comprehensive. It drives both the risk assessment process and the supervisory approach. The Bank of Spain has improved its engagement with the AML/CFT supervisory regime. Feedback to obliged entities is generally adequate in most sectors where STR filings are strongest.

Prudential supervisors of the insurance and securities sectors continue to rely on SEPBLAC's AML/CFT risk assessments, and take a primarily rules-based approach. Spain should promote a better understanding of the risks in these sectors.

Engagement with high-risk non-financial sectors should be improved. Existing guidance appears to focus more on compliance elements in a rules-based fashion and less on the elevated risks. Spain should improve the risk-focus of sector guidance and outreach on the identified high risk areas of real estate and foreign criminal networks given the importance of these in the fight against ML and TF. SEPBLAC should also work to improve its relations with and oversight of the legal sector given lawyers' role in company formation, and its worrying self-perception as a low risk sector.

6.1 Background and Context

6.1. Spain has a dual-track supervisory regime, with a single supervisor (SEPBLAC) responsible for AML/CFT supervision in all financial and DNFBP sectors, in cooperation with sector supervisors. In the banking sector, the Bank of Spain shares responsibility with SEPBLAC for AML/CFT inspections. In the securities and insurance sectors, SEPBLAC carries out thematic AML/CFT inspections and also directs The National Securities Exchange Commission (CNMV) and the Directorate-General for Insurance and Pension Funds (DGSFP) to conduct financial institution-specific inspections as needed. In the DNFBP sectors, there is a range of other supervisors, professional bodies, self-regulatory bodies (SRBs), and central prevention bodies.

6.2. The structure of Spain's financial sector effectively places much of the burden of implementing AML/CFT controls on the banks, since many other financial sector firms either form part of banking conglomerates, or market their products through banks and require use of existing bank accounts. There is a corresponding focus on banking supervisors when looking at the supervision of AML/CFT obligations. The number of obliged entities in each sector is set out below.

Table 6.1. Obliged Entities

Financial institutions	Subtotal	Total
Core Principles financial institutions		
Banks (Banks and saving banks) (a)		69
National banks	48	
Subsidiaries of foreign banks	21	
Securities (Broker-dealers, Dealers and Portfolio Managers) (b)		84
Insurers (Life insurance) (c)		136
Other financial institutions		
Credit Cooperatives		68
Credit Finance Institutions (EFC)		50
Collective Investment		108
Pension Funds (d)		37
Mutual Guarantee (e)		23
Payment Entities (MVT) (f)		31
E-money		2
Private Equity (g)		139
Bureaux de change (h)		285
Entities licensed to Buy & Sell foreign currency		9
Entities licensed to Buy foreign currency		176
Branches of foreign financial institutions		
EU Banks		78
Non-EU Banks		8
EU Securities		36
EU Insurers		18
EU Collective Investment		9

Table 6.1 Obliged Entities (continued)

Financial institutions	Subtotal	Total
Payment Entities (MVT) (i)		8
EU E-money		1
DNFBPs		
Casinos and gambling		87
Casinos	*41*	
Lotteries and games of chance	*46*	
Legal professionals		3 970
Notaries	2 891	
Registrars	1 079	
Lawyers (j)	-	
Auditing		2 603
Accountants & Tax advisors		1 115
Trust and Company Service Providers		19
Real estate agents		4 227
Dealers in precious metals or stones		-

Table Notes:

(a) 92 registered but only 69 active in October 2013. 15 structurally supervised entities represent 86% of total sector assets.

(b) 17 entities represent 70% of total sector assets.

(c) 4% of life policies are distributed by 2 786 insurance brokers.

(d) entities whose sole activity is managing pension funds.

(e) 7 entities represent 70% of total sector activity.

(f) 49 registered but only 31 active in October 2013. 14 entities transfer 82% of total amount.

(g) 58% of which are Private Equity Management Companies.

(h) Related to the tourism sector, 1,964 businesses may buy foreign currency as an ancillary activity.

(i) Including two entities that operate through agents networks.

(j) Source: General Counsel of Spanish Bars. 131,337 lawyers in Spain. Performing activities foreseen in the AML/CFT Law: estimated by surveys conducted by General Counsel; near 400 declared to be performing those activities.

6.2 Technical Compliance (R.26-28, R.34, R.35)

Recommendation 26 – Regulation and supervision of financial institutions

6.3. **Spain is largely compliant with R.26.** Licensing regimes are in place for all parts of the financial sector, including fit and proper tests. SEPBLAC and the Bank of Spain both follow a well-developed risk-based approach to supervision, and the banking sector is also supervised well in accordance with the Core Principles. There are some weaknesses in the implementation of the insurance Core Principles (as noted by the IMF), and in the implementation of the risk-based approach in the non-banking financial sector, since neither the insurance nor the securities supervisors take account of ML/TF risks in their supervisory plans.

Recommendation 27 – Powers of supervisors

6.4. **Spain is compliant with R.27.** Spain has implemented most of the requirements of R.27, and all supervisors have adequate powers and sanctions - though the administration of financial sanctions is complex because of the governance relationship between SEPBLAC, the Commission, and the Commission Secretariat. Financial sanctions are proposed by SEPBLAC and/or the sector supervisors, but are legally required to be approved by the Commission before being imposed.

Recommendation 28 – Regulation and supervision of DNFBPs

6.5. **Spain is largely compliant with R.28.** Spain applies largely the same AML/CFT requirements to both financial institutions and DNFBPs, set out in the *AML/CFT Law*, with SEPBLAC responsible for supervision of all AML/CFT obligations, in cooperation with the applicable sector supervisors, where these exist. The assessment of R.26 and R.27 above largely also applies to the DNFBPs with respect to AML/CFT supervision, though the bodies responsible for licensing and accreditation are different for each sector.

6.6. There are weaknesses in the powers of authorities to prevent criminals or their associates from being accredited, or from owning, controlling, or managing a DNFBP. In some DNFBP sectors (accountants, dealers in precious metals and stones, and TCSPs) there are no such requirements. In others (lawyers, solicitors, notaries, and real estate agents) the requirements are limited to prohibiting initial accreditation of convicted criminals, and do not address beneficial ownership. And in some, notably the legal profession, professional who are convicted of a criminal offence after being initially accredited in a profession, are temporarily disbarred by a court as part of a criminal sentence, but cannot be prevented from resuming their profession status.

Recommendation 34 – Guidance and feedback

6.7. **Spain is compliant with R.34.** The competent authorities and supervisors have established guidelines and provide feedback to assist FIs/DNFBPs to apply national AML/CFT measures, and detect and report suspicious transactions.

Recommendation 35 - Sanctions

6.8. **Spain is compliant with R.35.** Spain has a comprehensive system of penalties and sanctions for failure to comply with the relevant AML/CFT obligations, and since the last evaluation has significantly increased the maximum fine which can be imposed for compliance failures. In the most serious cases, the maximum penalty that can be applied to an obliged entity may include a fine of up to EUR 1.5 million and a public reprimand, or withdrawal of authorisation, and sanctions for directors or senior managers. Criminal sanctions may also be applied, e.g., in cases of serious negligence by persons who are legally obliged to collaborate with the authorities in the prevention of TF, but who fail to detect or prevent a TF offence.

Box 6.1. Passporting and home-host supervision

Under the EU's "passporting system" a financial institution organised under the laws of an EU Member State (home Member State) can provide services with or without an establishment in any other EU Member State, following prior notification and authorisation. The decision to issue an authorisation valid for either another Member State, several or the whole of the EU is the responsibility of the competent authority of the home Member State. Such a financial institution may then provide services or perform activities in the other Member States concerned (host Member States), either through an establishment or through the free provision of services, without the need to obtain additional authorisations in each host Member State. The prudential supervision of the financial institution in home and host Member states concerned is the responsibility of the home Member State, in close

cooperation with the host authorities.[1] Notification and supervision regimes vary depending on the financial services concerned and the risks to which the financial institutions are exposed. Supervisory cooperation will change in November 2014 when the Single Supervisory Mechanism (SSM) takes effect for significant banks (based on a variety of criteria including size and economic importance). This will create a new system of financial supervision for significant banks involving the ECB and the national competent authorities of participating EU countries. The SSM will apply mainly to supervision of significant banks and not so much for less significant banks. It will not apply at all to other non-bank financial institutions.

For AML/CFT requirements, the EU follows a territorial approach. It requires Member States to impose preventive obligations on financial institutions established on their territory. Although branches of FIs do not have to be authorised in the host country (as noted above), they are nevertheless directly subject to the host state's AML/CFT obligations. The practical supervision of the financial institution may vary according to the type of financial services provided, the risks at stake, and the degree of physical presence of the institutions in the host Member State. It also varies according to practices in different EU countries.

- For a financial institution conducting its activities under the right of establishment in a host country (e.g., by establishing branches), AML/CFT supervision in the host country is performed by the host country's competent authorities in cooperation with the home Member State's competent authorities.
- For a financial institution, such as a remittance provider, which uses a network of agents, the agents are not normally directly subject to the host state's AML/CFT obligations. At prudential level supervision is done by the home Member State in close cooperation with the host Member State and the home Member State may delegate certain controls on the host's territory to the host country supervisor, such as onsite inspections. However, the territorial nature of the *EU AML Directive* implies that agents, acting on behalf of the financial institution, have to comply with the AML/CFT requirements of the host country. Although this is not an explicit requirement, this is usually accomplished by way of the contract signed between the agent and the financial institution. The financial institution in the home Member State is fully liable for any acts of their agents, branches or entities to which they outsource. Financial institutions thus have to respect the AML/CFT rules of the host country.
- For a financial institution providing services without a physical presence (in Spain's case, approximately 850 credit, payment, and e-money institutions and 650 insurers), supervision is the responsibility of the home Member State in close cooperation with the host Member State (as noted above). EU supervisors have to cooperate and exchange information with regard to non-compliance issues which relate to prudential supervision or market conduct supervision, based on EU laws and regulations. However, in the area of AML/CFT supervision there is no specific guidance or technical standard from the EU, which has led to different supervisory approaches in EU countries with respect to AML/CFT supervision of entities that provide services without an establishment.

Spain's approach is based on their *AML/CFT Law*, which goes beyond the EU passporting rules. Spain applies the *AML/CFT Law* to all persons or entities that carry out the relevant activities in Spain, whether through branches, agents or the provision of services without physical presence. Spain therefore requires all EU authorised institutions providing services in Spain to appoint a suitable compliance officer and report STRs to SEPBLAC. Spain fully supervises compliance by entities acting

1 Further information on passporting issues is available from: www.eba.europa.eu/documents/10180/16094/Passporting-Guidelines.pdf ; or www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/1178/COM_SEC(2011)1178_EN.pdf.

through branches and agents. It does not supervise entities acting under the free provision of services for AML/CFT compliance or participate in joint examinations, but relies on the home supervisor for this (in close cooperation, as mentioned above).

In the case of Jyske Bank Gibraltar Ltd. ("Jyske"), this bank operated in Spain without an establishment, as allowed under the passporting system described above. Spain was unable to obtain reporting information from Jyske, and requested a preliminary ruling from the European Court of Justice on the question of whether Spain could compel Jyske to provide information directly to SEPBLAC, including both filing of STRs and responding to further requests for information from the Spanish FIU. The Court confirmed that subject to the conditions that no effective mechanism ensuring full and complete cooperation between the Member States exists which would allow those crimes to be combated effectively, and on condition that the legislation is proportionate, EU law would not preclude Spanish legislation which requires credit institutions, operating in Spain without being established there, to forward directly to the Spanish authorities information necessary for combatting ML and TF.[2]

2 http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-04/cp130054en.pdf.

6.3 Effectiveness: Immediate Outcome 3 (Supervision)

(a) Measures to prevent criminals and their associates from entering the market

6.9. **Financial sector supervisors apply sound fit and proper standards, supplemented by criminal background checks conducted by SEPBLAC.** The process applied by Bank of Spain is effective, and they can demonstrate several cases in which applications were rejected for reasons of fitness or propriety. The insurance and securities supervisors apply a similarly comprehensive approach (with some weaknesses in the implementation of the insurance Core Principles as noted above). SEPBLAC has the authority to provide input on all fit and proper testing in all financial and DNFBP sectors.

6.10. **However, legal powers to prevent criminals or their associates from being accredited as a DNFBP are very limited in some sectors.** Of greatest concern is the legal profession, where a lawyer who is convicted of a criminal offence after being initially accredited in a profession, cannot be prevented from resuming his or her profession (except for a temporary period of disbarment ordered by a court as part of a criminal sentence). Some prominent cases have seen lawyers convicted of a money laundering offence for their part in establishing and operating major money laundering operations, serve a prison sentence and/or period of disbarment, and then return to carrying out their former business as a lawyer.

6.11. **Although supervision of licensed MVTS operators has been strengthened, the authorities may not be active enough in identifying unlicensed operators in the MVTS sector.** Possible unlicensed operators are identified through reports to supervisors and through analysis of STRs, and adequate powers exist to sanction such activity. However, neither SEPBLAC nor the Bank of Spain has programmes in place to monitor the marketplace for illicit MVTS operators, and the number of entities investigated or sanctioned for such activity is low. Since 2006, six institutions have been sanctioned for operating as money remitters without a license, and two for providing payment services without a license - an overall average of one case each year.

6.12. **Authorities do take a more proactive approach in other sectors which face a high-risk from unlicensed operators.** In 2012, the Directorate General of Gambling (DGOJ) identified and verified 17 websites providing unauthorised online gambling accessible to the Spanish market. These were subject to disciplinary proceedings.

(b) Supervision for compliance with AML/CFT requirements & identification of ML/TF risks

6.13. **As the main AML/CFT supervisor, SEPBLAC takes a highly sophisticated risk-based approach to supervision across different sectors and within each sector.** SEPBLAC has developed a detailed risk analysis methodology for each sector of obliged entities, drawing on a wide range of information (in particular on strategic analysis by SEPBLAC's FIU function). The results of this analysis feed into the ongoing risk assessment process as well as the supervisory approach, which reflects the distribution of risks between different sectors, within each sector, and across thematic activities. SEPBLAC inspections are organised according to this risk model, rather than a periodic cycle. This process has been particularly effective in detecting risks in the MVTS sector (discussed in Box 3.2), and the results also appear to be effective.

6.14. **There is a well-developed risk-based approach to supervision in the banking sector, with good coordination between supervisors.** The Bank of Spain and SEPBLAC have both developed risk matrices which inform their supervisory programmes. The Bank of Spain's matrices largely deal with assessed risk by financial institution. Both agencies share the results of their risk assessments with each other, which helps each of them adjust their focus and collaboratively develop supervision plans to address identified risks and issues. There are no impediments to the full exchange of supervisory information.

6.15. **The Bank of Spain conducts comprehensive prudential supervision of the banking sector.** The Bank of Spain and SEPBLAC conducted joint structured supervision of Spain's fifteen biggest banks in 2012 and again in 2013. Such structured supervision involves the use of a permanent on-site team of inspectors, to conduct comprehensive inspection covering all supervised obligations. This initiative was a stock-take following the new *AML/CFT Law* enacted in 2010 and has allowed both agencies to acquire a comprehensive view of Spain's financial sector. However, the Bank of Spain does not conduct supervision of branches and subsidiaries outside Spain, although this is recommended by the Basel Committee on Banking Supervision in its guidance.

6.16. **Coordination between supervisors seems to work well.** Coordination is done both bilaterally, and through the Commission. In the banking sector, both SEPBLAC and the Bank of Spain feed the results of their supervision to the other and to the Commission, and thus the authorities are able to develop a holistic risk assessment of the sector. Given that the Spanish financial sector is large, this is an important advantage. The supervisory membership of the Commission seems comprehensive and there seem to be no missing or unrepresented supervisors.

6.17. **The CNMV and DGSFP are both capable supervisors, but do not focus on AML/CFT.** Both CNMV and DGSFP have AML supervisory methodologies of their own and apply these in specific financial institutions as directed by SEPBLAC. Their general level of supervisory competence and their prudential approach to supervision also seem adequate overall. However, they are less proactive than the Bank of Spain in their AML/CFT supervision. Rather than developing a specific ML/TF inspection programme, they provide SEPBLAC with a list of planned prudential inspections, and seek SEPBLAC's advice on which companies should have an AML inspection. This approach may indicate either a lack of understanding of the risks, or a lack of AML expertise.

6.18. **In the securities sector, the prudential supervisor seems to have an incomplete understanding of ML/FT the risks.** The CNMV has a different perception from SEPBLAC about the level of ML/TF risk in the securities sector. CNMV considers the sector as a whole to be low risk for ML and TF, while SEPBLAC considers some business lines to be high-risk, and the sector as a whole to be medium-risk. The understanding of CNMV of the ML/TF risk seems to be centred on the risks of handling cash and interacting with customers, with limited appreciation of the potential for securities transactions themselves to be used for ML or TF. The view that the securities sector is low risk is also inconsistent with the situations in other countries, as securities dealers usually operate on an account-basis where a client can deposit funds (by cash or transfer) and conduct trading transactions in a manner similar to banking transactions. The supervisor's view is shared by many securities firms themselves, with the result that the sector does not pay adequate attention to the higher-risk business lines, including equity management and collective investment schemes. The CNMV has not developed its own risk matrix, and does not reflect ML/TF risks in its supervision.

6.19. **SEPBLAC's inspection activities, in all sectors, are focused on thematic or topical issues identified by its risk analysis.** Rather than conduct comprehensive inspections covering all AML/CFT obligations, SEPBLAC identifies several thematic issues for a sector (e.g., the implementation of targeted financial sanctions), and prepares a focused inspection programme based on examination of specific indicators on those themes. The programme is then used as the basis for a series of short, focused thematic inspections of a number of firms in the relevant sector. This supervisory model results in inspections which are brief and of limited scope - in contrast with the comprehensive and permanent inspection approach of other supervisors. SEPBLAC's annual inspection plan set out a total of 102 inspections in the period from September 2013 to June 2014, of which 52 were thematic inspections involving some entities also subject to prudential supervision.

6.20. **Perhaps due to its central involvement in inspection, SEPBLAC may not yet have sufficient resources to adequately cover the range of obliged entities it supervises in the DNFBP sector.** Table 6.2 sets out the number of DNFBPs in Spain subject to SEPBLAC's oversight.

6.21. **In the financial sectors, SEPBLAC enjoys good support from the sector supervisors, especially the Bank of Spain.** The majority of SEPBLAC supervisory staff also have experience in banking supervision at the Bank of Spain. In the DNFBP sectors, the situation is less supportive. Some DNFBP sectors have active supervisors and are used to inspection (e.g., the casinos and online gambling sectors), or have central prevention units which, due to their statutory mandate, greatly facilitate the supervision of the sector (e.g., notaries and registrars). However, some DNFBP sectors do not have a non-AML supervisor.

6.22. **Casinos are supervised by the autonomous regional authorities and there is a generally adequate level of support for SEPBLAC.** However, there is some uncertainty about the numbers of lawyers subject to the AML/CFT regime. The estimated number of 400 is based on a sector assessment. Auditors, accountants and tax advisors are a relatively large group with varying levels of knowledge. The real estate sector is large and regarded as high risk by SEPBLAC. In summary, excluding Casinos, Notaries and Registrars, the DNFBP sector is a group of non-homogenous sectors where SEPBLAC acknowledges more supervision is needed. This is likely to present challenges in terms of volumes of work and specialised sector knowledge.

Table 6.2. DNFBPs

	Number
Casinos and gambling	87
Notaries	2 891
Registrars	1 079
Lawyers	See Note A
Auditors	2 603
Accountants & Tax advisors	1 115
Trust and Company Service Providers	19
Real estate agents	4 227
Dealers in precious metals or stones	See Note B
Casinos and gambling	87

Table Notes:

Note A: The authorities advised there are 131 337 lawyers in Spain. Of this number, almost 115 000 are in active practice. It is estimated by the legal sector itself that the number of lawyers who perform activities subject to the AML/CFT Law is 400.

Note B: Article 2q of the *AML/CFT Law* applies the AML obligations to professional dealers in jewels, precious stones or precious metals. Law 7/2012 (art.7) prohibits them from engaging in cash transactions equal to or greater than EUR 2 500.

6.23. **SEPBLAC's Supervisory Division at the time of the on site visit employed 15 professionals**, all of whom have a university degree and most of whom have a professional background at Directorate General of Supervision of Bank of Spain. The Division is functionally structured into groups, responsible respectively for off-site and onsite supervision. A *Strategy for Supervisory Division* was updated in 2013, as well as the operations manual for supervisory staff. As a result of this strategy SEPBLAC has identified a need for a 60% increase in staffing, which would result in an increase of 9 people for a total of 24.

6.24. **Supervision of MVTS has been significantly increased since 2009**, when SEPBLAC (in its FIU role) identified that persons linked to criminal organisations were acting as agents of money remitters and conducting organised and large-scale ML. This activity included more than 500 agents with links to criminal activity, seven MVTS with very serious deficiencies, and a total of over EUR 600 million was laundered through this route. The response to this case has included significantly strengthening the preventive measures applied to the sector. However, it remains a very high risk for both ML and TF.

6.25. **Nevertheless, weaknesses remain with respect to passported MVTS providers**. With respect to MVTS institutions licensed in Spain, the supervisory regime has been greatly intensified in recent years, following the detection of significant criminal abuse in the MVTS sector by agents (see Box 2). From 2010 to 2012, SEPBLAC carried out 13 AML inspections of payment institutions. It found serious weaknesses in 6 of these that enabled their agents to launder more than EUR 600 million. Two of these firms were large international operators. Three operators shut down voluntarily and two were subject to LEA investigations because of the agents and some managers. SEPBLAC now applies a much higher level of ongoing scrutiny on MVTS operators using such techniques as regular reporting of information relating to the entry of agents into the MVTS sector.

6.26. **Some MVTS providers offer services in Spain through local agents, but are incorporated and licensed in another EU Member State**. It is not clear that the supervisory arrangements in place under EU passporting rules deliver adequate supervision of these entities (see Box 9). Home-host cooperation seems to be limited and at most reactive. SEPBLAC shared their results on the MVTS case with the home supervisor(s), but there is no indication that the home supervisor(s) took any action with respect to their MVTS in Spain.

(c) Remedial actions and sanctions for non-compliance with AML/CFT requirements

6.27. **Financial sector supervisors apply a wide variety of supervisory actions clearly directed at remedial efforts**. Obliged entities are expected to implement these requirements under their internal controls, and these interventions are followed up and evaluated closely by the supervisors. Plenty of examples were produced and discussed. As a consequence of on-site and off-site inspections carried out, SEPBLAC directed more than 290 remedial actions to be taken in the period 2010 to 2012. During the same period, prudential supervisors imposed eight sanctions for breaches of licensing requirements. However, in the larger banks the Bank of Spain does not conduct supervisory visits to the branches or subsidiaries of financial institutions outside Spain (despite the guidance of the Basel Committee to the contrary) believing these operations to be the responsibility of host supervisors.

6.28. **Financial penalties are applied where non-compliance issues requires additional action beyond a supervisory instructions, or where an entity is not taking the necessary steps to implement the required remedial actions**. Over the period 2010 to 2012, the Commission applied 26 disciplinary procedures and financial penalties totalling nearly EUR 6.7 million over all sectors. Of this amount, slightly less than half was applied in the financial sector. The most significant underlying breaches were deficiencies in the design or implementation of internal controls (28% of cases), training (18%), special review (14%) and record-keeping (12%). Although the amount of fines seems low given the substantial size of the financial sector overall, the assessment team has kept in mind that during this period there has been substantial consolidation in the banking sector, the RBA has been introduced, and implementing regulations (*RD 304/2014*) only came into effect during the on-site visit. Sanctions rose in 2012 as supervisors began to apply the larger penalties introduced with the 2010 *AML/CFT Law.*

6.29. **In addition to financial penalties and remediation, supervisors can also reprimand financial institutions and DNFBPs, and apply individual sanctions against managers**. In the period from 2010 to 2012, 22 entities received a private reprimand, and two entities (a bank and an MVTS) were publicly reprimanded. Sanctions were also applied to four managers, in two MVTS operators, one of whom was publicly reprimanded, and another temporarily disqualified from managerial positions in any obliged entity.

Table 6.3. Disciplinary procedures

	2010	2011	2012
Total Remedial Actions	**122**	**128**	**41**
Financial institutions	74	50	41
DNFBPs	48	78	-
Total Punitive Procedures	**6**	**7**	**13**
Financial institutions	3	3	5
Banks	2	1	1
Securities	0	1	0
Insurance	0	0	2
Payment institutions (money remitters)	1	1	2
DNFBPs	3	2	6
Dealers in precious metals and stones	1	0	6
Notaries	1	0	0
Lawyers	0	2	0
Real estate	1	0	0
Managers	0	2	2
Total fines (in EUR)	**1 940 000**	**1 496 000**	**3 242 010**

(d) Impact of supervisory actions on compliance

6.30. **Feedback from the private sector indicates that the actions of supervisors have had a positive impact on the level of compliance in the financial sector.** SEPBLAC is clearly viewed as the AML/CFT authority in all sectors, but in the banking sector, the Bank of Spain is also seen as an authority particularly in the areas of internal controls which it supervises prudentially. The special examinations in 2011 and 2012 following the new legislation constituted a comprehensive stock-take in Spain's largest conglomerates. The impact of these supervisory measures in that sector are evident in the level of compliance and understanding of the sector.

6.31. **The work of SEPBLAC in analysing the problems caused by rogue MVTS agents is a clear example of how their work as a supervisor has impacted compliance.** SEPBLAC analysis has identified methodologies and techniques through which bad agents were able to execute illicit transfers. This analysis has enabled the sector to put in place specific controls to prevent a recurrence of this activity, and has refocused the sector's risk mitigation activity on to agents and away from customers. In addition, the intensified supervision of the sector in recent years, and the additional measures which were put in place, have left a high level of awareness and compliance in the sector, and an early-warning system to identify future illicit activity. Nevertheless, the frequency and intensity of on-site supervision of MVTS operators and agents remains low, given the high level of risk involved.

6.32. **Supervision appears to have had a positive impact on some DNFBP sectors, notably notaries and registrars.** Both professions benefit from having central prevention units which appear to strengthen

the profession's capacity to cooperate with competent authorities and to respond to instructions from supervisors.

6.33. **However, supervision is in the process of being established in the legal profession, and its impact so far is low.** This is shown in part by the low level of awareness of ML/TF risks within the sector. According to SEPBLAC's annual inspection plan, the first six onsite inspections in this sector will take place in the period from September 2013 to July 2014. In addition SEPBLAC states that there 5 real estate inspections will be conducted in June 2014. An additional 14 real estate companies (6 agencies and 8 developers) will be inspected in 2014/2015. Although this number seems low give the size of the sector, the authorities advise that a risk-based approach was used in selecting the inspections: one RE agency is associated with a high-risk sub-sector (luxury properties on the Costa del Sol), and the other four on the basis of systematic transactions reported to SEPBLAC.

(e) Promoting a clear understanding of ML/TF risks and AML/CFT obligations

6.34. **SEPBLAC is seen as an open, authoritative and approachable organisation.** Numerous examples were given of where SEPBLAC gave advice, input and information in all sectors. The Bank of Spain promotes a strong focus on AML/CFT measures by banks. Its AML/CFT supervisory framework should be adjusted to improve the definition of ML/TF and ensure that banks do not equate low "residual" ML/TF risk with low (inherent) risk as defined by the FATF. The insurance and securities supervisors both have weaknesses in their understanding of the risks, which prevent them from communicating them effectively to the sector. There is a risk of confusion when firms in these sectors hear different risk assessments from different supervisors, and this contributes to the low level of awareness of ML/TF risks among insurance and securities firms.

6.35. **There is not enough guidance on AML/CFT high risks and related obligations.** On the risks, some sectors which are acknowledged to be high risk (such as the real estate sector and foreign criminals) are not the subject of specific guidance, information or typologies which could help obliged entities to detect and report suspicious activity. On the obligations, Spain's AML/CFT laws and regulations have changed significantly in recent years (and even months), and obliged entities are hungry for further guidance on how the new requirements should be implemented, in particular on how specific practical difficulties can be overcome (such as the identification of domestic PEPs).

6.36. **External auditors (who review firms' internal controls) are an important channel for informal advice to financial institutions and DNFBPs on the implementation of AML/CFT obligations**. There may be scope to make use of them as a way to disseminate good practice more widely within the financial and DNFBP sectors.

Overall conclusions on Immediate Outcome 3

6.37. **Spain has a strong system of AML/CFT supervision in the financial sectors and has demonstrated that its supervision and monitoring processes have prevented criminals from controlling financial institutions.** In addition, the process has also resulted in identifying, remedying and sanctioning violations or failings of risk management processes.

6.38. **The supervisory approach to parts of the DNFBP sector is a work in progress.** Uncertainties about the numbers of lawyers caught by the *AML/CFT Law* and their lack of understanding of the risks, the level of knowledge in the auditing and tax advisor sectors, and the high risks in the real estate sector all suggest that the authorities need to focus their attention on the sub-sectors lacking supervisors, central prevention units, or where there is higher risk to improve the overall level of effective supervision in the DENFBP sector. However, SEPBLAC is aware of these challenges, and based on SEPBLAC's achievements to date in the financial sector, the assessment team is comfortable that SEPBLAC has the ability to move forward on these issues.

6.39. **SEPBLAC's approach to risk analysis is elaborate.** It drives both the risk assessment process and the supervisory approach. The Bank of Spain has improved its engagement with the AML/CFT supervisory regime. Nevertheless, there are some areas where moderate improvements are needed, as outlined below.

Based on the comprehensive risk assessments done by SEPBLAC, its effective partnership with the Bank of Spain in the banking sector, its work in the MVTS sector, its directive stance in the remainder of the financial sectors, and its understanding of the risks in the DNPBP sector which will inform its approach in that sector going forward, **Spain has achieved a substantial level of effectiveness for Immediate Outcome 3**.

6.4 Recommendations on Supervision

6.40. Based on the findings discussed above, the assessment team make the following recommendations for moderate improvements to the AML/CFT supervisory process in Spain.

6.41. Spain should improve the risk-focus of sector guidance and outreach on the identified high risk areas of real estate and foreign criminals, particularly in respect of preventative measures related to beneficial ownership, given the importance of these in the fight against ML and TF. Guidance should include specific information or typologies with relevant indicators to the private sector on the risks related to foreign criminals in combination with real estate in order for the private sector to be able to detect related ML and report STRs. Spain should also prioritise guidance on the implementation of more detailed obligations as set out in Royal Decree 304/2014.

6.42. The Bank of Spain should ensure that the AML/CFT supervisory risk matrix focuses on ML/TF risk as defined by the FATF (notably, the risk of ML/TF, rather than the risk of non-compliance or the resulting native impact on reputation). The risk assessment model should be based on inherent ML/TF risk and adequate risk mitigation, as suggested in paragraphs 8 and 9 of the Interpretive Note to R.1.

6.43. The Bank of Spain should consider expanding its supervisory inspections to branches and subsidiaries outside Spain, for the purpose of assessing internal controls applied on a group-wide basis by financial institutions. These inspections could be targeted, using a risk-based approach, to higher risk countries and/or high risk themes, identified in the Spanish risk assessment material hosting the operations of Spanish banks.

6.44. Substantial additional resources should be made available for AML/CFT supervision. Based on existing and expected workloads, a 60% increasing in staffing is planned by SEPBLAC. SEPBLAC should continue to monitor the resources needed for on-and off-site supervision of obliged entities in the DNFBP sector, paying particular attention to sector knowledge, training, and work volumes.

6.45. Spain should encourage the DGFSP to improve its compliance with *the IAIS Core Principles*, and encourage it and the CNMV to better develop their understanding of ML/TF risks in their sectors.

6.46. Authorities should take more proactive measures to identify and sanction unlicensed MVTS operators.

6.47. Spain should consider taking further fit and proper measures to prevent or restrict convicted money launderers from practising professionally as obliged entities under the *AML/CFT Law*. Such measures might include: implementing a registry of professionals (lawyers, notaries, and financial service providers) who have been publicly barred from their profession due to criminal activity, to enable obliged entities, employers, and customers to take account of the risks; applying significantly longer (or even permanent) periods of professional disbarment as a criminal sanction; or applying prohibitions on conducting certain kinds of high-risk business (e.g., company formation) after resuming the profession.

7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings

Spanish authorities have increased the transparency of legal persons by ensuring that basic information is publicly available through the Companies Registry, and that adequate, accurate and current beneficial ownership information is easily and rapidly available to competent authorities via the notary profession's Single Computerised Index. These measures should, over time, make it significantly more difficult for criminals to misuse Spanish legal persons. However there are nevertheless some concerns - albeit relatively minor - about the extent to which notaries verify the identity of the beneficial owner and the chain of ownership.

Legal persons remain an important vehicle for money laundering networks in Spain. Law enforcement authorities note an increase in the use of individual companies, or networks of companies (both domestic and foreign) in large-scale ML schemes such as the *Malaya* case (see Box 3.4). However, they also expressed satisfaction with the level of transparency of Spanish legal persons. In practice, they have been successful in a number of cases in identifying straw men and, ultimately, the real beneficial owner.

Legal arrangements are generally less well understood in Spain given that they are not enforceable in Spanish courts. Some high-profile ML cases in recent years have involved complex networks, including foreign trusts holding beneficial ownership and have raised practical challenges in investigations. However, important progress has been made. Trustees are subject to the AML/CFT obligations and, in addition are under a separate obligation to declare their status to financial institutions and other obliged entities. The authorities need to build on this progress by providing more guidance to the financial sector on these measures.

7.1 Background and Context

(a) Overview of legal persons

7.1. The most common forms of legal persons in Spain are the private limited liability company (*Sociedades de Responsabilidad Limitada – SL*, which make up 92% of legal persons in Spain, and 96% of new incorporations) and the public liability company (*Sociedades Anónimas – SA*, which make up 7.5% of legal persons). Spanish law also permits six other types of legal persons, including general partnerships (0.06%), simple limited partnerships (0.01%), partnerships limited by shares (0%), cooperatives (0.03%), economic interest groups (0.11%), reciprocal guarantee societies (0.04%), and non-profit organisations (foundations and associations) with legal personality.[1] The dominance of SLs is based on the fact that they are easier to establish than SAs, have a lower minimum capital requirement (EUR 3 000 for a SL, compared with EUR 60 000 for a SA) and greater flexibility in the establishment of management rules in the bylaws.

