



**Financial Action Task Force**  
Groupe d'action financière

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

**SPAIN**

**19 MAY 2006**

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## **Annex 1: List of Abbreviations**

AEAT	<i>Agencia Estatal de Administración Tributaria</i> – State Agency for Tributary Administration
AEB	<i>Asociación Español de Bancos</i> – Spanish Banking Association
AML	Anti-money laundering
BIDM	<i>Brigada de Investigación de la Delincuencia Monetaria</i> – Monetary Offences Investigation Squad
CCP	Common [European] Council Position
CDD	Customer due diligence
CECA	<i>Confederación Español de Cajas de Ahorros</i> – Spanish Confederation of Savings Banks
CFSP	Common [European] Foreign and Security Policy
CFT	Counter-terrorist financing
CNMV	<i>Comisión Nacional del Mercado de Valores</i> – National Securities Market Commission
CPMLMI	<i>Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias</i> – Commission for the Prevention of Money Laundering and Monetary Infractions
DAVA	<i>Dirección Adjunta de Vigilancia Aduanera</i> – Sub-division of Customs Surveillance
DGSFP	<i>Dirección General de Seguros y Fondos de Pensiones</i> – General Directorate of Insurance and Pension Funds
DNFBPs	Designated non-financial businesses and professions
EC	European Council [of the European Union]
ECB	European Central Bank
ECO	<i>Equipo de Crimen Organizado</i> – Organised Crime Team
EDOA	<i>Equipo de Delincuencia Organizada y Antidrogas</i> – Organised Crime and Anti-drugs Team
ETA	<i>Euskadi Ta Askatasuna</i> – “Basque Homeland and Freedom” (terrorist group)
EU	European Union
FIU	Financial intelligence unit
GRAPO	<i>Grupos de Resistencia Antifascista Primero de Octubre</i> – “First of October Antifascist Resistance Group” (terrorist group)
GRECO	Group of States against Corruption [Council of Europe]
KYC	Know-your-customer
ML	Money laundering
MLA	Mutual legal assistance
MOU	Memorandum of understanding
MVT	Money or value transmission
NCCT	Non co-operative country or territory
NPO	Non-profit organization
ODAIFI	<i>Oficina de Análisis e Investigación Fiscal</i> – Fiscal Analysis and Investigation Bureau

PC	<i>Código penal</i> – Penal Code
PEP	Politically exposed person
RD	<i>Decreto Real</i> – Royal Decree
S/RES/	[United Nations] Security Council Resolution
SA	<i>Sociedad anónima</i> – stock company or public limited company
SEPBLAC	<i>Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias</i> – Executive Service of the Commission for the Prevention of Money Laundering and Monetary Infractions
SR	Special Recommendation
SRO	Self-regulatory organisation
STR	Suspicious transaction report
TF	Terrorist financing
UCE	<i>Unidad Central Especial</i> – Central Specialised Unit
UDEF	Central Economic and Fiscal Crime Unit
UDEV	Central Specialised and Violent Crime Unit
UDYCO	Anti-drug and Organised Crime Unit

**Annex 2: Details of all bodies met during the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**

**I. MINISTRIES AND OTHER PUBLIC AUTHORITIES**

- Treasury - Secretariat of the Commission for the Prevention of ML
- Ministry of Justice
- Ministry of Interior: Police & Guardia Civil
- Ministry of Interior: Gambling casinos
- Customs Authority

**II. OPERATIONAL AGENCIES AND PROSECUTORIAL AUTHORITIES**

- Executive Service (SEPBLAC)
- AML & Drug Special Prosecutor Office
- Special Prosecutor Office against corruption and economic crimes

**III. FINANCIAL INSTITUTIONS**

1. Supervisory bodies

- Executive Service (SEPBLAC)
- Bank of Spain
- Securities and Exchange Commission (CNMV)
- General Directorate for Insurance

2. Professional associations

- Saving Banks Association (CECA)
- Private Banking Association
- Remitters Association

**IV. REPRESENTATIVES FROM THE FINANCIAL INSTITUTIONS SECTOR**

1. Banks

- BBVA
- SCH
- Caja Madrid

2. Money/value transfer service providers

- Moneygram

**V. DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS**

1. Supervisory bodies

- Executive Service (SEPBLAC)

2. Self-regulatory organisations

- Casino Association (AECJ)
- Spanish Federation of Building Developers
- Jewellers, Silversmiths and Watchmakers' Association (JSWA)

- General Directorate of Notaries
- Spanish Bar Association

## **VI. REPRESENTATIVES FROM THE DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS SECTOR**

1. Casinos
2. Dealers in precious metals and stones
3. Lawyers
4. Real estate agents

### Annex 3: Overview of the types of Legal Persons and Arrangements

The Spanish Commercial Code provides the following types of legal persons:

- **Sole proprietorship:** a foreign single person may start business in Spain. He must have legal capacity, according with the law of his home country, to carry on businesses activities. In this case, liability for debts is unlimited, and therefore sole proprietor is personally liable for business' debts. It is optional to be registered at the Spanish Corporate Register (*Registro Mercantil*) as a sole ownership.
- **Stock corporation or Public Limited Companies** (*Sociedad Anónima - S.A.*) are 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 shall be signed 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 €, 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, with no maximum capital. The rest of the share capital – known as passive dividends – must be paid up later into the company's bank account within the period laid down in the company's articles of association. Contributions may be made in the form of money, goods or intellectual property, which can be valued. Work is not valid as a capital contribution. 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 have to be registered. In the case of bearer shares, there is no legal obligation to maintain such registry. However, most of times the company is able to identify in practice the bearer of the shares, in order to effectively operate the rights of the share (voting, receive dividends, etc.)

The capital must be fully subscribed and paid up to at least a quarter of the nominal value of each share. Each share gives its holder the right to vote, priority subscription rights, participation in the distribution of the company's profits. Shares have to be registered in the name of the holder while they are not fully paid. Share may be listed on the Spanish Stock Exchange.

Shareholders may freely transfer their shares, unless corporate bylaws state restrictions on the transfer of shares. The shareholders are not personally liable for corporate debts; they are only liable to the extent of their contribution to the corporate.

The deed of incorporation must include the company's articles of association, which have been approved by its founders. The articles of association must state, among other provisions:

- The name of the company and description of its activity.
- The date on which it begins its operation.
- The registered office.
- The share capital, the capital part which is not paid-up and the period within the capital must be paid.
- Number of shares and the rights attached to them.
- Date on which the company's financial year ends.
- Structure of the company's management and special rights that founders may have.

The corporation must have a Board of Directors (*Consejo de Administración*) and a Shareholders' General Meeting (*Junta General de Accionistas*). The deed of incorporation must 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.

- **Limited Liability Company or Private Limited Company** (Sociedad de Responsabilidad Limitada - S.L.) is normally used in Spain to form small or medium sized businesses. It may be created by a single founder (then, it is called sociedad de responsabilidad limitada unipersonal).
- In principle, a limited liability company can conduct any type of business whatsoever although certain activities are reserved by Law for Limited Companies (for example: Banking, Pharmaceuticals, Pension Fund Management, Leasing, Insurance, and others). Any company that wishes to be quoted on the Stock Exchange must also have the format of Public Limited Company.
- The minimum capital requirements are € 3,005.06, which must be fully subscribed and paid-up at the time that the company is set-up. Contributions may consist of credit rights, real property, etc. Work is not valid as a capital contribution. The stake of the private limited company is not represented in shares. Participations of a Limited Liability Company cannot be listed on a Stock Exchange, these are indivisible and cannot be freely transferred.
- Partners are not personally liable for company's debts; their liability is limited to their investment in the company. Only one shareholder is needed; however there is no limit on the number of shareholders.
- The Limited Liability Company, without ceasing to be a capitalist organisation, is more defined by the characteristics of the individuals involved in the business, or the contracts concluded "intuitu personae"; this means that the capital that each member contributes is still important, but more recognition is given to the personal characteristics of the shareholders, consequently the limited liability format is more suitable for activities in which the participation of a limited number of people is foreseen, such as family or professional companies, as well as for conducting business that requires a modest initial outlay.
- In limited liability companies the identity of the shareholders matters, in a public limited company it does not.
- The formal and legal requirements for forming a limited liability company or a public limited company are basically the same, fundamentally the public deed of incorporation, which must be accompanied by a certificate regarding the company name, which has to be obtained from the Central Company Registry, along with certification of the deposit of money in an account in the name of the company. However, if the contribution of capital to the company is not monetary, a report must be obtained from an independent expert appointed by the Company Registry, on the value of the contribution. A report of this nature is also required whenever an increase in capital is planned. This report is not required in the case of limited liability companies.
- Inscription and registry information: The requirements under this heading are also identical for both types of companies. Thus, once the company has been formed through a public deed issued and signed by a Notary, the company has to obtain its Tax Identification Number and then pay the corresponding taxes for Transfer of Wealth, Documented Legal Proceedings, and Company Transactions. This tax is 1% of the company's share capital. The company itself is responsible for settling this debt within thirty working days following the date of issue of the company formation deed. Once the preceding steps have been taken, one then has to register the Company in the Company Register corresponding to the registered company address, which will be the Capital of the Province in which the company is formed. The inscription in the Company Registry is compulsory for the company to be recognised as such. If the company is not inscribed in the Register within one year of its being constituted or if before this period elapses the intention of the shareholders not to inscribe it is established, the company enters into an irregular situation, meaning that any shareholder can demand its liquidation and that if the company has started or continues operating, its own statutes and the relevant legislation will be applied with the shareholders being liable in an unlimited fashion for the company

debts. The Company Registry is public and can be consulted through electronic means; any citizen has the right of access to the information in it.

