



Financial Action Task Force
Groupe d'action financière

**THIRD MUTUAL EVALUATION REPORT ON
ANTI-MONEY LAUNDERING AND
COMBATING THE FINANCING OF TERRORISM**

SPAIN

23 JUNE 2006

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PREFACE - Information and methodology used for the evaluation of Spain

1. The evaluation of the anti-money laundering (AML)¹ and combating the financing of terrorism (CFT) regime of Spain was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004². The evaluation considered the laws, regulations and other materials supplied by Spain along with information obtained by the evaluation team during its on-site visit to Spain (Madrid) from 12 to 23 September 2005 and subsequently. During the on-site visit the evaluation team met with officials and representatives of relevant Spanish government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by an assessment team which consisted of FATF experts in criminal law, law enforcement and regulatory issues. The team was led by Mr. Vincent Schmoll, Principal Administrator, FATF Secretariat, and included: and Mr. Nicolas Burbidge, financial expert, Office of the Superintendent of Financial Institutions (Canada); Mrs. Tricia Howse, financial expert, Serious Fraud Office (United Kingdom); Mrs. Catherine Marty, Administrator, FATF Secretariat; Mr. Gjermund Mathisen (LL.M.), legal expert, Ministry of Justice and the Police (Norway); and Ms. María de la Concepción Patiño Cestafe, law enforcement expert, Ministry of Finance and Public Credit (Mexico). The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the terrorist financing (TF) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Spain as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Spain levels of compliance with the FATF 40+9 Recommendations (see Table 1)³, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

¹ See Annex 1 for a complete list of abbreviations and acronyms.

² As updated in October 2005.

³ See Table 1 for an explanation of the compliance ratings (C, LC, PC and NC).

EXECUTIVE SUMMARY

1. Background Information

1. This report provides a summary of the AML/CFT measures in place in Spain as of September 2005 (the date of the on-site visit), though more recent developments (including laws in force from January 2006) have also been taken into consideration. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Spain's levels of compliance with the FATF 40 + 9 Recommendations. (See attached table on the Ratings of Compliance with the FATF Recommendations).

2. The Spanish legal framework for combating money laundering and terrorist financing is generally comprehensive. The money laundering offences are broad in scope and easy to apply, according to Spanish prosecutors. The terrorist financing offences are broadly satisfactory, although they do not appear to cover acts of an individual terrorist (that is, not related to a terrorist group) and collection of funds under certain circumstances. The offences have been applied by prosecutors with success, but due to the lack of comprehensive statistics on prosecutions and convictions relating to money laundering and terrorist financing, the effectiveness of these measures is difficult to assess more precisely. The Spanish confiscation system is generally comprehensive. The system for freezing terrorist related funds has some deficiencies relating to its scope and the fact that national legislation has not yet been fully implemented. Again, the lack of comprehensive statistics in this area makes it impossible to assess the effectiveness of these regimes. Spain does have a clear and comprehensive framework for providing international co-operation.

3. SEPBLAC is the Spanish financial intelligence unit (FIU), which has been an active member of the Egmont Group since 1995. While generally effective in its FIU function, a lack of resources for its AML/CFT regulatory function may negatively impact on its overall effectiveness. Spanish national and regional authorities have at their disposal adequate legal powers for gathering evidence and compelling the production of documents, as well as a broad range of special investigative techniques. However, the process for obtaining account files (through SEPBLAC) at certain stages of the police investigation can be lengthy, thus calling into question the effectiveness of this process.

4. The preventive side of the Spanish AML/CFT regime is covered by its Law N° 19/1993 of 28 September, an implementing Royal Decree (N° 925/1995 of 9 June) and Law N° 12/2003 of 21 May, which introduced CFT prevention and freezing. Together these laws deal with customer identification and other AML/CFT obligations and apply to a broad range of financial institutions. However, the customer due diligence regime is insufficient to meet all of the subtleties of FATF requirements, and the CFT legislation does not explicitly extend CDD to the risk associated with terrorist financing. Requirements for determining the beneficial owner are also inadequate. Most categories of designated non-financial businesses and professions (DNFBPs) are subject to the Spanish AML law and by cross reference to the CFT law. The principal deficiencies in this area relate to those that are found in the broader financial sector, and monitoring of the implementation of AML/CFT measures by DNFBPs must be improved.

5. In recent years, Spanish competent authorities have identified different techniques used for the purpose of laundering money: use of term deposits, transfers abroad through accounts of Spanish limited companies supposedly involved in importing goods, transactions through corporate networks, use of bridging accounts, organised VAT fraud schemes, use of cash deposits and withdrawals and exchange of currency for high denomination notes. Underground banking operations between Spain and Morocco, related to hashish trafficking and smuggling, is also a recurrent trend.

6. The Government of Spain has been involved in a long-running campaign against terrorist organisations such as ETA, GRAPO and more recently Al Qaeda. To finance terrorism, the following methods have been identified: funds masked as donations to finance the projects of a non-profit organisation (ETA, Islamic terrorism); creation of groups of companies involved in publishing, printing and distribution of books, magazines and newspapers for the purposes of propaganda, which

then serve as a conduit for depositing funds obtained through coercion (extortion, kidnapping, etc.); fraudulent collection of subsidies, tax returns, etc.; creation of cultural associations by representatives of the terrorist organisation to facilitate the opening of current accounts and to serve as a cover for their control of goods and services; and the use of alternative remittance system transfers.

7. A wide range of financial institutions exists in Spain, including credit institutions, insurance companies and brokers, securities companies, investment companies, deposit companies, money exchange and money transfer businesses and leasing companies. A range of designated non-financial businesses and professions became subject to Law 19/1993 for the prevention of money laundering starting in April 2005: casinos, real estate agents, dealers in precious metals and stones, legal advisors, external accountants and auditors, notaries, lawyers and court representatives in certain circumstances as well as other activities (such as trade in art works and antiques). Spain is currently in the process of further reviewing its legislation for the purposes of implementing the Third EU Money Laundering Directive.

2. Legal System and Related Institutional Measures

8. Money laundering is criminalised through Article 301 of the Spanish Penal Code (PC) that makes it a criminal offence to acquire, process or transfer property knowing that the property derived from a crime (*delito*) or to commit any other act in order to hide or conceal its illicit origin or to assist the person having participated in the offence or offences to evade the legal consequences of his or her acts. In general, money laundering is criminalised on the basis of the Vienna and Palermo Conventions. However, all of the relevant requirements laid down in those Conventions do not seem to be included in Article 301 PC. Specifically, the wording in this article does not set out that the “possession or use” of proceeds of crime also constitutes money laundering, nor is there, as an alternative way of covering “possession and use”, an open-ended list of ways of handling proceeds of crime that would cover possession or use to the full extent required by the Conventions. This is true notwithstanding certain judgements by the Spanish Supreme Court, which seem to suggest that Article 301 PC could, in practice, be given a fairly broad interpretation as regards what actions the perpetrator is required to have carried out in respect of the proceeds.

9. Spain’s money laundering offences extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime, even if it has been transformed, exchanged or altered. Article 301 PC requires that the person prosecuted for money laundering have had the knowledge of the unlawful origin of the property. 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 prior act be under judicial proceedings. The Spanish Supreme Court has set up a long-standing doctrine on indirect proof of money laundering. Spain has adopted an all-crimes approach to the criminalisation of money laundering meaning that all crimes (*delitos* as opposed to fines or *faltas*) as mentioned in the Penal Code (including terrorist financing) could constitute a predicate offence for money laundering. Spain can use its money laundering offence to prosecute the laundering of proceeds generated from a predicate offence that occurred in another country provided that the predicate offence would have been a criminal offence if committed in Spain.

10. There is no fundamental principle of Spanish law that prohibits Spain from applying the money laundering offence to the person(s) who committed the predicate offence, and Spanish authorities state that they have criminalised “self-laundering”. Nevertheless, it remains somewhat unclear to what extent self-laundering would be covered by the Spanish money laundering offences. The wording of Article 301 PC is silent with respect to self-laundering and there are no examples of any conviction for self-laundering. However, despite the absence of a clear criminalisation of self-laundering, or rather because Article 301 PC does not expressly exclude the perpetrator of the predicate offence from being liable for laundering the proceeds, one judgement from the Spanish Supreme Court does suggest, albeit in an *obiter dictum*, that a number of the alternatives in Article 301 PC could be applied not only to a third party launderer but also to the perpetrator of the predicate offence.

11. Spain's money laundering regime includes all ancillary offences to the offence of money laundering as described in Recommendation 1.

12. It appears that there is a relatively low number of prosecutions/convictions for money laundering. The figures that are available only reflect serious cases of money laundering handled by specialised prosecution offices. The prosecutors with whom the team of evaluation met indicated that the money laundering offences are easy to use – in particular due to the doctrine of indirect proof whereby it is not necessary to prove that the property in question constitutes proceeds of a specific criminal act. Rather, it suffices to prove – using the criminal standard of proof– that the property has no legal origin. Spain should make sure that its national law would allow for holding legal persons criminally liable for money laundering. At present, a legal person may be subject to an administrative fine or other sanction if the natural persons responsible for its management and direction are found guilty of a criminal offence involving the legal person.

13. Spain's criminalisation of terrorist financing is largely in line with international standards—in particular, with the Terrorist Financing Convention—yet it does not cover all the requirements of Special Recommendation II. This is perhaps not entirely surprising, as Spain has sadly had to cope with domestic terrorism for many years and has developed robust and sophisticated laws to counter this. However, modern changes to terrorist activities and to the nature of terrorism itself necessitates a fresh look at even tried and trusted laws to ensure that nothing falls through the cracks. Accordingly, Spain should consider carrying out a critical and comprehensive review of the various offences in Spanish law at present contributing to fulfilling the FATF requirements. In particular, Spain should ensure that: (1) offences properly cover terrorist financing in the form of providing and collecting funds with the unlawful intention that they should be used, or in the knowledge that they are to be used, by an individual terrorist (for any purpose); (2) TF offences cover providing and collecting funds directly in order to carry out a terrorist act and; (3) TF offences extend to providing and collecting funds to legitimate activities run by a terrorist organisation or an individual terrorist.

14. The Spanish legal framework on confiscation, freezing and seizing of proceeds of crime measures up well to the FATF standards. Insofar as the legal framework as such is concerned, the requirements under Recommendation 3 are met. However, the statistics and other information provided on the practical application of the relevant mechanisms do not provide a sufficient basis for giving concrete, specific recommendations on possible improvement.

15. As in other European Union countries, the obligation to freeze under S/RES/1267(1999) has been implemented through Council Regulation (EC) N° 881/2002. Annex I to the Regulation contains the same information as the list maintained by the Al-Qaida and Taliban Sanctions Committee; and the Annex is regularly and promptly updated. The obligation to freeze under S/RES/1373(2001) is implemented through Council Regulation (EC) N° 2580/2001. In Spain, in addition to the EC regulations, Law 12/2003 offers the possibility of freezing any type of financial flow so as to prevent the funds from being used to commit terrorist actions. Judicial freezing orders under Spanish law do not seem to fulfil the requirements under S/RES/1373(2001) to the full extent. Such judicial freezing is ordered with a view to securing claims for damages, compensation to victims etc. as may be recognised in a later conviction for terrorist offences. Hence, this judicial freezing has neither the same preventive aim nor necessarily the same broad scope as the kind of freezing measures foreseen in and required by S/RES/1373(2001) and Special Recommendation III. There also seem to be some shortcomings in the Spanish system when it comes to examining and giving effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. The assessors did not see evidence that Spanish authorities have established and implemented a clear, efficient procedure to ensure the prompt determination of whether reasonable grounds or a reasonable basis exists to initiate a freezing action and the subsequent freezing of funds or other assets without delay. Spain should take the necessary steps to ensure the full practical and efficient application of the otherwise seemingly adequate domestic legal framework laid down in Law 12/2003. In particular, it should promulgate the announced Royal Decree that will implement and enforce the law and through it provide additional guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets. The need for additional guidance specifically concerning TF is also related to the

practical application of freezing measures under the two EC Regulations. Spain should establish and make clear and publicly known the necessary procedures for de-listing and unfreezing in appropriate cases.

16. The Spanish FIU, SEPBLAC, was established in 1993 and has been a member of the Egmont Group since 1995. Its functions involve receiving, analysing and disseminating information, but it also has a role as a supervisor. The total number of STRs received was around 1,000 in 2001 and 2,500 in 2004. In 2004, SEPBLAC sent 57 reports to the national court, 52 to the anti-narcotics public prosecutor's office, 204 to the anti-corruption public prosecutor's office, 866 to the *Policía Nacional* (National Police) and 320 to the *Guardia Civil* (Civil Guard). SEPBLAC's internal structure includes two police units (the *Guardia Civil* and the National Police) as well as customs personnel, who cooperate with each other and supplement the information provided by reporting parties. According to Spanish authorities, SEPBLAC receives generous funding from the Bank of Spain for the purpose of creating appropriate and progressive systems and procedures. It maintains satisfactory relationships with reporting parties and actively exchanges information with other FIUs.

17. Notwithstanding, the evaluation team noted a few deficiencies in SEPBLAC's operations. The quality of SEPBLAC's analysis was broadly commented by the competent investigating authorities during the on-site visit. The *Guardia Civil*, the national police and the anticorruption prosecutor (which receive the majority of the reports) believe that they are receiving too many reports and that many of them are inadequate for starting an investigation. It may be desirable for those police or law enforcement units to participate more actively in deciding what reports may be dispatched and the criteria to do so in order to guarantee their usefulness and the success of potential investigations. The evaluation team has also reservations about the economic independence of SEPBLAC vis-à-vis the Bank of Spain. Finally, SEPBLAC performs supervisory activities that may have an impact on the effectiveness of its functions as an FIU.

18. Spain has a comprehensive network of law enforcement and prosecution authorities and is largely in compliance with Recommendation 27. The *Guardia Civil* and the National Police are both responsible for fighting crime, including ML/FT. The Drug and Money Laundering Special Prosecutor's Office acts before the National Court in crimes of drug smuggling and money laundering perpetrated by organised groups and affecting more than one region. The Special Public Prosecutor's Office for the Repression of Economic Crimes Related with Corruption is competent for a series of crimes including crimes against the Treasury, smuggling, and embezzlement of public funds, fraud and extortion, bribery, crimes of political favour-peddling and voluntary bankruptcy. It obtained new responsibilities in the prosecution of money laundering and organised crime cases in 2004.

19. Authorities have comprehensive powers to compel production of, obtain access to, search premises for, and seize any documents needed during their investigations, as well as other investigative powers. However, considering the lack of comprehensive statistics (especially the number of initiated AML/CFT investigations and the percentage of total investigations completed), it is not possible to assess whether law enforcement and prosecution authorities effectively perform their functions. Expertise within the Drug and Money Laundering Special Prosecutor's Office could be diversified, and more skills in economics would be an asset. Finally, the prosecutors' offices generally mention the issue of resources as their main difficulty.

20. Spain has a currency monitoring system which requires individuals and companies to declare the amount, origin and destination of incoming and outgoing funds. With the adoption of the Special Recommendation IX, the system has been re-directed towards preventing money laundering. With regard to the system in place, the current declaration form seems to be more aimed at currency controls and does not seem very useful for AML or CFT purposes. The introduction of a new declaration form should facilitate the implementation of the declaration system for AML/CFT purposes. The applicable ministerial order and the law are silent on the methods to use to inform people about their obligation to report the transportation of cash or monetary instruments above a certain threshold, which raises a real issue of effectiveness of the measures in place. Again, the adoption and implementation of a new regulation should introduce useful mechanisms in this respect.

The possibility of stopping or restraining currency or monetary instruments does not explicitly exist where there is a suspicion of terrorist financing. It also seems that asset forfeiture provisions do not apply to persons who are smuggling cash or monetary instruments that are related to money laundering or terrorist financing. Finally, the sanctions regime in place seems appropriate and to give valuable results. Specific issues related to the physical cross-border transportation of cash arise with regard to the cities of Ceuta and Melilla and their location in North Africa; however, no further information was provided by the Spanish authorities.

3. Preventive Measures - Financial Institutions

21. In Spain, the preventive side of the AML/CFT system is rooted both in Law N° 19/1993 of 28 December on certain measures for the prevention of money laundering (Law 19/1993), along with Royal Decree N° 925/1995 (RD 925/1995) of 9 June (amended in January 2005) which implements this Law, and in Law N° 12/2003 of 21 May (Law 12/2003). Law 19/1993 contains customer identification as well as the other AML obligations that apply to a wide range of financial institutions; however, it does not directly refer to the fight against terrorist financing, which is contained in separate Law 12/2003. The connection between the two laws should be made more explicit. The Spanish AML/CFT system is not based on risk assessments in the manner contemplated in the revised FATF 40 Recommendations. As far as specific requirements are concerned, RD 925/1995 takes into account different risk situations, such as non face-to-face business.

22. Spain has implemented customer due diligence (CDD) requirements although the current regime is insufficient to meet all subtleties of Recommendation 5. The current requirements are not extended to the risk related to terrorist financing. There are inadequate requirements to ascertain the beneficial owner. Obligations in relation to ongoing due diligence and those requiring financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant are not sufficiently clear and do not impose direct obligations as asked for in Recommendation 5. With regard to higher risk situations, measures in place are incomplete. Spain should also address whether or not financial institutions are permitted to apply simplified or reduced CDD measures and should issue appropriate guidance to that effect. Financial institutions should not be permitted to open accounts, commence business relations or perform transactions when adequate CDD has not been conducted. Clear and direct measures should be adopted when financial institutions fail to complete CDD satisfactorily. Finally, Spain has not adopted rules governing the CDD treatment of existing customers on the basis of materiality and risk. Recommendations 6 and 7 have not been adequately implemented. In relation to Recommendation 8, Spain has some regulation in place that addresses the issue of non-face to face relationships (when establishing customer relationships) but does not extend this requirement to non-face to face transactions (linked to ongoing due diligence). There is no clear general guidance regarding emerging technological developments.

23. Neither the law nor the Royal Decree specifically deal with the issue of relying on third parties or other intermediaries to conduct due diligence. However, there is a requirement that responsibility for CDD always stays with the financial institution. Recommendation 9 is therefore not applicable. With regard to Recommendation 4, Spanish statutes dealing with a duty of confidentiality, both for domestic and for international matters, allow for exceptions that prevent the secrecy laws from hindering the implementation of the FATF Recommendations.

24. Spain complies with the requirements of Recommendation 10. Requirements in RD 925/1995 related to wire transfers entered into force in January 2006. They seem to be in line with the requirements set out in SR VII. However, the implementation and effectiveness of these measures could not be assessed due to their recent coming into force. Finally, the effectiveness of the monitoring of compliance with SR VII is linked to the overall effectiveness of Spain's supervision of financial institutions for AML/CFT and some doubts remain in this area (see comments below). Recommendations 10 and 21 are fully observed.

25. With regard to the reporting obligation, attempted transactions should be clearly and directly subject to the reporting obligation. Although the legal framework appears generally adequate, the

evaluation team expressed some concerns about the relatively low numbers of STRs, especially from outside the banking system and the fact that a large number of STRs have been filed by a small number of financial institutions. SEPBLAC relies heavily on prevention efforts, and its resources are inadequate to ensure a proper implementation of the reporting obligation through AML/CFT supervision. Finally, the fact that the scope of the Spanish ML/TF offences is not quite broad enough has a corresponding negative impact on the scope of the reporting obligation. Recommendations 14 and 19 are fully observed. There is not sufficient AML/CFT guidance available, and SEPBLAC does not deliver sufficient specific feedback to reporting entities especially on the status of STRs and the outcome of specific cases.

26. Financial institutions are obligated to establish internal procedures and policies to prevent money laundering, a measure that meets most of the FATF requirements. However, reporting financial institutions should be obliged to establish screening procedures to ensure high standards when hiring employees. Careful attention should also be paid to the implementation of proper internal procedures by all financial institutions.

27. Spanish requirements on financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures largely comply with the FATF standard. The authorities indicated that their broad interpretation of the requirements as stated in Law 19/1993 allow them to ensure adequate compliance consistent with the Spanish requirements and the FATF Recommendations. The identified shortcomings regarding the supervisor's ability to ensure AML/CFT compliance raise questions on whether this broad interpretation is indeed systematically applied. Spain should therefore add provisions to clarify that, for example, the higher standard has to apply in the event that the AML/CFT requirements of the home and host countries differ. There is no legally binding prohibition on financial institutions to enter into or continue correspondent banking relationship with shell banks, nor is there any obligation on financial institutions to determine whether a respondent financial institution in a foreign country permits its accounts to be used by shell banks.

28. The various procedures for licensing financial institutions appear adequate to prevent criminals from gaining control or significant influence of these businesses. It seems that criminal background checks are made at the time that a new financial institution is licensed. After that it is essentially left to financial institutions to do this as changes are made to the Board or to senior management. However, the Bank of Spain must approve new appointments, and this process includes a review of each appointee's qualifications and whether he or she has been subject to administrative sanctions. Spain should clarify what specific requirements and expectations are of financial institutions and whether the financial institutions or the Bank of Spain is responsible for doing background checks on new directors and new officers (changes after initial incorporation).

29. SEPBLAC is directly responsible for AML/CFT supervision for a large number of regulated financial institutions. For example in 2004 the total number of regulated financial institutions was 6,520. However, it only conducted 14 inspections of regulated financial institutions in that year. SEPBLAC has signed some MOUs with the financial regulators (Bank of Spain, the National Securities Market Commission and the Directorate General of Insurance and Pension Funds) that operate AML/CFT inspection programmes of their own. The AML/CFT supervision programmes operated by the financial regulators provide an additional level of comfort to SEPBLAC in respect of institutions not inspected directly by them; and in addition the requirement to notify SEPBLAC of compliance breaches is an additional strength. However, there is a fairly significant gap between the volume of inspections being done by the financial supervisors and the resulting information on these which reaches SEPBLAC. Spain should take steps to review its supervisory regime and better co-ordinate the inspection of reporting entities to increase the number of inspections. Finally, competent authorities are encouraged to review the adequacy of resources dedicated to supervision and take the appropriate steps to make the inspection programme as effective as possible. The limited results of the reporting obligation by money remitters raise some serious concerns about the effectiveness of the implementation of the FATF standards in this sector.

30. While there is a system of sanctions in place (not implemented by the supervisor itself but rather by the Treasury), due to the relatively limited access by SEPBLAC to the overall state of compliance with AML/CFT requirements, it is impossible to measure the effectiveness of the sanctions regime (element relating to effectiveness).

4. Preventive Measures – Designated Non-Financial Businesses and Professions

31. Law 19/1993 has imposed AML obligations on most categories of DNFBPs since April 2005. A discrete business sector for trust and company service providers has not been identified in Spain. However, AML/CFT obligations are applicable to persons offering these services if such persons fall into the categories identified (Spanish authorities confirmed that lawyers or other regulated and supervised professionals offer services equivalent to those offered by independent trust and company services providers as found in some other jurisdictions).

32. The main deficiencies in the implementation of AML/CFT preventive measures that relate to financial institutions (i.e., Recommendations 5, 6, and 8-11 and described above) also apply to DNFBPs, since the core obligations for both DNFBPs and financial institutions are the same. Requirements in relation to the identification of beneficial ownership and additional identification/know-your-customer rules should apply to DNFBPs to the full extent. Overall, the ratings for Recommendations 12 and 16 reflect concerns about the scope of application of AML/CFT obligations and the effective implementation of the existing requirements. More generally, the evaluation team believed that the effectiveness of the implementation of current Spanish AML/CFT laws could be improved by developing effective monitoring of the implementation of FATF standards by DNFBPs in Spain. It is also important to work with the different sectors (via their professional associations for instance) to improve awareness and overcome reluctance to apply AML/CFT requirements.

33. Due to the limited (staff and technical) resources of SEPBLAC for carrying out inspections of DNFBPs, there is no effective AML/CFT supervision in place. DNFBPs generally recognise that they do not have enough guidance as far as AML/CFT requirements are concerned.

34. With regard to Recommendation 20, Spain has not yet taken steps to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

5. Legal Persons and Arrangements & Non-Profit Organisations

35. Spanish law does not lay down any explicit obligation on legal persons, such as a limited company, to know or to disclose information about the beneficial ownership of that company as that term is defined in the glossary to the Methodology, nor is there any registry that maintains information on beneficial ownership in this sense. It thus seems that Spanish law does not require adequate transparency concerning beneficial ownership and control of legal persons, and it is in practice, bound to be difficult and sometimes quite cumbersome for competent authorities to obtain the necessary information. Moreover, access to such information, when there is access to it, is often not timely. Relying on investigative and other powers of law enforcement, Spanish competent authorities can produce disclosure of the immediate owners of a legal person – but if these, in turn, are also legal persons, the competent authorities must resort to continuing up the chain, one link at a time. Following this path, and through the use of mutual legal assistance instruments whenever non-domestic legal persons form part of the chain, Spanish competent authorities should at least be able to arrive at the ultimate owner(s) of a legal person if not the person exercising ultimate control. To the extent that the necessary information is thus obtained, there can be doubts as to whether the information is adequate, accurate and up to date, which may be difficult for the legal persons involved and the competent authorities to verify.

36. Bearer shares are still in use in Spain although they are now not so widely used as some years ago and their importance has decreased accordingly. In particular, the use of paper-format bearer

shares has decreased, and since 1998 it is impossible to prove ownership by mere possession of a certificate. This development is a positive one. However, the above-mentioned difficulties in ensuring that competent authorities have timely access to adequate, accurate and current information on beneficial ownership and control of the company itself persist with respect to legal persons using bearer shares as much as with respect to legal persons not using such shares.

37. Spanish law does not recognise the legal concept of a trust, including trusts created in other countries. As well, according to Spanish authorities, there are no other legal arrangements that are of a similar nature to a trust or which would otherwise meet the definition of a “legal arrangement” as defined in the FATF Recommendations. Nevertheless, Spanish lawyers do, from time to time, handle trusts located abroad. Spanish authorities indicated that when handling trusts abroad, Spanish lawyers are subject to the same legal regime as when assisting Spanish persons/entities, including the obligations with regard to customer identification, record keeping, STR reporting, etc.

38. In Spain, the NPO sector is basically made up of associations and foundations. Spain has over the last few years reviewed the adequacy of its legal framework relating to non-profit organisations that could be abused for the financing of terrorism and has put several measures in place to prevent such abuse. Nevertheless, there are some doubts as to whether the existing rules are fully implemented. Spain should give further consideration to implementing other specific measures from the Best Practices Paper on SR VIII or other measures to ensure that funds or other assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorist organisations.

6. National and International Co-operation

39. The activities of planning, co-ordination and implementation of the anti-money laundering policy in Spain are carried out through the Commission for the Prevention of Money Laundering. A significant part of domestic co-operation takes place through this mechanism; however, these efforts could be further reinforced to achieve more effective bilateral interagency co-operation.

40. Spain signed the Palermo Convention and its Protocols on the 13 December 2000 and ratified on 1 March 2003. The Vienna Convention was ratified on 11 November 1990. Spain signed the 1999 United Nations International Convention for the Suppression of the Financing of the Terrorism on 8 January 2001, and it was ratified on 1 April 2002. Spain has not fully implemented the Vienna Convention and the Palermo Convention (“possession or use”, self-laundering). Spain has not fully implemented the Terrorist Financing Convention in that it has not criminalised the collecting of funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts (as that term is defined in the relevant Article of the Convention). Furthermore, there are doubts as to whether Article 2(3) is fully implemented insofar as Article 576 PC does not fully cover the criminal acts set out in the Conventions listed in the Annex to the Terrorist Financing Convention. Finally, the shortcomings in effective CDD requirements under Spanish law demonstrate that Article 18(1)(b) of the Terrorist Financing Convention has not – to the full extent – been properly implemented.

41. Spain has not fully implemented the relevant UN Security Council Resolutions since: (1) it has issued very little guidance to financial institutions and other persons/entities that may be holding targeted funds/assets; (2) it has not established or made clear and publicly known the necessary procedures for de-listing and unfreezing in appropriate cases; and (3) because the scope of the terrorist financing offence is not quite broad enough, it would be unable to freeze the assets of a person who provides or collects funds with the unlawful intention that they should be used, or in the knowledge that they are to be used, by an individual terrorist.

42. Spanish authorities are able to provide a wide range of mutual legal assistance. A proper application of treaties combined with Spain’s being a party to a significant number of treaties on mutual legal assistance provides a solid basic legal framework. This framework is expanded and further strengthened by other important factors, such as Spain’s providing mutual legal assistance on

the basis of reciprocity without also requiring a bi-lateral or multilateral treaty. It is moreover noteworthy in this respect that if a request for mutual legal assistance is received from a country with which Spain has no treaty on mutual legal assistance, the requesting State's ability and willingness to render mutual legal assistance to Spain to the same extent (reciprocity) is assumed without any further need for guarantees. Statistics, although not as comprehensive and detailed as they ideally should be, suggest that efficiency in the practical application of the system has improved over the last years and is now generally good. Notwithstanding the system's overall efficiency and as a recommendation without any effect on the compliance rating, Spain should consider how the average time for processing request for mutual legal assistance, in particular from countries outside the European Union, could be further reduced.

43. Both ML and TF are extraditable offences. The Spanish authorities state that extradition can occur pursuant to Spain's multilateral and bilateral extradition agreements or the principle of reciprocity where there is no multilateral or bilateral agreement in existence between Spain and the requesting country. Spain does not oppose the extradition of its own nationals on a general basis, as long as the requesting State also agrees to extradite its nationals (based on reciprocity). The Spanish authorities confirm that where the requirement of dual criminality applies, it is interpreted broadly. This means that it is not necessary that the offence be described in exactly the same way under the requesting country's laws, as long as the activity in question is punishable under Spanish law.

44. In general, SEPBLAC's capacity to exchange information with foreign counterparts appears to be satisfactory. Exchanges of information are not made subject to disproportionate or unduly restrictive conditions, and there appears to be a range of mechanisms or channels that can be used to co-operate with other countries. In information exchanges SEPBLAC is governed by the criteria of the Egmont Group or by the Collaboration Agreements signed with 22 countries. Spanish authorities indicated that information exchanged by SEPBLAC with other FIUs is not subject to restrictions of any kind. The fundamental criterion is that of reciprocity. SEPBLAC has no restriction on information exchange of a tax nature. Financial institutions or DNFBPs cannot invoke confidentiality or secrecy restrictions when responding to requests for information from SEPBLAC, except for public notaries, lawyers and solicitors, who may assert legal professional privilege.

45. The evaluation team was advised that financial supervisors are not authorised to share information related to money laundering or terrorist financing with foreign counterparts. Should a foreign regulator approach one of them in a request for information in relation to ML/TF, the financial regulator would refer the request to SEPBLAC and, once the information is made available by SEPBLAC, communicate it to the foreign financial supervisor. Since SEPBLAC does not deal directly with foreign supervisors to reply to requests related to AML/CFT supervision, it seems difficult to conclude that the co-operation mechanisms in place ensure a rapid, constructive and effective exchange of information.

46. As far as statistics are concerned, Spain should maintain more comprehensive data in the following areas: (1) number of ML/TF investigations, prosecutions and convictions; (2) data on the amounts of property frozen, seized and confiscated relating to money laundering, terrorist financing and criminal proceeds; (3) number of STRs filed on cross-border transportation of currency and bearer negotiable instruments; (4) statistics on whether the request for mutual legal assistance was granted or refused and on how much time was required to respond; (5) number of requests for extradition for ML/TF cases and figures on whether the request was granted or refused and how much time was required to respond; (6) number of formal requests made or received by SEPBLAC in distinguishing between the requests that were granted or refused and (7) number of spontaneous referrals made by SEPBLAC to foreign authorities.

MUTUAL EVALUATION REPORT

1. General

1.1 General Information on Spain

1. The Kingdom of Spain covers an area of 505,957 square kilometres, including the Balearic Islands, the Canary Islands and three small Spanish possessions off the coast of Morocco. Two Spanish cities (Ceuta and Melilla) in the North of Africa also form part of the nation⁴. Spain is separated from Morocco by the Straits of Gibraltar and has both an Atlantic and a Mediterranean coastline. Madrid is the capital city. Other important cities are Barcelona, Bilbao, Valencia, Seville and Saragossa.

2. The population of Spain is approximately 41 million and has a literacy level of 97.9% (as of 30 June 2005). Life expectancy averages 79.52 years (as of 2005). Spain has one of the lowest population densities of the European Union. The languages are Castilian Spanish (100%), Catalan (17%), Galician (7%) and Basque (2%). Castilian is the official language nationwide; the other languages are official regionally. The age of majority is 18. There has been significant change on the migratory patterns during the last 15 years. Spain was traditionally country of emigration. At present however, the trend has reversed, and now Spain has become a country of immigration. Significant changes have taken place in this country at the political, social, economic and demographic level. Moreover, immigration has not only become an important topic, both as a real fact and as a political issue but also across all parts of contemporary Spanish society. Spain has no official religion. The constitution of 1978 disestablished the Roman Catholic Church as the official state religion, while recognising the role it plays in Spanish society. More than 90% of the population are at least nominally Catholic.

3. The new Spanish constitution of 1978 heralded a radical transformation from a dictatorship to a democratic government in Spain. The most important task of the constitution was to devolve power to the regions, which were given their own governments, regional assemblies and supreme legal authorities. The central government of Spain retains exclusive responsibility for foreign affairs, external trade, defence, justice, law (criminal, commercial and labour), merchant shipping and civil aviation. Spain has been a member of the UN since 1955, NATO since 1982 and the EU since 1986, and is also a permanent observer member of the Organisation of American States (OAS).

4. As a member of NATO, Spain has established itself as a major participant in multilateral international security activities. Spain's EU membership represents an important part of its foreign policy. Even on many international issues beyond Western Europe, Spain prefers to co-ordinate its efforts with its EU partners through the European political co-operation mechanism. Spain has also maintained its special identification with Latin America. Its policy emphasises the concept of *Hispanidad*, a mixture of linguistic, religious, ethnic, cultural, and historical ties binding Spanish-speaking America to Spain. Spain maintains economic and technical co-operation programs and cultural exchanges with Latin America, both bilaterally and in the context of the EU. Spain also continues to focus attention on North Africa, especially on Morocco.

5. The Spanish economy boomed from 1986 to 1990, averaging five percent annual growth. After a European-wide recession in the early 1990s, the Spanish economy resumed moderate growth starting in 1994. Spain's mixed capitalist economy supports a GDP that on a per capita basis is 80% of the rates for the four leading West European economies. Spain successfully worked to gain admission to the first group of countries that launched the European single currency (the euro) on 1 January 1999. One of the cornerstones of Spain's economic success story has been structural reform and

⁴ In 1995, the plenary of the Senate has passed the Statutes of Autonomy of Ceuta and Melilla. They both form part of the territory of the European Union.

liberalisation drive. Unemployment remains high at 10.4%. Growth of 2.5% in 2003 and 2.6% in 2004 was satisfactory given the background of a faltering European economy. Currently, the main challenges to the new socialist government over the next few years include adjusting to the monetary and other economic policies of an integrated Europe, reducing unemployment to stay internationally competitive, continuing investment in networks and knowledge, following the ongoing revision of economic regulations to reduce red tape and to foster business initiative, as well as absorbing widespread social changes.

6. Spain is a parliamentary monarchy. The Chief of State is the King⁵ and the government is comprised of the President of the Government⁶ (the head of government) and the Council of Ministers designated by the president (the Cabinet). The legislative authority (bicameral system) lies with the General Courts or National Assembly (*Las Cortes Generales*) that consists of the Senate (*Senado*) and the Congress of Deputies (*Congreso de los Diputados*). The judicial system is headed by the Supreme Court, which is the country's highest tribunal except for constitutional questions. The supreme governing and administrative body is the General Council of the Judiciary. The structuring of the Spanish State into autonomous communities or *Comunidades Autónomas* is one of the most important points of the Constitution. There are 17 autonomous communities⁷ and 2 autonomous cities.

7. The autonomous communities have wide legislative and executive autonomy, with their own parliaments and regional governments. The distribution of powers and responsibilities differs from one community to another and is stipulated in the "autonomy statute" (*estatuto de autonomía*). There is a de facto distinction between "historic" communities (Basque Country, Catalonia, Galicia, and Andalusia) and the rest. The historic ones initially received more functions, including the ability of the regional presidents to choose the timing of the regional elections (as long as they happen at most 4 years apart). As another example, the Basque Country and Catalonia have a full-range of police forces of their own: *Ertzaintza* in the Basque Country and *Mossos d'Esquadra* in Catalonia. Other communities have a limited local constabulary or none at all.

8. The Spanish Constitution was adopted on 6 December 1978. Spain's legal system is a civil law system with regional applications. Primary legislation is in the form of laws. Secondary legislation is in the form of regulations.

1.2 General Situation of Money Laundering and Financing of Terrorism

9. *Money laundering*. In recent years, Spanish competent authorities have identified different techniques used for the purpose of laundering money: constitution of term deposits; transfers abroad through private accounts (the operating method consisting of paying cash into accounts and ordering transfers abroad continues to be one of the most frequent methods used by foreign criminal organisations operating in Spain to send the proceeds of their illegal activities abroad and to try to separate the funds from their origin); transfers abroad through accounts of Spanish limited companies supposedly dedicated to importing goods; transactions through corporate networks; use of bridging accounts (reception of transfers ordered from abroad by a closed number of companies, and issue of overseas transfers, to one or several companies. A tax haven frequently appears as the origin or destination of the funds); organised VAT. fraud schemes; use of cash deposits and withdrawals and change to high denomination notes. Underground banking operations between Spain and Morocco, combining hashish trafficking and smuggling is also a continuous trend (via Ceuta and Melilla). Finally, corruption schemes were analysed in various cases in 2004.

⁵ King JUAN CARLOS I (since 22 November 1975).

⁶ Jose Luis RODRIGUEZ ZAPATERO (since 17 April 2004).

⁷ The 17 autonomous communities are: Basque Country, Catalonia, Galicia, Andalucía, Principality of Asturias, Cantabria, La Rioja, Region of Murcia, Community of Valencia, Aragon, Castilla-La Mancha, The Canary Islands, Navarre, Extremadura, Community of the Balearic Islands, Community of Madrid, Community of Castilla and Leon.

10. *Terrorist financing.* The Government of Spain, regardless of its political approach, has been involved in a long-running campaign against ETA, a terrorist organisation founded in 1959 that resorts to murder, kidnapping and extortion in order to gain independence of part of the territory in the north of Spain and the south of France and establish a Marxist-Leninist State. ETA targets Spanish security forces, military personnel, Spanish Government officials, and politicians of the Popular Party and the Socialist Party. The group has carried out numerous bombings against Spanish Government facilities and economic targets. The Spanish Government attributes over 1,000 deaths to ETA terrorism since its campaign of violence began. In recent years, the government has had more success in controlling ETA, due in part to increased security co-operation with French authorities. In November 1999, ETA ended a cease-fire it had declared in September 1998. Since then, ETA has conducted a campaign of violence and is blamed for the deaths of some 46 Spanish citizens and officials. Each attack has been followed by massive anti-ETA demonstrations around the country, clearly demonstrating that the majority of Spaniards, including the majority of Spain's Basque population, have no tolerance for continued ETA violence. The government continues to pursue a counterterrorist policy.

11. Spain also faces another terrorist group, commonly known as GRAPO. This urban terrorist group seeks to overthrow the Spanish Government and establish a Marxist state. It opposes Spanish participation in NATO and the US military presence in the country and has a long history of assassinations, bombings, and kidnappings mostly against Spanish interests during the 1970s and 1980s. In a June 2000 communiqué following the explosions of two small devices in Barcelona, GRAPO claimed responsibility for several terrorist attacks throughout Spain during the previous year. In 2002 and 2003, Spanish and French authorities were successful in hampering the organisation's activities through sweeping arrests, including some of the group's leadership.

12. Al Qaeda is known to operate cells in Spain. On 11 March 2004, only three days before national elections, 10 bombs were detonated on crowded commuter trains during rush hour. Security forces deactivated three more devices, and one was found unexploded. Evidence quickly surfaced that terrorists with possible ties to the Al-Qaeda network were responsible for the attack that killed 191 people. Spanish investigative services and the judicial system have sought to arrest and prosecute suspected Al-Qaeda members and actively co-operate with foreign governments to diminish the transnational terrorist threat.

13. Spanish law enforcement authorities have identified some methods and techniques that have been used to finance terrorism (FT) in Spain: funds masked as donations to finance the projects of a non-profit organisation (ETA, Islamic terrorism); creation of groups of companies dedicated to publishing, printing and distribution of books, magazines and newspapers for the purposes of propaganda, which then serve as a conduit for depositing funds obtained through coercion (extortion, kidnapping, etc.), fraudulent collection of subventions, tax returns, etc.; creation of a cultural association by the representatives of the terrorist organisation to facilitate the opening of current accounts and serve as a cover for their control of goods and services (funds were withdrawn by payments to the corporate groups controlled by the terrorist organisation and withdrawn in cash); use of alternative remittance system transfers; and the creation of a web page dedicated to the GRAPO prisoners offering the possibility for sympathisers to donate money in support of the terrorist activity of the group.

1.3 Overview of the Financial Sector and DNFBCs

a. *Overview of the Financial Institutions sectors*

14. In Spain, financial businesses include all resident corporations that are principally engaged in financial intermediation (financial intermediaries) and/or in auxiliary financial activities (financial auxiliaries). Non-profit institutions recognised as independent legal entities that serve other financial businesses are included.

Monetary financial institutions

15. These sub-sectors include resident credit institutions, as defined in the EU legislation, and all other resident financial businesses whose activity consists of receiving deposits and/or close substitutes for deposits from entities other than monetary financial institutions, and, for their own account (at least in economic terms), granting loans and/or investing in securities. This sub-sector is the grouping that the European Central Bank (ECB) considers to be the “money-creating sector” in the euro area monetary statistics⁸.

16. *Other monetary financial institutions.* This grouping comprises resident institutions, which means in practice that the Spanish financial accounts include the business of the Spanish branches of foreign institutions and do not include the business of Spanish institutions’ foreign branches.

- Credit institutions comprise commercial banks, savings banks, credit co-operative banks, the *Instituto de Crédito Oficial* and specialised credit institutions (specialised lending institutions known as *Entidades de crédito de ámbito operativo limitado* – ECAOL until 1996).
- Money market funds (MMF) consist of all Spanish money-market mutual funds (FIAMMs)⁹. Mutual funds can be classified on the basis of their investor vocation; i.e. according to the securities they propose to investors (pursuant to Law 35/2003 of 4 November 2003). Funds are divided into two large groups: FIAMMs and Securities Mutual Funds (FIMs)¹⁰.

Non-monetary financial institutions

17. This group comprises all resident financial institutions that are principally engaged in financial intermediation other than monetary financial institutions.

18. *Other financial intermediaries, except insurance corporations and pension funds* consist of financial intermediaries that are principally engaged in financial intermediation by incurring liabilities in forms other than currency, deposits and/or close substitutes for deposits from institutional units other than monetary financial institutions, or insurance technical reserves.

- *Portfolio investment institutions other than MMFs* include capital market mutual funds (FIMs), closed-end investment companies (SIMs), open-end investment companies (SIMCAVs) and real-estate investment companies and mutual funds. Also included, until December 1998, were FIAMMs that until then had not been considered money market funds, as indicated in the observations on sub-sector S.122. The fund categories defined by the National Securities Market Commission pursuant to Law 35/2003 of 4 November 2003 is the basis for determining the funds included in the non-monetary financial institutions sector.
- *Securities-dealer companies* are included in this sub-sector since as part of their business they can take positions for their own account. By contrast, securities agencies, which cannot engage in such business, are considered financial auxiliaries.
- *Asset securitisation vehicles* include mortgage securitisation vehicles, asset securitisation vehicles and the nuclear moratorium securitisation fund.
- *Venture capital funds and companies* provide medium- and long-term funds to firms with difficulties in gaining access to other sources of financing.

⁸ See Regulation (EC) No 2423/01 of the ECB of 22 November 2001 (ECB/2001/13).

⁹ Regulation (EC) No 2423/01 of the ECB of 22 November 2001 (ECB/2001/13) defines money market funds as those collective investment undertakings of which the units are, in terms of liquidity, close substitutes for deposits and which primarily invest in money market instruments, and/or in other transferable debt instruments with a residual maturity up to and including one year, and/or in bank deposits, and/or which pursue a rate of return that approaches the interest rates of money market instruments.

¹⁰ See the National Securities Market Commission (CNMV) Guide on Mutual funds and collective investments: www.cnmv.es/inversores/eng/documentos/pdf/guia_fondos_eng.pdf#search=FIAMMs%20spain

- *Financial holding companies* are companies that do not themselves carry out financial intermediation activities but that control a group of subsidiaries that engage in financial intermediation.
- *Issuers of preference shares* are companies other than credit institutions that issue equity units that carry entitlement solely to the redemption of their face value along with the accrued return (but not the liquidation value of the issuer in the event of dissolution) and that, for the purposes of seniority of debt, stand immediately behind all the creditors (See Law 19/2003 of 4 July 2003).

19. *Financial auxiliaries.* This sub-sector consists of all financial businesses that principally engage in activities closely related to financial intermediation but which are not financial intermediaries themselves. They include deposit guarantee funds, securities agencies, mutual guarantee companies, appraisal companies, management companies (of pension funds, mutual funds and portfolios), the Insurance Undertakings Settlement Commission until it was included in *Consortio de Compensación de Seguros* (Insurance Compensation Consortium) and the managing companies of organised markets and of securities clearing and settlement. Included here are the holding companies that themselves carry out activities of financial auxiliaries.

20. *Insurance corporations and pension funds.* This sub-sector consists of life and risk insurance corporations, non-profit insurance institutions, the *Consortio de Compensación de Seguros* (the Insurance Compensation Consortium) and autonomous pension funds.

- Insurance corporations include:
 - *Life and risk insurance corporations.* These include both (Spanish and foreign) corporations and “*mutuas*” (mutual companies), whose operations are similar to those of corporations and which should not be confused with the entities with the same name which are either fall under social security funds or under non-profit insurance institutions, which are described below.
 - *Non-profit insurance institutions.* These entities, called *mutualidades de prevision social* are welfare entities mostly set up prior to Law 8/1987 (see “Pension funds” below) by certain groups which in some cases maintain pension funds to supplement social security system pensions, provide benefits to their members in the event of death, birth, etc. and even grant loans).
 - *The Consortio de Compensación de Seguros* (the Insurance Compensation Consortium) is a public law entity created for the purpose of covering the extraordinary risks of individuals and property. It is basically financed by surcharges on the premiums paid by policy-holders and by State contributions and loans, although it also receives premiums directly. In addition, it acts as the State’s agent in dealings with the Spanish export credit company, the public-sector life and risk insurance corporation that manages, on behalf of the State, the coverage of political risks and certain trade risks affecting Spanish exports. This activity is not included in the accounts of these entities, but is consolidated in the State accounts.
- Pension funds: funds created under Law 8/1987 are considered to be pension funds. These funds, which are known as autonomous funds, fall under the control of the General Directorate of Insurance and Pension Funds. They are separate and independent from the assets of the institutions that promote them, do not have separate legal status and are formed by the resources assigned for previously established purposes in their corresponding pension schemes. The management of the funds is entrusted to a management and depository institution, and they are monitored by a supervisory committee. Non-autonomous pension funds, i.e. pension funds set up by certain credit institutions by means of contributions to provident funds or internal reserves, are not included here. These funds figure in the liabilities of the sectors that formed them, where they are recorded as “insurance technical reserves” vis-à-vis the employees (households) entitled to claim them. RD 1588/99 set a deadline of 1 January 2001 for non-financial businesses to convert their non-autonomous pension funds into autonomous ones.

Subsequent provisions postponed this deadline to 31 December 2004 except on what relates to the so called *premios de jubilación* for which the deadline is set to 31 December 2006.

21. Financial leasing transactions, issuing and management of credit cards and postal operators companies are subject to AML/CFT obligations.

22. The following chart sets out the number of financial institutions subject to AML/CFT requirements in Spain from 2001 to 2004:

	2001		2002		2003		2004		Variation 2004/2001
	Number	%	Number	%	Number	%	Number	%	
Official Credit Institute	1	0,03	1	0,03	1	0,01	1	0,02	0,00%
Banks	88	2,86	86	2,17	82	1,20	76	1,17	-13,64%
Savings banks	47	1,53	47	1,19	47	0,69	47	0,72	0,00%
Lending co-operatives	90	2,92	86	2,17	86	1,26	83	1,27	-7,78%
Branches of EU foreign banks	38	1,23	44	1,11	51	0,75	50	0,77	31,58%
Branches of non EU foreign banks	11	0,36	10	0,25	10	0,15	9	0,14	-18,18%
Lending institutions	95	3,09	101	2,55	85	1,24	78	1,20	-17,89%
Credit card issuers	3	0,10	3	0,08	6	0,09	6	0,09	100,00%
Stock brokers	120	3,90	111	2,80	125	1,83	108	1,66	-10,00%
Insurance stock companies	156	5,07	371	9,36	227	3,32	174	2,67	11,54%
Pension fund management firms	55	1,79	51	1,29	62	0,91	59	0,90	7,27%
Fixed-income investment companies	204	6,63	222	5,60	215	3,15	124	1,90	-39,22%
Variable-income investment companies	1.573	51,10	2.159	54,48	2.809	41,11	2.889	44,31	83,66%
Collective Investment Managers	141	4,58	143	3,61	149	2,18	119	1,83	-15,60%
Portfolio Managers companies	43	1,40	34	0,86	54	0,79	26	0,40	-39,53%
Money Changing firms	348	11,31	378	9,54	2.782	40,71	2.629	40,32	655,46%
International fund transfer firms	42	1,36	23	0,58	42	0,61	42	0,64	0,00%
Services provided without a permanent establishment	1	0,03	0	0,00	---	---	---	---	
Others	22	0,71	93	2,35	---	---	---	---	
TOTAL	3.078	100,00	3.963	100,00	6.833	100,00	6.520	100,00	111,83%

23. The following chart sets out the types of financial institutions that are authorised to carry out the financial activities that are listed in the Glossary of the FATF 40 Recommendations:

TYPES OF FINANCIAL INSTITUTIONS AUTHORISED TO CARRY OUT FINANCIAL ACTIVITIES LISTED IN THE GLOSSARY OF THE FATF 40 RECOMMENDATIONS	
Type of financial activity (See the Glossary of the 40 Recommendations)	Type of financial institution that is authorised to perform this activity in Spain
Acceptance of deposits and other repayable funds from the public (including private banking)	Credit institutions (<i>entidades de crédito</i>).
Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfaiting))	Credit institutions (<i>entidades de crédito</i>), financial credit establishments (<i>establecimientos financieros de crédito</i>)
Financial leasing (other than financial leasing arrangements in relation to consumer products)	Leasing companies (<i>establecimientos financieros de leasing</i>); credit institutions
The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	Currency exchange and money remittance firms (<i>establecimientos de cambio de moneda y remisión de fondos</i>); credit institutions
Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Credit institutions, financial credit establishments
Financial guarantees and commitments	Credit institutions; collateral companies (<i>sociedades de garantía recíproca</i>)
Trading in: (a) money market instruments (cheques, bills, CDs, derivatives, etc.);	Credit institutions; securities firms (<i>sociedades/agencias de valores</i>);

TYPES OF FINANCIAL INSTITUTIONS AUTHORISED TO CARRY OUT FINANCIAL ACTIVITIES LISTED IN THE GLOSSARY OF THE FATF 40 RECOMMENDATIONS	
Type of financial activity (See the Glossary of the 40 Recommendations)	Type of financial institution that is authorised to perform this activity in Spain
(b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	
Participation in securities issues and the provision of financial services related to such issues	Credit institutions; securities firms
Individual and collective portfolio management	Credit institutions; collective investment schemes (<i>sociedades de inversión / fondos de inversión / sociedades gestoras de fondos de inversión</i>); pension funds (<i>fondos de pensiones</i>); portfolio management firms (<i>sociedades gestoras de cartera</i>)
Safekeeping and administration of cash or liquid securities on behalf of other persons	Credit institutions; securities firms; collective investment schemes
Otherwise investing, administering or managing funds or money on behalf of other persons	Credit institutions; securities firms; collective investment schemes
Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers)	Insurance companies
Money and currency changing	Currency exchange and money remittance firms

b. Overview of the Non-financial Businesses and Professions sectors

24. **Casinos**¹¹. In Spain, there are several types of game machines: (1) category A includes those machines that permit the player to play a game for a while in exchange for a fixed price. This kind of machines never returns money; (2) category B provides the player with a time to play and, eventually, a, metallic reward. Regulation fixes that the amount of rewards should be 75% of total revenues. This category of machines (usually known as slot machines) is not a game of chance; (3) category C is the sole machine that is properly a game of chance. The amount of the reward is higher and they are only permitted in casinos.

25. All casinos must be licensed before beginning their activity (Article 3.2 of RD 444/1977 of 11 March). The autonomous communities grant the authorisation (licence) following a mandatory report from the Central Administration. The licence can not be transmitted (Articles 10.1.j and 16.i of the Regulation for Gambling Casinos, approved by Ministerial Order on 9 January 1979) and the transmission of more than 5% of the capital is subject to administrative authorisation (article 19.a). Operating a casino without a duly granted licence constitutes very serious infraction according to Article 1.2 of Law 34/1987 of 26 December.

26. Internet casinos are not authorised in Spain, and virtual casinos are forbidden. This is not to underestimate the difficulty of putting a stop to online casinos run from servers located outside Spain. In such cases, the Spanish courts can only act through the institutional channels of mutual judicial assistance or international agreements.

¹¹ Information in this section has been provided by the competent departments of the autonomous communities where establishments are located and by the Spanish Casino Association.

Casinos in Spain – Figures available in 2006	
Total number of casinos	39 (+ 2 branches)
Number of Category C Machines (Games of chance)	1,843
Gaming revenues	283,275,080 EUR
Tips	67,527,797 EUR
Door revenues	2,877,751 EUR
"C" Machine takings (Games of chance)	118,261,822 EUR
Money exchanged for tips (Drop)	1,480,135,650 EUR
Number of visitors	3,049,984

27. **Real Estate sector.** Spain has over 45,800 registered companies with a licence to operate in the sector. Of this number, only 4,600 employ more than three persons. These companies are mainly concentrated in the country's coastal and central zones, i.e. those that have been expanding most rapidly in recent years. In fact 70% of Spanish real estate firms are registered in the regions of Catalonia, Madrid, Andalusia and Valencia. Real estate is a remarkably fragmented sector. In 2002, the turnover of all real estate companies was 46.92 billion EUR, the turnover of listed companies (Vallehermoso, Metrovacesa, Urbis, Colonial, Fadesa and Bami) was 3.11 billion EUR, which amounted to 6.63% of the total figure. In 2004, more than one and a half million real estate operations were registered in the country. The construction industry represented 15% of Spanish GDP in 2004, with the real estate sub-sector accounting for something over 70%.

28. Approximately 4,500 of these 45,800 companies are members of the Property Companies' Association although many of them are holdings that comprise 6 or 7 other companies.

29. **Dealers in precious metals and dealers in precious stones.** In Spain there are some 20,000 jewellers, silversmiths and watchmakers (individuals and companies). This approximate figure covers the whole sector including manufacturers, distributors, retailers, salesmen, etc. and any other related activity.

30. The Spanish Association of Jewellers, Silversmiths and Clock and Watchmakers (*Asociación Española de Joyeros, Plateros y Relojeros, AEJPR*) represents and defends the legitimate general and shared interests of entrepreneurs and professionals in the jewellery, silverware and watch making sector whose businesses are registered in Spain. Membership extends to manufacturing companies, jewellery, silverware and watch and clock wholesalers and retailers, importers and exporters of gems and precious stones, etc. The association has an estimated 12,000 members.

31. **Lawyers.** Law in Spain is a free and independent profession that provides a service to society, which is incompatible with any other activity that could undermine the freedom, independence or dignity inherent to the profession. The governing bodies of Spain's legal profession in order of importance are: the Bar Association, the Councils of the Regional (Law) Colleges or Associations and the Law Colleges themselves. The functioning of these bodies is ruled by democratic principles and strict financial control, with annual budgets, and authorities granted by the bodies' articles of association and applicable relevant legislation. These bodies guarantee the quality of service that lawyers provide to citizens, and they have the authority to impose sanctions on those lawyers who may breach their code of ethics.

32. The title and function of lawyer is an exclusive right of law graduates who register with a Spanish Law College as a practicing professional, who undertake the professional management and defence of the parties in all types of proceedings and who give legal counsel and advice. Likewise, the lawyer can exercise his profession before all types of Courts and Tribunals, administrative bodies, associations, corporations and public entities of any nature, without prejudice to being able to perform the same functions for any entity or private individual when such services are required. Any lawyer who is registered in any one of Spain's professional Colleges can freely practice the profession anywhere in Spain, in the other member countries of the European Union and in other countries according to the applicable legislation. Lawyers from other countries can practice in Spain in accordance with the relevant current legislation.

33. A lawyer can practice for his or her own account, as an employee, or as an associate in an individual or a collective practice. The lawyer who has an individual professional office will be responsible to his client for all the actions or steps taken by his/her articulated juniors or associates, notwithstanding the lawyer's right to seek recovery from said persons where applicable. Nonetheless, associates and articulated juniors are also subject to the same code of ethics and assume their own liability in disciplinary proceedings. Practicing as a lawyer and being an employee must be specially agreed in writing, setting down the conditions, duration, scope, and financial regime of the collaboration. Law can also be practiced as an employee, through a written employment contract, in which the basic freedom and independence for exercising the profession must be respected; likewise, the contract will specify whether the service is of an exclusive nature.

34. Regarding the types of activities or business in which lawyers may engage, they essentially fall into two classes: the first is the activity as counsel, whereby the client receives all types of advice of a legal nature, including the drafting of correspondence, contracts, other types of documents or the issue of professional opinions and findings on issues submitted for their consideration; the second category refers to the lawyer's physical presence, defending and technically managing the client's defence, protecting the client's interests before all types of Courts and Tribunals, be they civil, criminal, commercial, employment-related or contentious-administrative.

35. According to the information provided by the Bar Association, there are 108,500 registered practicing members and 37,714 registered but not practicing, giving a total of 146,214 registered and qualified professionals in Spain. The Ministry of Justice is promoting a reform of the system of access to the profession with a view to imposing additional requirements for law graduates who want to practice Law, such as complementary examinations, attendance at courses organised by Legal Practice Schools, or prior experience during a certain period under the supervision and control of established lawyers. In this respect, the draft law will soon be submitted for debate to the Lower House of Parliament.

36. **Notaries** are legal professionals who simultaneously practice a public function to give citizens the legal security promised by the Spanish Constitution (Article 9) within the scope of extrajudicial legal affairs. They have a highly specialised training and are selected by rigorous public examinations guaranteeing complete and adequate training. Notaries are empowered to certify the truth and authenticity of documents involved in various activities (for example wills, real estate sales and purchases, etc.) thus guaranteeing the citizen total legal protection and security. There are approximately 3,000 Notaries in Spain, distributed throughout the national territory and organised into provincial Colleges or Associations that support them in their function and at the same time control their activity. The General Council of Notaries co-ordinates the activities of the various Colleges and, in terms of hierarchy, reports to the Ministry of Justice. The notaries have created a Laundering Prevention Body and, at the time of the on-site visit, were designing AML/CFT tools into their central database.

37. **Accountants.** This profession in Spain is not regulated or subject to specific controls. No specific qualifications are required nor do accountants need to be registered. There is an Accounting and Auditing Institute which presumably registers them; however this only applies to auditors (there is an official register; see below for this profession), tax advisors (General Register of Tax Advisors), and those acting as external accountants were to become subject to Royal Decree AML/CFT obligations starting in January 2006.

38. **Auditors and tax advisors.** According to Article 2.2 of Law 19/1993 of 28 December , concerning specific measures for preventing money laundering, natural and legal persons acting in the exercise of their profession as auditors or tax advisors are subject to a number of obligations. In Spain, the main legislation regarding the auditing function includes Law 19/1988 of 12 July on Auditing, and its regulation contained in RD 1636/1990. Registration in the Official Register of Auditors entitles these persons to carry out professional activities only as foreseen in article 1 of Law 19/1988. Exercising the auditing or tax advice professions also requires obtaining certain academic

qualifications and membership in the appropriate professional association. As of July 2005, the figures on Registered Auditors are as follows:

- Natural persons: 4,632
- Natural persons currently non practising: 11,854
- Legal persons: 1,155

39. According to Law 19/1988, auditors are directly and severally liable for the damages and losses arising from breach of their obligations according to the general rules of private law. When the activity is performed by a professional from an auditing firm, the auditor and the firm is liable jointly and severally. Notwithstanding the unlimited civil liability for damages and losses that may be caused while practising their activity, auditors and auditing firms are obliged to provide a guarantee in the form of a cash deposit, public treasury bonds, a bank guarantee or civil liability insurance, for the account of and in the manner established by the Ministry of Economy and Finance. The sum, in any case, is proportional to their business turnover. A statutory bond shall be set for the first year of practice. Auditors are bound to secrecy as to all information disclosed to them while practising their activity and may not use such information other than for the actual auditing of accounts. Finally, auditors and auditing firms are required to keep and safeguard the documentation related to each audit performed by them, for a term of five years, as of the date of the auditing report, including the working papers by the auditor that provide the proof and basis for the conclusions recorded in the report.

40. For tax advisors, there are three main public professional corporations, although there is not a legal obligation to be part of them in order to perform exercise this activity:

- *Consejo General de Colegios de Economistas de España* (General Council of Economist Associations of Spain) groups all the professional associations for economists in Spain (currently there are thirty). Some 43,325 natural persons are members of these associations;
- *Consejo Superior de Colegios Oficiales de Titulados Mercantiles y Empresariales* has a specific section — the *Registro General de Asesores Fiscales* (REGAF) (General Registry of Tax Advisors) — that was created in 1985 with the main objective to develop, adapt and revise the technical rules of tax advising and to provide an ongoing training of its members. As of September 2005 there were 2,297 natural persons and 320 legal persons that are registered in REGAF;
- *General Council of Bar Associations* groups all bar associations in Spain (currently there are 83). It is necessary to have a law degree to be member of a bar association.

41. **Trust and company service providers.** In Spain, trust and company services providers are not recognised as separate businesses or professions. Lawyers normally provide trust and company services.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements¹²

42. The Spanish Commercial Code provides the following types of legal persons: (1) sole proprietorship; (2) stock corporation or public limited companies (*Sociedad Anónima* - S.A.); (3) limited liability company; (4) worker's partnerships; (5) joint ventures and (6) branches.

43. A *Sociedad Anónima* is normally used in Spain for investments in major projects. It is essentially a capitalist entity, meaning that more worth is assigned to the capital or money that each shareholder contributes rather than the personal characteristics of the shareholders. For this reason, it is the most suitable format for conducting activities where the participation of a large number of shareholders is foreseen along with greater mobility of capital. The deed of incorporation is signed

¹² See Annex 3 for more information concerning the characteristics of the legal persons and arrangements that exist in Spain, including the requirements for establishing them.

before a notary and then registered at the Spanish Corporate Registry (*Registro Mercantil*). A single person can form this type of company (then, it is called *sociedad anónima unipersonal*). Minimum share capital is 60,000 EUR, of which at least twenty five percent must be paid up; this means that a limited company can be formed with a disbursement of 15,025.30 EUR, with no maximum capital. The capital of a public limited company can be represented either in registered shares or in bearer shares. There is a legal obligation for the company to maintain a shareholders' register in the case of registered shares, in which changes of the ownership of shares must be recorded. In the case of bearer shares, there is no legal obligation to maintain such a registry.