7.2. The incorporation process for both main types of company is similar. A public document of incorporation must be executed before a notary, who conducts CDD on company owners and directors as part of the process. The incorporation document is then registered with the Companies Registry (on the basis of the information and documentation provided by the notary). During the incorporation process a temporary "NIF" tax identification document must be obtained from the Tax Authority. Registration with the Companies Registry serves to grant legal personality to the company. Reforms to company law and incorporation processes have made company formation easier than in the past. Currently, the incorporation process for a simple SL company can be completed within one day.

7.3. In Spain, notaries and registrars are public officials, and are also obliged entities under the *AML/CFT Law*. Because notaries act under delegated authority from the Ministry of Justice in incorporating legal persons, the involvement of a notary is required at the company formation stage, as well as subsequently, in the case of SLs, to validate specific changes in ownership. In addition to company services, notaries conduct some 300 different types of activities. When duly executed, notarial acts are presumed to be valid, self-authenticating and self-executing, as well as probative. Information submitted to the Companies Registry must be accompanied by a notarial document, and must be updated within a specified time period. Notaries and registrars therefore play an important role as gatekeepers with respect to the formation of legal persons and many of their actions.

7.4. Both professions have established central prevention bodies which, in addition to their statutory obligations, have responsibility for providing members of the profession with advice, training, and tools for AML/CFT. Both central prevention bodies also have a role in managing the information gathered respectively by notaries and registrars in the course of their work, and making this available to other authorities (see Box 7.1 for the notaries' central prevention body).

(b) Overview of legal arrangements

7.5. Generally, legal arrangements (domestic or foreign) are not enforceable in Spanish courts. Spain is not a signatory to the *1992 Hague Convention on the law applicable to trusts*, and the Spanish Supreme Court has refused to recognise or enforce the requirements of such trusts: e.g., *Judgement 308/2008*. However, trusts formed on the basis of overseas law can and do operate in Spain, and Spanish lawyers do from time to time establish trusts using a foreign legal basis or deal with trusts located abroad. Spain has recognised this by including trustees as obliged entities under the *AML/CFT Law*.

7.6. Spanish contractual arrangements, known as *fiducia*, have some functional similarity to a trust. *Fiducias* are not regulated by Spanish law and are not expressly recognised in the Spanish legal system, but

1 At the time of the assessment there were 2 298 912, SLs and 185 125 SAs. The other legal persons are far less frequent: general partnerships (0,06%), simple limited partnerships (0,01%) partnerships limited by shares (0%), cooperatives (0,03%), economic interest groupings (0,11%), reciprocal guarantee societies (0,04%).

they have nevertheless been recognised in case law by Spanish courts: *Judgment of the Supreme Court of 4 July 1998 (ED 7896)*. A *fiducia* is normally established through written documents - one transferring an asset from its original owner (the *fiduciante*) to the other party (the *fiduciario*), and the other specifying that the asset will revert to its original owner in the event that the *fiduciario* fails to meet his responsibilities, as outlined in the document. A *fiducia* may apply to both immovable and movable property, in particular corporate shares or stock. The foregoing characteristics are very similar to an express common law trust in many respects, including its general structure (allocating assets to another person for a defined purpose), mode of establishment (through a document drawn up by the parties), and purpose. There is no requirement for such a document to be prepared by a lawyer or other professional, or to be registered with a notary or registry (although both are possible).

7.7. According to the authorities, the *fiducia* is not widely used in Spain because it does not offer adequate legal protection of the interests of the *fiduciante*/settlor. Most experts interviewed by the assessment team considered that Spanish residents who wish to use a trust-like arrangement would normally use a common-law trust (established under foreign law), rather than a *fiducia*, since foreign trusts are readily accessible, and offer a greater degree of legal protection (albeit under a foreign jurisdiction's law).

(c) International context for legal persons and arrangements

7.8. Spain is not an international centre for company formation and administration nor a source country for legal arrangements, other than as described above.

7.9. Legal persons remain vulnerable to misuse. In recent years, law enforcement authorities have noted an increase in the use of individual companies, or networks of companies (both domestic and foreign) in large-scale ML schemes. The SL is the type of legal person most commonly used in ML schemes, which is unsurprising considering that it dominates the Spanish corporate landscape. Legal persons are used for ML in several ways, from simple self-laundering, through smurfing, and the use of front companies with or without legitimate business activities, to the use of complex, multi-layered, and offshore corporate structures. One trend that has been noted in ML cases is a shift away from using newly-created simple front companies with no legitimate business activities, and towards laundering money through established companies which also conduct other, legitimate business (such as trading companies).

7.10. In recent years, the authorities have noted an increased presence of foreign trusts in various transactions or schemes conducted in Spain, but no strong evidence that, overall, the use of foreign trusts is a frequent occurrence. The notaries' central prevention body has studied some 19 cases of involvement of foreign trusts since 2008, some of which were legitimate while others appeared suspicious and were therefore referred to the SEBPLAC. LEAs also note some instances where foreign legal arrangements were used in large-scale ML schemes. The assessment team was not provided with any quantitative risk assessment on the use of legal arrangements in ML schemes in Spain. However, cases reviewed by assessors, and discussions with the notaries and LEAs in particular, suggest that foreign legal arrangements pose a relatively minor threat to Spain.

7.2 Technical Compliance (R.24, R.25)

Recommendation 24 – Transparency and beneficial ownership of legal persons

7.11. **Spain is largely compliant with R.24.** Spain principally relies on the notary profession's Single Computerised Index for information on beneficial ownership of legal persons. This includes information obtained and recorded by notaries when incorporating entities or conducting certain other acts or transactions by persons and entities, and information on the transfer of shares of SLs. This is supplemented by the use of other information (on account ownership), and information held by other authorities such as company registry, tax or stock market authorities. There are several weaknesses relating to sanctions for breaches, and the lack of effective controls on the transfers of shares in public limited companies (SA) which are not publicly listed.

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

7.12. **Spain is largely compliant with R.25.** Spain principally requires information on the parties to foreign trusts holding assets in Spain to be obtained and recorded by notaries incorporating entities or conducting certain other acts or transactions or by other obliged entities. AML/CFT obligations apply to trustees, and Royal Decree 304/2014 (art.6) requires obliged persons (including trustees) to identify and verify the identity of the settlor, the trustees, the protector, the beneficiaries and of any other natural person who exercises ultimate effective control over express trusts or similar arrangements, even through a chain of control or ownership. The same Royal Decree obliges trustees of express trusts to report their status to obliged entities when they wish to establish business relationships or intervene in a transaction. Article 9.6 of Royal Decree 304/2014 allows obliged entities to access the notaries' Single Computerised Index for the purpose of verifying beneficial ownership. There are weaknesses in the level of sanctions or liability faced for breaches of the requirements.

7.3 Effectiveness: Immediate Outcome 5 (Legal persons and arrangements)

(a) Understanding of risks and vulnerabilities

7.13. **Information on the creation and operation of the types of legal persons that may be established in Spain is widely available in both Spanish and English.**[2]

7.14. **Spain has adequately identified and assessed the vulnerabilities and ML/TF risks of legal persons created in its territory, and the competent authorities have a relatively good understanding of that risk.** The Ministry of Justice, acting through the Notaries' Central Prevention Unit (OCP), has recently conducted an assessment which establishes the level of risks faced by each type of legal person, and lays out factors that may increase that risk. The assessment includes an analysis of the current legal framework and a review of some court cases and suspicious transaction reports filed by notaries (through the OCP). No new measures have yet been taken on the basis of that assessment, but the main authorities nevertheless appeared familiar with its findings.

7.15. **Other competent authorities - law enforcement authorities in particular - appear to have a good understanding of the ML/TF risks of legal persons on the basis of the risk assessment and also from their own practical experience.** Some prosecutors have identified changes in ML patterns (such as a decline in the use of shell companies and an increase in the laundering of illegal proceeds in companies that also conduct legitimate activities), and noted certain "preferences" amongst the various types of organised crime groups for certain forms of company. The SL seems to be favoured by criminal groups engaged mainly in drug trafficking, while the SA is more common in corruption cases.

7.16. **The findings of the risk assessment were shared with the main competent authorities, but law enforcement authorities' understanding of current trends and typologies do not seem to be shared with or communicated to other relevant authorities or to reporting entities.** As a result, some authorities and reporting entities may not be sufficiently aware of the typologies of ML through legal persons. Notaries, in particular, seem to consider that the risks at the incorporation stage are limited, a view which is not corroborated by some of the cases under investigation, and which may lead them to pay insufficient attention to potential red flags at the incorporation stage. This is a relatively minor shortcoming which is partly compensated by the fact that some of the risk indicators listed by the OCP include elements linked to the incorporation process. Further efforts can nevertheless be devoted to fostering a greater understanding of the ML/TF risks amongst notaries, notably through greater sharing of information on typologies.

7.17. **No risk assessment has been conducted with respect to legal arrangements.** Overall, competent authorities and obliged entities seemed less aware of the risk presented by legal arrangements (in particular

2 For example, guidance from www.ipyme.org or www.investinspain.org/guidetobusiness/index_en.htm.

foreign trusts) being misused for ML/TF purposes in Spain. LEAs expressed frustration that in some instances the beneficial ownership of certain Spanish entities had been difficult or impossible to establish because of the presence of one or more foreign legal person or arrangement in the chain of control, and the corresponding difficulty in obtaining further information from the relevant foreign authorities. In particular, there is a high level of awareness of the risks associated with some foreign jurisdictions (in particular, Gibraltar) under whose laws many of the legal arrangements used in Spain are established. However, it is noteworthy that if a trustee of a Gibraltar trust is located in Spain, such trustee has obligations under the *AML/CFT Law,* including the obligation to disclose their status to others as noted in more detail above.

(b) Measures to prevent misuse

7.18. **Spanish authorities have taken a number of measures aimed at preventing and mitigating the risk of misuse of Spanish legal persons.** They have in particular significantly increased the transparency of legal persons by ensuring that basic information is publicly available through the Companies Registry and that beneficial ownership information is easily and rapidly available to competent authorities and obliged entities through the Single Computerised Index maintained by the General Council of Notaries (see Box 7.1). While they note ongoing misuse of legal persons for money laundering, law enforcement authorities also expressed satisfaction in the level of transparency of Spanish legal persons. In practice, they have been successful in a number of cases in identifying straw men and ultimately discovering the real beneficial owner.

7.19. **However, Spanish authorities are less adept at dealing with foreign legal arrangements, likely because Spain has little internal experience in dealing with them.** As noted above, regulations that came into effect while the assessment team was on site oblige trustees located in Spain to disclose their status as such to other obliged entities when initiating business arrangements or participating in transactions. This should facilitate the identification of trustees. High-profile ML cases in recent years (for example, *White Whale* and *Operation Malaya*) have involved complex networks of companies and legal arrangements often comprised, in part, of trusts constituted abroad in nearby off-shore centres. LEAs in particular have noted that, in these situations, where the beneficial ownership trail leads to the presence of a foreign legal arrangement such as a trust, it is often very difficult or sometimes impossible to obtain further information from the jurisdiction where the trustee is located, or from the jurisdiction under whose laws the trust was formed.(which is not a problem unique to Spain).

7.20. **Corporate criminal liability was introduced in Spain comparatively recently.** This change, together with the ease of access to basic and beneficial ownership information, the strong preventive measures imposed on financial institutions and DNFBPs, (including notaries and company registrars, which are obliged entities under the AML/CFT law), and the measures taken by the courts to dissolve legal entities involved in ML schemes, and or seize their assets should, over time, act as strong deterrents to the misuse of Spanish legal persons.

7.21. **Bearer shares and nominee shareholders are not significant issues in Spain.** Bearer shares are effectively immobilised by the requirement to involve a regulated entity in any transfer. Nominee services are not permitted by Spanish law and not usually offered by TCSPs. Although not explicitly prohibited, there is no real incentive to have recourse to nominees because of the lack of legal protection offered. Normal CDD requirements include verification of the identity of the customer and of the person acting on their behalf (e.g., through a power of attorney) when doing business with an obliged entity, including when conducting any of the operations which require the involvement of a notary, which in the context of legal persons (e.g., incorporation, purchase or selling of real estate, increase of capital and, in most cases, transfer of shares).

7.22. **Although Spain has implemented measures to prevent the misuse of legal persons and legal arrangements, further efforts would prove useful.** Several features of the current Spanish framework constitute strong deterrents to the misuse of legal persons, including: (i) the ease of access to basic information about companies; (ii) the ability of competent authorities to quickly access beneficial ownership information in the notaries' Single Computerised Index; (iii) the CDD measures required of obliged entities (including obligations to determine the ultimate beneficial owners of clients and to perform enhanced due diligence in the presence of companies that issue bearer shares; (iv) the role of notaries and company registrars in detecting suspicious activity involving legal persons, as part of their duties as obliged entities; and (v) the recent introduction of corporate criminal liability, and application of significant criminal sanctions in some

recent cases.

7.23. **However, some areas of concern remain**:

a. There is a concern with respect to records on transfers of shares. Such transfers are well documented except in the limited case of those public companies (SA) which are not publicly listed on a stock exchange. Registered shares in such companies can be transferred directly on the basis of the title document itself, without the application of any controls or disclosure requirements by a notary.

b. It is possible for companies to conduct a range of activities for up to two months prior to their formal registration with the Company Registry, on the basis of a provisional tax ID number. Information on companies in this situation would appear in the notaries' single computerised index, but not in the publicly accessible Company Registry. Obliged entities can nevertheless identify companies in this situation through CDD, using the provisional tax ID number and of the notarial deed of incorporation. Companies are prevented from transferring shares or appointing directors during that time but, are otherwise able to conduct business without the legal entity being fully incorporated.

c. The presence of foreign legal arrangements in the chain of beneficial ownership has been noted by LEAs in a few cases and, in some of these instances, has made it difficult or impossible to establish who ultimately controlled the domestic entities. Spain was unable to provide statistics on how frequently foreign trusts are used in Spain.

(c) Information on beneficial ownership

7.24. Customer due diligence undertaken by obliged entities makes a significant contribution to Spain's systems for providing authorities access to beneficial ownership information and to ensuring the quality of that information. All obliged entities normally perform basic CDD using the documents prescribed by law, are aware that information on the beneficial owner needs to be obtained, and generally do so in the manner prescribed by law (albeit unevenly across the different professions). The notary profession is particularly relevant in virtue of the legal requirements for their involvement to validate most acts involving legal persons. Notaries are very aware of their significant gatekeeper role, as well as of the importance of the information they hold, and have actively worked with the authorities to develop systems to open up their wealth of information for the authorities.

7.25. **There is scope to strengthen the CDD conducted by notaries on the beneficial ownership of companies.** Notaries are required in all cases, to identify and record the beneficial owner of a newly incorporated entity on the basis of a declaration made by the company's representative. In practice, the identity of the beneficial owner is only verified when certain risk indicators are met, and, unless one or more of the risk indicators are met, due diligence does not normally include verification of the status of the beneficial owner, or examination of the chain of ownership to the ultimate beneficial owner. This could indicate that customer due diligence is conducted in a "formalistic' way rather than on the basis of a clear understanding and assessment of the facts, and that beneficial ownership information may be included in the Single Computerised Index without notaries being fully satisfied that it is correct. As indicated above, this is compensated to some extent by the fact that the database also includes beneficial ownership information obtained through automatically processing the successive transfers of shares. It also provides information on the status of beneficial ownership and on the chain of ownership.

Box 7.1. Notarial Databases

The involvement of a notary is required in a large number of instances, in particular during the incorporation of legal persons. In all instances, notaries are required to collect information pertaining to all parties involved in an act or transaction (i.e. not only the person who ultimately covers the expenses of the notary's activity). Information collected includes: the name, surname, ID document, nationality, address of the parties and their representative, and information on the beneficial owner (see below); the type of transaction performed (including the type of legal relationship between the parties, and the percentage of rights in the transaction); the payment (means, amounts and date of payment); and the object involved (identification and description of the asset).

Since 1 January 2004, all the information collected by notaries is uploaded twice a month to a database - the Single Computerised Index - which is managed by the General Council of Notaries (the OCP). In addition to the basic information collected, the database includes scanned copies of ID documents and notarial deeds. At the time of the assessment, the database contained information pertaining to some 70 million notarial deeds, 96 million transactions, 140 million natural and legal persons, and 49 million objects.

The information contained in the Single Computerised Index is available to all competent authorities. For example, law enforcement agencies (National Police, Guardia Civil), specialised prosecutors (National Prosecutor's Offices against drugs and organised crime, corruption, and other economic crimes), Customs, and the SEBPLAC have direct, online access via a token system, with results delivered in real-time. Other authorities (e.g., the judiciary and the Secretariat of the Commission) may request access to specific information.

The Beneficial Ownership Database became operational in March 2014, and was made available to competent authorities in April of the same year. It builds upon the information available in the Single Computerised Index by aggregating the information on beneficial ownership and on transfers of shares. For each company, the database offers two levels of information: (i) the beneficial ownership information obtained by the individual notary in the conduct of the normal CDD requirements (i.e. the declaration of beneficial ownership which, if at least one risk indicator is met, includes a copy of the beneficial owner's ID document); and (ii) For SLs (which represent some 93% of all companies created in Spain) the beneficial ownership information obtained through aggregating the information on the successive transfers of shares. Since notaries are required to be involved in these transfers, this information is always verified and updated. It includes the names of all natural persons who are beneficial owners through direct or indirect ownership of more than 25% of the shares, and of those who hold less than 25% but exercise control. Information on intermediary intervening parties is also available (through the record of any transfer of shares except those of SA that are not listed on the stock exchange).

Searches may be conducted by company as well as per individual. A system of alerts enables competent authorities to be immediately aware of any new act conducted before a notary by any natural or legal person who has been previously the subject of a search, so that this new information can be incorporated into the investigation.

Under Royal Decree 304/2014, the Beneficial Ownership Database can be made available to obliged entities under the AML/CFT Law for the conduct of their CDD obligations, on the basis of an agreement between the obliged entity and the General Council of Notaries.

Alongside these databases, work is underway by the OCP to develop a database of domestic PEPS, which will be made available to obliged entities as well as to competent authorities, also upon approval of the Spanish Data Protection Agency.

In addition to recording information, the Single Computerised Index facilitates the OCP's responsibility for the detection of suspicious activities by scoring the risk posed by individual notarised acts or groups of acts on the basis of a list of some 60 key risk indicators which include, for example, the incorporation of companies owned by foreign-based legal persons.

7.26. **The relevant authorities (in particular law enforcement authorities and SEPBLAC) can obtain adequate, accurate and current basic and beneficial ownership information on all types of legal persons created in Spain in a timely manner.** Competent authorities have adequate access to the beneficial ownership information through the notaries' Single Computerised Index (see Box 7.1), and information held in FIs and DNFBPs customer files (with a court order). Since April 2014, they have access to the information contained in the Beneficial Ownership Database established by the OCP. SEPBLAC, public prosecutors, and all the relevant law enforcement agencies have direct access to the Single Computerised Index, which ensures the timeliness of that access. Judges have access upon request, which the OCP seeks to implement without delay. Accurate basic information is publicly available through the Companies Registry, although its information on the share ownership is not necessarily up to date (because it is only included at the incorporation stage and during an increase or decrease of capital). Updated information on ownership is maintained in the Single Computerised Index, and is available to competent authorities. At the time of the assessment, reporting entities did not have access to the beneficial ownership information in the database, but such access had been authorised by the data protection agency and was in the process of being operational. In practice, the authorities frequently use the information contained in the Single Computerised Index database in the course of ML/TF investigations. They expressed their satisfaction with the quality, comprehensiveness, and ease of access of the database

7.27. **Competent authorities have little access to beneficial ownership information on legal arrangements.** Currently, little information is available. Accessing information relies on the use of law enforcement powers and, in the absence of any central database, the use of those powers requires prior knowledge of the existence of the legal arrangements and of who the trustee or *fiduciario* is. Because trusts are not legally recognised in Spain, information collected by tax authorities does not record the existence of trusts or the parties to them, and so therefore cannot be used to supplement gaps in other information sources, even with a court order.

7.28. **Although the risk of misuse of foreign and/or domestic legal arrangements has not been formally assessed, both competent authorities and reporting entities consider these risks to be low, because such arrangements are not commonly used in Spain** (notably due to the fact that they are not enforceable under Spanish law). However, TCSPs and lawyers in Spain and neighbouring jurisdictions do participate in the establishment of common law trusts (governed by another country's laws), and banks hold assets held in such trusts (especially on the Costa del Sol where the number of foreign residents is substantially higher). Some reporting entities have suspected the presence of foreign legal arrangements in some ML schemes, and law enforcement authorities have noted their use in some high profile and complex cases (see above), but there is no indication that this is a frequent occurrence.

7.29. **Recently introduced measures are expected to improve the situation.** Royal Decree 304/2014 requires obliged persons to identify and verify the identity of the settlor, the trustees, the protector, the beneficiaries, and any other natural person who exercises ultimate effective control over trusts or similar arrangements, even through a chain of control or ownership. However, this requirement was introduced during the on-site and is not yet implemented in practice. The Financial Ownership File (see Box 1), when established, will hold data identifying the account holders, representatives or authorised persons, together with all other persons who have withdrawal powers over the account: *AML/CFT Law art.43*. This will assist authorities in identifying accounts held in trust, provided either that the financial institution opening the account determines that it is dealing with a trustee, or that the trustee identifies themselves as such to the financial institution.

7.30. **Sanctions are available (including criminal sanctions) but rarely need to be applied against persons who do not comply with information requirements.** In the absence of all the requested

information, notaries (and others, such as the Company Registry) do not proceed with the requested activity. False information is easily detected because the notarial database is self-checking and highlights any inconsistency. Disclosure of false information to notaries constitutes a criminal offence: *art.392 Penal Code*. In practice, it rarely occurs and is therefore rarely sanctioned. Other failures to comply with information requirements are in general not sanctioned for similar reasons.

Overall conclusions on Immediate Outcome 5

7.31. **In terms of ensuring access to basic and beneficial ownership information on legal persons, Spain's system appears to be effective**, and only moderate improvements are needed. Law enforcement authorities have shown that they can successfully investigate money laundering cases which make extensive use of legal persons, and can identify and prosecute the beneficial owners in such cases. Beneficial ownership information on Spanish companies is easily and rapidly available to competent authorities via the notary profession's Single Computerised Index. This is a strong positive feature of Spain's system and the measures taken for managing and enabling access to information are an example of good practice for other countries.

7.32. **Some weaknesses remain in the implementation of preventive measures against the misuse of legal persons and arrangements, but, overall, appear relatively minor compared to the positive features of the Spanish system.** They include: the limited information on beneficial owners of foreign legal arrangements (which is not a frequent occurrence but has occurred in some high profile ML cases noted above); the limited transparency of transfer of shares on SAs that are not listed on a stock exchange (which is a limited number); the ability of not-yet-registered companies to make financial transactions for up to two months (a problem which is mitigated by the availability of information in the notaries' Single Computerised Index as well as in financial institutions and DNFBPs customer files); and limitations on the extent to which notaries verify the identity of the beneficial owner and the chain of ownership (which is also mitigated by the Single Computerised Index and by the fact that, in most instances, at least one risk indicator is met and triggers the obligation to verify the identity of the beneficial owner). In addition, guidance on conducting CDD on legal arrangements is non-existent, CDD measures in respect of trusts and trustees only took effect during the on-site, and thus it is too early to assess how the new obligations are implemented in practice.

7.33. **Spain's system will be strengthened further by recent changes to Spain's laws and regulations** (in particular corporate criminal liability), **and by additional practical measures under development** (in particular the financial ownership file and reporting entities' access to the beneficial ownership database). These will, over time, make it significantly more difficult for criminals to misuse Spanish legal persons.

7.34. **Overall, Spain has a substantial level of effectiveness on Immediate Outcome 5.**

7.4 Recommendations on Legal Persons and Arrangements

7.35. Based on the findings above, the assessment team recommend the following moderate improvements to the measures applied to legal persons and arrangements in Spain.

7.36. Spain should increase transparency on the transfers of shares of non- publicly listed SAs (for example by requiring that transfers be made with the involvement of a notary) and ensure that there is adequate information on the parties to the transfer.

7.37. In light of the central role of notaries as gatekeepers in Spain's system, authorities should:

- conduct outreach to the profession to foster a greater understanding of the ML/TF risks, in particular of companies being created for the sole or main purpose of laundering funds. This is related to the recommendation above (paragraph 5.77) on implementation of procedures for verifying the identity of high-risk customers.
- produce guidance on additional steps which could or should be applied as part of (enhanced) due

diligence on legal persons, including: (i) examination of the ownership and control structure of the company; (ii) deeper examination of the purpose and nature of the company's business; and (iii) verification of the status of the beneficial owner and (if applicable) the chain of ownership.

- ensure that recently issued procedures addressing these items are effectively implemented (e.g., through supervision focused on the implementation of these requirements and on the quality of beneficial ownership information).

7.38. To improve the understanding of risks in this area, authorities should assess the risks of foreign legal arrangements being misused for ML/TF purposes, and should ensure that there is adequate sharing of information on ML risks, trends and typologies between competent authorities and communication to the reporting entities. This would ensure that reporting entities, in particular, are more sensitive to and more familiar with typologies involving legal arrangements. It could also focus on improving, the ability of the LEAs to obtain beneficial ownership information when these arrangements are detected, particularly in complex networks of companies and legal arrangements.

7.39. Given the general lack of experience in Spain in dealing with trustees and legal arrangements, Spain should consider ways to improve guidance to financial institutions and DNFBPs on conducting CDD on persons who may act as professional trustees of foreign trusts. In addition, given the direct obligation imposed on trustees to self-identify to obliged entities, the Spanish authorities should consider introducing guidance directed at service providers in Spain, such as lawyers and other trust and company service providers, focusing on their obligations.

7.40. Spain is encouraged to carry through with its plans to make beneficial ownership information on legal persons and arrangements available to financial institutions and DNFBPs, as these entities do not yet have access to the Beneficial Ownership Database.

8. INTERNATIONAL COOPERATION

Key Findings

Spain can provide a wide range of international cooperation including mutual legal assistance (MLA), extradition, and other forms of cooperation, and is able to do so in a timely manner. These mechanisms are particularly effective in the EU context, as there is a comprehensive legal framework that provides simplified procedures for judicial cooperation, extradition, and the execution of foreign confiscation orders.

Overall, the Spanish authorities are proactive in seeking international cooperation to pursue criminals and their assets. Spain has successfully investigated and prosecuted a number of large complex ML cases involving transnational criminal organisations through international cooperation with their operational and law enforcement counterparts. FIU to FIU cooperation works well. International cooperation on AML/CFT supervision has been limited, but there are no obstacles.

Asset sharing appears to work particularly well with EU counterparts, and is also possible with non-EU counterparts although the procedures and mechanisms are less comprehensive in this context and should be strengthened.

8.1 Background and Context

8.1. International cooperation is particularly important given Spain's context. Spain faces high ML risks from foreign criminals who launder the proceeds of foreign predicates in the country, mainly through the real estate sector. As well, Spain is a major trans-shipment point and gateway to Europe for drugs entering Europe from South America and North Africa, and the cross-border transportation of the related proceeds to third countries. Countries with which Spain has significant international ML links are China, Colombia, Italy, Mexico, Morocco, Pakistan, Russian Federation, Serbia, and the United Kingdom. Spain also faces high TF risks from domestic terrorist groups (such as ETA) which have close links with France, and Islamist terrorist groups which have close links to North African countries. The Central Authority for mutual legal assistance, including extradition, is the Ministry of Justice.

8.2 Technical compliance (R.36-40)

Recommendation 36 – International instruments

8.2. **Spain is compliant with R.36.** Spain has signed and ratified the Vienna, Palermo, Terrorist Financing, and Merida Conventions, and enacted legislative measures to fully implement their requirements.

Recommendation 37 – Mutual legal assistance

8.3. **Spain is compliant with R.37**. Spain has a legal basis that allows it to rapidly provide the widest possible range of mutual legal assistance (MLA) in relation to investigations, prosecutions and related proceedings involving ML, TF and associated predicate offences.

8.4. A positive feature which facilitates timely response to MLA requests from EU Member States is that these can be forwarded directly between competent judicial authorities (judges, courts or prosecutors) and it is not necessary to go through the Ministry of Justice: *RD 453/2012 art.6, Convention on Mutual Assistance in Criminal Matters between the Member States of the EU (2000) (mandatory), Convention implementing the Schengen Agreement (as a rule, optionally)*. Another positive feature is that dual criminality is not required, even when coercive measures are requested.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

8.5. **Spain is compliant with R.38.** Spain has the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize or confiscate the laundered property and proceeds from, and instrumentalities used (or intended for use) in ML, TF and predicate offences, or property of corresponding value.

8.6. A positive feature is that Spain is able to provide assistance to requests for co-operation made on the basis of non-conviction based confiscation proceedings and related provisional measures in circumstances that go beyond those required by R.38. For requests from any country (EU or non-EU), such circumstances include when: the statute of limitations has expired but the assets' unlawful origin can be proven; where the perpetrator is exempt from criminal liability because of mental disorder, intoxication, acting in self-defence, etc. (*Penal Code art.20*); or where the assets are perishable, abandoned, more expensive to maintain than their value, dangerous to keep, will depreciate substantially over time, or are destined for an unknown location (*Criminal Procedure Code art.367(4) & (5)*). Non-conviction based confiscation is possible for all requests from other EU member states[1]: *Law 4/2010 art.3.2 & 15-18*. Another positive feature is that dual criminality

1 For example, Spain enforces *misure di prevenzione* orders for confiscation. *Misure di prevenzione* are preventive measures under Italian legislation that may be applied, regardless of whether an offence was committed or not. Their purpose is to avoid other offences being perpetrated by persons belonging to groups that represent a risk for the community (e.g., organised crime groups).

is not required, even when coercive measures are requested.

Recommendation 39 - Extradition

8.7. **Spain is largely compliant with R.39**. Spain is able to execute extradition requests in relation to ML/TF without undue delay through clear processes for the timely execution of extradition requests. The Ministry of Justice is the central authority in such matters: *Law 4/1985 art.6-22 (for non-EU countries) and Law 3/2003 (for EU countries)*. In situations where the request is from a non-EU country and the underlying case falls within the jurisdiction of the Spanish courts, the case is submitted to competent authorities for the purpose of prosecution of the offences set forth in the request. Dual criminality is required when extraditing to non-EU countries. As Spain has not criminalised the financing of an individual terrorist (who is not otherwise part of a terrorist group) for a purpose unrelated to the commission of a terrorist act, it would be unable to meet the dual criminality requirement in such cases.

8.8. The system has two positive features: extradition mechanisms for EU member states are simplified and do not require dual criminality (*Law 3/2003 art.12*); and in urgent cases, the defendant may be provisionally arrested, pending receipt of the formal extradition request (*Law 4/1985 art.8*).

Recommendation 40 – Other forms of international cooperation

8.9. **Spain is compliant with R.40**. All of the competent authorities (including SEPBLAC, the prudential supervisors, LEAs and the Tax Agency) have a solid legal basis and mechanisms that enable them to provide a wide range of international cooperation in relation to ML, TF and predicate offences in a rapid, constructive and effective manner, both spontaneously and upon request.

8.3 Effectiveness: Immediate Outcome 2 (International Cooperation)

(a) Providing and seeking mutual legal assistance

8.10. **International cooperation is a particularly important issue in the Spanish context, given the risks** that Spain faces as both a destination country for foreign proceeds, a trans-shipment point for drug related proceeds destined for third countries, and a target for transnational organised crime groups and international terrorist groups.

8.11. **Spain provides constructive and timely MLA and extradition across the range of international co-operation requests, and the quality of assistance provided by Spain is generally high**. Indeed, Spain is very responsive to requests for international cooperation, and the quality of assistance provided by Spain is generally high, as was confirmed from feedback which was received from 24 countries[2].

8.12. **International cooperation works particularly well in the EU context where an extensive legal framework, often involving simplified measures, applies**. Within the EU, the courts of all EU member states are able to cooperate directly, without need of support from their respective Ministries of Justice. Requests from other EU member states relating to the recovery of assets are always channelled through the CICO which also acts as the platform for the Assets Recovery Office. Statistics available on MLA facilitated through the CARIN network show that Spain is the most requested country (77 requests were answered by Spanish police, out of the total 320 requests made through the CARIN network). This fact is consistent with Spain's high assessed risks as a destination country for the proceeds of foreign predicate offences, and frequent laundering through Spain's real estate sector. The average time taken to process an incoming request is 14.5 days, depending on the complexity and urgency of the matter.

2 Armenia; Australia; Austria; Azerbaijan; Belgium; Brazil; Canada; France; Greece; Hong Kong, China; Ireland; Isle of Man; Japan; Mexico; Morocco; Paraguay; Peru; Qatar; Russian Federation; San Marino; Sweden; Slovenia; United Kingdom; and United States.

8.13. **International cooperation is more challenging outside of the EU context**. The Ministry of Justice processes all international cooperation requests sent to and received from non-EU countries (except those relating to confiscation and sharing of assets). Generally, these systems work well. However, a few incidents were reported of requests being received in the incorrect form or without adequate supporting information. Such requests were not immediately actionable for various technical reasons, which delayed execution of the request by the foreign authorities. A few difficulties in arranging for asset sharing between Spain and non-EU countries were also reported. These problems generally related to cooperation with non-EU countries with very different legal systems or rules of evidence from those of Spain and, in any event, do not appear to be systemic.

8.14. **Some of these issues may also relate to the need for more resources**, particularly for processing international requests related to the confiscation and sharing of assets, or for ensuring that foreign counterparts are of aware of which person(s) within the Central Authority are responsible for processing such requests. The contact point for all requests is one person within the Office of the Special Prosecutor Against Drug Trafficking, with support from CICO and the International Prosecutor Cooperation Office. This does not seem adequate, given the high volume of requests received in this area.

8.15. **Spain regularly seeks legal assistance for international co-operation to pursue domestic ML, associated predicate offences and TF offences, particularly where such cases have transnational elements (something that occurs quite often in the Spanish context)**. Many of Spain's large ML cases have international links and have been successfully investigated and prosecuted, often with international legal assistance, and the assets later shared with foreign counterparts. These cases are a measure of Spain's success in this area.