- Information on the company that the company is obliged to provide: the information that is mainly controlled refers to the owners of the company as shown in the shareholders' ledger, which must be kept permanently up to date, under the responsibility of the company's administrators. The shareholders' ledger can be demanded by the public authorities, by the company administrators, or by the shareholders. The shareholders' ledger along with all the other company books must always be kept at the company's registered address.
- **Worker's partnerships.** The share capital of Cooperatives (Cooperativas) and Labour Corporations (Sociedades Laborales) is owned by the workers. The Cooperative is a worker's association developing an economic activity as these hold common economic needs. Minimum capital is not required. The deed of corporation shall be registered at the Cooperatives' Registry of the Spanish Labor Ministry (Ministerio de Trabajo). Workers are not liable for company debts, unless otherwise is stated in the bylaws. Labour Corporations may take the legal form of a Limited Liability Company, or a Stock Corporation. The workers are liable for company debts to the extent of their contributions.
- **Joint Ventures** in Spain may use different forms.

A group of companies can form **temporary business associations** (uniones temporales de empresas - UTE) to carry on specific projects for a limited time, each company will keep its legal status; they undertake operations in common under specific regulation. These are normally set up for engineering and construction projects. Notarial deed shall be made and registered with the Special Register of UTE at the Spanish Ministry of Economy (*Ministerio de Economía*).

**Economic Interest Groups** (*Agrupación de Interés Económico - AIE*); which are set up to help their members to achieve their individual objectives; its members are liable for the company debts. This is normally used to provide centralised services for a group of companies. They must be incorporated by public deed and entered in the Spanish Corporate Registry (Registro Mercantil). Members can transform an AIE into any other type of commercial entity.

**Entrepreneurs may agree to contribute with money or in kind** to a venture that they do not manage (contrato de cuentas en participación), the non-managing participants do not become shareholders, they receive the right to an agreed share of the profit resulting from the venture.

- **Branches.** The branch is an organization depending on its parent, which is located abroad. It has the same legal personality as its parent and runs similar activity. A branch has to be set up through a public deed made before a notary and registered at the Corporate Registry. The following documentation will be required for the registration: (1) copy of the incorporation deed and articles of association of the foreign partner; (2) copy of the minute of the foreign company's Board of Directors' meeting establishing the decision of opening a branch in Spain, containing the capital assigned to it, the name of the manager and his general powers; (3) certificate of a Spanish bank showing that the transfer of capital assigned to form the branch has been carried out.

A Spanish Consul shall legalize the copies mentioned above, and a sworn official translator shall translate the incorporation deed and bylaw of the foreign company into Spanish. A permanent address and fiscal representative in Spain will be required. The requirements for the constitution of a branch are the same as for setting up any other business in Spain. The tax position is very similar to other business, although the branch may deduct from its income the costs incurred in respect of the parent company; e.g. cost of management. Creditors may demand their payments of their debts to the branch located in Spain or directly to the parent located abroad.





#### Annex 4: AML/CFT Strategy outline

<i>Objective</i>	<i>Strategy</i>	<i>Action</i>	
1.- Support to obligated parties in the implementation and improvement of laundering prevention measures	1.1.- Establish a regular discussion platform with obligated parties (Executive Service-Financial regulator-institutions)	1.1.1. Analyse and exchange experiences on suspicious transactions and developments in the same; look in general lines at reporting tendencies. 1.1.2. Pre-emptive prevention measures regarding risk sectors, practices and geographical areas (national and international).	
	1.2.- Strengthen the obligated parties inspection programme	1.2.1. Support institutions in designing suitable internal rules. 1.2.2. Strengthen and guide the work of prevention units within reporting institutions (customer identification procedures; design of IT applications; internal transaction analysis procedures). 1.2.3. Promote a system of internal/external audits on the institution's anti-laundering procedures.	
		1.3.- Make the review of certain prevention measures part of the routine inspection duties of supervisory agencies	1.3.1. Develop a checklist of laundering indicators for use in these agencies' routine inspection processes. 1.3.2. Co-production of guides or fact sheets on suspicious transactions for each type of obligated party.
		1.4.- Promotion of training actions by obligated parties	1.4.1. Support with the design and regular updating of staff training contents.
	1.5.- Greater engagement of key risk sectors and activities (private banking; internet banking; use of correspondents; group subsidiaries) in the fight against money laundering	1.5.1. Definition of the risks associated to these sectors/activities for input to all public initiatives (regulation, inspection and international participation).	
	2.- Support to the investigation and prosecution of laundering activities	2.1.- Optimisation of informational and cooperation mechanisms in laundering investigations	2.1.1. Compilation of statistics within each police unit on investigations conducted under section 301 of the Criminal Code. 2.1.2 Integrate the statistics compiled within police units and the statistics for judicial processes.
2.2.- Promote asset investigations whose purpose is the identification, seizure and subsequent administration of the assets of laundering offenders			2.2.1. Draw up an asset investigation manual for use in laundering investigations. 2.2.2. Analyse and propose the eventual creation of a uniform system of asset confiscation and administration.
2.3.- Promote the more widespread use of certain tools in laundering investigations		2.3.1. Analyse and propose improvements allowing the use of undercover agents and supervised handovers.	

<i>Objective</i>	<i>Strategy</i>	<i>Action</i>
	2.4. Promote investigator training	2.4.1. Design and organise refresher courses for investigative staff.
3.- Support to international action aimed at improving the effectiveness of the anti-laundering systems of other countries and territories	3.1. Promote and collaborate with FATF action lines	3.1.1. Promote FATF initiatives and their ownership by stakeholder agencies: reform of the 40 Recommendations.
	3.2. Priority support and assistance to countries in the geographical expansion zone of our reporting institutions	3.2.1. Support to regional anti-laundering groups.
		3.2.2. Participation in international evaluation rounds to detect failures of compliance.
		3.2.3. Implementation and ongoing improvement of Financial Intelligence Units.
	3.3. Practical collaboration in laundering investigations and typology exercises	3.3.1. Closer exchange of financial information and conclusion of ad hoc agreements.
3.3.2. Participation in typology exercises.		
3.4. Effective, plural participation in other international forums and initiatives related to money laundering		

## Annex 5: List of laws, regulations and other material received

Title of the law / regulation / legislation	Date	Language(s)
Penal Code (extracts)	23/11/1995	English and Spanish
Criminal proceedings law (extracts)		English and Spanish
Law 5/2005 concerning supervision of financial conglomerates and amending other financial sector legislation	22/04/2005	Spanish
Law 19/2003 on the legal regime applicable to capital movements and cross-border economic transactions and on specific measures to prevent money laundering	04/07/2003	English
Law 17/2003 regulating the Fund of confiscated assets derived from drug trafficking and other related crimes	28/05/2003	
Law 12/2003 on prevention and freezing of terrorist financing	21/05/2003	English
Law 50/2002 on Foundations	26/12/2002	
Organic Law 1/2002 regulating the Right of Association	22/03/2002	
Law 13/1994 of autonomy of the <i>Banco de España</i>	01/06/1994	English
Law 19/1993 concerning specific measures for preventing the laundering of capital	28/12/1993	English and Spanish
Law 30/1992 on the legal regime governing the public administration	26/11/1992	
Law 13/1989 on credit co-operatives	26/05/1989	English
Law 26/1988 on discipline and intervention of credit institutions	29/07/1988	English
Law 24/1988 on the securities market	28/07/1988	English
Law on passive extradition	21/03/1985	Spanish
Royal Legislative Decree 6/2004 approving Consolidated Text of regulation and Supervision of Private Insurances.	29/10/2004	English
Royal Decree 2660/1998 regulating the exchange of foreign currency in establishments open to the public other than credit institutions	14/12/1998	English
Royal Decree 864/1997 approving the Regulation of the Fund of confiscated assets derived from drug trafficking and other related crimes	06/06/1997	English
Royal Decree 692/1996 on legal framework for financial credit entities	26/04/1996	English
Royal Decree 1245/1995 on the formation of banks, cross-border activity and other issues relating to the legal regime for credit institutions	14/07/1995	English
Royal Decree 925/1995 approving Regulations to Law 19/1993 concerning specific measures to prevent money laundering	09/06/1995	English and Spanish
Royal Decree 1636/1990 that approves the Regulations To Develop Act 19/1988, Of 12th July, On Auditing	20/12/1990	Spanish