44. In Spain, the NPO sector is made up primarily of associations and foundations. Foundations are private entities that hold assets donated to them for the purposes set out in the documents establishing them (for commercial and non-commercial purposes). Associations are bodies formed by several natural or legal persons for a common non-profit purpose.

45. Spain has not signed the Convention on the Law Applicable to Trusts and on their Recognition (1 July 1995, The Hague).

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

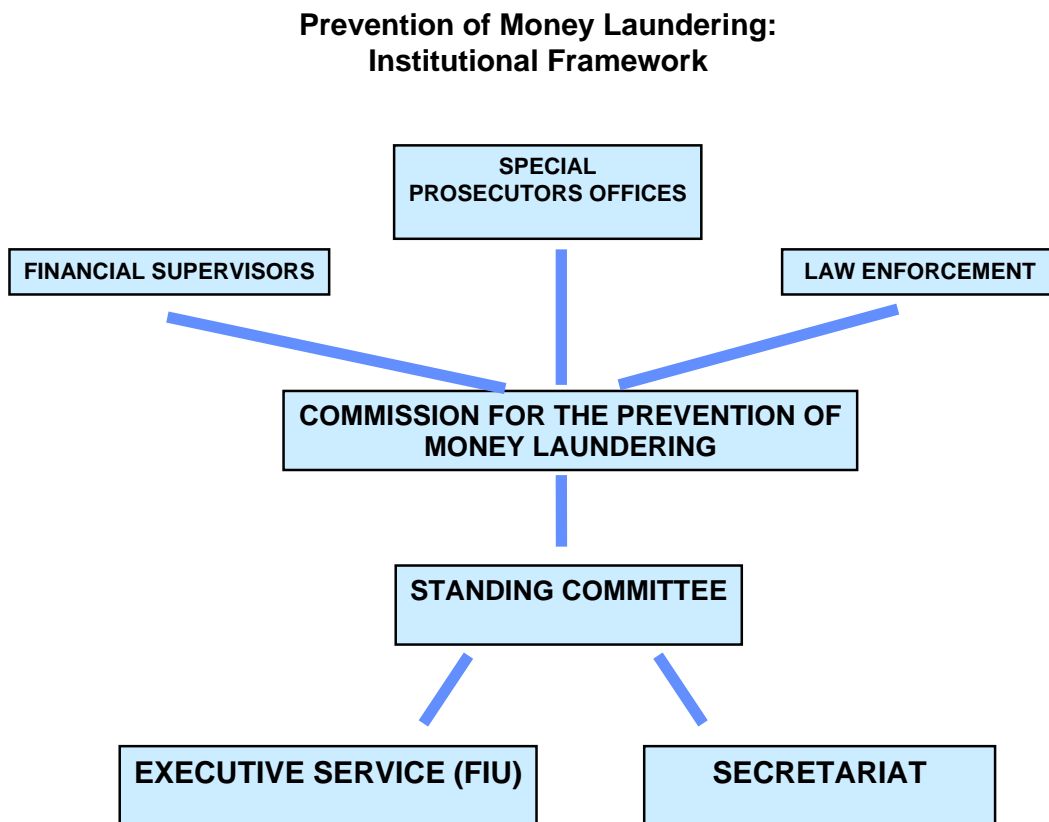
46. The Commission for the Prevention of Money Laundering (see organisational diagram below), which includes all relevant agencies with AML/CFT responsibilities, devised and approved the AML National Strategy in 2002¹³. It consists of 3 main objectives, 12 strategies and 21 actions, assigned to each of the members of the Commission. Each member competent for developing the action is responsible before the Commission. In summary, the strategy is as follows:

- *OBJECTIVE 1: Support to reporting entities in the implementation and improvement of laundering prevention measures.* This objective is to be pursued through the following strategies: (1) establishing a regular discussion platform with reporting parties (this implies analysing and exchanging experiences on suspicious transactions and facilitating pre-emptive measures regarding risk sectors, practices and geographical areas (national and international); (2) strengthening the reporting parties' inspection programme; (3) making the review of certain prevention measures part of the routine inspection duties of supervisory agencies; (4) promoting training actions by reporting parties and (5) greater engagement of risk sectors and activities (private banking; internet banking; use of correspondents; group subsidiaries) in the fight against laundering;
- *OBJECTIVE 2: Support to the investigation and prosecution of laundering activities.* This includes the following elements: (1) optimising informational and co-operation mechanisms in laundering investigations (including compiling relevant statistics); (2) favouring asset investigations whose purpose is the identification, seizure and subsequent administration of the assets belonging to persons involved in laundering activities; (3) promoting the wider use of certain tools in laundering investigations (improvements to allow the use of undercover agents and supervised handovers) and (4) promoting investigator training;
- *OBJECTIVE 3: Support to international action to improve the effectiveness of the anti-laundering systems of other countries and territories.* This objective is to be pursued through the following strategies: (1) promoting and collaborating with FATF action lines; (2) priority support and assistance to countries in the geographical expansion zone of our reporting institutions –such as GAFISUD or CFATF); (3) practical collaboration in laundering investigations and typology exercises and (4) effective, plural participation in other international forums and initiatives related to money laundering (United Nations Convention against Transnational Organised Crime).

¹³ See the Strategy Outline, Annex 4 of the Report.

b. The institutional framework for combating money laundering and terrorist financing

47. The following chart sets out the structure of the institutional framework in place to fight against money laundering in Spain:



Ministry of Economy and Finance

48. *The Commission for the prevention of Money Laundering. General structure.* Spain's institutional regime for money laundering prevention is based on the Commission for the Prevention of Money Laundering. There is no single unit or department in charge of combating ML-FT. Rather, a number of units or departments are involved, one way or another, in developing and implementing elements of the overall national AML/CFT policy. This is the reason why an interdepartmental body was created in Spain. The main task of the Commission is to promote an adequate level of co-ordination and agree common goals and activities. Its primary functions are to:

- Direct and foster activities designed to prevent the financial system or businesses of any other kind from being used to launder money.
- Organise co-operation in this area between government agencies and the private sector.
- Finalise draft provisions governing money laundering-related matters.
- Submit proposed sanctions to the Minister of the Economy and Finance, if authority for the approval of such sanctions lies with the Minister or with the Council of Ministers as a whole.

49. The Commission organises two official meetings a year, although the practice is that more meetings are held. The Standing Committee, chaired by the Director General of the Treasury and Financial Policy, deals with all ordinary matters in the realm of prevention policy which cut across

various units or requires joint action. The Standing Committee holds meetings more often than the Commission.

50. *Supporting bodies depending on the Commission.* Pursuant to article 15 of Law 19/1993, the Commission has the following support bodies: the Commission Secretariat and the Executive Service of the Commission, as well as the Standing Committee of the Commission.

1 – The Secretariat of the Commission for the Prevention of Money Laundering. According to Article 23 of RD 925/1995 of 9 July, as the implementing regulation for Law 19/1993, this department of the Treasury and Financial Policy General Directorate (Ministry of Economy and Finance) is responsible for preparing draft laws and regulations on countering money laundering, for promoting and co-ordinating Spain's participation in international forums and for preparing sanction proceedings against reporting institutions.

51. More specifically, the Deputy Director for the Inspection and Supervision of Capital Movements of the Directorate General for the Treasury and Financial Policy, in addition to the responsibilities assigned to it regarding cross-border transactions and exchange controls, acts as the Commission's Secretariat, and it prepares relevant draft legislation for submission to the Commission for information purposes or its approval as appropriate. It also institutes penalty proceedings for offences stipulated in Law 19/1993, following deliberation by the Standing Committee, and the appointment of examining officers in such proceedings. The examining officers recommend the appropriate decision to the Commission so the latter may impose penalties as indicated by the law.

Institutions involved in monitoring compliance, and in collecting and using financial information related to suspect or actual criminal activities.

2 – The Executive Service of the Commission for the Prevention of Money Laundering (SEPBLAC). Law 19/1993 and RD 925/1995 establish that the support unit for the Commission for the Prevention of Money Laundering and Monetary Offences is the Commission's Executive Service, which is known by the acronym SEPBLAC. The agency is the Spanish financial intelligence unit (FIU), the primary mission of which is to receive and analyse reports of suspicious and unusual transactions from financial institutions and from other non-financial professions. It also carries out, in general terms, supervisory and inspection functions of the AML/CFT system.

52. SEPBLAC performs investigation and prevention of infringements of administrative law under the legal framework governing cross-border capital movements and financial transactions, along with its activities to prevent the financial system or businesses of any other kind from being used to launder money. The Monetary Offences Investigative Squad (BIDM) is a law enforcement unit of the Directorate General for the Police attached to SEPBLAC to support SEPBLAC activities. The Investigation Unit of the Guardia Civil has been granted similar responsibilities vis-à-vis SEPBLAC.

53. The staff of SEPBLAC includes employees of the Bank of Spain, the Ministry of the Economy and Finance, the National Police Corps and the *Guardia Civil*. It incorporates inspectors from the realms of government finance, customs, the Bank of Spain and BIDM.

54. *Composition of the Commission.* The Commission is an interdepartmental body chaired by the Secretary for Economic Affairs, with representatives drawn from those units and departments having responsibility for the fight against money laundering (in particular, *Banco de España*, the CNMV, the General Directorate of Insurance and Pension Funds (DGSFP), the Government Committee for the National anti-Drug Plan, the Inland Revenue, the Special Public Prosecutors Offices for drug trafficking and corruption, the General Directorates of the Police Force and Guardia Civil, the Police Committees of autonomous regions running their own law enforcement corps, etc.). According to Article 20 of RD 925/1995, as amended by RD 54/2005 of 21 of January, the Commission, which shall be attached to the State Secretariat for Economic Affairs, shall be under the chairmanship of the

State Secretary and shall further be composed of representatives of different relevant ministries and institutions¹⁴.

55. The composition of the Prevention Commission and the Standing Committee is adapted to changes in the structure of the Administration since 1995, and the Director of the National Intelligence Centre is given a place on both. Rules are laid down for the *Guardia Civil* unit attached to SEPBLAC, with provision for the eventual co-operation with the Commission of other police corps.

56. Within the “Customs Monitoring Service of the Department of Customs and Excise”, and in order to strengthen its activity in this area, the Central Anti-Money Laundering Unit has operated since the beginning of 1996. Regional units have also been set up to carry out tasks related to money laundering and the hiding of assets obtained through illicit activities within specified geographical areas.

Ministry of Interior

57. **The *Guardia Civil*.** Within the structure of the Ministry of Interior, two units of the *Guardia Civil* combat money laundering: the “Judicial Police”, which comprises various units deployed throughout Spain in line with the country’s judicial districts, and which has task forces to combat economic crime on the national and regional levels; and the “Fiscal Service”. The *Guardia Civil* is according to the law the fiscal investigative police of Spain and the Fiscal Service is in charge to specifically develop that mission. With regard to customs issues, the *Guardia Civil*’s groups of tax experts monitor movements of persons and goods through customs gateways (e.g. airports, ports and land border-crossings), detecting physical movements of funds. The *Guardia Civil*’s surveillance of the coasts and borders also helps to detect funds (through mobile customs patrols and patrols of ports and the coastline).

58. **The Directorate General for the Police.** This General Directorate is part of the Ministry of Interior as well. Within the General Commissariat for Criminal Investigations, three bodies have responsibility for combating money laundering: the Central Specialised and Violent Crime Unit (UDEV) and the Financial Crimes Investigation Units. On the regional level, since 1997, anti-drug and organised crime units (UDYCOs), to combat drug trafficking, organised crime and money laundering have been created. The UDYCOs possess special counter-laundering task forces.

Ministry of Justice

59. **The Special Prosecutor’s Office for the Prevention and Repression of Illegal Drug Trafficking.** Created by Law 4/1988 of 4 April, the most important functions of the Office are to investigate and prosecute all offences having to do with illicit drug dealing, and to investigate criminal money laundering offences connected with such trafficking. The authority of the Special Prosecutor’s Office extends to all parts of Spain, and proceedings may be brought against organised groups and in

¹⁴ The complete composition is as follows: the Chief Prosecutor of the Special Drug Trafficking Prevention and Control Office, the Chief Prosecutor of the Special Office for Economic Offences relating to Corruption, the Director-General of Police, the Director-General of the *Guardia Civil* [Spanish *Guardia Civil*], the Director-General of the Treasury and Financial Policy, the Head of the Customs and Excise Department of the Inland Revenue, the Head of the Financial and Tax Inspectorate of the Inland Revenue, the Director-General of Insurance and Pension Funds, a Director-General of the National Securities Markets Commission, a Director-General of the Bank of Spain, the Director-General of Trade and Investment, the Executive Director of Intelligence in the National Intelligence Service, the Head of the Spanish Data Protection Agency, the Head of the Technical Office of the State Secretary for National Security, the Director of the Executive Service of the Commission, the Deputy Director-General for the Inspection and Control of Capital Movements of the Directorate-General of the Treasury and Financial Policy, who shall act as Secretary to the Commission, one representative of each of the autonomous regions having its own police force for the protection of persons and property and for the maintenance of public safety. Each of the autonomous regions in question shall inform the Chairman of the office assigned responsibility for representing them on the Commission.

respect of crimes affecting more than one Spanish province. The Office may also prosecute drug trafficking and the laundering of money derived from trafficking committed abroad, when the perpetrators of such crimes are in Spain and their extradition has been neither granted nor requested.

60. **The Special Prosecutor's Office for the Repression of Corruption-Related Economic Crimes.** Created by Law 10/1995 of 24 April and modelled on the Special Prosecutor's Office for the Prevention and Repression of Illegal Drug Trafficking, its main functions are to carry out the proceedings and investigations and to intervene in trials on criminal matters concerning crimes under its competence, which are assigned to it by the State Prosecutor General when they are of particular importance. Thus it plays a part in obviously important cases involving public finance, smuggling, fraud, and crimes against public administration, where those crimes are committed by officials exercising their functions, in addition to offences linked to the previous ones, and particularly money laundering, provided that the State Prosecutor General so decides.

61. Money laundering associated with financial crimes is a matter for the Public Prosecutor in general, without prejudice to the role of the Special Prosecutors' Office against corruption in cases as set out by law (those which exceed the operational capacity of local prosecutors). In order to investigate and uncover crimes involving money laundering, both Special Prosecutors' Offices have access to the services of a criminal investigation unit made up of officers from the National Police Corps and the Guardia Civil.

Financial system supervisory bodies

62. **The Bank of Spain.** Following the publication of RD No. 925/1995, the Bank of Spain decided that, as a central bank, it would pursue its own efforts in combating money laundering even though SEPBLAC had been assigned to oversee enforcement of anti-money laundering measures by financial institutions over which the Bank exercises prudential control.

63. The Bank of Spain helps to bolster SEPBLAC's staffing and material resources. It applies in-house anti-laundering measures. It disseminates information and recommendations on laundering-related issues to credit institutions, takes part in working groups on money laundering, both at home and internationally, and participates in training activities for both the public and private sectors.

64. **The National Securities Exchange Commission (CNMV).** The CNMV oversees and inspects securities exchanges and the activities of all natural and legal persons taking part therein, and it is empowered to impose sanctions. As stipulated in Title II of the Securities Market Law 24/1988 the National Securities Market Commission is established and is entrusted with the supervision and surveillance of the securities markets and of the trading activities of all individuals and legal persons in these markets, the exercise of the power to sanction them, and other duties attributed to it by the mentioned Law.

65. The CNMV seeks to ensure the transparency of the securities markets, the correct formation of the prices on these markets and the protection of investors by promoting disclosure of any information necessary in order to attain these ends. The Commission also advises the Government and the Ministry of Economy and Finance and, as appropriate, the equivalent bodies of the Autonomous Regional Governments on matters relating to securities markets, at the request of such bodies or on its own initiative. It may also propose to those entities such procedures or regulations relating to securities markets as it deems necessary. It draws up and publishes an annual report describing its activities and the general condition of the securities markets.

66. The CNMV is a public law entity with independent legal status and full public and private legal capacity. It is governed by a Board which exercises all the powers attributed to it by this Law and by the Government or the Minister of Economy and Finance in implementation of the Law 24/1988. Among these powers are: (1) Imposition of penalties due to extremely serious infringements of Title VIII of Law 24/88. (2) Authorisation, withdrawal of authorisation, and corporate transactions of

investment services firms and other persons or entities acting under the scope of Article 65.2, when so required by regulations, based on their importance from an economic and legal standpoint. (3) Authorisation and withdrawal of authorisation of branches of investment services firms from countries that are not members of the European Union, and other subjects in the securities market, when so required by regulation, based on the economic and legal significance of such subjects.

67. Without prejudice to the nature of the Advisory Committee as an advisory body to the Board of the National Securities Market Commission, the Committee informs draft regulations of a general nature on matters relating directly to securities markets that are referred to it by the Government or by the Ministry of Economy and Finance, in order to implement the principle of the right of affected sectors to a hearing as part of the procedure of drawing up administrative provisions. An MOU is signed with SEPBLAC by which the mutual assistance is provided in performing inspections.

68. **The General Directorate of Insurance and Pension Funds.** The Directorate General for Insurance and Pension Funds performs the functions attributed under current regulations to the Ministry of the Economy and Finance in respect of private insurance and reinsurance, capitalisation and retirement funds. An MOU is signed with SEPBLAC by which the mutual assistance is provided in performing inspections.

Other institutions with competences in AML issues

69. **Ministry Of Foreign Affairs.** By virtue of its powers, the Ministry of Foreign Affairs runs Spain's foreign policy with regard to combating money laundering, and in so doing it accords high priority to the FATF Forty Recommendations.

70. **Ministry of Justice.** The Ministry's role focuses primarily on the formulation of criminal legislation to combat money laundering, in liaison with all competent authorities including the Special Prosecutor's.

Trade associations

71. **The Spanish Private Banking Association (AEB).** Since 1995, the AEB's efforts to prevent money laundering have led to the production and dissemination to its member banks of circulars regarding amendments on anti money laundering legislation. The AEB has also sent banks regular letters and bulletins, and it is continuing to co-operate with the authorities in charge of the fight against money laundering. To this end, it regularly organises various types of meetings involving banks, savings and loan associations and government officials.

72. **The Spanish Confederation of Savings Banks (CECA).** Since 1994, CECA has prepared and disseminated several circulars on the prevention of money laundering. By this means, this institution keeps their members informed on the amendments on anti money laundering legislation. Furthermore, the Audit Co-ordinating Committee discusses yearly the profiles of transactions that are reported to SEPBLAC, to ascertain whether any changes to auditing procedures are needed so as to detect suspicious transactions. The savings banks' auditing procedures are currently being updated in line with amendments to the FATF's Recommendations.

73. The non financial businesses and professions are represented by individual professional bodies including the Spanish Association of Jewellers, Silversmiths and Clock and Watchmakers, the *Consejo General de Colegios de Economistas de España*, *Consejo Superior de Colegios Oficiales de Titulares Mercantiles de España* and *Instituto de Censores Jurados de Cuentas*, the Accounting and Auditing Institute, the Spanish Casino Association, the General Council of Law and the General Council of Notaries.

c. Approach concerning risk

74. Although clear preference for developing specific regulations for each of the duties of obliged entities, several AML/CFT measures in Spanish regulation are applied using a risk-based approach. In this regard, several measures are devised in a way that gives room for the obliged entities to decide the level of intensity of the measures based on their own estimation of risk. Areas such as customer identification, customer acceptance policy or analysis of suspicious transactions are regulated in a way that the obliged entity must perform a risk assessment and decide either (i) on the type of additional measure or (ii) the intensity of the measure. The establishment of the business relationship is the cornerstone of the risk-based policy followed by obliged entities. The CDD applied at this point provides them with the elements and the parameters needed to assess the profile risk of the customer and adequately monitor the transactions conducted in the course of the relationship.

75. Customer risk is taken into account in article 3.5 of RD 925/1995. The Decree sets out that at the time of entering into a business relationship, the reporting parties must obtain information from their clients in order to ascertain the nature of their business or professional activity. They are also required to take reasonable steps to check the accuracy of the information given. These measures include the establishment and application of procedures to verify the activities declared by clients. Such procedures should bear in mind the relevant level of risk in each case and be based on documents that provide details on their declared business activity either provided by the client or from third-party sources.

76. The inspections performed by SEPBLAC and the competent supervisor detect and assess the appropriateness of the measures implemented or the intensity of the measures put in place to cover the risk.

77. Country risk is also a relevant part of the overall risk approach. Spanish authorities have identified an explicit list of higher risk countries through RD 1080/1991. Several provisions are related to requiring obliged entities to adapt the level of intensity of the measures in interacting with these countries. In particular, special analysis of transactions must be performed for transactions with countries of concern, according to Article 5.2. c of RD 925/1995. The Decree sets out that when establishing the internal control procedures, reporting parties must specify the way in which this obligation to conduct a special examination is to be fulfilled. Such specifications includes the preparation and dissemination among executives and employees of a list of transactions particularly liable to be linked to money laundering, which should be regularly updated, and the use of appropriate IT tools to conduct each analysis, bearing in mind the type of transaction, business sector, geographical scope and quantity of the information; in addition, the terms of articles 9 and 10 of Organic Law 15/1999 of 13 December on the Protection of Personal Data also apply.

78. Product risk is also a relevant part of the risk assessment. Some provisions give guidance to obliged entities on the need to develop CDD implementing measures on areas of business where risk is above the average. Article 3.5 third paragraph of RD 925/1995 sets out that reporting parties must apply additional identification and “know-your-customer” measures to control the risk of money laundering in highly sensitive business areas and activities; in particular, private banking, correspondent banking, distance banking, currency exchange, cross-border transfers of funds or any others that may be determined by the Commission for the Prevention of Money Laundering and Monetary Offences.

d. Progress since the last mutual evaluation or assessment

79. Spain was the seventeenth FATF member country to be reviewed during the second round of mutual evaluations. The main deficiencies/difficulties identified in the second FATF Mutual Evaluation Report dated 2 October 1998 were: (1) absence of penal liability for legal entities; (2) absence of certain investigative techniques; (3) absence of match between the definition of money laundering in the Penal Code and the Prevention Law (where it is more limitative); (4) weaknesses in the exchange of information between SEPBLAC and the judiciary; (5) lack of resources for local

police and courts; (6) problem of banks' employees protection when submitting suspicious transaction reports; (7) need for some regional and local banks to strengthen the effectiveness of their internal control systems; (8) confidential treatment of the origin of reports of suspicious transactions; (9) lack of effective mechanisms for feedback concerning reports of suspicious transactions and (10) limited number of STRs submitted by the securities and insurance industries as well as the bureaux de change. Since then, the following measures have been taken: A specific tool has been established by SEPBLAC for processing huge amount of information delivered under the systematic reporting obligation. A significant amount of resources have been used to exploit this information for its use in investigations. The interface between prevention and enforcement has been improved by establishing a liaison unit of the Guardia Civil within SEPBLAC. Its objective is to channel information in both directions.

80. *Outline of relevant regulatory instruments on ML and TF and recent changes.* These instruments are described below. They have their origin in the EU Directives on prevention of money laundering adopted in 1991 and 2001:

81. Law 19/1993, on certain measures for the prevention of money laundering. Additional provision one of Law 19/2003, on the legal regime of capital movement of and foreign financial transactions and on specific measures for prevention of money laundering, transposes Directive 2001/97/EC into Spanish law, by amending Law 19/1993 of 28th December, on specific measures for prevention of money laundering. Some significant amendments are as follows:

- It extends the criminal activities requiring co-operation to all the offences leading to a prison sentence exceeding three years (among others tax offences) (Article 1). Until the amendment, the scope of co-operation was limited to drug trafficking, terrorism and organised crime.
- It extends the range of financial services subject to AML/CFT obligations to include casinos; external auditors; external accountants; independent legal professionals; tax advisors; those who perform real estate promotion, agency, commission or mediation activities in the purchase of real estate; notaries public, lawyers and solicitors when they participate or act on behalf of customers in any financial or real estate transaction, and the individuals and corporations who may be defined as such as in the regulations (Article 2).
- It establishes that the obligation to report operations is based on a lack of visible correspondence with the nature, volume of the activity or operating antecedents of the customers, or whenever the financial, professional or business reasons to perform the transactions do not seem apparent (Article 3.4).

82. RD 925/1995 of 9 June approving the regulations to Law 19/1993 of 28 December concerning specific measures to prevent money laundering, as amended by RD 54/2005 of 21 January. The main new items introduced by this law are:

- Enlarged scope of subjective reporting (new reporting parties).
- "Material" knowledge of clients
- Declaration of cash movements exceeding certain thresholds
- Obligation to include identifying data of the originator in international transfers
- Identifying clients when establishing non face-to-face business relations (telephone or electronic banking)
- External review of prevention procedures
- Changes in systematic reporting
- Institutional changes

83. Law 19/2003, on the juridical regime on monetary movement and overseas financial transactions and on certain measures for prevention of money laundering. In addition to regulating the

juridical regime of monetary movement, as aforementioned, this Law, as described above, transposes Directive 2001/97/EC on prevention of money laundering.

84. Law 12/2003, on prevention and blocking terrorist financing. It is intended to avoid terrorist activities, acting preventively on their sources of financing. Relevant aspects are:

- Regulates the administrative action to block accounts, balances and assets of terrorists (Article 1).
- Reinforces the obligations of the financial sector and other sectors obliged to collaborate in prevention of money laundering related to terrorism, any breach of the duties provided under same being considered a very severe breach (Article 4).

2. Legal System and Related Institutional Measures

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis

85. **Recommendation 1.** A specific law governing measures to prevent money-laundering was enacted in 1993, and the corresponding regulations was promulgated by Royal Decree and published in the Official Gazette in 1995. In 1996, the Spanish Penal Code defined the general laundering offence in connection with a serious crime, under the provisions related to receiving stolen goods and similar conduct. Some innovations introduced in the Penal Code included the broadening of the scope for punishment and a more precise definition of punishable conduct, including any serious criminal activity (prostitution, fraud, terrorism, tax offences etc.), as well as an increase in the penalties imposed by the Code in relation to laundering offences connected with drug trafficking. The definition of money laundering in the Spanish Criminal Code required the predicate offence to be a "serious offence", that is, according to Spanish legislation, an offence punished with more than three years' imprisonment. The Penal Code was amended by the Organic Law 15/2003 of 25 November to replace this requirement.

86. Article 301 of the Penal Code (PC) as amended in 2003 makes it a criminal offence to acquire, process or transfer property knowing that the property originates from a crime (*delito*) or to commit any other act in order to hide or conceal its illicit origin or to assist the person having participated in the offence or offences to evade the legal consequences of his or their acts. The hiding or concealment of the true nature, origin, location, use, movement or rights concerning the goods or the ownership thereof, when it is known that the goods originate from one of the offences enumerated in the same Article (crimes related to drug trafficking, dealing in narcotics or psychotropic substances described in articles 368 to 372 of the Penal Code) or from an act of participation therein are also criminal offences (Article 301.2 PC).

87. In general, money laundering is criminalised on the basis of the Vienna and Palermo Conventions. However, not all the relevant requirements laid down in those Conventions seem to be implemented in Article 301 PC. Specifically, the wording in Article 301 PC does not set out that the "possession or use" of proceeds of crime also constitutes money laundering (as set out in Article 3(1)(c)(1) of the Vienna Convention and Article 6(1)(b)(i) of the Palermo Convention), nor is there in Article 301 PC, as an alternative way of covering "possession and use", an open-ended list of ways of handling proceeds of crime that would cover possession or use to the full extent required by the said Conventions. True, whenever possession or use of the proceeds would amount to hiding or concealing of the true nature, source, location, disposition, movement, rights with respect to or ownership of the property constituting the proceeds, the necessary legal basis is found in Article 301(2) PC. And whenever possession or use would amount to an act carried out "in order to hide or conceal" the illicit

source of the proceeds being laundered or in order to “help the person who participated in the crime or crimes to avoid the legal consequences of acts”, the necessary legal basis is found in Article 301(1) PC. However, when this is not the case, the wording in Article 301 PC does not cover “possession or use”. It thus seems that Article 3(1)(c)(1) of the Vienna Convention and Article 6(1)(b)(i) of the Palermo Convention are not implemented to the full extent in Spain. This is true notwithstanding certain judgements by the Spanish Supreme Court, which may seem to suggest that Article 301 PC could, in practice, be given a fairly broad interpretation as regards what actions the perpetrator is required to have carried out in respect of the proceeds¹⁵.

88. Spain’s money laundering offences extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime, even if it has been transformed, exchanged or altered. Article 122 PC stipulates that any person who acts with the objective of monetary gain and who profits from the proceeds of a serious or minor offence shall be obliged to make restitution of the property or indemnify for the damages caused in proportion to his/her share therein (civil liability).

89. Article 301 PC requires that the person prosecuted for money laundering have had the knowledge of the unlawful origin of the property. 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 prior act be under judicial proceedings. It seems that Spain’s implementation of the money laundering offence goes further in that the prosecutor does not have to demonstrate that the proceeds stem from a specific criminal offence or a specific type of crime or who committed the predicate offence. This does not mean that the burden of proof is reversed since the prosecution still must prove to the criminal standard of proof that the proceeds have no legal origin. In practice, the evidence must show that the money does not stem from legal income, an inheritance, a loan, a gift, etc. The Spanish Supreme Court has set up a long-standing doctrine on indirect proof of money laundering (for instance, unjustified increases of assets or movements or capital which do not follow any commercial purpose, inexistence of legal activities that justify assets increases, unlikely or irrational explanation¹⁶). The prosecutors that the evaluation team met stated that they do not face any difficulties in using the money laundering offence as defined in the Spanish Penal Code.

90. Spain has adopted an all-crimes approach to the criminalisation of money laundering meaning that all crimes (*delitos* as opposed to *finas* or *faltas*) as mentioned in the Penal Code (including terrorist financing) could constitute a predicate offence for money laundering. Serious crimes (*delito graves*) are punishable by more than five years imprisonment. Less serious crimes (*delitos*) are punishable by imprisonment for between three months and five years (Article 33 PC). The money laundering offence is considered to be a crime (*delito*). The designated categories of offences, as defined in the 40 FATF Recommendations, are covered as follows in the Spanish Penal Code and relevant laws (the list of criminal law references given is not exhaustive):

- Participation in an organised criminal group and racketeering: Article 302 PC;
- Terrorism, including terrorist financing: Articles. 571 to 580 PC;
- Trafficking in human beings and migrant smuggling: Articles 312 & 318 PC;
- Sexual exploitation, including sexual exploitation of children: Article 318 bis PC;
- Illicit trafficking in narcotic drugs and psychotropic substances: Articles 359 to 385 PC;
- Illicit arms trafficking: Article 566 PC;
- Illicit trafficking in stolen and other goods: Article 298.2 PC;
- Corruption and bribery: Articles 419 to 445 PC;
- Fraud: Articles 419 to 445 PC;
- Counterfeiting currency: Articles 386 to 388 PC;
- Counterfeiting and piracy of products: Articles 270 to 288 PC;

¹⁵ See Supreme Court sentence n°1595/2003 of 29 November.

¹⁶ See Supreme Court sentence n°2/25/2004 (“nobody involved could accredit the lawful origin of the property”).

- Environmental crime: Articles 325 to 340 PC;
- Murder, grievous bodily injury: Articles 138 to 163 PC;
- Kidnapping, illegal restraint and hostage taking: Articles 163 to 168 PC;
- Robbery or theft: Articles 234 to 243 PC;
- Smuggling: Article 2 of Organic Law 12/1995 of 12 December;
- Extortion: Article 243 PC;
- Forgery: Articles 389 to 403 PC;
- Piracy: Article 39 Law 209/1964 of December 24 and Articles 138, 147, 163-168 or 234 PC;
- Insider trading and market manipulation: Articles 413 to 418 PC.

91. All of the offences set out in the designated categories of offences (as defined in the Glossary of the FATF 40 Recommendations) are predicate offences for money laundering.

92. Spain can use its money laundering offence to prosecute the laundering of proceeds generated from a predicate offence which occurred in another country (Article 301.4 PC) provided that the predicate offence would have been a criminal offence if committed in Spain¹⁷.

93. In the penal area, the Spanish jurisdiction will apply to hear cases for crimes and misdemeanours committed in Spanish territory or committed aboard Spanish airlines or ships, without prejudice to the provisions contained in international treaties to which Spain is party (Article 23 of Organic Law on the Judiciary). Likewise, Spanish courts will recognise acts as crimes according to the Spanish penal laws, even though they may have been committed outside of Spanish territory, provided that the people criminally liable are Spanish or foreigners who have acquired the Spanish nationality after the perpetration of the act and provided the following requirements are fulfilled:

- That the act is punishable in the place where it is carried out, except when by virtue of an international treaty or a rule of an international organisation to which Spain is a party this requirement is not necessary.
- That either the aggrieved party or the Public Prosecutor makes a complaint before the Spanish Courts.
- That the offender has not been acquitted, pardoned or sentenced abroad, or in the latter case the offender has not served the sentence. If only a part of the sentence has been served, this shall be taken into account to reduce proportionally the corresponding sentence in Spain.

94. Spanish courts will recognise acts as crimes that are committed by Spanish citizens or foreigners living out of Spanish territory when these crimes can be defined, according to the Spanish criminal law, as any of the following crimes:

- Of treason and against the peace and independence of the State.
- Against the Crown holder, his Consort, his Heir or the Regent.
- Rebellion and sedition.
- Forging the signature or royal seal, the State's seal, the signature of Ministers and public or official seals.
- Forging the Spanish currency and its issue
- Whatever forging that may harm directly the reputation or interests of the State, and the introduction or issue of the forge.
- Attacks against Spanish authorities and civil servants.
- Those perpetrated by Spanish civil servants residing abroad in the exercise of their duties and the crimes against the Spanish Public Administration.
- Those relating to exchange control.

¹⁷ See Supreme Court sentence n°1501/2003 of 19/12/2003.

95. Likewise, Spanish courts will be competent to recognise as crimes the acts committed by Spanish citizens or foreigners living out of Spanish territory when the said acts can be considered, according to the Spanish penal law, as any of the following:

- Genocide.
- Terrorism.
- Piracy and hijacking of airplanes.
- Forging of foreign currency.
- Those relating to prostitution and the corruption of minors or handicapped. (Modified by sole final provision 2 of the Organic Law 11/1999 of 30 April)
- Illegal trafficking of psychotropic, toxic and narcotic drug.
- Those relating to the genital mutilation of women, when those responsible are in Spain. (Added by sole Article of the Organic Law 3/2005 of 8 July)
- And any other which, according to the international agreements or treaties, should be persecuted in Spain.

96. There is no fundamental principle of Spanish law that prohibits Spain from applying the money laundering offence to the person(s) who committed the predicate offence, and Spanish authorities state that they have criminalised “self-laundering” in accordance with e.g. Article 6(2)(e) of the Palermo Convention. Nevertheless, it remains somewhat unclear to what extent self-laundering would be covered by the Spanish money laundering offences. The wording of Article 301 PC is silent with respect to self-laundering and there are no examples of any conviction for self-laundering. However, despite the absence of a clear criminalisation of self-laundering, or rather because Article 301 PC does not expressly exclude the perpetrator of the predicate offence from being liable for laundering the proceeds, one judgement from the Spanish Supreme Court¹⁸ does suggest, albeit in an *obiter dictum*, that a number of the alternatives in Article 301 PC could be applied not only to a third party launderer but also to the perpetrator of the predicate offence.

97. Spain’s money laundering regime has implemented all ancillary offences to the offence of money laundering as described in Recommendation 1. Article 304 PC punishes incitement, conspiracy (conspiracy exists when two or more persons agree to commit a crime and decide to perpetrate it, Article 17 PC) and proposition (proposition exists when the person who has decided to commit a crime invites one or more other persons to perpetrate it, Article 17 PC) to commit any type of money laundering. Article 16.1 of the Penal Code defines as an attempt to commit criminal offence any direct and exterior act of initiation of the commission of the crime which implies the performance of all or part of the acts that should objectively lead to the intended result, but where the intended result is not achieved due to factors independent from the will of the offender. Article 62 PC provides that an attempt to commit an offence is punishable by a penalty which is one or two degrees lower than the prescribed penalty for a completed crime, to the extent deemed appropriate, with due regard to the danger inherent in the attempt and the degree of execution reached. Principal offenders and accomplices are criminally liable for crimes and misdemeanours (Article 27 PC). Accomplices are the people who co-operate in the execution of a crime through previous or simultaneous actions (Article 29 PC). Article 28 PC sets out that those who abet directly or indirectly others to commit an offence (aiding and abetting) and those who co-operate in the committing of an offence by performing an action without which the crime could not have been perpetrated (facilitation and counselling) are to be considered as principal offenders and are subject to the same penalties.

98. *Additional element.* The Spanish authorities indicated that, where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country but which is a predicate offence in Spain, then the action would nevertheless constitute a predicate offence for money laundering.

¹⁸ Judgment n° 1293/2001 of 28 July 2001.

99. **Statistics.** The following table indicates the number of prosecutions and convictions with regard to money laundering (these statistics reflect only the files brought to court at a national level). Most of the cases are conducted at this level. Other minor cases might have taken place at a local level. Statistics provided by the Ministry of Justice)

Year	Number of ML prosecutions	Number of ML convictions
2002	7	7 (28 defendants found guilty)
2003	9	9 (30 defendants found guilty)
2004	12	11 (50 defendants found guilty)

100. On the basis of the available statistics provided both before and during the on-site visit, there seems to be reason to doubt the overall effectiveness in the practical application of the money laundering offence in Spain. However, as the statistics provided are in no way comprehensive, effectiveness is difficult to assess more precisely. For instance, no statistical information is available on the application of the money laundering offence on a regional level in Spain, no statistics are available on sanctions and no statistics are available showing how many investigations led to prosecution and in turn what the specific results of these prosecutions were. The few figures available only reflect serious cases of money laundering handled by specialised prosecution offices. As far as drug offences are concerned, the number of cases seems very small in a country relatively exposed to drug trafficking.

101. **Recommendation 2.** The offence of money laundering applies to natural persons that knowingly engage in money laundering activity (intentional money laundering) as required by the FATF Recommendations. Money laundering through serious negligence is also punishable. With respect to negligent money laundering, it is not the perpetrator's knowledge of the unlawful act that is sanctioned, but the fact that the perpetrator "ought to have known". Intent in respect of doctrine established by the Supreme Court¹⁹ also includes situations where an accused person acknowledged the possibility that property could be the proceeds of crime and reconciled himself/herself with that possibility (*dolus eventualis*). This means that a perpetrator is unable to avoid liability by turning a blind eye to the fact that property is the proceeds of crime (i.e. wilful blindness). Although the law does not expressly say so, case law and legal tradition permit the mental element of the offence to be inferred from objective factual circumstances.

102. In Spain, criminal liability for money laundering does not apply to legal persons although civil and administrative liability may be applied. Article 302.2, a) PC foresees the application of Article 129 PC to the crime of money laundering, and lays down the possibility of imposing sanctions on legal entities as follows:

- a) *Closure of the company, its premises or outlets, temporarily or definitively. Temporary closure may not exceed five years.*
- b) *Dissolution of the company, association, or foundation.*
- c) *Suspension of the activity of the company, association or foundation for a maximum term of five years.*
- d) *The prohibition to conduct in future activities, commercial transactions or business of the type that has contributed to committing, favouring, or concealing the crime. This prohibition may be of a temporary or definitive nature. If temporary, the prohibition term may not exceed five years.*
- e) *Intervention in the company to safeguard the rights of its employees or creditors, for the required period without exceeding a term of five years.*

¹⁹ See Supreme Court sentences 4/1/2002, 5/2/2003 and 10/1/2000.

2. *The temporary closure described in sub-section a) and the suspension referred to in sub-section c) of the preceding section, may also be dictated by the Examining Judge during investigations.*
3. *The ancillary consequences foreseen in this article are aimed at preventing the continuation of the criminal activity and its effects.*

103. In principle, the liability is different depending on whether the case concerns private individuals or legal entities. A legal entity is civilly and administratively liable for the damage caused or in cases of objective liability (for example, liability for defective products, misleading advertising, or environmental damage). The damage is paid for directly from the assets of the legal entity and in certain cases, the administrators will be personally liable in a subsidiary fashion. Where civil liability of legal entities is concerned, the general principle is that “all persons that are criminally responsible for an offence or crime are likewise civilly liable for any damage or prejudice derived from the offence” (Article 116 of the Penal Code). However, in addition to the foregoing general rule, Article 120 of the Commercial Code establishes the subsidiary civil liability for a series of cases, which include (Section 4) legal entities that are involved in any industry or commerce, for crimes or offences that have been committed by their employees or subsidiary dependents, representatives or managers during the performance of their obligations or services. Their administrative liability is likewise addressed: as Article 130.1 of Law 30/1998 of 26 November on the Legal Regime of Public Administrations and Common Administrative Procedures, states: “the sanctions for actions that constitute administrative offences may only be applied to the physical persons or legal entities that are responsible for the same, even as a consequence of non-observance”.

104. Criminal liability of legal entities based on culpability has always been excluded from the Spanish criminal justice system, in which guilt, as it is a reproach based on criminal intent, could only attach to private individuals. For this reason, for crimes committed in the sphere of a legal entity, the liable parties are the actual administrators that act in the name and representation of the same, as established in Article 31 of the Penal Code, which states that “the person acting as the real or constructive administrator of a legal entity, in the name or representation of another, legally or voluntarily, will be personally responsible, even when the conditions, qualities or relations that the corresponding crime or offence requires so that the administrator is liable do not concur in said person, if these circumstances apply to the legal entity or person in whose name and representation the administrator acts”. The Penal Code does not provide a definition of manager, and therefore it is necessary to refer to the definition in the relevant law with respect to the legal person for which a person acts to determine whether he/she constitutes a manager. For this purpose it is necessary to refer to the relevant provisions in the Commercial Code and laws relating to business corporations, foundations, co-operatives, etc. For instance, with respect to business corporations, Article 89.3 of the Legislative RD 1564/1989 of 22 December establishes that the term “manager” includes not only members of the board of directors, but also executives or persons with the authority to represent the company.

105. In addition, a new section of Article 31 sets out that if a fine is imposed on the perpetrator of the crime, the legal entity that the perpetrator is acting in representation or in the name of, will be jointly and directly liable for paying said fine. The Penal Code also regulates the liability of legal entities based on the risk involved; in other words, on the need to prevent crimes that may be committed in the same sphere of activity as that of the legal entity in question. This concerns the “auxiliary consequences” described in Article 129 of said Code, which include the suspension of activities of the company and the definitive closing down of the company.

106. Based on this explanation, it seems that there is no fundamental principle of Spanish law that prevents Spain from establishing criminal liability for legal persons (the Spanish authorities refer more to a legal tradition) and Spain is thus obliged, under the FATF 40 Recommendations, to extend criminal liability for money laundering to legal persons. As this has not been done, legal persons in Spain cannot, for instance, be sentenced to a fine (as a criminal penalty) for money laundering. The

lack of legal basis for finding legal persons criminally liable for money laundering is nevertheless and to a certain extent, mitigated by provisions such as Article 129 PC foreseeing a wide range of punitive measures other than fines, which may, in the context of a money laundering prosecution be taken against a legal person.

107. Natural persons found guilty of the ordinary money laundering offence are punishable by a prison term of between six months and six years and fined an amount equivalent to three times the value of the property. In these cases, the judges or tribunals, taking into account the seriousness of the offence and the personal circumstances of the offender, can also impose on him/her, a specific sentence of prohibition from exercising the profession or industry for a period of between one to three years and to order the temporary or permanent closure of the establishment or premises.

108. Terms of imprisonment are imposed at a level lying in the upper half of the range where the property in question originates from any of the offences connected with trafficking in toxic drugs, narcotics or psychotropic substances described in articles 368 to 372 of the Penal Code. In these cases, the provisions laid down in Article 374 PC apply (seizure provisions). The same penalties, as appropriate in the particular case, are imposed in respect of the hiding or concealment of the true nature, origin, location, use, movement or rights concerning the goods or the ownership thereof, where it is known that the said goods originate from one of the offences contemplated in the preceding section or from an act of participation therein. If the acts have occurred through serious negligence, the penalty is imprisonment for a term from six months to two years and a fine of three times the value. Committing repeated offences is considered as aggravating circumstances.

109. The Penal Code also provides for an aggravated punishment in Article 302 PC referring to the crime of money laundering carried out by organisations. Thus, it establishes that in that case, sentences lying in the upper half of their range are imposed upon persons belonging to an organisation pursuing the aims described in those cases, and to a more severe sentence when the offenders are heads, managers or persons in charge of the organisations under reference.

110. In such cases the Judges or Courts are required, in addition to the appropriate sentences, to impose specific disqualifications from exercising his profession or business for a period of from three to six years, and may likewise order one or other of the following measures:

- Dissolution of the organisation or definitive closure of its premises or establishments open to the public.
- Suspension of the activities of the organisation or closure of its premises or establishments open to the public for a period of not more than five years.
- Prohibition of the performance by such organisations or associations of those activities, commercial operations or transactions in the exercise of which the offence has been facilitated or concealed, for a period of not more than five years.

111. *Statistics.* Considering the lack of statistics, it is not possible to assess whether natural persons and legal persons are in fact subject to effective, proportionate and dissuasive sanctions for money laundering since the number of money laundering convictions is also very low (based on the figures available at national level).

2.1.2 Recommendations and Comments

112. *Recommendations 1 and 2.* Spain's money laundering offences are broad in their scope and the prosecutors that the team of evaluation met indicated that the offences are easy to use – in particular due to the doctrine of indirect proof whereby it is not necessary to prove that the property in question constitutes proceeds of a specific criminal act; rather, it suffices to prove – to the criminal standard – that the property has no legal origin. However, due to the lack of comprehensive statistics on the number of money laundering prosecutions and convictions, the effectiveness of the legal measures in place is difficult to assess more precisely. Thus, it seems difficult to make concrete, specific

recommendations on the improvement of the practical implementation of the money laundering offences in Spain. However, some enhancements could be made as follows: (1) Article 301 PC should clearly set out that the “possession or use” of proceeds of crime constitutes money laundering to the full extent required by the Vienna and the Palermo Conventions; (2) Spain should clarify the legal situation in its national law with respect to self-laundering, preferably by enacting legislation clearly allowing for prosecuting and convicting the perpetrator of a predicate offence, who goes on to launder the proceeds, for money laundering as well as for the predicate offence itself; (3) Spain should make sure that its national law would allow for holding legal persons criminally liable for ML; and (4) comprehensive statistics should be maintained on the number of money laundering prosecutions and convictions and on the range of penalties imposed both at national and regional levels. Further training measures may also be appropriate, such as providing additional training to judges for the purpose of enhancing their ability to manage the complexities of a money laundering case.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	LC	<ul style="list-style-type: none"> ▪ A few of the relevant requirements laid down in the Vienna and Palermo Conventions have not been implemented to the full extent (the “possession or use” of proceeds of crime). ▪ Although Spanish law does seem open to prosecution for self-laundering, the extent to which self-laundering would be covered by the Spanish money laundering offences remains somewhat unclear, and there are no examples of any convictions for self-laundering. ▪ As the statistics provided are in no way comprehensive, effectiveness is difficult to assess more precisely. However, the statistics that are available do suggest some doubts as to the effectiveness in the practical application of the ML offences in Spain.
R.2	LC	<ul style="list-style-type: none"> ▪ Spanish law foresees a broad range of sanctions that can be applied to legal persons, but legal persons cannot be sentenced for a crime and thus held criminally liable. ▪ A lack of statistics on sanctions actually imposed on natural and legal persons means that effectiveness cannot be properly assessed.

2.2 Criminalisation of Terrorist Financing (SR II)

2.2.1 Description and Analysis

113. Spanish law includes a very broad range of criminal provisions which specifically target terrorism. Terrorist offences are gathered in Articles 571 and following of the Penal Code, enacted through Organic Law 10/1995 of 23 November, and amended through Organic Law 7/2000 of 22 December, Organic Law 5/2000 of 12 January and Organic Law 20/2003 of 23 December. Terrorist financing is punished as an offence of belonging to a terrorist group (Article 515.2) when it is a continuous activity, and punished as collaboration (Article 576) when it is occasional. Financing is one of the collaboration acts listed non-exhaustively in Article 576. The Court will have to decide whether the facts under review imply collaborating with the terrorist organisation. This must be understood notwithstanding the penalties that would apply both to the direct offender and the “financer” for the acts (murder, bodily harm...) committed with the means facilitated by the “financer”, if there is a direct relation between both of them, as in this case it would be a form of principal participation in the concrete terrorist act having been carried out.

114. Terrorist offences under the Penal Code are structured according to one presupposition: that of belonging to, acting for the sake of, or collaborating with armed bands, bodies or groups whose aim lies in subverting the constitutional order or in seriously altering public peace, by committing the following offences: destruction or arson (Article 571 PC); causing death, the injuries described in Articles 149 and 150, or other injuries; kidnapping a person, detaining him or her unlawfully, under threat or coercion (Article 572 PC); or any other criminal offence (Article 574 PC). Other terrorist behaviour, apart from the act of belonging to or collaborating with a terrorist group, is also covered. The following offences are likewise penalised: stockpiling arms and ammunition, unlawful possession or storage of any substances or contrivances of an explosive, flammable, incendiary, or asphyxiating character, or of any of their components. There is also a penalty for their manufacture, trafficking,

transport or supply of any kind, and also for the mere positioning or employment of those substances or of related means and devices, should these acts be committed by persons who belong to, act for, or collaborate with armed bands or terrorist bodies or groups (Article 573 PC). Belonging to and directing a terrorist organisation or any of its groups is an independent criminal offence in Spain, applicable whether or not concrete terrorist acts are committed (Article 516 in relation to 515 which punishes illicit associations).

115. Likewise, there are provisions for the punishment of anyone who, without belonging to any armed band, or terrorist body or group, acts with the aforementioned aims of subverting the constitutional order or of breaching the peace, or who contrives to those ends by threatening the inhabitants of any location, or the members of any social, political or professional collective, and who, for this purpose, commits homicide, causes the injuries described in Articles 149 and 150, unlawfully arrests, kidnaps or coerces persons, causes arson, destruction of damage typified in Articles 263 to 266, 323 and 560, or possesses, manufactures, stocks, traffics, transports or supplies arms, ammunition or substances or contrivances of an explosive, flammable, incendiary, or asphyxiating character, or of any of their components (Article 577 PC). Spanish law punishes both belonging to and collaborating with a terrorist group and the concrete offence committed. Heavier penalties related to terrorist groups partially respond to the fact that belonging to a group increases the chances of committing the offences or avoiding prosecution. The individual terrorist is only held responsible for the concrete offences he commits, as he does not benefit from the advantages provided by the organisation.

116. As far as terrorist financing is concerned, the Penal Code prescribes punishment for anyone who, in order to obtain funds for armed groups, organisations or associations or terrorist groups, or to further their purposes, commits a crime against property (Article 575 PC). The performance or facilitation of any act of collaboration with the activities or purposes of an armed group or terrorist organisation or group is also criminalised (Article 576 PC). Laws of collaboration are understood to mean the supply of information on or the surveillance of persons, goods or facilities; the building, fitting-out, transfer or use of lodging or storage facilities; the concealment or movement of people linked to armed groups or terrorist organisations or groups, the organisation of training sessions or attendance at such sessions; and in general, any other equivalent form of co-operating, assistance or complicity, economic or otherwise, with the activities of the aforementioned armed groups or terrorist organisations or groups. Such action is punishable under Spanish law pre-dating the International Convention for the Suppression of the Financing of Terrorism. "Economic support" is not defined but the term is broad enough to meet the definition of funds of the Terrorist Financing Convention. Terrorist financing offences are predicate offences for money laundering.

117. There is a penal sanction for the praise or justification, through any means of public expression or broadcasting, of the offences included in Articles 571 to 577 or of those involved in carrying them out; and also for any deed that would imply any discrediting, disparaging or humiliation of the victims of terrorist acts, or of their relatives (Article 578 PC).

118. Article 579 PC establishes that provocation, conspiracy and proposition to commit the crimes set forth in Articles 571 to 578 – crimes of terrorism – are punishable by a sanction which one or two degrees lower than that corresponding, respectively, to the actions referred to in the previous articles. The provisions of Article 16.1 PC (attempt to commit a criminal offence) apply also for the terrorist financing offence. General provisions on principals (Article 28) and accomplices (Article 29) are also applicable to all the aforementioned offences. The commission of the crime abroad does not rule out punishment for the crime in Spain, provided that the initiation of the commission of the crime occurred in Spain, in the case where an attempt or a conspiracy of two or more persons to commit a crime also occurs in Spain or in the case of provocation, conspiracy or proposition to commit a crime (principle of territoriality in respect of the competence of the Spanish judiciary, as set forth in Article 23.1 of Organic Law 6/1985, on the judiciary). The Organic Law of the judiciary branch (LO 6/1965 of 1 July) establishes that Spanish courts are competent to take cognizance of acts that constitute terrorist offences under Spanish law (including terrorist financing) which are committed by Spanish

nationals or foreigners outside the national territory. The latter is based on the principle of universal justice (Article 23.4).

119. The obligations under Special Recommendation II—as elaborated in the Interpretative Note to Special Recommendation II (INSR II)—go beyond what is required by the Terrorist Financing Convention. In addition to criminalising the activities enumerated in the Terrorist Financing Convention, countries are also obliged to criminalise a third type of activity—collecting or providing funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist. Article 576 PC covers only financing of “an armed group, organisation or association or terrorist group”. This article does not extend to terrorist financing in the form of providing or collecting funds with the unlawful intention that they should be used, or in the knowledge that they are to be used, by an individual terrorist. There are also no other provisions in the Penal Code properly covering the provision or collection of funds to an individual terrorist (to be used by that person for any purpose). This is also true for Article 577 PC, which prescribes punishment for the commission of certain terrorist acts.

120. Article 576 PC does not extend to terrorist financing in the form of providing or collecting funds directly in order to carry out a terrorist act (as the term “terrorist act” is defined in the Interpretative Note to SR II). The Spanish Penal Code covers a person who finances a terrorist act as a principal offender (perpetrator), e.g. under Article 577 PC, if that terrorist act is actually carried out and could not have been carried out without the financial contribution, cf. Article 28(2)(b) PC. And if the financing consists of *collecting* funds for a particular terrorist act, i.e. if the funds have not yet been provided for its commission when the scheme is uncovered, Spain submits that this would be punishable as an attempt under Article 16 PC. In any case, this way of covering the provision or collection of funds directly in order to carry out a terrorist act would not seem to fulfil all the requirements in the Interpretative Note to SR II, *inter alia* that TF offences should not require that the funds were actually used to carry out or attempt a terrorist act(s) or that the funds be linked to a specific terrorist act(s).

121. Terrorist financing in the form of merely “collecting” funds is not covered by the wording in Article 576 PC but is covered as an attempted breach of Article 576 PC when the funds are collected in order to be provided to “an armed group, organisation or association or terrorist group” in furtherance of its illicit aims or activities. To a certain extent, where the terrorist financing perpetrator collects the funds by means of committing “crimes against property”, Spain can also rely on Article 575 PC criminalising the collection of funds for certain forms of terrorist organisations or their ends. An attempted breach of the financing offence in Article 518(1) PC may also be relied upon where necessary, cf. below.

122. Article 576 PC alone does not to the full extent cover terrorist financing in the form of collecting or providing funds to terrorist organisations – the way the term “terrorist organisation” is defined in the Interpretative Note to SR II. The requirement under SR II to criminalise financing of “terrorist organisations” is based on a particular definition of “terrorist organisation”, which is different in scope from what the Spanish legislation refers to as an “armed group, organisation or association or terrorist group”. (Chiefly, the FATF standard is built on a terrorist organisation being any group involved in any of the offences set out in any of the 9 UN Conventions/Protocols listed in the Annex to the Terrorist Financing Convention or any act as described in Article 2.1 (b) of that Convention.) Article 576 PC requires an organisation to have a particular purpose (“subverting the constitutional order or seriously breaching public peace”) in order for it to be considered a terrorist group within the meaning of Article 576 PC (cf. Article 571 PC). A group which, for ordinary criminal purposes, is involved in kidnapping (within the meaning of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents or the International Convention against the Taking of Hostages) or is dealing in enriched uranium (within the meaning of the Convention on the Physical Protection of Nuclear Material), would thus not be covered under Article 576 PC and that Article would not extend to providing funds to such a group – unless the group is armed, in which case the provision of funds, where such provision would amount to

collaboration with the activities or aims of the said group, would be covered. However, what is not covered by Article 576 PC on this point would seem to be covered by the reference made to Article 515(1) PC on criminal organisations in Article 518(1) PC on economic co-operation with various kinds of illicit organisations.

123. Moreover, Article 576 PC does not seem to extend to the provision of funds to legitimate or charitable activities run by a terrorist group (such as e.g. hospitals): terrorist financing under Article 576 PC would have to amount to collaboration with the “activities or aims” of the terrorist group – a requirement which would, it seems from the on-site visit and from the meetings the assessors had with practitioners, likely be interpreted to exclude legitimate activities and aims as opposed to the aims of subverting the constitutional order or seriously breaching public peace and activities carried out in pursuit of such aims

124. That Spain, to a certain extent, can rely on concepts such as *inter alia* complicity or aiding and abetting in the commission of terrorist offences to punish those having financed terrorism, does not go to fulfil the requirements set out by SR II. The shortcomings in the scope of the Spanish terrorist financing offences, as set out above, have an impact not only on counter terrorist financing but also on terrorist financing as a predicate offence for money laundering.

125. The terrorist financing offence is subject to the same principles as the money laundering offence concerning inferring the intentional element of the offence from objective factual circumstances. Concerning the liability of legal persons and in accordance with Article 515 PC, illicit associations, which include armed bands and terrorist groups or organisations, are punishable. In order to prevent the continuation both of the criminal activity and of its consequences, the magistrates or courts shall order the dissolution of illicit associations (Article 520 PC) and shall also order any of the other accessory consequences foreseen in Article 129 PC: temporary or final closure; termination of any activities.

126. The Penal Code establishes severe penalties for all terrorist offences which are proportional to the seriousness of the offence committed. Terrorist offences are specifically defined and harsher penalties are prescribed for them than for ordinary offences that are not committed for terrorist purposes (for example, a murder is punishable by 15 to 20 years imprisonment, a murder for terrorist ends, by 20 to 30 years). Under Article 575, obtaining funds for an armed group, organisation or terrorist group is punishable with the maximum level laid down for the committed crime. Under Article 576, providing economic assistance to an armed group, organisation or terrorist group is punishable by a prison term of five to ten years and a special penalty of suspension of rights between eighteen and twenty-four months.

127. **Statistics.** Some data was presented to the assessors²⁰, in particular on ongoing cases, indicating that practical use is indeed made of the TF offences. However, apart from the statistics on FT-related STRs received by SEPBLAC (see Section 3.7), there are no comprehensive statistics on TF investigations (see Section 2.6²¹), prosecutions or convictions in Spain. It was therefore not possible to fully assess effectiveness in the practical application of the system.

2.2.2 Recommendations and Comments

128. **Special Recommendation II.** Whereas the current TF legislation in Spain, a country with a long history of actively fighting terrorism, to a large extent predates the Terrorist Financing Convention, the new FATF requirements build upon and go further than what is required by that Convention. Taking special account of this fact, and in the light of the shortcomings identified above, Spain should

²⁰ See for instance case n° 36/2005 in relation to the financing of Al-Qaeda activities or case n° 27/2002 in relation to the financing of ETA activities.

²¹ Nine TF investigations were carried by the National Police from 2000 to 2005 and 3 by the Guardia Civil in 2004 & 2005.

consider carrying out a comprehensive review of the various offences in Spanish law at present contributing to fulfilling the FATF requirements. In particular, Spain should ensure that: (1) TF offences properly cover the provision or collection of funds with the unlawful intention that they should be used, or in the knowledge that they are to be used, by an individual terrorist (for any purpose); (2) TF offences cover the direct provision or collection of funds in order to carry out a terrorist act and; (3) TF offences extend to the provision of funds to or collection of funds for legitimate activities run by a terrorist organisation or an individual terrorist.

129. The analysis and remarks made with respect to R.2 apply correspondingly and have also been taken into account in the rating. Reference is made to section 2.1 above.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR II	LC	<ul style="list-style-type: none"> ▪ The Penal Code does not provide for an offence of terrorist financing in the form of providing or collecting funds with the unlawful intention that they should be used, or in the knowledge that they are to be used, by an individual terrorist for any purpose. ▪ TF offences under Spanish law do not seem to properly cover providing or collecting funds to legitimate activities run by a terrorist organisation (or by an individual terrorist; cf. also above). ▪ The Spanish TF offences do not properly cover terrorist financing in the form of providing or collecting funds directly in order for them to be used to carry out a terrorist act. ▪ The relevant offences are predicate offences for ML but some shortcomings in the scope of the Spanish TF offences (as set out above) may raise an issue of effectiveness in this respect. ▪ Spanish law foresees a broad range of sanctions that can be applied to legal persons also for TF, but legal persons cannot be sentenced and thus held criminally liable. ▪ A lack of more comprehensive statistics on prosecutions, convictions and sanctions imposed on natural and legal persons means that effectiveness cannot be fully assessed.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

130. The Spanish legal framework on confiscation, freezing and seizing of proceeds of crime measures up to the high FATF standards. Insofar as the legal framework as such is concerned, the requirements under Recommendation 3 are met.

131. The Penal Code provides for two different types of confiscation: generic, for any offence (Article 127); and specific, for drug trafficking offences (Article 374). In a generic manner, Article 127 of the Penal Code extends the range of confiscation by applying it to all crimes or summary offences under the Code. Not only the effects or instrumentalities used to commit an offence are confiscated, but also the profits derived therefrom, even if those profits have been transformed or modified. Article 127 also provides for the confiscation of property that constitutes instrumentalities intended for use in the commission of any crime or offence. The same article provides for the confiscation of property of equivalent value. It also applies to property that is derived directly or indirectly from proceeds of crime and regardless of whether the property is held or owned by a criminal defendant or by a third party. The only limitation relates to the cases where the property is held or owned by a bona fide third party.

132. Article 374 of the Penal Code calls for the confiscation of goods acquired through drug trafficking-related crimes, and of any profit obtaining therefrom, regardless of any subsequent transformations, except if the goods belong to an innocent third party not responsible for the crime. This particular precept of the Penal Code provides expressly for the confiscation of instrumentalities, effects, etc. used for illegal drug dealing, as well as of the goods or proceeds obtained from the illicit traffic. Consequently, all assets held by a person convicted of drug trafficking may be confiscated if those assets have been derived from unlawful conduct.

133. Under generic provisions, a judge may impose provisional measures concerning effects seized from any type of offence by virtue of the code of criminal procedure. In respect of the measures that a judge must impose in order to ensure confiscation, in drug trafficking cases, pursuant to Section 374.2 of the Penal Code, goods, effects and instrumentalities may be seized and stored by the judicial authorities at the very outset of an investigation. A judge may also rule that goods, effects and instrumentalities that may be traded lawfully may be used provisionally by the criminal investigation unit in charge of tracking down illicit drug trafficking, given the necessary guarantees and while a case is under investigation.

134. Articles 326 and 334 of the Criminal Proceedings Law establish that the examining judge takes possession of from the beginning of the judicial investigation procedure all material evidence of a crime having been committed and any instrument or property that could be related to it. Article 589 of the Criminal Proceedings Law provides that when incriminating evidence against a person exists, the court should demand a bail bond, otherwise the suspect's property will be embargoed for a sufficient amount to cover the financial responsibilities that may attach.

135. In addition, article 374 of the Penal Code lays down that in the case of trafficking in drugs, narcotics, and psychotropic substances, so as to ensure confiscation, apprehension, or embargo, orders to this effect can be decreed from the very beginning of the criminal investigation. Spanish laws allow the initial application to freeze or seize property subject to confiscation to be made *ex-parte* or without prior notice.