8.16. **Spain also provided the following statistics on the number of MLA and extradition requests** made and received.

8.17. **Spain actively seeks international cooperation for the purpose of tracing assets that may be subject to investigation**. For example, in *Preliminary Proceedings 275/08* of the Spanish High Court, Spain requested cooperation from numerous countries in tracing the proceeds from corruption offences. As a result of Spain's request, over EUR 39 million were blocked in Switzerland and an additional EUR 4.5 million were blocked in Monaco.

8.18. S**pain plays a very significant role in asset tracing and recovery within the European Union** via the ORA (the Asset Recovery Office of Europol), with the support of the National Police and the Civil Guard. From 2007 to 2010, 50% of the requests for asset tracing submitted by all of the countries in the EU were received in Spain. Spain provided some specific examples of how it responds to requests from other countries to assist in the tracing, freezing/seizing and recovery of assets. For example, see *Letter Rogatory 20/12* (judicial assistance provided by the Spanish authorities for the recovery of assets derived from corruption in Italy), and *Letter Rogatory 19/13* (judicial assistance provided to the Netherlands for freezing assets relate to a ML investigation).

8.19. **Spain provided examples of measures it has taken to facilitate its access to effective and timely assistance, where problems have arisen**. For example, international cooperation with Morocco was greatly enhanced through the EU-Moroccan twinning project through which Spain and France were appointed to support Morocco in reinforcing its AML/CFT national regime through training and awareness raising campaigns. This was an important development given the drug trafficking and terrorist financing risks Spain faces from certain parts of North Africa.

Box 8.1. International cooperation to investigate & prosecute ML

Sentence AN 3395/2010: Members of a Russian organised crime group laundered the proceeds of foreign predicate offences, primarily through Spain's real estate sector. One controlled several casinos in the Russian Federation. Spain undertook active international cooperation with:

- the United States through which information was obtained about a company involved in the ML scheme
- the Russian Federation which resulted in information being obtained concerning the defendants' ML operations through four casinos they controlled in Moscow; and
- the United Arab Emirates which culminated in one defendant being extradited from Dubai to Spain.

The following important legal principles were confirmed by this case:

- **The Spanish courts have jurisdiction to try cases involving the laundering of proceeds from crimes perpetrated abroad.** One defendant had been convicted in 2006 in Georgia for belonging to a criminal organisation. Therefore, due to the res judicata principle, he could not be convicted in Spain of the same offence. However, he could still be prosecuted in Spain for laundering the proceeds of those foreign predicates and, one of the consequences of the 2006 conviction is that his equity is considered to be the proceeds of crime.
- **In the absence of an extradition agreement, extradition can take place on the principle of reciprocity**. One defendant was arrested in the United Arab Emirates (Dubai), and extradited back to Spain for trial. He unsuccessfully challenged the extradition request on the basis that Spain had no extradition agreement with the United Arab Emirates (UAE).
- **Circumstantial evidence can be used to prove the ML offence** (e.g., large sums of money or increases in equity which cannot be explained from normal business practices or commerce, or the absence of any lawful business which could justify the increase in equity or transactions).

Operation Avispa (Wasp): Members of a Russian organised crime group laundered the proceeds of foreign predicate offences, primarily through Spain's real estate sector. With the support of SEPBLAC, a profile was developed of certain operations which had as their common denominator the use of these companies as intermediaries for significant movements of funds, often originating from or destined for tax havens. The funds did not arise from commercial/business transactions and involved unusual increases in assets. Spain undertook active international cooperation with the French Judicial Police, Belgian Police, Federal Criminal Police Office of Germany (BKA), Israeli police forces, INTERPOL and EUROPOL. This cooperation made it possible to gather invaluable information on the activities of these organised crime groups. In total, 28 arrests were made. The authorities blocked/seized over 800 current accounts distributed among 42 banking institutions in Spain were blocked, several safe deposit boxes, EUR 83 009 cash, USD1 424, EUR 100 000 in promissory notes, 41 luxury vehicles, and a large number of rural and urban properties (including luxury mansions, and a housing development).

Table 8.1. International cooperation

International cooperation[1]	2010	2011	2012
Mutual legal assistance (MLA)			
Requests received from other countries on ML	88	91	65
- Requests on ML executed (as at October 2013)	64	68	38
Requests sent by Spain to other countries on ML	24	28	35
- Requests on ML executed (as at October 2013)	15	18	15
Requests received from other countries on TF	1	1	0
Requests sent by Spain to other countries on TF	0	1	0
Requests received from other countries on ML	88	91	65
MLA requests received by the Special Anti-Drug Prosecutor's Office (National Court)			
For asset tracing (with a related freezing/confiscation request)	5	0	12
For asset tracing (without a related freezing/confiscation request)	11	10	10
Requests received from EU member states	9	7	16
Requests received from non-EU member states	7	3	6
Total	16	10	22
Extradition requests			
Requests received from other countries on ML	9	12	8
- Granted	8	4	6
- Denied	0	1	0
- Pending (as at July 2013)	1	7	2
Requests sent by Spain to other countries on ML	6	11	9
- Granted	3	4	3
- Denied	0	1	0
- Pending (as at July 2013)[2]	3	4	5
Requests received from other countries on TF[3]	0	0	1
Requests sent by Spain to other countries on TF	0	0	0

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 27 (p.41), Table 28 (p.42), and Table 46 (p.62).

Table Notes:

1 The monetary values in this table are approximate (the figures have been rounded up/down).

2 Two extradition requests were withdrawn in 2011, and 1 was withdrawn in 2012.

3 All letters rogatory in relation to TF in 2010 to 2012 were answered. These statistics do not include letters rogatory regarding the distinct offences of terrorism and related offences.

Box 8.2. Examples of international cooperation for the purpose of tracing and confiscating assets

Operation Brancato: This is an investigation of the Cosa Nostra mafia organisation and a business group responsible for gasification procedures in certain parts of Sicily. The operation was carried out mainly in Italy and has led to EUR 48 million worth of freezing orders on several companies and assets owned by the heirs to the main person under investigation. The investigation involved Spain's Central Unit for Economic and Tax Crime, and the Barcelona Judicial Police Provincial Brigade, working in cooperation with the Italian Guardia di Finanza (Palermo). Financial investigations by the Spanish police units enabled the Italian judicial authorities to issue international letters rogatory which led to the freezing of 2 real estate properties in Spain (declared sales value of almost EUR 1.6 million), 5 cars, bank products held at various banks, and a property development company.

Operation Champi: This operation resulted in disbanding a criminal organisation (comprised mainly of Netherlands citizens) that specialised in mass installation of hydroponic marijuana plantations along the Costa del Sol, and subsequent distribution of the drugs to the Netherlands. The organisation also distributed ecstasy (MDMA) in Spain which was acquired from the Netherlands. The investigation involved the Civil Guard, Office for Asset Localisation and Group II of the Drugs of UDYCO Costa del Sol, the Equity Investigations and Asset Localisation Group of Malaga Judicial Police Provincial Brigade, and the Combined Malaga Customs Surveillance Unit. During the investigation, Spain requested information from the Netherlands Asset Recovery Office, and made requests for the enforcement of freezing orders which led to 18 properties in the Netherlands being frozen (with a declared value of over EUR 2.2 million). An additional 3 properties in Spain were frozen, as were 20 vehicles (valued at EUR 110 000), over EUR 24 000 cash, drugs, and various instrumentalities of crime. Nineteen people were arrested, and prosecution is ongoing.

8.20. **Spain is at high risk for large complex ML schemes, most of which involve complex and opaque structures of legal persons and arrangements, some of which are abroad in off-shore centres.** Spain requests international cooperation in such cases, and cited examples of good cooperation with some offshore centres, including Andorra, Monaco, and San Marino.

8.21. **International cooperation between Spain and Gibraltar is not adequate, which carries the combined risk of being an offshore centre with a thriving trust and company formation sector**. Spanish authorities told the assessment team that Gibraltar companies, and trusts created in Gibraltar, have appeared as money laundering vehicles in some ML schemes. However, Spanish authorities note that they do not receive adequate cooperation from Gibraltar authorities. Lack of cooperation may be exacerbated by the channels through which cooperation requests are addressed to Gibraltar. Although Spain requests direct FIU-to-FIU cooperation through the Egmont network, Spain will not undertake direct cooperation in other contexts, and instead channels requests to the Gibraltar authorities through the UK authorities, which can result in significant delay.

(b) Providing and seeking other forms of international cooperation

8.22. **The Spanish authorities also seek and receive other forms of international co-operation for AML/CFT purposes.** Cooperation among LEAs, particularly with those of other EU member states, occurs regularly and involves both information exchange and joint investigations. For example, 64 joint investigations were carried out in 2013 with other EU Member States' LEAs. Spain maintains a web of Police and Liaison Magistrates abroad to facilitate such cooperation. Joint investigations are also regularly carried out with non-EU countries, and Spain has signed specific MOUs with countries in North Africa and the Maghreb, Latin America, and Asia to counter specific ML/TF threats originating in certain countries. Spain is also a member of the CARIN network through the UDEF (Financial and Tax crimes Unit), which is also the central point of the Stolen Assets Recovery Initiative (StAR).

Table 8.2. Other forms of International cooperation

	2010	2011	2012
FIU cooperation			
Requests received from foreign FIUs	458	563	507
- Requests fulfilled	430	537	490
- Requests rejected	28	26	17
Requests sent by SEPBLAC to foreign FIUs	375	379	392
Total requests made & received by SEPBLAC	**833**	**942**	**899**
Unprompted communications received from foreign FIUs	48	70	92
Unprompted communications from SEPBLAC to foreign FIUs	24	29	22
Total unprompted communications made & received by SEPBLAC	**72**	**99**	**114**
Law enforcement/police cooperation			
Requests received from foreign authorities on ML	550	668	718
Requests sent by the Spanish authorities on ML	71	75	86
Supply of information to foreign authorities on TF	6[1]		
Requests sent by Spanish authorities to foreign authorities on TF	59[2]		

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 23 (p.45), Table 24 (p.46), and Tables 46 & 47 (p.62).

Table Notes:

1 five of these communications of information concerned international terrorist organisations.

2 three requests concerned domestic organisations, seven concerned international organisation & one concerned proliferation/dual use technology.

8.23. **FIU-to-FIU cooperation also occurs regularly**, with SEPBLAC regularly seeking such assistance to support its own analysis, and providing information to other FIUs both spontaneously and upon request.

8.24. **Although Spain is able to provide international cooperation by SEPBLAC (as an AML/CFT supervisor) and the Core Principles supervisors, and has entered into MOUs to facilitate such cooperation, in practice, this tool is not used frequently.** SEPBLAC has shared its findings on the MVTS with other supervisors. The Bank of Spain has only once received a request on AML/CFT from another supervisor and referred it to SEPBLAC.

8.25. **Spain provided statistics (Table 8.2) showing its willingness and capacity to provide international assistance to and seek it from foreign counterparts.** Based on the feedback provided from 24 countries, there are no serious problems to report in this area.

(c) International exchange of basic & beneficial ownership information of legal persons/arrangements

8.26. **Most of the authorities involved in providing MLA or other types of international cooperation do not keep statistics on how many MLA requests are for basic/beneficial ownership information on legal persons and arrangements.** Such requests are common, but are often included as part of a much broader request involving multiple elements. Only, Spain's Asset Recovery Office was able to provide any statistics in this area, estimating that about 20% of the requests Spain receives relate to legal persons, and 80% relate to legal persons. For outgoing requests, 13% relate to legal persons, and 87% relate to natural persons. These requests are processed in the same way as other MLA requests, as described above.

8.27. **Spain has access to a range of basic and beneficial ownership information of legal persons**, as described in Immediate Outcome 5. However, much less information is available on legal arrangements, even though CDD obligations have been in place since 2010 requiring obliged entities to identify the key parties associated with trusts. Some weaknesses also remain in the implementation of preventive measures against the misuse of legal persons and arrangements, as set out above, which may limit the information Spanish authorities can access, either on their own behalf or in response to foreign requests.

Overall conclusions on Immediate Outcome 2

8.28. **Spain demonstrates many of the characteristics of an effective system in this area, and only moderate improvements are needed**. It generally provides constructive and timely information or assistance when requested by other countries, including: extradition; the identification, freezing, seizing, confiscation and sharing of assets; and providing information (including evidence, financial intelligence, supervisory and available beneficial ownership information) related to ML, TF or associated predicate offences. Some problems have arisen in the context of Spain making requests to and sharing assets with non-EU countries with legal systems which are very different to Spain's. However, these issues do not appear to be overly serious or systemic.

8.29. **Spain routinely seeks international cooperation to pursue criminals and their assets and, in general, this works well**. Cooperation with tax havens presents challenges. However, Spain has had some success in resolving some of these issues (for example, involving international cooperation with Andorra, San Marino and Switzerland). The exception is MLA and extradition requests to Gibraltar, with whom Spain deals indirectly through the UK authorities which causes delays.

8.30. **All of the law enforcement and prosecutorial authorities met with during the onsite visit viewed international cooperation as a critical matter of high importance**. They are focused on both providing MLA in a constructive and timely manner, and also proactively seeking international cooperation, as needed. Spain relies heavily on cooperation with its foreign counterparts (particularly when pursuing cases involving the laundering of foreign predicate offences, or the activities of trans-national organised crime groups) and has achieved success in high profile ML and TF cases (for example, *White Whale*, *Malaya*, dismantling of ETA's economic and financing network).

8.31. **Spain was also able to provide concrete examples of organised crime groups and terrorist groups which have been dismantled through these efforts**. This is an important factor in the Spanish context, given the nature of its ML/TF risks.

8.32. **It is expected that Spain's focus on international cooperation, and the additional measures that it is taking to increase the transparency of basic and beneficial ownership information** (such as implementation of the Financial Ownership File) **will be important steps toward making Spain an unattractive location for criminals** (including terrorists) to operate in, maintain their illegal proceeds in, or use as a safe haven.

8.33. **Overall, Spain has achieved a substantial level of effectiveness with Immediate Outcome 2**.

8.4 Recommendations on International Cooperation

8.34. The Ministry of Justice should ensure that staff who are responsible for submitting requests to foreign countries are have sufficient training in how to submit actionable requests, particularly for non-EU countries with significantly different legal systems, and rules of evidence.

8.35. Spain should develop more specific procedures to facilitate asset sharing, particularly with non-EU countries.

8.36. Spain should allocate more resources to processing international cooperation requests related to

confiscation and asset sharing. Spain should consider sharing the competencies of the current contact point (who is currently one person located within the Office of the Special Prosecutor Against Drug Trafficking) with other judicial authorities, such as the Office of the Special Prosecutor against Corruption and Organised Crime, and implementing mechanisms to facilitate better coordination between the judges and the contact point in such cases.

Bibliography

Committee for the Prevention of Money Laundering and Monetary Offences (2013), Statistics Report 2010-2012, www.tesoro.es/doc/EN/EXCamp/Documento%20de%20Acrobat.pdf

Technical Compliance Annex

1. INTRODUCTION

This annex provides detailed analysis of the level of compliance with the *FATF 40 Recommendations* of Spain. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the mutual evaluation report (MER).

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous mutual evaluation in 2006. This report is available from www.fatf-gafi.org/countries/s-t/spain/documents/mutualevaluationofspain.html.

2. NATIONAL AML/CFT POLICIES AND COORDINATION

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

a2.1. These requirements were added to the *FATF Recommendations*, when they were last revised in 2012 and, therefore, were not assessed during Spain's third mutual evaluation which occurred in 2006.

a2.2. *Criterion 1.1.* Spain has prepared a range of risk assessments, including focused assessments of specific sectors or themes, and assessments at the national level of issues relevant to money laundering (ML) and terrorist financing (TF). Some of these assessments have a very narrow scope (e.g. a single border crossing), while others are wide-ranging, though not necessarily limited to ML/TF risks (e.g. assessments of organised crime and associated ML, and assessments of terrorism, including TF and other forms of support). The sectoral and geographical assessments reviewed by the team are of good quality, use multiple sources of information, are prepared through inter-agency processes, identify and assess important ML/TF risks, and set out operationally-relevant conclusions. For example:

a. The National Centre for Counter-terrorism Coordination (CNCA), (Ministry of Home Affairs) which is responsible for integrating, analysing, and evaluating all information on terrorism, has undertaken assessments of terrorist finance within its terrorism analysis.

b. The Centre of Intelligence against Organised Crime (CICO) (Ministry of Home Affairs) has produced detailed risk analysis of organised crime activity in Spain and associated ML activity.

c. Treasury, SEPBLAC, and other anti-money laundering (AML) / counter-terrorist financing (CFT) authorities have prepared specific ML/TF risk assessments of particular sectors (real estate, money or value transfer services (MVTS), legal persons, cash movements), and border crossing points.

d. ML/TF risk analysis of financial and designated non-financial businesses and professions (DNFBP) sectors and financial institutions (FIs) is undertaken as the basis for the SEPBLAC's annual inspection plan and approach to risk-based supervision.

e. SEPBLAC also prepares a risk map analysis based on suspicious transaction reports (STRs) and systematic reporting of certain operations.

f. The Commission for the Prevention of Money Laundering and Monetary Offences (the Commission) also issues "risk catalogues" which give guidance to the private sector to help identify high-risk transactions.

a2.3. Criterion 1.1 requires countries to "*identify and assess the ML/TF risks for the country*". This does not have to be done through a single national risk assessment. ML/TF risks to a country can be adequately identified and assessed through a series of focused assessments on specific sectors and threats, provided that those focused assessments together cover the full range of ML/TF risks, and the country can identify the implications of those focused assessments for AML/CFT policy and operations at a national level. In Spain's case, the scope of its focused ML/TF assessments collectively is relatively broad and they address the major risks identified by the assessment team. Spain also has national strategy-making processes which identify the implications of risk assessments for AML/CFT policies and operations at national level, in particular the preparation of the national *Strategy for the Prevention of Money Laundering*. Taken together, the underlying framework of specific risk assessments and operational analyses, and the strategies which are based on them, can be considered to adequately identify and assess the risks.

a2.4. *Criterion 1.2.* The CNCA is responsible for coordinating actions to assess terrorism and TF risks. The Commission for the Prevention of Money Laundering and Monetary Offences (the Commission), through its financial intelligence committee, has responsibility for assessing ML risk and has done so, e.g. through the

sectoral and border assessments noted above: *Royal Decree (RD) 304/2014, art. 65*. However, this requirement is new, and the risk assessments prepared to date were conducted by several different agencies and without formal coordination.

a2.5. *Criterion 1.3.* Several of the above risk assessments are regularly updated, including the CICO assessments, the SEPBLAC risk map and Annual Inspection Plan, and the CNCA's assessments.

a2.6. *Criterion 1.4.* The Commission has responsibility to coordinate with public authorities and provide guidance to obliged entities. The risk assessments noted above are made available to other relevant public authorities though in some cases their distribution is tightly controlled. Spain indicates that information derived from the SEPBLAC risk map and other risk analysis is provided to reporting entities as feedback: *RD 304/2014 art.65(1)(f).*

a2.7. *Criterion 1.5.* On the basis of its work mentioned above, Spain has implemented the following strategies related to ML/TF: (a) the *National Security Strategy* which identifies the major risks facing Spain (published May 2013); (b) the *Strategy Against Organised Crime* (2011-2014) (approved 2011); (c) the *Strategy for the Prevention of Money Laundering* (approved 2013); and (d) the *Integral Strategy against International Terrorism and Radicalization* (EICTIR) which is currently being discussed by the National Centre for Counter-terrorism Coordination (Ministry of Home Affairs).

a2.8. Additionally, Spain has introduced legislative measures to address new risks when these have been identified. For example, see the December 2013 amendments to Law 10/2010 (the *AML/CFT Law*), which applied suspicious transaction reporting and internal controls obligations to the national administrator of the Emission Allowance Registry, and the decision to apply AML/CFT obligations to SAREB (Spain's "Bad Bank").

a2.9. *Criterion 1.6.* Spain gives specific exemptions from AML/CFT obligations for foreign exchange by hotels, and for notaries when performing acts with no economic or patrimonial content: *AML/CFT Law art. 2.3, and RD 304/2014 art.3*. There are also exemptions from the internal control requirements for smaller entities which are DNFBPs or insurance brokers (employing less than 10 persons, with less annual turnover or total annual balance of EUR 2 million, and who are not part of a business group that exceeds these figures). These entities are subject to CDD, record keeping and reporting obligations, but are exempted from the detailed requirements relating to internal controls which are prescribed by articles 31 to 39 of Royal Decree 304/2014 (e.g., developing a prevention manual, establishing an internal control body, having AML/CFT procedures approved by a board of directors), on the basis that the organisational requirements that make sense in bigger companies are not practical in smaller entities. This is consistent with the Interpretive Note to R.18 which states that the "*type and extent of measures to be taken should be appropriate having regard to the risk of ML and TF and the size of the business*".

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a2.10. *Criterion 1.7*. There are several different mechanisms through which Spain requires enhanced measures or additional consideration of higher risks, including the following:

- **a.** Enhanced measures for some general high-risk activities (e.g., private banking, PEPs etc.) are required by law*: AML/CFT Law arts.11-16.*
- **b.** AML/CFT obligations apply to the following entities in addition to those required by the *FATF Recommendations*. These include registrars, the Emission Allowance Registry, real estate developers and promoters, and notaries (who are required to apply CDD for all acts they authorise, rather than only specific acts).
- **c.** Additional controls apply to bearer shares, religious entities, foundations, and associations.
- **d.** Enhanced due diligence is required for specific cases including: private banking services; foreign exchange transactions above EUR 6 000/quarter; funds remittance transactions above EUR 3 000/quarter; and business relationships with companies which have bearer shares: *RD 304/2014, art.19.*

e. There are requirements for systematic reporting of large transactions in cash or involving higher-risk countries.

f. On specific risks (e.g. agents of MVTS providers), the authorities conduct outreach and communication with relevant sectors.

a2.11. *Criterion 1.8.* Spain allows simplified measures to be applied by FIs and DNFBPs in circumstances that have been assessed by Spain to be low risk following public consultation, and which are identified in Regulation: *AML/CFT Law arts.9 & 10, RD 304/2014 art.16*.

a2.12. *Criterion 1.9.* Spain's supervision and monitoring of FIs/DNFBPs includes supervisory obligations in relation to ML/TF risk assessment and mitigation, as set out in the *AML/CFT Law*. The relevant supervisor for all FIs/DNFBPs is SEPBLAC (acting in cooperation with the sectoral supervisors). The analysis conducted under Recommendations 26 and 28 found that SEPBLAC has adequate inspection powers, there are comprehensive sanctions available to the authorities, and supervision appears to be carried out according to a risk-based approach (RBA).

a2.13. *Criterion 1.10.* Measures relating to this criterion are included in legislation, and in guidance on internal controls issued by SEPBLAC. FIs and DNFBPs are required to:

a. apply all customer due diligence (CDD) measures, but determine the degree of their application on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction, as set down in the explicit customer admissions policy referred to in article 26: *AML/CFT Law art.7*

b. give special attention to products or transactions favouring anonymity and new developing technologies, analyse them for ML/TF risk, document the results of such analysis, and make those results available to the competent authorities: *AML/CFT Law art.16*, and

c. adopt adequate policies of risk assessment and management, as part of their internal controls, and adopt an explicit customer admission policy, including a description of kinds of customers potentially presenting a higher risk: *AML/CFT Law art.26, RD 304/2014 art.32 and 33*.

a2.14. FIs and DNFBPs must be able to demonstrate to the competent authorities that the extent of the measures is appropriate in view of the ML/TF risks identified through a prior risk analysis which must be set down in writing. Regulations set out some of the risk factors that FIs/DNFBPs must take into account and require them to produce a risk analysis, document that analysis and review it regularly, and implement appropriate measures to manage and mitigate the risks identified: *RD 304/2014 arts.19, 22 & 32*.

a2.15. *Criterion 1.11.* FIs and DNFBPs are required to implement internal control procedures including ML/TF risk management, and risk-based customer acceptance procedures: *AML/CFT Law art.26*. An external review of each FI/DNFBP's internal controls, including their policies for risk assessment and mitigation, must be conducted every three years (and updated annually). Such reviews must be conducted by qualified external experts, indicate any changes required to the internal controls, be considered by the FI/DNFBP's board within three months, and be made available to SEPBLAC. This requirement may considerably strengthen the day-to-day oversight of firms' risk-based obligations, and allows SEPBLAC as a supervisor to focus on more significant cases: *see also R.18 and RD 304/2014 art.31-33.*

a2.16. *Criterion 1.12.* Simplified measures are only permitted in low risk cases which are defined in regulation. These include low risk customers (e.g. public law entities within the EU) and low risk products or transactions (e.g. life insurance policies solely insuring the risk of death): *RD 304/2014 art.15-16*.

a2.17. *Weighting and conclusion:* Spain meets all 12 criteria of R.1. ***R.1 is rated compliant***.

Recommendation 2 - National Cooperation and Coordination

a2.18. In its 3rd mutual evaluation report (MER), Spain was rated largely compliant with these requirements: *paragraphs (para.) 617-624*. The main deficiency related to the effectiveness of interagency co-operation which is not assessed as part of technical compliance under the *2013 Methodology*. Subsequent new legislation has further improved Spain's national cooperation and coordination mechanisms.

a2.19. *Criterion 2.1*. Spain has a national *Strategy for the Prevention of Money Laundering,* a *Strategy against International Terrorism and Radicalisation,* a *Strategy against Organised Crime,* and a *National Security Strategy* which identified TF and counter-proliferation as priority areas of action. These policies are, in practice, informed by the risks that Spain has identified. Spain's national AML/CFT policies are to be regularly updated and shall be consistent with the identified ML/TF risks: *RD 304/2014 art.62(1)*.

a2.20. *Criterion 2.2*. Spain has designated the Commission for the Prevention of Money Laundering and Monetary Offences (the Commission), which works under the Secretariat of State for the Economy (Ministry of the Economy), as the key mechanism for implementing and coordinating national AML/CFT policies: *AML/CFT Law art. 44, RD 304/2014 art.62*.

a2.21. *Criterion 2.3*. The Commission is comprised of over 20 of Spain's key AML/CFT agencies, including policy makers, the financial intelligence unit (SEPBLAC which is also the Executive Service of the Commission), law enforcement authorities (LEAs), supervisors, customs and tax authorities, intelligence services, data protection authorities, the judiciary, etc. It is responsible for developing and implementing AML/CFT policies and activities, facilitating domestic coordination and cooperation at the policy and operational level, and plays a role in sanctioning breaches of the AML/CFT requirements, as described in R.35: *AML/CFT Law art.44, RD 304/2014 art.63-65*. The Commission acts in Plenary, and through its Standing Committee (responsible for disciplinary proceedings for breaches of the *AML/CFT Law*) and its Financial Intelligence Committee (responsible for national ML/TF risk assessments). Its Secretariat is the Secretariat General of the Treasury and Financial Policy (Sub-Directorate General of Inspection and Control of Capital Movements). The Commission can convene whenever necessary, but is required to meet at least twice a year. Financial supervisors have a comprehensive series of cooperation and coordination agreements requiring SEPBLAC (as the AML/CFT supervisor) and the prudential supervisors—Bank of Spain, Directorate-General for Insurance and Pension Funds (DGSFP), and National Securities Exchange Commission (CNMV)—to cooperate, share information and coordinate inspection processes (see R.26 and R.40). LEAs also have additional coordination mechanisms including, collaboration and information exchange agreements, and joint working groups/teams[1] to facilitate investigations on priority issues (see also R.30).

a2.22. *Criterion 2.4*. Co-operation and coordination mechanisms to combat the financing of proliferation of weapons of mass destruction, other than those related to targeted financial sanctions (TFS), are limited. On targeted financial sanctions relating to PF, the Secretariat of the Commission is responsible for implementation, and there is a dedicated sanctions coordinator within the Ministry of Foreign Affairs. On wider measures to combat proliferation, the coordination mechanism is the Inter-ministerial Body on Material of Defence and Dual-use (JIMDDU) (comprised of over 10 relevant authorities including defence, security, trade, tax, export, foreign affairs, and intelligence services), which is in charge of coordinating the control of exports of dual use material, and determining policies and procedures in this area. Coordination between the JIMMDDU and the ML Commission is limited. Although some of the member agencies of the JIMDDU are also represented on the Commission, they do not include the Commission secretariat or SEPBLAC, and there are no regular mechanisms through which it can coordinate or share information with other relevant authorities, such as SEPBLAC, who could add value in this area. However, there is inadequate cooperation and coordination between the competent authorities responsible for export control, and other competent authorities (such as SEPBLAC) who can add value to the detection and investigation of proliferation-related sanctions evasion.

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1 For example, CICO (see R.1), the Specialised Group on Movements of Cash (see R.32), the CNCA which addresses CFT issues with broad representation from all the relevant departments, and the Terrorist Finance Watchdog Commission (see R.6).

a2.23. *Weighting and conclusion:* Spain's risks of proliferation-related sanctions evasion are genuine (as described in section 4.1 of the MER), and it has identified this as a priority area of action (see criterion 2.1). Nevertheless, there are gaps in coordination related to the export control regime. ***R.2 is rated largely compliant***.

Recommendation 33 - Statistics

a2.24. In its 3rd MER, Spain was rated partially compliant with these requirements (paragraph 695). The main technical deficiencies were that Spain only kept very limited statistics which were not very comprehensive. Spain subsequently addressed these deficiencies by amending the *Penal Code* through Organic Law 5/2010*: 4th follow-up report (FUR) of Spain para.149-152*. Since its last evaluation, Spain enacted new legislation empowering the Commission to develop ML/TF statistics.

a2.25. *Criterion 33.1*. The Commission gathers statistics annually from 25 agencies (including the National Commission on Judicial Statistics which is responsible for providing statistical data on judicial proceedings related to crimes of ML/TF) and issues a comprehensive ML/TF statistics document every few years: *AML/CFT Law art.44.n*. Going forward, it will issue this document annually. These statistics are collected "*to serve as an aid for decision-making on the overall improvement of the mechanism for combating ML and TF*": *Statistics Report (2010-2012) page 4*. The statistics in the report are comprehensive, include numerous detailed breakdowns, and cover:

- **a.** STRs received, analysed, and disseminated by SEPBLAC
- **b.** other types of reporting
- **c.** ML/FT investigations, prosecutions, and convictions
- **d.** property frozen, seized, and confiscated
- **e.** mutual legal assistance (MLA) or other international requests for cooperation made or received
- **f.** domestic cooperation requests, and
- **g.** supervisory actions.

a2.26. *Weighting and conclusion:* Spain meets the criterion of R.33. ***R.33 is rated compliant.***

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Recommendation 3 - Money laundering offence

a3.1. In its 3rd MER, Spain was rated largely compliant with these requirements (para.85-112). The main technical deficiencies were that the criminalisation of ML did not cover self-laundering, the possession or use of proceeds, and criminal liability for legal persons. Spain addressed these deficiencies by amending the *Penal Code* through Organic Law 5/2010.

a3.2. *Criterion 3.1*. Money laundering is criminalised on the basis of the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention)* and the *United Nations Convention Against Transnational Organised Crime (Palermo Convention)*[1]: *Penal Code art.301*.

a3.3. *Criteria 3.2 & 3.3*. Spain uses an all crimes approach. All offences punishable by more than three months imprisonment are predicate offences for ML. Tax offences became predicate offences for ML with the reform of the *Penal Code* in 2010, and this has since been confirmed by the Spanish courts: e.g., *White Whale, STS 974/2012*. A sufficient range of offences in all 21 categories of designated predicate offence are covered.

a3.4. *Criterion 3.4*. The ML offence covers "assets" a term defined in the *Civil Code* to mean every type of tangible or intangible property: *art.334-347*. This covers any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime.

a3.5. *Criteria 3.5*. When proving that property is the proceeds of crime, it is not necessary that a person be convicted of a predicate offence, or that the predicate offence was the subject of prior judicial proceedings: *Penal Code art.298-301*.

a3.6. *Criteria 3.6*. The ML offence expressly covers predicate offences that occurred fully or partly in another country: *Penal Code art.301(4)*. Spanish courts have jurisdiction to hear cases for crimes and misdemeanours committed in Spanish territory or aboard Spanish airlines or ships, without prejudice to the provisions of international treaties to which Spain is a party. Spanish courts will also recognise acts as crimes under Spanish penal law (even if committed outside of Spanish territory) provided that the people criminally liable are Spanish or foreigners who acquired Spanish nationality after perpetrating the act, and: the act is punishable in the place it was carried out[2]; the aggrieved party or Public Prosecutor has made a complaint before the Spanish courts; and the offender has not been acquitted, pardoned, or sentenced and served time abroad: *Spanish Judiciary Act art.23*.

a3.7. *Criteria 3.7*. The ML offence covers self-laundering: *Penal Code art.301(1)*.

a3.8. *Criteria 3.8*. Case law and legal tradition permit the mental element of the offence to be inferred from objective factual circumstances and allow for the indirect proof of ML (for example, by proving unjustified increases of assets with no (or an unlikely or irrational) legal explanation, or demonstrating movements of capital without any commercial purpose).

a3.9. *Criteria 3.9.* Natural persons convicted of intentional ML are subject to imprisonment of six months to six years, a fine of one to three times the value of the assets, and/or disbarment from exercising a profession or industry for one to three years. If the offence is continuing, the penalty may be elevated to the upper half grade penalty (i.e., up to 9 years imprisonment): *Penal Code art.74.1.* Within this range, the level of sanction imposed must be proportionate to the circumstances. Sanctions at the higher end of the

1 See art.3(1)(b)&(c) of the *Vienna Convention*, and art.6(1) of the *Palermo Convention*.

2 The provisions of an applicable international treaty or rules of an international organisation to which Spain is a party may deem this requirement unnecessary.

range are applied in cases involving drug, corruption, embezzlement, fraud, or organised crime offences, and town planning felonies: *Penal Code art.301 & 302*. Bosses, managers or officers of organisations dedicated to ML are punishable by 6 to 9 years imprisonment, or if the offence is continuing by up to 13 years and 6 months imprisonment: *Penal Code art.302 & 74.1*. Provocation, conspiracy and solicitation to commit ML are punishable by a sentence of one or two degrees lower than those specified above: *Penal Code: art.304.* Certain professions who commit ML offences while carrying out their professional duties are subject to special barring for three to ten years from public employment and office, profession, trade, industry or commerce: *Penal Code art.303*[3]. As for dissuasiveness, from a technical standpoint, these sanctions fall within the lower half of the range of sanctions applied by other FATF members for ML, and are within the range of sanctions available for almost all other types of financial crime in Spain[4]. A concern is that disbarment at the higher range (up to 10 years which is available for some other professions) is not available for lawyers, notaries or trust and company service providers, despite their important role as gatekeepers in complex ML schemes.

a3.10. *Criteria 3.10*. Legal persons (other than certain State-owned enterprises) convicted of ML are subject to a fine of one to three times the value of the assets, and/or temporary[5] or permanent closure of the establishment or premises. Sanctions at the higher end of the range are applied in cases involving drug or organised crime offences. This does not preclude parallel civil or administrative proceedings, and is without prejudice to the criminal liability of natural persons: *Penal Code art.301(1), 33(7) & 31bis*.

a3.11. *Criterion 3.11*. A full range of ancillary offences to the ML offence is available, including attempt, conspiracy, incitement, and solicitation. Those who aid and abet, or facilitate and counsel the offence are to be considered as principal offenders and are subject to the same penalties: *Penal Code art.16.1, 17, 27-29, 62, 304*.

a3.12. *Weighting and conclusion:* All but two of the criteria are fully met. Criteria 3.9 and 3.10 are both met to a large extent, but nevertheless have deficiencies that should be addressed. Disbarment sanctions for professional gatekeepers are not sufficiently dissuasive. As well, certain State-owned enterprises are exempt from criminal liability; however, deficiency is somewhat mitigated because the exemption does not apply if the legal person in question was formed in order to avoid possible criminal liability, and personal liability for the individuals involved in the offence still apply: *Penal Code art.31bis(5)*. The dissuasiveness of sanctions (criterion 3.9) is a concern that also impacts effectiveness (IO.7). ***R.3 is rated largely compliant.***

Recommendation 4 - Confiscation and provisional measures

a3.13. In its 3rd MER, Spain was rated largely compliant with these requirements (para.130-144). The deficiency related to effectiveness which is not considered as part of the technical compliance assessment under the *2013 Methodology*. Since then, Spain has implemented new legislation aimed at strengthening its framework of confiscation and provisional measures.

a3.14. *Criterion 4.1.* Amendments to the *EU Council Framework Decision 2005/212/JHA on Confiscation on Crime-related proceeds, Instrumentalities and Properties* have been transposed into Spanish legislation: *Penal Code art.127*. These provisions provide for the confiscation of all proceeds, laundered property, instrumentalities of crime, property related to any criminal activities committed within the context of a criminal or terrorist organisation, and property of equivalent value, regardless of whether the property is held by criminal defendants or third parties.