Royal Decree 1080/1991 determining the countries or territories (tax havens) referred to in arts. 2, 3-4 Of Law 17/1991 of 27 May on Urgent Tax Measures And 62 Of Law 31/1990 Of 27 December, Approving The National Budget For The Year 1991.	05/07/1991	English
Royal Legislative Decree 444/1977 approving complementary rules to the Royal Decree 16/1977, of 25 of February, Regulating Penal, Administrative and Financial aspects of Gambling Games	11/03/1977	Spanish
Ministerial Order ECO/2652/2002 implementing reporting obligations in respect of transactions conducted with certain countries	24/10/2002	English
Order approving the Regulation on Gambling Casinos	09/12/1979	English
Resolution concerning the compliance with the Instruction dated 10/12/1999 on the obligations of notaries and property and mercantile registries on the obligations of notaries and property and mercantile registries	30/11/2004	English
Council Act drawing up, on the basis of the Treaty on European Union, the Convention on mutual assistance and cooperation between customs administrations	18/12/1997	Spanish
Law 19/1988 on Auditing	12/07/1988	Spanish
Instruction No. 1/2005 Of The Department Of Customs And Special Taxes Of The State Tax Administration Agency Relating To The Import Of Objects Manufactured With Precious Metals	28/02/2005	Spanish
Instruction from the Ministry of justice on the obligations of notaries and property and mercantile registries on the obligations of notaries and property and mercantile registries	10/12/1999	English
AEB Circular 660	06/07/1995	English
AEB Circular 674	01/02/1996	English
<b><u>Guidance</u></b>		
AEB - Examples of suspicious transactions		English
Guidance of Suspicious Transactions of Real Estate Agencies	1998	English
Resolution of the Directorate-General of Registries and Notaries Concerning Compliance with the Instruction dated 10 December 1999, on the Obligations of Notaries and Property and Mercantile Registries with Regard To The Prevention of Money Laundering	30/11/2004	
Instruction of The Directorate-General Of Registrars And Notaries On The Obligations Of Notaries And Property And Mercantile Registries With Regard To The Prevention Of Money Laundering	10/12/1999	Spanish
Guidance 660/1995 of Private Banking Association	1995	Spanish
Guidance of Suspicious Transactions Credit Institutions, Insurance Services, Remittances, Real Estate Services, Notaries	2005	Spanish
<b><u>Draft legislation</u></b>		
Ministerial Order regulating the previous declaration of cash movements in the		

context of the prevention of money laundering

Ministerial Order regulating remittance activity in the context of the Money Laundering prevention.

**Other relevant documentation circulated by the FATF Secretariat**

SEPBLAC Annual Report	2004	English
CNMV Annual (extracts)	2003	English
Report from Spain on Myanmar	09.01.2004	English
Report from Spain on Nauru	14.01.2002	English
Report from Spain on Ukraine	21.01.2003	English
Press release	2005	English



## Annex 6: Copies of key laws, regulations and other measures

- Penal Code (extracts)
- Law 12/2003, dated 21 May, on prevention and freezing of terrorist financing.
- Royal Decree 925/1995 of 9 June approving the Regulations to Law 19/1993 of 28 December concerning specific measures to prevent money laundering. (Amended by RD 54/2005 of 21 January).

### Penal Code

#### - Money laundering offence

*Article 301 of the Penal Code as reformed by the Organic Law 15/2003:*

"1. Any person who acquires, converts or transfers property knowing that its origin is illicit or to help another person who may have participated in the breach or breaches of the law to avoid the legal consequences of such actions will be punished with a prison term of between six months and six years and fined an amount equivalent to three times the value of the goods in question. In these cases, the judges or tribunals, taking into account the seriousness of the offence and the personal circumstances of the delinquent can also impose on the delinquent, the special punishment 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. If closure is temporary it cannot exceed more than five years.

The punishment will be imposed in its higher half when the goods have their origin in any one of the crimes related to drug trafficking, dealing in narcotics or psychotropic substances described in articles 368 to 372 of this Code. In these cases, the provisions laid down in article 374 of this Code will be applied.

2. These same sanctions will be applied, according to the case, to concealment or collusion regarding the true nature, origin, location, destination, movements or rights over the goods or ownership of said, knowing that they proceed from one of the crimes described in the preceding paragraph or from an action of participating in such crimes.

3. If the events can be classed as criminal negligence, the punishment will be a prison term of six months to two years and a fine of three times the amount involved.

4. The guilty party will equally be punished even though the crime that gave rise to the proceeds or the actions punishable according to the preceding paragraphs may have been committed partially or totally in a foreign country.

5. If the guilty party has obtained profits, they will be confiscated according to the rules of articles 127 of this Code".

#### - Terrorist financing offence

*Article 571. [Devastation or Fire]*

Those persons belonging to, acting at the service of, or collaborating with armed groups, organisations, or associations whose purpose is subverting the constitutional order or seriously breaching public peace, commit the crime of devastation or fire typified in articles 346 and 351, respectively, and will be punished with a prison term of between fifteen and twenty years, without prejudice to the term that may correspond if life is threatened or the physical health or integrity of the person is attacked.

*Article 572. [Attacks on the person]*

1. Any person belonging to, acting at the service of, or collaborating with armed groups, organisations or associations or terrorists groups described in the preceding article, attacking the person, will be punished by:

1° A prison term of between twenty and thirty years if they are responsible for a person's death.

2° A prison term of between fifteen and twenty years if they cause injuries of the types foreseen in Articles 149 and 150 or kidnap a person.

3° A prison term of between ten and fifteen years if they cause any other injury or illegally detain a person, or threaten, or intimidate a person.

2. If the attacks are made against the people mentioned in paragraph 2 of Article 551 or against members of the Armed Forces or the State's Security Forces or Bodies, Police of the Autonomous Communities or Local Authorities, the punishment will be imposed in its upper half.

#### *Article 573. [Use or possession of firearms]*

The use or possession of firearms, ammunition, explosive apparatus or substances, inflammable, incendiary or asphyxiating materials or any of their components as well as the manufacture, trafficking, transport or supply in any way and the mere placing or use of such substances or of the means or mechanisms will be punished with a prison term of six to ten years when said actions are committed by people belonging to, acting at the service of, or collaborating with armed groups, organisations, associations or terrorist groups described in the preceding Articles.

#### *Article 574. [Other crimes]*

The person belonging to, acting at the service of or collaborating with armed groups, organisations, associations or terrorist groups who commits any other violation of the law with any of the objectives expressed in Article 571, will be punished with the prison term laid down for the crime, at the upper half of the scale.

#### *Article 575. [Provision of funds through property crimes]*

Any person who with the aim of collecting funds for armed groups, organisations or associations or terrorist groups referred to previously, or with the intention of favouring their ends commits crimes against property, will be punished with the maximum level laid down for the committed crime without prejudice to the punishment that may be imposed in accordance with the provisions of the following Article relating to collaboration.

#### *Article 576. [Collaboration]*

1. Any person who carries out or facilitates any act of collaboration with the activities or aims of an armed group, organisation, association or terrorist group will be punished by a prison term of five to ten years and a special sanction of suspension of rights between eighteen and twenty four months.

2. Acts of collaboration are understood to include providing information or surveillance of people, property or installations, the construction, fitting out, cession or use of housing or deposits, the concealment or transfer of people linked to armed groups, organisations or terrorist groups, as well as the organisation of training practices, attendance at same and in general, any other equivalent way of cooperating, helping, or mediating either financially or in any other fashion with the activities of said armed groups, organisations, associations, or terrorist groups.

When the information or surveillance of the people mentioned in the preceding paragraph endangers the life, physical integrity, freedom or wealth of said persons, the punishment provided for in section 1, will be imposed at its upper half. If the risk foreseen materialises, the event will be punished as a co-perpetrator or accomplice according to the circumstances.

*Article 576 bis.*

1. Any public servant or authority who helps provide funds or goods of a public nature, grants, or public subsidies of whatsoever type to illegal associations, or political parties that have been dissolved or prohibited by a judicial resolution due to having carried out actions related to the crimes referred to in this section, as well as political parties, private individuals or corporate entities, and in particular parliamentary groups and associations of voters who, in fact, continue or succeed the activities of these dissolved or suspended political parties will be punished with a prison term of three to five years.

2. The maximum term referred to in the preceding paragraph will be imposed on the authority or public functionary who repeatedly behaves in the fashion described in this Article, after being ordered by a court or the administration to cease such activity.