136. State security forces and bodies and the competent administrative authorities are legally empowered, according to the provisions of their regulating norms, to carry out investigations in checking and monitoring property or rights that are susceptible to confiscation. In all events, judicial authorisation must be obtained if these measures impinge on fundamental rights.

137. Article 301 of the Penal Code punishes any action aimed at helping a person who has committed a crime to evade the legal consequences of his actions, including confiscation. It makes no difference whether the help has been given with full knowledge or with serious negligence. Consequently, it is possible to declare the invalidity of actions and agreement, including contracts, in which the parties knew or should have known that they were helping to prevent confiscation that was in order according to the law. To prevent the same conduct, it is necessary that the actions already carried out constitute some breach of the legal order.

138. The Spanish authorities did not provide any information on whether the Spanish laws provide for the confiscation of the property of organisations that are found to be primarily criminal in nature or the property subject to confiscation but without a conviction of any person (civil forfeiture).

139. Overall, it seems from the on-site visit that the practical application of confiscation, freezing and seizing measures is satisfactory. Particular mention should be made of the fact that practitioners in the field did seem satisfied both with respect to the application of the rules on confiscation and with respect to the application of provisional measures to secure confiscation – and the assessors were provided with some examples of concrete cases. Some statistical data on seizure, freezing and confiscation has also been made available. However, the data provided are in no way comprehensive and there is a clear lack of more specific and detailed statistics that would help in assessing the efficiency with greater precision and certainty.

140. **Statistics.** Police operations against money laundering carried out by the Monetary Offences Investigation Brigade, in collaboration with other Police Units during the period 2001-2004 were as follows:

	2001	2002	2003	2004
Investigations	8	7	7	6
Persons arrested	62	56	57	81
Money seized	2.139.995 USD 366.891.000 PTS	2.213.309 USD 70.000 GBP	3.434.645 USD 1.752.672 USD	4.115.431 €
Money frozen		4.000.000 €	2.750.000 €	43.200.000 €
Other assets			2 planes jewellery and gems 1 speed boat 1 chalet 1 pistos 5 vehicles	2 sailing boats 2 pistols 1 revolver 81 vehicles 2 properties

141. The Guardia Civil provided the following figures on money seized in relation to money laundering and terrorist financing proceeds:

	Money seizures (2004)	Money seizures (1 st half of 2005)
Number of cases	261 interventions	157 interventions
Persons arrested	0	0
Other persons involved but not arrested	257	167
Money seized	17,711,236 EUR	21,138,705 EUR
Assets seized	---	---

142. The following figures indicate the amounts of money confiscated in relation to drug trafficking and made available to different public or private agencies from 2000 to 2005 (in euros):

2000	2001	2002	2003	2004	2005
4,653,375.46	6,891,264.89	8,227,280.41	7,919,630	8,273,000	12,398,000

143. There are very limited figures (only from the *Guardia Civil*) on the number and the amounts of property confiscated relating to money laundering, terrorist financing and criminal proceeds. There are no statistics on the number of cases and the amounts of property frozen, seized, and confiscated relating to underlying predicate offences.

2.3.2 Recommendations and Comments

144. **Recommendation 3.** Even if the Spanish legal framework does measure up to Recommendation 3, there may still be room for further improvement. However, the statistics and other information provided on the practical application of the relevant mechanisms are such that they provided an insufficient basis for giving concrete, specific recommendations on possible improvement or for commenting more specifically on the potential for such possible improvement.

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R. 3	LC	<ul style="list-style-type: none"> ▪ The effectiveness of the freezing, seizure and confiscation regime could only be partially assessed based on the information available.

2.4 Freezing of funds used for terrorist financing (SR III)

2.4.1 Description and Analysis

145. The obligation under Special Recommendation III consists of two elements. The first requires the implementation of mechanisms that will allow a jurisdiction to freeze or seize terrorist related funds in accordance with relevant United Nations Security Council resolutions. The second element is the obligation to have measures that will allow a jurisdiction to seize or confiscate terrorist funds on the basis of a judicial order or through some other similar mechanism. In Spain, the first obligation has been implemented through the framework of the European Union, and this mechanism will be described in more detail below. For the second obligation, that is, the ability to seize or confiscate terrorist funds using judicial mechanisms, Spain relies on the processes described in the previous chapter relating to Recommendation 3. In the interest of avoiding duplication, the descriptions and analyses appearing in the chapter 2.3 will not be repeated here, although they have been taken into account in assessing compliance with SR III.

146. Since the Treaty on European Union was put into force, the EU has sought to implement international sanctions through joint instruments as far as possible. In all instances where a specific Regulation is used to impose restrictive measures to help attain the objectives of the Common Foreign and Security Policy (CFSP), this requires the adoption of a Common Position under Article 15 of the Treaty establishing the European Union. As an instrument of the CFSP, a Common Position on new sanctions is adopted by the Council of the EU and requires unanimity. Where restrictive measures target persons, groups and entities that are not directly linked to the regime of a third country, Articles 60, 301 and 308 of the Treaty establishing the European Community apply. In this case, adoption of the Regulation by the Council requires unanimity and prior consultation of the European Parliament. The Council Regulations imposing sanctions and the implementing Commission Regulations are part of Community law. It is standing case law that Community law takes precedence over conflicting legislation of the Member States. A European regulation is binding in its entirety and is directly applicable in all EU Member States (Article 249 of the Treaty establishing the European Community).

147. In Spain, in addition to the EC regulations, Law 12/2003 offers the possibility of freezing any type of financial flow so as to prevent the funds from being used to commit terrorist actions. It is worth noting some of the main features of the system established in Law 12/2003:

- The so-called *Terrorist Finance Watchdog Commission* is established and charged, in particular, with the competence of issuing freezing orders (Article 9). This body is chaired by the Deputy-Minister for Security (Ministry of Interior) and made up of representatives from most of the concerned Departments having to do with terrorism and the regulation of the financial sector, such as Interior, Justice, Economy and Finance, and the Public Prosecutor's Office. It is a key element in co-ordinating and bringing together all available information and views in order to ensure an optimal decision on and justification for issuing freezing orders. The Watchdog Commission has met a few times since autumn 2003. However, based on the information made available to the assessors, it seems the Watchdog Commission has yet to make use of its competences in issuing freezing orders.
- *Adoption of freezing orders* (Article 2). As an essential element in the prevention, the Watchdog Commission can issue freezing orders on the basis of (1) information provided by the financial system through the existing AML/CFT reporting obligations, and (2) police or any other type of intelligence data gathered by the Administration, including (but not limited to) information

- from intelligence services. Monitoring the assets frozen and deciding on an eventual release of the prohibition is another task for the Watchdog Commission (Articles 2.3 and 2.6). The Watchdog Commission decides on a case-by-case basis for how long the freezing order is in place. In any case, the duration of the freezing order cannot exceed 6 months (Article 2.5).
- *Judicial review* (Article 3). The individual or entity affected by the freezing order is fully entitled to immediately ask for the judicial review of the Watchdog Commission's order before the competent Court (Article 3.3). Regardless of whether judicial review is initiated by the individual or entity affected, the Watchdog Commission is obliged to request the continuity of the freezing order before the expiration of the 6 months period. It is the competent judicial Authority (not the Watchdog Commission) who decides on the continuity of the freezing order (authorising or rejecting it) (Article 2.5).
 - *Co-ordination and compatibility of administrative action and judicial proceedings against the same individuals* (Articles 3.4, 3.5 and 3.6). The preference and priority of the decisions adopted by the judicial Court is the cornerstone of the system. In any situation, the Watchdog Commission is obliged to make the Court aware that there could be criminal (terrorist or terrorist financing) activity involved and provide it with all the available data (Article 3.6). It is the Court who ultimately has to decide upon the justification for and therefore continuation of the administrative freezing order (Article 3.4). The Watchdog Commission is obliged to immediately notify the freezing order to the Court if a criminal proceeding is under way (Article 3.5).
 - *Criteria to assess the relation with a terrorist group for the Watchdog Commission's freezing order* (Article 7). A number of criteria can be taken into account when assessing the relation between a person and a terrorist group. These criteria to assess the connection contribute to reducing the room for discretion by making explicit the criteria to be used in assessing the connection to a terrorist group. On the other hand, these criteria will help find the evidence of the capacity of the person or legal entity to exercise relevant influence over a terrorist group (or the other way around). In this regard, factors such as considering the real beneficiaries of certain transactions or the possibility to extend the controls over the continuation or succession of the activity of an entity are relevant in clarifying the connections to a terrorist group (Article 7).

148. It also worth noting that the Spanish Council of Ministers adopted on 6 March 2001 a decision requesting the implementation of S/RES/1267(1999) and S/RES/1373(2001) in the Spanish legal framework.

149. ***Freezing funds in the context of S/RES/1267(1999) and successor resolutions.*** The freezing of assets against certain persons and entities linked to Osama bin Laden, the Al-Qaida network and the Taliban arising from S/RES/1267(1999) and subsequent resolutions S/RES/1333(2000), S/RES/1363(2001), S/RES/1390(2002) and S/RES/1455(2003), has been implemented through Council Common Position 2002/402/CFSP, which constitutes the CFSP base to adopt an EC Regulation. The resulting Regulation is Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Osama bin Laden, the Al-Qaida network and the Taliban and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan. Article 2 of this Regulation contains the operative obligation to freeze, as well as the prohibition on making any funds available to the group targeted by the Regulation. The targeted group is listed in Annex I to the Regulation and contains the same information as the list maintained by the Al-Qaida and Taliban Sanctions Committee. The Annex is regularly and promptly updated by the Commission when the Sanctions Committee amends its list. The Common Position has so far been amended on one occasion, through Council Common Position 2003/140/CFSP, in order to implement S/RES/1452(2002). The Regulation has so far been amended 61 times (in February 2005). The freezing measures apply without delay and without giving prior notice to the persons concerned.

150. Regulation 881/2002 states that all funds²² and economic resources²³ belonging to, or owned or held by, a natural or legal person, group or entity designated by the Sanctions Committee must be frozen. It also states that no funds may be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity designated by the Sanctions Committee. Thirdly, no economic resources may be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity designated by the Sanctions Committee, so as to enable that person, group or entity to obtain funds, goods or services. It is also prohibited to grant, sell, supply or transfer, directly or indirectly, technical advice, assistance or training related to military activities, such as assistance related to the manufacture, maintenance and use of arms (Article 3). Under S/RES/1267(1999), taken up in the Interpretative Note to Special Recommendation III, the freezing of funds should apply not only to the funds held by the designated natural or legal persons but also to the funds *controlled* by them or by *persons acting on their behalf or at their direction*: the two elements in italics are not included in Regulation 881/2002.

151. Council Regulation (EC) No 561/2003 of 27 March 2003 amending, as regards exceptions to the freezing of funds and economic resources, Regulation (EC) No 881/2002, allows for an exception, upon a request made by an interested natural or legal person, to the national competent authority, for certain types of funds and economic resources with the approval of the Sanctions Committee²⁴. These provisions are consistent with the Security Council resolutions.

152. **Freezing funds in the context of S/RES/1373(2001).** With regard to the freezing of the assets of terrorists and terrorist entities resulting from S/RES/1373(2001), the obligation to freeze has been implemented in the EU through Council Common Positions 2001/930/CFSP and 2001/931/CFSP. The resulting Regulation is Council Regulation (EC) No. 2580/of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism creates a mechanism similar to that of Regulation 881/2002 by instituting an obligation to freeze the assets of the natural or legal persons, groups or entities referred to in S/RES/1373(2001).

153. In the context of S/RES/1373(2001), the mechanism for designating persons or entities whose funds should be frozen is collegial: it lies with the Council of the EU. Article 2 of Regulation 2580 states that the Council, acting by unanimity, shall establish, review and amend the list of persons, groups and entities to which the Regulation applies, in accordance with the provisions of Common Position 2001/931/CFSP. Article 1(4) of the Common Position states that the list should be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has

²² "Funds" are defined as "financial assets and economic benefits of every kind, including but not limited to cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; public and privately traded securities and debt instruments, including stocks and shares, certificates presenting securities, bonds, notes, warrants, debentures, derivatives contracts; interest, dividends or other income on or value accruing from or generated by assets; credit, right of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export-financing".

²³ "Economic resources are defined as "assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services".

²⁴ "Article 2 shall not apply to funds or economic resources where: (a) any of the competent authorities of the Member States, as listed in Annex II, has determined, upon a request made by an interested natural or legal person, that these funds or economic resources are: (i) necessary to cover basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges; (ii) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; (iii) intended exclusively for payment of fees or service charges for the routine holding or maintenance of frozen funds or frozen economic resources; or (iv) necessary for extraordinary expenses; and (b) such determination has been notified to the Sanctions Committee; and (c) (i) in the case of a determination under point (a)(i), (ii) or (iii), the Sanctions Committee has not objected to the determination within 48 hours of notification; or (ii) in the case of a determination under point (a)(iv), the Sanctions Committee has approved the determination".

been taken by a competent authority, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds.

154. In order to ensure the effectiveness of imminent designations or freezing orders issued or to be issued by other jurisdictions ("pre-notifications"), Spain uses the capacity of asking for full information from the obliged entities, according to Article 8 of RD 925/1995. All types of information must be provided to SEPBLAC when acting its own competences. No restriction is allowed. Under this capacity, SEPBLAC retrieves information, within a short period of time, from the obliged entities on whether a suspected terrorist to be designated has assets within the Spanish financial sector before the formal designation has taken place or the freezing order has been issued by the foreign jurisdiction. If that were the case, Spain would act based on its own domestic freezing instruments, after informing the requiring jurisdiction. Additionally, a Law is pending approval by Parliament, which will allow embargo measures agreed by a judicial authority of any other country of the European Union to be applied in Spain on any type of property.

155. The list drawn up by the Council of the EU for the purpose of applying Regulation 2580/2001 mentions (1) natural persons who commit or attempt to commit terrorist acts or who participate in or facilitate the commission of terrorist acts; (2) legal persons, groups or entities that commit or attempt to commit terrorist acts or that participate in or facilitate the commission of such acts; (3) legal persons, groups and entities owned or controlled directly or indirectly by one or more natural or legal persons referred to at points (1) and (2); and (4) persons, groups and entities acting on behalf of or under the direction of one or more persons, groups or entities referred to at points (1) and (2). The notion of control of a legal person, group or entity is defined in Article 1(6) of the Regulation.

156. Regulation 2580/2001 states that all funds belonging to, or owned or held by, a natural or legal person, group or entity included in the list drawn up by the Council shall be frozen. Funds, other financial assets and economic resources²⁵ shall not be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity included in the same list. Assets are to be frozen without delay and without giving prior notice to the persons concerned. The relevant list of persons, groups and entities has been amended on several occasions by Council Decisions²⁶.

157. Under Law 12/2003, any terrorist group or entity may be designated by the Terrorist Finance Watchdog Commission, irrespective of their designation by the Council of the EU.

158. Under Article 5 of Regulation 2580/2001, the Treasury may on occasion and under such conditions as it deems appropriate in order to prevent the financing of acts of terrorism, authorise the use of frozen funds to meet essential human needs (food, medicine, rent, etc.) and to pay taxes, compulsory insurance premiums, utility fees and charges due to a financial institution for the maintenance of accounts. Applications for such authorisation must be submitted to the Treasury if the funds have been frozen in Spain.

159. EC Regulation 2580/2001 does not cover persons, groups and entities having their roots, main activities and objectives within the European Union (EU internals). EU internals are still listed in an Annex to the Common Position 2001/931/CFSP, where they are marked with an asterisk, signalling that they are not covered by the freezing measures but only by an increased police and judicial co-

²⁵ "Funds, other financial assets and economic resources" are defined as "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit".

²⁶ Council Decision 2001/927/EC of 2 December 2001 first established the list provided for in Article 2(3) of Regulation 2580/2001; the most recent update being Council Decision 2005/930/EC of 21 December 2005 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2005/848/EC.

operation between the Member States. The Presidency Conclusions of the EU RELEX/Sanctions meeting of July 2004 noted that for the freezing of funds and assets of groups, entities and persons which appear listed as "internal" (marked with an 'asterisk') in the list annexed to Common Position 2001/931, if read together with articles 2 and 3 of Common Position 2001/930 (combating terrorism), national legislation is necessary. This was supported at an informal meeting of the EU finance ministers in September 2005 when they agreed that there is a benefit in complementing the EU action with administrative or judicial mechanisms at the national level to identify and freeze terrorist assets effectively. Therefore, in order to freeze funds located in the EU of a suspected terrorist or terrorist financier being a citizen of any one of the 25 EU Member States or a terrorist organisation having its main activities within the EU, Spain has to rely on (additional) domestic measures.

160. Judicial freezing orders under Spanish law would not seem to be able to fill this function to the full extent, or to fulfil the requirements under S/RES/1373(2001) to the full extent. Such judicial freezing is ordered with a view to securing claims for damages, compensation to victims etc. as may be recognised in a later conviction for terrorist offences. Hence, this judicial freezing neither has the same preventative aim, nor necessarily the same broad scope, as the kind of freezing measures foreseen in and required by S/RES/1373(2001) and Special Recommendation III.

161. There seems to be some shortcomings in the Spanish system also when it comes to examining and giving effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. The assessors have not seen evidence of Spanish authorities having established and implemented a clear, efficient procedure to ensure the prompt determination, according to applicable national legal principles, of whether reasonable grounds or a reasonable basis exists to initiate a freezing action and the subsequent freezing of funds or other assets without delay. It seems that whenever a freezing action initiated under the freezing mechanisms of other jurisdictions is transmitted to Spanish authorities with a request to take corresponding action in Spain, Spanish authorities first take steps to try to identify whether the person or entity subject to the freezing order (currently) is holding funds in Spain and only if and when established that so is the case, go on to consider taking a decision on freezing.

162. ***Common aspects of implementation for S/RES/1267(1999) and S/RES/1373(2001)***. By way of introduction, under the terms of Special Recommendation III (which takes up the terms of the two Security Council resolutions), measures to freeze assets must apply to funds or other assets owned or controlled wholly or *jointly*, directly or indirectly, by the persons concerned, etc. and to funds or other assets *derived or generated* from funds or other assets owned or controlled by such persons. The two EC Regulations make no mention of the elements in italics. Therefore, the definitions of terrorist funds and other assets subject to freezing and confiscation contained in the regulations do not cover the full extent of those given by the Security Council or FATF (in particular, the notion of control of the funds does not feature in Regulation 881/2002).²⁷

163. In addition, under article 1.1 of the Law 12/2003, the freezing actions extend to the following: *with the objective of preventing terrorism financing activities, the accounts, balances and financial positions as well as transactions and movements of capital – even sporadic ones – and their corresponding operations of collecting, paying, or transferring in which the drawer, issuer, titleholder, beneficiary, payee, or recipient is a person or entity linked to terrorist organisations or groups, or when the transaction, movement or operation has been carried out by reason of or on the occasion of the perpetration of terrorist activities or to contribute to the objectives pursued by*

²⁷ In the revised texts of (1) EU guidelines on implementation and evaluation of restrictive measures (sanctions), adopted by the Council of the EU on 12 December 2005, and (2) EU Best Practices for the effective implementation of restrictive measures, agreed by Coreper II on 8 December 2005, a broader definition has been applied to the terms as used in the current EC Regulations. This broader definition includes the concepts of *control* of the funds, as well as the further distinction of *joint* control. These two documents were developed in the framework of the EU Common Foreign and Security Policy, and although they do not have the legal status of revising the relevant EC Regulations, they may be used by member states interpreting the Regulations.

terrorist groups or organisations, are all susceptible to being blocked or cancelled in the terms provided for in this law.

164. By using the term “capital”, which covers a wide range of assets (in accordance with the definition set out in Article 1, paragraph 2 of Law 19/1993 on certain measures for the prevention of money laundering²⁸), the freezing of assets provided for by Law 12/2003 is deemed to cover any type of asset or good liable to be frozen. Other provisions of the Law also refer to “freezing” in the broadest sense of the term (Article 2, paragraph 2; Article 4, paragraph 1.a). Article 2.2, for instance, allows extending the freezing order issued by the Watchdog Commission to other assets coming from financial transactions²⁹.

165. Spanish law does not refer explicitly to funds or assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations. However, the definition set out in Article 1, paragraph 1 of Law 12/2003 covers a wide range of operations and the means by which the aforementioned individuals or organisations may participate therein. It may therefore be concluded that the funds or assets generated from others linked to terrorism can also be frozen, since the source of these funds or assets would, according to Spanish law, provide proof of links with terrorism and grounds for them to be frozen.

166. Furthermore, Article 7 of the cited Law gives a very wide interpretation to the concept of individual or entity linked to terrorist organisations:

- a) *Those persons or entities whose link with a terrorist group or organisation has been recognised in a judicial resolution, in a court finding, or other resolution adopted by a competent body of the European Union, or any other international organisation of which Spain is a member.*
- b) *Those who act as administrators by fact or by law or in the name of, on behalf of, or in legal or voluntary representation of the organisation or of any person or entity forming part of or controlled by a terrorist group.*
- c) *Those entities whose managing or administrative bodies or in whose share capital other persons or entities forming part of or controlled by a terrorist organisation participate with significant influence.*
- d) *Those who constitute a decision unit with a terrorist group or organisation, either because some of them hold or could hold directly or indirectly control over the others, or because said control corresponds to one or various persons or entities who act systematically or in concert with the group or organisation.*
- e) *Persons and entities created or interposed by a terrorist organisation with the aim of concealing the true identity of the parties ordering or receiving a financial transaction or of the parties to any business or contract.*

²⁸ For the purposes of this Law, “the laundering of capital” shall be understood to mean the acquisition, use, conversion or transfer of property derived from any of the criminal activities enumerated in the preceding paragraph or from participation in such activities, for the purpose of concealing or disguising its origin or helping a person involved in the criminal activity to evade the legal consequences of his acts, as well as the concealment or disguise of its true nature, source, location, disposition, movement or ownership or of rights with respect of it, even if the activities that generate the property are carried out in the territory of another State.

²⁹ The Watchdog Commission may also freeze cash, securities and other instruments arising from financial transactions or operations that the principal or beneficiary has performed, directly or through an intermediary, for the purpose, or on the occasion, of the perpetration of terrorist activities or to contribute to the purposes or goals pursued by terrorist groups or organisations.

- f) *Those who without being included in any of the preceding paragraphs financially assist or favour a terrorist organisation.*
- g) *Those persons or entities which, in the light of the identity of the persons who manage or administer them, or because of any other circumstances can be deemed to constitute material continuation or succession of the activity of any person or entity provided for in the preceding paragraphs, irrespective of the form or legal title used for said continuation or succession.*

167. In those cases where a link, one way or another, is established, the freezing order will reach the whole of the assets of the legal person and not just a part of thereof. The freezing mechanism in place extends to all the assets held by not only by a terrorist organisation itself but also to those held by its associated (legal and physical) persons, regardless of its legal form and structure, according to Article 7. In other words, when a link with the structure can be established the freezing order can reach the whole of the assets of this structure, even when other persons are also owners of the structure.

168. In order to make it easier for Member States to implement the Regulations and ensure their compliance with the obligations imposed by the UN resolutions, the European Commission organises meetings between the Member States' authorities with competence for the freezing of assets at which issues of mutual interest are considered. Seminars and conferences also provide forums for exchanging views on the measures to be taken and other countries' mechanisms for freezing assets.

169. More specifically, Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence lays down the rules whereby a Member State recognises and executes on its territory a decision to freeze assets issued by an authority of another Member State in the context of criminal proceedings and thus institutes the principle of mutual recognition in criminal matters of decisions that precede the judgement phase, in particular those that enable the competent judicial authorities to act rapidly to obtain evidence and seize easily transferable assets.

170. EC regulations are published in the Official Journal of the European Communities and enter into force the day of their publication. On April 25, 2002, the Director General of the Treasury delivered the FATF Guidance for Financial Institutions in Detecting Terrorist Financing to the Spanish Banking Association (*Asociación Española de Banca, AEB*) and the Spanish Confederation of Saving Banks (*Confederación Española de Cajas de Ahorro, CECA*) requesting them the highest possible dissemination among their associates. Additionally, the Secretary of State for the Economy used to periodically deliver to financial institutions the actualised lists of individuals and organisations subject to asset freezing measures. Now that a comprehensive, downloadable database has been established by the European Commission, the obliged entities have access to direct and updated information on the persons listed (see the list at the following address: http://europa.eu.int/comm/external_relations/cfsp/sanctions/measures.htm for information and procedures. The EC web page contains all applicable legislation on terrorism financing under the headline "Terrorist groups (foreign terrorist organisations)" and a database where all persons, groups and entities, including designated terrorists that are subjected to freezing measures are listed). All obliged subjects must check immediately their client databases upon each official publication of a new list in the Official Journal of the European Communities. This conclusion, although not expressly stated, can be inferred from the obligation imposed by article 5 Regulation 881/2002 to immediately inform the competent authorities on the accounts and amounts frozen. In case obliged subjects fail to comply with these obligations, they will be subject to sanctions in accordance with Law 19/2003 of 4 of July. Once a match is found by an obliged entity, it is sent to the Directorate General of the Treasury and Financial Policy. The role of the Treasury, as the designated competent Authority under EC Regulations, has been to assist obliged subjects in the verification of identities, that is, to help entities to make sure if the person whose assets have been preventively frozen is the one on the list, thus preventing mismatches caused by homonymy. To this end, immediate notifications are delivered to (1) Police investigative Units, (2) SEPBLAC (3) representatives of Spain at the UN 1267

Committee (Ministry of Foreign Affairs). Sometimes, additional information is obtained and immediately sent to the entity concerned.

171. In application of Law 12/2003, the freezing orders adopted by the Terrorist Finance Watchdog Commission may be either published in the Official Gazette (Article 60 Law 30/1992) or directly communicated to the obliged subjects (Article 58 Law 30/1992). In all cases, the resolution to freeze may be adopted without first hearing the owner(s) of the accounts, positions or balances in question if this seriously compromises the effectiveness of the measure or public interest. In any case, the identity of the civil servants involved in the administrative proceedings in which the resolutions are adopted and executed shall remain confidential at administrative and jurisdictional level (Article 2.4 Law 12/2003).

172. There is, however, a lack of up-to-date guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under Law 12/2003 and the on-site visit left a clear impression that there is a need for such guidance. The competent authorities rely on the specific guidance issued by the Commission for the Prevention of Money Laundering that are very general and comprise both money laundering and terrorist financing. It seems that there is a need for clear guidance on the practical measures that should be taken to ensure that effective measures are in place to fully apply and comply with the said Law. In particular, such institutions, persons and entities seem to be waiting, still, for the announced Royal Decree regulating the implementation and enforcement of the said Law before taking further measures with respect to its application. The lack of guidance may jeopardise successful practical application of an otherwise seemingly adequate domestic legal framework.

173. The European Commission amends the list of persons and entities referred to in Regulation (EC) No 881/2002 on the basis of Communications from the Sanctions Committee established by S/RES/1267(1999). The guidelines adopted on 7 November 2002 and amended on 10 April 2003 provide for a procedure for removal from the lists (see www.un.org/Docs/sc/committees/1267/1267_guidelines.pdf). A person, group or entity may seek removal from the list from its national government or the government of its country of residence. If the government supports the request, it must hold discussions with the government(s) at the origin of the listing. Depending on the outcome of these discussions, a request for removal may be submitted to the 1267 Sanctions Committee, which takes its decisions by consensus. If the Committee members are not able to agree and subsequent discussions are inconclusive, the request may be submitted to the Security Council. When a name is withdrawn from the list, the UN issues a Communication which is taken up at European level in a Commission Regulation. As such regulations apply directly, the financial institution can unfreeze the assets with no further formalities. A ministerial order will also be issued, removing the name from the list at the date the Commission Regulation takes effect. The Treasury will inform the institution that has frozen the assets in writing that the name has been removed from the list.

174. Under Regulation 2580/2001, there is nothing to prevent a person, group or entity (provided that it has legal personality) from taking legal action if it considers that the assets have been unjustly frozen. Article 6 of Regulation 2580/2001 states that the competent authorities of a Member State may grant specific authorisations: (1) to unfreeze funds, other financial assets or other economic resources, (2) to make funds, other financial assets or other economic resources available to a person, entity or body referred to in Annex I of the regulation or (3) to render financial services to such person, entity or body, after consultation with the other Member States, the Council and the Commission.

175. In Spain, when a match between the list and a client is notified to the Treasury by an obliged entity, additional information is required. On the basis of this information received, the Treasury may come to the conclusion that the person whose assets have been frozen is not a designated one. Then an immediate communication to the obliged entity is sent so that it can release the funds frozen. On the other hand, the information gathered on listed persons (based on the matches notified by the obliged entity) is delivered to the Ministry of Foreign Affairs, so that it can be sent to the UN 1267 Committee

and eventually enrich the amount of information available on one concrete listed person or entity. In addition to that, through the relevant appeal presented to the court that is handling the case, unfreezing can be declared when the funds in question are proven not to proceed from terrorist activities.

176. Under the EU regime, information gathered through the implementation phase regarding possible mistakes in the spelling of names, etc. produces feedback to the Ministry of Foreign Affairs, which is relevant in deciding the delisting of the persons concerned at the EU level.

177. A procedure for cases of mistaken identity is contained in the document “EU Best Practices for the effective implementation of restrictive measures”, Doc No 15115/05 PESC 1085 RELEX 705 COTER 87 FIN 476. This procedure was originally adopted in December 2004.³⁰

178. Under the Spanish domestic freezing regime, any person whose assets have been frozen by the Watchdog Commission can challenge this freezing order immediately and make the measure be reviewed by a Court (article 3.3 of Law 12/2003). In order to protect the rights of the person whose assets are frozen, priority is given to the appeal; it will be processed on a preferential basis.

179. With respect to the practical application of the freezing mechanisms under the EC Regulations there is a lack of clear, up-to-date guidance that would respond to the need for such guidance, which financial institutions and other persons or entities that may be holding targeted funds or other assets have.

180. On this background, there are some doubts as to the current effectiveness, in terms of practical application, of freezing measures under Law 12/2003 and the two EC Regulations in Spain. In this regard, there is also a lack of monitoring for compliance with the said freezing regimes and a lack of supervision to facilitate the practical application of the system and thus ensure its effectiveness.

181. For considering de-listing requests with respect to designations under Regulations 881/2002 and 2580/2001 and for accordingly unfreezing the funds or other assets of de-listed persons or entities in a timely manner, Spain does not seem to have a clear, efficient and publicly known procedure set up domestically – and at least with respect to Regulation 881/2002 the designated person (or entity) does not have a clear gateway for himself requesting de-listing by the 1267 Sanctions Committee, alternatively through the EU. In this context, mention should, however, also be made of Law 12/2003 having an apt procedure for de-listing from any lists that Spanish authorities may in the future establish under this legal authority. And with respect to Regulation 2580/2001 it is foreseeable that a designated person or entity could take a request for de-listing to the Luxembourg Court (the Court of First Instance / the European Court of Justice).

182. Correspondingly, Spain does not seem to have a clear, efficient and publicly known procedure for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by freezing pursuant to the two EC regulations. Again, however, Law 12/2003 would seem to have an apt procedure also in this respect – for freezing undertaken pursuant to this legal authority.

183. **Freezing, seizure and confiscation in other circumstances.** Spanish regulations relating to confiscation and seizure have general application; the measures introduced within the framework of Recommendation 3 therefore apply to funds or other assets connected with terrorism not referred to in S/RES/1267(1999) and S/RES/1373(2001). The analysis developed in relation to Recommendation 3 applies also to the terrorist financing context (*see Section 2.3*).

184. **General provisions.** Regulation 881/2002 and Regulation 2580/2001 make no mention of the protection of the rights of third parties acting in good faith. According to Article 6 of the Treaty of the European Union “*the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member*

³⁰ The document was revised in December 2005.

States. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.” More specifically, article 288 of the Treaty Establishing the European Community states that “*in the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties*”.

185. In the absence of specific measures, the general rules of civil liability in ordinary law apply. It is self-evident that no natural or legal person applying the provisions of the regulations that govern them will incur any liability whatsoever unless negligence can be proved.

186. Article 6 of Regulation 881/2002 states that the freezing of funds, other financial assets and economic resources, in good faith that such action is in accordance with the Regulation, shall not involve the natural or legal person, group or entity implementing it, or its directors or employees, in liability of any kind unless it is proven that the freezing was due to negligence.

187. Article 2.3 of Law 12/2003 explicitly ensures that any type of harm should be avoided to third parties in good faith after the issuance of the freezing orders. If this was the case, the freezing measure will be released with respect to a particular transaction. In general, protection of third parties who have acted in good faith is guaranteed by the Spanish legal order, since article 127.1 of the Penal Code would apply, stating: any punishment imposed due to a crime or fraudulent offence will entail the loss of the proceeds derived from it and the property, means or instruments with which the crime may have been executed as well as the profits proceeding from the crime irrespective of the transformations that the property may have undergone. The proceeds and other elements will be confiscated unless they belong to third parties who have acted in good faith and have acquired the property or title legally, and are totally unrelated to the crime or offence.

188. In both Law 12/2003 and Law 19/1993, specific capacities are granted to SEPBLAC in order to inspect and verify the level of compliance with the AML/CFT regime by the obliged entities. According to Article 15.2.f) Law 19/1993, SEPBLAC shall have, among others, the following function: “*monitoring the suitability of the procedures and organs referred to in paragraph 7 of article 3 of this Law and proposing the necessary corrective measures*”. Additionally, article 24.2 of its Regulation, approved by RD 925/1995, states that “*the Executive Service shall act to investigate and prevent administrative offences against the laws on capital movements and cross-border transactions, and to forestall and prevent the utilisation of the financial system or other types of companies or professionals for the purposes of money laundering, in this connection exercising the functions referred to in article 15.2 of Law 19/1993 of 28 December and Law 19/2003 of 4 July.*” As a result, SEPBLAC conducts periodic examinations of the AML/CFT procedures and organs of the obliged subjects, being the results laid down in written reports submitted to the Secretariat of the Watchdog Commission: “*the Secretariat of the Commission shall be responsible, inter alia, for instituting and conducting the sanctioning proceedings necessary in respect of the commission of infractions covered by this Law, and making the corresponding proposal for decision to be submitted to the Commission*” (article 15.1 Law 19/1993).

189. In relation to Law 12/2003, article 9.4 states that “*the Watchdog Commission shall exercise its powers with the support of the services to be determined by regulation and of the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Violations referred to in Article 15.2 of Law 19/1993.*” Correspondingly, article 15.2.g) of Law 19/1993, as amended by Law 12/2003, states that SEPBLAC will have the function of “*providing such support to the Watchdog Commission as is required to enable it to properly exercise and perform its functions, execute its orders and guidelines and ensure that the law regulating this Commission is applied in accordance with the instructions received from it*”. This statement should be balanced based on the comments provided in Section 3.10 of the Report on supervision and oversight and the lack of monitoring of the implementation of AML/CFT requirements by the reporting parties.

Information to be treated as additional elements

190. Spain seems to have implemented several best practices as contained in the FATF document on freezing terrorist assets. This is particularly true with regard to co-operation between the competent authorities and co-operation with foreign governments (via EU procedures).

191. Although the procedures are in place, no request for releasing any freezing measure had been received at the time of the on-site visit.

192. **Statistics.** The number of persons or entities and the amounts of property frozen pursuant to or under U.N. Resolutions relating to terrorist financing (both S/RES/1267(1999) and S/RES/1373(2001)) is as follows:

Year	Nº	Amount
2001	74	6.374,42 €
2002	10	19.652,00 €
2003	7	10.242,31 €
2004	6	83,75 €

193. In relation to the financing of terrorism, SEPBLAC provided the following data:

STRs related to international lists of terrorists	2003	2004	2005	TOTAL
Number of STRs received	28	40	15	83
STRs related to terrorist financing	2003	2004	2005	TOTAL
Number of STRs received	28	43	74	145

2.4.2 Recommendations and Comments

194. **Special Recommendation III.** Spain should, as a matter of priority, take the necessary steps to ensure the full practical and efficient application of the otherwise seemingly adequate domestic legal framework laid down in Law 12/2003, in particular through enacting the announced Royal Decree regulating the implementation and enforcement of the law and through providing additional guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets. The need for additional guidance specifically concerning TF relates also to the practical application of freezing measures under the two EC Regulations. Spain should also establish and make clear and publicly known the necessary procedures for de-listing and unfreezing in appropriate cases. The comments made in reference to Recommendation 3 apply equally here and have been taken into account in assessing compliance with SR III.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR III	LC	<ul style="list-style-type: none"> ▪ With regard to national mechanisms for considering requests for freezing from other countries and for freezing funds of EU internals, Law 12/2003, although in force, has yet to be practically implemented. ▪ The definition of funds in the EC Regulations does not fully cover the terms in SR III. ▪ Spain has issued very little guidance to financial institutions and other persons/entities that may be holding targeted funds/assets. ▪ Spain has not established or made clear and publicly known the necessary procedures for de-listing and unfreezing in appropriate cases.

		<ul style="list-style-type: none"> ▪ Because the scope of the terrorist financing offences is not quite broad enough, Spain would be unable to freeze the assets of, inter alia, a person who collects funds directly in order for the funds to be used to carry out a terrorist act. ▪ The effectiveness of the freezing, seizure and confiscation regime cannot be satisfactorily assessed based on the information available.
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Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

195. **Functions and responsibilities of the FIU.** The *Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias* (the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences or *SEPBLAC* by its Spanish name), the Spanish FIU, has its roots in the Executive Service of the Commission for Monitoring Exchange Control Offences, created by RD 2391/1980 of 10 October 1980 as the operating arm of the Commission and assigned to the Bank of Spain with the functions of investigating breaches of exchange control law (monetary offences and administrative infringements) and supporting the legal authorities (Central Court No. 3 of the *Audencia Nacional*) and administrative authorities (Directorate-General of Foreign Transactions and the Bank of Spain).

196. Law 19/1993 of 28 December 1993 on specific measures for the prevention of money laundering and its implementing regulations approved by RD 925/1995 of 9 June 1995, extended the powers of the Monitoring Commission to the prevention of money laundering related to drug trafficking, terrorism and organised crime. Currently known as the *Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias* (the Commission for the Prevention of Money Laundering and Monetary Offences), it is headed by the Secretary of State for Economy, who carries out his functions with the support of the SEPBLAC and the Secretariat.

197. SEPBLAC is responsible for receiving, analysing and disseminating information transmitted by the obliged subjects. Other responsibilities are:

- Rendering assistance to the judicial bodies, the Public Prosecution Department, the criminal police and the competent administrative bodies.
- Reporting to these bodies and institutions on the conduct giving reasonable indications of a criminal offence or, as the case may be, an administrative infringement.
- Supervising the obliged subjects.
- Carrying out the instructions and following the guidelines given by the Commission, and submitting to it the reports that it requests.
- Acting as Secretariat to the Commission for Monitoring Terrorist Financing Activities.
- Investigating and preventing infringements of administrative law under the legal framework governing cross-border capital movements and financial transactions, as established in article 24.2 of the RD 925/1995.

198. Among the functions assigned to SEPBLAC under Spanish Law are “rendering assistance to the judicial bodies, the Public Prosecution Department, the police and the competent administrative bodies” and “reporting to these bodies and institutions on the conduct giving reasonable indications of a criminal offence or, as the case may be, an administrative infringement”. In addition to the reports submitted to these authorities (the main beneficiaries of the activities performed by SEPBLAC, as can be seen from the accompanying statistics), the assistance provided by SEPBLAC mainly takes the form of answering requests for background information, stored in its databases, on individuals or operations that the authorities are currently investigating. In such cases, SEPBLAC provides all the

information it has on file and any supplementary analysis based on the information received from the requesting authority. The table below shows the requests for information processed by SEPBLAC in recent years.

Requesting National Authority	2001	2002	2003	2004
Courts and public prosecutor	11	19	28	20
National Police Force	11	61	107	88
Civil Guard	36	26	58	124
Customs and Excise Department	11	19	21	19
Directorate General of the Treasury and Financial Policy	0	5	42	73
Bank of Spain	0	10	11	13
Other information request	0	4	6	32
TOTAL	69	144	273	369

199. Pursuant to the money laundering legislation, if a reporting entity suspects that a transaction is related to money laundering, the entity should not to carry out the transaction before informing SEPBLAC, unless not doing so is impossible or impede a prosecution (Article 9 of RD 925/1995). SEPBLAC could not give a general indication as to the period that normally elapses between the date of a suspicious transaction and the date the related STR is reported. SEPBLAC has no legal power to block assets in cases involving money laundering and the financing of terrorism.

200. SEPBLAC has prepared diverse instructions for the financial institutions and other subject parties with guidelines on the way to submit the reports. These instructions specify the forms and procedures to submit the reports and indicate the minimum content required in the report. Subject parties may use a free format to report although SEPBLAC has suggested a format which may create difficulties when processing the information.

201. In April 2005, the financial institutions received instructions on “on-line communications” (prior to that reporting was done through CD’s or paper sent to SEPBLAC). The diversity of the data bases of SEPBLAC was making it increasingly more difficult to manage information. Data dispersion caused the information to become redundant, hindering the possibility of obtaining a sole record of the subject persons and parties, making it necessary to perform specific tasks every time one wished to cross information from two or more areas or data bases. Due to that, the decision was made in 2002 to unify all the data bases, integrating them in a single application (TAIS) to reduce their complexity and improve their performance. The project involves a term plan of 4 years. This process gave rise to some advantages for SEPBLAC. Firstly, it has improved administration of the data bases, as this reduces the number of people who must be involved. Centralisation also facilitated other additional tasks, such as making back-up copies of the information and documenting the processes. Additionally, it generated major cost savings. Finally, it allowed the information to be used in a more efficient, effective manner, by automatically cross-indexing related information. The Management and Planning Area records all the communications and requests received, which are entered in the TAIS application. All the data contained in the communications are thus pooled with the other information already held in the Service, enabling TAIS to provide the existing data held in it on people, other matters, reported transactions, investigations and documents.

202. For the purpose of guidance, SEPBLAC Annual reports include some examples of cases analysed by SEPBLAC and propose some analysis with regard to certain sectors and activities of specific risk (for instance, in 2004, SEPBLAC carried out an analysis of risks in the equity markets).

SEPBLAC has also adopted instructions to facilitate the exchange of information (electronically or by fax) with the banking sector on asset tracking. Through “asset tracking request” forms (called F27), the requests to track assets of people that might be related to the financing of terrorism and/or whose names appear in official lists issued by international bodies can be followed as well as the respective answers (“Answer to asset tracking request” – called F27/R). These forms specify the information to be exchanged and some guidelines which make it easier for financial institutions to understand and filling out the forms.

203. **Access to information.** SEPBLAC has immediate direct or indirect access to all the public data bases with financial, administrative and police information. It also has a contract for access to data bases with private commercial or financial information. In particular, SEPBLAC has direct, immediate access to the following sources of information: (1) statistical information on movement of capital and overseas financial transactions from the Bank of Spain (balance of payments, Article 16.2 of Law 19/1993); (2) Business Registry; (3) Register of Money Changing Establishments and (4) Register of Lending Institutions. SEPBLAC has also direct, immediate access to the following data bases and sources of information: (1) Notarial Records (Article 16 of Law 19/1993); (2) National Police Force (Article 25.2 of RD 925/95); (3) *Guardia Civil* (Article 25.2 of RD 925/95); (4) Police forces of the Autonomous Regions (Article 25.3 of RD 925/95); (5) the Tax Authorities (Article 16.1 of Law 19/1993); (6) the management bodies and General Treasury of the Social Security (Article 8 of Law 12/2003); (7) the Bank of Spain (Article 16.2 of Law 19/1993); (8) the National Commission of the Stock Market (CNMV) (Article 16.2 of Law 19/1993); (9) the Directorate General of Insurance and Pension Funds (DGFSP) (Article 16.2 of Law 19/1993); (10) other bodies with supervisory competences and (11) Those managed by the authorities and civil servants in general (Article 16 of Law 19/1993 and Article 27 of RD 925/95). SEPBLAC also has access to the private data bases in requires to perform its duties (Informa, Dun & Bradstreet).

204. SEPBLAC is authorised to obtain from reporting parties additional information and documentation needed to perform its duties (Article 8 of RD 925/1995). The procedure to complement the information received from the reporting parties in order to analyse the merits of the report is to place requests to different authorities to know if an investigation is going on, in such case additional information is requested to the subject party. The average time to process the reports is of four months.

205. **Dissemination of information and elements to measure effectiveness.** When deciding on which authorities should receive its reports, SEPBLAC considers, first, whether there is an ongoing investigation by another authority and, second, the degree of determination of the underlying criminal offence once it has completed its analysis. In those cases where the analysis reveals that the individuals or operations under scrutiny are being investigated by the judicial authorities or law enforcement agencies, the report will always be addressed to the authority leading the investigation. In those cases where, as a result of the analysis, it is possible to substantiate the underlying criminal offence at the origin of the illicitly obtained funds, the offence will determine the addressee of the report. For offences relating to drug trafficking, the drugs arm of the prosecution service (*Fiscalía Antidroga*) is the addressee; for monetary offences – including financial offences – the addressee is the anti-corruption arm of the prosecution service (*Fiscalía Anticorrupción*); and for terrorism-related offences the addressee is the High Court (*Audiencia Nacional*). In those cases where there is evidence of money laundering, there are no ongoing investigations by other authorities and the underlying criminal offence has not been determined, the addressees are normally the law enforcement agencies (national police force, civil guard, and the customs and excise department). In those cases where there is evidence of administrative tax-related infringements, the addressee will be the tax authority (AEAT – State Tax Revenue Service). The vast majority of the cases are assigned to the police corps along with the Anticorruption Prosecutor’s Office and the Tax Authorities. During the on-site visit, the first three authorities expressed some concern about the lack of information, on the reports of SEPBLAC, necessary to start an investigation but this issue had never been discussed among them and SEPBLAC, not even at the Commission meetings. By contrast, the tax authorities (AEAT), customs (Servicio de Vigilancia Aduanera), the High Court’s prosecution service (Fiscalía de la Audiencia Nacional) and the anti-drug arm of the state prosecution service (Fiscalía Antidroga) said that they did not have this

problem and stated that they were very satisfied with the value of the reports they received from SEPBLAC. This is due to the fact that the reports sent to these latter authorities are those where there were already cases being investigated. The Anti-Corruption Prosecutor's Office indicated that co-operation with SEPBLAC was generally profitable. The comments on the side of the police corps as to their role in SEPBLAC was that of a liaison between central authorities and SEPBLAC more than a task force that decided which reports would be of interest to be assigned to the competent authority. When posing the question on what was the value added by SEPBLAC to the reports received, there was not a clear answer. Once the cases are assigned by SEPBLAC, it does not know what happens nor does the police corps on the destiny of their investigations once on the prosecution stage.

206. The assignment of money laundering cases is as follows:

	2001	2002	2003	2004
National Court	5	25	32	57
Trial Courts	10	25	61	46
Anti-narcotics State Attorney	17	19	34	52
Anti-corruption State Attorney	27	39	135	204
National Police Force	291	624	735	866
Civil Guard	32	43	103	320
Customs and Excise Department	14	21	40	54
Directorate General of the Treasury and Financial Policy	9	20	53	106
Bank of Spain	33	28	12	10
Ministry of Finance-Tax Authorities	1	2	115	227
Directorate General of Insurance	0	1	1	0
Others bodies	1	4	32	40
PROVISIONAL FILING	882	873	545	516
TOTAL	1.322	1.724	1.898	2.498

207. The following chart indicates the number of money laundering cases initiated, completed and still in process in 2003 and 2004 within SEPBLAC. Money laundering cases are begun as a result of suspicious transaction reports received and requests for information from national and international authorities. In 2004 the number of money laundering investigations begun grew by 46.14%, the fastest rate of growth in the last few years (2,228 in 2003 and 3,256 in 2004). The number of cases completed rose by 36.37% (2,106 in 2003 and 2,872 in 2004) and cases in progress by 36.36% (1,056 in 2003 and 1,440 in 2004).

Money laundering matters initiated, concluded and under way			
	2003	2004	2004/2003 Variation
Initiated	2.228	3.256	46,14%
Completed	2.106	2.872	36,37%
In process	1.026	1.440	36,36%

208. SEPBLAC is a technical support body of the Commission for Prevention of Money Laundering and Monetary Offences (Article 25 of Law 19/1993) and the Commission for Surveillance of Terrorist Financing Activities (Article 9.4 of Law 12/2003) and its Director is the Secretary to the latter Commission (Article 9.2.c. of Law 12/2003). The duties of SEPBLAC include the following:

- To execute the orders and follow the guidelines provided by the Commission, as well as submit the reports it requests.
- To provide the necessary assistance to the Commission for Surveillance of Terrorist Financing Activities for adequate practice and performance of its duties, to execute its orders and guidelines and to ensure application of the terms provided in the law that regulates that Commission, according to the instructions received from it.

209. It is placed under the authority of the Bank of Spain, which affords it the staff and the material and financial aid it requires and appoints the director. SEPBLAC is subject to the directives and

supervision of the Commission for the Prevention of Money Laundering and Monetary Offences. It is not sure that the independence of SEPBLAC is guaranteed. Its budget is not separate from that of the Bank of Spain, but for the moment this does not seem to pose a problem since the Bank of Spain has been generous with SEPBLAC.

210. **Secure protection of information.** SEPBLAC is subject to Organic Law 15/1999 of 13 December 1999 on the protection of personal data, since the files used at SEPBLAC are not included among the exceptions envisaged under this legislation. The persons assigned to SEPBLAC have the duty of professional secrecy, not being able to publish or disclose reserved data or documents (Article 26 of RD 925/1995). In the process of performance and implementation of the work procedures and the computer system of SEPBLAC, security of the information will be considered a priority. The following measures have been adopted to that end:

- Unified entry record.
- Controls on access to information.
- Limiting access to the information that is strictly necessary to perform the duties and carry out the work entrusted.
- Permanent, systematic auditing controls.
- Limiting cession of information to third parties (Bodies and Authorities) to the cases foreseen under the laws in force.
- Prior authorisation by the Management to supply data and submit reports to third parties outside SEPBLAC.

211. **Periodic reports.** SEPBLAC publishes an Annual Report of Activities that includes statistics and typologies. SEPBLAC web site (www.sepblac.es) also publishes statistical information and the reports and news it considers relevant or of interest to the subject institutions.

212. **Egmont Group.** Spain joined the Egmont Group in 1995. SEPBLAC has chaired the Outreach Work Group, responsible for new member countries joining from 1998 to 2000. SEPBLAC is now chairing the Outreach Work Group again.

213. For the purposes of information exchange with FIUs, SEPBLAC is governed by the *Declaration of Purpose* of the Egmont Group and its Principles for Information Exchange. SEPBLAC has used FIU-Net since joining this information-exchange system, mainly to respond to requests for information from other FIUs who are also members.

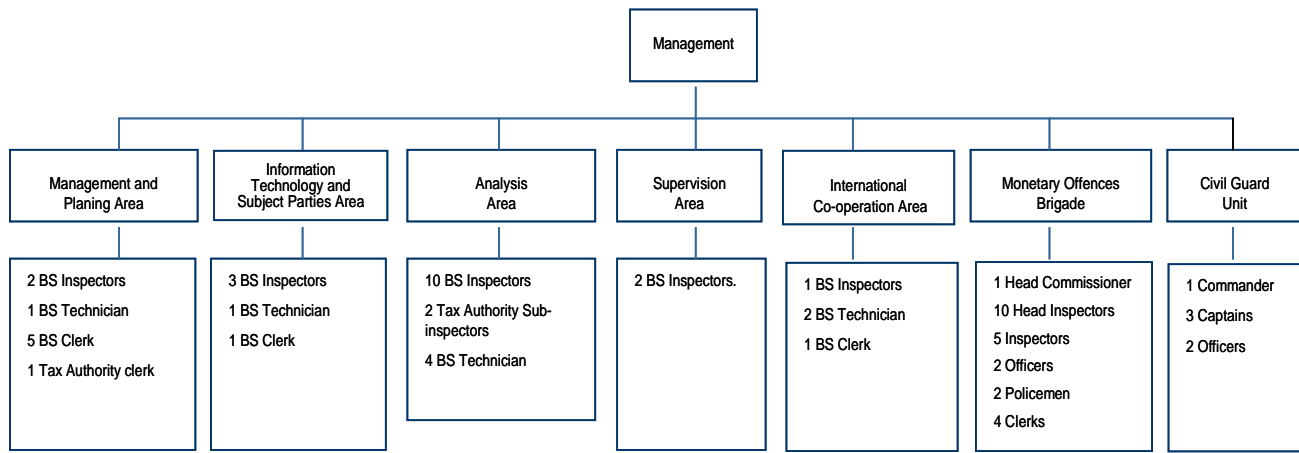
214. **Structure and resources of the FIU.**³¹ SEPBLAC is, along with the Secretariat, the technical supporting body of the Commission for Prevention of Money Laundering and Monetary Offences (Article 15.2 of Law 19/1993 and Article 22 of RD 925/95). The Director of SEPBLAC is the Secretary of the Commission for Surveillance of Terrorist Financing Activities and SEPBLAC is the technical supporting body of that Commission (Article 9 of Law 12/2003).

215. In 2001, Project 2001-2004 was set up, that was intended to consolidate the Spanish FIU. During that period, the organisational structure of SEPBLAC was set up; it was joined by staff from the *Guardia Civil*, National Police Force, Bank of Spain and Tax Authorities; the work procedures were defined; a major part of the technological renewal was performed through implementation of advanced information technology equipment and applications; awareness and collaboration by subject parties was improved, and better results were also achieved in all the activities of the Service. The profiles of people forming the staff of SEPBLAC are complementary in age, experience, training and origins. SEPBLAC had a staff formed by 37 people from the Bank of Spain (28), Finance Ministry (9) and a Unit assigned to the National Police Force with 32 people (the Monetary Offences Investigation Brigade). The average age of the staff was 51 years.

³¹ As related to Recommendation 30; see Section 7.1 for the compliance rating for this Recommendation.

216. In 2005, the staff of SEPBLAC was composed of 75 people (40 employees from the Bank of Spain, 5 from the Tax Agency, 24 officers from Monetary Offences Investigation Brigade of the National Police Force and 6 from the *Guardia Civil* Unit. In the period 2001-2004, a major renewal was carried out in the staff of SEPBLAC that allowed a team of highly qualified professionals to be formed to perform its duties. The average age of the staff of SEPBLAC has gone from 51 to 41. The complementary nature of the professionals from diverse origins is considered as an asset.

217. The organisational structure of SEPBLAC was defined in 2001. It is organised into management and seven areas: Management and Planning, Information Technology, Subject Parties, Instruction, Supervision, International Co-operation and Monetary Offences Brigade. In 2002, two changes were made in the organisational structure. The first was unification of the Information Technology and Subject Parties Areas, because performance and co-ordination of the work required that; and the second was creation of a new Area, due to the *Guardia Civil* joining SEPBLAC.



218. SEPBLAC has developed its work procedures based on the following priorities:

- Simplification of the procedures, limiting the phases and proceedings to those that are strictly necessary.
- Autonomy of the work posts, providing them the necessary tools (computing resources and access to information).
- Automation of all the tasks, seeking the most appropriate computing solutions.
- Taking advantage of the administrative work, making use of the information stored and avoiding repetition of tasks.
- Enabling use to be made of all the available information in treatment of each case it is related to.
- Security control over the information in the data bases of SEPBLAC, through the following measures:
 - Registration of a unified entry.
 - Controls over access to information.
 - Limiting access to information to that strictly necessary to perform the duties and do the work assigned.
 - Establishing auditing controls.
 - Restricting cession of information to third parties (Public bodies and Authorities) to the cases foreseen in the laws in force.

219. The information system of SEPBLAC is formed by a state-of-the-art data processing centre, an application that supports the activities of SEPBLAC and which integrates all the information (TAIS), two tools to make use of the information (Business Object and Analyst's Notebook), a system for document management and a web page. Project 2001-2004 is aimed, as far as computer systems are concerned, to provide SEPBLAC with the necessary information technology infrastructures and tools to improve performance and effectiveness in performance of all the duties it had been assigned. This started a process of technological renewal that was materialised in replacement of the old network and application computing infrastructure by a totally renewed, latest generation one that is summed up in the following points:

- Equipment: replacement of all the user equipment with new ones containing the necessary office computing tools to perform the daily activity of SEPBLAC.
- Servers: replacement of all the old servers with other new ones equipped with the necessary resources to support the applications and data bases of the new computer system of SEPBLAC.
- Networks: deployment of a faster, safer network able to fulfil the requirements of safety and connectivity with other bodies or networks which which SEPBLAC maintains relations.
- Applications: design, development and implementation of new software applications to capture, store and operate information from SEPBLAC and the subject parties: TAIS and DMO. Installation of other commercial products to make use of that information: Business Objects and Analyst's Notebook.

220. Specifically, the objectives for 2004 have been aimed at reinforcing the security measures for access to the information stored in its data bases and to improve the performance and efficiency of the processing of that information by centralised application of SEPBLAC TAIS. An effort is now being made to speed up and improve the processes of exchange of requests and responses with information with the subject parties, taking advantage of the speed and automation of the on-line procedures. (On-line Communications Project). To complete the information model, work is being carried out on developing an on-line communication system with the subject parties.

221. All SEPBLAC professional staff of have received training covering the aspects required to perform their specific duties. This training is tailored to specific job functions (for example, management, inspectors, analysts, etc.) and to the particular source agency of the individual (Bank of Spain, Treasury, National Police Force and Guardia Civil).

222. *Statistics.* SEPBLAC maintains the following statistics:

- Money laundering matters initiated, concluded and under way.
- Communications of suspicious transactions.
- Matters for international co-operation.
- Request for information of national authorities.
- Source of communications of suspicious operations by private institutions.
- Quality of the content of communications.
- Assignment of concluded money laundering matters.
- Exchange-controls matters initiated, concluded and under way.
- Exchange-controls matters. Source – assignment.
- Number of systematic reporting transactions communicated.
- Breakdown of number of systematic reporting transactions communicated.
- Institutions communicating systematic reporting transactions.
- On international co-operation including the nature of information exchanges and the comparison of information exchanges year by year.

223. SEPBLAC publishes an annual report which includes statistics and some typology, thus SEPBLAC should keep those statistics while its reports are changing stages, that means, those that became investigations, consignations, final decisions and the terms of those decisions. This will

definitely help to assess the efficiency of the system. In March 2006, the team was told that early 2006, SEPBLAC set up a procedure whereby authorities receiving its reports should deliver a feedback on their final destination.

2.5.2 Recommendations and Comments

224. **Recommendation 26.** SEPBLAC is a mature FIU that largely complies with Recommendation 26. It was designed as the core structure in combating money laundering and then the financing of terrorism in Spain. It is properly empowered to undertake its functions. Its internal structure includes two police units (the civil guard and the national police) as well as customs staff, who co-operate with each other complementing the information provided by reporting parties. Currently, as the interlocutors disclose, it has received generous funds from the Bank of Spain with the purpose of creating adequate areas and progressive systems and procedures. It maintains satisfactory relationships with reporting parties and keeps active information exchange with other FIUs. Its functions involve receiving, analysing and disseminating information but it also performs as supervisor and secretariat of the recently established Commission to combat the financing of terrorism.

225. Looking at the effectiveness of the work achieved by SEPBLAC, the assessment team would like to emphasise the following. The assessors were told that it takes SEPBLAC approximately 4 months to carry out internal analysis of STRs and assign ML/TF suspicious cases to competent authorities. This seems to be a reasonable delay. The vast majority of STRs are sent 1 to 3 months after the transaction took place despite the existing obligation for financial institutions to send STRs to SEPBLAC before performing a transaction which appears to be suspicious. This issue should be more carefully addressed.

226. The quality of SEPBLAC's analysis was broadly commented on by the competent investigating authorities during the on-site visit. The Guardia Civil, the national police and the anticorruption prosecutor (which receive the majority of the reports) believe that they are receiving too many reports and that many of them are inadequate to start an investigation. It might be desirable that those police or law enforcement units participate more actively in deciding what reports may be dispatched and the criteria to do so, in order to guarantee their usefulness and the success of potential forthcoming investigations.

227. **Resources.**³² Although SEPBLAC is the executive arm of the Commission to prevent money laundering and monetary crimes, which is composed by several ministries, the Bank of Spain appoints the Director of SEPBLAC and provides its budget (there is no separately identifiable SEPBLAC budget). SEPBLAC should have, as much economic independence as possible; and in addition, Spain should consider appointing or electing the director on a ministerial level or having the appointment made by the Commission for the Prevention of Money Laundering or by that Commission and the Commission for Surveillance of Terrorist Financing Activities.

228. The broad area of responsibility assigned to SEPBLAC is ambitious. It appears that it is not adequately staffed to carry out its supervision functions, thus it must call on human resources from other areas, in particular from the analytical area. This practice weakens its efficiency in performing its main functions of receiving, analysing and disseminating information. Additionally, SEPBLAC carries out other activities that similarly affect its effectiveness in the performance of its principal functions, such as investigations of failures to declare cross-border transportation of funds, the preparation of reports in support of sanctioning procedures conducted by the Commission to prevent money laundering and monetary crimes, and its functions as secretariat of the Commission to combat the financing of terrorism.

³² As related to Recommendation 30; see Section 7.1 for the compliance rating for this Recommendation.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors underlying rating
R.26	LC	<ul style="list-style-type: none"> There is some question on the quality of the reports produced by SEPBLAC from a law enforcement perspective[issue of effectiveness].

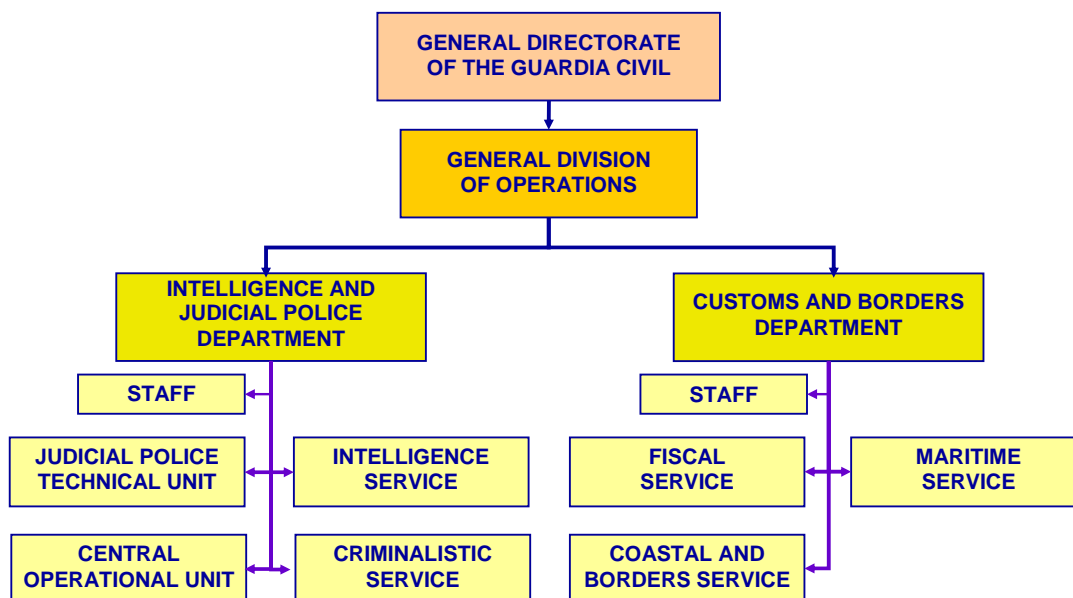
2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27 & 28)

2.6.1 Description and Analysis

229. **Recommendation 27.** Spain has a comprehensive network of law enforcement and prosecution authorities and is in compliance with Recommendation 27. Two major police corps: the *Policía Nacional* (National Police) and the *Guardia Civil* (Civil Guard) are responsible for the combating of crime, including ML/FT, under the direction of the State Secretary (Deputy Minister) for Security (Ministry of Interior). The *Guardia Civil* has competence in towns with up to 30,000 population and the National Police in the rest of the country. The Director General of the Police and the Director General of the *Guardia Civil* are both members of the Commission for the Prevention of Money Laundering and Monetary Offences, which works under the authority of the Secretariat of State for the Economy (Ministry of Economy). Additionally, in certain regions, namely Catalonia, the Basque Country and Navarre, there are police corps acting under the direction of the regional authorities, who are also members of this Commission.