3 Entrepreneurs, financial sector intermediaries, medical practitioners, civil servants, social workers, teachers or educators.

4 The exception is TF offences for which much heavier sanctions. However, this does not seem unreasonable since, unlike ML, TF can result in life-threatening consequences.

5 If the closing is temporary, its duration may not exceed five years.

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a3.15. *Criterion 4.2*. Spain has implemented the following measures to enable the judicial police to confiscate property and take provisional measures:

a. The judicial police have the power to identify, trace and evaluate property by making the necessary queries, conducting entries and searches (with judicial authorisation), and carrying out the investigations needed to collect all items, instruments or criminal evidence which are at risk of disappearing, and making that property available to the judicial authority.

b. The Criminal Court may authorise the judicial police to carry out provisional measures, such as freezing or seizing, to prevent any dealing, transfer or disposal of property that is subject to confiscation. The Criminal Court is the only authority that can authorise provisional measures, and it may do so *ex parte.*

c. The Criminal Court may authorise the judicial police to take steps to prevent or void actions that prejudice Spain's ability to freeze or seize or recover property that is subject to confiscation.[6]

d. The judicial police are authorised to undertake a broad range of investigative measures in support of such actions, including controlled delivery of seized property to further an investigation, and delay of seizures in organised crime investigations if such delay might prejudice the investigation.[7]

a3.16. *Criterion 4.3.* The rights of *bona fide* third parties are protected: *Penal Code art.127*.

a3.17. *Criterion 4.4.* Spain has designated authorities responsible for managing and, when necessary, disposing of property frozen, seized or confiscated including the Asset Recovery Bureau (ORA) of CICO (comprised of officers from the National Police, Civil Guard, and Customs Surveillance), and the Asset Tracing Offices (OLA) of the National Police and the Civil Guard (see R.30). Spain has comprehensive procedures for: disposing of frozen/seized assets when it would be more costly to preserve them; selling, auctioning or destroying confiscated assets; managing the proceeds of sale; managing judicial deposits and confiscations of cash, assets or values in the Ministry of Justice Account for Deposits and Consignations; and regulating a fund derived from goods seized in relation to drug trafficking and related offences.[8]

a3.18. *Weighting and conclusion:* Spain meets all four criteria of R.4. ***R.4 is rated compliant.***

Operational and Law Enforcement

Recommendation 29 – Financial intelligence units

a3.19. In its 3rd MER, Spain was rated largely compliant with these requirements (para.195-228). The deficiency related to effectiveness, an aspect which is not assessed as part of technical compliance under

6 For example, the judge may order a bond or may order attachment of assets sufficient to secure any pecuniary liabilities (such as a fine) which may ultimately be imposed.

7 *Criminal Procedure Law* art.263bis, 282, 282bis, 334, 338, 367 quarter to 367 septies, 374, 589, 592, 600, 738.2 & 783, 764; *Penal Code* art.374 & 374.1 for drug and related ML offences; and *Tax Code* art 81 for tax crimes and related non-tax crimes.

8 *Penal Code* art.127(5) (for criminal offences) and 374 (for drug and related ML offences), and *Criminal Procedure Law* (as amended by *Law 18/2006* and *Law 13/2009*) art.338, 367bis to 367 septies, 600 & 738.

the *2013 Methodology*. Since Spain's last mutual evaluation, the FATF Standards have been significantly strengthened in this area by imposing new requirements which focus on the FIU's strategic and operational analysis functions, and the FIU's powers to disseminate information upon request and request additional information from reporting entities.

a3.20. *Criterion 29.1*. Spain has established an FIU—the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC)—which has responsibility for acting as a national centre for receiving and analysing suspicious transaction reports (STRs) and other information relevant to ML/TF and associated predicate offences, and for disseminating the results of that analysis: *AML/CFT Law art.45(4)(a)-(d), RD 304/2014 art.67(1)*.

a3.21. *Criterion 29.2.* SEPLAC serves as the central agency for the receipt of disclosures filed by reporting entities, including: a) STRs filed by reporting entities as required by R.20 and R.23; and b) other systematic reporting required by national legislation, including cash transaction reports, reports on transactions with higher risk jurisdictions, transportations of currency and bearer negotiable instruments (BNI), aggregated information on money remittances and wire transfers, statistical information on foreign transactions and capital movements, and information on opening or closing of current accounts, savings accounts, securities accounts and term deposits.[9]

a3.22. *Criterion 29.3*. SEPBLAC is legally empowered to require from all reporting entities all information and documentation needed to perform its functions: *AML/CFT Law art.21*. SEPBLAC also has access to a wide range of administrative, law enforcement, and financial information (including tax[10] information)[11], apart from its own database, that it requires to properly undertake its functions.

a3.23. *Criterion 29.4*. SEPBLAC undertakes operational analysis based on the information received from reporting entities and the other information available to it (as described in criterion 29.3). The analysis is aimed at identifying specific targets, following the trail of particular activities or transactions, and determining links between those targets and possible proceeds of crime, ML/TF and predicate offences: *AML/CFT Law art.45(4)(d)*. SEPBLAC is also required to undertake strategic analysis and has issued strategic analysis reports on a number of priority issues such as MVTS, tax issues, cash movements and seizures, terrorism, and Nigerian fraud scams: *RD 304/2014 art.67(5)*.

a3.24. *Criterion 29.5.* SEPBLAC is authorised to disseminate (spontaneously or upon request) the results of its operational analysis, in the form of Financial Intelligence Reports, to competent judicial bodies, the Public Prosecutor's Office, the police and administrative authorities. SEPBLAC uses dedicated, secure and protected telematics channels to disseminate and receive information from the National Police and the Civil Guard, the tax and customs authorities, and foreign FIUs.

a3.25. *Criterion 29.6.* SEPBLAC protects its information by:

a. Rules governing the security and confidentiality of information. The data, documents and information received, processed, maintained or disseminated by SEPBLAC shall be

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9 *AML/CFT Law* art.20, 36, 43 45(4)(c) & 48.2.

10 *Collaboration Agreement For the Exchange Of Information Between the AEAT and SEPBLAC* governing the exchange of information between SEPLAC and the State Tax Agency (AEAT), based on art.33 of the *AML/CFT Law* and art.94 of the *Tax Code*.

11 **Financial:** Tax records, asset registers, land/property ownership records, company records, customer transactions of banks and other FIs, licensing and compliance records, licences on conducting different types of currency transactions, the Financial Ownership File (described in Box 3.1), and the notarial Single Computerised Index (described in Box 4.1). **Administrative:** Registers of physical persons, visas, passports, citizenship records, social security information on physical persons, and address information. **Law enforcement:** records before court decision, criminal records after conviction, and customs records.

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confidential and may not be disclosed except in defined cases: *AML/CFT Law art.45(4), 46 & 49*.

b. SEPBLAC staff members have clear instructions governing security, confidentiality and the handling of information, and are subject to security clearance.[12] Breaching confidentiality duties may constitute a criminal offence or a disciplinary infringement: *Penal Code art.198, Law 13/1994 art.6*.

c. Access to SEPBLAC's facilities and information, including IT systems, is restricted and protected: *SEPBLAC Instruction on Information Security*. SEPBLAC itself is housed in secure, guarded and anonymous premises.

a3.26. *Criterion 29.7*. The following factors are relevant to SEPBLAC's operational independence and autonomy.

a. SEPBLAC is organically and functionally attached to the Commission, but acts with operational autonomy and independence: *RD 304/2014 art.67(4)*. The Director of SEPBLAC is appointed by the Commission which also oversees SEPBLAC by approving its organisational structure and operational guidelines. These guidelines are general in nature and do not refer to operational matters such as specific STRs or other sources of information which are to be disseminated by SEPBLAC on a strictly technical basis. Such operational decisions are left to SEPBLAC's discretion: *AML/CFT Law art.44.2(d), 44.2(f) & 46.1*.

b. SEPBLAC is able to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information: *AML/CFT Law art.48.3*. Memoranda of understanding (MOUs) with other FIUs are authorised by the Commission and signed by the SEPBLAC director.

c. SEPBLAC has legally established core functions: *AML/CFT Law art.45.4, RD 304/2014 art.67*.

d. SEPBLAC is able to obtain and deploy the resources needed to carry out its functions, on an individual and routine basis, free from any undue political, government or industry influence or interference: *AML/CFT Law art.45.3 RD 304/2014 art.67(7)*.

a3.27. Criterion 29.8. SEPBLAC is a founding member of the Egmont Group.

a3.28. *Weighting and conclusion:* Spain meets all eight criteria of R.29. ***R.29 is rated compliant.***

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

a3.29. In its 3rd MER, Spain was rated largely compliant with these requirements (para.229-251 and 300-301). The deficiency related to effectiveness which is not assessed as part of technical compliance under the *2013 Methodology*.

a3.30. *Criterion 30.1.* Spain has a comprehensive institutional framework of judicial police, prosecutors and judges designated with responsibility for ensuring that ML/TF and predicate offences are properly investigated. Two major police corps—the National Police (CNP) and Civil Guard are responsible for combating any crime, including ML/TF, under the direction of the State Secretary (Deputy Minister) for Security (Ministry of Interior): *Criminal Procedure Law art.282 & 282bis*. The Customs Surveillance authorities are authorised to investigate and pursue certain crimes, and are part of the judicial police. Additionally, Catalonia,

12 SEPBLAC's *Instruction on Information Security* has been individually distributed to all personnel.

the Basque Country and Navarre have police corps, acting under the direction of regional authorities. All general prosecutors are competent to try ML cases, and any trial court has competence over such proceedings within its territory. Additionally, Spain has police units, prosecutors and courts specialised in investigating and prosecuting specific predicate offences and related ML, including:

a. Within the CNP: the Central Unit against Economic and Fiscal Crime (UDEF)[13] (all national/international economic and tax crimes), the Unit Against Drugs Organised Crime (UDYCO) (drug and organised crime offences), and the General Information Office (crimes related to the activities of persons subject to AML/CFT regulation and developing intelligence against terrorism).

b. Within the Civil Guard: the Office of Information combats terrorism and its financing at the local level (*provincias*) through the Groups Information Command (GICs), and centrally at the national level by the Information Service which has a Section of Economic Research which is in charge of complex investigations and also advises the GICs in this area. The Office of Judicial Police combats ML at the local level by different judicial police units situated in each of Spain's provinces. At the central level, the most specialised ML investigations are carried out by the Central Operation Unit (UCO) which has a ML Group for this purpose. Additionally, there is a Financial Intelligence unit at the Technical Unit of the Judicial Police (UTPJ).

c. Within the Tax Agency (AEAT): the Customs Surveillance Unit (which has Customs Fiscal Specialised Units) is in charge of investigating and pursuing certain crimes and misdemeanours including tax fraud, corruption, smuggling, and transportation of means of payment. The Department of Customs and Excise is responsible for all customs controls, including those relating to movements of means of payment in the customs area, and may fulfil this responsibility using its own officials (e.g., members of the Customs Surveillance) or with support of the Civil Guard. The Adjoint Directorate of Customs Surveillance (in the Customs and Excises Department) investigates tax irregularities relating to customs and excise, and is authorised to seize the profits of criminal activities irrespective of their form: *Organic Law 12/1995*. The Equity Investigation Department in the General Sub-directorate of Operations coordinates the AML actions of the Customs Surveillance, including payment methods control operations and actions taken in the fight against tax fraud in support of other Departments, and develops plans and strategies.

d. Within the Public Prosecution: the Special Prosecutor (SP) against Drug Trafficking (drug traffic and related ML), the SP Against Corruption and Organised Crime (corruption, organised crime and related ML, other than when to drug trafficking offences or terrorism), and the Prosecutor Office of the National High Court (TF and related ML): *Organic Statute of Public Prosecutor art.19.4.n, 19.4.q & 19.3(a) to (c)*.

e. The National High Court has exclusive competence over proceedings involving TF and related ML.

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a3.31. *Criterion 30.2.* All units and research groups of the judicial police are authorised to conduct financial investigations related to their criminal investigations, both in parallel and simultaneously, under the supervision of the Judicial Authority and the Prosecutor. They can also refer cases to other agencies to follow up with such investigations, where appropriate, regardless of where the predicate offence occurred. The Civil Guard uses the System of Investigation (SINVES) to support and coordinate its investigations and referrals to other agencies. A similar system—the Coordination of Invetigation System (SCI)—is used to coordinate the different investigative units at the national level.

13 UDEF also provides operational coordination and technical support to the corresponding territorial departments: *INT/2103/2005 Order of 1 July 1 as amended by INT/2103/2005 Order of 1 July*.

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a3.32. *Criterion 30.3*. Spain has designated competent authorities to expeditiously identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. Within the CNP, the Assets Investigation Section integrates all of the units responsible for carrying out ML investigations. Within the Civil Guard: all judicial police units and research groups have competence and capacity to undertake economic research related to their criminal investigations; the Asset Tracing Office (OLA) cooperates with foreign authorities conducting financial investigations; the Customs Fiscal Specialised Units monitor Spain's customs entry points and focus on ML and cross-border transportations of cash; and the Territorial Fiscal Units undertake "fiscal patrolling" along Spain's coastal areas and land borders.

a3.33. *Criterion 30.4.* The Tax Agency (AEAT) is not considered to be a LEA. However, as explained above in criterion 30.1, the Customs Surveillance Unit (which is a department of the AEAT) is an LEA (albeit not a security body): *Organic Law 2/1986 art.9*. The Tax Auditing Department of the AEAT undertakes administrative investigations of the predicate offence of tax crimes (specifically tax irregularities on direct and indirect taxation, except custom and excises). If ML/TF is detected during an investigation, it must be reported to a prosecutor or judge, along with any recommendations for invoking provisional measures. The Tax Auditing Department has powers to freeze or seize the proceeds of tax frauds: *Tax Code art.81*.

a3.34. *Criterion 30.5*. The Money Laundering and Anti-Corruption Central Investigation Unit of the CNP and the Central Operation Unit (UCO) of the Civil Guard are specialised judicial police units designated to investigate corruption and related ML. A Special Prosecutor Office against Corruption and Organised Crime was also created to deal with these specific types of offences and related ML. These authorities have sufficient powers to identify, trace, and initiate the freezing and seizing of assets.

a3.35. *Weighting and conclusion:* Spain meets all five criteria of R.30. ***R.30 is rated compliant***.

Recommendation 31 - Powers of law enforcement and investigative authorities

a3.36. In its 3rd MER, Spain was rated largely compliant with these requirements (para.252-256 and 300). The deficiency related to effectiveness which is not assessed as part of technical compliance under the *2013 Methodology*.

a3.37. *Criterion 31.1*. The competent authorities conducting investigations of ML/TF and associated predicate offences can obtain access to all necessary documents and information for use in those investigations, prosecutions, and related actions. The judicial police can obtain judicial authorisation for the production of records which may be used for evidentiary purposes and that are held by FIs/DNFBPs and other natural/legal persons. Upon request and warrant, financial information can also be gathered through the EUROPOL 09-EU-US TFTP Agreement: *EU Financial Investigation Handbook pages 252-256*. The judicial police, judges and courts also have the power to search persons and premises, take witness statements, require monitoring of a specific account, and gather evidence for use in legal proceedings: *Criminal Procedure Law art.334, 410-450 & 545-578*.

a3.38. *Criterion 31.2*. The competent authorities are able to use the wide range of investigative techniques contained in the *Criminal Procedure Law* for investigating ML/TF and associated predicate offences including undercover operations, intercepting communications, accessing computer systems, and controlled delivery: *art.263 bis, 282 bis & 579-588*.

a3.39. *Criterion 31.3*. There are a number of mechanisms through which the judicial police, prosecutors and security forces can identify whether natural or legal persons hold or control accounts, or have ownership of assets—none of which requires prior notification to the owner of the account/asset or the requested entity. Under order of a court or prosecutor, the judicial police can obtain this information directly from the Tax Database or the Tax Agency can communicate directly with SEPBLAC: *AML/CFT Law art.49.2(e)*. The authorities can also access directly: public registries of land (*cadastre*), commerce (*informa*) and moveable property; the Justice Minister Register on life insurance; the notaries' Single Computerised Index (described in Box 4.1 of the MER); the Registry of Social Security (TGSS); the Bank of Spain CIRBE on the Balance of Payments; and the Financial Ownership File (described in Box 3.1 of the MER).

a3.40. *Criterion 31.4.* The competent authorities investigating ML, TF and associated predicate offences are able to ask for all relevant information held by the FIU (SEPBLAC), and may use such information as intelligence to further their investigations. SEPBLAC is legally responsible for providing assistance to judicial bodies, the Public Prosecutor's Office, the criminal police and the competent administrative bodies: *AML/CFT Law art.45.4*.

a3.41. *Weighting and conclusion:* Spain meets all four criteria of R.31. ***R.31 is rated compliant***.

Recommendation 32 – Cash Couriers

a3.42. In its 3rd MER, Spain was rated largely compliant with these requirements (para.302-329). The deficiency related to effectiveness which is not assessed as part of technical compliance under the *2013 Methodology*.

a3.43. *Criterion 32.1*. Spain has implemented a declaration system for incoming and outgoing cross-border transportations of currency and BNI which are made by travellers (cash couriers), through the mail or in cargo.[14] The declaration obligation applies to both natural and legal persons acting on their own or behalf of a third party, and applies to the full range of currency and BNI, as that term is defined in the glossary to the *FATF Recommendations*.

a3.44. *Criterion 32.2.* Spain has implemented a written declaration system for all travellers carrying amounts above the EUR 10 000 threshold (or its equivalent foreign currency): *AML/CFT Law art.34.1(a)*. The declaration shall contain accurate data on the bearer, owner, recipient, amount, nature, origin, intended use, route, and means of transport used. The obligation to declare is deemed breached if the information submitted is incorrect or incomplete.[15]

a3.45. *Criterion 32.3* - This criterion is not relevant, as it only applies to disclosure systems.

a3.46. *Criterion 32.4.* Upon discovery of a false declaration or failure to declare, Customs officials and police officers have broad powers to control and inspect natural persons, their baggage, and their means of transport, in accordance with customs law.[16]

a3.47. *Criterion 32.5.* Failure to comply with the declaration obligation constitutes a serious offence. The fine is from EUR 600 (minimum) up to twice the value of the means of payment (maximum) which is significantly higher than the sanctions which were in place at the time of Spain's last mutual evaluation.[17] To ensure proportionality, the applicable penalty for breaching the declaration obligation is determined by considering any aggravating circumstances, including the mode of concealment, amount undeclared, lack of proof of the origin of the funds, intentionality or repetition of the conduct, etc.: *AML/CFT Law art.52.3(a), 57.3 & 59.3*.

a3.48. *Criterion 32.6*. All information obtained through the declaration is submitted to SEPBLAC through an electronic database managed by the Tax Agency. When there is a seizure, the record is immediately sent to

14 *AML/CFT Law* art.34, EU Reg.1889/2005 art.3, Order of the Ministry of Economy and Finance EHA/1439/2006 art.1, Organic Law 12/1995 art.1, RD 304/2014 art.46.

15 *AML/CFT Law* art.34.1(a), 34.4, and declaration form (Form S-1) set out in the Order of the Ministry of Economy and Finance (EHA/1439/2006).

16 *AML/CFT Law* art.35.1, EC Reg. 2913/92 art.4(14) & 13, Organic Law 12/1995 art.16.1, Ministerial Order 1439/2006 art.5, and *Departmental Customs Note on the Cash Movements Declaration Process* issued by the Deputy Directorate General on Customs Management (12 February 2007).

17 When Spain was last assessed, the applicable penalties were EUR 600 to a maximum of half the amount of the means of payment utilised: 3rd MER, para.320.

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SEPBLAC for investigation and to the Commission for instituting sanction proceedings, if appropriate: *AML/CFT Law art.35.2 & 36, RD 304/2014 art.45(2), Order EHA/1439/2006 art.8*. SEPBLAC is also informed in cases where there is no seizure: *RD 304/2014 art.45(3)*.

a3.49. *Criterion 32.7*. At the domestic level, Spain has implemented information exchange mechanisms, specialised units and joint police/customs cooperation centres at the EU internal borders to ensure that there is adequate coordination among customs, immigration and other related authorities on issues related to the implementation of R.32. Declarations that could be relevant for fiscal purposes are reported directly to the Tax Agency. Information related to seizures is available to the Tax Agency and Spain's security forces which handle immigration matters: *AML/CFT Law art.36, Order EHA/1439/2006 art.8(3)*. Breaches of the declaration obligation are reported to the Commission which centralises this information and periodically forwards it to the LEAs, the National Intelligence body (CNI), CICO, the customs supervision services of the AEAT, and SEPBLAC: *AML/CFT Law art.36*. The CNP and Civil Guard can obtain information from the Commission when their investigations involve people with seized money. The Cash Control Group[18] coordinates all activities related to the movement of means of payment. There are Joint Police and Customs Cooperation Centres at the EU internal borders[19], and agreements in place to strengthen and expand cooperation between the authorities responsible for law enforcement internally within the EU in the common border areas.

a3.50. *Criterion 32.8.* Customs officers and police are able to "control" (in other words, stop) currency/BNI to verify compliance with the declaration obligation. They are empowered to seize the means of payment when there is a suspicion of ML/FT, a false declaration, or a failure to submit the declaration: *AML/CFT Law art.35.1 & 35.2; RD 304/2014 art.45(1) & (2), and art.46*.

a3.51. *Criterion 32.9.* Information obtained from the declaration system or from any related controls or inspections conducted may be transferred to the competent authorities of other countries: *Law 10/2010 art.37*. The information to be collected and maintained on the declaration form includes: the amount of the declared means of payment, the identification data (date/country of birth, nationality, name, address) of the bearer and declarant, etcetera.

a3.52. *Criterion 32.10*. The information collected pursuant to the declaration obligation is subject to confidentiality: *AML/CFT Law art.49, EU Reg.515/97 art.8*. There are specific safeguards in the legislation to ensure that the declaration obligation does not restrict trade payments or the freedom of capital movements: *Law 19/2003 art.1.2*.

a3.53. *Criterion 32.11*. Persons carrying out physical cross-border transportations of currency/BNI that are related to ML/TF or predicate offences are subject to the sanctions applicable the ML/TF offences, as described in R.3 and R.5. The confiscation of any smuggled goods, items, proceeds or their equivalent value is authorised: *Organic Law 12/1995 art.5*.

a3.54. *Weighting and conclusion:* Spain meets all 11 criteria of R.32. ***R.32 is rated compliant***.

18 The Cash Control Group is chaired by the Treasury and comprised of representatives from the Treasury SEPBLAC, the security forces responsible for handling immigration matters (the National Police and the Civil Guard), the CNI, Customs, and the Customs Surveillance.

19 See the *Departmental Customs Note on Police & Customs Cooperation Centres* (26 January 2009) which sets out criteria and standard procedures to be applied in these Customs and Police Cooperation Centres.

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4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Recommendation 5 - Terrorist financing offence

a4.1. In its 3rd MER, Spain was rated largely compliant with these requirements (para.113-129). The main technical deficiencies were that the offence did not cover: the financing of a sufficient range of terrorist acts; providing or collecting funds for a terrorist organisation or individual terrorist for any purpose; and funds from a legitimate source. The offence also required the funds to have been actually used to carry out or attempt or be linked to a specific terrorist act, and did not apply criminal liability to legal persons. Spain has subsequently amended its legislation to address many of these deficiencies.

a4.2. *Criterion 5.1*. The TF offences covers all of the terrorist acts described in article 2(a) and 2(b) of the TF Convention: *Penal Code (as amended by Organic Law 5/2010) art.576 & 576bis(1)*.

a4.3. *Criterion 5.2.* The TF offences cover any person who, directly or indirectly, provides or collects funds intending them to be used, or knowing they shall be used, fully or partially to commit any of the terrorism offences of articles 571-580, or to deliver them to a terrorist organisation or group. The TF offences also cover any acts of collaboration, including providing any economic aid to the activities or purposes of terrorist organisations or groups: *Penal Code art.576 & 576bis(1)*. However, the financing of an individual terrorist (who is not part of a terrorist organisation/group) for purposes unrelated to the commission of a terrorist act is not covered.

a4.4. *Criterion 5.3*. Spain has terrorist financing offences that extend to any funds whether from a legitimate or illegitimate source. Article 576bis covers *funds*—a term which, on its face, does not extend to assets of every kind, as is required by R.5. Article 576 covers any type of "economic" aid (a term which broad enough to be consistent with the definition of *funds* in the Glossary to the *FATF Recommendations*). There are no restrictions in the legislation that would prevent the TF offences from covering funds/economic aid from legitimate or illegitimate sources.

a4.5. *Criterion 5.4.* The TF offences do not require that the funds or economic aid were actually used to carry out or attempt a terrorist act or are linked to a specific terrorist act.

a4.6. *Criterion 5.5*. The intent and knowledge required to prove the offence can be inferred from objective factual circumstances (see also criterion 3.8).

a4.7. *Criterion 5.6.* Natural persons convicted of TF are punishable by five to 10 years imprisonment, and a fine of 18 to 24 months (approximately EUR 1 115 to EUR 298 000).[1] Within this range, the level of sanction imposed must be proportionate to the circumstances. If the funds are used to execute specific terrorist acts, the offence shall be punished as co-perpetration or complicity, as appropriate, which means that significantly higher sanctions apply: 20 to 30 years if someone dies; 15 to 20 years if someone is seriously injured; and 10 to 15 years if someone is injured less seriously: *art.576bis and 572*. As for whether these sanctions are dissuasive, heavier sanctions apply to TF offences than for other types of financial crime in Spain, even in circumstances where no terrorist act is executed. This does not seem unreasonable since, unlike other types of financial crime, TF may have life-threatening consequences. The sanctions available in Spain fall within the range of sanctions available in other FATF members for TF offences.

1 Fines are expressed in days or months (meaning a period of 30 days): *Penal Code art.50*. The daily rate is from EUR 2 to EUR 400 for natural persons, and EUR 30 to EUR 5 000 for legal persons. The court determines the extent of the fine, within these limits, taking into account the amount of the fine in relation to the economic situation of the convicted person (equity, income, family obligations, and other charges).

a4.8. *Criterion 5.7.* Since its last evaluation, Spain has extended its TF offences by applying criminal liability and sanctions to legal persons (other than certain State-owned enterprises, as described above in R.3) which are punishable by: a fine from two to five years (approximately EUR 22 300 to EUR 9.3 million) (if the offence committed by a natural person has a punishment of imprisonment exceeding five years); a fine from one to three years (approximately EUR 740 to EUR 745 000) (if the offence committed by a natural person has a punishment of imprisonment of between two and five years); dissolution, suspension of activities or closure of premises and establishments for up to five years; temporary (for up to 15 years) or permanent prohibitions on carrying out certain activities; being barred from obtaining public subsidies and aid, entering into contracts with the public sector, or enjoying tax or Social Security benefits and incentives for up to 15 years; or judicial intervention to safeguard the rights of the workers or creditors for up to five years: *Penal Code art.31bis & 576bis(3)*.

a4.9. *Criterion 5.8.* A full range of ancillary offences are available including: attempt, conspiracy, provocation, solicitation, and collaboration. Principals to the offence include anyone who directly induces another to commit a crime or co-operates by committing an act without which the crime could not have been committed. Accessories are those who co-operate in carrying out the offence with prior or simultaneous acts: *Penal Code art.15, 28, 29, 579(1) & 576(2)*.

a4.10. *Criterion 5.9.* TF offences are predicate offences for ML (see R.3).

a4.11. *Criterion 5.10.* The TF offence applies, regardless of whether the person is alleged to have committed the offence(s) in the country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur. Spanish courts have broad jurisdiction to hear cases for crimes and misdemeanours committed in Spanish territory or committed aboard (see also criterion 3.6). Additionally, Spanish courts recognise acts as crimes when committed by Spanish citizens or foreigners abroad when those acts can be considered terrorism: *Spanish Judiciary Act art.23*.

a4.12. *Weighting and conclusion:* In practice, situations involving the financing of an individual terrorist (who is not otherwise part of a terrorist group) for purposes completely unrelated to a terrorist act are much less common than the financing of a terrorist act or the material support of a terrorist organisation for any purpose. Likewise, financing activity is more often done through the provision/collection of funds, than through the provision/collection of other types of property (although the latter does occur) (criterion 5.3). In any case, even if this circumstance (which is not covered by article 576bis) does arise, Spain will usually be able to prosecute this activity using the article 576 collaboration offence. Although certain State-owned enterprises are exempt from criminal liability (criterion 5.7), the possibility of one being knowingly involved in TF does not appear to be likely and this factor is also mitigated for reasons described in R.3. Consequently, these deficiencies are not considered to be serious. ***R.5 is rated largely compliant***.

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

a4.13. In its 3rd MER, Spain was rated largely compliant with these requirements (para.145-194). The main technical deficiencies were: gaps in the scope of the freezing measures pursuant to the European Union (EU) Regulations (limited definition of *funds*—an issue which has improved since then, and EU internals not subject to freezing measures); very little guidance to FIs/DNFBPs on how to implement these requirements; and no clear and publicly known delisting and unfreezing procedures. Additionally, the domestic freezing mechanism set out in Law 12/2003 (which applies to EU internals and could, therefore, help to fill some gaps in the EU framework) had not been practically implemented, and was still not implemented at the time of Spain's 4th FUR four years later (in 2010). There were also some concerns about effectiveness which do not fall within the scope of a technical compliance assessment under the *2013 Methodology*. Spain recently enacted new legislation aimed at addressing these issues.

a4.14. *Criterion 6.1.* In relation to designations under UN resolutions 1267/1989 and 1988:

a. The Foreign Affairs and Cooperation Ministry (MAEC) is responsible for proposing designations to the UN 1267/1989 and 1988 Committees on behalf of Spain, through its

Permanent Mission to the United Nations (UN).

b. The LEAs and National Intelligence Agency (CNI) are responsible for detecting, investigating and identifying targets for designation, and can use the same powers as when they investigate any crime. Members of the Watchdog Commission[2] may propose designations, based on the information gathered in their respective departments. In practice, designations would be proposed by the security forces.

c. The MAEC applies an administrative standard of proof when deciding whether or not to propose a UN designation. The decision is not conditional on the existence of a criminal proceeding.

d. & (e) The question of whether Spain follows the UN procedures/forms and provides sufficient information is not relevant because, although it has a process for submitting designations to the UN (as described in subparagraphs a to c above), in practice, it has not yet done so.

a4.15. *Criterion 6.2.* For 1373 designations, both EU and domestic measures apply.

a. At the EU level, the Council of the EU is the competent authority for making designations: *Council Reg.2580/2001, CP 931/2001/CFSP*. At the domestic level, the MAEC is responsible for proposing designations to the EU on behalf of Spain through its Permanent Mission to the EU. The Watchdog Commission is also authorised to initiate freezing action: *Law 12/2003*.

b. The mechanisms described in criterion 6.1 apply to identifying targets for 1373 designations.

c. At the EU level, when requests are received, CP 931 Working Party (WP) of the Council of the EU examines and assesses whether the person meets the 1373 designation criteria.[3] All Council working parties consist of representatives of the governments of the Member States. At the domestic level, when requests are received, the Watchdog Commission is authorised to issue freezing orders in relation to persons (including EU internals) who meet the 1373 criteria.[4]

d. CP 931 WP applies a "reasonable basis" evidentiary standard of proof, and the decision is not conditional on the existence of criminal proceedings: *CP 2001/931/CFSP art.1(2) & (4)*. Likewise, the Watchdog Commission applies an administrative burden of proof, unconditional on the existence of criminal proceedings: *AML/CFT Law art.42(1)*.

e. At the EU level, requests to third countries are not addressed in CP 2001/931/CFSP or Regulation 2580/2001. It is common practice that a number of countries (in particular, those who are preparing to join the EU) are asked to align themselves with any new CFSP Decision. The requests are, in so far as known, made by the Council Presidency (i.e., the Member State that chairs most of the Council meetings, including the CP 931 Working Party) and prepared by the Council Secretariat. All designations must be supported by sufficient

2 The Watchdog Commission is comprised of representatives from the Public Prosecutor, Ministry of Justice, Ministry of the Interior, and Ministry of Finance. Its President is the State Secretariat for Security.