*Article 577. [Without belonging to an armed group]*

Any person who, without belonging to an armed group, organisation, association or terrorist group, with the aim of subverting the constitutional order or seriously altering the public peace or contributes to these aims, terrorising the inhabitants of a settlement or the members of a social, political, or professional collective who commit homicide, bodily harm, of the type typified in Articles 147 to 150, or carry out illegal detention, kidnap, threats, or intimidation against persons, who carry out any crime of fire, devastation, or material damage as typified in Articles 263 to 266, 323 or 560, or own or use, manufacture, hold in custody, deal in, transport or supply firearms, ammunition or explosive substances or devices, inflammable, incendiary or asphyxiating materials or any of their components will be punished with the prison term corresponding to the crime in its upper half.

*Article 578. [Preparatory actions]*

Any promotion or justification through any public means of expression or publicity relating to the crimes provided for in Articles 571 to 577 of this Code or paying homage to people who may have participated in their execution or the performance of actions that entail discrediting, humiliating or insulting the victims of the crimes of terrorism or their families will be punished with the prison term of one to two years. The Judge will also be empowered to decree in the sentence during the period of time laid down in it, any one or more of the prohibitions provided for in Article 57 of this Code.

*Article 579. [Voluntary abandonment of the activities]*

1. Incitement, conspiracy and inducement to commit the crimes foreseen in Articles 571 to 578 will be punished with the term one or two grades below those corresponding respectively to the events provided for in the preceding Articles.

2. Persons who are liable for the crimes foreseen in this section, without prejudice to the prison terms that correspond according to the preceding Articles will also be punished through the total suspension of civil rights for a period of between six and twenty years more than the length of the prison term imposed, with the sentence taking into account the seriousness of the crime, the number of crimes committed and the delinquent's personal circumstances.

3. In connection with the crimes foreseen in this section, the Judges and Tribunals, presenting reasoned arguments in the sentence, will be empowered to impose the prison term in one or two grades lower than that laid down by the law for the crime in question, when the perpetrator has voluntarily abandoned criminal behaviour, submits himself to the authorities, confessing the events in which he may have participated and in addition actively collaborates with the authorities to prevent a crime being committed and effectively cooperates in obtaining decisive evidence for the identification or arrest of other criminals or to prevent any actions committed by armed groups, organisations, associations or terrorist groups to which he may have belonged or with which he may have collaborated.

*Article 580. [International recurrence]*

In the case of all crimes related to the activity of armed groups, organisations, associations or terrorist groups, a sentence imposed by a foreign Judge or Tribunal will be considered equivalent to a sentence from Spanish Courts and Tribunals for the purposes of applying the aggravated crime of recurrence.

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**- Law 12/2003, dated 21 May, on prevention and freezing of terrorist financing.**

JUAN CARLOS I  
KING OF SPAIN

To all the parties that see and understand this.

Be apprised that Spanish Parliament has passed, and I have sanctioned, the following Law.

*PREAMBLE*

*I*

Terrorism is one of the greatest aggressions against peace, security and stability in democratic societies. Tragic events such as the 11 September 2001 attacks are further evidence that no citizen, institution or State is immune to this threat. Consequently, all States must provide a proportionate and coordinated response to this situation and equip themselves with the necessary mechanisms to fight terrorism in all its forms and manifestations and to prevent further terrorist attacks with all the instruments provided by the rule of law, in a context of maximum international cooperation.

Therefore, the international community, under the auspices of the United Nations, has stated that one of its main objectives is international agreement and coordinated work in order to prevent and suppress terrorist acts.

In order to prevent terrorist acts, it is vital to stem the flow of finance to terrorist organisations. The United Nations has repeatedly stated that the number and seriousness of terrorist acts depend greatly on the finance that terrorists obtain. Therefore, international organisations and the States that belong to them are convinced that preventive measures can reduce the activities and devastating effects of terrorist organisations. Specifically, UN Security Council Resolution 1373 (2001), adopted unanimously at the 4,385<sup>th</sup> meeting on 28 September 2001, reaffirming its Resolutions 1267 (1999), 1269 (1999), 1333 (2000) and 1368 (2001), ordered all States to adopt the necessary measures to prevent and suppress the crime of terrorism.

Section 1.a) of Resolution 1373 provides that all States shall "prevent and suppress the financing of terrorist acts", and section 1.c) orders that they shall "freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities".

In Europe, the Extraordinary Council meeting of the Heads of State and Government on 21 September 2001 resolved that the fight against terrorism was to be a priority for the European Union and designed a specific Action Plan against terrorism, whose key feature is the fight against financing.

The European Union and Member States have undertaken to adopt the necessary measures so that their financial systems cooperate in preventing the creation and transfer of funds that serve to commit terrorist acts.

In Spain, our international commitments and the unfortunate experience of our people, who have suffered terrorism for decades, make it necessary to equip Spanish law with effective measures to prevent this type of crime while adhering to the principles that govern our democratic State and the rule of law. This is a continuation of the policies on preventing particularly serious types of crime, such as money laundering and drug trafficking, and closely relates to other legislation, such as Law 19/1993, dated 28 December, on certain measures to prevent money laundering, and

Law 40/1979, dated 10 December, on the legal system of exchange control, which focus on preventing and avoiding crime from a financial standpoint.

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In order to prevent the financing of terrorism and avoid the use of the financial system in a globalised economy for such purposes, the principle that has inspired this law is the possibility of freezing any type of financial flow or position so as to prevent the funds from being used to commit terrorist actions, make it possible to identify and combat terrorists' financial channels, and ascertain the real nature of the funds, their source, location, disposition and movements, and the identity of the real owners of those transactions.

This possibility of freezing and examining operations which may be particularly related to terrorist financing is achieved by conferring specific powers to freeze balances and financial movements on specific persons within a specialist professional body, the Terrorist Finance Watchdog Commission, in the understanding that this is a preventive measure and not a penalty since it is has been established not to find guilt but to avoid the performance of criminal acts which, when appropriate, will be judged by the competent judge, thereby making any early warnings operational.

Those powers may be applied to individuals or transactions when there are reasonable signs that they will be used to finance terrorist actions, either because they are included in international lists to which Spain adheres, or because there are a number of subjective and objective factors, specified by law, that make it possible to reasonably infer that their purpose is to provide economic support to terrorist activities.

Consequently, the Watchdog Commission that is now created will manage and stimulate these activities aimed at preventing the use of the financial system to commit crimes, specifically, terrorist actions, it will liaise in this matter between the public administrations and financial institutions, and it will support the judicial system, the Public Prosecutor's office and the criminal investigation department.

All the foregoing is logically without prejudice to the powers that the Spanish Constitution and Spain's body of laws confer on the Judiciary to review the correctness, purpose and proportionality of administrative actions, to persecute and prosecute crime, and to guarantee citizens' rights. An additional guarantee is also provided: judicial authorisation is required for the measures to be extended in time beyond the minimum considered to be indispensable for performing the complex task of verification.

In short, the freezing measures envisaged by this law must be performed with the indispensable collaboration from the entities that act in financial flows, and the latter subject to specific obligations. Also, considering the importance of the information about transactions that may be associated with persons and other entities that may be subject to the freeze, and to make this law applicable, it is necessary to oblige other administrations, bodies and institutions to cooperate in terms of information exchange.

#### **Article 1. Freezing of capital transactions and movements and prohibition of opening accounts in financial institutions.**

1. In order to prevent activities that finance terrorism, the following may be frozen in the terms provided by this law: accounts, balances and financial positions, capital transactions and movements, even occasional ones, and their corresponding collections, payments and transfers, in which the principal, issuer, owner, beneficiary or recipient is a person or entity related to terrorist groups or organisations, or when the transaction, movement or operation is performed for the purpose, or on the occasion, of perpetrating terrorist activities, or for contributing to the goals pursued by terrorist groups or organisations.

2. For the purposes of this law, freezing is deemed to be the prohibition of performing any type of movement, transfer, alteration, use or transaction of capital or financial assets that changes, or may change, the volume, amount, location, ownership, possession, nature or destination of said capital or assets, or any other change that facilitates their use, including the management of a securities portfolio.

3. The persons and entities listed in section 1 may also be prohibited from opening accounts in financial institutions and their branches in Spain, when they appear as owners or are authorised to operate or represent them.

4. The provisions of this law are deemed to be without prejudice to the provisions of the Law of Civil Procedure regarding non-attachable assets and to Article 2 of Law 40/1979, dated 10 December, on the legal system of exchange control, and the provisions that implement it.

#### **Article 2. Adoption of the resolutions by the Terrorist Finance Watchdog Commission.**

1. In accordance with the preceding Article, the Terrorist Finance Watchdog Commission shall be empowered to freeze balances, accounts and positions, including assets deposited in safe-deposit boxes, opened by persons or entities related to terrorist organisations in any of the institutions stated in Article 4, and to prohibit the opening of new accounts where such persons or entities appear as owners or authorised users or representatives.

2. 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.