230. *Guardia Civil – general structure.* In 2001, the *Guardia Civil* structure was reorganised due to several factors, two of them closely related to money laundering and terrorism financing:

- The convenience of having all Judicial Police aspects under the same structure. Therefore, former investigation and analysis units depending on *Fiscal Service* in charge of drug trafficking, money laundering and fraud are now integrated in general Judicial Police units.
- The convenience of giving an integral response to trouble along the border, taking into consideration its evolution and the fact that Spain is a relevant external border in the European Union. Therefore, the *Fiscal Service*, with a more technical and customs approach, takes part in a new *Fiscal and Borders Department* which includes prevention and surveillance services.

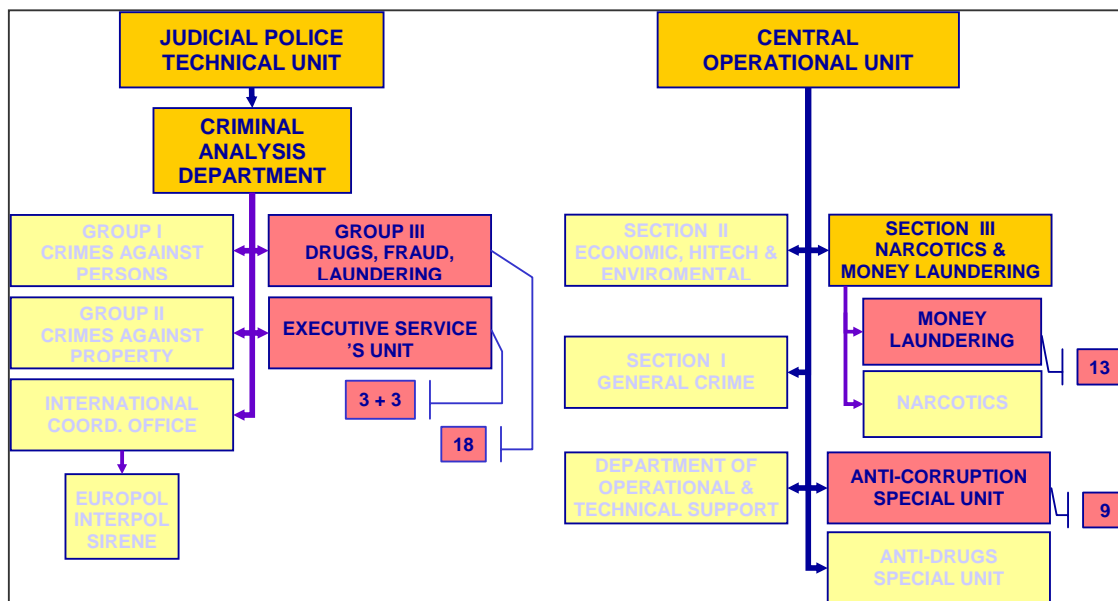


231. Apart from these two Services, Judicial Police and *Fiscal*, there is the Intelligence Service, with competence in terrorism affairs, including terrorism financing. Judicial Police Service and Intelligence Service are integrated in the same Intelligence and Judicial Police Department. This structure is graphically shown in the following chart (other units non-directly related to money laundering and terrorism financing are not mentioned).

232. *Guardia Civil - Judicial Police Unit*. The work of the Judicial Police lies on three pillars: criminal analysis, investigation and criminology. This is reflected on three levels: central, regional and provincial; nevertheless, in money laundering the main effort is made by provincial level, while regional is more oriented, normally, to other specific crimes. It must be noted that criminal analysis is not only focused on investigation, but also on preventive measures and on the national strategy in criminal matters.

233. Regarding money laundering, internal regulations (mainly the Judicial Police Handbook, with the highest mandatory rank in *Guardia Civil*; last version is dated 7 February, 2005) oblige all investigative units to: (1) record all the investigations in a specific database, called Operj, including economical aspects; and (2) to begin, with any investigation, a parallel *patrimonial* (or “asset tracing”) investigation, with a double aim: to locate and confiscate the proceeds of crime, assuring that convicted persons can cover their potential financial liabilities, and to be the basis of an eventual more complex financial investigation. Any investigator must have the skills for a basic asset tracing investigation. However, money laundering investigations are carried by specific units, specialised in those matters. In the central level, there are:

- *Criminal analysis*: the Criminal Analysis Group for Drug Trafficking and Money Laundering, with eighteen people, is integrated into the Judicial Police Technical Unit. This Group centralises all the exchange of information between Judicial Police units and SEPBLAC and keeps the formal relations with SEPBLAC and the Secretariat of the Commission for Prevention of Money Laundering and Monetary Offences.
- *Investigation*: the Money Laundering Investigation Group, with thirteen people, is integrated into the Central Operational Unit. There is as well an Investigation Unit in the Anticorruption Prosecutor’s Office, integrated in the Central Operational Unit but functionally depending on the Prosecutor, with 9 people; this Unit deals with money laundering cases as well.



234. At the regional level, only Andalusia has a specific Organised Crime and Antidrug Investigation Section, with 4 people. At the provincial level: the EDOA³³ is in charge of investigations dealing with organised crime, which is mostly drugs trafficking, and money laundering. There is at least one EDOA office in each province, with the following exceptions:

- Cadiz has four EDOAs: two based in the capital of the province, Cadiz; and two other in the city of Algeciras.
- Malaga has three EDOAs.
- Alicante, Asturias, Balearic Islands, Madrid and Murcia have two EDOAs. In total, there are 494 people integrated in the different 63 EDOAs.

235. In 2005, a new complementary investigation structure was being organised. The aim was to create Organised Crime Teams (ECOs³⁴) in the main areas where organised crime activity has been detected: Alicante (for the Eastern coast of Spain), Malaga (Southern coast), Balearic Islands, Galicia, Catalonia and Canary Islands. ECOs are based in their influence area but centrally directed and supported by the Operational Central Unit. The aim is to become specialists in the investigation of criminal finances. It was foreseen to have three ECOs operational before the end of 2005: Alicante, Malaga and Balearic Islands. The other three were to be created during 2006.

236. *Guardia Civil –Intelligence Service.* The Intelligence Service is structured in two levels:

- *National*, with three Central Special Units³⁵ and an Operational Support Group. The Central Units are specialised in different areas: national terrorism (UCE 1), international terrorism (UCE 2) and counter-intelligence (UCE 3). There is a specific Economical Investigation Sub-group for terrorism financing investigations in all areas. The creation of such units is welcome.
- *Provincial*, with one Intelligence Group in every province. The composition and specialisation depends on the requirements of any province. There is no specialisation on terrorism financing, as all investigations are carried out in the national unit. However, provincial groups do carry out complementary economic investigations at the request of the central office; currently, there are trained personnel in the provinces with the highest level of this activity.

237. *Guardia Civil –Fiscal Service.* Guardia Civil is, by law, the fiscal guard of Spain³⁶ and the Fiscal Service is in charge to specifically develop that mission. To do so, Fiscal Service has two different types of units:

- *Customs Fiscal Specialists Units.* They are located on every custom depending functionally on the Customs Administration. Thus, there are units in 7 land customs, 26 ports and 22 airports, plus 4 of mixed character (in small islands and towns). Relevant part in these units is the so called ODAIFIs³⁷, specialised in proactive analysis of fiscal documents to prevent crimes and other offences. The main services, related to money laundering, carried out by these units are the seizures of cash in borders, although the ODAIFIs work closely to the Judicial Police units to qualify investigations.

³³ EDOA: *Equipo de Delincuencia Organizada y Antidrogas* (Organised Crime and Antidrug Team). These teams are the evolution of former GIFAs (*Grupos de Investigación Fiscal y Antidroga* – Fiscal and Antidrug Investigation Teams).

³⁴ ECOs: *Equipos de Crimen Organizado*.

³⁵ UCEs: *Unidades Centrales Especiales*.

³⁶ Organic Law 2/1986, about security forces and corps.

³⁷ ODAIFI: *Oficina de Análisis e Investigación Fiscal* (Fiscal Analysis and Investigation Bureau).

- *Territorial Fiscal Units.* They are responsible for a sort of “fiscal patrolling” alongside coasts, borders and in the area where a regional police is in charge of public order (Catalonia and Basque Country) and are specialised in cash seizures.

238. “*Vigilancia Aduanera*” (Customs Surveillance) is another agency which plays a role in the combating of money laundering in accordance with Constitutional Law 12/1995 of 12 December on the Suppression of Smuggling, which allows the seizing, amongst other things, of the profits of criminally proceeds irrespective of their form. Additionally, the State Agency for Tributary Administration (AEAT) is competent in the investigation of money laundering, via the Department of Customs and Special Taxes- *Direccion Adjunta de Vigilancia Aduanera* (Sub-Division of Customs Surveillance).

239. *Ministry of Economy - Secretariat of the Commission.* The Secretariat is attributed to the Deputy Directorate General for Inspection and Control of Capital Movements (Article 23 of the Regulation approved by RD 925/1995). Responsibilities of the Secretariat are as follows: (1) The preparation of draft legislation relative to the prevention of money laundering, for submission to the Commission for information purposes or its approval as the case may be and (2) the institution of penalty proceedings for the commission of the offences described in Law 19/1993, following deliberation by the Standing Committee, and the appointment of examining officers in such proceedings. The officers involved in these procedures recommend the appropriate decision to the Commission so the latter may proceed as stated in Article 12.1 of Law 19/1993 to impose penalties.

240. Currently, the Secretariat comprises 14 civil servants (5 lawyers, 1 economist and 8 administrative personnel). As members of the Civil Service, employees of the Secretariat are subject to disciplinary proceeding if they fail to comply with their legal obligations, as provided in RD 33/1986. Additionally, employees of the Secretariat are specifically subject to a confidentiality provisions in accordance with Article 25.1 of the Regulation: “All persons working at some point on the Commission’s behalf that have gained knowledge of its activities or had access to data of a confidential nature are obliged to maintain due professional secrecy. Failure to comply with this requirement shall incur liability as provided by law. Such persons may not publish, communicate or exhibit confidential data or documentation, even after they have left its service, unless express authorisation has been granted by the Commission”. As to the budget, although, as a unit of the Ministry of Economy and Finance, the Secretariat has no separate financial plan.

241. On AML training, the staff of the Secretariat exchanges experience and knowledge from foreign colleagues in several international fora (specially, FATF). Additionally, several AML courses and seminars are conducted in Spanish-speaking countries, obtaining a fruitful exchange of experiences.

242. Spain has two special prosecutor’s offices: the drug and money laundering special prosecutor and the special prosecutor for the repression of economic crimes related with corruption; both play a key role in combating ML.

243. *Drug and Money Laundering Special Prosecutor Office.* This Office was founded in 1988 and acts before the National Court in crimes of drug smuggling and money laundering perpetrated by organised groups and affecting more than one region. This special prosecutor handles the most important cases.

244. *Special Public Prosecutor Office for the repression of Economic Crimes Related with Corruption.* This Office was created by Law 10/1995 of 24 April. It is responsible for a series of crimes including crimes against the Treasury, smuggling, and embezzlement of public funds, fraud and extortion, bribery, crimes of political favour-peddling and voluntary bankruptcy. It obtained new responsibilities in the prosecution of money laundering and organised crime cases area in 2004. It deals with cases of “special importance” (interpreted by Instruction 1/1996 of the Attorney General). Its main tasks consist facilitating investigations and participating in penal proceedings (in first instance, appeal or in the phase of execution).

245. *Additional elements.* Spain has implemented other elements which enhance its ability to investigate money laundering and terrorist financing. The current Criminal Prosecution Law allows the postponing of the detention of persons suspected of money laundering and the seizure of the money with the aim of identifying the persons involved in the above-mentioned activities and of obtaining the corresponding incriminatory evidence (Article 263 bis). The current Criminal Prosecution Law allows the use of the following procedures as means for the investigation of money laundering:

- The controlled delivery of the money (Article 263 bis).
- The action of the undercover agent (Article 282 bis).

246. Controlled deliveries are very common in drug trafficking investigations, both nationally and internationally. As to undercover operations, its main features can be summarised in these aspects:

- Undercover agents are personnel under the control of Judicial Police (i.e. from police services).
- All criminal activity witnessed by the undercover agent must be reported to the prosecutor or judge.

247. The use of the above techniques is conditioned by their necessity for the purposes of the investigation in relation to the importance of the offence and the possibilities of surveillance. In addition, they require the issuance of a prior written resolution by:

- In the case of controlled delivery, the responsible investigating judge, the Ministry of Economy or the heads of the units of the Judicial Police, either from the central or provincial offices, and their superiors.
- In the case of action by the undercover agent, the responsible investigating judge or the Ministry of Economy, giving immediate notice to the judge.

248. Information exchange taken place and joint operations with other countries relating to money laundering investigation are possible and have occurred. For example:

- The customary exchange of information, especially with EU countries, relating to citizens of one country who have been detected with a significant undeclared quantity of money in cash.
- In March 2004, a joint operation with the UK was conducted, with simultaneous actions in both countries, which gave rise to the seizure of large quantities of money in cash and the inspection of a factory in the UK (*Operación Náuticas – Crawl*).

249. Within the *Guardia Civil*, financial investigation is well-structured. Simple asset investigation is part of the training of every investigator and must be part of every criminal investigation. Its aim is to locate and confiscate the proceeds of crime and to be the basis for a future potentially more complex financial investigation. In every province, there is a specialised Anti-drugs and Organised Crime Team (see comments above). There are also permanent specialised teams that focus on economic crimes, fraud, money laundering and terrorism financing at a central level. There is also an Investigation Unit assigned to Spanish FIU, with the missions of analysing cases in the FIU, enhancing the FIU's capacities with *Guardia Civil* databases and information capabilities, linking the FIU with *Guardia Civil* units and supporting *Guardia Civil* investigations when necessary.

250. Money laundering and terrorist financing investigations have been carried out on a regular basis through bilateral co-operation. There are no specific problems apart from those existing with regard to organised crime and terrorism investigations. In those cases, a new and very useful channel has been added: the SEPBLAC international links through the *Guardia Civil* Investigation Unit. The mechanisms vary considerably depending on the countries involved in the specific cases.

251. The detection of new trends of money laundering are communicated to SEPBLAC and the data are exchanged with this body according to the current legislation in this matter (Articles 94 and 95 of

Law 58/2003 of 17 of December, General Tax Law). This exchange of data may also occur with the Commission for the Prevention of Money Laundering and with the Terrorist Finance Watchdog Commission. Regarding *Guardia Civil* there are several reports related to money laundering and terrorist financing. The Annual Judicial Police Memory describes all types of criminality handled by *Guardia Civil*. A specific section is dedicated to money laundering. Each semester, a Judicial Police Bulletin is published including a section on money laundering trends. The Investigation Unit in the FIU prepares quarterly reports of activities, with an annual summary. Finally, the Fiscal Service of the *Guardia Civil* has a permanent on-line Fiscal Information Bulletin where there is a section on the actions against trans-border illicit cash movement.

252. **Recommendation 28.** For Spanish police forces, there are two legal ways of obtaining financial information: (1) via the FIU: SEPBLAC may pass on any information it has to the police, provided an application to do so is made in accordance with Law 19/1993 and Law 12/2003; (2) via judicial/prosecution order: in these cases it may be necessary for the police forces to previously identify the specific financial institution in which the assets may be located using one of these two channels:

- Addressing the requests to the credit institutions associations (Spanish Banking Association, AEB, Spanish Confederation of Saving Banks, CECA or National Association of Credit Cooperatives, UNACC), which re-send the requests to each one of their around 830 affiliates, or
- Asking for revenue information from the Tax Agency, whose databases are particularly inclusive.

253. The evaluation team was told that the process of obtaining information on account files can take up to 6 months, impeding police authorities from getting timely financial information. The Commission for the Prevention of Money Laundering and Monetary Offences is developing a system to carry out automatic search of assets (project SALAF).

254. Once the financial products have been located, the next step will be to obtain further information through a judicial/prosecution order. The powers vested in judicial authorities according to the Criminal Prosecution Law are extremely extensive and include the power to authorise the search of persons and premises and the compulsory production or seizure of any documents, files or records.

255. With respect to the Sub-Division of Customs Surveillance, its officials (like all officials of the custom's department), are empowered to ask for the presentation of the declaration of movement of cash across borders. They may also conduct investigations on the persons who make such movements if an indication existed that a money laundering activity could be occurring, particularly in those cases where the money could be obtained through contraband activities, including drug trafficking. In the Customs areas, officials can carry out the search of travellers, their belongings, baggage or goods, and, if necessary, they may seize undeclared money or money with indications of criminal origin, without a prior judicial authorisation. Outside of the Customs areas, in the cases that evidence exists on a possible offence of money laundering or illicit origin of the money, persons and vehicles can be searched, as well as money seized. In the case of investigating bank accounts, conducting house searches, blocking bank accounts and preventive annotations in public records to avoid the alienation of property or estates, an authorisation by a judge is needed.

256. Customs Surveillance officials and Police Services are empowered to conduct investigations of money laundering and terrorist financing, as well as take statements from witnesses, which can be used in prosecutions for offences of money laundering and terrorist financing, including the predicate offences and related actions.

257. **Resources.**³⁸ Spanish authorities recognise that an enhanced management of the existing resources remains a permanent challenge, given the obvious fact that no law enforcement agency in the world is granted unlimited human and financial resources.

258. *Guardia Civil – Judicial Police.* 538 people more or less are directly dedicated to money laundering. They must be incorporated into the overall 3,405 Judicial Police personnel. Additionally, there is a *Guardia Civil* Unit assigned to SEPBLAC under the functional control of the FIU's Director. It has six people (three from Judicial Police and three from Intelligence Service. Apart from these personnel in Judicial Police units, it is also common to turn to external experts: agents from the Tax Agency, financial advisors, entrepreneurs, auditors, accountants, etc. Normally their role is to help in the management and interpretation of data, always under the direction of the head of investigation. This help is provided in different ways: judicial request, official police request, contract, etc.

259. Judicial Police units work with the following databases:

- *Guardia Civil* system: (1) extensive access to criminals and crimes; (2) vehicles; (3) weapons and (4) Hotel guests.
- Judicial Police system: (1) drug trafficking and money laundering database (Basefis) and (2) investigations database (Operj).
- Fiscal and Borders system: (1) ships and (2) controls and borders.
- External databases: (1) prisons database; (2) Spanish Enterprise Register; (3) Spanish census; (4) Spanish identity cards; (5) economic information database *Axesor* (private) and (6) SEPBLAC databases (only for *Guardia Civil* Unit in the FIU).

260. The first experience with specialised financial investigation training in *Guardia Civil* was in the early 1990s, when high level financial training was given to several investigators. After a medium-term assessment, it was revealed inefficient. The cause for that was identified as the lack of connection between financial training and actual financial crime. So, from 2000 a new training programme was designed based on actual cases and focused on procedures and practices. It required a considerable effort of top investigators and analysts to create those procedures and guidelines, to select the theoretical content of the courses and to begin to train new investigators, new analysts and the future trainers. It was then when the *Patrimonial Investigation Handbook* was born (the latest version was to be published at the end of September 2005). The training programme is at two levels (basic and specialised) plus several complementary courses. Previously, all investigative personnel had to take the Judicial Police course (one month on-line and 13 weeks classroom) to become an investigator; the *Judicial Police* title is given by the Ministry of Justice.

261. Basic training is provided to all investigators on all crimes, and also for trainers in investigation academies. It has an on-line phase plus a one week class phase. Several external institutions have taken part in this course, such as the former Government Delegation for National Drugs Plan and the current State Secretary for Security. In the past years, the following courses have taken place: 2 in 2002; 7 in 2003; 3 in 2004 (in common with National Police) and 2 in 2005 (first semester).

262. Specialised training is provided to the investigators with the basic course and wider experience. Its aim is to train investigators for money laundering, terrorism financing and economic crimes. It is given by the Financial and Money Laundering Investigation Course and divided into an on-line phase (4 to 6 weeks) and a classroom phase (5 to 6 weeks). The course is structured into four areas: financial, accounting, laws and investigation. There has been one course per year since 2001. The complementary training deals with different aspects, such as specific financial tools or problem areas (for example, current accounts, accounting or audits).

263. *Guardia Civil – Intelligence Service.* The Intelligence Service employs a total of 1,935 people (60 specialised in the terrorist financing investigations). The training in terrorism financing has two

³⁸ As related to Recommendation 30; see Section 7.1 for the compliance rating for this Recommendation.

steps. The first one is the Intelligence Course to become a member of Intelligence Service, which has a two-month on-line phase and one-month classroom phase. The second step is the specialisation in terrorist financing. The relevant course is given by the same Financial and Money Laundering Investigation Course through the IUISI (University Institute for Internal Security), explained above. In the same way, there is complementary training just as for the Judicial Police, and therefore financial specialisation is common for both kind of units (Judicial Police and Intelligence).

264. Intelligence units have the same databases as Judicial Police units, in addition to their own database related to terrorism intelligence called *Aquila*.

265. *Guardia Civil –Fiscal Service*. The Customs Fiscal Specialists Units employ 3,282 people, 210 out of them in the ODAIFIs. The Territorial Fiscal Units employ 1,360 people. The different Fiscal units have the following databases at their disposition, depending on their operational level (Specialist or Territorial):

- *Guardia Civil* system: (1) basic access to criminals; (2) vehicles and (3) weapons.
- Fiscal and borders system: (1) ships; (2) controls and borders and (3) fiscal statistics.
- External databases: (1) prisons database; (2) customs database *BUDA*³⁹ (only ODAIFIs) and (3) Spanish Enterprise Register.

266. The training for the Fiscal Service personnel depends on their speciality. In this way, there are several courses in the tax area.

267. *Directorate General for the Police (National Police)*. Throughout Spain, the total number of officers employed in the fight against money laundering is 1,603, although many of them are engaged in multi-disciplinary functions, which is the case in local and provincial police stations. The profile of the officers involved in these tasks runs from diploma holders to university graduates, as they are almost all officers on the executive scale and the selection process undertaken by the Training and Improvement Division of the Police Directorate, when it comes to joining the National Police Force, requires at least a diploma in one of the areas laid down in the Selection and Training Regulations. The university courses most frequently taken in these cases are law and economics degrees.

268. The professionalism of the officers is guaranteed by the requirements of the general principles that apply to their conduct, which are found in Law 2/1986 of 13 March, the State Security Forces and Bodies Law (*Ley de Fuerzas y Cuerpos de Seguridad del Estado*), and by Law 9/1968 of 5 April on the rules of professional secrecy and handling of information (*Ley de Secretos Oficiales*, the “Official Secrets Law”).

269. There was a budget for 2005 in the General State Budgets Law (*Ley de Presupuestos Generales del Estado*), Law 2/2004 of 27 December, of around 57,843.68 EUR for actions relating to drugs and a total budget of 6,492,830.98 EUR for State Security Forces and Bodies and prisons. The Criminal Investigation Service (*Comisaría General de Policía Judicial*) does not have information on budget data, partial and/or total, or on economic items for financial years prior to 2005.

270. The training of police officers assigned to money laundering investigation comes from the courses arranged by the Police Directorate Training and Improvement Division and by the Criminal Investigation Service itself, as well as from seminars, meetings, visits to other countries to get a better perspective and overview of the problem, etc. In terms of combating the financing of terrorism, there is no data available, as this comes within the jurisdiction of the Information Service. The Secretary of State for Security also arranges courses on this subject each year.

271. The IT resources used to carry out the task in question are the following databases: Extradiciones IP, GATTI, ADEXTRA, ADDNIFIL, ADPASFIL, ARCHIVO SISS, GRUME,

³⁹ BUDA: *Base Unificada de Datos Aduaneros* (Unified Base of Customs Data).

PERPOL, DNI, etc. These databases cover police files and records, but investigators also have access to other databases, with the proper guarantees and provided that they observe Law 15/1999 on personal data protection (*Ley sobre protección de datos de carácter personal*), including the databases of the Companies Registry, the Cadastral Office, the Property Registry etc. Investigators also collaborate with credit institutions and credit card databases etc.

272. *Directorate General for the Police - Central Specialised and Violent Crime Unit (UDEV)*. The Central Specialised and Violent Crime Unit (UDEV) that replaces the Central Criminal Investigation Unit was restructured during 2005, creating the Central Economic and Fiscal Crime Unit (UDEDEF). This Unit includes the Money Laundering Section that is made up of 11 Inspectors, 3 Police Officers and 1 Administrative Assistant. The profile and level of qualifications of the Inspectors in the section is a university degree, in the majority of cases in law or economics. Their function is the operational investigation of money laundering networks nationally and internationally.

273. The Money Laundering Section is headed by a Section Head and made up of three operational (investigation) groups. Five years ago there were two groups but a further group has been added since 2003. The Section has an administrative officer who is responsible for the administrative functions generated by the Section, plus the archive (computer and documentary) of its records.

274. The duty of professional secrecy and conduct procedures are governed by: (1) Organic Law 2/1986, the State Security Forces and Bodies Law; (2) RD 884/1989, the Regulations on the Disciplinary Regime of the National Police Force (*Reglamento de Régimen Disciplinario del CNP*); (3) the Criminal Code and (4) The Criminal Procedure Law.

275. The UDEDEF does not have its own budget, being included within the Police Directorate's Budget. Concerning the training, all members of the Money Laundering Section have received specific training on money laundering and financial crime, both nationally and internationally. Most of them also give courses on these subjects in order to train specialists in other police units, both national and international.

276. The Money Laundering Section is totally computerised, working via its own network for its investigations and a global network for connections with other police units (coded). It also has specific databases and its own computer tools. All the members of the Section have access to the various financial and police databases that are needed for the investigations, with the exception of those that require a warrant before they can be consulted.

277. *Directorate General for the Police – the Financial Crimes Investigation Units*. The Brigade currently has 19 officers from the National Police Force, taken from the following categories: (1) 1 Senior Scale (Superintendent); (2) 14 Executive Scale (9 Chief Inspectors, 5 Inspectors); (3) 4 Basic Scale (2 Police Officers, 2 Clerks). The internal structure and number of members is as follows: (1) Head Office: 1 Superintendent; (2) Operational Section: 3 Chief Inspectors, 3 Inspectors, 2 Clerks, 2 Police Officers and (3) Technical Section: 6 Chief Inspectors, 2 Inspectors.

278. In terms of confidentiality and integrity standards, the general rules and regulations applicable to civil servants and, as members of the National Police Force, the specific rules and regulations applicable to it apply. Some of the members of the Brigade have taken, amongst others, courses on operational and strategic analysis organised by the Training Division of the Police Service. As speakers or lecturers, several training sessions are provided every year.

279. As a police unit, it has access to all the databases of the Police Directorate. As a unit within SEPBLAC it has access to the TAIS database (Computerised Processing of the Service's Information), which brings together data on all communications of suspicious and unusual operations which by virtue of the provisions of the current legislation are received from the financial system and other parties required to provide it.

280. *Regional Police – the Drugs and Organised Crime Unit (UDYCO-Central)*. The number of employees is as follows:

Year	Number of Employees
2001	109
2002	136
2003	123
2004	143
2005	182

281. The profile of the officers who make up this unit varies according to the different scales. Entry to the Executive Scale is via public competition, and three years' university study are required which, coupled with the two courses taken in the Ávila police college, leads to a degree in Police Sciences. However, it should be noted that most people who apply through this entry method already have a university degree, most of them in law and criminology. The level of education required to join the Basic Scale is Graduate of the Mandatory Secondary Education Programme, although in recent years most of the entrants to this Scale have had a higher level of education than the mandatory requirement.

282. Currently the UDYCO-Central is made up of the following Brigades and Groups:

- Central Drugs Brigade has a total of 71 officers in four sections specialising in each type of drug (heroin, cocaine, hashish, psychotropic and precursors).
- Central Organised Crime Brigade has three sections (Organised Crime and Illegal Traffic in Vehicles, Asset Investigation and International Relations) and a total of 54 officers.
- Operational Support Section provides support for investigations carried out by the different Brigades, particularly in relation to surveillance operations. This Section has 24 officers.
- Special Rapid Response Against Organised Crime (GRECO-Costa del Sol) has 16 officers and is located in Málaga.
- Special Rapid Response Against Organised Crime Group (GRECO-Alicante) has 6 officers and is located in the province of Alicante.
- Unit Attached to the State Prosecutor's Office (Anti-Drug Prosecutor's Office) has 6 officers.
- Operational Co-ordination Group has a total of 8 officers.
- Technical Section has 6 officers.

283. Several training courses for combating ML and TF are organised every year.

284. UDYCO-Central currently has access to the databases managed and administered by the Police Directorate, which include databases relating to foreigners, police records, consultations on objects and persons. In terms of the technological resources needed to process the information, UDYCO-Central has 101 computers. It has internet connections and is integrated in the national intranet system. As most representative in the area of communications, each officer in the Unit has transmission equipment that has recently been developed. The unit has an integral communication system that allows greater cover at a national level and includes the National Police Force and the *Guardia Civil*. Another resource that has recently been introduced with a view to a more efficient communications system is the so-called integral telecommunications system (SITEL), used in telephone surveillance operations that have been authorised by a court. It should be noted that UDYCO-Central provides technical support and manpower to all the regional UDYCOS and to those sections and groups involved in investigated illegal drugs trafficking and organised crime in the different operations of the National Police Force.

285. *Regional UDYCOS*. In 2004 the number of people in the regional UDYCOS and provincial Drugs Sections and Groups who were involved exclusively or part of the time in investigating illegal drugs trafficking and organised crime in the different operations of the National Police Force was 1,768.

286. Since they were first formed UDYCOS have tended to be established in the areas that are most susceptible to drugs trafficking and organised crime. Units have been set up on the east coast, the Costa del Sol, in the south of the country, Galicia, the Balearic Islands and the Canary Islands and in the major cities such as Madrid, Barcelona and Valencia. They are usually integrated into the Provincial Brigades of the Criminal Investigation Service, reporting to police headquarters and functionally to UDYCO-Central. In terms of the rest of the operations that do not have UDYCOS, investigations into illegal drug trafficking and organised crime are undertaken by the Drugs and Organised Crime Sections and Groups that exist in most of the provinces of Spain.

287. As mentioned in the case of UDYCO-Central, regional staff have access to the databases managed by the Police Directorate which have already been referred to. The SITEL system is also widely used at this level. In terms of computer resources, it should be noted that the various operations have 566 computers, e-mail accounts, internet connections and, in terms of communications, 1,110 sets of transmission equipment for the integral communication system that has been referred to in the context of UDYCO-Central. They are all also part of the national intranet.

288. In *Dirección Adjunta de Vigilancia Aduanera* (Sub-Division of Customs Surveillance), there are permanent teams exclusively committed to the investigation of money laundering, comprising a total of 50 officials:

- Nine civil servants in the Central Services, the Area of Heritage Investigation of the General Subdivision of Operations;
- In the Territorial Services, the number of officials committed to money laundering varies in each Regional Province in relation to the relevance of the offence. For example, in Andalusia and Galicia there are 5 persons each, whereas in the La Rioja or Aragon there are 2 persons specifically committed to the investigation of ML;
- In addition, there are officials committed to the investigation in other fields, like drug trafficking or smuggling, who can sporadically contribute to the activities of fight against money laundering.

289. No information was provided by the customs authorities on their current resources dedicated to AML/CFT issues or on AML/CFT training programs in place.

290. The *Guardia Civil*, the National Police and the Sub-Division of Customs Surveillance have to record all ML investigations related to drug trafficking in a co-ordination database called RSI. This database is handled by the State Secretary for Security. Regarding TF matters, Customs are not competent for conducting TF investigations. Customs Fiscal Specialists Units are located on every custom house and work functionally and under the supervision of the Customs authorities.

291. *The Drug and Money Laundering Special Prosecutor's Office*. The Office employs 9 prosecutors and 20 prosecutor delegates. It has a police unit. It expressly expressed the need to have an economic unit, experts within the unit who may develop economic research.

292. *The Special Public Prosecutor's Office for the repression of Economic Crimes Related with Corruption*. The office employs is internally organised as follows:

- A Chief Prosecutor assisted by 1 deputy and 9 additional prosecutors;
- Special Units:
 - Unit of Judicial Police (21 persons)
 - Unit of Tax Fraud Officials (9 persons)
 - Unit of Public Accounts Official Auditors (5 persons)
 - Other staff (22 persons).

293. No mention was made to the assessment team as to whether special training or educational programmes are provided to judges and courts concerning ML and TF offences and the seizure, freezing and confiscation of property.

294. Using the resources available to them, the *Guardia Civil* has initiated investigations relating to money laundering and terrorist financing offences as follows:

2004	Money laundering	Terrorism financing *	Money seizures **	Total
Number of cases	14 investigations	1 investigation	261 interventions	15 investigations 261 interventions
Persons arrested	369 ***	0	0	369
Other persons involved but not arrested	9	32	257	298
Money seized	18,080,208 EUR	0	17,711,236 EUR	35,791,444 EUR
Assets seized	87 real state properties 5 real state societies 3 enterprises	---	---	87 real state properties 5 real state societies 3 enterprises

1st half of 2005	Money laundering	Terrorism financing *	Money seizures **	Total
Number of cases	4 investigations	2 investigations	157 interventions	6 invest.
Persons arrested	36	0	0	36
Other persons involved but not arrested	0	54	167	221
Money seized	14,967,015 EUR	0	21,138,705 EUR	36,105,720 EUR
Assets seized	1 hotel high-value paintings	---	---	1 hotel high-value paintings

Money seized money: currencies indicated euros

* Only one investigation (terrorism financing) originated from an FIU communication. The remaining 20 came from the investigation units in Guardia Civil.

** Money is pre-seized depending on a follow-on administrative or judicial process.

*** Number of persons arrested people includes those who were arrested because of the associated crime.

295. From 2001 to 2005, the National Police carried out 9 investigations related to TF. 56 persons were arrested, banks accounts were frozen for a total amount of 451,826 EUR and real estate properties were seized for a total value of 7,635,452 EUR.

296. The Drug and Money Laundering Special Prosecutor Office provided the following statistics:

Year	Total of criminal proceedings	Number of reports (for ML)
2003	299	1086 (59)
2004	324	3805 (66)
2005	278	1047 (55)

297. The Special Public Prosecutor's Office for the repression of Economic Crimes Related with Corruption collected the following statistics:

Number of judicial proceedings 1996-2004	42 (37 convictions)
Number of new judicial proceedings opened in 2004	24 (5 convictions)
Number of judicial proceedings opened in the Unit of Tax Fraud Officials 2004	53
Number of judicial proceedings opened in the Unit Public Accounts Officials 2004	10
Number of judicial proceedings opened in the two Units of Judicial Police 2004	16

298. **Statistics.** Spain maintains very partial and limited statistics on money laundering and terrorist financing investigations, prosecutions and convictions as well as on property frozen, seized and confiscated. Based on the information available, it is not possible to assess the effectiveness of the prosecutions of ML/TF cases.

2.6.2 Recommendations and Comments

299. **Recommendations 27.** Considering the lack of comprehensive statistics (especially the number of investigations initiated in AML/CFT area and the percentage of total investigations solved), it is not possible to assess whether law enforcement and prosecution authorities effectively perform their functions. It would be important to maintain much more detailed data since it would also allow law enforcement and prosecution agencies to measure the results of their efforts in the AML/CFT area.

300. **Recommendation 28.** The process by which Spanish police forces can have access to account files should be quicker and more efficient. Efforts should be made in this area.

301. **Resources.**⁴⁰ Expertise within the Drug and Money Laundering Special Prosecutor's Office could be diversified and more skills in economics would be an asset. The prosecution offices generally mention the issue of resources as their main difficulties, considering that the legal framework is satisfactory to meet the FATF requirements (the prosecutions of predicate offences committed outside Spain still remain a universal problem in the money laundering context).

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors underlying rating
R.27	LC	<ul style="list-style-type: none"> Due especially to the lack of statistics, it is not possible to assess whether law enforcement and prosecution authorities effectively perform their functions [issue of effectiveness].
R.28	LC	<ul style="list-style-type: none"> The process by which Spanish police forces can have access to account files is not effective [issue of effectiveness].

2.7 Cross Border Declaration or Disclosure (SR IX)

2.7.1 Description and Analysis

Background information

302. In 2003, the Law 19/2003 of 4 July on the legal regime applicable to capital movements and cross-border economic transactions and on specific measures to prevent money laundering brought relevant amendments to the Law 19/1993 of 28 December on measures to prevent money laundering, mainly in the area of increasing the controls over cash transactions. The underlying premise of this amendment was that the increase of controls over the banking transactions and the sharp increase in

⁴⁰ As related to Recommendation 30; see Section 7.1 for the compliance rating for this Recommendation.

flows to Latin America should be addressed by enhancing the monitoring of cash movements under the AML preventive regime.

303. The previous regulation on the monitoring of cross-border movements of cash and equivalents centred on statistical reporting. This reporting was once part of the exchange control function and now comes under the recent Law regulating capital movements. New safeguards in financial systems and practical experience on the nature of cash movements have shifted the aim pursued in Spain to one of laundering prevention. In other words, the purpose of such controls has come to dominate over statistical function, especially now that cash movements have far less quantitative relevance. On the other hand, the inclusion of cross-border cash controls within the anti-laundering armoury is also congruent with the approach being urged at European Union level.

304. Another development is the fresh impetus given to the control of funds for terrorist financing, where cash handling and movements have proved to be a widespread practice among illicit organisations and groups, not just in Spain but throughout the international community.

305. The requirements to declare cash movements has accordingly been maintained, but transferred to the AML regime, with the text of Law 19/1993 duly adapted to the resulting obligations (description, inclusion within penalty regime, etc.). In February 2006, a new Ministerial Order regulating the advance declaration of movements of cash and monetary instruments in the framework of money laundering prevention was still under discussion. This Ministerial Order is intended to specify in more detail all the requirements concerning the declaration of movements of cash and monetary instruments in the framework of money laundering prevention. It should enter into force by the end of 2006.

306. The need to monitor cash movements has also been reaffirmed by the recent approval of Regulation (EC) 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community. As Recital three of Regulation (EC) 1889/2005 states, “such harmonisation should not however affect the possibility for Member States to apply, in accordance with existing provisions of the Treaty, national controls on movements of cash within the Community”.

Implementation of a declaration system

307. Spain has implemented a declaration system that applies to incoming or outgoing physical transportations of cash and other means of payment. Article 2.4 of Law 19/1993 of 28 December, establishes the basic principles of control over cash movements above the applicable threshold. Both cross-border and domestic (within the territory) cash movements are covered. The obligations imposed in Article 3, section 9, to declare the origin, destination and current possession of funds must apply to natural and legal persons making the following movements:

- The movement into or out of national territory of coins, banknotes or bearer cheques made out in the national currency or any other currency or any material support, including electronic supports (this meets the definition of “bearer negotiable instruments” as defined by the FATF Recommendations), designed for use as a means of payment in an amount greater than 6,000 EUR per person and journey.
- The movement within national territory of coins, banknotes and bearer cheques made out in national or foreign currency or any material support, including electronic supports, designed for use as a means of payment in an amount greater than 80,500 EUR.

308. Therefore, currently a declaration must be filed whenever a cross-border movement of cash or other usual mean of payment above 6,000 EUR is made. The threshold applied to domestic cash

movements is 80,500 EUR. However, at the moment of the on-site visit⁴¹, a possible upgrade of the above-mentioned thresholds (10,000 EUR for cross-border cash movements and 100,000 EUR for domestic movements) was being studied. Two reasons may justify the change: (1) the need of adjusting the cross-border threshold to the effect of the inflation rate (it has been 6,000 EUR since 1981) and (2) the tendency to facilitate the applicability by using round, easy numbers. The 6,000 EUR threshold is in line with the provisions of Regulation (EC) 1889/2005 and is substantially lower than the maximum limit set by the FATF (15,000 EUR). As regards internal movements, the idea is that the figure of 100,000 EUR should facilitate knowledge of and compliance with the obligation to declare, while the increase over the original 80,500 EUR threshold will not materially alter the risk of money laundering.

309. It should be noted that the declaration requirement does not apply to legal persons that are professionally engaged in the transportation of cash or monetary instruments. It also does not apply to reporting parties as listed in Law 19/1993 for transportation of cash or other instruments related to their business activities. The Ministerial Order to come into force will also not apply to government authorities and agencies, including the Bank of Spain or any public-law entity.

310. With respect to incoming or outgoing transportation of cash or monetary instruments, a B-1 form must be completed and passed on to the customs authorities at the point of entry or to a deposit institution registered in the official register of the Bank of Spain (Article 4 of Ministerial Order 27/12/91⁴²). According to Article 3.9 of Law 19/1993 of 28 December mentioned above, the B-1 declaration includes the (1) origin of funds, (2) the destination of the funds and (3) the justification for holding the cash or the payment instruments. The Customs Authority or the *Guardia Civil* is empowered to require explanation on these three basic aspects. Identification data of the bearer and amount of the cash or monetary instruments must also be disclosed. Once the declaration has been presented to the competent authority, they should make a record of it (of all of the declaration components), return the original to the party concerned and send the duplicate to the Bank of Spain. The Ministerial Order or the Law are silent on the methods to use to inform the public on their obligation to report transportations of cash or monetary instruments above a certain threshold (for instance, signs along the road towards the border, form automatically provided either in airplanes, vessels or at the border crossing⁴³).

311. Shortly, the B-1 form should be replaced by a new form (S-1 form, see new Ministerial order). This form will be available in the local offices of Customs and Excise (Inland Revenue) or from the Ministry of Economy and Finance. It will also be available on the Internet on the web pages of SEPBLAC, the Inland Revenue (www.aeat.es) and the Directorate-General of the Treasury and Financial Policy (www.tesoro.es). The declaration form will be one and the same regardless of the types of movement. Completed declaration forms are to be signed and presented by the person carrying the cash or monetary instruments. The said cash or monetary instruments must be accompanied at all points of the journey by the corresponding declaration and carried by the person figuring therein as the carrier. Irrespective of the place or manner of presentation, the declaration must be produced voluntarily for verification to the permanent Customs Service at the border crossing, if there is one, or to the National Law Enforcement and Security Agencies, at the request of their agents.

⁴¹ This is part of the amendments brought by the Ministerial Order that was still under discussion in February 2006.

⁴² Ministerial Order of 27 December 1991 implements the Royal Decree 1816/1991 of 20 December on cross-border transactions and sets out procedural rules relating to collections and payments between residents and non-residents and transfers to and from other countries as a result of cross-border transactions. It also establishes certain categories of declarants, determinable by reference to the specific activity that they undertake and for which their own set of regulations is established.

⁴³ The draft Ministerial Order sets out provisions on information to travelers as follows: “the Customs and Excise Department of the Inland Revenue shall establish information systems on its premises in order to acquaint travellers with the obligation to present declarations of cash movements as specified in this Order. The collaboration of international passenger transport companies may also be called on to this end”.

Prior to their movement the carrier of the cash or monetary instruments may submit the declaration on-line, signed with a recognised electronic signature, on the website of the Inland Revenue (<http://www.aeat.es>).

Powers of competent authorities upon discovery of a false declaration and information collected and retained in the case of a false declaration

312. According to Article 12.3 of Law 19/1993 in the event of failure to make the declaration required by Article 3, section 9 of this law, the National Law Enforcement and Security Agencies or the Customs and Excise Department are entitled to seize the means of payment, forwarding the certificate of seizure immediately to SEPBLAC, for its investigation⁴⁴. In cases where the obligation to make the declaration is not fulfilled, the Customs Services must stop the means of payment that are discovered and open a record where, besides collecting the details of the inspection undertaken, they also obtain a statement from the traveller on the origin of the money intercepted. This record will serve as the basis to initiate an administrative sanction procedure. If there are indications that the money intercepted originated from criminal activities, the judge will be informed and the seized money will be made available to him. No reference is made to the cases where there is a suspicion of ML or TF.

313. Once the seized funds are received, the Secretariat of the Commission (Treasury) analyses the evidence and opens a sanctions procedure for failure to file a declaration. The actions undertaken for non-declaration are documented in a record where, amongst other things, appear the name of the person and other identification data and the residence of the person, bearer of the money, or of the means of payment without declaring; as well as a description of the value of these. The above-mentioned record will be transferred to SEPBLAC and to the Secretariat of the Commission for the Prevention of Money Laundering. The above-mentioned data are available to judicial authorities, law enforcement agencies and the State Agency of Tributary Administration.

Co-ordination amongst domestic competent authorities

314. The continuous interaction between the Secretariat of the Commission and SEPBLAC in the case of sanctions procedures (Article 17.4 of RD 925/1995) ensures that all the aspects related to the origin of the funds and connections with potential illicit activities are taken into account. Both the *Guardia Civil* and the National Police have units assigned to SEPBLAC and have full access to these cases. All the documents used in the sanctions procedure are delivered to SEPBLAC, which is in charge of developing the investigations on the funds and report to the Secretariat.

315. In accordance to Article 17.4 of RD 925/1995, SEPBLAC's role in the system includes:

- Receive the report of any undeclared amount found and retained by the Customs Authorities and the *Guardia Civil*.
- Carry out investigations to check (1) the origin of the funds and (2) potential connections with other police investigations or judicial proceedings in course.
- Receive all the information gathered through the sanctions procedure from the Secretariat of the Commission.
- Inform the Secretariat on the origin of the funds and other aspects related to the procedure being conducted.

⁴⁴ In the regime set up in the new Ministerial Order, similar seizure mechanisms have been adopted. The seizure may occur when there is a complete or partial lack of accuracy in the identity details of the carrier or owner of the cash or payment instruments, the origin and destination of them, the reason for the movement, along with an up or down variation of more than 10%, or 3,000 euros, between the amount carried and the amount declared. The competent authority responsible for retaining the cash or monetary instruments must complete a "seizure certificate" that contains a list of very comprehensive data on the case to be forwarded to SEPBLAC.

316. The Commission for the Prevention of Money Laundering and the Standing Committee play the role of co-ordinating and analysing the functioning of the system. All participants in the declaration system are members of both the Commission and the Committee (Police, *Guardia Civil*, Customs, Secretariat of the Commission and SEPBLAC). At the operative level, as far as the investigation of ML is concerned, there is in place a Cabinet for Harmonised Action of the Ministry of Interior, where joint actions undertaken by law enforcement agencies and the Customs Surveillance are co-ordinated. A task force depending on the Commission for the Prevention of Money Laundering with representatives from the Secretariat, *Guardia Civil*, SEPBLAC, Customs and National Intelligence Centre has discussed the new Ministerial Order and periodically prepares special operations in airports on cash movements.

International co-operation and assistance

317. As far as international co-operation is concerned, Spain is part of the Convention entered into on the basis of article K.3 of the Treaty of the European Union, relating to Mutual Assistance and Co-operation between Customs Administrations, made in Brussels on 18 December 1997. In addition, within the European Union and as regards the First Pillar, the main mutual assistance procedure is found in EC Regulation no. 515/97 of the Council on Mutual Assistance to ensure the correct application of the law on customs and agricultural matters.

318. As far as conventions with other countries on mutual assistance and co-operation on customs matters are concerned (which normally include money laundering), the Department of Customs and Special Taxes has entered into the following multilateral conventions:

- Co-operation Conventions under the auspices of the WCO (World Customs Organisation). It has a network for exchange of information, the RILO network (Regional Intelligence Liaison Office) and its own information exchange system the CEN (Customs Enforcement Network).
- Convention between the National Customs Services of Latin America, Spain and Portugal on Co-operation and Mutual Assistance.
- Agreements and Protocols on Mutual Administrative Assistance signed by the European Commission with other countries (37 countries such as Israel, Kazakhstan, Liechtenstein, Georgia, etc.).
- Memorandum of Understanding with the CCLEC (Caribbean Customs Law Enforcement Council), which includes a mutual assistance procedure. The CCLEC is made up of 37 countries from the Caribbean plus the United States, Canada, France, the United Kingdom, the Netherlands and Spain.

319. The Department of Customs and Special Taxes has also entered into bilateral agreements with: Algeria, Argentina, Austria, Cuba, United States of America, France, Italy, Morocco Mexico, Norway, Portugal, Russia, Sweden and Turkey.

Sanctions for failing to make a declaration

320. For failing to make a declaration, the following range of sanctions is available. Article 3.9 of Law 19/1993 sets up the obligation to declare the (1) origin, (2) destination and (3) the reason for holding cash above the applicable threshold. The failure to declare any or all of these aspects involves a serious breach of the Law (Article 5.2 of Law 19/1993). Article 9 of the Law sets out the list of sanctions (fines are applicable in this case). More specifically, failure to make a declaration is punishable by a fine ranging from a minimum of 600 EUR up to half of the amount of the means of payment utilised (Article 8.3 of Law 19/1993). In the event that the means of payment are found in a place or situation clearly indicative of the intent to conceal them or that the origin of the funds is not duly proven, the fine may extend to the entire amount of the means utilised (this is intended to apply to ML cases). Therefore, the lowest amount is 600 EUR. The highest amount of the sanction depends on (1) whether there is no justification of the origin of the funds / the funds are hidden on purpose (2) the

origin is justified and/or the place where they are located does not indicate a clear will to hide them. In the first of these cases, the highest amount of the sanction can reach 100% of the cash; in the second, 50%.

321. Cases of false declarations are punished under Article 17.4 of RD 925/1995. In these cases, 100% of the undeclared cash/monetary instruments can be seized. Finally, according to Article 12.3 of Law 19/1993, in the event of failure to make the declaration required by Article 3, section 9 of this law, the National Law Enforcement and Security Agencies or the Customs and Excise Department are entitled to seize the means of payment.

Seizing, freezing and confiscation

322. It seems that provisional measures and confiscation provisions do apply to persons who are smuggling cash or monetary instruments that are related to money laundering or terrorist financing.

Unusual cross-border movements of gold, precious metals and precious stones

323. In Spain, gold, precious metals and precious stones are considered to be merchandise and subject therefore to customs legislation and formalities. Failing to file a declaration when importing or exporting such goods may constitute a case of smuggling and falls under the responsibility of the customs authorities. Movements of gold, precious metals or precious stones into or out of the EU must be reported to Customs.

Safeguards to ensure the proper use of information reported or recorded

324. There is a computerised database held by SEPBLAC where all declarations are entered. Declarations of model B1 are sent to SEPBLAC by the Customs Authorities and the credit institutions, as the declarations can be presented either to the credit institution or directly to customs. This database is fully used in the framework of combating ML/FT. Recorded data are subject to strict safeguards to ensure a proper use. According to Article 26 of RD 925/1995, any person working or who has worked for the Commission or has had access any data is obliged to a strict secrecy rule.

Additional elements

325. Spain does not seem to have implemented additional measures as set out in the Best Practices Paper for SR IX.

326. **Statistics.** The following figures have been delivered by the Spanish Treasury that is in charge of imposing sanctions for failure to declare cross-border transportation of currency and bearer negotiable instruments:

	2000	2001	2002	2003	2004	2005
Total of amounts seized EUR	62,821,067.35	35,640,610.45	20,752,587.81	19,690,362.40	26,711,175.06	33,608,442.7
Number of sanction procedures	333	234	227	278	310	309
Total of amounts confiscated EUR	436,210.08	132,685.71	346,243	1,048,817	3,506,717.45	2,636,145

327. The following table sets out the origin and assignment of capital movement cases:

Origin and assignment of the cases	2001	2002	2003	2004	Variation 2004/2001
Capital movement cases - origin					
Bank of Spain	24	0	8	6	-75,00%
Lending institutions	1	0	1	0	-100,00%
Directorate General of Treasury and Financial Policy	90	75	77	64	-28,89%
Customs and Excise Department	120	112	191	189	57,50%
Civil Guard	163	106	77	132	-19,02%
Directorate General of Police	0	1	0	0	-
Money Exchange firms	1	5	0	0	-100,00%
Total origin of capital movement cases	399	299	354	391	-2,01%
Capital movement cases - Assignment					
Directorate General of Treasury and Financial Policy	330	293	426	366	10,91%
Finance Ministry - Tax Authorities	1	0	1	0	-100,00%
National Police Force	1	0	2	1	0,00%
Civil Guard	2	2	0	1	-50,00%
Executive Service of the CPBCIM	71	13	14	13	-81,69%
Total assignment of capital movement cases	405	308	443	381	-5,93%

328. The following table indicates the destination countries when freezing cash funds at the border:

2001		2002		2003		2004	
COUNTRY	%	COUNTRY	%	COUNTRY	%	COUNTRY	%
Colombia	18,3	Germany	11,3	Germany	13,11	China	14,84
Germany	9,9	United Kingdom	10,4	Venezuela	14,27	Venezuela	13,20
China	8,8	China	9,9	Colombia	10,20	Germany	11,28
United Kingdom	7,9	Colombia	9,4	Italy	9,29	United Kingdom	3,36
Andorra	7,6	Andorra	8,5	China	6,12	France	3,34
				Belgium	5,29		

2.7.2 Recommendations and Comments

329. *Special Recommendation IX.* Spain follows a currency control system which compels individuals and companies to declare the amount, origin and destination of incoming and outgoing funds. With the adoption of the Special Recommendation IX, the system has been redirected towards preventing money laundering. With regard to the system in place, the following remarks should be made. Firstly, the current declaration form (B-1) seems to be more aimed at currency controls and does not seem very useful for AML or CFT purposes. The introduction of a new declaration form (S-1) should facilitate the implementation of the declaration system for AML/CFT purposes. The applicable Ministerial Order or the Law are silent on the methods to use to inform people that on their obligation to report transportations of cash or monetary instruments above a certain threshold which raises a real issue of effectiveness of the measures in place. Again, the adoption and implementation of the new Ministerial Order should introduce useful mechanisms in this respect. The possibility to stop or restrain currency of monetary instruments does not explicitly exist where there is a suspicion of terrorist financing. It also seems that provisional measures and confiscation provisions apply to persons who are smuggling cash or monetary instruments that are related to money laundering or terrorist financing. Finally, the regime of sanctions in place seems appropriate and to give valuable results. The cities of Ceuta and Melilla and their location in North Africa appear to raise specific issues related to the physical cross-border transportation of cash; however, no further information was provided by the Spanish authorities.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR IX	LC	<ul style="list-style-type: none"> ▪ The declaration system as currently implemented raises some issues of effectiveness.

3. Preventive Measures - Financial Institutions

330. In Spain, the preventive side of the AML/CFT system is rooted in Law N° 19/1993 of 28 December on certain measures for the prevention of money laundering (“the Prevention Law” or “Law N° 19/1993”), and Royal Decree N° 925/1995 (RD 925/1995) of 9 June which implements this Law. The law seeks to prevent and block money laundering by imposing administrative obligations for reporting and co-operation on financial institutions and on other, non-financial institutions. RD 925/1995 was amended by RD 54/2005 of 21 January. Most of its provisions entered into force on 22 April 2005. Other provisions (certain provisions in relation to professional transport of cash, international transfers and drafts managed by postal services and lotteries and other games of chance as regards the payment of prizes) entered into force on 22 January 2006, after the on-site visit. Within three years, RD 925/1995 should be amended to implement to the 3rd EU Money Laundering Directive. Royal Decrees are norms issued by the Government. They have the legal status of a Regulation and complement and develop the provisions of the Law.

331. The following types of financial institutions are covered by the AML/CFT regime:

- Credit institutions.
- Insurance undertakings authorised to do business in the area of life insurance.
- Securities brokers and broker-dealers.
- Investment companies, excepting those whose management, administration and representation are handled by a management company of collective investment undertakings.
- Management companies of collective investment undertakings and pension funds.
- Portfolio management companies.
- Companies issuing credit cards.
- Legal or natural persons engaging in currency exchange activities or the management of money transfers, whether or not as their core business, with regard to the associated transactions.

332. These categories are understood to include the financial credit entities referred to in the First Additional Provision of Law 3/1994 of 14 April, adapting Spanish legislation on credit institutions to the Second Banking Co-ordination Directive and introducing further changes relative to the financial system, as well as foreign individuals or entities performing activities in Spain of the same nature as those of the aforementioned entities, whether through branch offices or through the provision of services without operating a permanent establishment.

333. According to this law, financial leasing companies are understood to be included in the category of financial credit entities. Financial credit establishments (*establecimientos financieros de crédito*) are entities whose principal activity is to pursue one or more of the following activities under the terms determined by regulation: (1) granting loans and credit, including consumer loans, mortgage loans and finance for commercial transactions; (2) factoring, with or without recourse; (3) financial leasing transactions, including the supplementary activities envisaged in paragraph 8 of the seventh additional provision of Law 26/1988 of 29 July on the Discipline and Intervention of Credit Institutions, (4) issuing and management of credit cards and (5) the granting of guarantees and endorsements and similar commitments. Pursuant to paragraph four of Additional Provision Seven of Royal Law-Decree 12/1995 and also to Article 1.1 of RD 692/1996, financial credit establishments have the nature of credit institutions.

334. Customer credit companies are not a different category of institutions. Customer credit services are provided in Spain by credit institutions. Postal operators have been recently included in the list of obliged parties by virtue of RD 925/1995 (Article 2.2 of RD 925/1995 applies to the “international transfers and drafts managed by postal services”).

335. In summary, the set of AML/CFT obligations under the Royal Decree includes:

- Customer identification (Articles 3 and 4)
- Special examination for risk transactions (Article 5)
- Record keeping (Article 6)
- Reporting of transactions to SEPBLAC (Article 7)
 - Reporting of suspicious transactions (Article 7.1)
 - Systematic reporting (Article 7.2)
- Provision of information to SEPBLAC (Article 8)
- Refusal to perform a transactions (Article 9)
- Confidentiality (Article 10)
- Establishment of internal procedures and units for AML/CFT control (Articles 11, 12 and 13)
- Staff training on AML/CFT skills (Article 14).

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

336. As described in the FATF Recommendations, a country may decide not to apply certain AML/CFT requirements, or to reduce or simplify the measures being taken, on the basis that there is a low or little risk of money laundering or terrorist financing. The Spanish AML/CFT system applies a selective risk-based approach in certain provisions. Further, in line with the 2nd EU ML Directive on Money Laundering, Spain has extended AML/CFT obligations to certain DNFBP sectors (see Section 4.6). The implementation of the 3rd EU Directive on Money Laundering will provide an opportunity to introduce a risk-based approach. As far as specific requirements are concerned, RD 925/1995 does take account of different risk situations, such as non face-to-face business.

337. As a supervisor, SEPBLAC uses a risk-based approach to AML/CFT supervision. In 2002 for instance, SEPBLAC focused its supervisory activity on bureaux de change and money transfer companies.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

Recommendation 5

338. *Anonymous accounts and accounts in fictitious names.* Spain’s legislative regime effectively precludes the use of anonymous accounts or accounts in fictitious names. Reporting financial institutions are not allowed to register anonymous accounts or accounts in fictitious names. This follows from the requirements contained in Law 19/1993 and RD 925/1995 that reporting entities are required to identify their customers and record the name, address, etc.

339. *Numbered accounts.* There is no regulation on numbered accounts in Spanish legislation. The organisation and features on the numbered accounts that exist are in the hands of the banks. In any case, it must always be possible for the financial institution to (formally and materially) identify the account holder and fulfil the rest of the AML/CFT obligations. The use of a number in place of the name of the customer occurs only for internal communication within the bank (when the customer expresses the need for discretion above and beyond the normal practice in the branch). More precisely,

all internal control personnel, including the AML/CFT compliance officer, internal and external auditors and competent authorities have access to the registers that link the number with the name. Commercial banks and savings banks do handle numbered accounts but indicated to the evaluation team that they were insignificant in number. No statistics reflecting the current number of numbered accounts were provided to the evaluation team.

340. *When CDD is required.* Law 19/1993 (Article 3) and RD 925/1995 stipulate that reporting parties shall require, by means of the presentation of formal supporting evidence, the identification of their customers at the time of establishing business relations. Identification should also take place in the case of occasional transactions above 3,000 EUR (the accepted FATF threshold is 15,000 EUR). This enhanced requirement that entered into force in April 2005 should be stressed. This also includes situations where the transaction is carried out in several operations that appear to be linked (see Article 4.2a of RD 925/1995). When performing wire transfers on an occasional basis, financial institutions are always required to identify the client performing a wire transfer regardless of the amount or threshold. In those cases where the amount of the occasional wire transfer is above 3,000 EUR, it is also mandatory for the financial institution to gather and verify the information on the business or professional activity of the originator. In this case, Article 3.5 of R D 925/1995 is fully applicable. Identification should also take place where there is a suspicion of money laundering regardless of any thresholds (Article 3.2 of the Law 19/93 and Article 4.2a of RD 925/1995). There is no direct obligation to undertake CDD measures when financial institutions have doubts about the veracity or adequacy of previously obtained customer identification data⁴⁵. For Spanish authorities, this case is a purely hypothetical situation in Spain since, according to the law, all clients must be identified through official documents issued by the State. The evaluation team believes that the identification through official identification documents does not guarantee that the identification data supplied are systematically correct and not forgeable (cases of forgery are always possible). The existing regulation is therefore not sufficient to meet the specific requirement under Recommendation 5, and this should be corrected.

341. There is no mention of terrorist financing in either Law 19/1993 or RD 925/1995. Both set out measures that aim to prevent money laundering. The Spanish authorities have indicated to the assessment team that the connection between money laundering prevention and the fight against terrorist financing is regulated in Law 12/2003 of 21 May on prevention and freezing of terrorist financing. Article 4.2 of that law establishes that the persons and entities subject to the requirements under Law 12/2003 (and as referred to in Article 2 of Law 19/1993 i.e. financial institutions and DNFBPs) must comply with all requirements established in Law 19/1993. Legally speaking, if the connection between AML and CFT issues exists, the assessment team has some reservations on the understanding that financial institutions (and DNFBPs) have of their CFT requirements in relation to the Law 19/1993 or RD 925/1995. The team noticed that there is a lack of guidance to financial institutions (and DNFBPs) on how to implement and comply with their CFT obligations and on the practical measures that the industry should take to make sure that effective CFT measures are in place (see Section 3.10 of the Report). It seems essential that in the future, when adopting new preventive measures (especially in the context of implementing the 3rd EU Directive on Money Laundering), the new regulations jointly address the AML and CFT issues.

342. *Required CDD measures – identification of natural persons.* The general rule is that the reporting institutions must require submission of documents establishing the identity of their clients, whether regular or not. Clients who are natural persons must submit a national identity document (this refers to the Identity Card – *Documento Nacional de Identidad* or *DNI* – issued by the Ministry of Home Affairs to all Spaniards over the age of 14; it contains the full name of the holder, date and place of birth, address, signature, photograph and a personal identity number), a residence permit

⁴⁵ This situation could practically occur where, in the course of a business relationship, suspicions arise that the identification data already supplied are incorrect or false. This also could be the case where there is doubt on whether the person seeking to execute a transaction within the context of a business relationship already established is actually the customer or beneficial owner previously identified.

issued by the Ministry of Home Affairs, a passport or an identity document valid in their country of origin including a photograph of the holder; all without prejudice to any mandatory communication of their tax identification number or foreigners' identification number, as appropriate (Article 3.2 of RD 925/1995). Circular 660 adopted on 6 July 1995 by the Spanish Private Banking Association (AEB) endorsed these requirements without providing any additional guidance. The current provisions do not set out provisions in relation to the verification of identification data (for instance, for non residents, confirming the date of birth from an official document; confirming the permanent address or confirming the validity of the official documentation provided through certification by an authorised person e.g. embassy official, notary public; etc.).