3 The criteria specified in Common Position (CP) 2001/931/CFSP are consistent with the designation criteria in resolution 1373.

4 The criteria specified in Law 12/2003 are consistent with the designation criteria in resolution 1373 (for the Watchdog Commission); *AML/CFT Law* art.42(1) (for the Council of Ministers).

information to identify the specific designated persons and exculpate those bearing the same or similar names: *CP 2001/931/CFSP art.1(5)*. The law does not specify clear channels or procedures for requesting other countries to give effect to actions initiated under the Watchdog Commission freezing mechanism.[5]

a4.16. *Criterion 6.3.*

a. The competent authorities have sufficient legal authorities and procedures to collect or solicit information to identify persons/entities who meet the designation criteria. The MAEC and Ministry of Interior have a mechanism for collaborating and sharing information on Spain's proposals for UN designations, although as Spain has not yet proposed any designations, this mechanism has not been used in practice: *Action Protocol (July 2013) Clause 1*. The Watchdog Commission discusses designation proposals and related information queries. All EU Member States are required to provide each other with the widest possible range of police and judicial assistance in these matters, inform each other of any measures taken, and cooperate and supply information to the relevant UN Sanctions Committee.[6]

b. Designations take place without prior notice to the person/entity identified[7]. For asset freezing, the Court of Justice of the EU makes an exception to the general rule that notice must be given before the decision is taken in order not to compromise the effective of the first freezing order. The listed individual or entity has the right to appeal against the listing decision in Court, and seek to have the listing annulled.

a4.17. *Criterion 6.4.* Implementation of targeted financial sanctions (TFS), pursuant to resolutions 1267/1989 and 1988, does not occur "without delay". Because of the time taken to consult between European Commission departments and translate the designation into all official EU languages, there is often a delay between when the designation and freezing decision is issued by the UN and when it is transposed into EU law under Regulation 881/2002. As regards Resolution 1988, similar issues arise when the Council transposes the decision under Regulation 753/2011. In 2013, transposition times ranged from 7 to 29 days for resolution 1989 designations, and 7 days to 3.5 months for resolution 1988 designations[8]. New designations are treated as being urgent and are generally processed in times at the lower end of this range. Other amendments to the list (such as deletions) are less urgent and will take more time to be transposed into EU regulation. Spain recently amended the *AML/CFT Law* to enable the Council of Ministers, on the proposal of the Minister for Economy and Competitiveness, to implement TFS without waiting for designations to be transposed into EU regulation: *art.42(1)-(2)*. However, this mechanism is untested and it is unclear, on the face of the legislation, whether the Council of Ministers could take its decision quickly enough to implement TFS under resolutions 1267/1989 and 1988 without delay. For resolution 1373, TFS are implemented without delay because, once the decision to freeze has been taken, Council Regulation 2580/2001 is immediately applicable to all EU Member States and the Watchdog Commission resolutions are immediately effective in Spain.

a4.18. *Criterion 6.5.* Spain has the following legal authorities and procedures for implementing and enforcing TFS:

a. For resolutions 1267/1989 and 1988, there is an obligation to freeze all funds, financial

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5 **Draft Legislation:** In Spain, regulations are currently being drafted with an aim to clarify this aspect.

6 Reg.881/2002 art.8 & 2580/2001 art.8, CP 2001/931/CFSP art.4.

7 Reg. 1286/2009 preamble para.5 and art.7(a)(1), Law 12/2003 art.2(4), AML/CFT Law art.42(1), Reg. art.47(3).

8 In the 3rd round of mutual evaluations, these delays ranged generally between 10 to 60 days.

assets or economic resources of designated persons/entities.[9] However, as described in criterion 6.4, long transposition times mean that this does not happen without delay and raises the question of whether the freezing action, in practice, takes place without prior notice to the designated person/entity. It is not yet known whether the new as-yet-untested Council of Ministers mechanism can act quickly enough to solve the problem, and this is not clear on the face of the legislation. For resolution 1373, the obligation to freeze all funds/assets of designated persons/entities applies immediately to all EU Member States, and without notice to the designated persons/entities: *Reg.2580/2001 art.2(1)(a)*. Listed EU internals[10] are not subject to the freezing measures of Regulation 2580/2001, but are subject to increased police and judicial cooperation among Member States: *CP 2001/931/CFSP footnote 1 of Annex 1*. The *Treaty of Lisbon (2007)* provides a legal basis upon which to do so, but the EU has not implemented such a mechanism: *art.75*. The Watchdog Commission Resolutions to take freezing action apply immediately in Spain, and may be applied to EU internals, but these measures do not adequately fill the gaps in the EU legal framework: *Law 12/2003*.

b. For resolutions 1267/1989 and 1988, the freezing obligation extends to all funds/other assets that belong to, are owned, held or controlled by a designated person/entity. The obligations to freeze the funds or assets of persons and entities to be frozen when acting on behalf of, or at the direction of, designated persons or entities is met by the requirement to freeze funds or assets "controlled by" a designated entity, which extends to persons acting on their behalf in relation to those funds: *Regulations 881/2002 art.2(2)*. For resolution 1373, the freezing obligation does not cover a sufficiently broad range of assets under the EU framework (although subsequent regulations cover a wider range of assets): *Reg.2580/2001 art.1(a) & 2(1)(a), Law 12/2003 art.1.1*.

c. At the EU level, EU nationals and persons within the EU are prohibited from making funds/other assets available to designated persons/entities, as required by R.6.[11] At the domestic level, prohibitions in the Watchdog Commission resolutions are not sufficiently broad; however, this not a deficiency because these aspects are covered under the EU legislation: *Law 12/2003 art.1.3.*

d. Once the UN or EU makes a designation, Spain's Permanent UN or EU Mission informs the Foreign Ministry, which communicates the designation and supporting information to the other relevant ministries and departments in Spain. Designations made pursuant to the EU regulations are published in the EU Official Journal (OJEU), and on the Internet[12] (users may subscribe to an automatic alert notification). Designations or restrictive financial measures adopted by the Watchdog Commission or the Council of Ministers are published in the Spanish State Official Gazette (BOE). Direct pre-notification to FIs/DNFBPs is possible. Guidance to FIs/DNFBPs and other persons/entities that may be holding targeted funds/

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9 Regs. 881/2002 art.2(1), 1286/2009 art.1(2), 753/2011 art.4, and 754/2011 art.1.

10 *EU internals* are persons who have their roots, main activities and objectives within the EU.

11 Reg.881/2002 art.2(2), 1286/2009 art.1(2), 753/2011 art.4 & 754/2011 art.1.

12 http://eeas.europa.eu/cfsp/sanctions/index_en.htm.

other assets is publicly available.[13] The authorities can also provide additional guidance on a case-by-case basis.

e. Natural and legal persons (including FIs/DNFBPs) are required to provide immediately any information about accounts and amounts frozen: *Reg.881/2002 art.5.1, Reg.2580/2001 art.4, Reg.753/2011 art.8*. Any freezing or blocking of funds/economic resources shall be immediately reported in writing to the Secretariat General: *RD 304/2014 art.47(3)*. Additionally, public authorities and FIs are required to notify the Watchdog Commission of any type of (attempted) deposit that may be performed in the frozen account: *Law 12/2003 art.4(b), (d) & (e)*.

f. The rights of *bona fide* third parties are protected: *Reg.881/2002 art.6, Reg.753/2001 art.7, Reg.2580/2001 art.4, AML/CFT Law art.42(1), and Law 12/2003 art.5*.

a4.19. *Criterion 6.6*. There are mechanisms for de-listing and unfreezing the funds/other assets of persons/entities which do not, or no longer, meet the criteria for designation.

a. For 1267/1989 and 1988 designations, Spain uses the mechanisms described in criterion 6.1 to officially submit de-listing requests to the relevant UN Sanctions Committees.

b. For 1373 designations, amendments to Regulation 2580/2001 are immediately effective in all EU Member States. The Watchdog Commission shall lift its freeze when its investigations do not evidence that the affected assets are related to the financing of terrorist activities: *Law 12/2003*. The Secretariat General of the Treasury—through the Sub-directorate General of Inspection and Control of Capital Movements (Sub-directorate General)—is the competent authority in charge of authorising the unfreezing of funds according to procedures established in regulation: *RD 304/2014 art.49(1).*

c. For 1373 designations, Spain uses the mechanisms described in criterion 6.2 to officially submit de-listing requests to the Council of the EU. Designated persons/entities are informed about the listing, its reasons and legal consequences, and have rights of due process. There are comprehensive procedures for allowing, upon request, a review of the designation decision before a court or other independent competent authority. The CP 931/Reg.2580/2001 list is reviewed *ex officio* at least every six months. A listed individual or entity can write to the Council to have the designation reviewed or can challenge the relevant Council Implementing Regulation in Court: *Treaty on the Functioning of the European Union (TFEU), art.263, 4th paragraph*. Article 275 also allows legal challenges of a relevant CFSP Decision. At the domestic level, resolutions of the Sub-directorate General are subject to appeal before the Secretariat General: *RD 304/2014 art.49(5)*.

d. & (e) For 1267/1989 and 1988, designated persons/entities are informed about the listing, its reasons and legal consequences, and have rights of due process. At the EU level, there are legal authorities and procedures for de-listing, unfreezing, and allowing a review of the designation by the European Commission (resolution 1267/1989) or the Council of the EU (resolution 1988). The designation can also be reviewed using the UN mechanisms of the UN Office of the Ombudsperson (1267/1989 designations) or the UN Focal Point mechanism (1988 designations). These procedures may take place in parallel: *Reg.881/2001 art.7a & Reg.753/2011 art.11*. Spain can put forward delisting requests to the UN on its own motion. The European Commission or the Council of the EU should inform the designated individual/entity about the appropriate UN channels and procedures.

13 www.tesoro.es/SP/expcam/CongelacionFondos.asp; *EU Best Practices for the Implementation of Restrictive Measures* issued by the European Council covers identifying designated persons, freezing assets, resolving false positives, delisting, unfreezing assets and humanitarian exemptions.

f. Spain has implemented publicly known procedures for obtaining assistance in verifying whether a customer's identity matches that of a designated person/entity.[14] Upon verification that the person/entity involved is not designated, the funds/assets must be unfrozen: *Reg.881/2002, Reg.2580/2001 & Law 12/2003*.

g. De-listings and other changes to lists of designated persons/entities are published and guidance is available as described in criterion 6.5.

a4.20. *Criterion 6.7.* At both the EU and domestic level, there are mechanisms for authorising access to frozen funds or other assets which have been determined to be necessary for basic expenses, the payment of certain types of expenses, or for extraordinary expenses: *Reg.881/2002 art.2a, Reg.753/2011, Reg.2580/2001 art.5-6, RD 304/2014 art.47 & 49, and Law 13/2003 art.2.3*.

a4.21. *Weighting and conclusion:* The ability to freeze without delay is the fundamental feature that distinguishes TFS from taking provisional measures in the context of an ordinary criminal proceeding. Consequently, the deficiencies described in criteria 6.5(a) and 6.4 are serious. The deficiency described in criterion 6.5(a) is also serious, given the terrorist risks which Spain has historically faced from EU internals—for example, from members of the Euskadi Ta Askatasuna (ETA). ***R.6 is rated partially compliant***.

Recommendation 7 – Targeted financial sanctions related to proliferation

a4.22. These requirements were added to the *FATF Recommendations*, when they were last revised in 2012 and, therefore, were not assessed during Spain's 3rd mutual evaluation which occurred in 2006.

a4.23. *Criterion 7.1*. Spain primarily relies on the EU framework for its implementation of R.7.[15] R.7 requires implementation of proliferation-related targeted financial sanctions (TFS) to occur *without delay*—a term that, in this context, is defined to mean "ideally, within a matter of hours".[16] Although the EU regulations are effective immediately in all EU Member States from the date of their publication, the delays in transposing the UN obligations into the EU legal framework (an issue that is discussed in more detail in R.6) mean that, in practice, TFS are not implemented without delay. As noted above in criterion 6.4, it is not known whether the new as-yet-untested Council of Ministers mechanism will address this problem. The practical impact of this deficiency may be mitigated in part by the separate and wider EU sanctions regimes applied to entities from Iran and DPRK. In addition, there is an EU authorisation process imposing comprehensive controls on transfers of funds between the EU and Iran, including prior authorisation (in article 30 of Regulation 267/2012, implementing the financial vigilance provisions of UNSCR1929). While this requirement implements a different UN obligation and is beyond the scope of R.7, it could potentially also be used to prevent the execution of transactions with designated entities during the period between their UN listing and the EU transposition.

a4.24. *Criterion 7.2.* The Sub-directorate General of Inspection and Control of Capital Movements is responsible for implementing TFS in this area.

a. The EU regulations require all natural and legal persons within the EU to freeze the funds/other assets of designated persons/entities. This obligation is triggered as soon as the regulation is approved and the designation published in the OJEU. However, delays in transposing the UN designations into EU law means that freezing may not happen without

14 Website of the Treasury and Financial Policy General Secretariat.

15 Resolution 1718 on the Democratic People's Republic of Korea (DPRK) is transposed into the EU legal framework through Council Reg. 329/2007, Council Decision (CD) 2013/183/CFSP, and CD 2010/413. Resolution 1737 on Iran is transposed into the EU legal framework through Council Reg. 267/2012.

16 See the glossary to the *FATF Recommendations.*

delay for entities which are not already designated by the EU, and raises the question of whether the freezing action, in practice, takes place without prior notice to the designated person/entity. It is not yet known whether the authorisation process noted above, or Spain's new Council of Ministers mechanism will fully address this problem (see also criteria 6.4 & 6.5a).

b. The freezing obligation extends to the full range of funds or other assets required by R.7.

c. The regulations prohibit funds/other assets from being made available, directly or indirectly, to or for the benefit of designated persons/entities, unless otherwise licensed, authorised or notified in accordance with the relevant UN resolutions: *Reg.329/2007 art.6.4 & Reg.267/2012 art.23.3*.

d. Mechanisms for communicating designations are the same as described above in criterion 6.5(d). Guidance to FIs/DNFBPs and others who may be holding targeted funds/other assets is publicly available.[17] If more specific guidance is required, FIs/DNFBPs may contact the Treasury directly to resolve any potential doubts or questions.

e. Natural and legal persons are required to provide immediately any information about accounts and amounts frozen: *Reg.329/2007 art.10, Reg.267/2012 art.40, and RD 304/2014 art.47(3)*.

f. The rights of *bona fide* third parties are protected: *Reg.329/2007 art.11 & Reg.267/2012 art.42*.

a4.25. *Criterion 7.3.* EU Member States are required to take all measures necessary to ensure that the EU regulations in this area are implemented, and have effective, proportionate and dissuasive sanctions available for failing to comply with these requirements.[18] SEPBLAC is responsible for monitoring and ensuring compliance with these obligations, and the supervisory regime is generally sound (see R.26, R.27 and R.28): *AML/CFT Law art.45.4f & 42(3)*. Failure to comply with these requirements is punishable by administrative and criminal sanctions as described in R.35: *AML/CFT Law art.51-52*.

a4.26. *Criterion 7.4.* The EU Regulations contain procedures for submitting delisting requests to the UN Security Council for designated persons/entities that, in the view of the EU, no longer meet the criteria for designation:

a. The Council of the EU communicates its designation decisions and the grounds for listing, to designated persons/entities who have rights of due process. The Council of the EU shall promptly review its decision upon request, and inform the designated person/entity. Such a request can be made, irrespective of whether a de-listing request is made at the UN level (for example, through the Focal Point mechanism). Where the UN de-lists a person/entity, the EU amends the relevant EU Regulations accordingly.[19]

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17 Treasury published *Guidance on Restrictive Measures Adopted in View of the Situation of Iran: Financial Sanctions:* www.tesoro.es/doc/SP/expcam/Normativa/Sanciones%20internacionales%20Iran.%20%20Enero%202014.pdf; see also the *EU Best Practices for the effective implementation of restrictive measures.*

18 Reg.329/2007 art.14 & Reg.267/2012 art.47.

19 Reg. 329/2007 art.13.1(d) & (e), Reg.267/2012 art.46, and CP 2006/795/CFSP art.6.

b. Spain has implemented publicly known procedures for obtaining assistance in verifying whether a customer's identity matches that of a designated person/entity[20]. Upon verification that the person/entity involved is not designated, the funds/assets must be unfrozen.

c. There are specific provisions for authorising access to funds or other assets, where the competent authorities of Member States have determined that the exemption conditions set out in resolutions 1718 and 1737 are met, and in accordance with the procedures set out in those resolutions[21]. These include a web-platform where entities can request on-line authorisation to transfer funds to or from an Iranian person, entity or body above the threshold (according to the more restrictive legislation enacted by the EU).

d. De-listings and other changes to the EU list are published and communicated to FIs and DNFBPs, and guidance is available, as described in criterion 7.2(d).

a4.27. *Criterion 7.5.*

a. The addition to frozen accounts of interest, other earnings, or payments due under contracts, agreements or obligations that arose prior to the date of designation is permitted, provided that such amounts also become subject to the freeze[22].

b. Payment of amounts due under contracts entered into prior to designation is authorised, provided it has been determined that the contract and payment are not related to any of the items or activities prohibited under resolution 1737 (on Iran), and upon prior notification to the UN 1737 Sanctions Committee: *Reg.267/2012 art.24 & 25*.

a4.28. *Weighting and conclusion:* The ability to freeze without delay is the fundamental feature that distinguishes TFS from taking provisional measures in the context of an ordinary criminal proceeding. Consequently, the deficiencies described in criterion 7.1, and 7.2(a) are serious issues. ***R.7 is rated partially compliant.***

Recommendation 8 – Non-profit organisations

a4.29. In its 3rd MER, Spain was rated largely compliant with these requirements. However, that assessment pre-dated the adoption in 2006 of an Interpretive Note, which means that on this Recommendation, Spain has not previously been assessed against the detailed requirements of R.8.

a4.30. The concept of an NPO has not been legally developed in Spain, other than in the context of tax purposes and the listing of NPOs which can be subject to favourable tax treatment: *Law 49/2002 art.2 and Additional Disposition 8 & 9*. The sector is primarily made up of different types of entities: associations[23] (70% by number), foundations (23%) and religious entities (the remaining 7%, together with federations of associations or foundations). In terms of donations/resources, foundations receive 60%; religious entities receive 22%; and associations of public interest (q.v.) receive 17%. There are separate legal, registration and

20 Website of the Treasury and Financial Policy General Secretariat.

21 Reg.329/2007 art.7 & 8, and Reg.267/2012 art.24, 26 & 27.

22 Reg.329/2007 art.9, and Reg.267/2012 art.29.

23 The Spanish concept of *association* includes many entities such as clubs, interest groups, etc. which are outside the scope of the FATF definition of NPOs, as they do not primarily engage in raising or disbursing funds.

oversight regimes for each type of NPO.[24] On the risks of the NPO sector, Spain notes that ETA has in the past created NPOs (particularly cultural associations) specifically as a means of financing terrorism. There are also concerns about religious entities receiving funds from overseas as a risk relating to the wider context of potential terrorist activity (in particular radicalisation) rather than directly to the diversion of NPO funds to finance terrorism.

a4.31. *Criterion 8.1.* Spain reviewed the NPO sector and applicable legislation in 2012. (A previous review was conducted in 2004). The 2012 review included extensive information on the sector, and recommended additional legislative measures for well-resourced NPOs. Those measures, eventually applying to all foundations and associations, were introduced by article 42 of RD 304/2014.

a4.32. *Criterion 8.2.* Spanish authorities have produced a best practices paper, in cooperation with key NPO sector stakeholders, which is publicly available and has been disseminated to NPOs registries and groups. There has also been engagement with the sector on self-regulatory initiatives and on the implementation of the new obligations in RD 304/2014. Outreach is not always focused on TF, however wider terrorism risks associated with NPOs (principally radicalisation) are addressed through outreach to minority communities.

a4.33. *Criterion 8.3.* Different policies apply to each type of NPO. Each of the relevant laws includes general provisions regarding the purpose and governance of that NPO type. There is a general obligation to ensure that foundations or associations are not used for ML/TF, or to channel funds to terrorist groups: *AML/CFT Law art.39*. There are further specific measures which must be applied by NPOs in order to access particular streams of funding, including special tax status, funds from the Spanish Agency for International Cooperation and Development (AECID), funds managed through the *Pluralismo y Convivencia* foundation[25], or other public funds. The criterion is not fully met with respect to all associations which have weaker general good governance obligations than foundations and religious entities (unless they pursue a purpose of general interest that is recognised as such by the Public Administration, and/or as any other NPO, they receive public funds): *see Organic Act 1/2002 art.32.1 for the definition of "associations of public interest"*.

a4.34. *Criterion 8.4.* This criterion is not meant to apply to all NPOs. The measures required vary according to the type of NPO concerned, and its activities and funding sources. There are general requirements applicable to each type of legal entity and, overall, the measures specified by this criterion cover "*the NPOs which account for (i) a significant portion of the financial resources under the control of the sector; and (ii) a substantial share of the sector's international activities*", as is required by R.8:

a. Foundations are required to implement all of the elements set out in the criterion: maintaining information on the NPO (item a), issuing annual financial statements (b), having controls to account for funds (c), and licensing /registration (d), are required by Law 50/2002. A "know your beneficiaries" rule (e) and the maintenance of transaction records (f) are required by the *AML/CFT Law*: *art.39*. Additionally, there are external audit requirements for large foundations with assets/income above EUR 2 400 000 and/or more than 50 staff.

b. Associations are required to implement most of these elements: (a) and (b) are required by Law 1/2002, and elements (e) and (f) are required by the *AML/CFT Law*. There are no mandatory requirements to have controls to account for funds (c), or to be licensed /

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24 The legal requirements applying to NPOs are set out in: Law 50/2002 for foundations, Organic Law 1/2002 for associations, and Organic Law 7/1980 for religious entities. Additional requirements for foundations and associations are included in Spain's *AML/CFT Law*. There are further relevant requirements in various other laws and regulations which apply to subsets of the NPO sector such as associations of public purpose, international development NPOs, NPOs subject to a special tax regime, and overseas- or state-funded religious entities.

25 The *Pluralismo y Convivencia* is a public foundation whose purposes include providing economic support to religious minorities. In this framework, it has developed a project which channels foreign finance to minority religious groups. To ensure transparency before the Spanish state and foreign donors, it keeps a follow-up of the origin, destination, and use of funds.

registered (d). Nevertheless, Spanish authorities consider that a large majority of associations have registered.

c. Additional requirements apply to entities with *Association of public interest* status (which associations must apply for, in order to receive special tax treatment), or for entities receiving public funds or funds from the *Pluralismo y Convivencia* foundation, and for entities with substantial financial sources or activities abroad. *Associations of public interest* do face obligations corresponding to (c) and (d). Of 41 748 associations in Spain, 2 077 have *Association of public interest* status, and 1 944 are registered with the tax agency. Spain considers that these include most of the associations which the FATF's definition would class as NPOs.

d. Religious entities are required to implement some of these elements: elements (a) and (d) are required by Organic Law 7/1980, but are not required to apply elements (b), (c), (e), or (f), with the exception of: entities receiving funding through the *Pluralismo y Convivencia* foundation or public funding (controls are limited to the co-funded projects or activities); or entities with special tax status (which are required to implement elements (b) and (c)).

e. Recent regulation applies further obligations to all foundations and associations (but not to religious entities). These include requirements to identify and verify the identity of all persons receiving funds, and all persons donating EUR 100 or more.[26] They are also required to ensure the suitability of their governing body, to have internal controls and maintain records, to report suspicious activity to SEPBLAC, and to cooperate with the ML Commission: *Royal Decree 304/2014 art. 42*.

a4.35. Though the measures applied to foundations are complete, there are significant gaps in the requirements which apply to religious entities, and one requirement (registration) which is not applied to non-public interest associations. Nevertheless, this criterion is still met because the particular subset of the NPO sector to which such preventive measures must be applied is covered, as is noted in the chapeau of the preceding paragraph. The Spanish authorities note that most of the associations and religious entities which meet the FATF definition of an NPO, qualify as *Associations of public interest* in Spanish law, and are therefore subject to the additional requirements set out above. It should also be noted that most of the associations of public interest appear to provide services (e.g., health care, education), rather than expressive activities (e.g., programmes focused on sports and recreation, arts and culture, interest representation, and advocacy which are identified as lower risk). Indeed, the recent FATF typologies report on the *Risk of Terrorist Abuse in Non-Profit Organisations* (2014) noted that: "*based on available information, the conclusion emerges that 'service NPOs' are most frequently abused by terrorist movements*": *para.63*.

a4.36. *Criterion 8.5.* Compliance must be monitored by the relevant registry or protectorate, and corresponds closely to the obligation to file accounts. For foundations, the protectorate reviews the annual accounts and supporting information provided by each foundation. In cases of non-compliance, the protectorate may revoke acts, dismiss trustees, or take control, and ultimately suspend or dissolve a foundation. There is no mandatory monitoring for associations or religious entities (though there is monitoring of public interest associations or entities receiving funding through the *Pluralismo y Convivencia* foundation, or any other public funding, and the Tax Agency conducts monitoring of NPOs with special tax status). Where monitoring is conducted, sanctions for non-compliance are in general to withhold the special status or privilege that the requirements are linked to. Failure to meet the obligations under the *AML/CFT Law* are governed by the sanctions regime set out in that act (as described under R.35).

26 The requirement to identify donors exceeds the measures required by Recommendation 8, but was introduced by Spain in 2003, in response to the use of associations by separatist terrorist groups to collect and move funds anonymously. This requirement does not pose an excessive additional burden because NPOs already have to identify their donors and report them to the Tax Agency, so their donors may enjoy tax benefits.

a4.37. *Criterion 8.6.* Spain has a very complex institutional system for the oversight of NPOs. In total there are 8 national and 76 regional bodies which hold information on NPOs. There are 17 autonomous communities in Spain, each of which maintains a registry of associations and a protectorate for foundations. Some autonomous communities include more than one province, and maintain separate provincial registries. Ceuta and Melilla also maintain registries. In total there are 59 regional registries of Associations. There are separate national registries for foundations (held by the Ministry of Education, Culture & Sport), associations (held by the Ministry of Home Affairs), and religious entities (held by the Ministry of Justice), which hold information on entities which are active at national level. For associations, the national registry also indicates which of the regional registries holds information on a given association. In addition, information on NPOs is held by the Tax Authority, SEPBLAC, AECID, the Notary profession's Single Computerised Index, and the *Pluralismo y Convivencia* foundation.

a4.38. Spain has taken the following steps to ensure domestic cooperation, access to information, and reporting of suspicions transactions related to NPOs: a general STR reporting obligation on all public officials; limited information exchange between national and regional registries (to enable authorities to identify which registry holds information on a particular association); and the use of national databases (including the financial ownership file and the notary profession's database which centralises information on foundations, both discussed under R.24). The LEAs have access to this information for investigative purposes. While elements (b) and (c) of the criterion are met, Spain's extremely fragmented pattern of information held by different registries and authorities makes it more difficult to ensure effective exchange of general information on the sector and to raise TF awareness among all involved authorities.

a4.39. *Criterion 8.7.* Spain uses the general procedures and mechanisms for international cooperation to handle requests relating to NPOs, and does not identify additional points of contact or procedures for requests involving NPOs. The assessment of R.37-40 has not identified any substantial problems which would affect cooperation regarding NPOs.

a4.40. *Weighting and conclusion:* Spain's understanding of the risks is good, and its outreach to the NPO sector is adequate. The preventive measures and monitoring criteria are met with respect to foundations and associations of public interest (including some religious entities), which account for most of the sector's financial resources and international activities (although gaps remain for some other types of NPOs). Spain has fragmented institutional arrangements for NPO registration and supervision, but has extensive cooperation and coordination mechanisms to mitigate difficulties arising from this. ***R.8 is rated as largely compliant***.

5. PREVENTIVE MEASURES

Recommendation 9 – Financial institution secrecy laws

a5.1. In its 3rd MER, Spain was assessed as compliant with these requirements (para.380), and the *FATF Recommendations* in this area have not changed. Revised legislation since 2006 has given Spain the opportunity to strengthen and clarify the requirements for the sharing of information for AML/CFT purposes.

a5.2. *Criterion 9.1.* Financial institution secrecy laws do not appear to inhibit the implementation of AML/CFT measures. Spanish FIs/DNFBPs are required to maintain customer confidentiality, and are subject to data protection provisions. However, the *AML/CFT Law* includes a range of provisions to prevent these obligations from interfering with the exchange of information for AML/CFT purposes, and requires mandatory sharing of information in defined circumstances. These apply in all three areas of particular concern set out in the Methodology:

a. Access to information by competent authorities is ensured through a general obligation on regulated entities to provide documents and information to the Commission, its support bodies, or other competent authorities.

b. Sharing of information is ensured through specific requirements for information sharing by supervisors and other relevant authorities. There is also a general obligation on any authority or official to report evidence of ML/TF to SEPBLAC.

c. Sharing of information between FIs is supported by specific measures to permit the exchange of information for the purposes of preventing ML/TF when it would otherwise be prohibited. Notably, information on a suspicious transaction can be shared with another regulated FI if there is reason to believe that the rejected transaction to which it relates may be attempted elsewhere. The *AML/CFT Law* also exempts the processing and sharing of information from a number of the requirements of Spain's law on the protection of personal data, if it is required for AML/CFT purposes. Specific provisions are included in regulation to allow exemptions from data protection requirements, which would permit obliged entities to exchange information on certain types of transactions or clients, and to use common files for sharing this information: *RD 304/2014, art. 61*.

a5.3. *Weighting and conclusion:* Spain meets the criterion of R.9. ***R.9 is rated compliant***.