3. Once the freeze has been decided, the Watchdog Commission can authorise transactions and their corresponding collections, payments or transfers for the purpose of paying debts regarding salaries, taxes, social security and other in order to avoid harm to third parties in good faith.

4. 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.

5. The resolutions referred to in the preceding sections shall be in force for the period of time stipulated expressly by the Watchdog Commission.

When the resolution is based on a provision or resolution adopted by a competent body or the European Union or another international organisation to which Spain belongs, the duration of the effect shall be that determined in said resolution. Otherwise, the duration cannot initially exceed six months; the Watchdog Commission can extend this period if the causes that led to the freeze still exist, subject to judicial authorisation, which must be resolved upon within at most 15 days. The Commission shall request the authorisation before the end of that period and the judicial body that is competent to decide on the appeal against these acts shall make the decision after hearing the persons affected by the freeze or prohibition. In any case, the initial freezing resolution shall remain effective until the judicial resolution authorising or rejecting the extension is issued.

6. In any case, the Watchdog Commission shall lift the freeze when the actions or investigations performed do not evidence that the affected assets bear any relation to the financing of terrorist activities.

#### **Article 3. Jurisdictional control.**

1. The Watchdog Commission shall always exercise its powers without prejudice to the powers conferred by the Spanish Constitution and other Spanish laws on the Judiciary, especially on the criminal courts.

2. The Watchdog Commission shall aid the criminal courts and the Public Prosecutor in the discharge of their duties.

3. The Watchdog Commission's resolutions, which put an end to the administrative pathway, may be appealed via the contentious-administrative system, and shall be processed on a preferential basis.

4. If a criminal proceeding is under way dealing with the same persons, events and grounds as the actions envisaged in this law, the criminal court hearing the case shall be the competent body for resolving to continue with the freeze of those balances, accounts, positions, cash, securities and other instruments, through the adoption of the corresponding precautionary measures.

5. If there is a criminal proceeding under way which may be related to the freeze measures adopted by the administration, the Watchdog Commission's resolutions must be notified to the criminal court that is processing it.

6. The Watchdog Commission shall immediately notify the competent court of any event of which it becomes aware during the exercise of the powers conferred on it by this law that might constitute a crime or, even if not constituting a crime as such, may be related to events that can be classified as criminal.

#### **Article 4. Persons and entities that must comply.**

1. 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, dated 28 December, on specific measures to prevent money laundering, are obliged to collaborate with the Terrorist Finance Watchdog Commission and, in particular, to undertake the necessary measures in order to make the freeze envisaged in Article 1 effective; in particular, they must:

- a) Prevent any type of action or operation that leads to a disposition of the balances and positions of any type, cash, securities and other instruments related to frozen capital movements, payments and transfers, except those involving the influx of new funds and resources into frozen accounts.
- b) Notify the Watchdog Commission of any type of deposit that may be performed in the frozen account, without prejudice to performing the transaction.
- c) Examine closely any operation that, because of its amount or nature, may be particularly related to the financing of terrorists activities.
- d) Notify the Watchdog Commission, at their own initiative, of any event or operation with regard to which there are rational signs of being related to the financing of terrorist activities, and of any request or demand that they receive in which the principal, issuer, owner, beneficiary or addressee is a person or entity related to terrorist organisations or with regard to which there are rational signs that they are related to same, or with regard to which the Watchdog Commission has adopted any measure.
- e) Supply the Watchdog Commission with the information it demands for the exercise of its powers.
- f) Refrain from executing any operation of the type stated in paragraph d) of this section unless they have previously notified the Commission as envisaged in that same paragraph.
- g) Not reveal to any client or third party that information has been relayed to the Watchdog Commission in accordance with preceding paragraphs b), d) and e), or that a transaction is being examined under the terms of paragraph c).
- h) Establish appropriate procedures and bodies for internal control and communications in order to prevent and block transactions relating to persons and entities related to terrorist organisations.

2. In any case, the persons and entities stated in the preceding section shall comply with this Article and with the other applicable duties in accordance with Law 19/1993.

#### **Article 5. Exemption from liability.**

The measures adopted in good faith to comply with the provisions of the preceding Article by the obliged persons and entities or, exceptionally, their managers or employees, shall not entail a violation of the obligations imposed by contracts or by sector regulations to which they are subject and shall not give rise to any type of liability.

#### **Article 6. Penalty system.**

1. A breach of the duties envisaged in this law shall be deemed to be a very serious violation for the purposes envisaged in chapter II of Law 19/1993, and shall be penalised in accordance with same.

2. The references made in that chapter to the Secretariat of the Commission for the Prevention of Money Laundering and Monetary Violations shall be equally applicable to the Terrorist Finance Watchdog Commission.

3. The power to propose the imposition of penalties for the commitment of violations envisaged in this law lies with the Watchdog Commission and the power to penalise lies with the Minister of the Interior.

#### **Article 7. Persons and entities related to terrorist groups or organisations.**

1. For the purposes envisaged in this law, the Commission can consider the following persons or entities to be related to a terrorist group or organisation:

- a) Persons or entities whose relation to a terrorist group or organisation has been acknowledged in a court decision, a provision or a resolution adopted by a competent body of the European Union or by any international organisation of which Spain forms part.
- b) Persons who act as *de facto* or *de jure* administrators or in the name or interest, on behalf or in legal or voluntary representation of the organisation or of any person or entity belonging to, or controlled by, a terrorist group.
- c) Entities in whose management or governing bodies or in whose capital or endowment other persons or entities belonging to, or controlled by, a terrorist organisation have a participation with a significant influence.
- d) Persons or entities that constitute a decision-making unit with a terrorist group or organisation, either because any of them has or may have control over the others, directly or indirectly, or because said control corresponds to one or more persons and entities that act systematically or in concert with the group or organisation.
- e) Persons or entities created or interposed by a terrorist organisation in order to conceal the real identity of the principals or beneficiaries of an economic transaction or of the parties in any type of business or contract.
- f) Persons or entities not included in the preceding paragraphs that financially contribute to, or favour, a terrorist organisation.
- g) Persons or entities that, in view of the persons who direct or administer them, or of any other circumstances, are considered to be a material continuation or succession of the activity of any person or entity envisaged in the preceding paragraphs, all of this regardless of the legal form or title used for said continuation or succession.

2. In any event, in the case of mercantile companies, membership of the same corporate group shall be as defined in Article 4 of Securities Market Law 24/1988, dated 28 July.

#### **Article 8. Disclosure obligation.**

1. The tax administrations, the social security management companies and the General Treasury of the Social Security, the Bank of Spain, the National Securities Market Commission (CNMV), the Directorate-General of Insurance and Pension Funds, and the other bodies and agencies that supervise financial matters shall be obliged to disclose any personal data and information obtained in the exercise of their functions to the Watchdog Commission, at the request of its President, in the exercise of the powers conferred on him/her by this law.

2. For the purposes of Organic Law 15/1999, dated 13 November, on Personal Data Protection, the files that are created by the Watchdog Commission for compliance with the purposes envisaged in this law shall be deemed to be publicly-owned.

#### **Article 9. Terrorist Finance Watchdog Commission.**

1. The Terrorist Finance Watchdog Commission is hereby created as the body in charge of deciding the freeze of all the operations defined in Article 1 of this law and of exercising all the powers that are necessary for compliance with the provisions hereof.

2. The Watchdog Commission shall be accountable to the Interior Ministry and shall comprise:

- a) President: the Secretary of State for Security.

b) Commissioners:

1. A member of the Public Prosecutor's office, appointed by the Attorney General.

2. A representative of the Justice, Interior and Economy Ministries, appointed by the heads of the respective departments.

c) Secretary: the Director of the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Violations.

If the President of the Commission deems appropriate, he/she may call upon experts in the areas under its power to provide specific advice on certain matters.

3. The members of this Commission are subject to the liability system established by law, particularly regarding the obligations derived from the knowledge of information received and of personal data that are disclosed, which can be used only for the exercise of the powers attributed by this law.

The experts that advise the Commission are also subject to the same liability system regarding any knowledge they obtain as a result of assisting the Commission.

4. 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.

5. The disclosure obligations referred to in Article 4 of this law shall be complied with through the Commission for the Prevention of Money Laundering and Monetary Violations referred to in Article 15.2 of Law 19/1993.

6. The Watchdog Commission's powers are deemed to be without prejudice to the powers conferred by Law 19/1993 on the Commission for the Prevention of Money Laundering and Monetary Violations.

**Additional provision one. Amendment to Law 19/1993, dated 28 December, on specific measures to prevent money laundering.**

A new paragraph g) is added to Article 15.2 of Law 19/1993 with the following content, and the current paragraph g) becomes a new paragraph h):

"g) Provide the necessary assistance to the Terrorism Finance Watchdog Commission for the appropriate exercise and discharge of its duties, execute its orders and guidance and ensure compliance with the provisions of the law governing that commission in accordance with the instructions received from it."