343. *Required CDD measures – identification of legal persons.* Legal persons must submit an authenticated document (a deed of incorporation delivered by a notary) certifying their name, legal form, registered address and corporate purpose, without prejudice to the mandatory communication of their tax identification number. The deed of incorporation of a company must be signed before a notary and then registered at the Spanish Corporate Registry (*Registro Mercantil*). The company's registration is published in the *Boletín Oficial del Registro Mercantil* (the Official Companies Registry Gazette). No specific requirements apply to foreign legal persons. Circular 660 of the AEB has endorsed these requirements and recommends asking for the production of powers of attorney of legal person's representatives. The current provisions do not set out provisions in relation to the verification of identification data for legal entities (such as for established corporate entities - reviewing a copy of the latest report and accounts; conducting an enquiry by a business information service, or an undertaking from a reputable and known firm of lawyers or accountants confirming the documents submitted; utilising an independent information verification process, such as by accessing public and private databases; etc.). Article 3.5 of the RD 925/1995 only obliges financial institutions to verify the information in relation to the nature of the declared business or professional activity (see paragraph below).

344. RD 925/1995 (Article 3.5) introduces the obligation (which entered into force in April 2005) to establish a client's profile based on the nature of the business or professional activity. These measures must include the establishment and application of procedures to verify the activities declared by clients. Such procedures are to take into account the level of risk pertaining in each case and are to be based on obtaining papers from clients that are related to their declared business activity, or procuring information on this activity from third-party sources (these sources are not defined in the regulation). Reporting parties must also apply additional identification and "know-your-client" measures to control the risk of money laundering in highly sensitive business areas and activities; in particular, private banking, correspondent banking, distance banking, currency exchange, cross-border transfers of funds or any others that may be determined by the Commission for the Prevention of Money Laundering and Monetary Offences. The Minister for Economic and Financial Affairs may from time to time issue orders establishing guidelines for a particular business area and activity. Two provisions of Ministerial Orders complement the AML/CFT regime by clarifying and establishing specific measures for the international money remittance activity (see Section 3.11) and money exchange and for the activity performed by notaries (See Part IV).

345. No specific CDD provisions (including the identification of beneficial ownership) have been adopted for legal arrangements (especially for trusts). Trusts are not permitted in Spain and therefore cannot be formed under Spanish legislation. For foreign trusts, Spanish authorities have indicated that people acting on behalf of trusts are considered to be "legal representatives" and must present a legal proxy in order to establish business relationships. Such a requirement – not explicitly set out in the Royal Decree or in the Law - does not fully meet the obligations under Recommendation 5 that explicitly requires the identification of the trustee or the person exercising effective control of the legal arrangement as well as the beneficiaries.

346. *Identification of beneficial owners.* For natural and legal persons, the proxies of people acting on their behalf (in the case of legal or express representation) must be attested (Article 3.2 and Article 3.3 of the RD 925/1995). Where there is some indication or evidence that a client (a natural person) is

not acting on its own behalf (tacit or implicit representation), the reporting parties must collect the necessary information to identify the persons on whose behalf he is acting. In the insurance sector, Article 8 of Law 50/1980 sets out the obligation to include the identification not only of the policyholder, but also of the beneficiary of the insurance policy. For legal persons and in the case of tacit or implicit representation, the reporting parties must also make every reasonable effort (this notion is not defined even if the Spanish authorities claim that financial institutions are familiar with this concept without defining it) to determine *their ownership or control structure* (provision entered into force in April 2005). On this difficult issue of beneficial ownership and as defined by the FATF Recommendations, no further guidance has been developed (for instance the notion of effective control – possibly over a sufficient percentage of the shares or voting rights – is not further explained and it appears that financial institutions are not required to obtain information relating to the shareholdings or any corporate group behind a customer who is a legal person). Financial institutions are therefore left with a very general and imprecise requirement (and, based on the discussions that took place during the on-site visit, some of them clearly misunderstand their obligations in relation to the identification of beneficial ownership). Based on a broad and general obligation (that might not even be interpreted as such), it is very unlikely that financial institutions are concretely able to take the necessary steps to properly identify beneficial owners of both legal and natural persons as expected in Recommendation 5. Finally, the Royal Decree does not impose a direct requirement to *verify* the identity of the persons acting on the behalf of legal or natural persons. This obligation can only be deduced from Articles 3.2 and 3.3 that require that the powers of a person acting as a representative of a natural or legal person have to be attested.

347. *Purpose and intended nature of the business relationship.* At the time of entering into a business relationship, the reporting parties must procure information from their clients in order to ascertain the nature of their business or professional activity. They must also take reasonable measures to check the accuracy of the information given (Article 3.5 of RD 925/1995). In the case of legal persons, it is also mandatory to obtain information on the corporate purpose, through the documents of incorporation (Article 3.3 of RD 925/1995)

348. *Ongoing Due Diligence.* Article 5 of RD 925/1995 sets out an obligation for the reporting parties to perform continuous monitoring of the transactions that take place during the business relation in cases where there are suspicions of money laundering and in particular when any complex or atypical operations or operations without apparent economic or licit purpose take place (see also the provisions in relation to Recommendation 11). In order for the reporting parties to perform ongoing due diligence in a feasible way, it is mandatory that each entity develop its own catalogue of risk transactions on the basis of the geographical areas they operate, type of customers, type of business, etc. Basic parameters to perform ongoing due diligence are included in Article 5.2 of the Royal Decree. The list of transactions liable to be linked to money laundering must include, at least, the following indications:

- When the nature or volume of clients' loan or deposit transactions does not match with their business activities or transactional history.
- When a given account, without valid reason, is being credited with cash sums by a large number of persons or with multiple cash sums by a single person.
- Movements with their origin or destination in accounts held in the countries or territories referred to in article 7.2.b) [tax havens] – (from January 2006).
- Transfers received or handled which do not state the identity of the ordering party or the number of the account originating the transaction– (from January 2006).
- The transactions defined by the Commission for the Prevention of Money Laundering and Monetary Offences as being complex or unusual or lacking any evident economic or licit purpose. Such transactions shall be published or notified to reporting parties, directly or through the medium of their professional associations– (from January 2006).

349. Recommendation 5 sets out a general obligation to carry out ongoing due diligence on all performed transactions, not merely certain transactions where suspicions of money laundering occur.

Nevertheless, it appears that requirements as articulated in Article 5 of RD 925/1995 introduce an indirect obligation to carry out ongoing due diligence on all transactions (see for instance the wording of Article 5.2a that implies that financial institutions should perform ongoing due diligence of all transactions carried out throughout the course of the business relationship).

350. There is no *clear or direct* obligation in the Royal Decree requiring financial institutions to ensure, as part of their ongoing due diligence and in addition to the specific scrutiny of transactions, that documents, data or information collected under the CDD process is kept up-to-date and relevant. Article 3 of the Royal Decree (last paragraph) requires financial institutions to take additional steps to check a client's identity when they detect a higher-than-average risk in the course of the business relationship. Article 5 sets out requirements to conduct a *special examination* of certain transactions, but the measures to take to meet these requirements are not defined and do not expressly refer to the review of CDD data. Both requirements under Criterion 5.7 of the Methodology should be clearly stated as being part of any ongoing due diligence activity.

351. *Risk.* Article 3.5 of RD 925/1995 identifies areas where enhanced due diligence is required. Reporting parties must apply additional identification and "know-your-client" measures to monitor the risk of money laundering in highly sensitive business areas and activities; in particular, private banking, correspondent banking, distance banking, currency exchange, cross-border transfers of funds or any others that may be determined by the Commission for the Prevention of Money Laundering and Monetary Offences. Complementary measures must be developed by reporting entities when defining their own catalogue of risk transactions (*see above provisions on ongoing due diligence*). The risks in relation to terrorist financing are not expressly mentioned and guidance on risk for financial institutions makes little reference to this type of risk. .

352. In 1991, Spanish Banking Association adopted non binding guidelines for credit institutions (*Illustrative list of risk operations for credit institutions*). Updated in 2005 by the Commission for the Prevention of Money Laundering and Monetary Offences, these guidelines identify a number of operations involving a potential risk of links with money laundering operations. The proposed list of indicators aims at providing examples to enable the institutions to assess the money laundering risk according to the type of business they carry out and/or the profiles of their clients. Each institution is invited to develop its own list of indicators for dissemination to employees (from all management levels) and periodic review. The criteria for the existence of risk refer to: (1) the profile of the client (individual, company, association or foundation) based on the information that the institution must obtain on the client's activity and (2) the usual and expected business or activity of the client on the basis of his operating history. The relationship with tax havens or high risk territories is considered as an additional factor which increases the level of risk. The guidelines point out the following indicators:

- Unusual and/or frequent changes in the type or nature of the methods of payment which are not reflected on the client's account.
- Unusual cash transactions.
- Unusual movements on bank accounts.
- The unusual use of sham corporate vehicles, existing undertakings or associations or undertakings having little genuine activity.
- Atypical, unusual or counter-economic international movements of funds in significant amounts.
- Secured and unsecured loans, credit lines or asset operations.
- Persons from political circles in high risk areas.
- Deficiencies in the particulars given, deliberate lack of contact with the branch or lack of concern as regards the profitability or benefits of products.
- Correspondent accounts with foreign banks with which the bank is insufficiently familiar and/or which are in tax or money laundering havens.
- Unusual attitudes on the part of employees and representatives of financial institutions.

353. Equivalent guidelines were issued in the securities, money remittances and insurance sectors in July 2005.

354. RD 925/1995 is silent on the type of additional identification and “know-your-customer” measures to be taken by financial institutions in presence of a higher risk operation or customer (Article 3.5 of the Royal Decree refers to the obligation to systematically collect information on the purpose and intended nature of the business relationship; Article 11.1 of the same Royal Decree obliges financial institutions to apply “extra precautions” for higher risk customers in accordance with relevant international standards without defining the nature of such additional measures). The guidelines indicate that in this case financial institutions should examine the operation with particular care and should record in writing the results of the examination. Reporting parties are therefore left with flexibility and a margin for discretion. Nevertheless and for the sake of clarity and proper implementation, the evaluation team believes that financial institutions should be provided with more precise requirements on the types of enhanced due diligence measures that are expected to be adopted in these circumstances⁴⁶. As indicated in the Methodology, additional scrutiny and enhanced due diligence measures could also be recommended in business relationships involving legal arrangements (such as trusts) and companies that have shares in bearer form.

355. Obviously, guidelines issued by the Commission for the Prevention of Money Laundering help reporting entities to define higher risk areas and categories of customers. At the end of the day, it will have to be the reporting entity itself which has to (1) analyse its own business profile and risks and (2) define which concrete measures are to be applied to the various groups of transactions (Article 5.2 of RD 925/1995).

356. The general rule remains that customers must be subject to the full range of identification measures set out above. However, Article 4 of RD 925/1995 sets out situations where reporting parties can be released from the identification requirements:

- When the client is a financial institution with its registered offices in the European Union or in third party countries whose conditions are equivalent to those imposed by Spanish law, as determined by the Commission for the Prevention of Money Laundering (no such formal determination has been made at the time of the on-site evaluation).
- When a non-regular client makes a transaction under 3,000 EUR except in the case of some indication or evidence of money laundering.
- When a client is a pension plan or a participant in a group life insurance policy that cannot be surrendered or used as loan collateral.
- When a client is a life insurance policy holder and the premiums do not exceed 1,000 EUR or where a single premium payment is less than 2,500 EUR and in the case of individual pension plans that provide contributions in a year that do not exceed 1,000 EUR.
- Where the benefits under a life insurance plan or policy are to be paid (transferred) to a credit institution.

357. It should also be noted that these exemptions mean that, rather than reduced or simplified CDD measures, no CDD measures apply whatsoever for these cases. The only restriction to these exemptions (Article 4.2a) applies to the transactions below 3,000 EUR that are carried out with occasional customers and for which there is some indication or evidence of money laundering. In this case, identification requirements must be carried out. The Spanish authorities indicated that it is understood that Article 5 of RD 925/1995 (special examination of certain transactions i.e. ongoing due diligence measures for complex or atypical transactions) is fully applicable to the situations identified under Article 4. Again, this does not clearly follow from the current wording of the Royal Decree. For

⁴⁶ Such enhanced measures could be as follows: visits to the places where the contracting parties or beneficial owners conduct their business; consultation of sources and databases accessible to the public; if applicable, information from trustworthy persons, etc.

the evaluation team, the existing exemption under Article 4 therefore appears to be an overly broad exemption from CDD requirements

358. With regard to the first exemption (financial institutions established in the EU), the FATF interprets Recommendation 5 in the sense that each country needs to make its own determination that another country is in compliance with and effectively implementing the FATF Recommendations before allowing its financial institutions to apply simplified CDD to financial institutions in the other country. This implies that the assessed country has gone through a deliberative process if it utilises a list of third countries that meet FATF standards. It appears that the Spanish authorities have not taken any measures to satisfy themselves that the country of residence of potential or existing customers (in this case an EU country) has effectively implemented the FATF Recommendations. Finally, it seems essential to make clear in the law or regulation (in relation to the existing Article 5 that it is applicable to any transaction) that such exemptions to carry out CDD measures are not acceptable where there is a suspicion of money laundering or terrorist financing (for now, this limitation only applies to transactions with non-regular customers, see Article 4.2a).

359. In the area of low risk activities or customers, Spain plans to adopt further provisions in collaboration with private sector associations and in line with the EU requirements in relation to the concept of equivalent third countries.

360. During the on-site visit, the evaluators visited three credit institutions; two banks and one savings bank. The senior management of all three institutions demonstrated sophisticated knowledge about country risk, particularly as it applied to the knowledge of financial institutions in various countries. One of them in particular had developed a sophisticated model of country risk measurement based on a methodology including the local legal and regulatory environment, systemic risk and other considerations. However, it is quite likely that small or less sophisticated financial institutions may not have the necessary expertise to conduct this detailed research. On the ML/FT risk related issues, Spain should consider, at a minimum, issuing guidance to the financial sector.

361. *Timing of verification.* Spain requires that the identity of the client be established “at the time of initiating business relations or effecting whatsoever transaction” (subject to the exemptions from identification requirements discussed above). Financial institutions are not permitted to complete the verification of the identity following the establishment of the business relationship. For non face-to-face transactions, some operational conditions must be met in establishing a non face-to-face business relation (see Article 3.7 of RD 925/1995):

- The first deposit in the account must come (1) from another account whose holder is the same client and (2) which is located in Spain or in jurisdictions other than the ones mentioned in 7.2.b of RD 925/1995 (tax or money laundering havens).
- The reporting entity has to obtain the ID documents within a month period.
- Discrepancies in data provided by the client and other information available determine the obligation to head the client to the ordinary face-to-face procedure.

362. Additional measures have to be implemented by the reporting entity, as this is characterised as a “highly sensitive business area” (Article 3.5 of RD 925/1995). These additional measures are proportional to the level of risk posed before the type of business, type of client, geographical area, etc.

363. *Failure to satisfactorily complete CDD.* There is no legislation requiring the reporting financial institutions to refuse to establish a customer relationship or carry out a transaction if customer identification (including beneficial owner identification) cannot be carried out or if identification documents believed to be incorrect cannot be verified although Spanish authorities explained to the assessors that it is understood in the formulation of Law 19/1993 (Article 3.1) that failure to carry out the mandatory identification process must have the consequence that the customer relation will be refused. Further, there is no requirement to terminate an existing business relationship. Finally, there is

no guidance that encourages a financial institution to consider making a STR when the institution is unable to satisfactorily complete CDD.

364. Problems (delay) for reporting entities in obtaining the data to perform CDD are an explicit example of a risky transaction in the guidelines issued by the Commission for the Prevention of Money Laundering (i.e. Point 8.b in the guidelines for credit institutions).

365. *Existing customers.* There are no specific AML/CFT legal or regulatory measures in place as to how reporting entities should apply CDD measures to their existing pool of customers. Spanish authorities indicated that since 1987 (date of introduction of the new Fiscal Identification Number - NIF) all existing Spanish account holders have been identified. Nevertheless, the assessment team believes that identification of customers for tax purposes is likely to differ from CDD measures for AML/CFT purposes (i.e. in relation to the beneficial ownership identification). Article 5 of RD 925/1995 sets out the obligation to carry out special examination of certain transactions but does not expressly refer to the reviews of CDD data. There is no legal requirement for a customer's identity to be re-verified upon a subsequent enlargement of the customer relationship in the same institution (i.e. the opening of a new account, writing a new insurance policy, etc).

366. *Effectiveness.* In addition to the deficiencies in the law itself, the effectiveness of the current customer identification measures is difficult to establish. In 2004, SEPBLAC conducted 11 inspections of banks, savings banks, lending co-operatives, insurance companies and stock brokers. The inspections revealed defects in the procedures for customer identification and knowledge (this did not include the assessments of other risk areas) and SEPBLAC issued 28 recommendations in this area (compared to 21 recommendations in the internal organisation area and 14 for defects in relation to reporting systems). SEPBLAC also received 10 reports from the Bank of Spain relating to the issues of non-compliance. The results of these thematic inspections do raise some preliminary concerns about how compliant Spanish financial institutions are with the existing basic requirements (which are generally not in line with the requirements established in Recommendation 5). Moreover, the low number of compliance inspections carried out on an annual basis does not allow measuring the level of implementation of CDD requirements by financial institutions.

Recommendation 6

367. Spain has not implemented adequate AML/CFT measures concerning the establishment of customer relationships with politically exposed persons (PEPs). Spain intends to adopt new provisions in the context of the 3rd EU Money Laundering Directive.

368. In the guidelines for credit institutions issued by the Commission for the Prevention of Money Laundering in June 2005, "persons from political circles in high risk areas" are identified as higher risk customers. Specifically concerned are "the accounts opened in Spain by people holding high profile political positions, senior officials or similar persons (directors of public companies, etc.) in generally non-democratic countries, including their close family members, who receive funds from abroad which they use to purchase real property or financial assets of significant value or to make large deposits." Guidelines for securities and insurances sectors also refer to politically exposed persons as higher risk customers. These guidelines do not have the force of law but are intended to help financial institutions drawing their own lists of transactions particularly liable to be linked with money laundering (see Article 5.2 of RD 925/1995).

369. Article 11.1 of RD 925/1995 (in force since April 2005) requires financial institutions to "draw up an explicit policy for client admission. The said policy shall include a description of the kinds of clients potentially carrying a higher-than-average risk, in accordance with the factors defined by each reporting party with reference to the relevant international standards. Client admission policies shall be progressive, with extra precautions taken for those exhibiting a higher-than-average risk". The Spanish authorities indicated that "relevant international standards" refer to the FATF standards (including the requirements under Recommendation 6) and that this introduces a direct enforceable legal obligation

with regard to the need for a client admission policy that includes PEPs. Despite this interpretation provided by authorities, the evaluation team believes that this cannot be considered as a direct obligation and sufficient requirement, and it therefore does not meet the obligations set out in Recommendation 6. There are no specific requirements in the Royal Decree on (1) the obligation to obtain senior management approval for establishing business relationships with a PEP; and (2) the obligation to establish the source of wealth and source of funds for customers and beneficial owners identified as PEPs. In terms of implementation, the team expresses some doubts on whether all financial institutions (and not only the biggest ones that currently have PEPs policies in place) are able to fully understand their obligations under Article 11.1 of RD 925/1995 in relation to PEPs.

370. Concerning the definition of PEPs, the Spanish authorities indicate that despite the fact that foreign PEPs normally pose a higher risk, domestic ones are usually included, too, according to what it seems to be generally the practice in Spanish financial institutions.

Recommendation 7

371. In Spain, correspondent banking relationships have been identified as a higher risk activity (see Article 3.5 of RD 925/1995 and guidelines to credit institutions) that requires the adoption of additional CDD measures (see provisions and comments in relation to Recommendation 5). Nevertheless, none of the specific requirements contained in Recommendation 7 have been implemented. Spanish authorities believe that Article 3.5 introduces a direct and enforceable obligation in the case of correspondent banking relationships since these relationships are classified as higher risk and must be subject to enhanced control measures. Again, these measures are not defined in the regulation itself but left to the discretion of financial institutions that must implement “international standards” as referred to in Article 11.1 of RD 925/1995. The assessors are of the opinion that the existing obligation (with a simple cross-reference to international standards) is not sufficient to meet the existing FATF standards in this area.

Recommendation 8

372. There is no regulation or guidance regarding the need for internal policies within financial institutions to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

373. Article 3.7 of RD 925/1995 establishes the framework for preventing money laundering through non face-to-face operations (by telephone or electronic channels and either for permanent or occasional customers) and sets out the following requirements when establishing the business relationship:

- *The client’s identity is accredited as defined in the applicable regulations on electronic signatures, or*
- *The first deposit originates from an account in the same client’s name opened in Spain or in countries and territories other than those listed in Article 7.2.b) (tax havens), or*
- *The conditions established to this effect by the Minister for Economic and Financial Affairs are judged to be met [which had not been done at the time of the on-site visit].*

374. The reporting parties must obtain ID documentation within one month after the opening of the business relationship. Distance banking (and not non face to face activities in general) is referred to as a highly sensitive business (Article 3.5 of the Royal Decree) that requires enhanced CDD measures (as defined in Article 3.7). In relation to the scrutiny attached to non face-to-face transactions, general ongoing due diligence rules set out in Article 5 of the Royal Decree apply. There are no policies or procedures in place to address the specific risk attached to non-face to face transactions.

3.2.2 Recommendations and Comments

375. As a preliminary remark, it is essential that all preventive measures adopted by Spain clearly mention the fight against terrorist financing as a full component of the legal system in place (the Royal Decree should be amended to reflect this).

376. *Recommendation 5.* The evaluation team believes that the current Spanish regulation related to CDD requirements is insufficient to meet all subtleties of Recommendation 5. RD 925/1995 seems to introduce some requirements that, subject to a very flexible and broad interpretation, could on some occasions be in line with the FATF standards. Nevertheless, they generally lack clarity and the evaluation team has some doubts on the feasibility for financial institutions to implement them in the spirit of Recommendation 5. The team believes that Spain should particularly implement the following missing elements of Recommendation 5 as a matter of priority:

- All Customer Due Diligence requirements should be extended to clearly reflect the risk related to terrorist financing (currently RD 925/1995 applies the requirement to the laundering of the proceeds of all offences punishable by 3 years imprisonment).
- Requirements in relation to the identification of beneficial owners should be redefined to reflect the exact contents and subtleties of Recommendation 5. The identification of beneficial ownership (and its two components, i.e. the notion of equitable owner as well as the notion of a person exercising ultimate ownership and control over a legal person or arrangement) should be clearly defined to ensure a proper implementation by the reporting parties that should fully and systematically carry out this identification. These measures should be extended to legal arrangements.
- Requirements in relation to ongoing due diligence and the obligation for financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant should be clarified and impose direct obligations as asked for in Recommendation 5.
- With regard to higher risk situations, measures in place should be supplemented. Spain should also address whether or not financial institutions should be permitted to apply simplified or reduced CDD measures and issue appropriate guidance.
- Financial institutions should not be permitted to open an account, commence business relations or perform transaction when adequate CDD has not been conducted. Clear and direct requirements should be adopted when financial institutions fail to satisfactorily complete CDD.
- Spain should adopt rules governing the CDD treatment of existing customers on the basis of materiality and risk.

377. *Recommendation 6.* Spain has introduced in its legal framework a very indirect requirement in relation to PEPs. There is no doubt that the biggest Spanish financial groups have PEPs policies in place (the implementation of the totality of the requirements set out in Recommendation 6 is nevertheless not guaranteed in the absence of clear legal obligations) but smaller financial institutions may not have the same understanding of Article 11.1 of RD 925/1995. It is important that clear and direct obligations as defined in Recommendation 6 be expressly adopted in Spain.

378. *Recommendation 7.* Recommendation 7 has not been implemented (cross-border correspondent banking has only been identified as a higher ML/TF risk activity for which enhanced CDD measures are necessary). Spain should fully implement this Recommendation as a matter of priority.

379. *Recommendation 8.* Spain has some regulation in place that addresses the issue of non-face to face relationships (when establishing customer relationships) but that does not extend to non face-to-

face transactions (linked to ongoing due diligence). Non face-to-face activities in general (and not only distance banking) should be considered as a highly sensitive business. There is no clear general guidance regarding emerging technological developments. Spain should address this specific issue.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	PC	<ul style="list-style-type: none"> ▪ <i>When CDD is required:</i> there is no direct obligation to undertake CDD measures when financial institutions have doubts about the veracity or adequacy of previously obtained customer identification data. ▪ <i>Required CDD measures:</i> (1) the current provisions do not set out requirements in relation to the verification of identification data for natural persons or for legal entities (except the verification of information related to the nature of the business); (2) no specific provisions have been adopted for legal arrangements (especially for trusts). ▪ <i>Identification of beneficial owners:</i> financial institutions are left with very general and imprecise requirements (this raises the issue of effective implementation of the requirement). ▪ <i>Ongoing Due Diligence:</i> there is no clear or direct obligation in the Royal Decree requiring financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant. ▪ <i>Risk:</i> (1) RD 925/1995 is silent on the type of additional identification and "know-your-customer" measures to be taken by financial institutions when facing a higher risk transaction or customer (this raises the issue of effective implementation of the requirement); (2) with regard to low risk situations, the current exemptions mean that, rather than reduced or simplified CDD measures, no CDD measures apply whatsoever for these cases. This appears to be an overly broad exemption from CDD requirements although Article 5 of RD 925/1995 (special examination of certain transactions) is fully applicable to these situations; (3) there is no direct or clear provision setting out that the current exemptions are not acceptable whenever there is a suspicion of money laundering or terrorist financing. ▪ <i>Failure to satisfactorily complete CDD:</i> there is no legislation that requires reporting financial institutions to refuse to establish a customer relationship or carry out a transaction if customer identification (including beneficial owner identification) cannot be carried out or if identification documents believed to be incorrect cannot be verified although Spanish authorities explained that it is understood in the formulation of Law 19/1993 (Article 3.1) that failure to carry out the mandatory identification process must have the consequence that the customer relation will be refused. Further, there is no requirement to terminate an existing business relationship. Finally, there is no requirement for financial institutions to consider making a STR when the institution is unable to satisfactorily complete CDD. ▪ <i>Existing customers:</i> there are no specific legal or regulatory measures in place as to how reporting entities should apply CDD measures to their existing pool of customers although Article 5 of RD 925/1995 (special examination of certain transactions) is fully applicable in these circumstances.
R.6	NC	<ul style="list-style-type: none"> ▪ Spain has not implemented adequate AML/CFT measures concerning the establishment of customer relationships with politically exposed persons (PEPs).
R.7	NC	<ul style="list-style-type: none"> ▪ Spain has not implemented adequate AML/CFT measures concerning establishment of cross-border correspondent banking relationships.
R.8	PC	<ul style="list-style-type: none"> ▪ Spain has no specific regulation concerning non-face to face business transactions. ▪ There is no general requirement that financial institutions have policies in place to deal with the misuse of technological developments.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

380. Neither Law 19/1993 nor RD 925/1995 specifically deal with the issue of reliance on third parties or other intermediaries to conduct due diligence. However, there is a requirement that responsibility for CDD always stays with the financial institution. Spanish legislation does, however, allow financial institutions to enter into outsourcing agreements. Outsourcing agreements are outside

the scope of Recommendation 9 and therefore the evaluation team determined that this Recommendation is not applicable to Spain.

3.3.2 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	N/A	<ul style="list-style-type: none"> ▪ Although financial institutions may rely on outside agencies to perform CDD for them, this is only done in the context of outsourcing agreements that must be performed under contract and thus this falls outside the scope of Recommendation 9.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

381. In Spain, all issues related to banking secrecy have always been interpreted as a right of the client vis-à-vis the financial institution based on the private sphere. There has never been a public right of secrecy protected by the competent authorities (public sphere). Any type of public regulation cannot be superseded by this right of the client vis-à-vis the institution. This is why bank secrecy has never been an issue with regard to public regulations and, particularly, AML/CFT.

382. Article 3.4.b of Law 19/1993 and Article 8 of RD 925/1995 set out provisions to assure the exchange of information between competent authorities and reporting parties without undue restriction. Reporting parties must collaborate with SEPBLAC and furnish, pursuant to the provisions of article 3.4. b of Law 19/1993, information necessary to perform its functions. This information may concern any data obtained by the reporting parties concerning the transactions they conduct. Information requests from SEPBLAC must clearly set forth the matters regarding which information is required and the deadline by which it must be supplied. When the information is not supplied by the deadline or is supplied in an incomplete manner with the omission of essential data that prevents SEPBLAC from properly examining the case, then the obligation referred to in Article 8 is deemed not to be fulfilled. However, if the data omitted do not invalidate the information requested, SEPBLAC can call upon the reporting party to furnish the missing information indicating the deadline for complying with the second request. Failure to comply with a SEPBLAC request is deemed a breach of the reporting obligation.

383. The information must be communicated through internal control units using the procedures established pursuant to Article 13 of RD 925/1995 (*Reporting procedures*), and all the data requested must be set out in a detailed, clear and complete manner. In the event that not all the information requested is available, this should be expressly stated.

384. The usual restriction is applied to professionals in respect of their confidentiality when representing the client in proceedings or advising them on how to avoid or initiate Court action (auditors, external accountants, tax advisors, notaries, lawyers and court representatives with respect to the information they receive from clients or obtain in their regard when developing the clients' legal cases, or when engaged in their mission of defending or representing such clients during administrative or legal actions or in relation thereto or advising them on initiating or avoiding court action, regardless of whether they received such information before, during or after these proceeding). Lawyers and court representatives remain bound by their duty of professional secrecy in accordance with existing legislation. Beyond this situation, professionals must provide all type of information to SEPBLAC without restriction.

385. A failure to provide information to SEPBLAC is one the most serious violations of AML/CFT legislation (Article 5.3 of the Law 19/1993). Additionally, sanctions for this violation are made public (Article 9.1.a of Law 19/1993).

386. Article 26 and 27-32 of RD 925/1995 assure the full sharing of information between competent authorities. At national level, Articles 27 and 28 of the Royal Decree are specifically devoted to enhancing co-operation to the highest degree from all types of authorities (administrative authorities including supervisory agencies, judiciary authorities, property and mercantile registrars) looking into activities which might involve any potential breach of the AML regulation, including the duty to co-operate with SEPBLAC. The Bank of Spain, the National Securities Markets Commission, the Directorate-General of Insurance and Pension Funds, the Directorate-General of Registries and Notaries, the Institute of Accounting and Auditing, professional associations and the competent bodies at national and regional level, as appropriate, must provide a complete report to SEPBLAC when, in the course of their inspection or supervisory duties, they detect possible violations of the obligations established in Law 19/1993 .

387. The flow of information between the members of the Commission for the Prevention of Money Laundering is ensured by imposing high standards of secrecy to the information flowing outside the Commission. Confidentiality clauses are applicable to any flow of information outside the Commission, according to Article 26 of RD 925/1995. There is a secrecy obligation on issues dealt under the competence of the Commission, any type of action or information cannot be disclosed outside the Commission, except the cases explicitly mentioned. All persons working at some point on the Commission's behalf that have gained knowledge of its activities or had access to data of a confidential nature are obliged to maintain due professional secrecy. Such persons may not publish, communicate or exhibit confidential data or documentation, even after they have left its service, unless express authorisation has been granted by the Commission. The following items are exempted from the requirements laid down in the preceding paragraph:

- The dissemination, publication or communication of data in cases where the party involved gives his or her express consent thereto.
- The publication of consolidated data for statistical purposes, or notes in summary or consolidated form, so individual parties cannot be identified, even indirectly.
- The supply of information at the request of parliamentary commissions and judicial or administrative authorities legally empowered to make such requests.

388. The exchange of information between SEPBLAC and the tax authorities established in the General Taxation Law are governed by an agreement concluded between SEPBLAC and the Inland Revenue.

389. The authorities, persons or public bodies receiving information of a confidential nature originating from the Commission for the Prevention of Money Laundering are likewise bound by the professional secrecy regulated in this article, and may only use such information in the course of their legally established duties.

390. Articles 29 to 32 of the Royal Decree ensure co-operation with foreign competent authorities. There is no obligation to sign a treaty or a specific instrument for sharing information with foreign authorities. Simply (1) respecting the "reciprocity principle" and (2) ensuring the confidentiality vis-à-vis the people involved in the information exchange must be followed. A general clause excludes co-operation with foreign counterparts when sovereignty and other vital national interests are at risk. This reason has not yet been used as grounds for refusing a request.

391. There is no restriction to exchange information between reporting entities in the prevention of ML/FT. In some particular cases, the exchange of information among entities (both domestically and internationally) is a requirement to fulfil the obligations imposed by AML legislation. This is the case of article 5.2.d of the RD 925/1995, which obliges the financial institution receiving a wire transfer without the identification data to perform special analysis of this transaction with a view to determine whether it must be reported or not. The exchange of information with the ordering financial institution is essential for this activity. However, it is worth noting that there is no legislation specifically permitting this information sharing or obligating correspondents to share information.

3.4.2 Recommendations and Comments

392. Spain's statutes dealing with a duty of confidentiality, both for domestic and international matters, allow for exceptions that prevent the secrecy laws from inhibiting the implementation of the FATF Recommendations.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	C	Recommendation 4 is fully met.

3.5 Record keeping and wire transfer rules (R.10 & SR VII)

3.5.1 Description and Analysis

393. *Recommendation 10.* Record keeping requirements are covered by Article 3.3 of Law 19/1993. The Article requires reporting entities to keep for a period of at least five years all documentation related to transactions and customer identification data. Article 6.1 of RD 925/1995 extends the minimum period of maintaining the necessary records to six years. Documents that must be kept relate to identification data when establishing business relations or conducting occasional transactions. Equivalent documentation must be kept when making a suspicious transactions report (STR). The starting point of this six-year period is the moment when (1) the business relationship is finished or (2) when the transaction is executed.

394. The record keeping obligation is not limited to keeping copies of the identification documents. It also extends to the documents that permit the reconstitution of individual transactions. Data such as beneficiary, address, currency or amounts involved are the features that define the transaction and allow reconstructing the trail in case it originated in previous transactions. Additionally, probative value of the records kept is required so that they can be used in judicial proceedings if necessary.

395. For the purposes of Recommendation 10, SEPBLAC is the competent domestic authority responsible for collecting financial information needed for investigation purposes. Therefore law enforcement authorities must address their requests to SEPBLAC, which then directly liaises with financial institutions. Spain has no explicit requirement that all customer transaction records and information be available on a timely basis to SEPBLAC (except the more general provisions on the reporting parties' duty to co-operate with SEPBLAC). To the knowledge of the assessors, SEPBLAC does not face difficulties in obtaining financial information from financial institutions in a timely manner. The Law and the Royal Decree are also silent on the way financial institutions should store relevant information, especially on the manner that would permit efficient follow-up of the documentation. This is left to individual corporate decision. The evaluation team did not get specific information on how financial institutions store their data nor on how they secure them and make all transactions easily traceable. In its inspections, SEPBLAC regularly imposes fines for breaching the record keeping requirements.

396. *Special Recommendation VII.* At the time of the on site visit, in most respects, SR VII was not implemented. Article 3.6 (*Identification of clients*) and Article 5 2d of RD 925/1995 (*Special examination of certain transactions*) only entered into force on 22 January 2006.

397. The Bank of Spain adopted a new regulation to monitor wire transfers in Spain. The "Instruction of the National Electronic Clearing System SNCE/A/03/724" (Instruction 03/724), amending Instruction SNCE/A/03/55 (Instruction 03/55) came into force on 4 April 2006. Instruction 03/55, still in force, regulates the general technical and operational aspects of the Wire Transfer

System of the National Electronic Clearing System⁴⁷. The modifications introduced by Instruction 03/724 were adopted in order to improve the identification system, by implementing a Single Reference code for all the Wire Transfers exchanged through the National Electronic Clearing System⁴⁸.

398. Each wire transfer exchanged through the National Electronic Clearing System, regulated by Instruction 03/55, must have a Single Reference code that will identify it, by ordering institution, in a univocal and unmistakable manner, given that each code is assigned exclusively to a particular transfer order. The Single Reference system is intended to enable a faster and simpler identification and to guarantee the possibility of tracking back any transfer exchanged through the system. The Single Reference is created following the specifications provided in Annex 1 of the Instruction 03/724.

399. With regard to the information to be obtained and maintained in the wire transfer, Article 3.6 of the Royal Decree refers to “identification data” as (1) the name and surname of the natural person or the name of the legal person; (2) the number of the corresponding national identity document, residence card, passport, tax identification number or foreigners’ identification number and (3) the number of account from which the transfer is carried out. In both domestic and cross-border wire transfers, the address of the originator (as referred to in Instruction 03/5) has been replaced by an identifier (ID card or equivalent for non nationals), for security reasons, following the advice of the Spanish police and based on experiences related to combating terrorism. The regulation applied to both permanent and occasional customers. Article 3 must be read in relation to Article 3.5 that requires financial institutions to procure (and verify) information provided on the nature of the business or professional activity when performing account based transfers.

400. As regards to wire transfers, the Spanish law does not distinguish between occasional and permanent customers, both being identified regardless of any threshold or exemption. The verification of the identity of occasional customers of wire transfers is performed through the general rules set out in RD 925/1995.

401. If the customer does not make the payment order in person, Article 3.6 covers two cases:

- For the transfers where the funds are paid by using a current account: the person to be identified will always be the account holder.
- For the transfers where the funds are paid in cash. In this case, Article 3.6 of RD 925/1995 sets out that “the originator shall be deemed to be the holder or holders of the account or, where no account exists, the natural or legal person ordering the transfer” (see definition of originator given in article 2.e of Revised Interpretative Note to SR VII).

402. For domestic wire transfers, the ordering financial institution is required to record the identification data of the originator and, where appropriate, of the person on whose behalf the originator is acting. This information must be *immediately* made available to the beneficiary financial

⁴⁷ Annex 1 of Instruction 03/55 regulates the identification information that shall be included by the ordering institution when exchanging any wire transfer through the National Electronic Clearing System: (1) the name of the originator; (2) the address of the originator; (3) the name of the beneficiary; (4) the address of the beneficiary and (5) the account number of the beneficiary. The above referred information remains with the transfer order throughout the entire payment chain.

⁴⁸ The Single Reference code is created following the specifications provided in Annex 1 of Instruction 03/724. It comprises 12 characters, obtained from the following data related to the transfer: (1) last digit of the year in which the transfer is issued (1 character); (2) number of the Julian day in which the transfer is issued (3 characters); (3) number of the transfer order (7 characters, that can not be repeated by the same ordering institution and day) and (4) Control Digit of the Whole (1 character). For instance, for a wire transfer ordered on April 10, 2006, the Single Reference would look the following way: 610150011690, being the first number the last digit of the year, the next three numbers the Julian day, the next seven numbers the number of the transfer order, and the last number, the Control Digit of the Whole.

institution upon request. All transfers necessarily include a unique identifier to settle the payment (see Instructions 03/55 and 03/724).

403. For cross-border wire transfers, the ordering financial institution is required to include, and where appropriate (in the case of an intermediary financial institution exists in the payment chain) maintain the identification data in the message accompanying the wire transfer.

404. Transfers exchanged in batch files in Spain are subject to the same requirements as individual transfers. Therefore, Instructions 03/55 and 03/724 are fully applicable to each individual transfer exchanged through the system in a batch file. In fact, when a credit institution needs, for obvious operational reasons, to bundle up several transfers in a batch file for transmission to the beneficiaries, each transfer order from the batch file carries exactly the same information that it would carry if exchanged as an individual transfer. The batch file is just the format used to send several transfers from the same originator and has no impact on the amount or the quality of the information carried out by each transfer of the batch file. In other words, the batch file contains individual transfers, each of them carrying the identification information provided in Annex 1 of Instruction 03/55 and the Single Reference code introduced by Instruction 03/724. This information, of course, remains with each individual transfer of the batch file throughout the entire payment chain.

405. For wire transfers, no threshold is applicable in Spain.

406. Article 5.2. d) of RD 925/1995 requires financial institutions to pay special attention to certain transactions, including those which are not accompanied by complete originator information. If the wire transfer is deemed to be suspicious, it must be reported to SEPBLAC (Article 5.3 of the Royal Decree). Article 11 of the same Royal Decree requires financial institutions to adopt adequate internal control measures to monitor activities potentially linked to money laundering. Finally, Instruction 03/55 identifies cases where a transfer order may be refused by financial institutions, especially in case of incomplete data accompanying the transfer. Therefore, financial institutions that receive an incomplete transfer order may refuse it on these grounds.

407. Since the provisions related to wire transfers and specific obligations under SR VII have only been in force since January 2006, proper monitoring of compliance (and possibly some sanctions) of financial institutions with these rules has not started yet. The evaluation team expresses some concern on the capacity of establishing a proper monitoring in the current supervision context (see comments in Section 3.10 of the Report).

408. The obligations under Article 3.6 of the Royal Decree on wire transfers are covered by the general enforcement powers and sanctions under Chapter II of Law 19/1993 and Chapter III of RD 925/1995. The sanctions regime has not been implemented yet since the provisions have only been in force since January 2006.

409. *Statistics.* SEPBLAC maintains statistics on the number of STRs filed on cross-border wire transfers:

	2004	2005
Cross-border wire transfers related to tax havens	147	186
Other cross-border wire transfers	1,267	874
TOTAL	1,414	1,060

3.5.2 Recommendations and Comments

410. *Recommendation 10.* Spain is compliant with the requirements of Recommendation 10.

411. *Special recommendation VII.* Requirements in RD 925/1995 related to wire transfers entered into force in January 2006. The team believe that they are in line with the requirements set out in SR VII. However, the implementation and effectiveness of implementation of these new requirements could not be assessed by the evaluation team. Finally, the effectiveness of the monitoring of compliance with SR VII is linked to the overall effectiveness of Spain's supervision of financial institutions for AML/CFT and some doubts remain in this area (see Section 3.10 of the Report).

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	C	Recommendation 10 is fully met.
SR VII	LC	<ul style="list-style-type: none"> ▪ Due to the recent adoption of relevant requirements in the Spanish legal framework, the implementation and effectiveness of implementation of these new requirements could not be assessed by the evaluation team; ▪ The evaluation team expressed some concern on Spain's capacity to establish – under the current AML/CFT supervision regime – a proper monitoring of compliance of financial institutions with the new requirements.

Unusual, Suspicious and other Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

412. *Recommendation 11.* Article 3.2 of Law 19/1993 sets out that the general rule that reporting entities should examine with special attention any transaction, irrespective of its amount, which by its nature, may be particularly linked to the laundering of proceeds. In particular, reporting parties must closely examine any complex or atypical operations or those which have no apparent economic or licit purpose, committing to writing the results of such examination. Article 5 of RD 925/1995 sets out that internal procedures of each reporting party must specify which operations should be considered complex, unusual or lacking an economic or licit purpose. Internal control procedures should specify the way in which the obligation to conduct a special examination is to be fulfilled. Such specifications should include the preparation and dissemination among executives and employees of a list of transactions particularly liable to be linked to money laundering, which should be regularly updated, and the use of appropriate IT tools to conduct each analysis, taking into account the type of transaction, business sector, geographical scope and quantity of the information.

413. Examples of circumstances that may trigger obligation to perform a special examination are as follows (Article 5.2 of the Royal Decree):

- When the nature or volume of a client's loan or deposit transactions does not match with his business activities or transactional history.
- When a given account, without valid reason, is being credited with cash sums by a large number of persons or with multiple cash sums by a single person.
- Movements with their origin or destination in accounts held in the countries or territories referred to in article 7.2.b.
- Transfers received or handled which do not state the identity of the ordering party or the number of the account originating the transaction.

414. The effective implementation of monitoring requirements was reviewed by the assessment team in its discussions with representatives of the private sector and in particular the banking sector. These discussions indicated that banks have policies and procedures in place to adequately identify transactions that trigger special examination. With respect to enforcement, the prudential supervision

of the financial sector generally includes reviews of AML/CFT processes implemented by the sector, and the team was satisfied that there is adequate oversight by these regulators of internal systems to ensure that the sector complies with the requirement to identify and apply enhanced due diligence on these transactions.

415. In any case, if the examination of the transactions yields evidence or certainty of the existence of money laundering, the circumstances must be reported immediately to SEPBLAC. To facilitate the practical implementation of this provision (especially by small obliged entities) a set of Guidance texts was issued by the Commission, where concrete types of potential risk transactions are offered to the different sectors (see Section 3.2 of the Report on ongoing due diligence).

416. Reporting parties are required to keep the results of their examination in writing. No period for keeping this written material is established specifically. Therefore, the general rule of a six-year period in Article 6 of the Royal Decree applies.

417. *Recommendation 21.* The general principle is that transactions conducted by a reporting entity from / to a country where AML/CFT standards are known to be substantially weak pose a relevant risk that must be taken into account. To this end, a specific list of countries where secrecy rules affecting tax and other issues has been adopted in Spain. Despite the “political cost” of keeping this public list, Spanish authorities believe that it reduces the room for interpretation and facilitates the uniform application by reporting parties. Article 5.2c of RD 925/1995 calls for special examination of certain transactions, including the movements of funds to or from accounts (including wire transfers) held in countries and territories determined by the Minister for Economic and Financial Affairs (this provision is in force from 22 January 2006). RD 1080/1991 of 5 July of the Ministry of Economy and Finance identifies the countries or territories that can be considered tax havens. Those countries listed by the FATF during the NCCT process that were not included in the annex of RD 1080/1991 were added to the list through a Ministerial Order (ECO/2652/2002 of 24 October).

418. According to Article 7.2.b of RD 925/1995, all transactions above 30,000 EUR are subject to a reporting obligation to SEPBLAC on a monthly basis (systematic reporting). This obligation does not require that there be a suspicion or any indications of ML or TF. It is purely automatic; whenever the transaction occurs it must be included in the monthly report to SEPBLAC. This obligation applies to transactions of or with natural or legal persons resident, or acting for residents in the countries or territories determined by order of the Minister for Economic and Financial Affairs, as well as transactions involving the transfer of funds to or from such countries or territories, whatever the country of residence of the intervening parties, whenever the amount of such transactions exceeds 30,000 EUR or the equivalent in foreign currency. Rules to prevent structuring of the transactions apply in this context (Article 7.2 of the Royal Decree). As an exemption (Article 7.3 of the Royal Decree), reporting parties may decide not to include a transaction in the systematic reporting when they are completely sure about the legitimacy and source of funds of the client. The justification of such decision must be kept in writing. Financial institutions are advised of concerns about weaknesses in the AML/CFT systems in other countries via the Commission for the Prevention of Money Laundering members. Financial institutions are also obliged to report problems in applying the Spanish AML/CFT standards by their subsidiaries or branches abroad. SEPBLAC will inform the Commission for the Prevention of Money Laundering on the concrete problems preventing Spanish financial institutions from applying equivalent standards to Spanish ones. Through this mechanism a fluid flow of information between the Commission for the Prevention of Money Laundering and the financial institutions is ensured in order to identify and follow the AML/CFT situations in jurisdictions of particular concern.

419. Non face-to-face establishment of business relation is not allowed when the first deposit in the account comes from one of the listed jurisdictions. Therefore, traditional face-to-face identification procedures must be followed, according to Article 3.7 of RD 925/1995.

420. As stated above, three types of measures are applied to these transactions: (1) inclusion of transactions in the systematic monthly reporting to SEPBLAC, (2) performance of special analysis of transactions and (3) limitation of the use of funds to face-to-face business relations. Other complementary measures can also be applied. Whenever the FATF has decided to adopt counter-measures with regard to an NCCT jurisdiction, complementary measures are put in place. In particular, several additional countermeasures were adopted in the area of

- Advising sectors to enhance the customer identification diligence with clients / transactions coming /sending to these jurisdictions.
- Taking into account the origin of the funds or the founders when incorporating a financial institution in Spain.
- Advising the sector of the additional risks that transactions with these jurisdictions may involve.

3.6.2 Recommendations and Comments

421. Recommendations 10 and 21 are fully observed.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	C	Recommendation 11 is fully met.
R. 21	C	Recommendation 21 is fully met.

3.7 Suspicious transaction and other reporting (R.13-14, 19, 25 & SR IV)

3.7.1 Description and Analysis

422. *Recommendation 13 and Special Recommendation IV.* According to Article 3.4 a of Law 19/1993 and Article 7 of RD 925/1995, reporting entities are required to report to SEPBLAC in two different circumstances:

- Reports of individual transactions considered “suspicious” (Article 7.1. of RD 925/1995), on the basis of presumption (*indicio*) or proof (*certeza*) of laundering in relation to activities covered by Article 1 of the Royal Decree (laundering of proceeds of any illicit activity punishable by a minimum of three years imprisonment) and irrespective of the nature or amount of the transaction. The reporting requirement also extend to situations (1) when the nature or volume of customer transactions does not match their activity or prior business profile and (2) when the special examination specified in Article 5 reveals no economic, professional or business justification for the transaction in question.;
- Systematic reporting of unusual transactions, (Article 7.2 of RD 925/1995): financial institutions must report on a monthly basis (1) transactions involving physical movements of cash, travellers’ cheques, cheques or other bearer instruments drawn on credit institutions—except those being credited to or debited from a customer account—and exceeding 30,000 EUR (above 3,000 EUR in the case of foreign exchange and money remittance entities others than credit institutions), and (2) transactions with or from natural or legal persons established in countries or territories that are considered tax havens under RD 1080/1991 if the amount of such transactions exceeds 30,000 EUR or countries designated as NCCT by the FATF.

423. Exceptionally, reporting entities may be released from the obligation of systematic reporting in the case of regular clients where the entity is sufficiently aware of the legality of the client’s activities

(Article 7.3 of the Royal Decree). In such cases, the list of exempted clients must be approved by the internal control unit based on written justification.

424. The reporting obligation applies to the laundering of proceeds of all types of illicit activity that are punishable by a minimum of three years imprisonment (see description and analysis in relation to Recommendation 1). The reporting obligation therefore applies to transactions suspected of being related to terrorism or terrorist financing as defined in Article 575 PC and the following (see Section 2.2 of the Report).

425. Law 12/2003 dated 21 May on prevention and freezing of terrorist financing reaffirms the obligation of reporting suspicious activities. Public administrations, credit institutions, insurers, investment services firms, collective investment schemes and their management companies, foreign exchange establishments, issuers of electronic money, pension fund managers, and other entities and persons referred to in Article 2 of Law 19/1993 are obliged to collaborate with the Terrorist Finance Watchdog Commission and, in particular, to undertake the necessary measures in order to make the freezing envisaged in Article 1 effective. In particular, they must examine closely any operation that, because of its amount or nature, may be particularly related to the financing of terrorist activities and notify the Watchdog Commission, at their own initiative, of any event or operation showing rational signs of being related to the financing of terrorist activities. They must also notify the Commission of any request they receive in which the principal, issuer, owner, beneficiary or addressee is a person or entity related to terrorist organisations or showing rational signs that they are related to such an organisation or with regard to which the Watchdog Commission has adopted any measure. The Watchdog Commission has met a few times since autumn 2003 (twice in 2003, three times in 2004 and once in 2005). In July 2005, SEPBLAC was asked to prepare a report on the STRs made in relation to terrorist financing. No additional information was provided to the evaluation team.

426. To facilitate the processing and use of the information, the suspicious transactions reporting must be carried out using the support and the format (electronic) specified by SEPBLAC. All necessary steps must be taken to ensure the privacy of personal data, in accordance with Article 9 of Organic Law 15/1999 of 13 December on the Protection of Personal Data. Suspicious Transactions Reports should contain the following information (Article 7.4 of the Royal Decree):

- List and identification data of the natural or legal person(s) taking part in the transaction and the nature of their participation.
- The activity normally carried out by the natural and legal persons engaged in the suspicious transaction and the correspondence between both activities (entered into force in April 2005).
- A list of transactions and their dates stating their nature, the currency used, the amounts and countries involved, their purpose and the means of payment used.
- The steps taken by the reporting party to investigate the transaction being reported (entered into force in April 2005).
- A statement of all the circumstances of whatever kind giving rise to the suspicion or certainty of a link with a money laundering operation or evidencing the lack of economic, professional or business justification for the activities carried out (entered into force in April 2005).
- Any other data of interest for SEPBLAC.

427. The AML/CFT reporting obligations apply to all transactions regardless of the amount (Article 3.2 of Law 19/1993). As an indirect obligation, attempted transactions should be subject to the reporting obligation since STRs should be carried out before the transaction takes place (Article 9 of the Royal Decree). Article 7.1 of the Royal Decree ("*Reporting of transactions to SEPBLAC*") requires reporting entities to report an "event or transaction" that is potentially linked to money laundering. The notion of "event" is not defined in the regulation. The requirement to report attempted transactions should be a direct one. A proposal for a transaction, or negotiations for a transaction for instance are situations that are not explicitly covered by Article 9 of the Royal Decree but fall under Recommendation 13 (see Criterion 13.3 of the Methodology). It seems that in 2004 and 2005 SEPBLAC received at least 40 STRs based on attempted transactions.

428. Article 1 of Law 19/1993 includes as a predicate offence all type of illicit participation in offences punishable by a minimum of three year imprisonment. According to Articles 301 and 305 of Spanish Penal Code, tax offences are considered as an underlying offence, as they may involve imprisonment up to four years.

429. The following chart indicates the number of STRs received by SEPBLAC, broken down by source:

Party Reporting	2001	2002	2003	2004	Variation 2004/2001
Private Concerns	989	1.259	1.521	2.296	132,15%
Public Bodies	24	60	54	75	212,50%
Notaries & Registrars	6	12	6	9	50,00%
Executive Service (Alerts)	30	9	12	25	-16,67%
Other Origins	15	11	5	9	-40,00%
TOTAL	1.064	1.351	1.598	2.414	126,88%

430. The following chart indicates the number of STRs received sent by private entities to SEPBLAC:

Private entities reporting	2001	2002	2003	2004	Variation 2004/2001
Banks	604	637	751	968	60,26%
Savings banks	296	472	439	711	140,20%
Lending Co-operatives	11	29	36	101	818,18%
Branches of EU lending institutions	7	17	20	17	142,86%
Branches of non EU lending institutions	4	2	2	2	-50,00%
Credit financing institutions	-	-	1	3	-
Insurance companies	7	3	4	1	-85,71%
Money Exchanging firms	21	28	199	330	1471,43%
Wire Transfers firms	13	61	61	145	1015,38%
Stock brokers and intermediaries	24	4	4	6	-75,00%
Credit card issuing companies	1	4	3	3	200,00%
Real estate promoters	1	1	0	8	700,00%
Gambling casinos	0	1	1	1	-
TOTAL	989	1259	1521	2.296	132,15%

431. In 2003 and 2004, STRs were sent by the following number of financial institutions:

Financial institutions	Number of entities reporting		Approximate total number of entities	
	2003	2004	2004	% reporting
Banks	21	28	76	37%
Savings banks	36	38	47	81%
Credit co-operatives	6	12	-	-
Branches of European credit institutions	7	8	50	16%
Branches of non-European credit institutions	1	2	9	22%
Credit finance institutions	1	3	-	-
Insurance companies	4	1	174	0.5%
Bureaux de change	13	21	41	51%
Funds transfers companies	1	1	1	100%

Stock brokers	1	3	108	3%
Credit card issuers	1	1	6	17%
TOTAL	92	118	-	-

432. The following chart sets out statistics on monthly systematic reporting:

Transaction	2001		2002		2003		2004	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount
Report of transactions above 30.000 € in cash or monetary instruments which produces no entry in the account of the client	30.240	2.504,95	38.503	3.816,53	52.068	4.384,30	62.122	5.183,76
Report of transactions above 30.000 € to/from accounts jurisdictions of concern	22.253	6.327,74	33.151	10.954,27	40.820	13.091,86	51.292	20.556,38

(1) Amounts in millions of euros

433. The number of transactions subject to obligatory monthly reporting increased in 2004 by 13.56% to reach a total of 334,452 transactions. Reporting by banks grew by 14.39%, while that by the savings banks rose by 11.27%. Bureaux de change reported 45,105 transactions, an increase of 28.70% compared to the number of transactions reported the previous year. Money transfer companies reported 56,164 transactions, 16.87% more than in 2003. The 334,452 transactions reported during monthly reporting were reported by 207 different regulated institutions. Broken down in terms of institution type, banks and savings banks reported most of these transactions (43 banks and 43 savings banks), followed by 28 bureaux de change, 25 credit co-operatives, 19 insurance companies and 16 stock brokerage firms.

434. The following charts sets out the type of predicate offences comprising the STRs received:

Offences	2001	2002	2003	2004	2005*
Generic money laundering	9	29	204	291	161
Smuggling	1	5	26	28	8
Corruption	0	1	3	9	1
Organised crime	5	21	66	37	36
Patrimonial common offences	0	2	6	15	9
Fraud, embezzlement, falsehood	11	40	214	407	120
Administrative infractions	0	0	2	4	3
Tax offences	6	43	251	274	125
Prostitution	0	0	20	14	2
Terrorism	1	6	47	109	57
Trafficking in human beings	0	1	16	11	3
Narcotics trafficking	8	73	191	216	120
Illicit car trafficking	0	1	5	13	4
Others	49	69	417	412	65
Not determined	55	91	368	649	264
Total	145	382	1,836	2,489	978

* As of 30 June 2005.

435. In relation to the financing of terrorism, SEPBLAC provided the following data:

Related to international lists of terrorists	2003	2004	2005	TOTAL
STR received	28	40	15	83
Related to terrorist financing	2003	2004	2005	TOTAL
STRs received	28	43	74	145

436. In general, there are some concerns about the effectiveness of the reporting system. Although the legal framework appears generally adequate, the evaluation team has some concerns about the low numbers of STRs, especially outside the banking system. SEPBLAC expects this number to go down considering that efforts on the prevention side should lead to smaller number of reports. SEPBLAC also believes that this number is satisfactory, linking this figure to the number of reports done through the systematic reporting. This may suggest that STRs are considered by SEPBLAC s primarily focused on placement transactions. SEPBLAC was not able to provide an analysis of STRs filed, broken down by the placement/layering/integration stages. Moreover, relying on the prevention efforts seems difficult to accept due to the serious weaknesses identified in the supervision area (see Section 3.10 of the Report).

437. *Recommendation 14.* The protection of financial institutions and their staff for breach of any restriction on disclosure of information when reporting suspicious transactions is covered by Article 4 of Law 19/1993 and Article 15 of RD 925/1995 stating that the reporting in good faith of the information envisaged in articles 7 (*Reporting of transactions to the Executive Service*) and 8 (*Provision of the information required by the Executive Service*) by reporting entities or, exceptionally, by their managers or employees does not constitute a breach of the restrictions on disclosure of information imposed by contract or by any legislative or regulatory provision, and should not result in any liability to the aforesaid persons.

438. Article 3.6 of Law 19/1993 includes, among the obligations of reporting parties, the prohibition on disclosing either to the customer or to third persons that information has been transmitted to SEPBLAC or that a transaction is being investigated because of its potential link with money laundering (see also Article 10 of the Royal Decree).

439. *Additional element.* Article 11.4 of RD 925/1995, regarding internal control measures, points out that the control and reporting units must take the appropriate steps to conceal the identity of the employees or managers carrying out STRs. In any case, the guarantee that the names and personal details of staff of financial institutions that make a STR are kept confidential by the FIU may be deduced from other parts of the regulation. Therefore, the amended Article 7.2 of RD 925/1995 stipulates that, to facilitate the processing and use of the information, the reporting of transactions must be carried out on the support and in the format specified by SEPBLAC. Further, all necessary steps are to be taken to ensure the privacy of personal data, in accordance with article 9 of Organic Law 15/1999 of 13 December on the Protection of Personal Data. In addition, paragraph 2 of Article 2.2 of RD 925/1995 stipulates that the representative of the reporting party shall be called upon to appear in all kinds of administrative or legal proceedings with regard to the data provided in reports to SEPBLAC or any supplementary information referring thereto, when it is deemed essential to obtain clarification, confirmation or additional information from the reporting party and not just from SEPBLAC or other official sources.

440. *Recommendation 25 - guidance related to the reporting obligation.* One of the principal objectives (Objective 1) of the AML Strategy approved by the Commission for the Prevention of Money Laundering is to give “support to reporting entities in the implementation and improvement of the AML tools”. Several strategies have been put in place to fulfil this objective. One of them (Strategy 1.1) is “to establish a regular discussion platform” made up of SEPBLAC, financial regulators and the institutions. Action 1.1.1 within this strategy is focused on “exchanging experiences

on STRs and developments; looking in general terms at the reporting trends”. In July 2005, the Telematic Communications system to facilitate the electronic exchange of information between SEPBLAC and credit institutions came into operation. The system facilitates the sending and receiving of STRs and information requests, as well as automating the processes for loading and storing the data received in the SEPBLAC databases. In order to improve the quality of the information contained in the forms, it is validated following the guidelines laid down by SEPBLAC. SEPBLAC has also developed guidelines for asset tracking requests and for responses relating to potential TF funds (Forms F27, F27_fax and F27_R).

441. *Recommendation 25 - feedback related to the reporting obligation.* SEPBLAC publishes an Annual Report of Activities that covers all the aspects of the obligations to be fulfilled by the reporting parties. It publishes examples of cases analysed by the FIU and includes studies and other documents analysing various sectors, businesses or geographical regions from the perspective of the risk of being used for money laundering purposes (in the equity markets for instance in 2004). SEPBLAC also has a website (www.seplac.es) on which it publishes statistics and other information to encourage and support fulfilment of the obligations of the subject parties.

442. For more specific feedback, SEPBLAC acknowledges receipt of all suspicious transaction reports and systematic reporting sent by the reporting parties. Guidelines with specific examples and indicators of risk activity have also been developed to allow each sector to have direct and actual feedback from Watchdog Commission members (regulators, supervisors, Police, SEPBLAC, etc.) on real cases and examples. Financial institutions are generally not informed about the outcome of the STRs that have been sent to SEPBLAC.

443. In 2002, a procedure was implemented to measure the quality of suspicious transaction reports received by SEPBLAC and help providing useful feedback to the reporting parties. The steps taken to set up this procedure were as follows:

- To distribute a pre-defined form among the subject parties and recommend that they use it. The form is called “Suspicious Transaction Report”.
- Analysis of the suspicious transaction reports of money laundering received by SEPBLAC and checking whether they match the content determined by the Regulations of Law 19/1993. The form “Assessment of the Content of the Suspicious Transaction Reports” is used.
- Preparation of an individual summary report (per company) with the result of assessment of the reports on transactions received and SEPBLAC. The form used is “Individual Summary Report on the Quality of the Suspicious Transaction Reports”.
- Preparation of a general summary report (all the companies) with the result of the evaluation of the suspicious transaction reports received by SEPBLAC. The form used is the “General Summary Report on the Quality of the Suspicious Transaction Reports”.