Customer due diligence and record-keeping

Recommendation 10 – Customer due diligence

a5.4. In its 3rd MER, Spain was rated partially compliant with these requirements, and the MER identified seven deficiencies (para.338-370). Spain exited the follow-up process in 2010 on the basis that many of these had been adequately addressed, largely as a result of changes introduced in the *AML/CFT Law*, though some deficiencies remained. R.10 was subject to significant revisions in 2012, and the *AML/CFT Law* was amended in December 2013 to address some of the new requirements of R.10.

a5.5. *Criterion 10.1.* The use of anonymous accounts, numbered accounts, or accounts in fictitious names is prohibited.

a5.6. *Criterion 10.2.* CDD is required before entering a business relationship or executing any transactions. Exemptions are permitted for occasional transactions below a EUR 1 000 threshold. CDD is also required in

the circumstances covered by C.10.2 (c) to (e): *AML/CFT Law art.7.6, RD 304/2014 arts.4, 9*.

a5.7. *Criterion 10.3.* Identification and verification are required of all "participants" in a business relationship or transaction, using "reliable and irrefutable" documentary evidence (of a type specified in regulation): *AML/CFT Law art.3.2; RD 304/2014, art.6*. A "participant" (*Interviniente*) in a transaction is considered to be a wider concept than "customer", and includes both natural and legal persons, legal arrangements, and persons depositing funds on behalf of somebody else.

a5.8. *Criterion 10.4.* There are specific requirements to verify the identity and authorisation of legal or voluntary representatives. The general identification requirement applies to "participants" rather than "customers" and therefore also encompasses persons acting on behalf of the customer. Specific CDD requirements also apply to trusts, *fiducias* and other legal arrangements: *AML/CFT Law art.3.2; RD 304/2014 art 6*.

a5.9. *Criterion 10.5.* Financial institutions are required to identify the beneficial owner and take appropriate steps to verify their identity and status before entering a relationship or executing an occasional transaction. This includes a requirement to gather the information required to find out the identity of the persons on whose behalf the client is acting. The act defines the "beneficial owner" in a manner which is compatible with the FATF's definition of beneficial ownership[1]: *AML/CFT Law art.4, RD 304/2014 art.8.*

a5.10. The definition of "beneficial owner" in the *AML/CFT Law* (art 4.2) includes an exemption for companies listed on a regulated market of the EU or equivalent third countries (included on the EU "Equivalence list"). However RD 304/2014 states that identification shall not be required regarding shareholders and beneficial owners of listed companies or of their majority-owned subsidiaries if they are subject to disclosure requirements which ensure adequate transparency of their beneficial ownership. For EU countries which fully implement Directive 2004/109/EC (on the harmonisation of transparency requirements), this exemption seems consistent with R.10. For other countries, the requirements of the regulation implement the requirements of R.10.

a5.11. *Criterion 10.6.* Financial institutions are required to understand the purpose and intended nature of the business relationship, to obtain information on the nature of their clients' activities, and to take graduated steps, on the basis of risk, to verify this information: *AML/CFT Law art.5, RD 304/2014 art. 10.*

a5.12. *Criterion 10.7.* General requirements for ongoing monitoring include scrutiny of transactions to ensure they are consistent with the customer's business and risk profile (including the source of funds), and to ensure that documents, data, and information are kept up-to-date. Specific measures set out in regulation require increased monitoring in higher-risk cases, and require at least an annual document review in such cases. General provisions about enhanced due diligence (EDD) and unusual transactions also apply in the context of ongoing due diligence: *AML/CFT Law art.6, RD 304/2014 art.11*.

a5.13. *Criterion 10.8.* There is a general requirement to identify the ownership and control structure of legal persons: *AML/CFT Law art.4.4.* The general requirement to understand the purpose and nature of the business relationship applies to all customers, including legal persons and arrangements: *art.5*. Due diligence measures must be applied to trusts and other legal arrangements, a concept that according to the authorities includes *fiducias*: *AML/CFT Law art.7.4*.

a5.14. *Criterion 10.9.* Legal persons must provide public documents evidencing their existence, company

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1 A beneficial owner is defined as: "the natural person(s) (a) on whose behalf the relationship is to be established or the transaction conducted, or (b) who ultimately owns or controls (direct or indirect) 25% or more of the capital or voting rights or who, by other means exercises control, directly or indirectly controls, over the management of a legal person (c) who owns or controls 25% or more of the property of a legal arrangement, or, where the beneficiaries have yet to be determined, the class of persons in whose interest the legal arrangement is set up". Further detail is included in RD 304/2014, art.8, which adds a requirement to identify the senior managing official in cases where no beneficial owner is identified under other parts of the definition.

name, legal form, address, directors, articles, and tax ID number. Trustees of trusts or similar legal arrangements are required to report their status, and must provide the founding document of the arrangement. Trustees are also included within the general requirement to verify the identity and authorisation of legal or voluntary representatives (noted above in relation to 10.4): *RD 304/2014 art.6.*

a5.15. *Criterion 10.10.* This requirement is implemented as part of the definition of a beneficial owner in article 4.2(b) of the *AML/CFT Law*, as described in criterion 10.5. Where these do not lead to the identification of the beneficial owner, Spain's law requires the FI not to enter into a business relationship or execute the transaction: *AML/CFT Law art.7.3, RD 304/2014 art. 8.*

a5.16. *Criterion 10.11.* This requirement is embedded in the definition of beneficial owner within the *AML/CFT Law.*[2] In the case of trusts the regulation requires identification of the settlor, trustees, protector, beneficiaries, and any other natural persons exercising control over the trust. For other relevant legal arrangements (including *fiducias*), the persons holding equivalent or similar positions must be identified: *RD 304/2014 art. 9.5*

a5.17. *Criterion 10.12.* The beneficiaries of life insurance policies are considered to be "participants" in the business relationship, and therefore must be identified in the course of CDD. There is a specific exemption from up-front verification of identity for beneficiaries of life insurance policies. But in all cases, the identity of a beneficiary of a life insurance policy (including generically designated beneficiaries) must be verified before the payment of the benefit or the exercise of any rights under the policy, consistent with part (c) of the criterion: *AML/CFT Law art.3(3), RD 304/2014 art. 5.*

a5.18. *Criterion 10.13.* The identity of the beneficiary must be verified before pay-out in all cases. Spain also requires the beneficiary of a life insurance policy to be included among risk factors considered when determining if enhanced CDD is required, and for the identification of the identity of the beneficial owner of the beneficiary: *AML/CFT Law art.3.3, RD 304/2014 art. 20.2.*

a5.19. *Criterion 10.14.* The identity of the participants must be verified before entering into the business relationship. For non-face-to-face business[3] verification may be delayed. In such cases, additional due diligence measures are also required if the FI perceives the risk to be above the average risk level. Elements (a) and (c) of the criterion seem to be met explicitly, and element (b) is met implicitly, since delayed verification is essential not to interrupt the normal conduct of business in a non-face-to-face business situation: *AML/CFT Law arts. 3.2 & 12; RD 304/2014 art.4.2.*

a5.20. *Criterion 10.15.* The controls applied in cases of non-face-to-face business when verification is delayed require additional due diligence measures in cases where the risks are above average. Financial institutions are required to establish policies and procedures to manage the risks associated with non-face-to-face business relationships: *AML/CFT Law art.12.2; RD 304/2014 art.4.2*.

a5.21. *Criterion 10.16.* Financial institutions are required to apply CDD measures to existing customers, on a risk-sensitive basis, and when they contract new products or undertake transactions which are significant for their volume or complexity: *AML/CFT Law art 7.2*. CDD measures should also be applied to all existing customers within five years of the time the *AML/CFT Law* came into force (30 April 2010).

a5.22. *Criterion 10.17.* Financial institutions are required to apply enhanced due diligence (EDD) in higher-risk situations specified in the *AML/CFT Law* or in regulations, or in other situations which present a higher

2 *"(c) Natural person or persons who ultimately own or control over 25 per cent or more of the property of a legal arrangement or entity that administers or distributes funds, or, where the beneficiaries of a legal arrangement or entity have yet to be determined, the class of persons in whose main interest it is set up or operates."*

3 These provisions include: requiring that the first deposit originates from an account in the client`s name in Spain, the EU, or an equivalent country; and undertaking documentary verification within one month of the start of the business relationship, with face-to-face identification being required if there is any discrepancy in the information available.

risk of ML/TF. The situations where enhanced measures are required are:

a. non-face-to-face business, cross-border correspondent banking, PEPs: *AML/CFT Law art.12-15*, and

b. situations that by their nature can present a higher risk, including those listed in regulation (e.g., private banking, money remittance, foreign exchange operations, companies which use bearer shares): *AML/CFT Law art.11, RD 304/2014 art.19*.

a5.23. There is some overlap between these provisions and the requirement to pay special attention to complex or unusual transactions, transactions with no apparent economic or lawful purpose, or transactions which by their nature could be related to ML/TF: *AML/CFT Law art.17*. FIs are required to conduct a special review of such transactions (and consider filing an STR), and to establish internal policies and controls which set out which transactions will be reviewed, and what the review will consist of. The type of EDD measures to be applied is set out in the law (for non-face-to-face business, correspondent banking, and PEPs) and in the regulation (for other situations in which EDD is required): *RD 304/2014 arts.19-20.*

a5.24. *Criterion 10.18.* The degree to which some CDD measures are applied (identification of the beneficial owner, the purpose and nature of the relationship, and ongoing monitoring) is to be determined on a risk sensitive basis: *AML/CFT Law art.7*. Financial institutions are required to demonstrate that the extent of measures is consistent with the risks, through a documented analysis. All CDD measures are required in cases when there is a suspicion of ML/TF. Information is included in regulation on the types of situation which could be considered low-risk and on what implementing the CDD measures to a lesser degree might consist of: *RD 304/2014 art.15-17.*

a5.25. The law includes a general provision that simplified CDD measures may be applied with respect to those customers, products, or transactions which involve a low risk of ML/TF. A graduated approach must be applied to the application of simplified measures, which includes: (a) verifying that the customer/product/transaction involves a low risk; (b) applying measures consistent with the risk, and ceasing simplified measures as soon as they perceive the customer/product/transaction does not involve a low risk; and (c) maintaining sufficient monitoring to detect transactions which require special attention. Together, these requirements seem consistent with those of R.10: *AML/CFT Law art.9.*

a5.26. *Criterion 10.19.* Financial institutions are not permitted to enter into a business relationship or execute a transaction, in cases where the required CDD measures cannot be applied: *AML/CFT Law art.7.3*. For existing business relationships, where CDD measures cannot be completed, financial institutions are required to terminate the business relationship and a special review is required. The *special review* is the normal preliminary step to the submission of a STR, and it involves considering making a STR. For a new customer or occasional transaction, where CDD cannot be completed, there is no direct requirement to conduct a special review. However, such cases still fall within the general requirement that an STR must be submitted (preceded by a special review), regarding "*any act or transaction, even the mere attempt, regarding which ... there is any indication or certainty that it bears a relation to money laundering or terrorist financing*": *art.18*. This applies to those cases where the inability to complete CDD in itself constitutes an indication of ML/TF, but still falls short of the requirement to consider an STR in all cases where CDD cannot be completed.

a5.27. *Criterion 10.20.* Spain's regulation requires financial institutions to take account of the risk of tipping-off, and allows them to not pursue the CDD process in situations where it process may tip-off the customer. However, there is no requirement to consider an STR in all cases where CDD cannot be completed: *RD 304/2014 art.12.*

a5.28. *Weighting and conclusion:* In terms of scope, all of the required sectors and activities are included. Following the adoption of Royal Decree 304/2014, most elements of R.10 are in place, however there is one remaining deficiency. There is no requirement to consider an STR in all cases where CDD cannot be completed (10.20), although the general STR and special review obligations do partially address this requirement. ***R.10 is rated largely compliant***.

Recommendation 11 – Record-keeping

a5.29. In its 3rd MER, Spain was rated as compliant with these requirements. However, the applicable law has changed, so a new analysis has been undertaken.

a5.30. *Criteria 11.1 & 11.2.* Financial institutions are required to retain documentation gathered for compliance with AML/CFT obligations for a minimum of 10 years: *AML/CFT Law art.25, RD 304/2014 art.29(2)*. This includes copies of documents obtained through the CDD process, and records of transactions and their participants. CDD records must be retained for 10 years after the termination of the business relationship, and transaction records for ten years after the execution of the transaction. The record keeping requirements also apply to business correspondence. A written record must be kept of any analysis undertaken by the financial institution, of a complex or unusual transaction, prior to reporting a suspicious transaction: *AML/CFT Law art.17.*

a5.31. *Criterion 11.3.* Financial institutions are required to hold transaction records in the form of an original or evidentiary copy admissible in court proceedings, of the documents or records duly evidencing the transactions, their participants, and the business relationship. Records must allow for the reconstruction of individual transactions, to provide evidence: *RD 304/2014 art.29.*

a5.32. *Criterion 11.4.* Financial institutions are required to have a record-keeping system which ensures proper management and availability of documentation for responding to the requirements of the authorities in a timely manner. Financial institutions are required to supply documentation and information requested by SEPBLAC, within the term specified in each case: *AML/CFT Law art.21.*

a5.33. *Weighting and conclusion:* Spain meets all four criteria of R.11. R.11 is rated ***compliant***.

Additional Measures for specific customers and activities

Recommendation 12 – Politically exposed persons

a5.34. In its 3rd MER, Spain was rated non-compliant with these requirements. However, these issues were addressed through new legislation in 2010. Since then, the FATF Standards have changed, and Spain has further amended its legislation to implement the new requirements.

a5.35. Spain defines three categories of PEPs: persons who perform or have performed prominent public functions, through an elective office, appointment or investiture, in either: (a) an EU Member State or third country; (b) the Spanish State (or an international organisation); or (c) Spanish Autonomous Communities (or a Spanish trade union, employers' organisation or political party): *AML/CFT Law art.14.1*. In each case, the law lists examples of specific positions which should be considered PEPs. Spain's definition includes mayors of towns with a population of more than 50 000. The decision to limit the PEPs requirements to mayors and councillors of towns of more than 50 000 inhabitants was based on the relevance of the municipality's budget and potential real estate expansion, and the competencies and functions of the municipal government (as higher level functions and actions are required from towns with more than 50 000 inhabitants). This is in line with the FATF guidance on PEPs (which notes that in some cases a prominent public function may exist at municipal level), and with Spain's risk profile, given a number of cases of corruption of municipal office-holders relating to planning and development permits. Measures are required for two years after the person ceases to perform the relevant function (though risk-based EDD should continue to be applied where relevant). These definitions and the time limit appear consistent with the FATF definition of PEPs.

a5.36. *Criterion 12.1.* For foreign PEPs, FIs are required to implement the four additional measures set out in R.12 (risk management systems, management approval, establishing the source of funds, and ongoing monitoring). The text of the law closely follows the text of R.12: *AML/CFT Law art.14.2*

a5.37. *Criterion 12.2.* For domestic PEPs and PEPs from international organisations, FIs are required to apply

reasonable measures to determine whether the customer (or their beneficial owner) is a PEP. Additionally, whenever an obliged entity conducts a special review (as per art.17), one of the things to be considered is whether any of the parties to the complex, large, unusual transaction is a domestic PEP (or family member of associate). Reasonable measures are defined as a review of the information obtained in the CDD process, in accordance with the risk factors. In higher-risk cases, FIs are required to apply the relevant measures applicable to foreign PEPs, as noted above in criterion 12.1. Specific provisions are included in regulation to allow screening of PEPs by centralised prevention bodies for relevant professions: *AML/CFT Law art.14.3, RD 304/2014 art.14.*

a5.38. *Criterion 12.3.* The relevant measures must be applied to family members and close associates of PEPs, with both terms defined in the law: *AML/CFT Law art.14.4.*

a5.39. *Criterion 12.4.* FIs are required to take reasonable measures to determine if the beneficiary of a life insurance policy (or their beneficial owner) is a PEP prior to payment of the benefit. If higher risks are identified, they are required to inform management, conduct enhanced scrutiny of the entire business relationship, and carry out a special review to determine whether a STR is warranted: *AML/CFT Law* art.14.5 & 14.6.

a5.40. *Weighting and conclusion:* Spain meets all four criteria of R.12. ***R.12 is rated compliant***.

Recommendation 13 – Correspondent banking

a5.41. In its 3rd MER, Spain was rated non-compliant with these requirements. These issues were addressed through new legislation in 2010, which was analysed at the time of Spain's exit from follow-up. Since then, relatively minor changes were made to R.13, with criterion 13.3 being the only substantial addition.

a5.42. *Criterion 13.1.* Credit institutions are required to apply the measures prescribed by R.13 in respect of cross-border correspondent banking relationships with respondent institutions from third countries, including gathering sufficient information to understand the respondent's business, assessing the respondent's AML/CFT controls, obtaining approval from a senior manager, and documenting the responsibilities of each institution. EU members are included in the term "third countries" and hence the R.13 obligations do apply to intra-EU correspondent banking relationships: *AML/CFT Law art.13*.

a5.43. *Criterion 13.2.* The use of payable-through correspondent accounts is prohibited in Spain, which renders the additional safeguards required by 13.2 not applicable: *AML/CFT Law art.13.*

a5.44. *Criterion 13.3.* Credit institutions are prohibited from entering into correspondent relations with shell banks, and must take appropriate measures to ensure their correspondents do not permit accounts to be used by shell banks: *AML/CFT Law art.13*.

a5.45. *Weighting and conclusion:* Spain meets all three criteria of R.13. ***R.13 is rated compliant***.

Recommendation 14 – Money or value transfer services

a5.46. In its 3rd MER, Spain was rated as largely compliant with these requirements (para.520-534). The report considered that Spain had implemented most elements of the Recommendation, but noted concerns about the level of effectiveness (in particular a low level of STR reporting by MVTS). Spain's law on payment services[4] (Law 16/2009) is based on the *EU Payment Services Directive* (2007/64/EC). Much of the analysis below will therefore apply to other EU member states.

4 "Payment institutions" are defined as legal persons (other than credit institutions) which have been authorised to carry out specified payment activities. The specified activities include the basis for the FATF definition of a MVTS, so the scope of Spain's provisions is consistent with R.14: Law 16/2009, art.6.

a5.47. *Criterion 14.1.* Authorisation from the Ministry of Economy and Finance is required for the creation of a payment institution (or for the establishment of a branch of a payment institution based outside the EU). The Ministry is required to receive a report from SEPBLAC when considering requests, and may refuse authorisation for a range of reasons which include lack of appropriate internal controls, or the business and professional repute of the shareholders, administrators, or directors. Authorised institutions are included in a publicly available register. Some entities authorised in other EU member states operate in Spain under the EU passporting system, as described in Box 3.5 in the main report.

a5.48. *Criterion 14.2.* Entities which are not subject to Law 16/2009 are prohibited from providing payment services, and are subject to the same sanctions as entities providing unlicensed operations as a credit institution*: art.4.3-4.4*. These sanctions are fines of up to EUR 500 000, or EUR 1 000 000 for repeated infractions: *Law 26/1998 art.29.1*. There are no criminal sanctions for unlicensed MVTS. Possible unlicensed operators are identified through reports to the CNMV and Bank of Spain, and through STR analysis by SEPBLAC. The Bank of Spain has powers to investigate the provision of unlicensed payment services, and has carried out a number of investigations into such activity. Since 2006, six institutions have been sanctioned for operating as money remitters without a license, and two for providing payment services without a license.

a5.49. *Criterion 14.3.* Payment institutions are subject to coordinated supervision by the Bank of Spain and SEPBLAC. The Bank of Spain is in charge of controlling and inspecting payment institutions when they perform payment services. It is empowered to request documents, conduct on-site inspections, issue guidance, and intervene or sanction as necessary*: Law 16/2009 art.15*. SEPBLAC is responsible for monitoring compliance with AML/CFT requirements, in coordination with other supervisory bodies, and these requirements apply to payment institutions (as well as to credit institutions and other forms of financial activity): *AML/CFT Law art.47 & 44.2(m).*

a5.50. Criterion 14.4. Payment institutions are required to have a comprehensive list of agents, including identity and location information, which is available to the Commission for the Prevention of Money Laundering and Monetary Offences (the Commission). The Register of Payment Institutions maintained by the Bank of Spain includes all agents of payment institutions, as well as the institutions themselves. This register is publicly available and required to be updated frequently. Payment institutions are required to apply internal controls to their agents, including the application of a "fit and proper" test, and monitoring of agents' activities: RD 304/2014 art. 37.

a5.51. *Criterion 14.5.* Payment institutions are subject to the general requirements of AML/CFT legislation on internal controls. They are required to have adequate AML/CFT policies and procedures which are communicated to branches and subsidiaries: *AML/CFT Law art.26*. Agents are not obliged persons themselves. The primary AML/CFT obligations are on the MVTS provider, which is responsible for the activity of its agents. Persons acting as agents do however have the same obligations as employees of obliged persons*: art 2.2*. Payment institutions are required to notify the Bank of Spain of procedures for the selection and training of agents and to ensure they have the required knowledge and skills*: RD 712/2010 art.14*.

a5.52. *Weighting and conclusion:* Spain meets all five criteria of R.14. ***R.14 is rated compliant****.*

Recommendation 15 – New technologies

a5.53. In its 3rd MER, Spain was rated partially compliant with these requirements, owing to the lack of a general requirement for FIs to have policies in place to deal with the misuse of technological developments, and the lack of specific regulations regarding non-face-to-face transactions. Analysis at the time of Spain's exit from follow-up concluded that both deficiencies had been addressed. However, changes to the FATF Recommendations incorporated the requirements regarding non-face-to-face business in R.10, and refocused R.15 to focus on the identification and mitigation of risks associated with new technologies, with obligations for countries and financial institutions.

a5.54. *Criterion 15.1.* Financial institutions are required to pay special attention to any ML/TF threats arising from products or transactions that might favour anonymity, or from new developing technologies, and take appropriate measures to prevent their use for ML/TF: *AML/CFT Law art.16.* Where a threat is identified,

FIs are required to conduct a specific analysis, and make this available to competent authorities.

a5.55. Spain has conducted a preliminary risk assessment of new payment methods. The FIU branch of SEPBLAC alerts its supervisory division of any new typologies detected through STRs. In several cases, action has been taken to mitigate the new risks identified, including measures on the use of new payment mechanisms in the online gambling sector, and actions to address the problem of criminals acting as agents in the e-money sector. In both cases, initial indications of a new vulnerability originated in an STR, but the response included measures such as the study of trends and statistics in the relevant sector, the introduction of new regulatory measures, and proactive monitoring by authorities of the entities exposed to such risks.

a5.56. *Criterion 15.2.* Financial institutions are required to pay special attention to any ML/TF threats that may arise from new technologies and take appropriate measures to prevent their use for ML/TF purposes, and in such cases to conduct a specific analysis of possible ML/TF threats There is a requirement to undertake a specific risk assessment prior to the launch or use of a new product, service, distribution channel, or technology, and to take appropriate measures to manage and mitigate the risks: *AML/CFT Law art.16, RD 304/2014 art.* 32.

a5.57. *Weighting and conclusion:* Spain meets both criteria of R.15. ***R.15 is rated compliant***.

Recommendation 16 – Wire transfers

a5.58. In its 3rd MER, Spain was rated largely compliant with these requirements. However, significant changes were made to the requirements in this area during the revision of the FATF Standards, and an entirely new set of laws and regulations on this subject now apply in Spain. Therefore little or no analysis is carried-forward from 2006.

a5.59. Spain implements the requirements on wire transfers through the *EU Regulation on Wire Transfers* (1781/2006/EC), which has direct applicability in Spain. Some supporting elements (such as supervision arrangements and sanctions for non-compliance) are set out in Spanish legislation—notably in the *AML/CFT Law*, which includes the core AML/CFT requirements. Transfers taking place entirely within the EU and European Economic Area (EEA) are considered domestic transfers for the purposes of R.16, which is consistent with the Recommendation. EU Regulation 1781/2006 does not include all the requirements of the revised R.16. Most significantly, it does not include requirements regarding information on the *beneficiary* of a wire transfer, which were added to the FATF Standards in 2012. The authorities advise that an updated Regulation is being prepared at the EU level which will incorporate the new FATF requirements.

a5.60. *Criterion 16.1.* FIs are required to ensure that all cross-border wire transfers of EUR 1 000 or more are accompanied by the required and accurate originator information: *EU Regulation 1781/2006 art.4 & 5*. However, there is no requirement to ensure that such transfers are also accompanied by the required beneficiary information.

a5.61. *Criterion 16.2.* The requirements of Regulation 1781/2006 regarding batch files are entirely consistent with the FATF requirements regarding originator information: *art.7.2*. However, there is no requirement to include beneficiary information in the batch file.

a5.62. *Criterion 16.3* & *16.4.* Regulation 1781/2006 requires collection (but not verification) of payer information in case of transactions below EUR 1 000. Spanish law supplements this, and requires verification of the identity of the payer in all transactions, including below EUR 1 000. However, there is no requirement to ensure that such transfers are also accompanied by the required beneficiary information. Spain does not apply a *de minimis* exemption for wire transfers below a given threshold: *AML/CFT Law art.3, RD 304/2014 art.4, Order EHA/2619/2006 art.2.1*. As for retail credit transfers (issued according to SEPA standards), they need to be compliant with the requirements set out in EU Regulation 260/2012 of the European Parliament and of the Council establishing technical and business requirements for credit transfers and direct debits in euro. According to article 5 thereof, when carrying out a credit transfer, payment service providers (PSPs) must ensure that the IBANs of the payer and payee are used for the identification of payment accounts. Moreover, the payee's name must be provided, where available. According to the annex, this information must

be passed in full and without alteration between PSPs.

a5.63. *Criteria 16.5 & 16.6.* Transfers within the EU and EEA are considered to be domestic transfers for the purposes of R.16, and are treated as such within Regulation 1781/2006. Domestic transfers may be accompanied only by the account number (or unique identifier) of the originator: *art.6*. The originator's PSP must be able to provide complete information on the originator, if requested by the payee, within three working days which is consistent with the second part of criterion 16.5 and criterion 16.6. There is also a general obligation to provide information to competent authorities.[5]

a5.64. *Criterion 16.7.* The ordering FI is required to retain complete information on the originator for five years: *Reg.1781/2006 art.5.5*. Financial institutions (including all entities executing wire transfers) are required to retain all records (including beneficiary information, where it exists) for a period of ten years: *AML/CFT Law*.

a5.65. 187. *Criterion 16.8.* Failure to comply with Regulation 1781/2006 is a breach of the *AML/CFT Law: art.52.5.* Ordering FIs are required to refrain from executing wire transfers that do not comply with the requirements set out in Regulation 1781/2006; *art.5*. The lack of requirements relating to beneficiary information indirectly affects this criterion.

a5.66. *Criterion 16.9.* Intermediary FIs are required to ensure that all originator information received and accompanying a wire transfer, is kept with the transfer:*Reg.1781/2006 art.12*. There are no requirements to do the same for beneficiary information which accompanies the wire transfer.

a5.67. *Criterion 16.10.* Where the intermediary FI uses a payment system with technical limitations, it must make all information on the originator available to the beneficiary financial institution upon request, within three working days, and must keep records of all information received for five years: *Reg.1781/2006 art.13*.

a5.68. *Criterion 16.11.* Intermediary FIs are not required to take reasonable measures to identify cross-border wire transfers that lack originator information or required beneficiary information.

a5.69. *Criterion 16.12.* Intermediary FIs are not required to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take the appropriate action.

a5.70. *Criterion 16.13.* Beneficiary FIs are required to detect whether the fields containing required information on the originator have been completed, and to have effective procedures to detect whether the required originator information is missing: *Reg.1781/2006 art.8*. There are no requirements to detect whether the required beneficiary information is missing.

a5.71. *Criterion 16.14.* Beneficiary FIs are required by Spanish law to identify the beneficiary if it has not been previously verified: *AML/CFT Law art.3, RD 304/2014 art.4, Order EHA/2619/2006 art.2.4*.

a5.72. *Criterion 16.15.* Where the required originator information is missing or incomplete, beneficiary FIs are required to either reject the transfer or ask for complete information, and take appropriate follow-up action in cases where this is repeated: *Reg.1781/2006 art.9*. There are no requirements relating to cases where the required beneficiary information is missing or incomplete.

a5.73. *Criterion 16.16.* Regulation 1781/2006 applies to MVTS providers.

5 The definition of a domestic transfer within the EEA-area in the Regulation (Art.6(1)) is wider than that in R.16, which refers to "*a chain of wire transfers that takes place entirely within the EU*". The Regulation refers to the situation where the PSP of the payer and the PSP of the payee are situated in the EEA-area. Hypothetically, this means that according to the Regulation, a domestic transfer could be routed via an intermediary institution situated outside the EEA-area.

a5.74. *Criterion 16.17.* MVTS fall within the scope of the *AML/CFT Law*, which includes general requirements on conducting special reviews of potentially suspicious transactions, filing STRs, and implementing internal controls. However in cases where the MVTS operator controls both the sending and receiving end of the transfer, there is no specific obligation in Spanish law or regulation to file an STR in any other country. SEPBLAC has addressed this issue through supervisory instructions in some cases.

a5.75. *Criterion 16.18.* Financial institutions conducting wire transfers are subject to the requirements of the EU regulations which give effect to UN resolutions 1267, 1373, and successor resolutions.

a5.76. In terms of scope, R.16 does not apply to transfers from a credit, debit or prepaid cards for the purchase of goods or services, so long as the card number accompanies all transfers flowing from the transaction, and Regulation 1781/2006 is generally consistent with those requirements.

a5.77. *Weighting and conclusion:* Spain's regulations leave gaps in the areas where R.16 was updated in 2012. The most significant problem is the absence of any requirements relating to information on the beneficiary of a wire transfer, which is the main deficiency for criteria 16.1, 16.2, 16.3, 16.13, and 16.15, and also indirectly affects 16.8 and 16.9. Other problems are the lack of requirements for intermediary FIs to take reasonable measures to check if information is present, and to have risk-based policies governing their actions when it is not (16.11 and 16.12). Nevertheless, Spain does meet the original core requirements of R.16, to ensure originator information accompanies the payment. ***R.16 is rated partially compliant***.

Reliance, Controls and Financial Groups

Recommendation 17 – Reliance on third parties

a5.78. In its 3rd MER, Spain did not permit reliance on third parties, so these requirements were judged to be not applicable. Spain introduced specific provisions on reliance in 2010. This Recommendation is particularly important in Spain, where financial groups have a significant role. A high proportion of securities and insurance business is conducted by entities which are part of financial groups, and which rely on the banking arm(s) of the group to conduct CDD.

a5.79. *Criterion 17.1.* Spain has implemented measures that are generally consistent with R.17 in that reliance is not permitted for ongoing monitoring of the business relationship and, where reliance is permitted, ultimate responsibility for completing CDD remains with the relying FI. There must be a written agreement between the relying FI and the third party, to formalise their respective obligations, and this agreement must require the third party to: (a) provide information on the client immediately[6]; and (b) provide copies of documents evidencing this information immediately, when requested. Relying FIs are also required to check that the third party is subject to AML/CFT obligations and supervision for compliance with these obligations, and has adequate procedures for compliance with CDD and record-keeping requirements. This satisfies all the elements of the criterion: *AML/CFT Law art 8, RD 304/2014 arts.13(3) & 13(2)*.

a5.80. *Criterion 17.2.* Reliance is permitted only on third parties covered by the AML/CFT legislation of other EU Member States or equivalent third countries. Reliance on members of the EU is not based on the level of country ML/TF risks, though it does reflect the fact that all EU members implement the same *EU Money Laundering Directive*. Inclusion on the EU list of equivalent third countries takes account of the level of compliance with FATF Standards, and is based on joint risk analysis by EU members, taking into account information on corruption, organised crime, and other ML/TF threats. Though the list of countries where reliance is permitted is not entirely risk-based, it does nevertheless *have regard* to the level of risk: *AML/CFT Law art.8.2.*

6 Spain notes that applying these obligations directly (rather than through contractual arrangements) would imply extraterritorial application of Spanish law.

a5.81. *Criterion 17.3.* Financial institutions are permitted to rely on CDD performed by their branches and subsidiaries in third countries, provided the group implements common measures for CDD and record-keeping, and has approved internal controls supervised by a group-level internal control body. Separate requirements on internal controls require measures to mitigate any higher risks: *RD 304/2014 arts.13.4, 34.*

a5.82. *Weighting and conclusion:* Overall, Spain broadly meets the criteria. There is only one specific element missing: that the level of country risk is not taken into account when considering whether reliance is permitted on a third party in another EU country. ***R.17 is rated largely compliant***.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

a5.83. In its 3rd MER, Spain was rated largely compliant with these requirements. Some deficiencies were identified, including the lack of a legal obligation to establish screening procedures to ensure high standards when hiring employees, and concerns about the level of implementation and effectiveness. Spain's previous provisions in this area have been replaced by the *AML/CFT Law* and RD 304/2014.

a5.84. *Criterion 18.1.* FIs and other obliged entities are required to adopt internal policies and procedures for CDD, record-keeping, risk management, and other AML/CFT obligations, along with a customer admission policy, including risk indicators and graduated additional precautions for customers presenting a higher-than-average risk: *AML/CFT Law art.26.* FIs are further required to have a manual for the prevention of ML/TF, which is available to SEPBLAC and may be amended at its direction. On the specific elements set out in the criterion:

a. *compliance management arrangements* - FIs are required to appoint a director or senior manager to act as representative to SEPBLAC (functionally equivalent to a management-level compliance officer) and have responsibility for reporting obligations. The representative must be fit and proper, and should have "*unlimited access to any information in the possession of the obliged person*"—a measure which significantly strengthens the representative's role. They must also establish an internal compliance unit responsible for implementing the policies and procedures, drawn from different business areas, headed by the representative to SEPBLAC: *AML/CFT Law art.26.2, RD 304/2014 arts.31, 35*.

b. *screening procedures* - FIs must implement adequate policies and procedures to ensure high ethical standards in the recruitment of employees, directors, and agents: *RD 304/2014 art.40.*

c. *ongoing employee training* - FIs must ensure that their employees are aware of the requirements of the *AML/CFT Law*, and must participate in specific ongoing training designed to detect transactions related to ML/TF: *art.29*. Obliged persons are required to prepare an annual training plan, taking account of the risks of the business sector and approved by the internal compliance unit. The requirement is met, though it may be also be desirable for authorities to provide further detailed guidance on the content of training programmes: *RD 304/2014 art.39.*

d. *an independent audit function* - FIs must have their internal controls reviewed annually by an external expert who meets supporting requirements concerning his/her competence and independence, and consideration of the review results: *RD 304/2014 art.38.*

a5.85. DNFBPs employing fewer than 50 persons or with an annual turnover below EUR 10 million are exempted from the requirement to establish an internal control body, instead requiring the company's designated representative to SEPBLAC to exercise the internal control and reporting functions. DNFBPs employing fewer than 10 persons, and whose annual turnover is below EUR 2 million are also exempted from other internal control obligations (risk assessment, a prevention manual, external audit of AML/CFT measures, and training.) These exemptions are consistent with R.18 which envisages that this requirement should have regard to the size of the business and the level of ML/TF risk. SEPBLAC has issued detailed guidance on the requirements and implementation of internal controls: *RD 304/2014 art.31 & 35*.

a5.86. *Criterion 18.2.* The *AML/CFT Law* includes requirements that internal controls shall be established at group level[7], and that measures "at least equivalent to those laid down by community law" are applied in branches and subsidiaries located in third countries (including EU member countries). Regulation requires such group-wide measures to include procedures for the exchange of information among group members, unrestricted access to AML/CFT information by group-level internal control bodies, and safeguards on the use of information: *AML/CFT Law arts.26.4 & 31.1, RD 304/2014 art.36*.

a5.87. *Criterion 18.3.* Spanish financial institutions are required to apply AML/CFT measures at least equivalent to those laid down by (European) Community law in their branches and subsidiaries in third countries (including EU member states). In cases where the third country's legislation does not permit the implementation of AML/CFT requirements, obliged entities are required to apply additional measures to mitigate the risks, and to inform SEPBLAC*: AML/CFT Law art.31*.

a5.88. *Weighting and conclusion:* The *AML/CFT Law* is significantly more detailed and demanding than the *EU's Third Money Laundering Directive* (Directive 2005/60/EC) upon which it is based and transposes into Spanish law. As it is currently drafted, Spain's law may technically allow branches and subsidiaries located in Spain of FIs incorporated in other EU countries, to apply less strict AML/CFT measures than those applicable to domestic institutions. This is particularly relevant at this point in time, when Spain has passed into national law a number of requirements (added to the FATF Standards in 2012), which have not yet been incorporated into a new EU Directive. However, considering the temporary nature of this issue and the fact that SEPBLAC has discretion to respond to inconsistencies of this type in the event that they do arise in practice (art.31), this issue has not been given significant weight. ***R.18 is rated compliant***.

Recommendation 19 – Higher-risk countries

a5.89. In its 3rd MER, Spain was rated compliant with these requirements, which are now incorporated into R.19. However both Spain's laws and the obligations of R.19 have changed significantly since the 2006 assessment.

a5.90. *Criterion 19.1.* FIs are required to take enhanced measures in cases set out in the law or regulations, in situations which by their nature pose a higher ML/TF risk, and in areas of business or activities which may pose higher risks. Six categories of high-risk countries, territories, or jurisdictions, are defined in regulation, including those that do not have appropriate AML/CFT systems, and those included on Spain's national list of tax havens (some of which are the subject of Spain's geographical AML/CFT risk assessments, as described in R.1). The general EDD provisions specifically require EDD to be applied to those countries where the FATF requires this. In addition, Spain requires FIs to systematically report transactions with certain countries[8]: *AML/CFT Law art.11, RD 304/2014 arts.19, 22*

a5.91. *Criterion 19.2.* In December 2013, Spain enacted amendments to the *AML/CFT Law* which added detailed requirements regarding countermeasures. The new measures give authority to the Council of Ministers to adopt countermeasures, either autonomously or in order to apply the decisions or recommendations of international organisations, institutions, or groups. The range of countermeasures which may be applied is broad enough to allow a proportionate and appropriate response to the risk: *art.42*.