**Additional provision two. Amendment to Law 230/1963, dated 28 December, the General Taxation Law.**

A new paragraph i) is added to Article 113.1 of the General Taxation Law with the following wording:

"i) Cooperation with the Terrorism Finance Watchdog Commission in the discharge of its duties, as provided by Article 8 of the Law on Prevention and Freezing of Terrorist Financing."

**Additional provision three. Amendment of the consolidated General Law on Social Security, approved by Legislative Royal Decree 1/1994, dated 20 June.**

A paragraph i) is added to Article 36.6 of the consolidated General Law on Social Security, to read as follows:

"i) Cooperation with the Terrorism Finance Watchdog Commission in the discharge of its duties, as provided by Article 8 of the Law on Prevention and Freezing of Terrorist Financing."

**Sole repealing provision. Repeal of legislation.**

Any provisions of equal or lesser rank that clash with the provisions of this law are hereby repealed.

### **Final provision one. Regulatory implementation.**

The Government is empowered so that, within six months from the date of entry into force of this law, it may approve the regulations for its enforcement and implementation, especially as regards the workings of the Watchdog Commission and its method of adopting resolutions

### **Final provision two. Entry into force.**

This law shall come into force on the day following its publication in the Official State Gazette.

Accordingly, I order all Spaniards, both private individuals and authorities, to obey this law and to cause it to be obeyed.

Madrid, 21 May 2003.

JUAN CARLOS R.

President of the Government

JOSÉ MARÍA AZNAR LÓPEZ

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### **ROYAL DECREE 925/1995 of 9 June approving the Regulations to Law 19/1993 of 28 December concerning specific measures to prevent money laundering. (Amended by RD 54/2005 of 21 January).**

Law 19/1993 of 28 December concerning specific measures to prevent money laundering empowers the Government to regulate and constitute the Commission for the Prevention of Money Laundering and Monetary Offences, established under article 13 of the Law, together with its administrative support bodies: the Commission Secretariat and the Executive Service. It should be noted that Law 19/1993 opted to expand the competences of the administrative authorities already dealing with different aspects of cross-border transactions and exchange control instead of setting up new administrative structures, as a result of which powers in the area of money-laundering prevention are now exercised by these same authorities, as the Law itself stipulates.

In the light of the above considerations, this Royal Decree has the purpose of defining the organisational and operational aspects of these administrative authorities, and in this connection establishes the composition of the Commission and its Standing Committee, and defines the administrative unit to act as the Commission's Secretariat along with its areas of competence. It likewise establishes the attachment of the Executive Service to the Bank of Spain and its operating regime.

While the Preamble to Law 19/1993 states that it will enter into force immediately upon publication, the text of the Law refers major aspects to the corresponding implementing provisions, such as, for example, the references made in articles 2, 3 and 5. For the purpose of meeting this legal requirement, the present Royal Decree undertakes to regulate these matters, and in this connection identifies those activities which are considered particularly likely to be used for money laundering together with the relevant obligations incumbent upon legal and natural persons engaging in such activities; details are given of the acts and procedures to be carried out by the obligated parties and, in particular, of the specific transactions which, due to their possible link with the laundering of proceeds from the criminal activities defined in article 1 of Law 19/1993 of 28 December concerning specific measures to prevent money laundering, must in all cases be reported to the Executive Service. Similarly, legal provision is made for exemption from liability as regards the furnishing of the information required, and penalty procedures laid down for failure to comply with reporting obligations.

By virtue of which, at the proposal of the Minister for Economic and Financial Affairs, with the approval of the Minister for Public Authorities, in agreement with the Council of State and after deliberation by the Council of Ministers at its meeting of 9 June 1995,

I decree

**Single article.** *Approval of the Regulations to Law 19/1993 of 28 December concerning specific measures to prevent money laundering*

This Royal Decree approves the Regulations to Law 19/1993 of 18 [sic] December, concerning specific measures to prevent money laundering.

Single derogatory provision. *Statutory repeal.*

Upon entry into force of the Regulations approved by this Royal Decree, Royal Decree 2391/1980 of 10 October regulating the composition and functions of the Commission for the Monitoring of Exchange Control Offences shall be repealed.

**First final provision.** *Statutory faculty.*

The Minister for Economic and Financial Affairs is hereby authorised, subject to the appropriate legal formalities, to issue whatever provisions may be necessary for the implementation of the Regulations approved by this Royal Decree.

**Second final provision.** *Entry into force.*

This Royal Decree and the Regulations that it approves shall come into force on the day following their publication in the Official State Gazette [Boletín Oficial del Estado].

Done at Madrid, 9 June 1995.

JUAN CARLOS R.

The Minister for Economic and Financial Affairs

PEDRO SOLBES MIRA

## **IMPLEMENTING REGULATIONS TO LAW 19/1993 OF 28 DECEMBER CONCERNING SPECIFIC MEASURES TO PREVENT MONEY LAUNDERING**

### **CHAPTER I**

#### **General Provisions**

**Article 1.** Scope of application.

1. For the purposes of the implementation of Law 19/1993 of 28 December concerning specific measures to prevent money laundering, these Regulations impose a system of requirements, actions and procedures whose aim is to forestall and prevent the use of the financial system and other sectors of economy activity for the laundering of the proceeds of whatsoever type of illicit participation in offences punishable by a custodial sentence of over three years.

2. For the purposes of these Regulations, money laundering shall be understood to mean the acquisition, use, conversion or transfer of the proceeds of the criminal activities referred to in the preceding section or of participation in such activities, for the purpose of concealing or disguising their origin or helping a person involved in the criminal activity to evade the legal consequences of his or her acts, as well as the concealment or disguise of their true nature, source, location, application or movement, or of their ownership or associated rights, even if the activities giving rise thereto are carried out in the territory of another State.

3. Compliance with the obligations contained in these Regulations shall be understood as without prejudice to those laid down in the Law on Criminal Procedure and in any other applicable provisions.

## **Article 2.** *Obligated parties.*

1. The following shall be subject to the obligations established in these Regulations:

- a) Credit institutions.
- b) Insurance undertakings authorised to do business in the area of life insurance.
- c) Securities brokers and broker-dealers.
- d) Investment companies, excepting those whose management, administration and representation is handled by a management company of collective investment undertakings.
- e) Management companies of collective investment undertakings and pension funds.
- f) Portfolio management companies.
- g) Companies issuing credit cards.
- h) 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.

The foregoing categories shall be 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 Coordination 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.

Obligated parties shall likewise be subject to the rules laid down herein with regard to transactions channelled through agents, and other natural or legal persons acting as mediators or intermediaries.

2. Natural or legal persons exercising the following professional or business activities shall be subject to the obligations laid down in article 16:

- a) Gambling casinos
- b) Real estate development, estate agency and real estate brokerage activities.
- c) Natural and legal persons acting in the exercise of their profession as auditors, external accountants or tax advisors.
- d) Notaries, lawyers and court representatives shall likewise be subject to such obligations when:
  - 1.- They participate on clients' behalf in the design, closure or advising of 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
  - 2.- They act for and on behalf of clients in any financial or real estate transaction.
- e) Activities connected with the trade in jewellery and precious stones and metals.
- f) Activities connected with the trade in art works and antiques.
- g) Activities connected with investment in postage stamps and coins.
- h) The professional transport of cash or means of payment.
- i) The international transfers and drafts managed by postal services.
- j) Lotteries and other games of chance as regards the payment of prizes.

When the individuals referred to in the preceding section exercise their professions as the employees of a legal person or render such person sporadic or regular services, the obligations shall correspond to the said legal person with regard to the services rendered.

3. Natural or legal persons making the following movements of means of payment on their own account or on behalf of third parties shall be obliged to declare the origin, destination and current possession of the corresponding funds:

a) The movement into or out of national territory of coins, bank notes or bearer cheques made out in the national currency or any other currency or any material support, including electronic supports, designed for use as a means of payment in an amount greater than 6,000 euros per person and journey.

b) The movement within national territory of coins, bank notes 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 euros.

For the above purposes, origin shall be understood as the legal document or operation determining the legitimate possession of the funds, and destination as the economic-legal finality to which the funds are to be applied.

The reference to electronic means of payment does not include registered credit or debit cards.

The forms and deadlines for declarations and the place and means of their submission shall be determined by order of the Minister for Economic and Financial Affairs, and the amounts set out in paragraphs a) and b) above may be modified at a later date.

The obligation established in this section shall not be applicable to obligated parties properly accrediting their status as such.

## CHAPTER II

### Obligations

#### HEADING 1. GENERAL REGIME

##### **Article 3.** *Identification of clients.*

1. Obligated parties shall require submission of documents establishing the identity of their clients, whether regular or not, at the time of initiating business relations or effecting whatsoever transaction, except in the cases envisaged in article 4 of these Regulations.

2. Clients who are natural persons shall submit a national identity document, a residence permit 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, prescribed by current regulations. The powers of persons acting as their representatives shall be similarly attested.