444. The results of this procedure are as follows

	2003		2004	
	Reports	%	Reports	%
Very good	71	4,71%	45	1,98%
Good	1070	71,05%	1740	76,69%
Regular	287	19,06%	320	14,10%
Deficient	13	0,86%	10	0,44%
Unclassified	65	4,32%	154	6,79%
TOTAL	1506	100,00%	2269	100,00%

445. SEPBLAC regularly organises technical assistance meetings with reporting parties where issues of feedback and exchange of information are raised as follows:

Entities	Number of meetings			
	2001	2002	2003	2004
	104			
Banks	3	6	7	17
Savings banks	4	3	8	22
Lending co-operatives	-	-	1	2
Money Exchange and wire-transfer management	5	2	6	6

446. *Recommendation 19.* Systematic reporting covering cash transactions above 30,000 EUR is in place, according to Article 7.2 of RD 925/1995. For money remittance and foreign exchange entities others than credit institutions, this threshold is reduced to 3,000 EUR (see general description above).

447. *Additional elements.* The information obtained from systematic reporting is sent in a standardised format following the technical parameters established by SEPBLAC. This allows the transactions to be directly integrated into the SEPBLAC systems and be adequately processed. The confidentiality provisions regarding the Commission for the Prevention of Money Laundering and its services (Article 26 of RD 925/1995) are fully applicable to the processing of this information.

3.7.2 Recommendations and Comments

448. *Recommendation 13.* Attempted transactions should be clearly and directly subject to the reporting obligation. Competent supervisors should ensure that banks and non-bank financial institutions comply with their reporting obligations.

449. *Recommendations 14 and 19.* Spain is fully compliant with Recommendations 14 and 19.

450. *Recommendation 25 – feedback and guidance on STRs.* SEPBLAC provides reporting parties with specific reporting forms, but little other guidance or practical assistance is available concerning the manner of reporting or the procedures that should be followed when reporting. The existing guidance is supplemented by information given on an ongoing basis in a dialogue among financial sector representatives, the FIU and other bodies. There is a need for more specific and systematic feedback to reporting entities especially the status of STRs and the outcome of specific cases.

3.7.3 Compliance with Recommendations 13, 14, 19, 25 & Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	LC	<ul style="list-style-type: none"> ▪ Attempted transactions are not directly subject to the reporting obligation. ▪ There are some concerns about the effectiveness of the reporting system. Although the legal framework appears generally adequate, the evaluation team expresses some concerns about the relative low numbers of STRs, especially outside the banking system and the fact that a large number of STRs were filed by a small number of financial institutions. It also seems that SEPBLAC relies too much on prevention efforts to ensure a proper implementation of the reporting obligation in the absence of fully adequate supervision in the AML/CFT area. ▪ Because the scope of the Spanish ML offences is not quite broad enough, there is a corresponding negative impact on the scope of the reporting obligation. ▪ Because the scope of the Spanish TF offences is not quite broad enough, there is a corresponding negative impact on the scope of the reporting obligation.
R. 14	C	Recommendation 14 is fully met.
R. 19	C	Recommendation 19 is fully met.

	Rating	Summary of factors underlying rating
R. 25	PC ⁴⁹	<ul style="list-style-type: none"> ▪ There is a need for more specific, timely and systematic feedback to reporting entities especially the status of STRs and the outcome of specific cases.
SR IV	LC	<ul style="list-style-type: none"> ▪ Attempted transactions are not directly subject to the reporting obligation. ▪ Because the scope of the Spanish TF offences is not quite broad enough, there is a corresponding negative impact on the scope of the reporting obligation. ▪ There are some concerns about the effectiveness of the reporting system.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

451. *Recommendation 15 – Internal procedures.* A substantial part of the Law and Royal Decree is focused on describing the nature, aim and structure of the internal measures and units that financial institutions should put in place to prevent ML/FT. Article 3.7 of Law 19/1993 sets out the obligation to establish adequate structures and procedures for internal control and communication in order to forestall and prevent operations related to money laundering. In particular, reporting parties must draw up an explicit policy of client admission. A number of sections of Article 11 of RD 925/1995 refer to the internal control measures that reporting parties must introduce.

452. A basic, initial difference is established regarding the size of the obliged entity and the resources it must use in the prevention of ML-FT, according to Article 11.2 of RD 925/1995:

- *Non-legal persons with more than a 25 employees and legal persons:* A specific AML/CFT unit must be established following the parameters and characteristics of Articles 11 and 12;
- *Non-legal persons with fewer than 25 employees:* There is no need to create a specific unit, and the obligations can be performed by the owner himself. When reporting parties are establishments or sole proprietorships with no more than 25 employees, the owner of the business exercises the internal control and reporting functions stated in the preceding section.”

453. For legal persons, establishments or sole proprietorships employing over 25 persons, internal procedures and units may be set up at group level, and, in such cases, there must be lines of communication for this purpose with subsidiaries, including those located abroad, or institutions within the same group. The aforementioned procedures and units are deemed to be acceptable when their organisation meets the requirements of speed, security, efficiency and co-ordination as regards both internal transmission and the analysis of and communication to SEPBLAC of information as required by anti-money laundering legislation. Internal reporting procedures must be established whereby an employee who becomes suspicious of a transaction can report the suspicion to his/her superiors and the reporting financial institution’s specially designated AML officer.

454. Financial institutions must have an internal unit in place from the time that are authorised to conduct business. A relevant part of the authorisation process is to verify the adequacy of the internal unit and measures in place to deal with AML/CFT risks, according to Final Provisions (First to Eight) of RD 925/1995. To this end, a report by SEPBLAC in which the unit and the internal procedures in place are assessed must be delivered during the process of authorising a financial institution.

455. Article 12 of RD 925/1995 describes the nature, features and composition of the internal unit that reporting entities must establish. The internal control and reporting units have the responsibility of analysing, verifying and communicating to SEPBLAC all information relating to transactions or acts

⁴⁹ This is an overall rating for compliance with Recommendation 25, based on the assessments in Sections 3.7 and 4.3 of the Report.

likely to be connected with money laundering, using the procedures laid down in Articles 11 and 13. To this end, reporting entities must take the necessary steps to ensure that the unit or units in question have the human, material, technical and organisational resources to adequately perform their duties. To ensure a permanent connection with SEPBLAC and representation of the entity in AML-CFT issues, each unit must be headed by a representative of the reporting party with SEPBLAC, who is responsible for communicating to the latter the information referred to in Articles 7 and 8, and receiving requests and notices from it. The representative of the reporting party should appear in all kinds of administrative or legal proceedings with regard to the data provided in reports to SEPBLAC or any supplementary information referring thereto, when it is deemed essential to obtain clarification, confirmation or additional information from the reporting party and not just from SEPBLAC or other official sources.

456. The compliance officer as described in Article 12 must be appointed by the management body in the case of legal persons, establishments or sole proprietorships with more than 25 employees. He must exhibit a professional conduct which ideally qualifies them to exercise such functions and possess the right knowledge and experience to exercise the functions referred to above. In smaller legal entities, the compliance officer should be the business owner or an employee. The names of the proposed representatives must be notified to SEPBLAC which may raise reasoned objections or observations when it considers they do not meet the conditions referred to in the Royal Decree.

457. *Independent audit function.* Reporting parties must provide SEPBLAC with full information on the structure and operation of their control and reporting units and of the procedures in place for their correct supervision. The suitability of such procedures and units must be verified by SEPBLAC, which may propose corrective measures and likewise issue instructions to reporting parties for their improvement or adaptation. Any changes in the structure and operation of these units or procedures must likewise be examined by SEPBLAC.

458. In order for the reporting entity to fulfil the obligation of monitoring and performing special analysis (Article 5 of RD 925/1995), full and complete access to all databases available within the entity is absolutely necessary. Restrictions of access to any data would imply restrictions in performing the analysis, and the duty would not be adequately fulfilled. The AML officer/unit should therefore have full access to all mentioned data and information. There is no provision setting out that the audit function must possess sufficient resources for its duties and that its staff should have sound knowledge of the financial institution's risks and the regulations applicable to financial institutions, as well as particular expertise in auditing and evaluating the development, operation and management of the financial institution's information systems.

459. Article 11.6 (third paragraph) of RD 925/1995 sets out that the internal unit must be structurally different from the audit department. This measure is intended to ensure that the audit department performs the audit of the AML/CFT unit, since internal control and reporting units must in any case operate separately from the institution's internal audit department or unit in both functional and organisational terms. An external, independent audit by an outside expert must be conducted once a year on every financial institution. The results of this audit must be written up in a confidential report which details the internal control measures in place, assesses their operational efficiency and proposes changes or improvements as required. This report must be available for consultation by SEPBLAC during a period of six years from the date of writing. Reporting parties must entrust external audits to persons having the right academic and professional profile to perform the task correctly. They may not entrust its conduct to any natural person who has rendered them any other kind of paid service in the three years prior to the report or rendering such service in the three years following its issue.

460. *Training.* Reporting financial institutions are required to establish special training programmes (Article 3.8 of Law 19/1993 and Article 14 of RD 925/1995) for employees and other relevant persons in order to comply with AML/CFT obligations. Additionally, employees and other persons performing AML/CFT tasks should participate in special training programmes that teach them to recognise transactions which may be related to ML and advise them on how to handle such cases.

461. *Screening procedures.* Based on the provisions of Article 2 of RD 1245/1995 of 14 July regulating the formation of banks, cross-border activity and other issues relating to the legal regime for credit institutions, shareholders with significant holdings and directors, managers or similar executives must undergo fit and proper screening procedures. In practice, there are no programs for screening employees other than those described above. There is no legal obligation for other financial institutions (other than credit institutions) to establish screening procedures to ensure high standards when hiring employees. Particular attention has been suggested by the Commission for the Prevention of Money Laundering on screening the behaviour of their employees, especially in sectors where entities are of a considerable size.

462. *Additional element.* The AML/CFT compliance officer must be directly appointed by the top management. SEPBLAC has the possibility of giving some orientation in the designation process.

463. There are some concerns about how effectively internal controls have been implemented. Among the number of recommendations issued by SEPBLAC in its supervisory functions, many of them generally relate to (1) internal organisation (21 in 2004); (2) personnel training (17 in 2004) and (3) internal auditing (17 in 2004). Due to the lack of a proper supervision in AML/CFT area, the evaluators have some concerns about the general level of implementation of proper internal procedures in Spanish financial institutions.

464. *Recommendation 22.* The Preamble of Law 19/1993 sets out that, taking into account the limitations that the principle of territoriality places on the effectiveness of provisions, the law requires Spanish institutions to establish adequate internal procedures for the prevention of the laundering of capital in their branches and subsidiaries abroad, and, at the same time, instructs the Spanish authorities particularly to seek the co-operation of the authorities of those States whose sovereignty extends to territories bordering on Spain. The First Additional Provision of Law 19/1993 stipulates that the Spanish institutions subject to this law must ensure that their branches and offices abroad have established adequate internal procedures to forestall and prevent operations related to the laundering of capital. If, exceptionally, the said local laws or regulations impede such procedures or make them ineffective, the Spanish financial institutions must inform SEPBLAC. Finally, global and uniform AML standards and policies are permitted for consolidated domestic or international groups, according to Article 11.1 of the RD 925/1995 (see above).

465. Current provisions require financial institutions to establish *adequate* internal procedures (not AML/CFT measures in general) applicable to branches and subsidiaries abroad. There is therefore no explicit obligation to ensure that branches and subsidiaries observe AML/CFT measures *consistent with Spanish requirements and the FATF Recommendations* to the extent that host country laws and regulation permits, although Spanish authorities stated that this is the way the text is understood. There is a requirement to pay particular attention to situations where branches and subsidiaries are based in countries that do not or insufficiently apply the FATF Recommendations in that financial institutions must report such cases to SEPBLAC as indicated above. Where the minimum AML/CFT requirements of the home and host countries differ, Spanish provisions do not explicitly require branches and subsidiaries of Spanish institutions located in those countries to apply the higher standard, to the extent that local (i.e. host country) laws and regulations permit. Rather, the requirement is to ensure that their branches and offices abroad have “established adequate internal procedures to forestall and prevent operations related to laundering capital.” The Bank of Spain indicated that in practice the requirements relating to foreign branches and subsidiaries of Spanish institutions are broadly interpreted to mean that such entities must as a minimum follow Spanish AML/CFT requirements if the host country requirements are lower. Thus Spanish institutions desiring to open a foreign branch have to report first to the Bank of Spain with their review of the local regulatory system and then to SEPBLAC if they find that local systems prevent them from complying with the Spanish AML/CFT system.

3.8.2 Recommendations and Comments

466. *Recommendation 15.* Reporting financial institutions (other than credit institutions) should be obliged to establish screening procedures to ensure high standards when hiring employees. Comparable procedures currently applicable to directors, managers or similar executives of credit institutions should be extended to other employees. Careful attention should be paid to the implementation of proper internal procedures by all financial institutions.

467. *Recommendation 22.* Spanish requirements regarding the foreign branches and subsidiaries of Spanish institutions do not appear to correspond in all facets to the FATF standard. The Bank of Spain authorities indicated that their broad interpretation of the requirements as stated in Law 19/1993 does indeed cover all of these requirements. They also provided a few examples of communication with Spanish institutions that could validate this interpretation. Nevertheless, the shortcomings described elsewhere on the ability of the supervisor to ensure fully the implementation of AML/CFT measures raise some concerns about the effectiveness in whether this broad interpretation is systematically applied. Spain should consider implementing a more direct obligation to require financial institutions to ensure that there is a clearer requirement for their foreign branches and subsidiaries to observe AML/CFT measures consistent with Spanish requirements and FATF Recommendations. It should also add provisions to clarify that in all cases the higher standards have to be applied in the event that the AML/CFT requirements of the home and host countries differ.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	LC	<ul style="list-style-type: none"> ▪ There is no legal obligation on reporting financial institutions (other than credit institutions to a certain extent) to establish screening procedures to ensure high standards when hiring employees. ▪ There are some concerns about how effectively internal controls have been implemented. Due to the lack of a proper supervision in AML/CFT area, the evaluators have some concerns about the general level of implementation of proper internal procedures in Spanish financial institutions.
R. 22	LC	<ul style="list-style-type: none"> ▪ There are concerns as to how effectively measures regarding foreign branches and subsidiaries of Spanish institutions have been implemented, in particular regarding the obligation to ensure that the measures implemented by foreign branches and subsidiaries are consistent with the Spanish requirements and FATF standards to the extent permitted by the host country.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

468. Title I of RD 1245/1995 of 14 July 1995 on the Formation of Banks, Cross-Border Activity and other Issues relating to the Legal Regime for Credit Institutions sets forth the legal regime for the formation of banks. Specifically, Article 2 of the regulation sets out the requirements to carry out banking activity, stating that an entity will be able to pursue banking activity if it has its registered office and its actual administration and management within Spanish territory.

469. There appears to be no specific legal provision prohibiting the financial institutions from entering into or continuing correspondent banking relationships with shell banks. Nor is there any obligation on financial institutions to determine whether or not a respondent financing institution in a foreign country permits its accounts to be used by shell banks. The existing guidelines to credit institutions in this area are not sufficient to meet the FATF requirements.

3.9.2 Recommendations and Comments

470. Spain should implement provisions with regard to a prohibition on financial institutions to enter into or continue correspondent banking relationship with shell banks. In addition, there should be an obligation on financial institutions to determine that a correspondent financial institution in a foreign country does not permit its accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	<ul style="list-style-type: none"> ▪ There is no legally binding prohibition on financial institutions on entering into or continuing correspondent banking relationships with shell banks; nor is there any obligation on financial institutions to satisfy themselves that a correspondent financial institution in a foreign country does not permit its accounts to be used by shell banks.

Regulation, supervision, guidance, monitoring and sanctions

3.10 Supervision and oversight

3.10.1 Description and Analysis

Authorities' roles and duties & Structure and resources - R.23, 30

471. *Recommendation 23 (Criterion 23.1)*. SEPBLAC is responsible for ensuring that all reporting financial institutions are in compliance with AML/CFT laws and regulations. The Bank of Spain, the National Securities Markets Commission (CNMV) and the Directorate General of Insurance and Pension Funds (DGFSP) exercise prudential supervision over their respective financial institutions, except for matters relating to AML/CFT. However, as discussed further below, the CNMV and the DGFSP currently include reviews of AML/CFT requirements in their supervisory programmes. The Bank of Spain applies the principles of safety and soundness to its core supervisory programmes which includes a limited element of reviewing AML/CFT compliance. The Bank of Spain, the CNMV and the DGFSP are each required to report to SEPBLAC when they detect possible breaches of AML/CFT obligations in the course of their regular supervisory duties (Article 16 of Law 19/1993)⁵⁰. The Bank of Spain (15 June 2005), the CNMV (18 June 2003) and the DGFSP (21 October 2004) have each signed MOUs with SEPBLAC to support co-ordination and mutual assistance in the performance of their duties, including their supervisory functions. In December 2005, SEPBLAC and the CNMV jointly adopted a Handbook of procedures for preventing money laundering in the stock market sector.

SUPERVISION AND LICENSING OF FINANCIAL INSTITUTIONS		
Financial institutions	Supervisory authority (in addition to the supervision carried out by the SEPBLAC)	Licensing decision made by:
Credit institutions	Bank of Spain	Ministry of Economy and Finance
Insurance stock companies	DGFSP	Ministry of Economy and Finance
Pension fund management firms	DGFSP	Ministry of Economy and Finance
Stock brokers	CNMV	Ministry of Economy and Finance
Collective investment managers	CNMV	Ministry of Economy and Finance
Portfolio manager companies	CNMV	Ministry of Economy and Finance
Companies issuing credit cards	Bank of Spain	Ministry of Economy and Finance

⁵⁰ Since June 2005 and the adoption of the MoU with the Bank of Spain, SEPBLAC has received 12 communications of that type from the Bank of Spain. Based on this information, SEPBLAC has carried out on-site inspections of 3 banks.

Money changing firms	Bank of Spain	Ministry of Economy and Finance
Fund transfers firms	Bank of Spain	Bank of Spain

472. Article 11.8 of RD 925/1995 that came into force on 22 April 2005 provides that competent licensing authorities must consult with SEPBLAC before granting a licence. SEPBLAC is responsible for checking the adequacy of the internal procedures and controls put in place for AML/CFT purposes.

473. There are some concerns about how effectively the financial sector is being supervised for AML/CFT purposes. It can be assumed that SEPBLAC must prioritise its supervisory functions since its resources are limited and may not cover sufficiently certain businesses and sectors. From 2001 to 2003, SEPBLAC carried out on-site inspections in larger credit institutions. In 2002, SEPBLAC's supervisory activities focused mainly on bureaux de change and money transfer companies. In 2003, attention was turned to savings banks. It seems that there is only limited supervision available even if the scope and depth of the inspections conducted was extended in 2004.

474. *Recommendation 30 (Structure and resources of the supervisory authority)*. SEPBLAC has a staff dedicated to supervision of 2 people. The evaluation team was advised that this would be augmented to 4 in 2006. Moreover, the evaluators were told that each analyst carries out on-site inspections (21 people in total). SEPBLAC recruits high quality staff at all levels and asks for high professional standards. The staff has been provided with internal training for combating money laundering and financing of terrorism (see also Section 2.5 on the general structure and resources of SEPBLAC).

Authorities' Powers and Sanctions – R. 29 & 17

475. *Recommendation 29*. SEPBLAC is the designated authority in Spain responsible for ensuring that financial institutions adequately comply with the requirements to combat money laundering and terrorist financing. SEPBLAC has defined and applies a procedure for AML/CFT inspections (off-site and on-site) and another one to monitor the recommendations (*Inspection Procedure* and *Procedure to monitor recommendations*). On-site inspections are either on the initiative of SEPBLAC or arise on the basis of information sent by other competent authorities (other supervisory authorities, public prosecutors, etc.). The inspections may be general (the review of the AML/CFT measures in place is complete) or thematic (only one or several of the AML/CFT obligations is reviewed). The selection of institutions to be inspected is based on several criteria including sectoral risk, geographical risk, importance of the reporting entity and degree of compliance with existing requirements. Once the inspection has taken place, SEPBLAC may draw up some recommendations it considers should be made to the financial institution. The final inspection report focuses on the following topics: (1) general information; (2) internal rules; (3) internal organisation; (4) procedure for identifying and knowing customers; (5) procedure for analysing risk operations; (6) compulsory monthly reporting and systematic reporting; (7) reporting of suspicious transactions; (8) requests by authorities; (9) exclusion of customers; (10) measures applied by other group companies in Spain; (11) measures applied by group in areas of risk; (12) procedures established in areas of risk; (13) training; (14) report on activities; (15) internal audit and (16) external audit. The inspection final report is forwarded to the Commission for the Prevention of Money Laundering and Monetary offences.

476. On-site inspections include the typical tools of supervision, such as the review of policies procedures, books and records, and extend also to sample testing of customer files. SEPBLAC also has the power to compel production and to obtain access to all records, documents or information relevant to monitoring compliance from all financial institutions. This also includes samples of STRs filed or samples of written reports about suspicious cases which have not been reported to the FIU. Thus, SEPBLAC does not need a court order before it can take action.

477. The inspections made by SEPBLAC are separate from those carried out by the three other supervisory authorities. The collaboration agreements signed between SEPBLAC and the CNMV and

the DGFSP respectively establish a work programme that focus on seven main areas: (1) internal rules and regulations; (2) internal organisation; (3) identification of clients; (4) analysis of transactions; (5) communications with SEPBLAC; (6) training and (7) record keeping. The three supervisory authorities draw up their respective reports on the result of the review which is forwarded to SEPBLAC so that it may formulate possible recommendations. SEPBLAC, in turn, has agreed to transmit its recommendations and requirements imposed on financial institutions to the three other supervisors. The programmes of regular, ongoing inspections and supervision are further discussed below.

478. The collaboration agreement with the Bank of Spain also calls for the Bank and SEPBLAC to carry out simultaneous inspections to evaluate credit institutions' compliance with the AML/CFT rules in the future. However, the level of co-ordination required between SEPBLAC and the Bank of Spain is lower than that contemplated in the MOUs with CNMV and DGFSP.

479. Failure to implement the recommendations or corrective measures proposed by SEPBLAC constitutes a severe offence. According to Article 5.2 of Law 19/1993, breach of the obligations foreseen in Sections 1, 2, 3, 4, 5, 7, 8 and 9 of Article 3 of the Law constitute severe offences.

480. Given the size and current structure of the financial sector and the small number of inspectors, the evaluators express some concerns on whether a proper and adequate AML/CFT supervision can take place in Spain, especially when considering the need to inspect all medium and smaller sized financial institutions (including the DNFBPs).

481. *Recommendation 17.* The Secretariat of the Commission for Prevention of Money Laundering and Monetary Offences is responsible for the initiation of penalty proceedings for the commission of offences described in Law 19/1993, i.e., failure to implement the requirements or recommendations imposed by SEPBLAC and arising from its inspections (Article 12 of Law 19/1993 and Article 17 of RD 925/1995). The Council of Ministers is competent to impose penalties for very serious offences, at the proposal of the Minister for Economic Affairs. The Minister is responsible for imposing penalties for serious offences, at the proposal of the Commission for the Prevention of Money Laundering and Monetary Offences. The Secretariat is responsible for conducting penalty proceedings for serious offences involving non compliance with the obligations set out in Article 3, section 9. The responsibility for resolving the proceedings lies with the Chairman of the Standing Committee of the Commission for the Prevention of Money Laundering and Monetary Offences, subject to a report from SEPBLAC. Inspections reports prepared by SEPBLAC, the Bank of Spain, the CNMV and the DGFSP are made available to these authorities.

482. Chapter II of Law 19/1993 deals with "Provisions regarding sanctions", which is regulated in its procedural aspects in Chapter III of RD 925/1995. The administrative sanctions referred to in Law 19/1993 are classified as serious or very serious.

483. The following offences constitute serious offences: non compliance with the obligations set out in sections 1 (*customer identification*), 2 (*special attention to unusual transactions*), 3 (*record keeping*), 4 (*obligation to report suspicious transactions*), 5 (*non execution of transaction until an STR has been communicated*), 7 (*internal controls and procedures*), 8 (*training*) and 9 (*cash movements*) of Article 3 (AML obligations), including failure to implement the corrective measures called for by SEPBLAC, as referred to in Article 3.7.

484. The following constitute very serious offences:

- Non-compliance with the obligation of confidentiality laid down in paragraph 6 of Article 3 (*tipping off*);
- Non-compliance with the requirement to communicate information on the specific matters determined by regulation as provided for in paragraph 4 (a) of Article 3 (*mandatory reporting*);

- Unjustified failure to comply by the obliged entity with the communication requirement laid down in paragraph 4 (a) of Article 3 when a manager or employee of the entity subject to obligation has brought the attention of the internal control organs of the entity to the existence of indications or of a certainty that a fact or transaction is related to the laundering of capital (*suspicious transactions reporting requirement*);
- Refusing or resisting the provision of specific information requested by SEPBLAC in writing, pursuant of paragraph 4 (b) of Article 3 (*professional secrecy*);
- Those offences classified as "serious" when, during the five preceding years, the obliged entity having committed the violation has been convicted in a final judgement for one of the offences set out in article 344 bis (h) or (i) of the Penal Code or for complicity or receiving in relation to the activities enumerated in paragraph 1 of Article 1 of the Law, or sanctioned by a final decision at least for two administrative infractions of the kind established in the Law.

485. Articles 5, 8, 9 and 10 of Law 19/1993 identify sanctions applicable to serious offences, sanctions for very serious offences, and graduating of sanctions, respectively as summarised in the following table:

Sanctions for serious offences	Sanctions for very serious offences	Graduation of the sanctions
<i>Sanctions applicable to legal persons</i>	<i>Sanctions applicable to legal persons</i>	
<p>Law 19/1993 – Article 8.1</p> <p>a. Private warning</p> <p>b. Public warning</p> <p>c. A fine of which the minimum amount shall be 6,010 EUR and of which the maximum amount shall be the higher of the following figures: 1 per cent of the equity capital of the entity; the amount of the economic content of the transaction plus 50 per cent, or 150.253 EUR.</p> <p>The sanction provided for in subparagraph (c), which shall in every case be mandatory, shall be imposed simultaneously with one of those provided for in subparagraphs (a) and (b).</p>	<p>Law 19/1993 – Article 9.1</p> <p>a. Public warning;</p> <p>b. A fine of which the minimum amount shall be 90,151.816 EUR and of which the maximum amount shall be the higher of the following figures: 5 per cent of the equity capital of the institution; twice the economic content of the operation, or 1,502,530.26 EUR;</p> <p>c. In the case of entities subject to administrative authorisation for operation, the revocation of such authorisation.</p> <p>The sanction provided for in subparagraph (b), which shall in every case be mandatory, shall be imposed simultaneously with one of those provided for in subparagraphs (a) and (c).</p>	<p>Law 19/1993 – Article 10</p> <p>The sanctions applicable in each case for the commission of very serious or serious infractions shall be graduated taking into account, in addition to the criteria established in article 131.3 of the Law Establishing the Legal Regime of the Public Administrations and Common Administrative Procedure, the following circumstances:</p> <p>(a) The profits obtained, if any, as a consequence of the omissions or acts constituting the infraction;</p> <p>(b) The circumstance of having taken the initiative to remedy the infraction;</p> <p>(c) Those final sanctions for very serious infractions covered by this Law imposed on the subject at law under obligation in the last five years.</p>
<i>Sanctions applicable to natural persons</i>	<i>Sanctions applicable to natural persons</i>	
<p>Law 19/1993 – Article 8.2</p> <p>In addition to the sanction to be imposed on the entity subject to obligation for the commission of serious infractions, one or more of the following sanctions may be imposed on the persons who, holding posts of administration or management in the entity, were responsible for the infraction:</p> <p>a. Private warning;</p> <p>b. Public warning;</p> <p>c. A fine for each person in a minimum amount of 3.005,06 EUR and a maximum amount of 60,101,210 EUR;</p> <p>d. Temporary suspension from functions for a period of not more than one year.</p> <p>The sanction provided for in subparagraph (c), which shall in every case be mandatory, shall be imposed simultaneously with one of those provided for in subparagraphs (a), (b) and (d).</p> <p>Failure to comply with the obligation set out in article 3, section 9 of this law will be punishable by a fine ranging from a minimum of 600 EUR up to half of the amount of the means of payment utilised. In the event that the means of payment are found in a place or situation clearly indicative of the intent to conceal them or that the origin of the funds is not duly accredited, the fine may extend to the entire amount of the means utilised.</p>	<p>Law 19/1993 – Article 9.2</p> <p>In addition to the sanction to be imposed on the entity subject to obligation for the commission of very serious infractions, one or more of the following sanctions may be imposed on the persons who, holding posts of administration or management in the entity, were responsible for the infraction:</p> <p>a. A fine for each person in an amount of between 60.101,210 EUR and 600.101,210 EUR;</p> <p>b. Separation from the post, with debarment from holding posts of administration or management in the same entity for a maximum period of five years;</p> <p>c. Separation from the post, with debarment from holding posts of administration or management in any entity subject to this Law for a maximum period of ten years.</p> <p>The sanction provided for in subparagraph (a), which shall in every case be mandatory, may be applied simultaneously with one of those provided for in subparagraphs (b) and (c).</p>	<p>In order to determine the sanction applicable among those provided for in articles 8.2 and 9.2, the following circumstances shall be taken into account:</p> <p>(a) The degree of responsibility of the person concerned in relation to the acts or of intentionality of the acts;</p> <p>(b) The previous conduct of the person concerned, in the entity incriminated or in another entity, in relation to the requirements laid down in this Law;</p> <p>(c) The nature of the representative function of the person concerned;</p> <p>(d) The economic capacity of the person concerned, when the sanction is a fine.</p>

486. The time limitation in respect of serious offences is three years, and in respect of very serious offences, five years (Article 11 of Law 19/1993). The statute of limitations is counted from the date on which the infraction was committed. In offences based on a continuing activity, the initial date for the calculation is that of the ending of the activity or that of the final act which completed the offence. The statute of limitations is interrupted by the initiation, with the knowledge of those concerned, of the sanctioning proceedings, and begins again if the proceeding is stopped for a month for reasons not

attributable to those against whom it is directed. The period is also interrupted by the initiation of penal proceedings for the same acts, or for other acts for which it is rationally impossible to sanction separately under this Law. The time limitation in respect of the sanctions imposed in conformity with this Law is two years in the case of serious offences and three years in the case of very serious offences.

487. Conduct punished by administrative or criminal sanctions may not be sanctioned under this Law when identity of subject, act and grounds is established (Article 6 of Law 19/1993). If it is considered that the acts and facts of which SEPBLAC is informed may constitute a criminal offence, the suspension of the sanctioning proceeding, if it has been instituted, is ordered, and the information transferred to the Public Prosecution Department (*Ministerio Fiscal*). When the penal proceedings are terminated, the sanctioning proceeding resumes against those obliged persons that have not been convicted in the penal process as perpetrators of the offence or their accomplices or accessories. The decision pronounced in the case must in any event take into account the facts proven in the relevant penal proceedings.

488. A failure to comply with Law 19/1993 leads to administrative sanctions. They apply to both legal and natural persons (directors, managers). They generally seem proportionate even if there are some inconsistencies (for example, failure to report a suspicious transaction is considered as serious offence, failure to send a systematic report is a very serious offence and there is no public warning for natural persons in case of very serious offences). These inconsistencies should be corrected. With regard to the failure to report suspicious transactions, the *non bis in idem* principle is applied strictly. It should be noted that too broad an interpretation of this principle, as laid down in Section 6 of Law 19/1993, impedes the application of administrative sanctions under the prevention mechanisms.

489. Since 2001, the Secretariat of the Commission for Prevention of Money Laundering and Monetary Offences has analysed 19 inspection reports (prepared by SEPBLAC, the Bank of Spain, the CNMV and the DGFSP) on banks, 23 on savings banks and 42 reports on foreign exchange houses and money remitters (out of 119 in total for all reporting entities subject to inspections between 2001 and 2004).

490. Since 2000, 17 sanctions on 17 financial institutions have been imposed for a total amount of fines of more than 7 million EUR. The following administrative sanctions have been imposed on financial institutions since 2000:

Violation	Sanction Category	Totals	Banks	Savings Banks	Money Remitters	Management company of collective investment undertakings
Customer identification	Serious	1,915,404 €	1,290,151 €	320,000 €	215,000 €	-
Record keeping	Serious					
Special exam for risk transactions	Serious	1,545,859 €	645,455 €	230,050 €	280,253 €	-
Report of suspicious transactions	Serious			310,101 €		
Abstention from performing transactions	Serious					
Systematic reporting	Very serious	500,000 €	500,000 €	-	-	-
Establishment of internal procedures and units for AML/CFT control	Serious	2,260,253 €	1,070,000 €	750,000 €	295,253 €	85,000 €
Training on AML/CFT skills	Serious	687,000 €	180,151 €	215,000 €	235,253 €	12,000 €
Lack of provision of information to the SEPBLAC according to Article 8 of RD 925/1995	Very serious	-	-	-	-	-

Violation	Sanction Category	Totals	Banks	Savings Banks	Money Remitters	Management company of collective investment undertakings
Lack of provision of information to the SEPBLAC (but not according to Article 8 of RD 925/1995)	Serious	250,000 €	-	250,000 €	-	-
Lack of confidentiality	Very serious	-	-	-	-	-
TOTAL		7,158,920 €	3,685,759 €	2,075,151 €	1,026,012 €	97,000 €
Private warnings				5		1

Market Entry (R. 23)

491. *Recommendation 23 (Criteria 23.3, 23.5, 23.7) – entities supervised by the Bank of Spain.* According to Article 2.1.d of RD 1245/1995, shareholders with significant holdings must be fit and proper. The Ministry of Economy and Finance can refuse authorisation to form a bank when, considering the need to guarantee sound and prudent management of the planned institution, the suitability of the shareholders who are going to have a significant holding therein is not considered adequate. A significant holding in a bank is one that directly or indirectly amounts to 5 percent or more of its capital or voting rights, or that makes it possible to exercise a significant influence. Suitability is assessed on the basis, *inter alia*, of:

- The business and professional reputation of the shareholders; this reputation is presumed whenever the shareholders are general government bodies or agencies.
- The assets such shareholders have available to meet their commitments.
- The transparency in the structure of the group, if any, to which the entity belongs and, in general, the existence of serious difficulties in inspecting or obtaining the necessary information on its activities.
- The possibility that the entity may be exposed, inappropriately, to the risk of the non-financial activities of its promoters or, in the case of financial activities, that the stability or control of the entity may be affected by the high risk of such activities.
- The possibility that the effective exercise of supervision of the institution may be hampered by its close links with other natural or legal persons, owing to the legal, regulatory or administrative provisions of the country laws of which any such natural or legal persons are subject, or owing to problems relating to the application of such provisions.

492. This means that one of the requirements for obtaining authorisation as a bank and engaging in banking activities is that the shareholders with significant interests must be persons of recognised commercial and professional standing and reputation (Article 4.1.b of RD 1245/1995). According to this requirement, they must have a personal record of respect for the laws and business practices regulating economic activity and, in any event, no criminal record (including money laundering) and that they have not been declared unfit to hold public office or a directorship or executive position in a financial institution (Article 2.2 of RD 1245/1995). For their part, board members and senior executives must meet the same requirements of commercial and professional standing and reputation, and a majority must have appropriate knowledge and experience to exercise their functions (Article 2.1f of RD 1245/1995/1995). In addition, a criminal background check is applied to all natural persons associated with a new entity during the approval process; however, the Bank of Spain does not apply such a process to new directors or senior managers that join the institution subsequently.

493. Verifying this requirement calls for sufficient information on their professional career and activity and, in the case of shareholders, on their financial position, with the necessary particulars where legal persons are concerned (Article 3 c of RD 1245/1995). The Bank of Spain keeps a Register of Directors and Senior Executives of its supervised institutions containing up-to-date personal and

professional information on the board members and general managers or similar senior managers. This register also contains information on any administrative penalties imposed on the persons holding the registered positions. It should be noted that these are subject to Law 26/1988 on the Discipline and Intervention of Credit Institutions (Law 26/1988). Also, information is exchanged by the various supervisory authorities (Spanish and, where applicable, non-Spanish) whenever appropriate. Furthermore, Law 26/1988 (title VI) provides for monitoring by the Bank of Spain of significant changes in shareholdings in credit institutions, of which prior notification to the supervisor is required.

494. Additionally, according to Article 2.1.i of RD 1245/1995 an entity is able to pursue banking activity if it has adequate internal control and reporting procedures and units to prevent and impede operations linked to money laundering under the conditions set forth in Articles 11 and 12 of the implementing Regulations for Law 19/1993.

495. Comparable requirements are applicable to all other entities (non credit institutions) supervised by the Bank of Spain.

496. *Recommendation 23 (Criteria 23.3, 23.5, 23.7) – entities supervised by the National Securities Market Commission.* Authorisation for investment services firms come from the Minister of Economy and Finance, at the proposal of the National Securities Market Commission. The authorisation must state the class of investment services firm in question and the specific investment services and ancillary services that are authorised. For an investment services firm, once authorised, to commence operations, the promoters must incorporate a company and register it with the Mercantile Register and subsequently with the appropriate Register of the National Securities Market Commission. Registration in the Register at the Commission must be published in the Official State Gazette.

497. The following requirements are necessary to enable a company to obtain authorisation as an investment services firm:

- Its sole corporate purpose must be the performance of the activities pertaining to investment services firms in accordance with the law.
- It must be a public company limited by shares (*sociedad anónima*) or by guarantee (*sociedad de responsabilidad limitada*) constituted for an indefinite period and the shares comprising its capital must be registered.
- In the case of a newly-created firm, it must be organised by the procedure of incorporation in a single act and its founders may not reserve for themselves any advantage or special remuneration of any kind.
- There must be a minimum amount of capital stock that must be fully paid in cash.
- It must have a board of directors consisting of at least five members in the case of a broker-dealer and at least three members in the case of a broker or portfolio management company.
- All the members of its board of directors and its general managers and similar officers must be of recognised professional or commercial repute.
- No member of its board of directors and none of its senior managers or similar officers may have been disqualified, either in Spain or another country, as a result of an insolvency proceeding; neither may they be undergoing prosecution; they may not have a criminal record for offences of fraud, tax crime, breach of duty in the custody of documents, infringement of secrecy, money laundering, misappropriation of public funds, disclosure or revelation of secrets, or crimes against property; and they shall not have been disqualified or suspended, due to criminal or administrative offences, from holding public office or offices for the administration or management of financial institutions.
- The majority of the members on its board of directors, and its senior managers and similar officers must have suitable knowledge and experience in matters connected with the securities market.
- It must have a good administrative and accounting organisation and the appropriate human and technical resources in relation to its programme of operations.

- It must have an internal code of conduct that conforms to the provisions of this Law and effective control and safeguard arrangements for information processing systems as well as adequate internal control mechanisms including, in particular, a system governing personal transactions by directors, executives, employees and authorised signatories of the firm.

498. The Ministry of Economy and Finance may refuse authorisation to establish an investment services firm when, based on the need to ensure sound and prudent management of the firm, the shareholders which are to have a qualifying holding are not considered to be fit and proper. The fit and proper criteria to be assessed are, among others:

- The shareholders' business and professional reputation.
- The assets which those shareholders possess to cover the commitments they undertake.
- The possibility that the firm may be exposed inappropriately to the risk of its promoter's non-financial activities or, in the case of financial activities, that the stability and control of the firm may be affected by the promoter's high risks.

499. The Ministry of Economy and Finance may also refuse authorisation because of the lack of professional ethics of the members of the board of administration and the administrators and managers of the portfolio investment firm, whenever the investment firm is going to be part of a financial conglomerate.

500. *Recommendation 23 (Criteria 23.3, 23.5, 23.7) – entities supervised by the General Directorate for Insurance and Pension Funds.* According to Article 5 of the Royal Legislative Decree 6/2004 of 29 October, access of Spanish entities to insurance activities must be authorised by the Ministry of Economy and Finance. According to Article 5.2 (e and f), among the conditions that are to be fulfilled in order to obtain and keep an administrative authorisation are:

- Indicate the contributions and the shares of the partners in the share capital or mutual company capital that must meet the conditions established in Article 14 (see below), stating specifically which of them is an insurance company, a credit entity or an investment services firm, and the shares (regardless their amount), if any, owned by any partner in an insurance company, a credit entity or an investment services firm.
- Be efficiently managed by persons meeting the necessary standards of personal and business reputation and professional qualifications or experience.

501. According to paragraph 6 of Article 5 of RD 6/2004, the request for authorisation will be denied, for among other reasons, when:

- The request fails to provide details on capital contributions, or the suitability of significant owners is not judged adequate to guarantee the undertaking's sound and prudent management.
- Those who will direct the company do not have the necessary conditions of personal and business reputation or of professional qualifications or experience.
- The existence of the contributions and the shares hampers the effective control and supervision or does not guarantee the sound and prudent management, or the managers or directors of the financial entity which hold the controlling interest, if any, do not meet the necessary standards of personal and business reputation and professional qualifications or experience.
- The undertaking's programme of activities does not foresee adequate internal control systems (and the generally agreed guidance and requirements for the adequacy of internal control systems).

502. The suitability of the natural or legal persons participating, directly or indirectly, in the incorporation of an insurance undertaking through a significant holding shall be sufficient to ensure its sound and prudent management. Such suitability, or the absence thereof, is to be inferred from:

- The personal and business reputation and the professional qualifications or experience of members.
- The assets that members have available to meet their commitments.
- The lack of transparency in the structure of the group, if any, to which the undertaking belongs, or the existence of serious difficulties in obtaining the required information on the performance of its business.
- The possibility that the undertaking may be unduly exposed to the risk of its promoter's non financial activities; or, in the case of financial activities, that the stability or control of the undertaking may be jeopardised by the high risk of such activities.

503. Sufficient professional qualifications are to be presumed of those holding a university degree in legal, economic, actuarial or financial sciences, business administration and management or in some specific private insurance subject area, while sufficient experience is to be presumed of those who have performed, during a period of not less than five years, senior management, administration, control or advisory functions in financial entities subject to solvency supervision, or functions of a similar level in public or private entities of a size and sophistication comparable to that of the undertaking whose establishment is sought. In no event shall the effective management of insurance undertakings be exercised by:

- Those having a criminal record for the offences of misrepresentation, breach of secrecy, disclosure and divulging of secrets, tax or social security fraud, misappropriation of public funds or any other offences against property; those disqualified from holding public or directorship or management positions in financial institutions, insurance firms or insurance brokers; undischarged bankruptcy under Law 22/2003 of 9 July on bankruptcy proceedings; and, in general, those liable for disqualification or disbarment under current legislation.
- Those suspended from exercising a position or removed from it or suspended from exercising an activity as a result of the sanction proceedings or specific control measures stated in article 39.2.d of this law and articles 25.2 and 27 of Law 9/1992 of 30 April on private insurance agents, during the enforcement of the sanction or until such time as the special control measure is lifted.

504. *Recommendation 23 (Criteria 23.5, 23.7) – money or value transfer service.* Non-bank natural or legal persons wishing to provide foreign transfers must obtain prior authorisation from the Bank of Spain and be registered in the relevant Bank of Spain register (Article 2 of RD 2660/1998). The Bank of Spain exercises ongoing (on-site and off-site) supervision of these institutions. The requirements for obtaining authorisation (including minimum capital) are the same as those for retaining it (Article 4 of RD 2660/1998). The list of agents engaged by MVT service operators and the attendant contractual documentation are available to the Bank of Spain at the service operator's registered office (Article 10 of Ministerial Order 16 November 2000). The list is incorporated systematically into a public register kept by the Bank of Spain (Rule 12.12 of Bank of Spain's Circular 6/2001 of 29 October 2001) which contains the personal data of agents.

505. Article 4 of RD 2660/1998 of 14 of December on exchange of foreign currency by non-credit institutions, requires for granting the authorisation that the shareholders, their directors and senior managers have the required commercial and professional good reputation. This requirement is assessed along the same lines that for credit institutions

Ongoing supervision and monitoring (R. 23-Criteria 23.4, 23.6 and 23.7)

506. *Recommendation 23 (Criteria 23.4, 23.6, 23.7).* As indicated above, SEPBLAC and the financial supervisors conduct on-going monitoring of financial institutions in Spain. The breakdown of all inspections (both by SEPBLAC and by financial supervisors that included AML/CFT elements) from 2001 to 2005 is as follows:

Institutions	Number of	Number of AML/CFT inspections since 2001	Total
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	financial institutions in 2004	2001	2002	2003	2004	2005	number of AML/CFT inspections by SEPBLAC
Banks	76	9	4	8	3	4	28
Savings Banks	47	4	4	17	1	1	27
Credit Co-operatives	83	1	1	1	1	2	6
Money remitters	42	7	14	5	3	4	33
Insurance Companies	174	1	2	0	3	2	8
Stock Brokerage firms	108	2	2	0	3	17	24
TOTAL	530	24	27	31	14	30	126

	CNMV Total number of inspection visits including AML/CFT	DGSFP Total number of inspection visits including AML/CFT
2001	30	-
2002	53	3
2003	45	6
2004	46	3
2005	23	11

507. Between 2001 and 2005, the Bank of Spain carried out about 90 full on-site inspections of smaller banks per year which always include internal controls and consequently reputational and compliance risk as well as know-your-customer requirements. The larger banks in Spain are under continuous monitoring (see below).

508. Generally speaking, the AML/CFT supervision programmes of financial supervisors are designed to assess the strengths of internal processes and controls and do not necessarily identify issues of AML/CFT non-compliance as such. However, as mentioned above, each financial supervisor is required by law to notify SEPBLAC when a possible situation of non-compliance with AML/CFT laws comes to its attention. Typically, the financial supervisor will conclude the on-site inspection with a written supervisory letter to the financial institution. Information relating to any AML/CFT findings is then copied to SEPBLAC. For example, in 2005 and as indicated above, the Bank of Spain conducted about 90 on-site inspections that included an AML/CFT component. Of these, 10 inspections resulted in AML/CFT recommendations, which were copied to SEPBLAC.

509. The Bank of Spain applies the principles of safety and soundness to its core supervision programme, which includes a limited element of reviewing AML/CFT compliance. This element consists of on-site enquiries about the overall regime and does not extend to detailed examination or the review of customer files, for instance. The Bank of Spain, like other financial supervisors, allocates significant resources to its supervision of large banking conglomerates. Under its supervisory framework the Bank evaluates the legal risks facing the banks, including reputation and compliance risks. The Bank evaluates internal controls, board and management decisions, the effectiveness of the internal audit function and other risk management controls. In Spain, the two largest banks and the two largest savings banks are assigned full time inspection teams by the Bank of Spain, located in the banks' premises. For example, a team of about 30 examiners each is housed on site at Spain's two largest banking conglomerates. Over a one-year cycle the inspection teams conduct a full AML/CFT controls programme and can immediately monitor issues and policy changes. Thus these 4 largest institutions are reviewed continuously. For smaller banks and financial institutions, the Bank of Spain plans a full AML/CFT inspection at least once every 3 years, depending on the risk profile of the bank and any specific issues. For most institutions there are meetings with management at least annual which afford the Bank of Spain an opportunity to deal with AML/CFT issues.

510. The CNMV and the DGFSP have regular supervision programmes that address their normal responsibilities. Unlike the Bank of Spain, however, they do not appear to initiate AML/CFT inspections internally, but rather rely on direction from SEPBLAC when the latter wishes to have an inspection done. Together with the aforementioned, whenever potential AML/CFT issues are detected in the course of ordinary solvency inspections, the DGSFP will contact the SEPBLAC and inform in an appropriate manner so they take the necessary actions. In addition, their MOUs with SEPBLAC do not provide for joint inspections, which could be considered.

511. The following chart indicates the number and types of recommendations issued by SEPBLAC to financial institutions that failed to fulfil their AML/CFT obligations:

	2001	2002	2003	2004
Internal regulations	12	21	17	17
Internal organisation	32	27	42	21
Customer identification and knowledge	14	28	28	28
Transaction analysis	23	34	24	15
<i>Systematic reporting</i>	6	23	16	6
Suspicious Transaction Reports	14	3	14	14
Replies to requests from the authorities	2	1	2	13
Customer exceptions	3	11	14	2
Subsidiary companies	16	9	22	8
Risk areas	3	0	2	4
Personnel training	16	24	16	17
Internal auditing	8	6	16	17
Subject party collaborating agents	9	9	4	11
External expert	3	0	1	16
Others	8	2	1	17
TOTAL	169	198	219	206

512. *Statistics.* SEPBLAC maintains statistics on the number of on-site examinations conducted relating to ML/CFT and sanctions applied.

513. *Guidelines (R.25 - Guidance for financial institutions other than on STRs).* Guidelines were issued some time ago for banks (1996). Following the creation of the Commission for the Prevention of Money Laundering, the existing Guidelines were updated and new Guidelines were issued for the other financial sectors during 2004 and 2005 (credit entities, money remitters and foreign exchange companies, securities sector and the insurance sector). The main target of these Guideline documents is to help the obliged entities identify risk transactions and deal with these potentially risky areas.

3.10.2 Recommendations and Comments

514. *Recommendation 17.* While there is a system of sanctions in place (that is not implemented by the supervisor itself but rather the Secretariat of the Watchdog Commission), due to the relatively

limited access by SEPBLAC to the overall state of compliance with AML/CFT requirements, it is impossible to measure the effectiveness of the sanctions regime (element relating to effectiveness). It is also not clear how the regime of administrative and criminal sanctions are articulated in practice. Finally, it is not clear why the coexistence of two regimes of sanctions (one for serious offences and another one for very serious offences) should be maintained since the distinction between very serious offences and serious offences seems artificial and somehow questionable.

515. *Recommendations 23 and 29.* The various procedures for licensing financial institutions appear adequate to prevent criminals from gaining control or significant influence of these businesses. It seems that criminal background checks are made at the time a new financial institution is licensed; however, it is essentially left to financial institutions to do this as changes are made to the board or to senior management. Nevertheless, the Bank of Spain must approve new appointments, and this process includes a review of each appointee's qualifications and whether he or she has been subjected to administrative sanctions. Spain should clarify what specific requirements and expectations are of financial institutions and whether the financial institutions or the Bank of Spain is responsible for doing background checks on new directors and new officers (changes after initial incorporation).

516. In common with many other FIUs, SEPBLAC is responsible for assessing compliance with the AML/CFT requirements by a large number of regulated financial institutions. For example in 2004 the total number of financial institutions subject to AML/CFT requirements was 6,520. However, SEPBLAC only conducted 14 inspections of regulated financial institutions in that year. Nevertheless, as noted above, the financial regulators operate AML/CFT inspection programmes of their own. They also signed MOUs with SEPBLAC in 2005 which opens up the possibility for SEPBLAC to take a more proactive approach in selecting institutions for inspection. The AML/CFT supervision programmes operated by the financial regulators provide an additional level of comfort to SEPBLAC in respect of institutions not inspected directly by them; and in addition the requirement to notify SEPBLAC of compliance breaches is an additional strength. However, there is a fairly significant gap between the volume of inspections being done by the financial supervisors and the resulting information on these which reaches SEPBLAC. For example; in 2004 the Bank of Spain conducted about 90 bank on-site inspections that contained an AML/CFT element. However, this work only resulted in 10 instances of notices to SEPBLAC of AML compliance deficiencies. In the same year SEPBLAC itself conducted 4 AML/CFT on-site compliance inspections – thus the total number of banks assessed by SEPBLAC in 2004 for compliance was a maximum of 14, out of a total of 123 banks and savings banks. Given the growing level of attention being paid to AML/CFT issues by financial supervisors and the raising of standards applicable to the financial sector, it is notable that a relatively low number of banks have had identifiable compliance issues. Spain should take steps to review its supervisory regime and better co-ordinate the inspection of reporting entities to increase the number of inspections reports to which SEPBLAC has access, whether such reports are generated by SEPBLAC itself or by financial regulators. A low number of inspections reduces the level of knowledge that SEPBLAC has about compliance. The MOUs with the financial regulators are a step in the right direction, but should require the parties to plan coverage of inspections. The MOU with the Bank of Spain provides for joint inspections, but does not specify how these will be done. Swift implementation of the collaborative agreement should be a priority. Finally, the competent authorities are encouraged to review the adequacy of resources dedicated to supervision and adopt the appropriate steps to make the inspection programme as effective as possible. This is essential to guarantee a proper and complete implementation of the AML/CFT standards.

517. *Resources.*⁵¹ At the time of the on-site visit, SEPBLAC had two full time staff dedicated to inspections. The evaluation team was advised that this figure subsequently increased to 4, and will increase substantially in 2006 principally to address the supervision of DNFBPs. SEPBLAC co-opts staff from the analysis sector to provide support for inspections which reduces analytical ability. The number of inspections carried out by SEPBLAC has been generally low and static over the past five years, even taking into account the contribution to AML/CFT oversight by the financial regulators,

⁵¹ As related to Recommendation 30; see Section 7.1 for the compliance rating for this Recommendation.

and it seems clear that, absent an increase in the amount of resources that SEPBLAC can dedicate to inspections, this number is not likely to rise over time. Clearly, SEPBLAC resources are limited and are inadequate for a broad inspection programme, especially considering that money remitters are not yet subject to all reporting requirements. There do not appear to be any supervisory resource issues in the operations of the financial regulators. One option open to the authorities as an alternative to increasing SEPBLAC's banking inspection resources would be its ability to place more reliance on the work of the financial regulators. In order to be effective, however, there would likely have to be a greater emphasis on compliance issues by such regulators in a more proactive manner than at present.

518. SEPBLAC is housed within the Bank of Spain for administrative purposes, although it is accountable directly to the Administration through the Commission. There is no separate budget for SEPBLAC so it is not possible for the evaluators to compare the cost of the FIU to other FIUs in other countries. The team was told that there are no obstacles to SEPBLAC obtaining required resources; but, because the overall budget of the Bank of Spain is subject to normal controls this could constrain the ability of SEPBLAC to properly plan its resource needs. Thus, the independence of the FIU is called into question due to this structure. Spain should consider striking a separately-identifiable SEPBLAC budget based on SEPBLAC's strategic priorities and have such budget specifically approved by the Commission in order to ensure that SEPBLAC is effectively independent. Finally, it is suggested that consideration be given to making the Commission on Money Laundering Prevention, rather than the Bank of Spain, responsible for appointing the director of SEPBLAC, or alternatively, sharing the responsibility for appointment between that Commission and the Commission for Surveillance of Terrorist Financing..

519. *Recommendation 25:* Almost every reporting entity that the assessors met with asked for more specific and tailored guidance concerning AML/CFT obligations. There is a need for more detailed sector-specific AML/CFT guidance. There is a lack of up-to-date guidance to financial institutions (and DNFBPs) on how to implement and comply with their CFT obligations and the on-site visit left a clear impression that there is a need for such guidance. There is a need not only for updated guidance on TF typologies but also on the practical measures that financial institutions (and DNFBPs) should take to make sure that they have effective CFT measures in place. The lack of such guidance may jeopardise successful practical application of the Spanish CFT system and may hamper the efficiency of the system.

3.10.3 Compliance with Recommendations 17, 23, 29, 30 & 25

	Rating	Summary of factors underlying rating
R.17	LC	<ul style="list-style-type: none"> ▪ While there is a system of sanctions in place, due to the relatively low volume of compliance monitoring carried out by SEPBLAC, and the issue of the articulation between the two regimes of administrative and criminal sanctions, it is difficult to measure the effectiveness of the sanctions [element relating to effectiveness].
R.23	PC	<ul style="list-style-type: none"> ▪ Key financial supervision (insurance companies, credit co-operatives and stock brokerage firms and to a lesser extent credit institutions) is producing a low number of reports on AML/CFT issues to transmit to SEPBLAC and therefore the compliance of these institutions with the FATF standards is not being adequately measured. ▪ The very limited resources of SEPBLAC with regard to AML/CFT issues may be negatively influencing the effectiveness of the overall AML/CFT supervision. ▪ Specific requirements for doing background checks on new directors and new officers in the situation of changes after initial incorporation should be clarified.
R.29	PC	<ul style="list-style-type: none"> ▪ The number of on-site supervisory visits that result in inspections reports on compliance with AML/CFT requirements is low given the number of regulated financial institutions. This raises concerns in term of effectiveness of the supervision regime in place.
R.25	PC	<ul style="list-style-type: none"> ▪ There is a lack of sector-specific AML/CFT guidance. ▪ The absence of proper guidance in the CFT area may jeopardise successful practical application of the Spanish CFT system and may hamper the efficiency of the system in place.

3.11 Money or value transfer services (SR VI)

3.11.1 Description and Analysis

520. *Definition of money remitters and registration requirements.* In Spain, there are two types of money remitters: those which are authorised by the Bank of Spain to operate exclusively as money remitters (there is only 1 reporting entity included in this category) and those which are authorised to operate both as money remitters and foreign exchange companies (there are 41 reporting entities included in this category). According to Spanish legislation, “currency exchange” is the purchase or sale of foreign banknotes and traveller's cheques, as well as the management of transfers received from or sent abroad, through credit institutions. The business activity of exchanging foreign currency of whatever denomination in establishments open to the public (hereinafter, currency exchange establishments) is subject to the authorisations and rules established in RD 2660/1998 of 14 December 1998 regulating the exchange of foreign currency in establishments open to the public other than credit institutions and its implementing provisions (especially, Ministerial Order of 16 November 2000). All of these entities are subject to the obligations established in Laws 19/1993 and 12/2003.

521. According to Article 2.1 of RD 2660/1998, the individuals or legal entities, other than credit institutions, wishing to engage in the purchase of foreign banknotes or traveller's cheques with payment in euros, in establishments open to the public, must meet the conditions established in sections 1 and 3 of Article 4 of the Royal Decree, obtain prior authorisation from the Bank of Spain to exercise such activity and be entered in the Register of currency exchange establishments kept by the Bank of Spain. Such activity can be engaged in on an exclusive basis or as a supplement to the activity constituting the establishment's core business.

522. According to Article 2.2 of RD 2660/1998 those persons who, without prejudice to their ability to conduct the transactions referred to in the preceding section, wish to engage in the sale of foreign banknotes or the management of cross-border transfers through credit institutions, in establishments open to the public, must meet the conditions set out in Article 4 of the Royal Decree, obtain prior authorisation from the Bank of Spain, and be entered in the Register of currency exchange establishments kept by the Bank of Spain. For the purposes of the preceding section, the following transactions are deemed to constitute the sale of foreign banknotes or traveller's cheques and the management of cross-border transfers:

- The sale of foreign banknotes or traveller's cheques against delivery of their equivalent value in pesetas or in other banknotes issued by foreign banks.
- Management of transfers received from abroad by means of the delivery to clients of Spanish or foreign banknotes or current account cheques or by ordering transfers to their bank accounts from the accounts of the currency exchange establishment.
- Management of transfers sent abroad against the delivery by clients of the corresponding amount in Spanish or foreign banknotes, or against the crediting of such amounts by the said clients in the accounts of the currency exchange establishment.

523. Paragraph 4 of Article 2 establishes that the exchange establishments licensed to conduct the transactions stated in paragraphs b) and c) of the preceding section must channel the debit, credit and settlement movements associated to this activity through accounts held at credit institutions operating in Spain, regardless of the communication procedures they may establish with their correspondent agents abroad. According to paragraph 5, settlements with clients ordering or receiving transfers for amounts above 3,000 EUR must be carried out by credit or debit entries in bank accounts held by the currency exchange establishment.

524. With regard to the issue of licensing and registration of currency exchange establishments and money remitters, paragraph 1 of Article 3 of RD 2660/1998 establishes that the Bank of Spain is the body empowered to authorise the exercise of currency exchange operations in the establishments dealt with in that Royal Decree. The corresponding licences must be granted in accordance with the

procedure laid down in title VI of Law 30/1992 of 26 November on the Legal Regime Governing the Public Administration and the Common Administrative Procedure. The licence document must specify the activities that may be carried out by the corresponding currency exchange establishment. The Bank of Spain must turn down licence applications for exchange establishments, issuing a reasoned decision to that effect, when the applicant fails to meet the conditions established in Articles 4 and 5 of this Royal Decree. An appeal as of right may be lodged against refusals with the Minister for Economic and Financial Affairs.

525. According to paragraph 1 of Article 3, licence applications are to be addressed to the Bank of Spain and must be resolved upon within three months from the date of their receipt of it. When an application is not acted upon before the deadline, it is deemed to be turned down as provided in Law 30/1992 of 26 November. Once a licence has been obtained and recorded in the Mercantile Registry if the case so demands, the Bank of Spain must immediately enter the applicant's name in the Register of currency exchange establishments, with notification to the applicant, as prescribed by article 58 of Law 30/1992 of 26 December. Once the name has been registered, the owner is free to begin business operations.

526. *Application of AML/CFT measures to money remitters.* According to Article 2.1 of Law 19/1993 and Article 2.1.(h) of RD 925/1995, legal or natural persons engaging in currency exchange activities or money remittance, whether or not as their core business, with regard to the associated transactions, are subject to all of the obligations established in those Regulations. Besides this general rule, money remittance is one of the categories covered by article 3.5 of RD 925/1995 which establishes that obliged entities must gather information on the business and professional activities of their clients, whether direct or beneficiaries, and verify the information obtained. Also with regard to client identification and KYC policy, for every occasional transaction above 3,000 EUR, CDD measures must be applied. The FATF and the 2nd EU Directive threshold of 15,000 EUR has been reduced to 3,000 EUR in Spain. When performing wire transfers on an occasional basis, financial institutions are always required to identify the client performing a wire transfer regardless of the amount or threshold, according to Article 4.2.a of RD 925/1995. In those cases where the amount of the occasional wire transfer is above 3,000 EUR, it is also mandatory for the financial institution to gather and verify the information on the business or professional activity of the originator. In this case, article 3.5 of RD 925/1995 is fully applicable.

527. According to Article 12 of RD 2660/1998, without prejudice to the other specific reporting requirements stated elsewhere in the Royal Decree, currency exchange establishments owned by a legal person must furnish the Bank of Spain with all information it requires on their balance sheets, profit and loss accounts, governing bodies or controlling interests, or any other analogous data the latter deems appropriate. Natural persons shall likewise be obliged to furnish information on their business accounts and earnings.

528. *Monitoring.* With regard to AML /CFT matters, money remitters are supervised by SEPBLAC with the same scope as any other financial institution. In total, 33 inspections of money remitters were carried out from 2001 to 2005 (42 money remitters were registered in 2004 i.e., 78% were inspected by SEPBLAC which then issued 203 recommendations). As far as the reporting obligation is concerned, the figures are as follows:

	2003		2004	
	Number of STRs	Number of entities reporting	Number of STRs	Number of entities reporting
Bureaux de change acting as money remitters	199	13	330	21
Money remitter	61	1	145	1
TOTAL	260	14 out of 42	475	22 out of 42

529. The number of entities reporting STRs to SEPBLAC remains limited (22 out of 42 in 2004) which raises some concerns in terms of a proper implementation by a large majority of these entities of the reporting requirement.

530. According to Article 10 of Ministerial Order of 16 November 2000, licensed money remitters should make available to the public in all their premises their complete list of agents. That list and the contracts and binding documents of the agents should also be available to the Bank of Spain at the registered office of the licensed money remitters. According to paragraph 7 of the Ministerial Order, agents are subject to all obligations and rules that should be applied to their principal (including those related to AML/CFT). Additionally, the information about any agent of any money remitter is available at Bank of Spain web site (www.bde.es).

531. Money remitters are subject to the general enforcement powers and sanctions under Chapter II of Law 19/1993 and Chapter III of RD 925/1995. Comments made under Section 3.10 on Recommendation 17 apply equally to them.

532. No information has been provided with regard to actions taken to identify and take measures against any underground activity in this sector. The Bank of Spain indicated that between 17 and 50% of the money remittances are made without using formal channels, either remitting by hand or using “compensation systems”.