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7 A "group" is defined in Spain's Code of Commerce as when "*a company holds, or may hold, directly or indirectly, the control over several others*": *art.42*. This is wider than the FATF definition, as it does not limit the term group to collections of entities which undergo consolidated supervision under the Core Principles, and could, for example, apply to groups of DNFBPs as well as to financial institutions.

8 These include RD 1080/1991 which requires systematic reporting of transactions with a list of countries (originally those considered tax havens, but updated in 2010 to include those considered to pose ML/TF risks), and RD 925/1995 (updated by RD 54/2005) which requires monthly reporting to SEPBLAC of transactions with countries listed in a ministerial Order. Such orders currently apply to eight countries.

a5.92. *Criterion 19.3.* Spanish authorities issue a public advisory through SEPBLAC's website to advise FIs of countermeasures or weaknesses in other countries' AML/CFT systems. This is based on the FATF/ICRG documents issued following each FATF meeting. Formal advisories are also provided to the Bank of Spain and the presidents of the National Bank Association and the National Savings Institutions. Spain also issues lists of countries which are subject to systematic reporting on the basis of ML/TF risks and other factors, as noted above in relation to criterion 19.1: *RD 1080/1991 and RD 925/1995 (updated by RD 54/2005)*.

a5.93. *Weighting and conclusion:* Spain meets all three criteria of R.19. ***R.19 is rated compliant.***

Reporting of Suspicious Transactions

Recommendation 20 – Reporting of suspicious transaction

a5.94. In its 3rd MER, Spain was rated largely compliant with these requirements (para.422-450). The main technical deficiencies were that: attempted transactions were not directly subject to the reporting obligation and, because the scope of the ML offences was not quite broad enough, there was a corresponding negative impact on the scope of the reporting obligation. Spain addressed these deficiencies when it enacted the *AML/CFT Law: para.108 of Spain's 4thFUR*.

a5.95. *Criterion 20.1.* FIs are required to notify SEPBLAC of any act or transaction showing any indication or certainty that it bears a relation to ML/TF: *AML/CFT Law art.18, RD 304/2014 art.26.* The term *money laundering* is defined to mean the conversion, transfer, concealment, disguise, acquisition, possession or use of property knowing that it is derived from criminal activity or any participation in such activity: *AML/CFT Law art.1.2*. This formulation is broad enough to meet the requirements of R.20. FIs are also required to conduct a special review of any event or transaction, regardless of its size, which, by its nature, could be related to ML/TF, and record the results of their analysis in writing. This includes examining with special attention all complex or unusual transactions or patterns of behaviours, with no apparent economic or visible lawful purpose, or those denoting signs of deception or fraud: *AML/CFT Law art.17, RD 304/2014 art.23-25.* Spain has also addressed previous deficiencies in the scope of its ML and TF offences which previously impacted on the scope of the reporting obligation (see R.3 and R.5).[9] The reporting of suspicious transactions related to tax crimes and other criminal activity has always been covered, as Spain has an all-crimes approach to its criminalisation of ML.

a5.96. *Criterion 20.2.* There is an explicit requirement to promptly report all suspicious transactions (regardless of their amount). This requirement also applies to suspicious attempted transactions which are to be recorded as "non-executed": *AML/CFT Law art.18(1)-(2), RD 304/2014 art.24*.

a5.97. *Weighting and conclusion:* Spain meets both criteria of R.20. ***R.20 is rated compliant***.

Recommendation 21 – Tipping-off and confidentiality

a5.98. In its 3rd MER, Spain was rated compliant with these requirements (para.422, 437-438 & 449).

a5.99. *Criterion 21.1.* Financial institutions and their employees are exempted from liability when disclosing

9 It should be noted that the remaining gap in the TF offence (the financing of an individual terrorist, who is not otherwise part of a terrorist group, for purposes completely unrelated to a terrorist act is not covered) does not negatively technically impact the STR reporting obligation. This is because the reporting obligation is worded very broadly (applying to "any indication…that it bears a relation to ML/TF), and FIs are not expected to drill down further to determine whether a terrorist is acting on their own or part of a terrorist organisation.

information to the competent authorities in good faith: *AML/CFT Law art.23*.

a5.100. *Criterion 21.2.* Financial institutions, their directors and employees are prohibited from disclosing to the customer or third persons the fact that information has been transmitted to the FIU, or is (or may be) under review for AML/CFT purposes to determine whether the transaction may be related to ML/TF. Breach of the disclosure prohibition is classed as a very serious offence under the *AML/CFT Law*, and is subject to the highest category of sanctions, as set out under R.35: *AML/CFT Law art.24, RD 304/2014 art.12, 24.1(d) & 26(2)*. It is prohibited to conduct any suspicious transaction, unless such a decision would endanger an investigation (for example, by tipping off the customer) or proves to be impossible: *AML/CFT Law art.19.*

a5.101. *Weighting and conclusion:* Spain meets both criteria of R.21. ***R.21 is rated compliant.***

Designated non-financial businesses and professions

Recommendation 22 – DNFBPs: Customer due diligence

a5.102. In its 3rd MER, Spain was rated partially compliant with these requirements. The deficiencies related to the specific CDD regime applied to DNFBPs, and general concerns about implementation and effectiveness. Since then, Spain introduced a new basis for AML/CFT requirements on DNFPBs which eliminates the previous differential obligations on FIs and other obliged entities, and provides a single set of rules for all reporting parties, including relevant DNFBPs: *AML/CFT Law*.

a5.103. *Criterion 22.1 (R.10).* The types of DNFBPs and the activities subject to CDD requirements include: casinos, dealers in precious metals and stones, notaries and registrars, auditors, external accountants, tax advisors, and persons carrying out (on a professional basis) specified activities relating to the creation and administration of legal persons and arrangements (corresponding to the FATF definition of trust and company service providers (TCSPs)): *AML/CFT Law art 2.1. See R.10 for a description of these requirements, including the deficiencies which apply to both FIs and DNFBPs.*

a5.104. As well as specific DNFBPs, to which the *AML/CFT Law* applies in all cases, these requirements also apply to specific activities undertaken by professionals, including: agency, commission, or brokerage in real estate trading; and the participation of lawyers or other independent professionals in the buying and selling of real estate or business entities, the management of funds, the opening or management of accounts, or the organisation of contributions necessary for the creation, operation or management of companies or trusts, companies or similar structures. Spain applies AML/CFT obligations to all the types of DNFBP required under R.22, as well as to property developers, professional dealers in art and antiques, lottery and other gambling operators, and cash transport companies. The deficiency identified in relation to failure to complete CDD, also applies in the case of DNFBPs.

a5.105. *Criteria 22.2 (R.11) and 22.3 (R.12).* See R.11 (record keeping) and R.12 (PEPs) for a description of these requirements. No technical deficiencies were identified for these requirements.

a5.106. *Criterion 22.4 (R.15).* See R.15 (new technologies) for a description of these requirements. No technical deficiencies were identified for these requirements.

a5.107. *Criterion 22.5 (R.17).* See R.17 (reliance on third parties) for a description of these requirements. One minor deficiency was identified, regarding the level of country risk, which is not taken into account when considering whether reliance is permitted on a third party in another EU country. However, this is only relevant to some types of DNFBP.

a5.108. *Weighting and conclusion:* The requirements for DNFBPs are the same as those applied to FIs under R.10, 11, 12, 15 and 17. There are no deficiencies which relate specifically to DNFBPs, however, there are some deficiencies relating to the underlying CDD obligations in R.10 (criterion 22.1) and a minor deficiency in the reliance obligations of R.17 (criterion 22.5). ***R.22 is rated largely compliant***.

Recommendation 23 – DNFBPs: Other measures

a5.109. In its 3rd MER, Spain was rated partially compliant with these requirements due to deficiencies with the underlying Recommendations, and concerns about the effectiveness of implementation. As noted above in relation to R.22, Spain introduced a new basis for AML/CFT requirements on DNFPBs through the *AML/CFT Law* which eliminate the previous differential obligations on FIs and other obliged entities, and provides a single set of rules for all reporting parties, including relevant DNFBPs. The types of DNFBP and the activities subject to AML/CFT requirements are as set out above in relation to R.22, and include all the types of DNFBP and activity required by the *FATF Recommendations*.

a5.110. *Criterion 23.1 (R.20).* See R.20 (suspicious transaction reporting) for a description of these requirements for which no technical deficiencies were identified. The key substantive difference between the reporting regimes for FIs and DNFBPs is that Spain permits the creation of centralised prevention bodies for collegiate professions, with responsibility for examining unusual transactions and considering the submission of STRs. The use of such bodies is in principle consistent with the requirements of this criterion and footnote 47 in the Methodology. Such a body exists for the notary profession (the OCP), and another is currently being created for registrars (the CRAB). Membership of these bodies is mandatory for all notaries and registrars. In the case of notaries, the OCP has access to a database including all notarised transactions, and uses software to identify high risk transactions or patterns of activity. The OCP analyses any transactions flagged by software or directly identified as suspicious by an individual notary, and considers whether to file an STR: *AML/CFT Law art.27, RD 304/2014 art.44.*

a5.111. *Criterion 23.2 (R.18).* See R.18 (internal controls and foreign branches and subsidiaries) for a description of these requirements. The internal controls requirements applied to DNFBPs are the same as those for financial institutions.

a5.112. *Criterion 23.3 (R.19).* See R.19 (higher risk countries) for a description of these requirements. No technical deficiencies were identified.

a5.113. *Criterion 23.4 (R.21).* See R.21 (tipping off and confidentiality) for a description of these requirements. There is one additional element relevant to DNFBPs which clarifies that lawyers, auditors and related professions seeking to dissuade a customer from engaging in illegal activity does not constitute disclosure: *AML/CFT Law art.24.3.* This is consistent with footnote 48 to the Methodology.

a5.114. *Weighting and conclusion:* The requirements for DNFBPs are the same as those applied to FIs under R.20, 18, 29 and 21. ***R.23 is rated compliant***.

6. SUPERVISION

Recommendation 26 – Regulation and supervision of financial institutions

a6.1. In its 3rd MER, Spain was rated partially compliant with these requirements. Spain exited the follow-up process in 2010 on the basis that these had mostly been adequately addressed. Both the FATF requirements and Spain's legal framework have changed enough that a new analysis is needed for this assessment.

a6.2. *Criterion 26.1.* SEPBLAC is responsible for supervising the compliance of all reporting FIs with their AML/CFT obligations, while sanctions responsibility lies, broadly speaking, with the Commission*: AML/CFT Law art.47 & 61*. SEPBLAC carries out its supervision in cooperation with the prudential supervisor for each sector, on the basis of specific MOUs with the Bank of Spain, the National Securities Exchange Commission (CNMV) and the Directorate-General for Insurance and Pension Funds (DGSFP*).* SEPBLAC remains the main AML/CFT supervisor. The prudential supervisors also conduct full AML/CFT inspections and monitoring, coordinated with SEPBLAC's own inspection plan. If a prudential supervisor identifies breaches of AML/CFT obligations, the Commission is responsible for any sanctions.

a6.3. *Criterion 26.2.* All Core Principles FIs are required to be licensed.[1] Operating an unlicensed FI constitutes an offence under each of the relevant laws.[2] The licensing regime for MVTS is considered under R.14. Authorisation from the Ministry of Economy and Finance is required for the creation of a payment institution (or the establishment of a branch in Spain). The Ministry must receive a report from SEPBLAC on all requests, and may refuse authorisation for lack of appropriate internal controls, or because of the business and professional repute of the shareholders, administrators, or directors. Authorised institutions are included in a publicly available register. Licensing or operation of shell banks is prohibited, as is doing business with them: *RD1245/1995 art.2, AML/CFT Law art.13.2*.

a6.4. *Criterion 26.3.* Comprehensive criminal ownership and "fit and proper" provisions have been adopted through Law 5/2009 and other supporting laws and regulations. These include setting out grounds on which persons may fail to meet either test, requirements for precautionary assessment of acquisitions and increases in shareholdings in the financial sector, and procedures for submitting information on management and significant shareholders to the Bank of Spain.

a6.5. *Criterion 26.4.* Spain undertook three IMF assessments in the context of its June 2012 Financial Sector Assessment Program (FSAP), of compliance with the Basel Core Principles, the IAIS Insurance Core Principles, and the IOSCO Objectives and Principles. The FATF has used the results of those FSAPs as a basis for assessment of this criterion.

a6.6. In the Banking sector, the IMF found that the core supervisory process at the Bank of Spain is strong, but identified several areas where Spain is not compliant with the Core Principles. The most relevant to AML/CFT supervision was a weakness in BCP1.4 on the sanctioning powers of the Bank of Spain, which must recommend sanctions to the Ministry of the Economy. The authorities note that this issue was addressed following the 2012 FSAP through new provisions which empower the Bank of Spain to apply sanctions, but require it to inform the Minister in cases where sanctions are imposed for very serious infractions: *RD 24/2012, Law 9/2012*.

1 Institutions from other EU countries that operate in Spain without a physical presence, are identified by SEPBLAC through a combination of cross-checks with prudential supervisors records, outreach programmes, and notifications from foreign supervisors. Institutions are informed of their obligations and asked to appoint a reporting officer. Supervisory action has been taken in some cases.

2 Law 26/1988 art.28 (for banks), Law 24/1988 art.66 (for investment services companies), RD 6/2004 art.5 (for insurance providers), and Law 35/2003 art.0ff and 41ff (for collective investment institutions).

a6.7. The Bank of Spain has implemented a supervisory framework which addresses financial risks to which banks are exposed. Under this framework, the risk of ML and TF is captured under reputational risk and is also part of the risk of non-compliance with legal regulations and internal rules (one of the operational risk factors the Bank of Spain requires to be included in banks' risk matrices). The Bank of Spain has also developed a separate risk matrix for AML/CFT supervision, appended to the framework, which states: "*Although money laundering and/or financing of terrorism transactions may not have a relevant direct impact on entities' solvency, the latter may be significantly eroded by the indirect consequences of the deterioration of entities' reputation as a result of these transactions, in addition to the damage such transactions may cause to the reputation of the system as a whole.*" This definition of ML/TF risk, as an indirect source of solvency risk, does not conform to the FATF definition of such risk.

a6.8. In the Insurance sector, the IMF found several relevant deficiencies. Of particular concern is the finding that Spain does not observe IAIS Principle 21 (countering fraud in insurance). The FSAP concluded that Spain also had a number of principles which are only partly observed:

a. *ICP2 (Supervisor)* - There are gaps in the powers and capacity of the supervisor, and DGSFP does not have the resources needed for a more risk-focused supervisory approach.

b. *ICP7 (corporate governance)* - The corporate governance requirement is limited, and there are no comprehensive requirements on the role and accountability of the Board and Senior Management.

c. *ICP 8 (risk management and internal controls)* - There is a lack of specific details on the scope of internal controls and reporting duties (on internal controls deficiencies).[3]

d. *ICP 18 (intermediaries)* - There is a lack of supervision of exclusive intermediaries, due to DGSFP's limited resources.

a6.9. In the Securities Sector, the FSAP found that implementation of the Core Principles was generally sound, but identified a relevant weakness in the implementation of principle 31 (internal controls), in that the CNMV makes limited use of on-site inspections. However, this weakness is not highly relevant to the current AML/CFT assessment, as it relates principally to the supervision of banks, where CNMV is not responsible for AML/CFT supervision.

a6.10. MVTS are subject to monitoring by the Bank of Spain and SEPBLAC (see criterion 14.3). With respect to other non-Core Principles FIs, SEPBLAC has blanket responsibility for monitoring and inspection of all obliged entities, and carries this out in accordance with a risk-based Annual Inspection Plan: *AML/CFT Law art.47 & 44.2(g).* Overall this criterion is only partly met, as the deficiencies highlighted in the supervision of the insurance sector are significant, and are particularly relevant to the implementation of AML/CFT measures.

a6.11. *Criterion 26.5.* Spain notes that SEPBLAC's AML/CFT supervision of FIs is risk-based, and its dual role as the FIU and the supervisory authority provides synergies between both functions (i.e., the FIU is a key source of information used in assessing the risks at national, sectoral, and institutional levels). SEPBLAC reviews financial institutions' ML/TF risks and policies, internal controls and procedures. It also conducts some analysis of ML/TF risks in Spain and in specific sectors, in order to evaluate ML/TF risks in the sector and determine supervisory cycles through the Annual Inspection Plan. Risk-based AML/CFT supervision is coordinated with the prudential supervisors.

a6.12. *Criterion 26.6.* SEPBLAC conducts risk assessments of each sector, and then of each institution, as a

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3 Spain notes that steps are being taken to address the issues relating to ICPs 7 and 8 in the context of the implementation of the EU Solvency II Directive. These include the introduction of European Insurance and Occupational Pensions Authority (EIOPA) Preparatory Guidelines from January 2014 which set out specific requirements on corporate governance, risk management, internal controls, and internal audit.

basis for preparing its Annual Inspection Plan. Assessments are updated at least annually (when preparing the annual inspection plan) and in cases where this is suggested by FIU analysis of STRs, or where there is a change of ownership or increase in shareholdings. The Bank of Spain conducts a risk-based supervisory approach by which supervisory plans and resources can be allocated to the institutions according to their risk profile and their systemic importance. The supervisory plan is updated at least yearly and adjusted as needed. CNMV supervision is risk based, but does not specifically include ML/TF risk factors. DGSFP supervision does not seem to follow a RBA.

a6.13. *Weighting and conclusion:* For core principles institutions, there are some deficiencies in how some core principles relevant to AML/CFT are being implemented (criterion 26.4), and the prudential supervisors in the insurance and securities sectors do not have a sufficiently well-developed RBA to supervision. However, SEPBLAC's application of risk- based oversight in the insurance and securities sectors mitigates most of these risks . ***R.26 is rated largely compliant***.

Recommendation 27 – Powers of supervisors

a6.14. In its 3rd MER, Spain was rated partially compliant with these requirements, mainly due to concerns about the effectiveness of the supervisory regime, based on the very low number of inspections. The introduction of the *AML/CFT Law* in 2010 comprehensively updated the applicable legislation, so the past analysis has not been re-used.

a6.15. *Criterion 27.1.* SEPBLAC has powers to supervise and monitor compliance of FIs with AML/CFT requirements.

a6.16. *Criterion 27.2.* SEPBLAC has authority to conduct inspections of FIs, according to an Annual Inspection Plan: *AML/CFT Law art.47.1*.

a6.17. *Criterion 27.3.* SEPBLAC has authority to access all relevant information, and broad powers to require cooperation by obliged entities, including the power to compel the production of information: *AML/CFT Law art.47.2*. The three prudential supervisors have similar powers under the relevant legislation.

a6.18. *Criterion 27.4.* There are a broad range of sanctions which can be applied if an obliged entity fails to meet its responsibilities under the *AML/CFT Law*, and specific processes for applying such sanctions. The power to apply sanctions rests with the Commission. Sanctions for breaches identified by SEPBLAC are initiated by the Commission Secretariat, which is responsible for administrative proceedings. Proposed sanctions are then considered by the Commission, following which, sanctions for serious or very serious breaches must be approved by the Minister of Economy and Finance, or the Council of Ministers, respectively. The impact of sanctions on the stability of the institution must be considered before serious sanctions can be applied.

a6.19. *Weighting and conclusion:* Spain meets criteria 27.1, 27.2, and 27.3. With respect to 27.4, it is clear that powers exist to apply sanctions in the case of breaches of AML/CFT obligations, but there is a question about whether the responsible supervisor has sufficient authority to apply those sanctions itself. There are no indications that ministerial approval interferes with the autonomy of supervisory decisions (except where those potentially affect the stability of financial institutions). On the basis of articles 44 and 45 of the *AML/CFT Law*, it seems appropriate to consider the Commission (including the Commission Secretariat, and SEPBLAC (in its role as the AML/CFT supervisor)) as a single entity for the purposes of this Recommendation. The complex process outlined above for approving sanctions could therefore be considered an internal procedure of the supervisor, and consistent with FATF requirements. ***R.27 is rated compliant***.

Recommendation 28 – Regulation and supervision of DNFBPs

a6.20. In its 3rd MER, Spain was rated non-compliant these requirements. The *AML/CFT Law* established a single legal basis for AML/CFT obligations of both FIs and DNFBPs, with SEPBLAC being responsible for AML/CFT supervision, working in cooperation with the relevant sectoral supervisors.

a6.21. *Criterion 28.1.* All physical casinos must have a licence prior to conducting business, as described in the 2006 evaluation. Internet casinos must be licensed, and there is an authority responsible for issuing licenses and overseeing the gambling sector: *Law 13/2011*. Persons or corporate entities with a criminal record or those penalised for serious offences relating to ML/TF are excluded from holding such licenses. The initial licensing process assesses the applicant, its standing and the AML/CFT measures adopted, with mandatory involvement by SEPBLAC. This includes reviewing the beneficial ownership of casino operators. There is no requirement in AML/CFT laws or regulations relating to changes in the ownership or management of an already-licensed casino, but licensing authorities (at regional level) exercise oversight of transfers of ownership.

a6.22. *Criterion 28.2.* SEPBLAC is the designated competent authority responsible for monitoring and ensuring compliance of all DNFBPs with AML/CFT requirements. As noted in R.23, all required categories of DNFBPs are included in this regime.

a6.23. *Criterion 28.3.* All categories of DNFBPs are subject to supervision by SEPBLAC, in accordance with SEPBLAC's supervisory strategy and inspection plan.

a6.24. *Criterion 28.4.* SEPBLAC's powers to monitor and ensure compliance are the same for FIs and DNFBPs, and are sufficiently broad and adequate (see R.27). There is a comprehensive system of administrative penalties and sanctions for failure to comply with the requirements of the *AML/CFT Law* for DNFBPs (see R.35). However, the powers to prevent criminals or their associates from being accredited, or from owning, controlling, or managing a DNFBP are limited. DNFBPs are required to implement policies to ensure high ethical standards in their staff. There are some regulatory prohibitions on persons with a criminal record being initially accredited as a lawyer, solicitor, notary, or real estate agent. However, there are several significant gaps: (a) there are no such requirements for accountants, dealers in precious metals and stones, or TCSPs (other than the requirements applicable to TCSPs who are lawyers, solicitors, notaries or accountants); (b) the professional accreditation requirements for lawyers, solicitors, notaries, and real estate agents are limited to prohibiting initial accreditation of convicted criminals; (c) there are no provisions relating to the beneficial ownership and control of DNFBPs which are legal persons (with the exception of casinos, above); and (d) there are no provisions relating to changes in the beneficial ownership and control of DNFBPs (including casinos, as noted above). Most significantly, a professional who is convicted of a criminal offence *after* being initially accredited in a profession, cannot be prevented from resuming their former profession (except for a temporary period of disbarment (normally five years) ordered by a court as part of a criminal sentence, which is rather low). Requirements on DNFBPs to ensure high ethical standards in their staff may prevent convicted professionals being hired as a member of staff in a DNFBP, but not from practising on their own behalf. This is a significant risk given the central role of lawyers in most organised ML cases in Spain. Spanish authorities note that this is due to a constitutional prohibition on permanently depriving a person of their livelihood.

a6.25. *Criterion 28.5.* SEPBLAC's AML/CFT supervision of FIs and DNFBPs is risk-based. As noted in relation to R.26, SEPBLAC conducts risk assessments of each sector and each institution, as a basis for preparing its Annual Inspection Plan. Assessments are updated at least annually (when preparing the annual inspection plan), and in cases where this is suggested by FIU analysis of STRs, or where there is a change of ownership or increase in shareholdings.

a6.26. *Weighting and conclusion:* Spain has implemented a comprehensive regulatory and supervisory regime for all DNFBPs, supported by supervisory powers that are generally sufficient except in one area (see criterion 28.4). ***R.28 is rated largely compliant***.

Recommendation 34 – Guidance and feedback

a6.27. In its 3rd MER, Spain was rated partially compliant these requirements on the basis that there was insufficient feedback on STRs, no sector-specific guidance, and insufficient CFT guidance. Spain has subsequently addressed these deficiencies.

a6.28. *Criterion 34.1*. The Commission has issued a significant amount of guidance which is periodically updated and aimed at assisting FIs and DNFBPs in their implementation of AML/CFT measures. The

Commission also publishes general information and guidelines on its website covering topics such as its structure and composition, general information on AML/CFT obligations, NPOs, voluntary tax compliance programmes and non-cooperative jurisdictions. It also has a channel to answer written questions, an FAQ section of the website, and a telephone Q&A service.

a6.29. The Treasury has published guidance on its website concerning cash movements[4] and the implementation of targeted financial sanctions. The Deputy Directorate-General of Inspection and Control of Capital Movements has held numerous meetings and delivered training sessions to entities subject to the *AML/CFT Law* (often in collaboration with the sectorial associations).

a6.30. SEPBLAC and Bank of Spain have issued extensive guidance (both general and for specific sectors), risk information, sanitised cases, AML/CFT typologies, upcoming technological projects and developments, information on the last international developments, etc.). SEPBLAC also gives specific guidance to new financial companies on the suitability of their proposed AML/CFT controls (see criterion 26.2), and holds bilateral meetings to solve specific issues upon request of obliged entities. Feedback to reporting entities on STRs includes: acknowledging receipt or rejection of an STR; annual feedback on STR reporting; and a risk map containing aggregated data that shows reporting entities what they are detecting in comparison with their sector and how to improve their AML/CFT procedures.[5]

a6.31. The Notaries' Centralised Unit has provided guidance on practical implementation of the AML/CFT obligations, ML/TF risk factors and mitigating measures, sanitised cases, and offers on-line AML/CFT training courses (an intensive course for notaries, and another for their employees). It has also developed AML/CFT procedures to be applied by all notaries, and disseminated other relevant information to assist the sector in implementing these requirements

a6.32. The AML Centre of Spanish Registrars (CRAB) has elaborated guidance and developed electronic screening tools to assist all of Spain's company, land and movable assets registers in their detection and reporting of STRs.

a6.33. *Weighting and conclusion:* Spain meets the criterion of R.34. **R.34 is rated compliant**.

Recommendation 35 – Sanctions

a6.34. In its 3rd MER, Spain was rated largely compliant with these requirements. Spain has passed a new law in this area (the *AML/CFT Law*) which requires fresh analysis.

a6.35. *Criterion 35.1.* There is a comprehensive system of penalties and sanctions for failure to comply with the requirements of the *AML/CFT Law*: *chapter VIII*. The law defines three categories of administrative offences and, for each category, sets out the specific offences or conducts which constitute the offence, the sanctions which may be applied, and process for their application. The classes of offence and applicable penalties are:

a. *Very Serious offences* - (e.g., tipping-off or failure to report a transaction internally been flagged as suspicious). Penalties include a fine of over EUR 150 000 and up to EUR 1.5 million (or 5% of the net worth of the sanctioned entity, or twice the value of the transaction), and either a public reprimand, or withdrawal of the entity's authorisation.

b. *Serious Offences* - (e.g., failures to comply with obligations to identify the customer or beneficial owner). Penalties include a fine of between EUR 60 001 and EUR 150 000 (or 1% of net worth / 150% the value of the transaction(s)) and a public or private reprimand.

4 www.tesoro.es/SP/expcam/MovimientosdeEfectivo.asp.

5 www.sepblac.es.

c. *Minor Offences* - (all other offences, including occasional infringements of some of the *serious* offences, if there are no indications of ML/TF). Penalties include a private reprimand, and/or a fine of up to EUR 60 000.

a6.36. In addition to the administrative sanctions set out above, criminal sanctions can be applied for some misconduct. Spain has criminalised TF perpetrated through serious negligence by perpetrators who are legally obliged to collaborate with the authorities in the prevention of TF, but who fail to detect or prevent a TF offence due to their serious negligence in the fulfilment of those obligations: *Penal Code art.301-304 on ML, and art.576 bis 2 on TF.* Criminal sanctions under these articles can be imposed both on the obliged entity and on its directors and senior managers*: Penal Code art.31bis.* The same action cannot be the basis for both criminal and administrative sanctions, and there is a requirement to suspend administrative sanctions proceedings while criminal proceedings for the same offence are considered. Sanctions apply for failure to comply with the requirements of R.6, 8, and 10-23.

a6.37. *Criterion 35.2.* Directors and senior management can be sanctioned personally in the case of very serious offences or serious offences. Penalties applicable to individuals for *very serious* offences include a fine of between EUR 60 000 and EUR 600 000, removal from office and 10 years disqualification from holding a management or administrative position in either that entity, or in any regulated entity. Penalties applicable to individuals for *serious* offences include a fine of between EUR 3 000 and EUR 60 000, and either a public or private reprimand, or suspension from office for up to one year.

a6.38. *Weighting and conclusion:* Spain meets both criteria of R.35. ***R.35 is rated compliant***.

7. LEGAL PERSONS AND ARRANGEMENTS

Recommendation 24 – Transparency and beneficial ownership of legal persons

a7.1. *Criterion 24.1.* There is publicly available information (in Spanish and English) which describes the types of legal person in Spain, the process for their formation, and the information required.[1]

a7.2. *Criterion 24.2.* The Ministry of Justice has analysed the ML/TF risks posed by legal persons. This analysis is the basis for a multi-agency consideration of risk. Regulations also require EDD when dealing with higher-risk forms (i.e., those with bearer shares, and pre-constituted "off-the-shelf" companies).

a7.3. *Criterion 24.3.* Basic information must be included in the company's deed of incorporation, which is held by the Company Registry and publicly available.

a7.4. *Criterion 24.4.* For both of the most common forms of legal person (SL and SA), there is a requirement to maintain a register of shareholders and their holdings. For private companies (SL) and public companies (SA)[2] with registered shares, the shareholder register must be maintained at the registered address of the company in Spain: *Corporate Enterprises Act, Art.9.1*. For public companies (SA) with dematerialised shares, the register of shareholders must be held by a depositary institution (i.e., by Ibericlear, or by a FI or investment firm, subject to AML/CFT supervision). Information on meaningful shareholders of listed companies is also held by CNMV. For public companies (SA) which are not publicly listed on a stock exchange, a transfer of shares can be made directly using the title document itself, without the application of any controls or disclosure requirements by a notary. This represents a gap in the requirements of R.24, however it has limited scope as SA only account for 7.5% of Spanish legal persons and the CNMV holds information on shareholders or persons controlling public companies, directly or indirectly, through voting rights (see para.280 below). Several other types of legal person (general partnerships, simple limited partnerships, and economic interest groupings) are not required to hold a register, as they are small, personal undertakings. This is consistent with the requirements to apply R.24 to other types of legal persons on the basis of their form and structure, and the level of risk.

a7.5. *Criterion 24.5.* The involvement of a notary is required to validate changes in basic information. Information submitted to the Company Registry must be accompanied by a notarial document, and must be updated within a specified time period (varying from 8 days to 2 months, depending on the type of information). Notaries also maintain the same information, as well as information related to changes in shareholders of SLs, in a separate database (the Single Notarial Computerised Index) which is updated within a maximum timeframe of 15 days. For registers of shareholders, if these are held by the company itself or a depository institution, the company director is responsible[3] for ensuring their accuracy, and for updating them immediately when changes take place. It is the entry in the ledger of shareholders, not the share certificate, which constitutes the shareholding.

a7.6. *Criterion 24.6.* Spain uses a combination of mechanisms to address this requirement, including a general obligation on companies, supplemented by additional measures to facilitate access to beneficial ownership information obtained by FIs and DNFBPs through the CDD process. Information on beneficial

1 e.g., from: www.investinspain.org/guidetobusiness/index_en.htm.

2 In this report the term "public company" is used to refer to *Sociedad Anónimas* (SA). It does not imply that such companies are state-owned. The main governing laws for both S.L and S.A are Act 3/2009 on structural modifications of commercial companies, and the *Corporate Enterprises Act* (Royal Legislative Decree 1/2010).