3. Legal persons shall submit an authenticated document accrediting their name, legal form, registered address and corporate purpose, without prejudice to the mandatory communication of their tax identification number as the case may be.

The powers of persons acting as their representatives shall be similarly attested.

4. Where there is some indication or evidence that the clients in question are not acting on their own behalf, the obligated parties shall procure the necessary information to identify the persons on whose behalf they are acting.

In the case of legal persons, the obligated parties shall make every reasonable effort to determine their ownership or control structure.

5. At the time of entering into a business relationship, the obligated parties shall procure information from their clients in order to ascertain the nature of their business or professional activity. They shall also take reasonable measures to check the accuracy of the information given.

These measures shall comprise the establishment and application of procedures to verify the activities declared by clients. Such procedures shall bear in mind the level of risk pertaining in each case, and shall be based on obtaining papers from clients that are related to their declared business activity, or procuring information on the said activity from third-party sources.

Obligated parties shall 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.

6. In the case of fund transfers within national territory, the originating institution shall record the identification details of the ordering party and, where appropriate, of the person on whose behalf he or she is acting. These data shall be furnished immediately to the transferee institution should the latter so request.

In the case of cross-border transfers, institutions should include and, where appropriate, maintain the identification data of the ordering party in the transfer document and in all messages relating thereto throughout the payment chain.

The ordering party 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.

For the purposes of this section, the identification data of the ordering party shall be the name and surname of the natural person or the name of the legal person; the number of the corresponding national identity document, residency card, passport, tax identification number or foreigners' identification number; and the number of the account from which the transfer is made.

The procedure laid down in paragraph one of this section regarding fund transfers within national territory may be made extensive to transfers within the European Union by means of an order of the Minister for Economic and Financial Affairs or Community legislation.

7. Notwithstanding the provisions of sections 1, 2 and 3 of this article, obligated parties may establish business relations or execute any type of transaction by telephonic, electronic or telematic means with clients not physically present for identification purposes, provided that:

- a) The client's identity is accredited as defined in the applicable regulations on electronic signatures, or
- b) 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), or
- c) The conditions established to this effect by the Minister for Economic and Financial Affairs are judged to be met.

In any event, the obligated parties shall procure copies from their clients of the documents stated in sections 2 and 3 of this article within one month from initiating a business relationship.

When the obligated parties observe discrepancies between the data facilitated by the client and other information available to them or in their power, they shall institute the identification procedures set out in sections 1, 2 and 3 of this article.

Obligated parties shall take additional steps to check clients' identity when they detect a higher-than-average risk in the course of business dealings.

**Article 4.** *Exemption from the requirement to identify clients.*

1. The obligated parties shall be released from the identification requirements established herein 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 and Monetary Offences.

2. Likewise the requirement to identify customers shall be waived in the following cases:

a) In the case of transactions with non-regular customers whose amount does not exceed 3,000 euros or the equivalent in foreign currency, except those transfers where the identification of the ordering party is mandatory under sections 1, 2 and 3 of article 3.

When clients are seen to have split one transaction into several to evade the duty of identification, the amount of each of these transactions shall be added together and identification duly sought.

The identification requirement shall likewise exist in those transactions where, following their examination by obligated parties as provided in article 5.1 of these Regulations, there is some indication or evidence of their being connected with the laundering of proceeds from the activities listed in article 1, even in cases where the amount involved is less than the threshold stated above.

b) In the case of pension plans or life insurance policies subscribed to by virtue of the employment relationship or occupation of the member or holder, provided such contracts do not contain a surrender clause and may not be accepted as collateral for a loan.

c) In the case of life insurance and supplementary policies concluded by duly authorised undertakings, when the amount of the premium or the regular premiums to be paid in one year does not exceed 1,000 euros or, in the case of a single premium payment, when its amount is less than 2,500 euros, and in the case of individual pension plans provided contributions in a year do not sum more than 1,000 euros.

d) When it has been established that the consideration due on life and supplementary insurance policies is to be credited to an account opened in the name of the customer at a credit institution bound by the requirement laid down in article 3.

The exemptions established in this article shall be without prejudice to the mandatory identification of beneficiaries, as established in article 3, before the insurer or other obligated party delivers the benefit.

#### **Article 5.** *Special examination of certain transactions.*

1. Obligated parties shall examine with special attention any transaction, irrespective of the amount of the same, which, by its nature, may be particularly linked to the laundering of proceeds from the activities referred to in article 1. In particular, the obligated parties shall closely examine any complex or atypical operations or those that have no apparent economic or licit purpose, committing to writing the results of such examination. To this end, the internal procedures of each obligated party shall specify exactly which operations should be considered complex, unusual or lacking an economic or licit purpose.

2. When establishing the internal control procedures and measures referred to in article 11, obligated parties shall specify the way in which this obligation to conduct a special examination is to be fulfilled. Such specifications shall 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, bearing in mind the type of transaction, business sector, geographical scope and quantity of the information; in any event, the terms of articles 9 and 10 of Organic Law 15/1999 of 13 December on the Protection of Personal Data shall apply.

The list of transactions liable to be linked to money laundering shall include, at least, the following indications:

- a) When the nature or volume of clients' loan or deposit transactions does not match with their business activities or transactional history.
- b) 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.
- c) Movements with their origin or destination in accounts held in the countries or territories referred to in article 7.2.b).
- d) Transfers received or handled which do not state the identity of the ordering party or the number of the account originating the transaction.
- e) 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 obligated parties, directly or through the medium of their professional associations.

3. In any case, if the examination of the transactions to which this article refers yields evidence or certainty of the existence of money laundering, the circumstances shall be reported immediately to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (hereinafter the Executive Service), in accordance with the provisions of article 7.

**Article 6.** *Preservation of documents.*

1. Obligated 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.

This requirement to preserve on record for a period of six years shall extend to copies of the documentation required for the identification of the clients effecting the transactions or establishing such business relations with the institution, in the event of mandatory reporting to the Executive Service pursuant to articles 5, section 3 and 7, sections 1 and 2, or mandatory identification of the customers pursuant to articles 3 and 4.

2. In the case of documents relating to identification, the said term shall begin on the date when the relations with a customer are terminated, and in the case of documentation or records accrediting transactions, on the execution date of each.

**Article 7.** *Reporting of transactions to the Executive Service.*

1. Obligated parties shall collaborate with the Executive Service, and to this end shall immediately notify it of any event or transaction in respect of which there exists the evidence or certainty of its being connected with the laundering of proceeds from the activities stated in article 1, as well as of any circumstance relating to such events or transactions which may subsequently occur.

Reporting requirements also extend to those transactions notably at odds with the nature of clients or with the volume of their activity or their transactional history, in cases where the examination specified in section 5 reveals no economic, professional or business reason for the transactions in question, in relation to the activities specified in article 1.

2. In any event, obligated parties shall report the following transactions to the Executive Service on a monthly basis:

- a) Transactions entailing the physical movement of coins, bank notes, traveller's cheques, cheques or other bearer documents issued by credit institutions, with the exception of those credited or debited to the account of a customer, whose value exceeds 30,000 euros or the equivalent in foreign currency. The obligated parties referred to in article 2.1.h) shall notify the Executive Service of transactions entailing the physical movement of coins, bank notes, traveller's cheques, cheques or other bearer documents whose value exceeds 3,000 euros or the equivalent in foreign currency.

b) 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 entailing 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 euros or the equivalent in foreign currency.

c) Any other transactions which the Commission for the Prevention of Money Laundering and Monetary Offences proposes for inclusion in the implementing provisions to these Regulations.

When clients split one transaction into several to elude the provisions of this section, the amounts of each shall be added together and the transaction duly reported by the obligated parties.

Whenever any of the transactions included in this section present some indication or evidence of being linked to money laundering, the provisions of the preceding section shall apply.

Should no transactions take place that are subject to mandatory reporting, the obligated parties shall report this circumstance to the Executive Service on a six-monthly basis.

To facilitate the processing and use of the information, the reporting of the transactions stated in this section shall be effected on the support and in the format specified by the Executive Service. Further, all necessary steps shall 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.

3. Exceptionally, obligated parties may be released from the reporting requirements referred to in the preceding sections when, in the case of transactions concerning regular clients, of the legality of whose activities they are sufficiently aware, the circumstances stated in section 1 above do not obtain. In such cases, the internal control unit shall previously approve the list of exempted clients, with written justification of the motives.

Likewise, the Commission for the Prevention of Money Laundering and Monetary Offences may, upon its own motion or at the urging of one or several obligated parties, decide the non inclusion of certain clients or groups of clients in the reports stated in section 2, under the conditions it establishes for each case.