533. A draft of Ministerial Order regarding the activities of money exchange and money remittance and applicable to all the categories of subjects that perform these activities within Spain’s legal framework was issued in 2005 and has followed since then the further steps in the legislative procedure in order to be enacted. Broadly speaking, (1) it deepens in the identification and KYC obligations for these activities, (2) concretizes the definition of non occasional customer, (3) deepens the scope of record keeping, (4) defines a third way to perform non face to face remittances apart from those included in paragraph 7 of Article 3 of RD 925/1995, (5) specifies the minimum technical requirements that must fulfil their on line control systems, and (6) obliges all the subjects that perform money transfer activities to include into their internal procedures the rules to verify that their correspondents abroad are provided with adequate AML systems. This Ministerial Order should be adopted in the course of 2006.

3.11.2 Recommendations and Comments

534. 78% of the money remitters registered in Spain have been subject to a SEPBLAC inspection. These inspections have indicated quite a large number of breaches when implementing the AML/CFT requirements. The adoption of a pending new Ministerial Order will certainly help the sector understand better the obligations to which it is subject under the Spanish AML/CFT regime. The current limited results of the reporting obligation by money remitters illustrate this difficulty and raise some serious concerns about the effectiveness of the implementation of the FATF standards in this sector. Spain should take steps to guarantee a proper implementation of the Recommendations by money remitters (especially in relation to Recommendations 5-7, 13 and SR VII).

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR VI	LC	<ul style="list-style-type: none"> ▪ The current difficulties in implementing AML/CFT measures (including the limited results of the reporting obligation) in this sector raise some serious concerns about the effectiveness of the implementation of the FATF standards.

4. Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBPs)

535. Law 19/1993 includes AML obligations for most categories of DNFBPs:

- Casinos.
- Real estate development, estate agents and real estate brokerage activities.
- Natural and legal persons acting professionally as auditors, external accountants or legal advisors.
- Notaries, lawyers and court representatives are likewise subject to AML obligations when:

1.- They participate on a client's behalf in the planning or performance of or giving advice on transactions involving the sale or purchase of real estate or commercial entities; the management of funds, securities or other assets; the opening or administration of savings or securities accounts; the organisation of the contributions necessary for the incorporation, operation or management of companies or for the creation, operation and management of trusts, associations and analogous structures, or

2. - Law for and on behalf of a client in any financial or real estate transaction.

- Activities connected with the trade of jewellery and precious stones and metals;
- Activities connected with the trade in art works and antiques;
- Activities connected with investment in postage stamps and coins;
- The professional transfers of cash or means of payment (from 22 January 2006);
- The international transfers and drafts managed by postal services (from 22 January 2006);
- Lotteries and other games of chance as regards the payment of prizes (from 22 January 2006).

536. All of the above mentioned non-financial obliged persons / businesses (DNFBP) are subject to AML/CFT preventive obligations under Article 16 of the Royal Decree and other related articles. Additionally, DNFBPs are subject to obligations established in the Law on prevention and freezing of terrorist financing (Article 4 Law 12/2003, dated 21 May).

537. A separate business sector for trust and company service providers does not exist in Spain and therefore AML/CFT obligations are not applicable to persons offering these services. It was nevertheless confirmed by Spanish authorities that lawyers or other regulated and supervised professionals offer services equivalent to those offered by independent formation agents of legal persons as found in some other jurisdictions.

538. The main deficiencies in the AML/CFT preventive measures applicable to financial institutions (i.e., Recommendations 5, 6, and 8-11 and described in Section 3 above) also apply to DNFBPs, since the core obligations for both DNFBPs and financial institutions are based on the same general AML/CFT regime. Overall, the ratings for both Recommendation 12 and Recommendation 16 have been lowered due to concerns about the scope of application of AML obligations and of CFT obligations and effectiveness. It is worth noting that a majority of DNFBP representatives met during the on-site visit were either complacent as to the ML/TF risks inherent to their activities or reluctant to apply the full AML/CFT measures in their daily activities (such as Article 16 for lawyers and the issue of professional secrecy). A lot more needs to be done to promote awareness among non-financial professions on AML/CFT issues.

4.1 Customer due diligence and record-keeping (R.12) (applying R.5, 6 & 8-11)

4.1.1 Description and Analysis

539. As mentioned above, DNFBPs are subject to a limited “*special regime*” contained in Article 16 of the Royal Decree. Nevertheless, when no specific provisions have been adopted, the general rules apply. Due to factors such as (1) the limited risk posed in some non-financial businesses, along with (2) the average transaction (normally smaller than financial business) and (3) the usual size and means of the average undertaking, the general AML/CFT framework ruling the financial sector has been adapted for some of the non-financial types of businesses. As a consequence, the AML/CFT regime has the following peculiarities when applied to non financial businesses and professions, according to Article 16 of RD 925/1995:

- CDD is applicable to transactions above 8,000 EUR. However, in the case of auditors, notaries and legal professions this exemption is not applicable. They must always perform CDD, regardless of the amount.
- The provisions of Article 3.4 and 3.5 of RD 925/1995 (requirement to determine the beneficial ownership and carry out additional CDD verification) do not apply.
- The requirement for systematic (monthly) reporting for the transactions indicated in article 7.2 of RD 925/1995 does not apply.
- A specific AML/CFT external audit is mandatory once in a three years period, instead of annually, as is the case for financial institutions.

540. **Applying Recommendation 5.** The same concerns in the implementation of Recommendation 5 apply equally to reporting financial institutions and reporting non-financial businesses and professions. Requirements in relation to the identification of beneficial ownership and additional identification/know-your-customer rules (especially the need to gather information on the nature of the business activity of the client and collect additional information for higher risk activities) should apply to DNFBPs to the full extent.

541. *Casinos.* The identification requirements apply to the following types of transaction:

- The delivery of cheques to clients resulting from the exchange of chips.
- Fund transfers conducted by casinos at the request of their clients.
- The issuing by casinos of certificates accrediting the winnings obtained by players.
- The purchase or sale of chips for an amount equal to or greater than 1,000 euros, unless clients are identified and registered, irrespective of the chips they buy, the moment they enter the casino.

542. The established threshold is lower than the one permitted by FATF 40 Recommendations (3,000 EUR/USD).

543. *Real estate agents and dealers in precious metals or stones.* Client identification must take place when performing transactions for amounts greater than 8,000 EUR or their equivalent in foreign currency. When attempts to avoid the identification requirement by dividing transactions into amounts below the threshold are detected, the transactions must be added together and identification duly sought.

544. *Natural and legal persons acting professionally as auditors, external accountants or tax advisors, notaries, lawyers and court representatives.* The 8,000 EUR threshold does not apply to these reporting entities which must carry out the identification of their clients in all cases, regardless of the amount involved.

545. **Applying Recommendation 6.** Spain has not implemented proper AML/CFT measures concerning the establishment of customer relationships with politically exposed persons (PEPs) that are applicable to DNFBPs. In the guidelines issued by the Commission for the Prevention of Money Laundering, customers having connections with the “political environment” (guidelines for

professionals), transactions involving persons occupying prominent political or official functions (guidelines for real estate agents) or PEPs (guidelines for casinos) are identified as higher risk customers. These guidelines do not have the force of law but are intended to help non-financial professions drawing their own lists of transactions potentially liable to be linked with money laundering (see Article 5.2 of RD 925/1995). Article 11.1 of RD 925/1995 requires DNFBPs to have a client admission policy for higher risk clients, but smaller establishments and sole practitioners are unlikely to understand the reference to “international standards” without more explicit provisions or clear guidance.

546. **Applying Recommendation 8:** Spain has a regulation in place that addresses the issue of non face-to-face relationships (when establishing customer relationships), but its provisions not extend to non face-to-face transactions (linked to ongoing due diligence). Non face-to-face activities in general (and not only distance banking, for example) should be considered as a highly sensitive business. There is no clear general guidance regarding emerging technological developments.

547. **Applying Recommendation 9:** Reporting non-financial businesses are not allowed to establish introduced business.

548. **Applying Recommendation 10:** Article 16.1.c) of RD 925/1995 sets out that the records of transactions which exceed 30,000 EUR or the equivalent in foreign currency must be maintained for six years, as well as all copies of the documents identifying the clients. This threshold does not apply to natural and legal persons acting in the exercise of their profession as auditors, external accountants or tax advisors, notaries, lawyers and court representatives, who must, in all cases, maintain the records mentioned above for six years. For maintaining identification data, provisions of Article 6 of the Royal Decree apply. As far as casinos are concerned, the team was told by the *Asociación Española de Casinos de Juego* (AECJ) that identification data of customers regularly erased after 6 months due to data protection rules. It seems that identification data is kept only in the case a client has been banned or with special permission of the data protection authority. This is fully contradictory with the record requirements defined in Recommendation 10. However, SEPBLAC has conducted on-site inspections of three casinos since 2001 and discovered no record keeping problems.

549. **Applying Recommendation 11:** Article 16.1.b) of the Royal Decree requires DNFBPs to examine with special attention any transaction, irrespective of the amount, which may be particularly linked to the laundering of proceeds from the predicate offences referred to in Article 1, and directly inform SEPBLAC when this examination leads to the suspicion or certainty of a laundering link. Without prejudice to the foregoing, gambling casinos shall in all cases inform SEPBLAC of transactions when there is some indication or evidence of a link with money laundering, and which fall within the categories described above (delivery of cheques to clients, fund transfers, issuing of certificates accrediting the winnings and purchase or sale of chips).

4.1.2 Recommendations and Comments

550. Spain should implement Recommendations 5, 6 and 8 fully and make these measures applicable to non-financial businesses and professions.

551. With regard to Recommendation 10, there are some concerns with regard to the implementation of the record keeping obligation by casinos. The relationship between the AML/CFT rules and the data protection requirements should be clarified.

552. More generally, the evaluation team believes that the effectiveness of Spain’s current laws can be improved by developing a proper monitoring of the implementation of FATF standards by the non-financial businesses and professions in Spain. It is also important to work with the different sectors (via their professional associations for instance) to improve awareness and overcome reluctance to apply AML/CFT requirements.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	PC	<ul style="list-style-type: none"> ▪ The same concerns in the implementation of Recommendation 5 apply equally to reporting financial institutions and reporting non-financial businesses and professions (see Section 3.2 of the Report). All existing requirements in relation to the identification of beneficial ownership and additional identification/know-your-customer rules (especially for higher risk activities) do not apply to DNFBPs. ▪ Spain has not implemented adequate AML/CFT measures concerning Recommendation 6 that are applicable to reporting non-financial businesses and professions. ▪ Spain has some regulation in place that addresses the issue of non-face to face relationships (when establishing customer relationships) but that does not extend to non-face to face transactions and there is no clear general guidance regarding emerging technological developments (Recommendation 8). ▪ With regard to Recommendation 10, there are some concerns with regard to the implementation of the record keeping obligation by casinos. ▪ More generally, the implementation of the FATF requirements (both ML and TF) by DNFBPs raises very serious concerns.

4.2 Monitoring transactions and other issues (R.16)

(applying R.13-15 & 21)

4.2.1 Description and Analysis

553. *Applying Recommendation 13.* According to Article 16.1.b) of the RD 925/1995, DNFBPs are required to examine with special attention any transaction, irrespective of the amount of the same, which may be particularly linked to the laundering of proceeds from the predicate offences referred to in Article 1, and directly inform SEPBLAC when this examination leads to the suspicion or certainty of a laundering link. Without prejudice to the foregoing, gambling casinos must in all cases inform SEPBLAC of transactions when there is some indication or evidence of a link with money laundering, and which fall within the categories described above (delivery of cheques to clients, fund transfers, issuing of certification of the winnings and purchase or sale of chips). STRs must be sent by DNFBP directly to SEPBLAC without the intervention of SROs.

554. In the case of legal professionals (notaries, lawyers and court representatives) the reporting obligation is subject to two limitations:

- It refers exclusively to the activities covered by AML/CFT legislation (participation on a client's behalf in the planning or performance of or the giving advice on transactions involving the sale or purchase of real estate or commercial entities; the management of funds, securities or other assets; the opening or administration of bank accounts, savings accounts or securities accounts; the organisation of the contributions necessary for the incorporation, operation or management of companies or for the creation, operation and management of trusts, associations and analogous structures, or activities for and on behalf of clients in any financial or real estate transaction), and
- Lawyers and court representatives remain bound by their duty of professional secrecy which covers the information received from a client or obtained in their regard when developing the client's legal cases, or when engaged in defending or representing such clients during administrative or legal actions or in relation thereto or advising them on initiating or avoiding court action, regardless of whether they received such information before, during or after these proceedings.

555. STRs filed by DNFBPs must comply with the requirements laid down in article 7.4 of the Royal Decree (see Section 3.7 of the Report). The numbers of STRs that received by SEPBLAC from the different categories of DNFBPs is as follows:

Entities reporting	2001	2002	2003	2004
Real Estate promoters	1	1	0	8
Gambling casinos	0	1	1	1
Notaries and registrars ⁵²	-	-	6	9
TOTAL	1	2	7	18

556. In Spain notaries are civil servants; therefore, they are part of the system for prevention of ML. Recently, their degree of involvement has changed as a consequence of the adoption of the new FATF recommendations and the Second EU Directive on ML. Notaries are now not only a co-operating institution (as before) but a specific group of obliged entities. Before becoming obliged subjects, they had been sending what it was considered “describing transactions” that do not themselves contain enough information to qualify as STRs, according to the standards established in article 7.4 of RD 925/1995. SEPBLAC received 2,532 reports of this type between 2001 and 2005. As is common in many countries, there is currently no communication among notaries and no common database of documents or clients; so there is no way of knowing whether a client has been to different notaries on one day. Under the current position of obliged subjects, the evaluation team was advised that notaries are generally well aware of the risks, and they (with the Directorate General) have since the on-site inspection begun setting up an innovative new AML/CFT system. A central database of all notarised transactions and a ML unit have been established within the General Chamber. The ML unit is now responsible for forwarding analysed STRs to SEPBLAC (see Ministerial Order signed on 20 September 2005). Work on the database began in 2004, but individual notaries (there are some 3,000 of them) will require detailed support and guidance on operating the new system. Quick and easy access to this database should also be available to law enforcements authorities and SEPBLAC. A relevant support to the analysing and reporting obligations is provided by the Centralised Body for AML/CFT that is already operational.

557. Except for casinos, real estate activities, trade in precious stones and metals (for other professions, the requirement entered into force in April 2005), the reporting obligation is quite new. Consequently, it is very early to be assessing the effectiveness of the system. All DNFBP sectors asked for more specific guidance in how to meet their AML/CFT obligations. Considering the confusion voiced by some of these sectors during the on-site visit, there are concerns about the effectiveness of implementation for Recommendation 13 (especially by dealers in precious stones and metals and lawyers). Nevertheless, it should be noted that some DNFBP sectors have started reporting and, considering how recently these reporting obligations were implemented, these reporting levels would seem to be a good start for these professions.

558. *Applying Recommendation 14.* Provisions of Article 15 of the Royal Decree apply both to financial and non-financial professions (see Section 3.7 of the Report). The DNFBP sectors are prohibited from disclosing that an STR or related information has been reported to SEPBLAC. In most of the DNFBP sector, this obligation has been implemented adequately. However, there is some concern about the way this obligation might be implemented with regards to lawyers/independent legal professionals. If a lawyer/independent legal professional does not accept the work, he may tell the client that he does not wish to do so because it would imply an obligation to file a report to the FIU. This is not considered as “tipping off” because a customer relationship has not yet been established and consequently the AML/CFT obligations do not apply. There is concern that this creates the possibility that a criminal could shop from lawyer to lawyer and test out different theories to determine what would have to be reported to SEPBLAC and what would not.

559. *Applying Recommendation 15.* By virtue of article 16.1.d) of the Regulation, DNFBPs are subject to general requirements imposed on financial institutions by RD 925/1995: articles 11 (internal control measures), 12 (internal control and reporting units) and 14 (training of staff). The only relevant

⁵² Since the adoption of the Ministerial Order of 20 September 2005 which regulates the Centralised Body for Money Laundering Prevention (*Órgano Centralizado de Prevención-OCP*) within the General Chamber of Notaries (that came into force on 24 December 2005), 23 STRs were filed.

particularity refers to the requirement to conduct an audit of internal control and reporting procedures by an outside expert: instead of the mandatory annual audit imposed on financial institutions, DNFBP can opt to run the external audit at three-year intervals, provided they perform an annual internal review of the operational effectiveness of their internal control and reporting procedures and units with the results written up in a report. Both reports, the external and the internal, must be available for consultation by SEPBLAC during a period of six years from the date of writing. For DNFBPs with no more than 25 employees, the owner of the business must exercise the internal control and reporting functions. The compliance officer is the business owner or an employee designated by him.

560. There are some preliminary concerns about how effectively internal controls have been implemented by DNFBPs, especially by the smaller entities. The guidance issued so far does not cover dealers in precious stones and metals. Existing guidance is confined to lists of typologies and does not assist individuals or small DNFBPs with specific AML/CFT obligations or with the practical interpretation of their legal obligations.

561. *Applying Recommendation 21.* Article 5.2 c) of RD 925/1995 is applicable to DNFBPs (see Section 3.6 of the Report). The existing Guidelines (for professionals, casinos and real estate agents) considers “higher-than-average risk” those transactions which involved funds coming from or clients resident in tax havens, in countries or territories non co-operative in the fight against money laundering or terrorist financing or in States in which it is publicly known the existence of particularly active criminal organisations (for example, drug trafficking, terrorist activities, organised crime or trafficking of human beings). Additionally, in the specific case of non co-operative countries, DNFBPs were instructed by the Ministry of Economy to apply enhanced diligence. Again, especially for those professions where no guidance has been issued yet, it is unlikely that a proper implementation of Recommendation 21 takes place.

4.2.2 Recommendations and Comments

562. Considering the calls for more guidance as voiced by all sectors during the on-site visit, there are preliminary concerns about the effectiveness of implementation for Recommendation 16 in all of its aspects. It is difficult to assess the overall effectiveness of the measures in place, as they have only been put into place recently. However, the Spanish authorities should continue to undertake information campaigns directed at the DNFBPs to clarify their AML/CFT obligations especially with regard to the duty to make suspicious transaction reports. The Spanish authorities should also ensure that there are no open questions left with regard to the interpretation of the AML/CFT provisions and where necessary adopt specific provisions taking into account the size and nature of the business carried out by non-financial professions. Guidance so far issued has been circulated through industry associations. Given the very large number of individual or small DNFBPs, some of which may not belong to an association, it is not clear how effective awareness is being achieved.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.16	PC	<ul style="list-style-type: none"> ▪ The same deficiencies in the implementation of Recommendations 13 and 15 apply equally to reporting financial institutions and reporting non-financial businesses and professions. ▪ Considering the calls for more guidance as voiced by all sectors during the on-site visit, there are preliminary concerns about the effectiveness of implementation for Recommendation 16 in all of its aspects.

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and Analysis

563. **Recommendation 24.** Casinos are licensed and supervised and must conduct their business in a physical location. Internet casinos are not permitted or authorised in Spain. However, Spain has not taken any measures to identify whether there are any Spanish residents/citizens who own or operate: (1) an internet casino; (2) a company that runs an internet casino; or (3) a server that is located in Spain and which hosts an internet casino. Moreover, Spain has not issued any guidance to reporting financial institutions or non-financial institutions alerting them to the possible existence of such entities and advising them of how to treat them.

564. Casinos are subject to regulations approved by Order 9.1.1979. They can only be operated by a Spanish SA and may not be more than 25% foreign owned. All casinos must have a licence prior to conducting business (Article 3.2 of RD 444/1977, dated 11 March). An authorisation (licence) is granted by the Autonomous Communities, following a mandatory report from the Central Administration. The licence can not be transmitted (Articles 10.1.j) and 16.i) of the Regulation for Gambling Casinos, approved by Ministerial Order dated 9 January 1979) and the transmission of more than 5% of the capital is subject to administrative authorisation (Article 19.a) of the Regulation). The evaluation team was told that there are minor regional variations in the regulations applied. The regulations do not appear to have been updated since 1979 and contain no specific AML provision. Gaming machine operators (bingo and slot machines) as well as casinos are licensed regionally, by local government tax departments. Each has its own rules following former State “norms”. The objectives of the authorisation process are to ensure:

- Transparency in gaming
- Fraud prevention
- Public protection.

565. Operators may be inspected at any time, by the National Police. No inspections are carried out by other national authorities. Local police are responsible for reporting ML concerns to SEPBLAC. Operating a casino without administrative authorisation (licence) constitutes very serious infraction, according to Article 1.2 Law 34/1987, dated 26 December.

566. Regulations exclude persons with a criminal record from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of casinos. Specifically, Article 7.c) of the Regulation for Gambling Casinos (approved by Ministerial Order dated 9 January 1979) requires that any application be accompanied by a negative criminal record of all the partners, promoters, administrators, directors, managers and representatives with administration faculties. If any of the said personas were a foreigner not residing in Spain, the application must be accompanied by an equivalent document, duly translated, issued by the competent authorities from his country of residence. Additionally, before initiating business, a list should be submitted providing details on the director, deputy directors and members of the board and the staff that are planned to work in games, secretary-reception, cash-desk and accounting. The details should include name, surname, nationality, civil status, domicile and ID number or passport, accompanied by negative criminal records for each of the persons on the list or equivalent document in the case of foreigners (Article 14.e of the Regulation for Gambling Casinos).

567. Only the personnel duly authorised are allowed to work in a casino. Article 26.1 of the Regulation for Gambling Casinos establishes the requirement to previously obtain a so-called “professional document”, mandatory in the case of the Gambling Director, Deputy Directors, members of the Board and of the staff working in games and their auxiliaries, reception, cash-desk and accounting. The expedition of the “professional document” is discretionary and may be freely suspended or revoked by the Administration on grounds of morality or competence (article 26.2). The suspension or revocation of the document prevents the holder from working in any casino located in national territory (article 26.3).

568. The licensing and supervision regime of DNFBPs is as follows:

SUPERVISION AND LICENSING OF DNFBPs				
DNFBPs	Supervisory authority in AML/CFT matters	Relevant SRO	Licensing decision/authorisation to carry out the activity made by:	Applicable regulation (including conditions of access to the profession)
Casinos	SEPBLAC	- Asociación Empresarias Española de Casinos de Juego. - Asociación de Promotores constructores de España (PACE)	Autonomous Communities/ General State Administration	RD 44/1977. Ministerial Order, January 9th 1979, passing the Regulation on Casinos.
Real Estate Agents	SEPBLAC	Consejo General de los Colegios Oficiales de Agentes de la Propiedad Inmobiliaria.	The exercise of this activity is free. Anyway, the condition of Real Estate Agent (API) is provided by the "Ministerio de Fomento".	It is necessary to pass an exam to become a Real Estate Agent.
Lawyers	SEPBLAC	Consejo General de la Abogacía Española.	Councils of the Regional Colleges	Law Degree+ Membership of Councils of the Regional Colleges
Notaries	SEPBLAC and GENERAL DIRECTORATE OF REGISTRIES AND NOTARIES (JUSTICE) ⁵³	Consejo General del Notariado	General State Administration	To become a Notary it is necessary to pass a Civil Competition at a State level
Dealers in precious metals and stones	SEPBLAC	Asociación Española de Joyeros, Plateros y Relojeros. Federación Española de Anticuarios.	The exercise of this activity is free.	
Accountants	SEPBLAC	Instituto de Auditores Censores Jurados de Cuentas de España.	The exercise of this activity is free.	

569. No inspections have taken place yet for auditors, external accountants or legal advisors and notaries, lawyers and court representatives. In 2005, two dealers in precious metals and stones were inspected. For casinos and real estate companies, the number of inspections carried out by SEPBLAC since 2001 is as follows:

Entities	2001	2002	2003	2004	Total
Real Estate companies	3	2	0	8	13
Casinos	1	1	0	0	2
TOTAL	4	3	0	8	15

570. It is not possible legally for SEPBLAC to enter into MOUs with DNFBPs regulators or SROs. SEPBLAC's supervision focus has been on financial institutions, and it is clearly not practical to give the same attention to the more fragmented DNFBPs sectors.

⁵³ For those requirements in the area of ML/FT prevention and, at the same time, in the area of the civil service they perform (i.e. record keeping obligation).

571. DNFBPs are fully subject to the sanctioning regime established in Law 19/1993 (see Section 3.10 of the Report). The following administrative sanctions were imposed to real estate agents in 2004:

Breach	Category of sanction	Real Estate Agents
Customer identification	Serious	90,000 EUR
Record keeping	Serious	
Special exam for risk transactions	Serious	80,000 EUR
Establishment of internal procedures and units for AML/CFT control	Serious	60,000 EUR
Training on AML/CFT skills to the staff	Serious	45,000 EUR
Warning		Private

572. **Recommendation 25 (Guidance for DNFBPs other than guidance on STRs).** SEPBLAC maintains a web site which provides extensive information on the AML/CFT framework: statistics, reports and publications, typologies, etc. Both SEPBLAC and the Secretariat of the Commission hold regular meetings with representatives from DNFBPs, such as the General Council of Notaries. In this respect, the recently approved Guidelines for professionals and real estate agents (July 2005) and casinos (November 2005) were the result of a joint effort with the private sector. Guidance is in the process of adoption for dealers in precious metals and stones and lawyers. Doubts raised by DNFBP on the interpretation or extension of AML/CFT obligations are solved by the Secretary of the Commission.

573. The existing guidelines consist of lists of typologies and there is nothing on any other AML measures such as record keeping and no mention of terrorist financing⁵⁴. The most recent advisory letter (December 2005) from SEPBLAC to a casino subject to inspection confirms that CFT procedures are needed.

574. The Spanish Bar association has sent the 40 Recommendations to its regional Bars and training schools, leaving them to distribute to individual practitioners in the region. Despite the efforts made the Ministry of economy, more should be done in this sector that is generally reluctant to apply AML/CFT requirements. The Bar Association has a strong ethics code which requires satisfaction as to non criminal origin of funds – all lawyers are well aware of the risks inherent in their business. This is something that can be exploited in dealing with the profession. Therefore, if it is accepted that the legal profession is a difficult area, competent authorities could do more to promote awareness through the Bar Association and by participating in training and seminars for the profession, and by re-assuring practitioners that the legal professional privilege will be understood and respected.

4.3.2 Recommendations and Comments

575. **Recommendation 24.** Considering the limited (staff and technical) resources of SEPBLAC for performing on-site inspections of DNFBPs and its practical inability to work through SROs by means of formal inspection MOUs, there is no proper AML/CFT supervision in place. The existence of specific audit reports in AML/CFT procedures that all reporting parties have to provide to SEPBLAC is also not sufficient since only two people (subsequently increased to four and a further increase is planned) within SEPBLAC are in charge of both carrying out on-site inspections and analysing these reports. Given the erratic coverage and recent nature of current DNFBPs guidance, effectiveness could be improved if SEPBLAC were to solicit more co-operation from industry associations, SROs and other authorities (such as the National Police who carries out inspections of casinos and jewellers for social and customer protection purposes) in a comparable way it is doing with the CNMV and DGFSP.

⁵⁴ The evaluation team was advised that guidance on terrorist financing will be issued later in 2006 by the Commission for the Surveillance of Terrorist Financing (the “Watchdog Commission”).

576. Spain should be aware of issues relating to the illicit operation of internet casinos in Spain, and should be prepared to address these problems.

Recommendation 25. DNFBPs generally recognise that they do not have enough guidance as far as AML/CFT requirements are concerned. It is essential that competent authorities further develop their efforts to raise AML/CFT awareness within the DNFBPs (and not only vis-à-vis those that already do send STRs to SEPBLAC) via, among other things, the adoption of sectoral and very practical guidelines (not limited to identify higher risks operations or situations but also spelling out specific obligations such as record keeping and reporting requirements). The lack of such guidance certainly jeopardises successful practical application of the Spanish AML/CFT system, especially amongst DNFBPs where the incidence of small firms and individual practitioners is so high.

4.3.3 Compliance with Recommendations 24 and 25

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.24	NC	<ul style="list-style-type: none"> ▪ There is no proper supervision or monitoring for AML/CFT requirements in place for DNFBPs. ▪ Spain not taken any measures vis-à-vis Internet casinos.
R.25	PC	<ul style="list-style-type: none"> ▪ There are not sufficient guidelines related to AML/CFT issues are available to DNFBPs.

4.4 Other non-financial businesses and professions Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

577. In addition to the non-financial businesses and professions as designated by FATF Recommendations 12 and 16, the obligations under Spanish AML/CFT legislation also apply to:

- Activities connected with the trade in art works and antiques;
- Activities connected with investment in postage stamps and coins;
- The professional transfers of cash or means of payment (from 22 January 2006);
- The international transfers and drafts managed by postal services (from 22 January 2006);
- Lotteries and other games of chance as regards the payment of prizes (from 22 January 2006).

578. The three last categories were introduced by RD 54/2005. In the case of the professional transport of cash or means of payments, the inclusion was suggested by the Directorate General of the Police since there was growing evidence that these enterprises might be used to move illicit funds. The international transfers and drafts managed by the postal services were introduced to establish a regulatory “even playing field” between credit institutions and postal services. Finally, lotteries and other games of chance were included after the detection of a specific ML typology (acquisition of winning tickets to launder funds): therefore the controls by obliged subjects must take place prior to the payment of tickets (in particular, due identification of the holder of the ticket). Consequently, these activities must comply with all of the requirements in Law 19/1993 and RD 925/1995.

579. Spain has not been taking steps to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering (like reducing reliance on cash). It does not seem that Spanish authorities, including the central bank, have encouraged the banking sector to establish an efficient infrastructure for electronic fund transfers.

4.4.2 Recommendations and Comments

580. Spain should take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.20	LC	<ul style="list-style-type: none"> ▪ Spain has not been taking steps to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

5. Legal Persons and Arrangements & Non-Profit Organisations

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

581. **Recommendation 33.** The Spanish Commercial Code provides for the following types of legal persons: (1) sole proprietorship; (2) stock corporation or public limited companies (*sociedad anónima* - SA); (3) limited liability company; (4) worker's partnerships; (5) joint ventures and (6) branches.

582. The deed of incorporation of a company in Spain must be signed before a notary and then registered at the Spanish Corporate Registry (*Registro Mercantil*). This is a public registry open and accessible to anyone, on-site or through the internet.

583. The deed of incorporation must include the company's articles of association approved by its founders. The articles of association must indicate, among other things: (1) the name of the company and description of its activity; (2) the date on which it begins its operation; (3) the registered office; (4) the share capital, the capital part which is not paid-up and the period within which the capital must be paid; (5) the number of shares and the rights attached to them; (6) the date on which the company's financial year ends; (7) the structure of the company's management and any special rights that founders may have. The deed of incorporation must also identify the persons initially entrusted with the management and representation of the company. Any amendment to the by-laws must be approved at a shareholders' general meeting.

584. Spanish law does not lay down any explicit obligation on legal persons, such as a limited company, to know or to disclose (for instance when buying shares in another company) information about the beneficial ownership of that company – as the term “beneficial owner” is defined in the Glossary to the Methodology – nor is there any registry that maintains information on beneficial ownership in this sense. It thus seems that Spanish law does not require adequate transparency concerning beneficial ownership and control of legal persons and it is in practice, bound to be difficult and sometimes quite cumbersome for competent authorities to obtain the necessary information. Moreover, access to such information, when there is access to it, will often not be timely. Relying on investigative and other powers of law enforcement, Spanish competent authorities can produce disclosure of the immediate owners of a legal person; however, if these in turn are also legal persons, the competent authorities are left to continuing up the chain, one link at a time. Following this path and through the use of mutual legal assistance instruments whenever non-domestic legal persons form part of the chain (provided that the third country in question is willing and able to provide such assistance), Spanish competent authorities should at least be able to arrive at the ultimate owner(s) of a legal person.

585. To the extent that the necessary information is obtained in this way, there can be doubts as to whether the information is adequate, accurate and up to date, which may be difficult for the legal persons involved and the competent authorities to verify.

586. A huge majority of the securities issued are usually represented in a dematerialised way (non-paper format / book-entry record). Securities have to be dematerialised in order to be traded or negotiated in organised markets. The certificate issued by the member of the market which holds the book entry record reflects that a specific identified person owns X number of securities. This

certificate is usually requested from the institution holding the book entry record by the owner in order to prove ownership. There is no share certificate which is “bearer” for this type of securities, since the certificate reflects just the identity of the person registered as owner in the book entry record and the number of securities owned. Therefore, this certificate cannot be passed from hand to hand (it is not “bearer”, it shows who the owner is, according to the registry) and, obviously, the possession of the certificate does only accord ownership as long as it shows on it who the person registered as owner is and the number of securities. Banks and other AML/CFT obliged entities can require the customer (legal person) to bring a certificate issued by the entity holding the book entry record in order to check who the owner of this customer (legal person) is. The certificate will inform the bank on the concrete identity of the person who owns shares and the number of shares owned.

587. Despite the process fostering the dematerialisation of securities, which has been going on in Spain since 1998, some securities continue to exist in paper format. These securities can be (1) securities registered in nominee name, or (2) bearer securities.

588. If the securities are registered in the name of a nominee, the nominee name in which the security is registered can be ultimately traced back to the person who is the owner. As with dematerialised bearer securities, the change of ownership will have to be registered in a paper-based book entry held by the company and the company’s register will show the new registered owner. The bank or another AML/CFT obliged entity can ask for information from the customer (legal person) about the identity of the owner. The customer (legal person) will be able to provide this information and copies of the registry to the bank or another obliged entity.

589. There are still cases where the shares are represented in bearer certificates. The new regulation, issued after 1998, limited substantially the potential of this instrument to be used anonymously thus making it impossible to know the identity of the beneficial owner of a company whose shares are represented in bearer certificates. Since 1998 (Additional Provision Three of Law 24/1998 of the Securities Market), the possession of the bearer share certificate is not enough to prove ownership. In addition, the transfer of the ownership of the security has to be performed through (1) a notary, (2) a securities firm, or (3) a credit institution for the ownership transfer in order to be valid. Transfers taking place in other types of situations are not recognised and therefore are not valid. Notaries, securities firms and credit institutions must keep records of the transaction and make them available to interested parties. Therefore, the mere handling of the certificate, going from hand to hand, does not accord ownership in favour of the person who possesses it. In real terms, Spanish bearer shares are not fully bearer securities anymore.

590. Spanish authorities indicated that there are several ways for the company to be aware of and to determine the beneficial owner: (1) the exercise of the voting/charge rights, and (2) obtaining information on ownership from the notary, the security firm or the credit institution which was involved in the transfer of the securities. These three types of institutions have systems capable of integrating ownership information and making it available to the company, if it is interested in obtaining such information.

591. Bearer shares are still in use in Spain although they are now not so widely as some years ago, and their importance has decreased correspondingly. In particular, the use of paper-format bearer shares has decreased. This development is a positive one. However, the difficulties mentioned above in ensuring that competent authorities can have timely access to adequate, accurate and current information on beneficial ownership and control persist with respect to legal persons using bearer shares as well as with respect to legal persons not using such shares.

5.1.2 Recommendations and Comments

592. It is recommended that Spain review its commercial, corporate and other laws with a view to taking measures to provide adequate transparency with respect to beneficial ownership.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none"> ▪ Spanish law, although requiring transparency with respect to immediate ownership, does not require adequate transparency concerning beneficial ownership and control of legal persons. ▪ There are similar doubts also about the availability of adequate, accurate and current information on beneficial ownership and control of legal persons using bearer shares. ▪ Access to information on beneficial ownership and control of legal persons, when there is access to such information, is often not timely.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

593. **Recommendation 34:** Spanish law does not recognise the legal concept of a trust, including trusts created in other countries. Equally, Spain advised that there are no other legal arrangements that are of a similar nature to a trust, or which would otherwise meet the definition of a “legal arrangement” as defined in the FATF Recommendations. Nevertheless, Spanish lawyers do, from time to time, handle trusts located abroad. Spain reports that when handling trusts abroad, Spanish lawyers are subject to the same legal regime as when assisting Spanish persons/entities, including the obligations with regard to customer identification, record keeping, STR reporting, etcetera.

5.2.2 Recommendations and Comments

594. Recommendation 34 is not applicable in the Spanish context.

5.2.3 Compliance with Recommendations 34 - Not applicable

	Rating	Summary of factors underlying rating
R.34	NA	Recommendation 34 is not applicable in the Spanish context.

5.3 Non-profit organisations (SR VIII)

5.3.1 Description and Analysis

595. The FATF issued an Interpretative Note to Special Recommendation VIII in February 2006. In this Report, Spain was not evaluated on its compliance with SR VIII according to the new Interpretative Note but on the basis of the Methodology as updated in October 2005.

596. **Special Recommendation VIII – review of the sector.** A comprehensive assessment on the Non-profit organisations (NPOs) sector in Spain has been conducted in the framework of SR VIII⁵⁵. In the review of this sector and based on case studies⁵⁶, Spain has extrapolated some conclusions on potential terrorist financing related risks:

⁵⁵ In 2004, Spain presented the results of the review to the FATF Working Group on Terrorist Financing.

⁵⁶ Although terrorism has become a global issue and nowadays is really difficult to talk about terrorism at a local level, Spain has been fighting a long battle against a terrorism which is based on a regional level but has proved to have diverse international links and, also, to have used the NPO sector to financially survive. Therefore, the review undertaken as regards criminal activity in the NPO sector is concentrated on the Spanish experience in fighting ETA.

- First, the criminal activity of some NPOs results, mainly, from their use as an instrument of terrorist financing. Collaterally, without deviating from this goal and, on many occasions, because they try to achieve it, these NPOs may commit other crimes. In fact, it is very common to verify that most of those NPOs were set up solely for use as a TF vehicle. This criminal activity conceals their financing activities and, on many occasions, is much more easily detected than the financing activities themselves. Some usual examples of such collateral crimes include: (1) double accounting; (2) Social Security fraud; (3) tax evasion and (4) forgery of documents.
- Second, within the NPO sector, the most affected sub-sectors are foundations and cultural associations. The nature of these entities makes them more vulnerable to their use by criminals in their money laundering and terrorist financing activities.

597. In light of these factors, Spain has undertaken some initiatives to identify, prevent and combat the misuse of NPOs. To implement mechanisms to monitor NPOs, the Spanish legal system relies on Law 19/1993 and Law 12/2003 as follows:

- Article 2 of Law 19/1993 identifies different reporting entities but does not include the NPO sector. Because there are no laws and/or regulations that impose AML/CFT obligations on NPOs, these entities are not obliged entities under the AML/CFT regime. Nevertheless, AML/CFT obliged entities play a relevant role in preventing money laundering and terrorist financing throughout the NPO sector, as long as they engage in business relations with NPOs and fully apply the AML/CFT regime. This is a way to monitor NPOs “indirectly”. For this indirect monitoring to be effective, clear guidance on typologies and potential risks must be made available. It appears that so far only the guidance for credit institutions and real estate agencies has identified NPOs as higher risk customers.
- The extension of AML/CFT regime to cover lawyers and other external professional advisors contributes to enhancing the preventive control to the NPOs sector, when conducting the various types of designated activities. No specific outreach to these sectors has been developed yet.
- The Additional Disposition II of Law 19/1993 of 28 December concerning specific measures for preventing the laundering of capital urges the board members, trustees and staff of a foundation, in the exercise of their duties according to Law 50/2002 of 26 of December, to ensure that their foundation is not used for AML/CFT activities. To this effect, foundations must keep the identifying documents of every person who has received resources from the foundation for the previous six years. These documents should be available to administrative and judicial authorities with responsibility for preventing and prosecution of terrorism. The same Additional Disposition II of the Law 19/1993 of 28 December, concerning specific measures for preventing the laundering of capital, refers to associations, and it imposes on the associations which are listed as of public interest the same burden with regard to foundations and AML/CFT activities.

598. Law 19/1993 sets out the obligation for all foundations and associations (1) to keep records for 6 years on the identity of every beneficiary of their activities domestically or internationally, and (2) to make this registry available to competent authorities. Although it is difficult to assess the impact and consequences of these provisions because of the recent implementation and the natural difficulty to assess any measure in the preventive area, incentives to conduct transactions through formal channels and to maintain records have proven to be relevant deterrent for ML/FT activities among all sectors.

599. In Spain, the NPO sector is basically made up of associations and foundations, and the legal regulation of these entities has recently been modified by Organic Law 1/2002 of 22 March on the Right of association and Law 50/2002 of 26 December on Foundations. As well, the Spanish legal system relies on Law 19/1993 of 28 December concerning specific measures for preventing the laundering of capital (which has been revised by the Law 19/2003 of 4 July), and Law 12/2003 of 21 May concerning the freezing of assets in relation to the terrorist financing.

600. *Associations.* The number of NPOs is changing, and an exact figure cannot be given, although an approximate figure may be obtained from the National Registry of Associations and the offices for foundations (*protectorados*) located in various ministries. As regards associations at a national level, the total number was 24,257 in 2004. The right to associate has become a guiding principle in the Spanish legal system, and in addition this freedom is interpreted very widely. There is no designated authority to supervise or monitor associations specifically with regard to their compliance with AML/CFT matters. However, Spanish legislation on associations allows the administrations of the Autonomous Communities to set up a registry for the associations which mainly operate at a regional level. Therefore, it is possible to estimate the number of associations which operate at a regional level: in total, some 24,417. These registries are obliged to inform the National Registry of Associations when these regional entities are created or dissolved. Associations are required to maintain information on (1) the purpose and objectives of their stated activities and (2) the identity of the person(s) who direct their activities, including board members (see Statutes of association, Articles 6 & 7 of Law 1/2002). Associations are also required to issue annual financial statements that provide detailed breakdowns of incomes and expenditures (Article 14 of Law 1/2002).

601. *Ensuring that terrorist organisations cannot pose as legitimate association.* The information from registries includes a range of issues such as the goals, identification of management and representative bodies, or the activities of the concerned associations. If the competent authority, when examining this information, considers that there are reasonable indications of a criminal structure or activity, it is to inform the association and, also, to communicate this point to the public prosecutor, thus halting the process of registration until a legal ruling is issued. The legal protection for associations is very strong, to the extent that only competent judicial authorities have the power to issue injunctions against them or dissolve them. Administrative authorities are not allowed to do this. Organic Law 1/2002 of 22 March on the right of association (Article 4.2) precludes administrative authorities from imposing any preventive measures or issuing injunctions which might affect the internal life of the association. Nevertheless, the administrative authorities could have some supervisory role when giving subsidies or technical assistance. The new Sectoral Council of Associations, where administrative authorities are represented, may eventually prove to be a good way of not losing contact with the different associations.

602. *Foundations.* There is a Registry of Foundations in the Ministry of Justice. In addition to that, information about foundations is also available in the foundation offices of the various ministries. In every regional administration there are also one or more registries where foundations, whose purposes do not go beyond the territory of the specific autonomous community, are registered. These registries are obliged to inform the *Registry of Foundations* in the Ministry of Justice when these regional entities are created or dissolve. Foundations are required to maintain information on (1) the purpose and objectives of their stated activities and (2) the identity of the person(s) who oversee their activities, including board members (see Statutes of foundations, Articles 10 & 11 of Law 50/2002). Financial transparency rules also apply to them (Article 25 of Law 50/2002).

603. There were 669 foundations in 2004, and they are distributed, in terms of assets, as follows:

- 1 - 30,000 EUR.....273 (40.8%)
- 30,000 - 300,000 EUR..... 163 (24.36%)
- +300,000 EUR.....204 (30.49%)
- no data available..... 29 (4.33%)

604. This sample shows that foundations in Spain are not very large in terms of assets and, also, that small foundations play a relevant role in this sector.

605. *Ensuring that terrorist organisations cannot pose as legitimate foundations.* The right to set up foundations is not as strongly protected as the right to associate, and this different legal treatment allows administrative authorities to play a bigger role as regards AML/CFT measures. Although the foundation offices (the national and regional ones) are not specifically devoted to supervising the

activity of the foundations as regards AML/CFT measures, their supervisory activity may also include this. They are in charge of verifying, for instance, whether the economic resources of the foundation are applied to its goals. Moreover, as in the case of associations, if the foundation office considers that there are reasonable indications of a criminal activity, it is to inform the foundation of this point and, also, to communicate these indications to the public prosecutor or to the competent judicial authority.

606. The Law 50/2002 of 26 December on Foundations (Article 42), allows the foundation office (*protectorado*) to temporarily place the foundation under administrative control when it detects a serious irregularity in the economic management which could endanger the existence of the foundation, or an incompatibility between the foundation's goals and its activities. Prior to this action by the administrative authorities, the foundation office must urge the trustees of the foundation to adopt appropriate measures to correct these irregularities. If the trustees do not comply with this request, the foundation office is able to seek from the judicial authority the temporary placement of the foundation under administrative control.

607. If a foundation does not comply with its obligations under Additional Disposition II of Law 19/1993 and, consequently, by doing so, is conducting itself in a manner incompatible with its goals, the boards members, by virtue of article 42 of Law 50/2002 of 26 December, will be able to seek from the judicial authority the temporary placement of the foundation under administrative control (assuming all the legal and statutory powers of the trusteeship). The same Additional Disposition II of Law 19/1993 of 28 December refers to associations and imposes on those which are listed as of public interest the same burden as regards foundations and AML/CFT activities.

608. *Religious entities.* Special consideration must be given to the religious entities which are registered in a specific registry within the Ministry of Justice. These statistics distinguish between:

- Entities of the Catholic Church 12,149
- Non-catholic entities..... 1,206

609. In relation to their structure and their average size, there is no general rule. The heterogeneity of this sector comprises almost every present feature. In order to find out more about their size of these entities, one must extract a representative sample, study it and, then, extrapolate the results to the whole NPO sector.

610. *Ensuring that funds are not used for terrorist purposes.* The Spanish legal system relies on two main legal texts to deal with AML/CFT obligations. These texts are Law 19/1993 of 28 December concerning specific measures for preventing the laundering of capital and Law 12/2003 of 21 May concerning the freezing of terrorist assets (see Section 2 of the Report). All of these measures are aimed at preventing any entity (including NPOs) from introducing money of criminal origin into the financial system.

611. Spain relies on existing mechanisms to share information among different competent authorities that hold relevant information on NPOs. Domestically, two major provisions are in place: Organic Law 2/1986 of 13 March on Security and Police Forces (Articles 48 and 49 establish specific co-ordination mechanisms between the security forces of the State and those of the Autonomous Communities) and Internal Order/ 1251/ 2004 of 7 May, which created the Executive Committee for the Unified Command of Security and Police Forces (*Guardia Civil* and National Police). Both instruments are used for general information exchange, and, consequently, the NPO sector can be included in their field of action.

612. *Additional elements.* Spain has developed some oversight programmes of the NPO sector as referred to in the Best Practices Paper to SR VIII. Some additional efforts should be done to improve the financial transparency of NPOs (in financial accounting for example).

613. The Spanish authorities believe that the decentralised political structure in Spain (involving the existence of various registries and foundation offices [*protectorados*]), the proliferation of NPOs, the varying degrees of activity in those entities and the legal protection for the rights of foundation and, above all, associations are elements which restrict the possibility of developing an accurate profile of the sector and, eventually, of establishing direct, tight and exclusive monitoring mechanisms over the sector. The same authorities acknowledge that a more comprehensive and detailed approach to these organisations is needed so that, through this improved knowledge, competent authorities will be able to promptly react to the risks posed by trends identified in the NPO sector.

614. With regard to NPOs, Spain is currently considering the following initiatives:

- As a first step, Spain seeks to raise awareness about the precise risks for the NPO sector in being used as a channel to provide resources for criminal purposes and, especially, for financing terrorist groups. In order to promote this awareness, competent authorities should act through: (1) the existing supervisory and controlling bodies, such as the tax agencies, foundation offices, registries, etc. and (2) the existing obliged persons according to relevant AML/CFT legislation. In particular, authorities and financial institution may be able to develop specific profiles for NPOs particularly susceptible of AML/CFT involvement;
- Next, it will seek to enhance police intelligence unit capacities, so that they can monitor a limited (feasible) number of types of NPO entities that are considered to be especially vulnerable to the risks posed. This could consist of (1) strengthening legal requirements and powers to collect and assess information for the law enforcement agencies; (2) improving the mechanisms of exchange of existing information (whether intra-administrative or inter-administrative at both national and international level); (3) improving the know-how of law enforcement authorities about the investigation of collateral crimes usually committed by NPO entities with a view to establishing links and connections among different types of criminal activities detected within the NPO sector and its vulnerabilities.

615. All of these initiatives should be considered in light of implementing the Interpretative Note to SR VIII that was adopted by the FATF in February 2006.

5.3.2 Recommendations and Comments

616. Spain has over the last few years reviewed the adequacy of its legal framework relating to non-profit organisations that could be abused for the financing of terrorism and has put several measures in place to prevent such abuse. Nevertheless, there are some possible doubts as to whether the existing rules are fully implemented. The assessment team did not for instance get information on the foundation offices (the national and regional ones) that are not specifically devoted to supervise the activity of the foundations as regards AML/CFT measures and whether such supervision is effectively carried out. No evidence was provided to the team. There is therefore insufficient basis upon which to assess the efficiency of the measures in place. Finally, Spain should give further consideration to implementing other specific measures from the Best Practices Paper to SR VIII or other measures to ensure that funds or other assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorist organisations. Spain should adopt new mechanisms to properly and fully implement the requirements under SR VIII as identified in its Interpretative Note.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR VIII	LC	<ul style="list-style-type: none"> ▪ There is insufficient basis upon which to assess the efficiency of the measures in place [issue of effectiveness].

6. National and International Co-operation

6.1 National co-operation and co-ordination (R.31)

6.1.1 Description and Analysis

617. **Recommendation 31.** The development, co-ordination and implementation of anti-money laundering policy in Spain is carried out through the Commission for the Prevention of Money Laundering. Since the AML/CFT policy is not the responsibility of a single department or body, the Commission is intended to serve as the focal point for the co-ordination of activities in fighting money laundering. As described above, the Commission for the Prevention of Money Laundering is chaired by the Secretary of State for Economy and made up of the directors of all the institutions and authorities involved, in one way or another, in combating money laundering (Police, Special Prosecutor Offices, Bank of Spain, Securities and Exchange Commission, General Directorate of Insurance and Pension Funds, Tax Agency, etc.).

618. The idea of bringing together all agencies playing a role in the prevention and combat of ML/TF is definitively welcome. Nevertheless, national co-ordination must also take place at the operational level as well. At present, the Commission for the Prevention of Money Laundering holds meetings twice a year. The evaluating team had access to the minutes of the three meetings held by the Commission but could not find references to discussion of issues arising at operational level (such as the volume of reports, their content, their usefulness, etc.). Therefore, although formal meetings take place, solid outcomes do not always seem to result.

619. The last mutual evaluation of Spain identified inadequacies in co-ordination among national authorities and police units (*Guardia Civil* and National Police). During the current evaluation, it was observed that the co-operation between the various operational authorities has improved. SEPBLAC has incorporated in its internal structure *Guardia Civil* and National Police units. Notwithstanding, the general perception is that each unit works separately, without understanding the efforts and the results as a whole. For instance, SEPBLAC does not know the final outcome of its individual reports or their usefulness once they have been sent to the competent authorities. Indeed, some of those authorities indicated to the evaluation team that they found the reports from SEPBLAC ineffective, although they had not at that point discussed these concerns with the other participants Spanish AML/CFT system in any formal way. It would be important to co-ordinate efforts, not only in paper but also in the operative level. Spain should take more steps to improve co-ordination. It is especially true in the area of fighting against terrorist financing where the role of the Watchdog Commission since July 2003 has been essentially limited to discussing a draft regulation implementing Law 12/2003 on the prevention and blocking of terrorist financing..

620. In 2004, SEPBLAC met with the Ministry of Justice, CECA, AEB, the tax authorities and the DGFSP. These meetings were intended essentially to present SEPBLAC working procedures and tools. More systematically, SEPBLAC has entered into co-operation agreements with the Bank of Spain, the CNMV and the DGFSP. The MOUs promote co-operation in the prevention of money laundering procedures. Co-ordination among these agencies took time to be built up, and it seems that there is still some room for improvement to promote more effective co-operation.

621. *Additional element.* The Commission for the Prevention of Money Laundering, as a part of its AML National Strategy, has devised a list of objectives and actions. One of the main objectives pursued through the strategy is to establish a regular discussion platform with reporting parties (among SEPBLAC, the financial regulators and financial institutions). Successful results from an ongoing dialogue with reporting parties could be achieved through a regular discussion platform that aims : (1) to analyse and exchange experiences on suspicious transactions and developments in the same; look in general lines at reporting tendencies and (2) to facilitate pre-emptive measures regarding risk sectors, practices and geographical areas (national and international). This essentially consists of circulating to reporting parties reports carried out at international level on money laundering and terrorist financing

trends and new techniques. Some representatives of the banking sector met by the evaluation team (including from the Spanish Banking Association) underlined the quality and frequency of the consultation and partnership existing with the Ministry of Economy. A more systematic consultation process should be developed with the DNFBPs (especially involving SEPBLAC).

622. The Commission for the Prevention of Money Laundering (see minutes of the meeting held in June 2004) acknowledges the need to assess the effectiveness of the Spanish AML system and has called for putting such a mechanism in place. The Commission has recommended in particular to analyse the existing link between (1) the reports finalised by SEPBLAC based on the information received, especially from the financial system, (2) police investigations, (3) penal actions, particularly confiscations, freezing, seizing of funds and sentences, and (4) administrative procedures to sanction reporting entities. It was agreed that a working group would be created to define the terms and conditions for performing such analysis, the indicators that will be used and the means of integrating information in successive phases. To the knowledge of the evaluation team, this analysis has not been carried out yet.

6.1.2 Recommendations and Comments

623. *Review of the effectiveness of domestic AML/CFT system.*⁵⁷ One of the main objectives of the AML National Strategy mentioned in Section 1.5 (para. 46) is to promote a review of the effectiveness of certain prevention measures. In this regard, Spain relies only on usual supervision mechanisms and has not conducted a proper review of its AML/CFT regime as a whole.

624. Although formal co-operation may take place, current efforts are not sufficient to meet the requirements of effective mechanisms of co-operation at national level. Spain should also conduct a comprehensive review of its AML/CFT regime in order to identify the weaknesses and shortcomings that need to be addressed.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	LC	<ul style="list-style-type: none"> ▪ Although formal co-operation may take place, there is still room for improvement in more effective interagency co-operation.

6.2 The Conventions and UN Special Resolutions (R.35 & SR I)

6.2.1 Description and Analysis

625. *Recommendation 31 and Special Recommendation I – Signature and ratification of UN Conventions.* Spain signed the Palermo Convention and its Protocols on 13 December 2000, and they were ratified on 1 March 2003. The Vienna Convention was ratified on 11 November 1990. Spain signed the 1999 United Nations International Convention for the Suppression of the Financing of the Terrorism on 8 January 2001, and it was ratified on 1 April 2002. According to Section 96 of the Spanish Constitution, validly concluded international treaties, once officially published in Spain, automatically become domestic law. This means that treaties, once ratified, are directly binding on all public authorities, including judges and prosecutors. Moreover, should a conflict or contradiction between a treaty and a law arise, prevalence and priority is given to the application of the international treaty. However, treaty obligations to criminalise a certain conduct must be implemented by means of national legislation in order to permit criminal prosecution and conviction for such conduct.

626. *Implementation of UN Conventions.* There are some shortcomings in the implementation of both the Vienna and Palermo Conventions, the Terrorist Financing Convention, S/RES/1267(1999) and its

⁵⁷ As related to Recommendation 32; see Section 7.1 for the compliance rating for this Recommendation.

successor resolutions and S/RES/1373(2001). With respect to the UN Conventions, the following comments should be made in particular: As set out in the comments under Recommendation 1, Spain has not fully implemented Article 3(1)(c)(1) of the Vienna Convention and Articles 6(1)(b)(i) and 6(2)(e) of the Palermo Convention (“possession or use”, self-laundering).

627. With respect to the Terrorist Financing Convention, there are doubts as to whether Article 2(1) is fully implemented insofar as this Article requires criminalisation not only of the provision of funds for terrorist acts but also of merely collecting funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts (as that term is defined in the relevant Article of the Convention). Furthermore, there are doubts as to whether Article 2(3) is fully implemented insofar as Article 576 PC does not fully cover the criminal acts set out in the Conventions listed in the Annex to the Terrorist Financing Convention and additionally any “other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act”, cf. Article 2(1)(b) of the Terrorist Financing Convention and see the comments made in this respect under Special Recommendation II.

628. To the extent that Articles 2(1) and 2(3) of the Terrorist Financing Convention are not fully implemented, the same would seem to apply correspondingly with respect to Articles 2(4) and 2(5) on accessory offences.

629. The shortcomings in effective CDD requirements under Spanish law (cf. R.5) demonstrate that Article 18(1)(b) of the Terrorist Financing Convention has not – to the full extent – been properly implemented.

630. However, so as not to give a distorted picture of the state of things, it is necessary to stress that most provisions of both the Vienna and the Palermo Conventions and the Terrorist Financing Convention are fully implemented in Spain.

631. *Implementation of the Security Council Resolutions.* With respect to the relevant Security Council Resolutions, where the shortcomings in implementation are relatively speaking somewhat bigger than with respect to the said Conventions, see in particular the comments set out to the implementation of SR III.

632. *Additional element.* Spain ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime on 21 August 1998. In May 2005, Spain signed the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (the process for ratification was ongoing at the time the evaluation took place).

6.2.2 Recommendations and Comments

633. It is recommended that Spain review in detail its implementation of the Conventions and the Security Council Resolutions mentioned above.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	LC	<ul style="list-style-type: none"> ▪ Implementation of the Palermo and Vienna Conventions: Although Spanish law may cover much of Article 3(1)(c)(1) of the Vienna Convention and Articles 6(1)(b)(i) and 6(2)(e) of the Palermo Convention (“possession or use”, self-laundering), Spain has not implemented these requirements to the full extent. ▪ Implementation of the Terrorist Financing Convention: Spain has not fully implemented Article 2(1) which – in connection with Article 2(3) – criminalises not only the provision of funds for terrorist acts but also the mere collection of funds with the intention that they should

		<p>be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts (as that term is defined in the said Article of the Convention) – regardless of whether an actual terrorist offence is carried out or not. To the extent that Articles 2(1) and 2(3) of the Terrorist Financing Convention are not fully implemented, the same would seem to apply correspondingly with respect to Articles 2(4) and 2(5) on accessory offences. The shortcomings in effective CDD requirements under Spanish law demonstrate that Article 18(1)(b) of the Terrorist Financing Convention has not – to the full extent – been properly implemented.</p>
SRI	PC	<ul style="list-style-type: none"> ▪ Implementation of the Security Council Resolutions: Spain has not fully implemented the relevant Resolutions since: (1) Spain has issued very little guidance to financial institutions and other persons/entities that may be holding targeted funds/assets, which raises issues of effectiveness of the freezing mechanisms in operation in Spain; (2) Spain has not established or made clear and publicly known the necessary procedures for de-listing and unfreezing in appropriate cases; (3) the obligation to criminalise the collection of funds with the intention that they should be used or in the knowledge that they are to be used, in order to carry out terrorist acts is not covered to the full extent; (4) the definition of funds in the EC Regulations is not quite broad enough; and (5) the EU freezing mechanisms are not applicable to EU internals and the new domestic legal framework in Spain – which could fill the gap in the scope of application of the EU mechanisms – has yet to be fully implemented in practice. ▪ Implementation of the Terrorist Financing Convention: Spain has not fully implemented Article 2(1) in connection with Article 2(3) which criminalises not only of the provision of funds for terrorist acts but also of merely collecting funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts (as that term is defined in the said Article of the Convention) – regardless of whether an actual terrorist offence is carried out. To the extent that Articles 2(1) and 2(3) of the Terrorist Financing Convention are not fully implemented, the same would seem to apply correspondingly with respect to Articles 2(4) and 2(5) on accessory offences. The shortcomings in effective CDD requirements under Spanish law demonstrate that Article 18(1)(b) of the Terrorist Financing Convention has not – to the full extent – been properly implemented.

6.3 Mutual Legal Assistance (R.36-38 & SR V)

6.3.1 Description and Analysis

634. *Recommendation 36 and Special Recommendation V.* Spanish authorities state that Spain can provide mutual legal assistance pursuant to a multilateral agreement such as the Schengen Convention or the European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959; a bilateral agreement or in accordance with the principle of reciprocity where there is no multilateral or bilateral agreement between Spain and the requesting country. The criteria that normally must be met under a bilateral or multilateral agreement in order for Spain to be able to provide mutual legal assistance include the requirement that the offence in question not be a political offence, that the provision of mutual legal assistance not threaten the sovereignty, security or public order of Spain and that the request not result in the persecution of the person to whom it relates on the basis of his/her race, religion, nationality, ethnic origin, political opinions or sex. Where there is no applicable bilateral or multilateral treaty and the principle of reciprocity is adopted, pursuant to Article 278 of the Organic Law of the Judiciary, mutual legal assistance shall only be denied where, for instance, the case in question is within the exclusive jurisdiction of Spain or the subject matter of the request is clearly contrary to the public order of Spain. Pursuant to Article 278.2 of the Law, the Government, through the Ministry of Justice, is responsible for determining whether reciprocity has been established between Spain and the State making the request.

635. Spain may provide mutual legal assistance of any type that is not incompatible with Spanish legislation and case law. Thus the measures available include the provision of declarations or witness statements, documents and criminal records, notification of documents, location and identification of persons, transfer of arrested persons, execution of registration orders and attachments and the freezing of bank assets.

636. Article 277 of the Organic Law of the Judiciary states that Spanish courts will render foreign judicial authorities the assistance they require to develop their jurisdictional functions, according to the provisions of International Treaties and Conventions to which Spain is party and, in absence of such instruments, in accordance with the reciprocity principle. As explained above, Spain follows the system whereby, once a treaty has been officially published in Spain, it automatically becomes part of internal law. Amongst other international instruments and in addition to the 1990 Council of Europe Money Laundering Convention and the UN Convention against International Organised Crime, Spain has ratified the 1959 Council of Europe Convention on Mutual Legal Assistance in Criminal Matters and its two protocols. The EU mutual legal assistance Convention entered into force for Spain as of 23 August 2005 and its Protocol as of 5 October 2005. Spain has also signed a number of bilateral mutual legal assistance treaties with many countries (including the vast majority of countries from the Americas and North Africa, as well as some countries from Asia).

637. The widest range of mutual legal assistance is provided through the above mentioned bilateral and multilateral conventions. Bilateral and multilateral treaties, for which internal implementation is not needed, define most of the specific actions (*a* to *f* of Criterion C.36.1 of the Methodology) in which rendering of mutual legal assistance takes place. The conditions for the requesting State to receive assistance from Spain are those established in the relevant treaty. Moreover, treaties generally include a final general clause stating that assistance will be granted for any kind of request for mutual assistance that is deemed necessary and not prohibited by the law of the State making the request. No restriction is made in practice by Spain in the granting of mutual legal assistance, as in practice judicial authorities interpret this clause in the broadest way, granting assistance in all possible cases.

638. In the absence of bilateral or multilateral instruments, Articles 276 to 278 of the Spanish Criminal Procedural Code (CCP) state that Judges will provide legal assistance to foreign judicial authorities based on the principle of reciprocity, as long as the requirements of the those articles are met, i.e., the request should be translated into Spanish, the subject matter of the investigation should not be of the exclusive competence of the Spanish jurisdiction, and the request should not affect Spanish sovereignty or other essential national interests. Investigating judges have the power to request all information and take (*ex officio* or on request of the parties) any measure they consider relevant to the investigation and can therefore render assistance to the same extent. Investigation is defined in Article 299 of the CCP as all the “activities pursuant to preparing the trial and to finding out and determining the perpetration of offences with all the circumstances relevant to their legal typology and to the culpability of the offenders, guaranteeing their persons and their financial liabilities”.