3 This requirement is in RD 1/2010 art.105.1 (for Private LLCs), and art.116 and 120.1 (for public LLCs and limited partnerships by shares). Art.107.2 requires share purchasers to inform the directors of the transaction. Directors are liable to the company, shareholders, and other parties for damages caused by acts or omissions in this area.

ownership is obtained and held by FIs or DNFBPs as part of the CDD process. Regulated entities are required to identify (and take reasonable steps to verify the identity of) the beneficial owner before entering business or executing a transaction. The identification of the beneficial owner may be based on a sworn declaration, though in higher-risk cases the FI/DNFBP is required to obtain additional documentation. Further measures were adopted to add clarity as the type of additional documentation that notaries should seek but, due to their recent adoption, cannot be taken into consideration for the purposes of this assessment. Spain's legislation in this area largely meets the FATF requirements (see criteria 10.5 and 22.1). The following specific measures facilitate access to this information by competent authorities:

a. Beneficial ownership information obtained by notaries through their CDD is held in the notary profession's Single Computerised Index (see box 6 in the main report). This database records separately the information obtained through customer declarations at the time of notarised transactions and the verified, aggregated information compiled by notaries. Currently the Single Computerised Index contains information on all acts authorised by notaries since 2004, and is available to competent authorities (including LEAs, relevant specialist prosecutors, SEPBLAC, and some others). A linked *Beneficial Ownership database* gives access to beneficial ownership declarations and has capacity to determine owners of a company's shares (including those who hold less than 25% of shares), directly or indirectly, using records of transfers of share ownership.

b. Credit institutions are required to provide a *financial ownership file* to the Ministry of Economy, with information on the names of account holders (or signatories) and, for legal persons, their beneficial owners. Once this system is operational (expected in late 2016), this information will be available to prosecutors and LEAs to enable them to determine where a person or company has an account.

c. Several existing sources of information are also available in order to identify beneficial ownership, including the Tax Agency (which contains names of company owners and directors), Company Registry, CNMV (which holds information on meaningful shareholders or persons directly or indirectly controlling meaningful voting rights (over 3%) in public companies), and Ibericlear.

a7.7. *Criterion 24.7.* Information held in the Single Notarial Computerised Index is verified and checked for consistency. Certain changes to company ownership and other information require the intervention of a notary, who is required to update the Index within a maximum of 15 days. Companies are required to ensure that the information they hold is accurate and up-to-date. There is a general requirement in the *AML/CFT Law* for FIs/DNFBPs to ensure that the documents, data and information they hold on customers are kept up to date. The frequency of the update depends on the level of risk, but at a minimum, CDD information must be updated: once a year in higher-risk cases; in the event of a suspicion that the information is inaccurate; or in a special review (of an unusual transaction): *RD 304/2014 art.11.2*. Financial ownership file information must be updated monthly. CNMV information on meaningful shareholders must be updated within four days. There are no specific mechanisms to ensure the accuracy of declarations by customers, or of the records held by companies on beneficial ownership, such as inspections, or penalties for providing false or incomplete information. However, under Spain's *Penal Code*, providing false information to a notary is an offence (of forgery/falsification).

a7.8. *Criterion 24.8.* Company administrators and directors have responsibility for maintaining beneficial ownership information. They are not required to be resident in Spain (or to designate another person to hold this information within Spain), though this may be a practical necessity in order to conduct any business. However, this information is also held by notaries, which are authorised and accountable for providing information and further assistance to the authorities.

a7.9. *Criterion 24.9.* Beneficial ownership information obtained by FIs/DNFBPs must be held for 10 years following the end of the business relationship. Information obtained by notaries must be held indefinitely (for 25 years in the notary's office, and thereafter in the general record). The Company Registry retains information permanently, and information held by companies themselves must be held for 6 years.

a7.10. *Criterion 24.10.* Analysis of the powers of law enforcement under R.31 does not indicate any gaps or deficiencies which would hinder their ability to access information on beneficial ownership.

a7.11. *Criterion 24.11.* Bearer shares may be issued by public limited companies (SA). Spain requires any valid transfer of bearer shares to be performed through a notary, securities firm, or credit institution, all of which are regulated entities and subject to CDD and record-keeping requirements: *Law 24/1998, additional provision three*. In effect, this immobilises bearer shares, since no transfer can take place without the involvement of a regulated entity. In addition, the *AML/CFT Law* requires EDD by FIs and DNFBPs when dealing with legal persons that have issued bearer shares, with a specific requirement to verify the identity of the beneficial owner (i.e., not to accept an unsupported declaration). Spain does not have bearer share warrants.

a7.12. *Criterion 24.12.* Nominee shareholders and nominee directors are not a normal feature of Spanish company law, and Spanish TCSPs do not offer nominee services. Nominees are not expressly allowed in Spain, however they are not specifically prohibited or controlled. Normal CDD requirements include verification of the identity of the customer and of the person acting on their behalf (e.g., through a power of attorney) when they conduct business with an obliged entity, including any of the operations which require the involvement of a notary.

a7.13. *Criterion 24.13.* For regulated entities under the *AML/CFT Law*, there is clear liability, and proportionate administrative sanctions are applicable for failure to comply. For other entities (i.e., the owners and directors of legal persons), a failure to include the required information will invalidate the registration of a given act, such as the transfer of shares to a new owner. There is no specific liability or sanction in cases where a company fails to maintain accurate information on its beneficial ownership, or where it makes a false or incomplete declaration to a financial institution or DNFBPs. Sanctions for filing false information only exist with respect to information given to tax authorities or the CNMV.

a7.14. *Criterion 24.14.* Basic information held in the company registry is publicly available and can be accessed online. When implemented, EU Directive 2012/17 is expected to further facilitate access to this information through the interconnection of national company registries throughout the EU. Normal provisions for cooperation with competent authorities in other countries apply to requests for shareholder or beneficial ownership information, with neither restrictions nor special measures applied. The analysis of R.37 to 40 does not indicate any specific deficiencies which would affect the ability to provide international cooperation regarding information on beneficial ownership.

a7.15. *Criterion 24.15.* Normal mechanisms for monitoring the quality of cooperation are applied. Only SEPBLAC assesses the quality of assistance it receives answers it receives from other countries in response to requests for basic and beneficial ownership information, but other authorities do not do this in a systematic way, and results are not collated.

a7.16. *Foundations and Associations*. The role of foundations and associations, and the monitoring regime applied to them are discussed in more detail in relation to R.8. For both foundations and associations, the information required with registration includes the equivalent of basic and beneficial ownership information (albeit with complex institutional arrangements for registration). The requirements of 24.7, 24.8 and 24.9are applied to foundations, through the involvement of notaries and the use of the Notarial Single Computerised Index, and to many associations through the process of registration as an *Association of public interest* - although this does not include all associations.

a7.17. *Weighing and conclusion:* Spain fully meets criteria 24.1, 24.2, 24.3, 24.5, 24.6, 24.8, 24.9 (for all types of legal persons except some associations), 24.10, 24.11 and 24.14, and largely meets 24.4, 24.7, and 24.12. Spain does not meet criteria 24.9 (for some associations only), 24.13 and 24.15. Overall, Spain seems to have a high degree of compliance with the core elements of the Recommendation relating to basic and beneficial ownership information. However, it has weaknesses on some supporting aspects of the Recommendation: sanctions; monitoring assistance received; and lack of controls on transfers of shares in public companies (SA) which are not publicly listed. Based on the relative importance of these elements, ***R.24 is rated largely compliant.***

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

a7.18. In its 3rd MER, these requirements were considered to be not applicable, as Spain does not recognise the legal concept of common law trusts. The *FATF Recommendations* were revised to clarify that R.25 does apply to countries in such circumstances.

a7.19. Spain also has *fiducia*—a type of legal arrangement with some similarity to a trust. *Fiducias* are not established through legislation and not expressly recognised in the Spanish legal system, but they have nevertheless been recognised in case law by Spanish courts. There are no formal obligations on *fiducia* or on the parties to a *fiducia* (the *fiduciario* and *fiduciante*). However, the CDD requirements of the *AML/CFT Law* apply to "*trusts and other legal arrangements or patrimonies which, despite lacking legal personality, may act in the course of trade": art.7.4*. This includes *fiducia*.

a7.20. *Criterion 25.1.* For trusts, parts (a) and (b) are not applicable. On part (c), lawyers acting as professional trustees (or *fiduciarios*) are required to apply the standard CDD and record-keeping requirements in the case of trusts and other legal arrangements.

a7.21. For *fiducia*, parts (a) and (b) apply. There is no clear obligation on the *fiduciario* (trustee) of a *fiducia* to hold information about it, except when the *fiduciario* is an obliged person (such as a lawyer). Nevertheless, because of the nature of a *fiducia* and the role of the *fiduciario*, it seems to be a practical necessity for the *fiduciario* to have information on the parties to the *fiducia* and the purpose of the *fiducia*.

a7.22. *Criterion 25.2.* Obliged persons are required to obtain a copy of the founding document of an "anglo-saxon trust" or similar legal arrangement, verify the identity of the trustee or representative, and verify the identity of other parties to the legal arrangement. There is an exemption for legal arrangements that do not conduct economic activity, which allows obliged entities to limit documentation to the person acting on behalf of the legal arrangement. Information must be updated according to an RBA, with annual updates required in higher-risk cases. Lawyers (and other regulated entities) whose customers are acting pursuant to legal arrangements (or are acting as a trustee / *fiduciario*) are required to conduct CDD and maintain records in line with the general requirements. However there are no legal requirements on other *fiduciarios* to update information (though this may be a practical necessity): *RD304/2014 art.6.3 & 9.5.*

a7.23. *Criterion 25.3.* Trustees and persons with equivalent role are required to disclose their status to obliged entities when forming relationships or carrying out occasional transactions. Discovery that a trustee has failed to do so triggers a special review (to consider an STR) and the termination of the business relationship: *RD 304/2014 art.6.3.*

a7.24. *Criterion 25.4.* There seem to be no provisions in law or regulation which would prevent the disclosure of information regarding a legal arrangement.

a7.25. *Criterion 25.5.* The general powers of law enforcement, prosecution and judicial authorities apply to information regarding trusts and legal arrangements, including *fiducia*. The analysis of R.31 indicates that LEAs have comprehensive powers to obtain access to all necessary documents and information for use in those investigations, prosecutions, and related actions.

a7.26. *Criterion 25.6.* Normal provisions for cooperation with competent authorities in other countries apply to requests for shareholder or beneficial ownership information on legal arrangements, with neither restrictions nor special measures applied for legal arrangements. The analysis of R.37 to 40 does not identify any major deficiencies which would affect the exchange of information on legal arrangements.

a7.27. *Criterion 25.7.* Lawyers or other regulated entities acting as professional trustees (or fiduciarios) are obliged to perform the obligations above. However, there are no legal obligations or specific sanctions for non-professional trustees for failing to comply. However, failure to disclose their status or provide adequate information may invalidate the attempted action, or lead a regulated entity to refuse the transaction or end the business relationship. As the basis for fiducia is in case law and not in legislation, there are no formal obligations on non-professional fiduciarios.

a7.28. *Criterion 25.8.* For regulated entities under the *AML/CFT Law*, there are proportionate and dissuasive administrative sanctions applicable for failure to comply with the CDD obligations (which include cooperating with competent authorities). For other persons, there is no specific sanction for failure to grant access to information, but general sanctions (for failure to comply with a judicial warrant) apply.

a7.29. *Weighting and conclusion:* Spain meets most of the criteria, but does not apply the requirements to *fiducia* and does not have specific sanctions for non-professional trustees who fail to comply with obligations (25.7) or provide information (25.8). In the context of Spain these are minor deficiencies. ***R.25 is rated largely compliant.***

8. INTERNATIONAL COOPERATION

Recommendation 36 – International instruments

a8.1. In its 3rd MER, Spain was rated largely compliant with the requirements relating to the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (*Vienna Convention*) and *United Nations Convention Against Transnational Organised Crime* (*Palermo Convention*), and partially compliant with the requirements relating to the *International Convention or the Suppression of the Financing of Terrorism* (*TF Convention*) and UN resolutions (para.625-633). The main deficiencies related to the criminalisation of ML (possession or use, and self-laundering were not covered), gaps in the scope of the TF offence, shortcomings in the CDD requirements, and problems in the implementation of relevant UN resolutions. Since its last evaluation, Spain has enhanced its implementation of the *Vienna*, *Palermo* and *TF Conventions* by broadening the scope of its ML and TF offences, applying criminal liability to legal persons, and strengthening CDD requirements.

a8.2. *Criterion 36.1*. Spain has signed and ratified the *Vienna Convention* (signed 20 December 1988, and ratified on 13 August 1990), *Palermo Convention* (signed 13 December 2000, ratified 1 March 2002), *TF Convention* (signed 8 January 2001, ratified 9 April 2002), and the *United Nations Convention Against Corruption* (*Merida Convention*) (signed 16 September 2005, ratified 19 June 2006).

a8.3. *Criterion 36.2.* Spain has enacted legislative measures to fully implement the Vienna, Palermo, TF, and Merida Conventions: Review of Implementation of the United Nations Convention Against Corruption: Finland & Spain (UNODC Implementation Review Group Report, 2011). It should be noted that the Convention requirements do not encompass all of the FATF requirements.

a8.4. *Weighting and conclusion:* Spain meets both criteria of R.36. ***R.36 is rated compliant***.

Recommendation 37 - Mutual legal assistance

a8.5. In its 3rd MER, Spain was rated compliant with these requirements, and no technical deficiencies were identified (para.634-654 and 661-663). Since then, Spain has implemented additional measures to enhance its ability to provide mutual legal assistance (MLA) to its EU counterparts.

a8.6. *Criterion 37.1*. Spain has a legal basis that allows it to rapidly provide the widest possible range of MLA in relation to investigations, prosecutions and related proceedings involving ML/TF and associated predicate offences. The legal framework is comprised of a network of international treaties and Conventions (for which internal implementation is not needed)[1], the *Spanish Judiciary Act* (governing MLA in the absence of a bilateral or international agreement) (art.276 & 277), the *Declaration of the Ministry of Foreign Affairs for the provisional application of the EU Agreement on Mutual Legal Assistance in Criminal Matters* (published 2003), and the principle of reciprocity. Spain has also addressed deficiencies in its criminalisation of ML and TF which further enhances its ability to provide MLA.

a8.7. *Criterion 37.2*. The Ministry of Justice is the central authority for transmitting and executing MLA requests. MLA requests are generally processed in the chronological order of their arrival, but can be prioritised in more urgent cases. The Ministry of Justice has an electronic system which allows monitoring of progress by recording all MLA requests sent or received and each step of the process.

a8.8. *Criterion 37.3.* MLA is not prohibited or made subject to unreasonable or unduly restrictive conditions. The only restrictions are those specifically provided for in treaties or conventions, or resulting from reciprocity. Spanish courts and judges can only refuse judicial assistance if the request relates to a

1 *Spanish Constitution* art.96.

suit which is subject to the sole and exclusive jurisdiction of the Spanish Courts, does not meet the basic requirements to establish its authenticity, is not drafted in Spanish, or the subject matter clearly breaches Spanish public policy principles.

a8.9. *Criterion 37.4.* Spain does not refuse MLA requests on the sole ground that they involve fiscal matters (which are ML predicate offences). Most bilateral and multilateral conventions to which Spain is a party specifically clarify that fiscal offences are not to be excluded from the ambit of MLA. Likewise, requests are not refused on grounds of secrecy or confidentiality requirements of FIs/DNFBPs (except where legal professional privilege or legal professional secrecy applies).

a8.10. *Criterion 37.5.* The international Conventions and bilateral agreements signed by Spain generally include specific clauses requiring the confidentiality of MLA requests to be maintained.

a8.11. *Criteria 37.6 & 37.7.* As a general rule, Spain does not require dual criminality to respond to MLA requests, even where coercive measures are requested, provided that the underlying conduct is an offence in the requesting country. Dual criminality is not required for the execution of European arrest warrant and surrender procedures between Member States: *Law 3/2003 art.9 and preamble*.

a8.12. *Criterion 37.8.* The same powers and investigative techniques used by judges and prosecutors under the Spanish *Criminal Procedure Law* may be used in the context of a request for international mutual assistance: *for example, art.263bis (controlled delivery), art.282bis (undercover operations), art.579 (intercepting communications), art.764 (seizing vehicles)*.

a8.13. *Weighting and conclusion:* Spain meets all eight criteria of R.37. ***R.37 is rated compliant***.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

a8.14. In its 3rd MER, Spain was rated compliant with these requirements (paragraphs 655-663).

a8.15. *Criterion 38.1*. Spain has the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize or confiscate the laundered property and proceeds from, and instrumentalities used (or intended for use) in ML/TF and predicate offences, or property of corresponding value. The legal framework, mechanisms and investigative powers described in R.37, also apply in relation to MLA requests to take provisional measures or confiscate property. Dual criminality is not required for the execution of freezing/seizing orders that are issued by other EU member states, and simplified procedures apply is such cases: *Law 18/2006 art.10-13, Law 4/2010 art.14-18*. Spain has signed 21 bilateral treaties with non-European countries that expressly include confiscation clauses, and do not require dual criminality. Key aspects of the legal framework are set out in Law 4/2010 (art.14-18), Resolution 1/2005 (art.75, 78, 80, 81, 84 & 85), and bilateral treaties with non-EU countries.

a8.16. *Criterion 38.2.* Spain is able to provide assistance to requests for co-operation made on the basis of non-conviction based confiscation proceedings and related provisional measures when the perpetrator is dead, absent or unknown, or in cases of flight. Such assistance is provided on the basis of the *Criminal Procedure Law* (art.786.1), *Penal Code* (art.127.4), Law 4/2010 (art.3.2 & 15-18) (for EU countries), bilateral MLA treaties (for non-EU countries), or such requests are processed on the basis of reciprocity.

a8.17. *Criterion 38.3.* Spain has: (a) arrangements for co-ordinating seizure and confiscation actions with other countries; and (b) mechanisms for managing, and when necessary disposing of, property frozen, seized or confiscated: *Law 18/2006, Law 1/2008, and Law 4/2010 (for EU Member States), and procedures set out in bilateral treaties or, alternatively, on the principle of reciprocity (for non-EU Member States)*. Spain has designated authorities responsible for coordinating such actions with their foreign counterparts including those described in criterion 4.4, and designated points of contact for international asset recovery initiatives and networks (e.g., Europol, Interpol, CARIN). The procedures described under R.37 for the management and disposal of seized assets also apply in the context of responding to MLA requests.

a8.18. *Criterion 38.4.* Spain is able to share confiscated property with other countries, particularly when

confiscation is directly or indirectly a result of co-ordinated law enforcement actions: *Law 4/2010 art.24 (which obliges sharing among EU Member States), and asset sharing provisions in bilateral/multilateral agreements and treaties with non-EU countries*. Confiscated assets of drug trafficking or related crimes are added to a special fund for the development of programs of prevention and co-ordinated law enforcement actions—the possible recipients of which include international agencies, supranational entities, and the governments of foreign states: *Law 17/2003 art.3.1(h)*.

a8.19. *Weighting and conclusion*: **R.38 is rated compliant**.

Recommendation 39 – Extradition

a8.20. In its 3rd MER, Spain was rated compliant with these requirements (para.s652-654 and 664-679).

a8.21. *Criterion 39.1*. Spain is able to execute requests in relation to ML/TF without undue delay.

a. Both ML and TF are extraditable offences*: Law 4/1985 art.2*.

b. Spain has implemented clear processes for the timely execution of extradition requests, and Ministry of Justice is the central authority in such matters: *Law 4/1985 art.6-22 (for non-EU countries), Law 3/2003 (for EU countries), Criminal Procedure Law art.824-833*. Spain has signed bilateral extradition treaties with a total of 36 states, and also grants extradition on the basis of reciprocity: *Spanish Judiciary Act art 277-278*. The system for prioritising, managing and keeping track of MLA requests (described in R.37) also applies to extradition requests, and the law specifies deadlines for processing such requests: *Law 4/1985 art.9, Law 3/2003*.

c. Spain does not place unreasonable or unduly restrictive conditions on the execution of requests: *Law 4/1985 art.4-5, Law 3/2003 art.12*. The *Spanish Constitution* provides that political crimes are excluded from extradition, but terrorism is not considered as political crime: *art.13.1*. This provides some important clarity on the scope of the political crimes exemption, which is important in Spain's context given its level of terrorism risk.

a8.22. *Criterion 39.2.* Spain is able to extradite its own nationals, and will not oppose their extradition, provided that the requesting State also agrees to extradite its nationals on a reciprocal basis. The European Arrest Warrant is based on the principle of mutual recognition and does not include nationality in the list of possible reasons for denial: *Law 3/2003 art.12*. Spain will not extradite its own nationals to non-EU countries if the underlying case falls within the jurisdiction of the Spanish courts. In such cases, Spain will submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request: *Law 4/1985 art.3.2.*

a8.23. *Criterion 39.3*. Dual criminality is required for extradition to non-EU countries. This requirement is deemed to be satisfied regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence: *Law 4/1985.* Because Spain has not criminalised the financing of an individual terrorist (who is not otherwise part of a terrorist group) for purposes completely unrelated to a terrorist act, it would be unable to meet the dual criminality requirement in such cases.

a8.24. *Criterion 39.4.* Spain has implemented simplified extradition mechanisms in relation to extradition among EU member states, in line with the European Arrest Warrant procedures, for which no dual criminality is required: *Law 3/2003.*

a8.25. *Weighting and conclusion:* The deficiency identified in criterion 39.3 is not considered to be significant for two reasons. First, in practice, such factual cases rarely arise. Second, only creates an issue when extraditing to a non-EU country (dual criminality is not required when extraditing to EU countries). ***R.39 is rated compliant.***

Recommendation 40 – Other forms of international cooperation

a8.26. In its 3rd MER, Spain was rated largely compliant with these requirements (para.680-694). The deficiency related to effectiveness which is not assessed as part of compliance with the *2013 Methodology*.

a8.27. *Criterion 40.1*. Spain's competent authorities can rapidly provide a wide range of international co-operation (spontaneously or upon request) related to ML/TF and associated predicate offences.[2]

a8.28. *Criterion 40.2*.

- **a.** The competent authorities have a lawful basis for providing cooperation.[3]
- **b.** Nothing prevents them from using the most efficient means to cooperate.
- **c.** All authorities (including SEPBLAC, the prudential supervisors, LEAs, and the Tax Agency) use clear and secure gateways, mechanism or channels*: Law 31/2010; Council Framework Decision 2006/960/JHA; EU Council Reg.904/2010 para.33-37.*
- **d.** The competent authorities have processes for prioritising and executing requests: supervisory and FIU requests must be prioritised and handled in the shortest possible time.[4] For LEAs, deadlines to send information to EU counterparts are specified in legislation and applied in practice to non-EU counterparts—from 8 hours for urgent requests when the information is directly accessible, to 14 days for other requests*: Law 31/2010 art.10.*
- **e.** The competent authorities have clear processes for safeguarding the information received.[5]

a8.29. *Criterion 40.3.* SEPBLAC, the prudential supervisors, the LEAs, and the Tax Agency have a comprehensive network of bilateral and multilateral agreements, MOUs and protocols to facilitate MLA with a wide range of foreign counterparts.

a8.30. *Criterion 40.4*. SEPBLAC proactively provides feedback to its foreign counterparts, whenever possible, on the use of the information provided and the outcome of the analysis conducted: *19th Egmont Principle, Warsaw Convention art.46.12*. The other competent authorities also provide timely feedback in various ways upon request.[6]

2 **SEPBLAC** *AML/CFT Law* art.48, CD 2000/642/JHA; **Bank of Spain** Law 13/1994 art.7.8; **DGSFP** RD 6/2004 art.2.2 & 77; **CNMV** Law 24/1988 art.91; *MOU on Cooperation between the EU Financial Supervisory Authorities, Central Banks and Finance Ministers on cross-border financial stability* (2008) (the *MOU on Cooperation between the EU FSAs*); **LEAs** Organic Law 2/1986 art.12.1, Law 31/2010 art.12; **Tax Agency** EU Council Reg.904/2010 para.33-37, Law 31/2010 art.5, Law 15/1999 art.2.

3 **SEPBLAC** *AML/CFT Law* art.48(3); **Bank of Spain** Law 13/1994 art.7.8, RD 1298/1986; **DGSFP** RD 6/2004 art.2.2 & 77; **CNMV** Law 24/1988 art.91; **LEAs** Organic Law 2/1986 art.12.1, Law 31/2010 art.9, Organic Law 2/1986 art.12.1(f), treaties; **Tax Agency** Law 15/1999, Council Reg.904/2010 para.33-37.

4 RD 925/1995 art.29.1 & 31.

5 **SEPBLAC** *AML/CFT Law* art.49, Reg. art.65.6; *Instruction on Information Security*; **Bank of Spain** RD 1298/1986; **DGSFP** RD 6/2004 art 22-534, certification in *UNE-ISO/IEC 270001:2007 standards on information security management*; **CNMV** Law 24/1988 art.90 & 91bis; **LEAs** Law 31/2010 art.5; **Tax Agency** Law 15/1999 art.2.

6 **Bank of Spain** RD 1298/1986, art.6; **DGSFP** RD 6/2004, art.22-quarter, 77 & 75; **CNMV** Law 24/1988, art.91.5; **LEAs** Law 31/2010, art.8.3; bilateral agreements; feedback from other countries concerning the timeliness of feedback.

a8.31. *Criterion 40.5*. The competent authorities do not prohibit or place unreasonable or unduly restrictive conditions on information exchange or assistance, and do not refuse requests for assistance on any of the four grounds listed in this criterion.[7] Spain confirms that situations where information exchange is not possible are extremely rare.

a8.32. *Criterion 40.6.* The competent authorities have in place controls and safeguards to ensure that information exchanged is used only for the intended purpose, and by the authorities for whom the information was sought or provided, unless prior authorisation has been given by the requested authority.[8]

a8.33. *Criterion 40.7.* Competent authorities are required to maintain appropriate confidentiality for any request for cooperation and the information exchanged, consistent with data protection obligations.[9]

a8.34. *Criterion 40.8*. The competent authorities can conduct inquiries on behalf of their foreign counterparts, and exchange all information that would be obtainable by them if such inquiries were being carried out domestically.[10] Specific inquiries and information exchanges relating to AML/CFT are handled by SEPBLAC. The prudential supervisors also have broad powers to conduct inquiries on behalf of their foreign counterparts and exchange information on prudential matters.

a8.35. *Criterion 40.9.* SEPBLAC exchanges information with foreign FIUs in accordance with the Egmont Group principles or under the terms of the relevant MOU, regardless of the other FIU's status as administrative, law enforcement, judicial or other FIU.[11] The legal basis for providing cooperation is described in criterion 40.2(a).

a8.36. *Criterion 40.10*. SEPBLAC proactively provides feedback to its foreign counterparts, as required by this criterion (also see criterion 40.4 above).

a8.37. *Criterion 40.11.* SEPBLAC is authorised to exchange all information required to be accessible or obtainable directly or indirectly by the FIU (in particular under R.29), and any other information which it has the power to obtain or access, directly or indirectly, at the domestic level, subject to the principles of reciprocity. Additionally, any authority, officer or supervisor is obliged to collaborate with SEPBLAC: *AML/CFT Law art.21, 48.1 & 48.3*.

a8.38. *Criterion 40.12*. SEPBLAC is the designated AML/CFT supervisor for FIs and DNFBP, and is authorised to cooperate with foreign authorities with analogous functions, regardless of their respective nature or status, in line with the applicable international standards for supervision: *AML/CFT Law art.48(3)*. As described in criterion 40.2(a), the prudential supervisors also have a legal basis to cooperate with their foreign counterparts.

a8.39. *Criterion 40.13*. SEPBLAC has broad powers to obtain information domestically (including information held by financial institutions and the information available to SEPBLAC through the exercise

7 RD 304/2014 art.60-61; **SEPBLAC** CD 2000/642/JHA art.4.3, Law 10/2010 art.48.2; **Bank of Spain** RD 1298/1986; **DGSFP** RD 6/2004; **CNMV** Law 24/1988 art.90.4(g) & art.91.5; **LEAs** Law 31/2010, art.9.3-9.7 & art.11; bilateral agreements.

8 **SEPBLAC** CD 2000/642/JHA art.5; **Bank of Spain** RD 1298/1986 art.6; **DGSFP** UNE-ISO/IEC 27001:2007 **CNMV** Law 24/1988; **LEAs** Law 31/2010 art.8, bilateral agreements.

9 **SEPBLAC** *AML/CFT Law* art.48.3; **financial supervisors** *MOU on Cooperation between the EU FSAs,* Law 24/1988 art.90.4(j) applicable to CNMV; **LEAs** Law 31/2010 art.5, bilateral agreements.

10 **SEPBLAC** *AML/CFT Law* art.48.3, CD 2000/642/JHA, *Egmont Group Principles for Information Exchange between FIUs*; **LEAs** Law 31/2010 art.9, bilateral agreements.

11 Council December 2000/642/JHA, art.3, 9th Egmont principle, *Warsaw Convention*, art.4.

of its FIU functions as described in criterion 29.3, and exchange it with foreign supervisors in a manner proportionate to their respective needs: *AML/CFT Law art.21 & 48.3*.

a8.40. *Criterion 40.14.* The financial supervisors are able to exchange the following types of information when relevant for AML/CFT purposes, with other supervisors that have a shared responsibility for financial institutions in the same group:

a. Regulatory information, such as information on the domestic regulatory system and general information on the financial sector is public and can be exchanged without restriction.

b. Prudential information, such as information on the FI's business activities, beneficial ownership, management, and fit and properness, can be obtained by SEPBLAC from the prudential supervisors: *AML/CFT Law art.48(2)*. The prudential supervisors can also exchange such information directly with their foreign counterparts.[12]

c. AML/CFT information, such as internal AML/CFT procedures and policies of FIs, CDD information, customer files, samples of accounts and transaction information can be exchanged by SEPBLAC with its foreign counterparts *AML/CFT Law art.21 & 48.3*.

a8.41. *Criterion 40.15.* SEPBLAC has broad powers to conduct inquiries on behalf of foreign counterparts and, as appropriate, to authorise or facilitate their ability to conduct their own inquiries in Spain, in order to facilitate effective group supervision. In doing so, SEPBLAC is authorised to obtain from the prudential supervisors all of the cooperation necessary: *AML/CFT Law art.48(2) & 48.3, Council Decision 2000/642/JHA*. The prudential supervisors are also authorised to conduct inquiries on behalf of foreign counterparts in relation to prudential matters which, in the EU context, is facilitated through the *MOU on Cooperation between the EU FSAs.*

a8.42. *Criterion 40.16*. SEPBLAC is authorised to disseminate information exchanged only with the prior authorisation of the requested financial supervisor, and has controls and safeguards in place to ensure that information is used appropriately.[13] The prudential supervisors have similar provisions.[14]

a8.43. *Criterion 40.17.* The National Police and the Civil Guard use simplified procedures for exchanging information and intelligence between the law enforcement authorities of EU Member States: *Law 31/2010; Council Framework Decision 2006/960/JHA*.

a8.44. *Criterion 40.18.* The LEAs are able to use their powers and investigative techniques (as described in R.31) to conduct inquiries and obtain information on behalf of their foreign counterparts. Restrictions on use imposed by the requested LEAs are observed, and are generally set out in bilateral treaties as specific conditions for the exchange of information. The LEAs also respect conditions on use prescribed by the agreements between Interpol and Europol (see also criterion 40.2(c) above).

a8.45. *Criterion 40.19.* The LEAs are able to form joint investigative teams with their foreign counterparts to conduct cooperative investigations, and, when necessary, establish bilateral or multilateral arrangements to enable such joint investigations. Joint investigations among EU Member States are facilitated by various mechanisms and joint investigation teams (JITs).[15] JITs can include LEAs from non-EU countries when there

12 **Bank of Spain** RD 1298/1986 art.6; **DGSFP** RD 6/2004 art.71; **CNMV** Law 24/1988 art.4.

13 AML/CFT Law art.49(2), CD 2000/642/JHA art.5 (see also criterion 40.6).

14 *MOU on Cooperation between the EU FSAs* Clause 8.1; RD 6/2004 art.75.4 (for **DGSFP**), specific provisions in bilateral/multilateral agreements (for **CNMV**).

15 Law 11/2003, Council Framework Decision 2002/465/JAI on JITs, Council Resolution of 26 February 2010 on a Model Agreement for setting up a JIT, and Council document *JITs Manual* (4 November 2011).

is an agreement of all other parties.[16] Spain has also enacted legislation on the criminal liability of joint investigative team officials when acting in Spain: *Organic Law 3/2003*.

a8.46. *Criterion 40.20.* SEPBLAC is specifically allowed to undertake indirect information exchange with other FIUs or AML/CFT supervisors requesting information. The Bank of Spain, DGSFP and CNMV can also undertake diagonal cooperation.[17] The LEAs are allowed to undertake indirect information exchange with non-counterparts in a timely way. Such cooperation is subject to the same conditions as apply in the domestic context: *Law 31/2010 art.9.6.*

a8.47. *Weighting and conclusion:* Spain meets all 20 criteria of R.40. ***R.40 is rated compliant***.

16 See the following Europol link for further details: https://www.europol.europa.eu/content/page/joint-investigation-teams-989.

17 **Bank of Spain** (Law 13/1994 art.7.8, RD 1298/1986 art.6.1, Internal Bank of Spain Rules art.23); **CNMV** (Law 24/1988, art.91 & 91bis); **DGSFP** (*General Protocol on the collaboration on the insurance supervisory authorities of the members states of the EU*).

Table of Acronyms

AEAT	Tax Agency
AECID	Spanish Agency for International Cooperation and Development
AML/CFT	Anti-money laundering / counter-terrorist financing
Art.	Article / articles
BNI	Bearer negotiable instruments
BOE	Spanish State Official Gazette
CD	Council Decision
CDD	Customer due diligence
CICO	Centre of Intelligence against Organised Crime
CIRBE	Bank of Spain database on the Balance of payments
CNCA	National Centre for Counter-terrorism Coordination
CNI	National Intelligence Centre
CNMV	National Securities Market Commission
CNP	National Police
Commission	Commission for the Prevention of Money Laundering and Monetary Offences
CP	Common Position
CRAB	AML Centre of the Spanish Registers
DGSFP	Directorate-General for Insurance and Pension Funds
DNFBPs	Designated non-financial businesses and professions
DPRK	Democratic People's Republic of Korea
EDD	Enhanced due diligence
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
ETA	Euskadi Ta Askatasuna
EU	European Union
FIs	Financial institutions
FIU	Financial intelligence unit
FSAP	Financial Sector Assessment Program
FUR	Follow-up report
JI	Service of Information (Civil Guard)
JIMDDU	Inter-ministerial Body on Material of Defence and Dual-use
JIT	Joint Investigation Teams
LEAs	Law enforcement authorities
MAEC	Foreign Affairs and Cooperation Ministry
MER	Mutual evaluation report
Merida Convention	United Nations Against Corruption

ML	Money laundering
MLA	Mutual legal assistance
MOU	Memorandum of Understanding / Memoranda of Understanding
MVTS	Money or value transfer services
NPO	Non-profit organisation
OCP	General Council of Notaries Centralized Prevention Unit
OJEU	EU Official Gazette (OGEU),
OLA	Asset Tracing Office (Civil Guard)
ORA	Asset Recovery Office (CICO)
Palermo Convention	United Nations Convention Against Transnational Organised Crime, 2000
Para.	Paragraph / paragraphs
R.	Recommendation / Recommendations
Reg.	Regulation
RD	Royal Decree
SEPBLAC	Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences
SINVES	System of Investigation (Civil Guard)
SP	Special Prosecutor
SRI	System of Register of Investigation (CNP)
STR	Suspicious transaction report
TCSP	Trust and company service provider
TF Convention	International Convention for the Suppression of the Financing of Terrorism, 1999
TF	Terrorist financing
TFS	Targeted financial sanctions
TGSS	Registry of Social Security
UDEF	Central Unit against Economic and Fiscal Crime (National Police)
UDYCO	Unit Against Drugs Organised Crime (National Police)
UN	United Nations
UTPJ	Judicial Police Technical Unit (Civil Guard)
Vienna Convention	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
WP	Working Party

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Anti-money laundering and counter-terrorist financing measures - Spain
Fourth Round Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CFT) measures in place in Spain as at the date of the on-site visit (21 April to 7 May 2014). The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Spain's AML/CFT system, and provides recommendations on how the system could be strengthened.