639. The period of time to provide mutual legal assistance varies since it depends on the judicial authority dealing with the individual case. In any case, the period of time needed to fully execute a request does not depend on the applicable Convention, but on the nature of the assistance requested (whether it is more or less time consuming or needs the intervention of various entities).

640. Spanish authorities indicated that no restriction is made in practice by Spain in the provision of mutual legal assistance. When international instruments apply, the conditions for the requesting State are the general requirements provided for by the Conventions (such as a summary of the facts, reference to the criminal proceedings in the requesting State, relevant connection of the assistance sought with the case, confidentiality if appropriate, dual criminality for compulsory measures, etc). In their absence, reciprocity is interpreted in the widest possible way (cf. Criterion 36.1 of the Methodology). In these cases, Spanish courts may only deny assistance in the cases described in Article 278 CCP (see above). Up to now, there is no record of the Spanish authorities having rejected any request for legal assistance in this matter on the grounds that judicial proceedings have not commenced in the requesting country.

641. For the moment, there is not an International Judicial Co-operation Law, so the procedures applicable to the handling of mutual legal assistance request are the general procedures provided for internal measures by the Procedural Code and those established in international instruments, when they exist. There are no predetermined written proceedings, although the General Council on the

Judiciary and the Ministry of Justice have started developing forms for some conventions with the aim of making the work easier for judicial authorities. These forms will cover the steps and the relationships among the various authorities involved in the process.

642. The evaluation team was informed that there is no record of the refusal of any request solely on the grounds that the offence was considered to involve fiscal matters. The fact that the offence also involves fiscal matters is in no way grounds for refusal. Fiscal offences are covered in the PC and considered therefore as criminal offences; therefore, mutual legal assistance may be granted for fiscal crimes just as for any other crime. No bilateral or multilateral convention excludes this possibility for fiscal offences; in fact, most of them clarify that fiscal offences are not to be excluded from the application of the Convention, even if that clause would not be necessary. In this sense, Article 1 of the Additional Protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters in force in Spain since 11 September 1991 states that “the Contracting Parties shall not exercise the right provided for in Article 2.a of the Convention to refuse assistance solely on the ground that the request concerns an offence which the requested Party considers a fiscal offence”. Article 2 states that “in the case where a Contracting Party has made the execution of letters rogatory for search or seizure of property dependent on the condition that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party, this condition shall be fulfilled, as regards fiscal offences, if the offence is punishable under the law of the requesting Party and corresponds to an offence of the same nature under the law of the requested Party. The request may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the requesting Party.” Article 8 of the Protocol to the EU mutual legal assistance Convention contains a provision similar to the abovementioned article 1.

643. No secrecy or confidentiality requirements on banks or financial institutions may be invoked against providing mutual legal assistance. In Spain the recipient of a judicial order, including financial institutions, is obliged, without exception, to provide the court with any kind of data maintained by the recipient of such an order. No confidentiality clause of any type can be invoked as a reason for refusing to satisfy such an order. In general terms, the European Convention states that it is compulsory to comply with sentences and other final resolutions of judges and courts, as well as to provide them such assistance as they may require in the course of legal proceedings and for the execution of judgements. The lack of provision of information to a Judge or a Court acting within its area of responsibility is criminalised in Article 410 PC. This principle applies therefore to requests for mutual legal assistance as well. It is also included in several international instruments ratified by Spain such as the 1990 Council of Europe convention on money laundering (Article 4.1) or the Protocol to the EU mutual legal assistance Convention (Article 7).

644. Judges and prosecutors use their own judicial and investigative powers to deal with the execution of mutual legal assistance requests. They do not need a specific attribution for taking the steps required to respond to assistance requests. Provisions on the law of criminal procedure dealing with the investigation of criminal offences state that public prosecutors will promote and, as appropriate, render international legal aid as called for in laws, treaties and international conventions. Likewise, in order to clarify the facts appearing in the submitted complaint or testimony, the public prosecutor may carry out or order any proceedings deemed necessary as empowered under the Code of Criminal Procedure excluding proceedings that entail provisional measures or measures restricting rights. Investigating judges are responsible for the investigation of cases and competent for authorising the use of investigative measures that could affect the exercise of fundamental rights.

645. Spain has ratified the European Convention on the transfer of proceeding in criminal matters, signed in Strasbourg on 15 May 1972. Additionally, a bilateral agreement determining the best venue for prosecution was signed with the US on 1 December 1988. Spain applies to a very large extent Article 21 of the 1959 European Convention, which establishes a mechanism for transferring criminal proceedings. Similar clauses have been introduced in most bilateral mutual legal assistance treaties. In fact, in several bilateral legal assistance treaties, an article on initiating or transferring criminal

proceedings to other countries has been included. This is also the case for bilateral instruments still under negotiation. In any case, the mechanism for initiating the transfer of criminal proceedings may be used as a form of *notitia criminis*, even if there is no specific provision whatsoever, and this mechanism has actually been widely used in the past.

646. Special mention should be made of Eurojust, at least for countries within the European Union. Eurojust has among its most important functions, the follow up of those cases involving more than two Member States, especially cases on organised transnational crime, in order to determine the best venue for prosecution. Eurojust holds co-ordination meetings with all the countries involved in one specific case and invites the competent authorities to transfer their own proceedings to the country being in the best position to prosecute, convict or confiscate the proceeds of the crime. Moreover, Eurojust also has co-operation agreements with third-party States.

647. Through the Ibero-American Judicial Network (IberRED), launched by Spain together with all 22 Latin American countries, transatlantic co-operation has taken place with Eurojust in order to fight child pornography through the Internet.

648. The rules governing mutual legal assistance in money laundering cases are fully applicable to terrorist financing.

649. *Additional element.* According to Article 15.2 of Law 19/1993 of 28 December, concerning specific measures for preventing the laundering of capital, “the Executive Service of the Commission, which, without prejudice to the attributions of the State security forces and bodies or, where applicable, of the Autonomous Communities and other services of the Administration, shall have the following functions: (a) rendering the necessary assistance to the judicial organs, the Public Prosecution Department, the criminal police and the competent administrative organs; and (b) reporting to the organs and institutions referred to in the preceding subparagraph on the conduct giving reasonable indications of a criminal offence or, as the case may be, an administrative infraction. On the other hand, Article 8 of RD 925/1995 of 9 June states that “reporting parties shall collaborate with the SEPBLAC and shall furnish, pursuant to the provisions of Article 3.4. b) of Law 19/1993, such information as it may require in the discharge of its duties; this information may concern any item of data or knowledge obtained by the reporting parties concerning the transactions they conduct and the parties thereto”. Furthermore, this criterion should be complemented with the obligation set forth in Article 3.3 of the Law 19/1993 and in Article 6 of Royal decree 925/1995, which states that “reporting parties shall preserve documents or records which attest adequately, with probative value, to the conduct of transactions and the business relationships existing with customers for a period of six years”.

650. The figures below relate to the number of rogatory letters handled by Spain:

NUMBER OF MUTUAL LEGAL ASSISTANCE REQUEST FROM/TO SPAIN					
Money laundering	2000	2001	2002	2003	2004
To Spain	NA	NA	13	13	22
From Spain	NA	NA	7	11	3
Terrorist crimes	2000	2001	2002	2003	2004
To Spain	0	3	7	11	7
From Spain	0	2	38*	33*	44*

* The sudden increase of rogatory letters requested by Spain in 2004 is directly related to prosecutions on terrorism attacks linked to the terrorist attacks in the US and Morocco.

651. **Recommendation 37 and Special Recommendation V.** Spain usually provides legal assistance regardless of the existence of dual criminality, except for searches or seizure of goods (Spanish Reservation to Article 5 of the 1959 European Council Convention on Mutual Legal Assistance in Criminal Matters). Moreover, it is not contrary to the Spanish domestic law to render mutual legal assistance even though the facts are not punished in the Penal Code. Under some treaties, Spanish

authorities grant mutual legal assistance even if the act is not punishable under domestic law, unless the criminalisation of the act is considered to be contrary to the Spanish internal public order.

652. As regards extradition, dual criminality is a requirement for surrender according to Article 2 of the Extradition Law. However, as far as European Union member States are concerned, dual criminality has to a large extent been excluded from the requirements for granting surrender.

653. When dual criminality is required, Spanish judicial authorities pay attention to the acts underlying the offence, regardless of their legal qualification. Moreover, most bilateral treaties signed by Spain, specify that when examining dual criminality, the competent authorities should not consider the name of the crime, but rather the criminal activity which is being investigated or prosecuted.

654. The provisions mentioned above are fully applicable to international co-operation in terrorism matters, including financing of terrorism.

655. **Recommendation 38 and Special Recommendation V** (cf. also the legal instruments already mentioned in articles 127 and 128 of the Spanish Penal Code on confiscation applicable also in terrorist financing cases). In general, investigating judges may impose provisional measures in order to guarantee the effectiveness of a future conviction. Therefore Article 127 which regulates confiscation (which is considered an accessory penalty deriving from a final conviction) is the basis for previous freezing and seizing measures to ensure its future effectiveness. The Criminal Procedural Code provides for the seizure and retention of the means used to perpetrate the crime and the effects derived from or related to the offence (Article 334 ss). It also provides for the seizure of goods during an investigation to cover the defendant's future financial liabilities (Article 589 ss). These provisions also apply where the request relates to property of corresponding value.

656. Spain has ratified the 1990 Strasbourg Convention, regulating the tools for ensuring the confiscation of the assets involved in a crime. Additionally, Spain is a party to the European Convention on judicial assistance in criminal matters signed in Strasbourg by the EU members on 29 May 2000. Moreover, freezing, seizing and confiscation measures can generally be accepted based on all legal assistance treaties to which Spain is a party, for example, through bilateral agreements as exist with the majority of the countries in the Americas and with some African and Asian countries, as well as through multilateral agreements with other countries.

657. Regarding drug trafficking and other related offences, Law 36/1995 of 11 December and RD 864/1997 of 6 June establishes a fund for the assets confiscated with regard to drug trafficking and other related offences.

658. Spain authorises the sharing of confiscated assets with various countries (the US, countries of the European Union, etc). Spain is working on a Convention with Canada on this matter through the National Plan against Drugs.

659. *Additional element.* The evaluation team was told that up to now only foreign criminal letters rogatory requesting confiscation have been recognised and executed.

660. **Statistics.** Spain maintains information on the number of requests for mutual legal assistance and keeps records on the types of requests. However, Spain does not collect statistics on whether the request was granted or refused and on how much time was required to respond.

6.3.2 Recommendations and Comments

661. A monist approach to the application of treaties combined with Spain being a State Party to a significant number of treaties on mutual legal assistance serves as a solid basic legal framework for providing mutual legal assistance. This framework is expanded and further strengthened by other important factors, such as Spain's ability to provide mutual legal assistance on the basis of reciprocity

without also requiring a bilateral or multilateral treaty. It is moreover noteworthy in this respect that if a request for mutual legal assistance is received from a country with which Spain has no treaty on mutual legal assistance, the requesting State's ability and willingness to render mutual legal assistance to Spain to the same extent (reciprocity) is assumed without any further need for guarantees.

662. Statistics, although not as comprehensive and detailed as they ideally should be, suggest that efficiency in the practical application of the system has improved over the latest years and is now good overall. In particular, certain additional measures or mechanisms, such as Eurojust, EJM and IberRED seem to have contributed in a positive way to improving the system.

663. Notwithstanding the system's overall efficiency and as a recommendation for Spain's consideration only without any influence on the rating for compliance, Spain should consider how the average time for processing request for mutual legal assistance, in particular from countries outside the European Union, could be further reduced. As a means for analysing what measures might assist in achieving this, Spain should also consider keeping more detailed and comprehensive statistics on mutual legal assistance.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	C	Recommendation 36 is fully met.
R.37	C ⁵⁸	Recommendation 37 is fully met.
R.38	C	Recommendation 38 is fully met.
SR V	LC ⁵⁹	<ul style="list-style-type: none"> ▪ With regard to the exchange of information with foreign supervisors, there are some doubts about the effectiveness of the mechanisms in place (in relation with Rec. 40).

6.4 Extradition (R.37, R.39 & SR V)

6.4.1 Description and Analysis

664. *Recommendations 37, 39 and Special Recommendation V.* Both ML and TF are extraditable offences. Spanish authorities state that extradition can take place pursuant to Spain's multilateral and bilateral extradition agreements or in accordance with the principle of reciprocity where there is no multilateral or bilateral agreement in existence between Spain and the requesting country. Spain indicates that where the European Convention on Extradition and "almost all the multilateral and bilateral extradition treaties to which Spain is a party" apply, the offence in question must be punishable under the laws of the requesting Party and Spain by a deprivation of liberty for a maximum period of at least 1 year. The same threshold is contained in the Passive Extradition Law. Spain has ratified the European Council Convention on Extradition of 13 December 1957 and adopted a law on passive Extradition on 21 March 1985. Spain has also signed about thirty different bilateral treaties on extradition.

665. Spain cannot provide extradition in the cases outlined in articles 3, 4 and 5 of the Passive Extradition Law. For instance, pursuant to Article 3, where the crime was committed outside the territory of the country requesting extradition, the request may be denied if Spanish legislation does not authorise extradition for a crime of the same type committed outside of Spain. In addition, pursuant to Article 4, extradition shall not be granted where, for instance, the crime is of a political

⁵⁸ This is an overall rating for compliance with SR V, based on the assessments in Sections 6.3, and 6.4 of the Report.

⁵⁹ This is an overall rating for compliance with SR V, based on the assessments in Sections 6.3, 6.4 and 6.5 of the Report.

nature (unless, for instance, it is an act of terrorism or a crime against humanity as provided in the Convention for the Prevention and Penalisation of the Crime of Genocide adopted by the United Nations General Assembly). Pursuant to Article 5, extradition may be denied where, for instance, the request has been made for the purpose of persecuting a person for reasons of race, religion nationality or political opinions.

666. Spain does not oppose the extradition of its own nationals on a general basis, as long as the requesting State also agrees to extradite its nationals (on a reciprocal basis). With respect to extradition requests from States other than the EU Members, Spain only extradites its own nationals if that clause is included in the respective conventions and there is an agreement to that end between the two parties. Article 3.2 of the Spanish Law on Passive Extradition provides that, should extradition be denied on the grounds of nationality, the Spanish government at the request of the other State will inform the Prosecutor's Office for the purposes of prosecution. The proceedings will be ruled by Spanish domestic law.

667. In the EU framework, the European Arrest Warrant establishes the surrender of all persons among EU Member States, regardless of their nationality, which cannot be grounds for refusal any more. However, it allows Member States to introduce a provision in their implementing legislations, when the person is a national of the executing State, with the following consequences: (a) when surrender is sought for the purpose of executing a sentence, the sentence imposed by the issuing State will be executed in his/her country of origin. Thus the person will not be physically surrendered, but the sentence will be executed and (b) when surrender is sought with an aim to prosecute, the person might be temporarily surrendered to the issuing State, and then returned to his/her country of origin to serve the sentence, if convicted.

668. If extradition is refused on the grounds of nationality, Article 3.2 on the Law on Passive Extradition also states that the requesting State will be asked to provide the proceedings and measures practiced in the other State, in order to continue them in Spain. In most bilateral agreements ruling extradition, there is a specific provision by which the requested State, when refusing surrender on the ground of nationality, shall submit the case to its own jurisdiction for trial.

669. The European Arrest Warrant (and the Spanish implementing Law 3/2003) introduces maximum delays in dealing with the surrender procedures established by it. There is now, as a general rule, a maximum delay of 60 days to decide on the surrender (or 10 days, should the person consent), and the surrender must be effective within 10 days following the surrender decision.

670. *Additional element.* Among EU Member States, the European Arrest Warrant has fully introduced the principle of mutual recognition of arrest and surrender orders, which has virtually waived formal extradition proceedings completely. Also, the European Arrest Warrant is in itself the basis for granting surrender, without any further formalities, whether it derives from an arrest warrant or a judgement to be executed. Also within the EU, and even before the entry into force of the European Arrest Warrant system (under the Dublin Convention), there was the possibility of waiving such proceedings when the person consented to be extradited.

671. The Spanish authorities provided the following figures for 2004:

- 73 outgoing extradition requests
- 376 incoming extradition requests
- 412 surrenders
- About 500 European Arrest Warrants since 1 January 2004.

672. The following chart sets out (1) the total number of requests for extraditions in terrorism cases, sent from and received by Spain from 2000 to 2005 and (2) the number of request of EU arrest orders sent from and received by Spain from 2000 to 2005:

Number of requests for extradition in terrorism cases	
Received by Spain	3
Sent from Spain	273
Number of request for EU arrest orders	
Received by Spain	1
Sent from Spain	161

673. *Dual criminality related to extradition.* The European Arrest Warrant establishes that a person will be surrendered where a European Arrest Warrant is issued under the conditions set forth in the Framework Decision and for the offences included in a list contained within the Decision, provided that such offences are punishable in the issuing member State by a custodial sentence or a detention order for a maximum period of at least three years (as defined in the Law of the issuing member State), without verification of the dual criminality of the facts.

674. The Spanish authorities confirm that, where the requirement of dual criminality applies, it is interpreted broadly. This means that it is not necessary that the offence be described in exactly the same way under the requesting country's laws, as long as the activity in question is punishable under Spanish law.

675. *Terrorist financing.* In addition to having ratified the 1977 Council of Europe Convention on the Suppression of Terrorism, Spain is party to the 12 UN antiterrorism conventions, including the 1999 International Convention for the Suppression of the Financing of Terrorism, so that the relevant provisions on extradition are applicable. As for terrorist offences under domestic law (Article 571 ss PC), they are subject to penalties of more than one year's deprivation of liberty which thus enables extradition. The previously mentioned Law on passive extradition and the Law implementing the European Arrest Warrant also apply to terrorist offences.

676. *Statistics.* Spain collects statistics on the number of requests for extradition for terrorism cases in general. However, no statistics are available for ML/TF cases more specifically and Spain does not collect data on whether the request was granted or refused and how much time was required to respond.

6.4.2 Recommendations and Comments

677. A monist approach to the application of treaties combined with Spain being a State Party to a significant number of extradition treaties serves as a solid basic legal framework for responding to extradition requests. This framework is expanded and further strengthened by other important factors, such as Spain's ability, on the basis of reciprocity, to extradite its own nationals. Furthermore, mention may be made of extradition not being conditional upon a treaty. Reciprocity is sufficient and if an extradition request is received from a country with which Spain has no extradition treaty, the requesting State's ability and willingness to extradite to Spain to the same extent (reciprocity) is assumed without any further need for guarantees.

678. The overall efficiency of the Spanish extradition system seems good, particularly so with regard to extradition to other EU Member States (on the basis of the European Arrest Warrant).

679. Notwithstanding the system's overall efficiency and as a recommendation for Spain's consideration only without any influence on the rating for compliance, Spain should consider how the average time for handling extradition requests, in particular from countries outside the European Union, could be further reduced. As a means for analysing what measures might assist in achieving this, Spain should also consider keeping more detailed and comprehensive statistics on extradition.

6.4.3 Compliance with Recommendations 37; 39 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.37	C ⁶⁰	Recommendation 37 is fully met.
R.39	C	Recommendation 39 is fully met.
SR V	LC	<ul style="list-style-type: none"> ▪ With regard to the exchange of information with foreign supervisors, there are some doubts about the effectiveness of the mechanisms in place (in relation with Rec. 40).

6.5 Other Forms of International Co-operation (R.40 & SR V)

6.5.1 Description and Analysis

680. *Recommendation 40 and Special Recommendation V.* As a matter of general policy, the competent authorities in Spain for international co-operation in the combat of crime, whether on an operational or ministerial level, have indicated that they give a clear priority to exchanging information with international counterparts as promptly and effectively as possible. Spanish legislation allows for a wide range of passing information relevant for preventing and detecting criminal acts to authorities in other countries. Spain does not refuse requests for co-operation solely on the ground that the request is considered to involve fiscal matters. Nor does it refuse requests for co-operation on the grounds of secrecy laws or confidentiality requirements (other than those held in circumstances where legal professional privilege applies). In general, exchanges of information are not made subject to disproportionate or unduly restrictive conditions.

681. *Law enforcement authorities.* According to Article 12.1.f) of the Organic Law 2/1986 governing the State Security Forces, the National Police exercises, among other things, the following function: “to co-operate and provide assistance to the Police Forces of other countries, in accordance with International Treaties, under the high direction of the Minister for the Interior.” For investigations to take place abroad, the *Guardia Civil* essentially relies on formal contacts within Interpol and Europol, through liaison officers and in the framework of Eurojust.

682. *Financial intelligence Unit.* Law 19/1993 (Article 16.3) and RD 925/95 (Article 29 to 32) regulate information exchange in matters of prevention of money laundering, the scope of the requests for information, processing requests for information and the limitations on the information exchange. SEPBLAC has full access to the information in the databases of public bodies and institutions and private institutions obliged to collaborate, and it is thus able to provide any information related to money laundering or terrorist financing to any country. The authorities, civil servants and other supervisors are also obliged to collaborate with SEPBLAC (Article 16 of Law 19/1993 and Article 27 of RD 925/95). SEPBLAC performs all its information exchanges with other countries through the respective FIUs. SEPBLAC is set up purely as an administrative authority within the Central Bank and as such has no powers of investigation. Consequently, in the case of requests for information from another FIU regarding bank accounts and transactions, SEPBLAC is empowered to request information from credit institutions, in accordance with the principle of reciprocity. An international request for mutual assistance (i.e. a rogatory letter) would be otherwise necessary if the investigation is being led by the courts.

683. In information exchanges, SEPBLAC is governed by the criteria of the Egmont Group or by MOUs signed with 22 countries:

1996	1997	1998	1999	2000	2001	2002	2003	2004
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⁶⁰ This is an overall rating for compliance with SR V, based on the assessments in Sections 6.3, and 6.4 f the Report

Belgium	United States	Portugal**	Mexico	Brazil	Panama	Andorra	Argentina	Peru
France*			Venezuela	Colombia		Guatemala	Romania	Australia
				Finland		Poland	Ukraine	Bulgaria
				Italy				Korea
				Monaco				

* extended in 2004

** extended in 2004

684. SEPBLAC is linked to the networks of the Egmont Secure Web and the FIUNet. The evaluation team was told that there is some inconsistency in the methods employed by SEPBLAC to respond to foreign requests (via e-mail or more formally via the Egmont Secure Web). For the sake of effectiveness, it could be recommended that all responses in the future follow the same format and channel. For SEPBLAC, this difficulty has only occurred under exceptional circumstances (for temporary technical difficulties).

685. The Spanish FIU is able to provide rapid responses to external requests received from other FIUs (the delay in answering will depend upon the priority of the request and the conditions of access to the requested information. The evaluation team was told by some FIUs based in FATF countries that response times vary from same day to seven months although this can vary according to the urgency or complexity of the case). The following table has been provided by SEPBLAC:

Requests for information from FIUs	2001	2002	2003	2004
Average response time (days)	39	31	21	20
Requests for information to FIUs				
Average response time (days)	37	36	37	35

686. Spanish regulations allow information exchanges with other countries to be made in two ways, that is, spontaneously, or on request. (Article 29 to 32 of RD 925/95). SEPBLAC may exchange information on money laundering as well as on the underlying predicate offences.

687. The Spanish authorities indicate the information exchange by SEPBLAC with other FIUs is not subject to restrictions of any kind. The fundamental criterion is that of reciprocity. SEPBLAC has no restriction on information exchange of a tax nature. Financial institutions or DNFBPs cannot invoke confidentiality or secrecy restrictions when responding to requests for information from SEPBLAC, except for Public Notaries, lawyers and solicitors, when acting as the advocate of the legal position of their customers. (Article 3.4b of Law 19/1993 and 8 of RD 925/95). SEPBLAC, thus, in responses to requests for information it receives, except in the case mentioned, cannot invoke confidentiality or secrecy restrictions as a reason for not responding to a foreign request.

688. SEPBLAC uses the information it receives from other FIUs for the specific purposes for which it has been requested. In cases when it is necessary to disseminate it to another authority, before doing so, it requests the relevant authorisation from the FIU that submitted this to it.

689. The following chart indicates the number of information exchanges with foreign FIUs from 2001 to 2004:

	2001	2002	2003	2004	Variation 2004/2001
Requests for information from FIUs	93	233	311	467	402.15%
Requests for information to FIUs	106	225	268	329	210.38%
TOTAL	199	458	579	796	300.00%

690. *Additional element.* SEPBLAC may exchange information swiftly and constructively with non counterpart national bodies or with other countries, as long as this is within the scope of the regulatory framework of prevention of money laundering and terrorist financing (Law 19/1993 and 12/2003). In this regard, information exchange by SEPBLAC with other countries is always carried out through the relevant FIUs. When SEPBLAC needs to obtain information from foreign authorities other than the

FIUs, it makes the request through the national authorities empowered to deal with the type of request concerned. (Judicial Police, State Attorney or Judicial Authority). Other national authorities may also use the FIU channel (SEPBLAC) to obtain information from other countries, reporting the reason for the request and as long as the request is based on the applicable regulations on prevention of money laundering. SEPBLAC may obtain relevant information from other authorities or persons at the request of a foreign FIU. In these cases, when the information is requested from the competent national authority, or from the subject institutions, it states the reason for the request, that is, that the original applicant is a foreign FIU.

691. *Supervisory authorities.* The evaluation team was advised that financial supervisors (Bank of Spain, the CNMV and the DGFSP) are not authorised to share information related to money laundering or terrorist financing with foreign counterparts. Should a foreign regulator approach one of them in a request for information in relation to ML/TF, the financial regulator would refer the request to SEPBLAC and, once the information was made available by SEPBLAC, would communicate it to the foreign financial supervisor. So far, SEPBLAC has not exchanged information with foreign supervisors through the CNMV nor the DGFSP. So far, seven requests from foreign banking supervisors have been passed through the Bank of Spain and sent to SEPBLAC. SEPBLAC has addressed two communications to a foreign banking supervisor through the Bank of Spain.

692. *Customs authorities.* No information was provided from the customs authorities on their capacity to co-operate with foreign counterparts.

693. *Statistics.* Spain does maintain statistics on the number of formal requests made or received by SEPBLAC without distinguishing between the requests that were granted or refused. No figures are available on the number of spontaneous referrals made by SEPBLAC to foreign authorities.

6.5.2 Recommendations and Comments

694. Since SEPBLAC does not deal directly with foreign supervisory counterparts to reply requests related to AML/CFT supervision, it seems difficult to conclude that the co-operation mechanisms in place ensure a rapid, constructive and effective exchange of information. Spain should take appropriate measures to address the issue of exchanging information with foreign counterparts in the supervision area.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.40	LC	<ul style="list-style-type: none"> ▪ With regard to the exchange of information with foreign supervisors, there are some doubts about the effectiveness of the mechanisms in place.
SR V	LC	<ul style="list-style-type: none"> ▪ With regard to the exchange of information with foreign supervisors, there are some doubts about the effectiveness of the mechanisms in place (in relation with Rec. 40).

7. Resources and Statistics

Remark: the text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report primarily contains the boxes showing the rating and the factors underlying the rating.

7.1 Resources and Statistics

7.1.1 Resources – Compliance with Recommendation 30

	Rating	Summary of factors underlying rating
R.30	PC	<ul style="list-style-type: none"> ▪ Considering the large number of entities that SEPBLAC is responsible for supervising, its number of staff is inadequate (See Section 2.5, paras. 214-221 & 228). ▪ The analysis staff of SEPBLAC is distracted from its main functions due to supervision tasks (See Section 2.5, paras. 214-221 & 228). ▪ The economic independence of SEPBLAC is called into question since it has no identifiable budget and its director is appointed by the Bank of Spain;(See Section 2.5, paras. 214-221 & 227). ▪ Insufficient resources are allocated to prosecution authorities (See Section 2.6, para. 302).

7.1.2 Statistics (Summary of Recommendations and Comments)

695. As far as statistics are concerned, more efforts should be made in collecting figures in the following areas: (1) number of ML/TF investigations, prosecutions and convictions; (2) data on the number of cases and the amounts of property frozen, seized and confiscated relating to money laundering, terrorist financing and criminal proceeds; (3) statistics on the number of STRs filed on international wire transfers; (4) statistics on whether the request for mutual legal assistance was granted or refused and on how much time was required to respond; (5) number of requests for extradition for ML/TF cases and figures on whether the request was granted or refused and how much time was required to respond; (6) number of formal requests made or received by SEPBLAC in distinguishing between the requests that were granted or refused and (7) number of spontaneous referrals made by SEPBLAC to foreign authorities.

7.1.3 Compliance with Recommendation 32

	Rating	Summary of factors underlying rating
R.32	PC	<ul style="list-style-type: none"> ▪ Spain has not conducted a proper review of its AML/CFT regime (See Section 6.1, paras. 622-623). ▪ There are no comprehensive statistics on money laundering investigations, prosecutions and convictions (See Section 2.1, para. 111). ▪ There are no comprehensive statistics on terrorist financing investigations, prosecutions and convictions (See Section 2.2, para. 127). ▪ There are very limited statistics on the number of cases and the amounts of property frozen seized and confiscated relating to money laundering, terrorist financing and criminal proceeds (See Sections 2.3, para. 140-143; 2.4, para. 192 and 2.6, para. 298). ▪ Spain does not collect statistics on whether the request for mutual legal assistance was granted or refused and on how much time was required to respond (See Section 6.3, para. 6598). ▪ Spain does not collect statistics on the number of requests for extradition for ML/TF cases and does not collect data on whether the request was granted or refused and how much time was required to respond (See Section 6.4, para. 675). ▪ Spain does maintain statistics on the number of formal requests made or received by SEPBLAC without distinguishing between the requests that were granted or refused (See Section 6.5, para. 692). ▪ No figures are available on the number of spontaneous referrals made by SEPBLAC to foreign authorities (See Section 6.5, para. 692).

7.2 Other relevant AML/CFT measures or issues

696. There are not other issues relevant to the Spanish AML/CFT system.

7.3 General framework for AML/CFT system (see also Section 1.1)

697. There are no elements of the general framework of the Spanish AML/CFT system that significantly impair or inhibit its effectiveness.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations

Table 2: Recommended Action Plan to improve the AML/CFT system

Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations has been made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or, in exceptional cases, has been marked as not applicable (NA).

Forty Recommendations	Rating	Summary of factors underlying rating
<i>Legal systems</i>		
1. ML offence	LC	<ul style="list-style-type: none"> ▪ A few of the relevant requirements laid down in the Vienna and Palermo Conventions have not been implemented to the full extent (the "possession or use" of proceeds of crime). ▪ Although Spanish law does seem open to prosecution for self-laundering, the extent to which self-laundering would be covered by the Spanish money laundering offences remains somewhat unclear, and there are no examples of any convictions for self-laundering. ▪ As the statistics provided are in no way comprehensive, effectiveness is difficult to assess more precisely. However, the statistics that are available do suggest some doubts as to the effectiveness in the practical application of the ML offences in Spain.
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> ▪ Spanish law foresees a broad range of sanctions that can be applied to legal persons, but legal persons cannot be sentenced for a crime and thus held criminally liable. ▪ A lack of statistics on sanctions actually imposed on natural and legal persons means that effectiveness cannot be properly assessed.
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> ▪ The effectiveness of the freezing, seizure and confiscation regime could only be partially assessed based on the information available.
<i>Preventive measures</i>		
4. Secrecy laws consistent with the Recommendations	C	Recommendation 4 is fully met.
5. Customer due diligence	PC	<ul style="list-style-type: none"> ▪ <i>When CDD is required:</i> there is no direct obligation to undertake CDD measures when financial institutions have doubts about the veracity or adequacy of previously obtained customer identification data. ▪ <i>Required CDD measures:</i> (1) the current provisions do not set out requirements in relation to the verification of identification data for natural persons or for legal entities (except the verification of information related to the nature of the business); (2) no specific provisions have been adopted for legal arrangements (especially for trusts). ▪ <i>Identification of beneficial owners:</i> financial institutions are left with very general and imprecise requirements (this raises the issue of effective implementation of the requirement). ▪ <i>Ongoing Due Diligence:</i> there is no clear or direct obligation in

		<p>the Royal Decree requiring financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant.</p> <ul style="list-style-type: none"> ▪ <i>Risk:</i> (1) RD 925/1995 is silent on the type of additional identification and "know-your-customer" measures to be taken by financial institutions when facing a higher risk transaction or customer (this raises the issue of effective implementation of the requirement); (2) with regard to low risk situations, the current exemptions mean that, rather than reduced or simplified CDD measures, no CDD measures apply whatsoever for these cases. This appears to be an overly broad exemption from CDD requirements although Article 5 of RD 925/1995 (special examination of certain transactions) is fully applicable to these situations; (3) there is no direct or clear provision setting out that the current exemptions are not acceptable whenever there is a suspicion of money laundering or terrorist financing. ▪ <i>Failure to satisfactorily complete CDD:</i> there is no legislation that requires reporting financial institutions to refuse to establish a customer relationship or carry out a transaction if customer identification (including beneficial owner identification) cannot be carried out or if identification documents believed to be incorrect cannot be verified although Spanish authorities explained that it is understood in the formulation of Law 19/1993 (Article 3.1) that failure to carry out the mandatory identification process must have the consequence that the customer relation will be refused. Further, there is no requirement to terminate an existing business relationship. Finally, there is no requirement for financial institutions to consider making a STR when the institution is unable to satisfactorily complete CDD. ▪ <i>Existing customers:</i> there are no specific legal or regulatory measures in place as to how reporting entities should apply CDD measures to their existing pool of customers although Article 5 of RD 925/1995 (special examination of certain transactions) is fully applicable in these circumstances.
6. Politically exposed persons	NC	<ul style="list-style-type: none"> ▪ Spain has not implemented adequate AML/CFT measures concerning the establishment of customer relationships with politically exposed persons (PEPs).
7. Correspondent banking	NC	<ul style="list-style-type: none"> ▪ Spain has not implemented adequate AML/CFT measures concerning establishment of cross-border correspondent banking relationships.
8. New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> ▪ Spain has no specific regulation concerning non-face to face business transactions. ▪ There is no general requirement that financial institutions have policies in place to deal with the misuse of technological developments.
9. Third parties and introducers	N/A	<ul style="list-style-type: none"> ▪ Although financial institutions may rely on outside agencies to perform CDD for them, this is only done in the context of outsourcing agreements that must be performed under contract and thus this falls outside the scope of Recommendation 9.
10. Record keeping	C	Recommendation 10 is fully met.
11. Unusual transactions	C	Recommendation 11 is fully met
12. DNFBP – R.5, 6, 8-11	PC	<ul style="list-style-type: none"> ▪ The same concerns in the implementation of Recommendation 5 apply equally to reporting financial institutions and reporting non-financial businesses and professions (see Section 3.2 of the Report). All existing requirements in relation to the identification of beneficial ownership and additional identification/know-your-customer rules (especially for higher risk activities) do not apply to DNFBPs. ▪ Spain has not implemented adequate AML/CFT measures concerning Recommendation 6 that are applicable to reporting

		<p>non-financial businesses and professions.</p> <ul style="list-style-type: none"> ▪ Spain has some regulation in place that addresses the issue of non-face to face relationships (when establishing customer relationships) but that does not extend to non-face to face transactions and there is no clear general guidance regarding emerging technological developments (Recommendation 8). ▪ With regard to Recommendation 10, there are some concerns with regard to the implementation of the record keeping obligation by casinos. ▪ More generally, the implementation of the FATF requirements (both ML and TF) by DNFBPs raises very serious concerns.
13. Suspicious transaction reporting	LC	<ul style="list-style-type: none"> ▪ Attempted transactions are not directly subject to the reporting obligation. ▪ There are some concerns about the effectiveness of the reporting system. Although the legal framework appears generally adequate, the evaluation team expresses some concerns about the relative low numbers of STRs, especially outside the banking system and the fact that a large number of STRs were filed by a small number of financial institutions. It also seems that SEPBLAC relies too much on prevention efforts to ensure a proper implementation of the reporting obligation in the absence of fully adequate supervision in the AML/CFT area. ▪ Because the scope of the Spanish ML offences is not quite broad enough, there is a corresponding negative impact on the scope of the reporting obligation. ▪ Because the scope of the Spanish TF offences is not quite broad enough, there is a corresponding negative impact on the scope of the reporting obligation.
14. Protection & no tipping-off	C	Recommendation 14 is fully met.
15. Internal controls, compliance & audit	LC	<ul style="list-style-type: none"> ▪ There is no legal obligation on reporting financial institutions (other than credit institutions to a certain extent) to establish screening procedures to ensure high standards when hiring employees. ▪ There are some concerns about how effectively internal controls have been implemented. Due to the lack of a proper supervision in AML/CFT area, the evaluators have some concerns about the general level of implementation of proper internal procedures in Spanish financial institutions.
16. DNFBP – R.13-15 & 21	PC	<ul style="list-style-type: none"> ▪ The same deficiencies in the implementation of Recommendations 13 and 15 apply equally to reporting financial institutions and reporting non-financial businesses and professions. ▪ Considering the calls for more guidance as voiced by all sectors during the on-site visit, there are preliminary concerns about the effectiveness of implementation for Recommendation 16 in all of its aspects.
17. Sanctions	LC	<ul style="list-style-type: none"> ▪ While there is a system of sanctions in place, due to the relatively low volume of compliance monitoring carried out by SEPBLAC, and the issue of the articulation between the two regimes of administrative and criminal sanctions, it is difficult to measure the effectiveness of the sanctions [element relating to effectiveness].
18. Shell banks	PC	<ul style="list-style-type: none"> ▪ There is no legally binding prohibition on financial institutions on entering into or continuing correspondent banking relationships with shell banks; nor is there any obligation on financial institutions to satisfy themselves that a correspondent financial institution in a foreign country does not permit its accounts to be used by shell banks.
19. Other forms of reporting	C	Recommendation 19 is fully met.
20. Other NFBP & secure	LC	<ul style="list-style-type: none"> ▪ Spain has not been taking steps to encourage the development

transaction techniques		and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.
21. Special attention for higher risk countries	C	Recommendation 21 is fully met.
22. Foreign branches & subsidiaries	LC	<ul style="list-style-type: none"> ▪ There are concerns as to how effectively measures regarding foreign branches and subsidiaries of Spanish institutions have been implemented, in particular regarding the obligation to ensure that the measures implemented by foreign branches and subsidiaries are consistent with the Spanish requirements and FATF standards to the extent permitted by the host country.
23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> ▪ Key financial supervision (insurance companies, credit co-operatives and stock brokerage firms and to a lesser extent credit institutions) is producing a low number of reports on AML/CFT issues to transmit to SEPBLAC and therefore the compliance of these institutions with the FATF standards is not being adequately measured. ▪ The very limited resources of SEPBLAC with regard to AML/CFT issues may be negatively influencing the effectiveness of the overall AML/CFT supervision. ▪ Specific requirements for doing background checks on new directors and new officers in the situation of changes after initial incorporation should be clarified.
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> ▪ There is no proper supervision or monitoring for AML/CFT requirements in place for DNFBPs. ▪ Spain not taken any measures vis-à-vis Internet casinos.
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> ▪ There is a need for more specific, timely and systematic feedback to reporting entities especially the status of STRs and the outcome of specific cases. ▪ There is a lack of sector-specific AML/CFT guidance. ▪ There are not sufficient guidelines related to AML/CFT issues are available to DNFBPs. ▪ The absence of proper guidance in the CFT area may jeopardise successful practical application of the Spanish CFT system and may hamper the efficiency of the system in place.
<i>Institutional and other measures</i>		
26. The FIU	LC	<ul style="list-style-type: none"> ▪ There is some question on the quality of the reports produced by SEPBLAC from a law enforcement perspective[issue of effectiveness].
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> ▪ Due especially to the lack of statistics, it is not possible to assess whether law enforcement and prosecution authorities effectively perform their functions [issue of effectiveness].
28. Powers of competent authorities	LC	<ul style="list-style-type: none"> ▪ The process by which Spanish police forces can have access to account files is not effective [issue of effectiveness].
29. Supervisors	PC	<ul style="list-style-type: none"> ▪ The number of on-site supervisory visits that result in inspections reports on compliance with AML/CFT requirements is low given the number of regulated financial institutions. This raises concerns in term of effectiveness of the supervision regime in place.
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> ▪ Considering the large number of entities that SEPBLAC is responsible for supervising, its number of staff is inadequate. (See Sections 2.5, paras. 214-221 & 228 and 3.10, para. 515). ▪ The analysis staff of SEPBLAC is distracted from its main functions due to supervision tasks (See Section 2.5, paras. 214-221 & 228 and 3.10, para. 515). ▪ The independence of SEPBLAC is called into question since it is housed within the Bank of Spain has no autonomous budget and its director is appointed by the Bank of Spain (See Section 2.5, paras. 214-221 & 227 and 3.10, para. 516).

		<ul style="list-style-type: none"> ▪ Insufficient resources are allocated to prosecution authorities (See Section 2.6, para. 302).
31. National co-operation	LC	<ul style="list-style-type: none"> ▪ Although formal co-operation may take place, there is still room for improvement in more effective interagency co-operation.
32. Statistics	PC	<ul style="list-style-type: none"> ▪ Spain has not conducted a proper review of its AML/CFT regime (See Section 6.1, para. 621). ▪ There are no comprehensive statistics on money laundering investigations, prosecutions and convictions (See Section 2.1, para. 111). ▪ There are no comprehensive statistics on terrorist financing investigations, prosecutions and convictions (See Section 2.2, para. 127). ▪ There are very limited statistics on the number of cases and the amounts of property frozen seized and confiscated relating to money laundering, terrorist financing and criminal proceeds (See Sections 2.3, para. 140-143; 2.4, para. 192 and 2.6, para. 299). ▪ Spain does not collect statistics on whether the request for mutual legal assistance was granted or refused and on how much time was required to respond (See Section 6.3, para. 658). ▪ Spain does not collect statistics on the number of requests for extradition for ML/TF cases and does not collect data on whether the request was granted or refused and how much time was required to respond (See Section 6.4, para. 674). ▪ Spain does maintain statistics on the number of formal requests made or received by SEPBLAC without distinguishing between the requests that were granted or refused (See Section 6.5, para. 691). ▪ No figures are available on the number of spontaneous referrals made by SEPBLAC to foreign authorities (See Section 6.5, para. 691).
33. Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> ▪ Spanish law, although requiring transparency with respect to immediate ownership, does not require adequate transparency concerning beneficial ownership and control of legal persons. ▪ There are similar doubts also about the availability of adequate, accurate and current information on beneficial ownership and control of legal persons using bearer shares. ▪ Access to information on beneficial ownership and control of legal persons, when there is access to such information, is often not timely.
34. Legal arrangements – beneficial owners	NA	Recommendation 34 is not applicable in the Spanish context.
<i>International Co-operation</i>		
35. Conventions	LC	<ul style="list-style-type: none"> ▪ Implementation of the Palermo and Vienna Conventions: Although Spanish law may cover much of Article 3(1)(c)(1) of the Vienna Convention and Articles 6(1)(b)(i) and 6(2)(e) of the Palermo Convention (“possession or use”, self-laundering), Spain has not implemented these requirements to the full extent. ▪ Implementation of the Terrorist Financing Convention: Spain has not fully implemented Article 2(1) which – in connection with Article 2(3) – criminalises not only the provision of funds for terrorist acts but also the mere collection of funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts (as that term is defined in the said Article of the Convention) – regardless of whether an actual terrorist offence is carried out or not. To the extent that Articles 2(1) and 2(3) of the Terrorist Financing Convention are not fully implemented, the same would seem to apply correspondingly with respect to Articles 2(4) and 2(5) on accessory offences. The shortcomings in effective CDD requirements under Spanish law demonstrate that Article

		18(1)(b) of the Terrorist Financing Convention has not – to the full extent – been properly implemented.
36. Mutual legal assistance (MLA)	C	Recommendation 36 is fully met.
37. Dual criminality	C	Recommendation 37 is fully met.
38. MLA on confiscation and freezing	C	Recommendation 38 is fully met.
39. Extradition	C	Recommendation 39 is fully met.
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> ▪ With regard to the exchange of information with foreign supervisors, there are some doubts about the effectiveness of the mechanisms in place.
Nine Special Recommendations	Rating	Summary of factors underlying rating
SR I Implement UN instruments	PC	<ul style="list-style-type: none"> ▪ Implementation of the Security Council Resolutions: Spain has not fully implemented the relevant Resolutions since: (1) Spain has issued very little guidance to financial institutions and other persons/entities that may be holding targeted funds/assets, which raises issues of effectiveness of the freezing mechanisms in operation in Spain; (2) Spain has not established or made clear and publicly known the necessary procedures for de-listing and unfreezing in appropriate cases; (3) the obligation to criminalise the collection of funds with the intention that they should be used or in the knowledge that they are to be used, in order to carry out terrorist acts is not covered to the full extent; (4) the definition of funds in the EC Regulations is not quite broad enough; and (5) the EU freezing mechanisms are not applicable to EU internals and the new domestic legal framework in Spain – which could fill the gap in the scope of application of the EU mechanisms – has yet to be fully implemented in practice. ▪ Implementation of the Terrorist Financing Convention: Spain has not fully implemented Article 2(1) in connection with Article 2(3) which criminalises not only of the provision of funds for terrorist acts but also of merely collecting funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts (as that term is defined in the said Article of the Convention) – regardless of whether an actual terrorist offence is carried out. To the extent that Articles 2(1) and 2(3) of the Terrorist Financing Convention are not fully implemented, the same would seem to apply correspondingly with respect to Articles 2(4) and 2(5) on accessory offences. The shortcomings in effective CDD requirements under Spanish law demonstrate that Article 18(1)(b) of the Terrorist Financing Convention has not – to the full extent – been properly implemented.
SR II Criminalise terrorist financing	LC	<ul style="list-style-type: none"> ▪ The Penal Code does not provide for an offence of terrorist financing in the form of providing or collecting funds with the unlawful intention that they should be used, or in the knowledge that they are to be used, by an individual terrorist for any purpose. ▪ TF offences under Spanish law do not seem to properly cover providing or collecting funds to legitimate activities run by a terrorist organisation (or by an individual terrorist; cf. also above). ▪ The Spanish TF offences do not properly cover terrorist financing in the form of providing or collecting funds directly in order for them to be used to carry out a terrorist act. ▪ The relevant offences are predicate offences for ML but some shortcomings in the scope of the Spanish TF offences (as set out above) may raise an issue of effectiveness in this respect. ▪ Spanish law foresees a broad range of sanctions that can be applied to legal persons also for TF, but legal persons cannot be

		<p>sentenced and thus held criminally liable.</p> <ul style="list-style-type: none"> ▪ A lack of more comprehensive statistics on prosecutions, convictions and sanctions imposed on natural and legal persons means that effectiveness cannot be fully assessed. 	
SR III	Freeze and confiscate terrorist assets	LC	<ul style="list-style-type: none"> ▪ With regard to national mechanisms for considering requests for freezing from other countries and for freezing funds of EU nationals, Law 12/2003, although in force, has yet to be practically implemented. ▪ The scope of the freezing measures under the two definition of funds in the EC Regulations (881/2002 and 2580/2001) does not fully cover the terms in SR III – the requirement of being applicable to the funds or other assets owned or controlled wholly or <i>jointly</i>, directly or indirectly, by the persons concerned, etc. and to funds or other assets derived or generated from funds or other assets owned or controlled by such persons – and, with respect to measures under Regulation 881/2002, the freezing of funds should apply not only of the funds held by the designated natural or legal persons but also to the funds <i>controlled</i> by them or by <i>persons acting on their behalf or at their direction</i>. ▪ Spain has issued very little guidance to financial institutions and other persons/entities that may be holding targeted funds/assets. ▪ Spain has not established or made clear and publicly known the necessary procedures for de-listing and unfreezing in appropriate cases. ▪ Because the scope of the terrorist financing offences is not quite broad enough, Spain would be unable to freeze the assets of, inter alia, a person who collects funds directly in order for the funds to be used to carry out a terrorist act. ▪ The effectiveness of the freezing, seizure and confiscation regime cannot be satisfactorily assessed based on the information available.
SR IV	Suspicious transaction reporting	LC	<ul style="list-style-type: none"> ▪ Attempted transactions are not directly subject to the reporting obligation. ▪ Because the scope of the Spanish TF offences is not quite broad enough, there is a corresponding negative impact on the scope of the reporting obligation. ▪ There are some concerns about the effectiveness of the reporting system.
SR V	International co-operation	LC	<ul style="list-style-type: none"> ▪ With regard to the exchange of information with foreign supervisors, there are some doubts about the effectiveness of the mechanisms in place (in relation with Rec. 40).
SR VI	AML requirements for money/value transfer services	LC	<ul style="list-style-type: none"> ▪ The current difficulties in implementing AML/CFT measures (including the limited results of the reporting obligation) in this sector raise some serious concerns about the effectiveness of the implementation of the FATF standards.
SR VII	Wire transfer rules	LC	<ul style="list-style-type: none"> ▪ Due to the recent adoption of relevant requirements in the Spanish legal framework, the implementation and effectiveness of implementation of these new requirements could not be assessed by the evaluation team; ▪ The evaluation team expressed some concern on Spain's capacity to establish – under the current AML/CFT supervision regime – a proper monitoring of compliance of financial institutions with the new requirements.
SR VIII	Non-profit organisations	LC	<ul style="list-style-type: none"> ▪ There is insufficient basis upon which to assess the efficiency of the measures in place [issue of effectiveness].
SR IX	Cross Border Declaration & Disclosure	LC	<ul style="list-style-type: none"> ▪ The declaration system as currently implemented raises some issues of effectiveness.

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. <i>General</i>	
2. <i>Legal System and Related Institutional Measures</i>	
Criminalisation of Money Laundering (R.1 & 2)	<ul style="list-style-type: none"> ▪ It should be clearly set out that the “possession or use” of proceeds of crime constitutes money laundering to the full extent required by the Vienna and the Palermo Conventions. ▪ Spain should clarify the legal situation in its national law with respect to self-laundering, preferably by enacting legislation clearly allowing for prosecuting and convicting the perpetrator of a predicate offence, who goes on to launder the proceeds, for money laundering as well as for the predicate offence itself. ▪ Spain should make sure that its national law would allow for holding legal persons criminally liable for ML. ▪ Further training measures may also be appropriate, such as providing additional training to judges for the purpose of enhancing their ability to manage the complexities of a money laundering case.
Criminalisation of Terrorist Financing (SR II)	<ul style="list-style-type: none"> ▪ Spain should ensure that there are offences properly covering terrorist financing in the forms of providing and collecting funds with the unlawful intention that they should be used, or in the knowledge that they are to be used, by an individual terrorist (for any purpose). ▪ Spain should ensure that TF offences cover the direct provision or collection of funds in order to carry out a terrorist act. ▪ Spain should ensure that TF offences extend to the provision of funds to and collection of funds for legitimate activities run by a terrorist organisation or an individual terrorist.
Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> ▪ The statistics and other information provided on the practical application of the relevant mechanisms are such that they do not provide any sufficient basis for giving concrete, specific recommendations on possible improvement or for commenting more specifically on the potential for such possible improvement.
Freezing of funds used for terrorist financing (SR III)	<ul style="list-style-type: none"> ▪ Spain should take the necessary steps to ensure the full practical and efficient application of the legal framework laid down in Law 12/2003, in particular through enacting the announced Royal Decree regulating the implementation and enforcement of the law. ▪ Competent authorities should provide additional guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets. ▪ Spain should also establish and make clear and publicly known the necessary procedures for de-listing and unfreezing in appropriate cases.
The Financial Intelligence Unit and its functions (R.26 & 30)	<ul style="list-style-type: none"> ▪ SEPBLAC and the law enforcement authorities should develop mechanisms to enhance their partnership and capacity to collaborate when dealing with ML/TF cases.
Law enforcement, prosecution and other competent authorities (R.27 & 28)	<ul style="list-style-type: none"> ▪ Law enforcement authorities should be able to measure the results of their efforts in the AML/CFT area (see recommendations in relation to statistics).

3. Preventive Measures – Financial Institutions	
Risk of money laundering or terrorist financing	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<p><i>Recommendation 5</i></p> <ul style="list-style-type: none"> ▪ All Customer Due Diligence requirements should be extended to clearly reflect the risk related to terrorist financing. ▪ The identification of beneficial ownership as defined by the FATF Recommendations should be clearly defined to ensure a proper implementation by the reporting parties that should fully and systematically carry out this identification. These measures should be extended to legal arrangements. ▪ Requirements in relation to ongoing due diligence and the obligation for financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant should be clarified and impose direct obligations as asked for in Recommendation 5. ▪ With regard to higher risk situations, measures in place should be completed. Spain should also address whether or not financial institutions should be permitted to apply simplified or reduced CDD measures, and issue appropriate guidance. ▪ Clear and direct requirements should be adopted when financial institutions fail to satisfactorily complete CDD. ▪ Spain should adopt rules governing the CDD treatment of existing customers on the basis of materiality and risk. <p><i>Recommendation 6</i></p> <ul style="list-style-type: none"> ▪ Clear and direct obligations as defined in Recommendation 6 should be expressively adopted. <p><i>Recommendation 7</i></p> <ul style="list-style-type: none"> ▪ Spain should fully implement this Recommendation. <p><i>Recommendation 8</i></p> <ul style="list-style-type: none"> ▪ Spain should adopt specific measures concerning non face-to-face business <i>transactions</i>. ▪ Spain should adopt a general requirement to deal with the misuse of technological developments.
Third parties and introduced business (R.9)	No recommended action.
Financial institution secrecy or confidentiality (R.4)	No recommended action.
Record keeping and wire transfer rules (R.10 & SR VII)	<p><i>Recommendation 10</i></p> <ul style="list-style-type: none"> ▪ No recommended action. <p><i>Special Recommendation VII</i></p> <ul style="list-style-type: none"> ▪ Spain should ensure an adequate implementation of the existing requirements.
Monitoring of transactions and relationships (R.11 & 21)	No recommended action.
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR IV)	<p><i>Recommendation 13 and Special Recommendation IV</i></p> <ul style="list-style-type: none"> ▪ Attempted transactions should be clearly and directly subject to the reporting obligation. ▪ SEPBLAC should ensure that banks and non-bank financial institutions comply with their reporting obligations (see recommended actions in relation to supervision). <p><i>Recommendations 14 and 19</i></p> <ul style="list-style-type: none"> ▪ No recommended action. <p><i>Recommendation 25</i></p> <ul style="list-style-type: none"> ▪ Spain should favour the adoption of more specific, timely and systematic feedback to reporting entities.

Cross Border declaration or disclosure (SR IX)	<ul style="list-style-type: none"> ▪ Spain should facilitate the implementation of the declaration system more specifically tailored to AML/CFT purposes to ensure the full effectiveness of the measures in place.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p><i>Recommendation 15</i></p> <ul style="list-style-type: none"> ▪ Reporting financial institutions (other than credit institutions) should be obliged to establish screening procedures to ensure high standards when hiring employees. ▪ Comparable procedures currently applicable to directors, managers or similar executives of credit institutions should be extended to other employees. ▪ Careful attention should be paid to the implementation of proper internal procedures by all financial institutions. <p><i>Recommendation 22</i></p> <ul style="list-style-type: none"> ▪ Spain should consider implementing a more direct obligation to require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with Spanish requirements and the FATF Recommendations. ▪ Spain should adopt provisions to clarify that the higher standards have to be applied in the event that the AML/CFT requirements of the home and host countries differ.
Shell banks (R.18)	<ul style="list-style-type: none"> ▪ Spain should prohibit financial institutions from entering into or continuing correspondent banking relationship with shell banks. ▪ There should be an obligation on financial institutions to determine that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17 & 25)	<p><i>Recommendation 17</i></p> <ul style="list-style-type: none"> ▪ Spain should ensure that the sanctions regime in place is adequately implemented and fully effective. <p><i>Recommendations 23 and 29</i></p> <ul style="list-style-type: none"> ▪ Spain should take steps to review its supervisory regime and better co-ordinate the inspection of reporting entities to increase the number of these controls. ▪ Specific requirements for doing background checks on new directors and new officers in the situation of changes after initial incorporation should be clarified. <p><i>Recommendation 30</i></p> <ul style="list-style-type: none"> ▪ Spain should consider increasing the capacity (especially the staff dedicated to this task) of SEPBLAC to carry out its supervision functions. ▪ Spain should consider striking a separately-identifiable SEPBLAC budget based on SEPBLAC's strategic priorities. ▪ Spain should give some consideration to change the mechanism to appoint the director of SEPBLAC.
Money value transfer services (SR VI)	<ul style="list-style-type: none"> ▪ Spain should ensure that the measures in place are adequately implemented and fully effective.
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	<p><i>Applying Recommendation 5</i></p> <ul style="list-style-type: none"> ▪ All Customer Due Diligence requirements should be extended to clearly reflect the risk related to terrorist financing. ▪ The requirement to identify beneficial ownership should be fully applicable to DNFBPs as well as the obligation to carry

	<p>out additional identification/know-your-customer rules.</p> <ul style="list-style-type: none"> ▪ Requirements in relation to ongoing due diligence and the obligation for DNFBPs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant should be clarified and impose direct obligations as asked for in Recommendation 5. ▪ With regard to higher risk situations, measures in place should be completed. Spain should also address whether or not DNFBPs should be permitted to apply simplified or reduced CDD measures, and issue appropriate guidance. ▪ Clear and direct requirements should be adopted when DNFBPs fail to satisfactorily complete CDD. ▪ Spain should adopt rules governing the CDD treatment of existing customers on the basis of materiality and risk. <p><i>Applying Recommendation 6</i></p> <ul style="list-style-type: none"> ▪ Clear and direct obligations as defined in Recommendation 6 should be expressively adopted. <p><i>Applying Recommendation 8</i></p> <ul style="list-style-type: none"> ▪ Spain should adopt specific measures concerning non-face to face business <i>transactions</i>. ▪ Spain should adopt a general requirement to deal with the misuse of technological developments. <p><i>Applying Recommendation 10</i></p> <ul style="list-style-type: none"> ▪ Spain should ensure that the measures in place are adequately implemented in the gambling sector. <p><i>Effectiveness</i></p> <ul style="list-style-type: none"> ▪ Spain should ensure that the measures in place are adequately implemented and fully effective.
Suspicious transaction reporting (R.16)	<p><i>Applying Recommendation 13</i></p> <ul style="list-style-type: none"> ▪ Attempted transactions should be clearly and directly subject to the reporting obligation; ▪ SEPBLAC should ensure that all DNFBPs comply with their reporting obligations (see recommended actions in relation to supervision). <p><i>Applying Recommendations 14 & 15</i></p> <ul style="list-style-type: none"> ▪ No recommended action. <p><i>Applying Recommendation 21</i></p> <ul style="list-style-type: none"> ▪ No recommended action.
Regulation, supervision and monitoring (R.24-25)	<p><i>Recommendation 24</i></p> <ul style="list-style-type: none"> ▪ SEPBLAC should guarantee that all DNFBPs are adequately supervised for AML/CFT purposes; ▪ Spain should be aware of issues relating to the illicit operation of internet casinos in Spain, and should be prepared to address these problems. <p><i>Recommendation 25</i></p> <ul style="list-style-type: none"> ▪ Spain should develop further its effort to raise AML/CFT awareness within the DNFBPs, especially through sectoral and very practical guidelines (especially in the CFT area).
Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> ▪ Spain should take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial	<ul style="list-style-type: none"> ▪ It is recommended that Spain review its commercial, corporate

ownership and control information (R.33)	and other laws with a view to taking measures to provide adequate transparency with respect to beneficial ownership.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	N/A
Non-profit organisations (SR VIII)	<ul style="list-style-type: none"> ▪ Spain should ensure that the measures in place are adequately implemented and fully effective. ▪ Spain should adopt new mechanisms to properly and fully implement the requirements under SR VIII as identified in its Interpretative Note. ▪ Spain should give further consideration to implementing other specific measures from the Best Practices Paper to SR VIII or other measures to ensure that funds or other assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorist organisations.
6. National and International Co-operation	
National co-operation and co-ordination (R.31)	<ul style="list-style-type: none"> ▪ Spain should develop mechanisms to improve the current interagency co-operation.
The Conventions and UN Special Resolutions (R.35 & SR I)	<p><i>Recommendation 35</i></p> <ul style="list-style-type: none"> ▪ Implementation of the Palermo and Vienna Conventions: Spain should fully implement Article 3(1)(c)(1) of the Vienna Convention and Articles 6(1)(b)(i) and 6(2)(e) of the Palermo Convention (“possession or use”, self-laundering). ▪ Implementation of the Terrorist Financing Convention: Spain should fully implement Article 2(1) that criminalises not only of the provision of funds for terrorist acts but also of merely collecting funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts (as that term is defined in the said Article of the Convention). Spain should fully implement Article 2(3) and Article 18(1) of the same Convention. <p><i>Special Recommendation I</i></p> <ul style="list-style-type: none"> ▪ Implementation of Security Council Resolutions. (1) Spain should issue guidance to financial institutions and other persons/entities that may be holding targeted funds/assets; (2) Spain should make clear and publicly known the necessary procedures for de-listing and unfreezing in appropriate cases and (3) Spain should adopt measures that allow freezing the assets of a person who provides or collects funds with the unlawful intention that they should be used, or in the knowledge that they are to be used, by an individual terrorist.
Mutual Legal Assistance (R.36-38, SR V)	<p><i>Recommendations 36, 37 & 38</i></p> <ul style="list-style-type: none"> ▪ Spain should give consideration to how the average time for processing request for mutual legal assistance, in particular from countries outside the European Union, could be further reduced. <p><i>Special Recommendation V</i></p> <ul style="list-style-type: none"> ▪ No recommendation action in this context.
Extradition (R.39, 37, SR V)	<p><i>Recommendations 37 & 39</i></p> <ul style="list-style-type: none"> ▪ Spain should consider how it might further reduce the average time for handling extradition requests, in particular from countries outside the European Union. <p><i>Special Recommendation V</i></p> <ul style="list-style-type: none"> ▪ No recommendation action in this context.
Other Forms of Co-operation (R.40, SR V)	<i>Recommendation 40</i>

	<ul style="list-style-type: none"> ▪ Spain should take appropriate measures to address the issue of exchanging information with foreign counterparts in the supervision area and for AML purposes. <p><i>Special Recommendation V</i></p> <ul style="list-style-type: none"> ▪ Spain should take appropriate measures to address the issue of exchanging information with foreign counterparts in the supervision area and for CFT purposes.
7. Resources and Statistics	
Resources of Competent Authorities (R.30)	<ul style="list-style-type: none"> ▪ SEPBLAC should have its resources increased to a large extent to permit it carry out its supervisory functions . ▪ Spain should consider increasing the economic independence of SEPBLAC vis-à-vis the Bank of Spain. ▪ Spain should consider allocating additional resources to prosecution authorities.
Statistics (R.32)	<ul style="list-style-type: none"> ▪ Spain should also conduct a comprehensive review of its AML/CFT regime in order to identify the weaknesses and shortcomings that need to be addressed. ▪ Spain should maintain more statistics in the following areas: (1) number of ML/TF investigations, prosecutions and convictions; (2) data on the amounts of property frozen, seized and confiscated relating to money laundering, terrorist financing and criminal proceeds; (3) number of STRs filed on cross-border transportation of currency and bearer negotiable instruments; (4) statistics on whether the request for mutual legal assistance was granted or refused and on how much time was required to respond; (5) number of requests for extradition for ML/TF cases and figures on whether the request was granted or refused and how much time was required to respond; (6) number of formal requests made or received by SEPBLAC in distinguishing between the requests that were granted or refused and (7) number of spontaneous referrals made by SEPBLAC to foreign authorities.

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country Comments
	None