4. The reports referred to in section 1 of this article shall be effected through the internal control units and following the procedures to be established pursuant to article 13, and shall contain at least the following information:

a) List and identification particulars of the natural or legal persons taking part in the transaction and the nature of their participation.

b) The activity which the natural or legal persons participating in transactions are known to engage in, and the congruence between this activity and the transactions made.

c) A list of transactions and their dates stating their nature, the currency in which they were transacted, the amounts and place or places involved, their purpose and the means of payment or collection used.

d) The steps taken by the reporting parties to investigate the transactions being notified.

e) A statement of all the circumstances of whatever kind giving rise to the suspicion or certainty of a link with money laundering, or evidencing the lack of economic, professional or business justification for the activities carried out.

f) Any other data which the Executive Service decides to be in the interests of money laundering prevention.

The reports referred to in this section may be submitted in electronic format. To this end, the Executive Service shall establish technical communication procedures to ensure that information can be speedily transmitted and is kept confidential.

5. The reporting referred to in section 1 herein shall be deemed to be complete when the provisions of article 262 of the Law on Criminal Procedure have been fulfilled.

**Article 8.** *Provision of the information required by the Executive Service.*

1. Obligated parties shall collaborate with the Executive Service 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 obligated parties concerning the transactions they conduct and the parties thereto.

2. Information requests from the Executive Service shall clearly set forth the matters regarding which information is required and the term within which it has to be supplied. When the information is not supplied within this term or is supplied in an incomplete manner with the omission of essential data, preventing the Executive Service from properly examining the case, then the obligation referred to in this article shall be deemed not to be fulfilled. However, if the data omitted do not invalidate the information requested, the Executive Service shall call upon the obligated party to furnish the missing information indicating the deadline for fulfilment of this second request, non-compliance with which shall be deemed a breach of reporting obligations.

3. The information shall be communicated through internal control units using the procedures established pursuant to article 13, and shall set out all the data requested in a detailed, clear and complete manner. In the event that not all the information requested is available, this shall be expressly stated.

4. The reporting referred to in the preceding sections can be completed electronically. To this end, the Executive Service and the obligated parties listed in article 2.1 shall establish technical communication procedures that ensure the information can be speedily transmitted and is kept confidential. The internal control units shall accordingly run daily checks on the existence or otherwise of requests and send the corresponding information electronically within the deadline given by the Executive Service.

**Article 9.** *Abstention from effecting transactions.*

Obligated parties shall refrain from carrying out any transaction of those referred to in article 7, section 1, without having previously made the notification stipulated therein.

However, when such abstention is not possible or might impede the prosecution of the beneficiaries of the transaction, obligated parties shall be free to perform it notifying the Executive Service immediately thereafter.

**Article 10.** *Duty of confidentiality.*

Obligated parties shall not reveal to the customer or to third parties the action which they are taking in connection with their obligations pursuant to Law 19/1993 in the form stipulated by these Regulations.

**Article 11.** *Internal control measures*

Obligated parties who are either legal persons or establishments or sole proprietorships employing over 25 persons shall introduce adequate internal control and reporting procedures and units, with a view to discovering, forestalling and preventing the conduct of operations connected with money laundering. These procedures and units may be set up at group level and, in such cases, shall establish lines of communication for this purpose with subsidiaries, including those located abroad, or institutions within the same group.

The aforementioned procedures and units shall be deemed to be suitable when their organisation meets the requirements of speed, security, efficiency and coordination as regards both internal transmission and the analysis of and communication to the Executive Service of information relevant to anti-money laundering legislation. The Minister for Economic and Financial Affairs may from time to time issue orders providing guidelines for different types of obligated parties.

Obligated parties shall 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

obligated 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.

2. When obligated parties are establishments or sole proprietorships with no more than 25 employees, the owner of the business shall exercise the internal control and reporting functions stated in the preceding section.

3. Obligated parties shall take appropriate measures to ensure that their employees and managers immediately notify control and reporting units of any fact relevant to the prevention of money laundering. Notifications shall contain sufficient data to, at least, identify the party or parties concerned, the acts and transactions in question, the value thereof, and the relevant place and dates.

Both the notifying party and the reporting unit shall keep a record of all such notifications.

Once the control and reporting unit has been duly informed, the manager or employee shall be free from any liability.

4. Control and reporting units shall take the appropriate steps to conceal the identity of the employees or managers effecting such notifications.

5. When a fact or transaction is notified to control and reporting units, they shall proceed to its immediate analysis or verification to determine any possible connection with money laundering. In the event that they discern indications or evidence of money laundering, the provisions of articles 7 to 10 above shall apply.

Whatever the decision adopted, the notifying employee or manager shall be informed of the follow-up action taken.

6. Obligated parties shall provide the Executive Service 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 shall be verified by the Executive Service, which may propose corrective measures, and likewise issue instructions to obligated parties for their improvement or adaptation.

Any changes in the structure and operation of these units or procedures shall likewise be examined by the Executive Service pursuant to the provisions of this section.

Internal control and reporting units shall in any case operate separately from the institution's internal audit department or unit in both functional and organisational terms.

7. The internal control and reporting procedures and units referred to in section 1 shall be subjected to an annual audit by an outside expert. The results of this audit shall 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, which shall include an annex with a detailed CV of the expert drawing it up, shall be available for consultation by the Executive Service during a period of six years from the date of writing.

The obligated parties referred to in article 2.2 can opt to run the external audit regulated in the preceding paragraph 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, shall be available for consultation by the Executive Service during a period of six years from the date of writing.

Obligated parties shall 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.

8. As part of the authorisation process for new financial institutions, the body empowered to grant such authorisation shall in all cases request a report from the Executive Service on the suitability or otherwise of the internal control and

reporting procedures and units envisaged in its programme of activities, in order to forestall and prevent the conduct of transactions linked to money laundering.

**Article 12.** *Internal control and reporting units.*

The internal control and reporting units envisaged in the preceding article shall have the function of analysing, verifying and communicating to the Executive Service all information relating to transactions or acts likely to be connected with money laundering, using the procedures laid down in accordance with articles 11 and 13.

To this end, obligated parties shall 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.

2. Each of these units shall be headed by a representative of the obligated party with the Executive Service, who shall be 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 obligated party shall be called on to appear in all kinds of administrative or legal proceedings with regard to the data provided in reports to the Executive Service or any supplementary information referring thereto, when it is deemed essential to obtain clarification, confirmation or additional information from the obligated party and not just from the Executive Service or other official sources.

3. The representatives referred to in the preceding section must meet the following conditions at least:

a) Be appointed by the management body in the case of legal persons, establishments or sole proprietorships with more than 25 employees.

b) Exhibit a professional conduct which ideally qualifies them to exercise such functions.

c) Possess the right knowledge and experience to exercise the functions referred to in section 1 above.

4. In the case envisaged in article 11.2, the representative shall be the business owner or an employee of his or her designation as the case may be.

5. The names of the proposed representatives shall be notified to the Executive Service which may raise reasoned objections or observations when it considers they do not meet the conditions referred to in section 3 above.

If within fifteen days following notification to the Executive Service, the latter has issued no decision on the proposed representatives, the proposal shall be deemed to be accepted.

When the representatives have been appointed, documents shall be sent to the Executive Service attesting the signatures of the same, such attestation of signature being valid as from the day following reception of the communication by the Executive Service.

Notification of the relinquishment of duties on the part of representatives must be accompanied by a new proposal for designation.

**Article 13.** *Reporting procedure.*

1. Reporting by obligated parties shall be effected directly and in writing through the representatives referred to in article 12.

2. Nevertheless, in circumstances of justified urgency, the Executive Service, in the interests of maximising security, speed and control in the transmission of information, may indicate specific ways and means by which reports may be furnished, provided a record is left of their emission and receipt and that the corresponding written document is received within a maximum of fifteen working days from the date when the initial report was made.

3. Managers or employees of obligated parties may notify the Executive Service directly of transactions which have come to their knowledge during the performance of their duties, and in respect of which there exists some evidence or certainty of a connection with money laundering, in cases where, although the facts have been brought to the knowledge of the internal control units of the obligated party, the latter have not reported back to the notifying manager or employee as provided in article 11.5 of these Regulations.

**Article 14.** *Training of obligated parties and their staff.*

1. Obligated parties shall take the necessary steps to ensure that the staff in their service are informed of the requirements deriving from anti-money laundering legislation. The measures to be taken shall include the organisation, with participation by workforce representatives, of training plans and special training courses for employees in general and, specifically, for staff members occupying posts which, by their nature, are ideal for the detection of acts and transactions possibly connected with money laundering. Such employees can thus be taught detection skills and the procedure to follow in every case.

2. The Commission may organise information and guidance courses or activities on the prevention of money laundering aimed specifically at members of the internal control and reporting units of obligated parties.

The Commission shall draft and issue recommendations in the course of its duties which shall be taken into account by obligated parties.

**Article 15.** *Exemption from liability.*

In accordance with article 4 of Law 19/1993, the reporting in good faith of the information envisaged in articles 7 and 8 above by obligated parties or, exceptionally, by their managers or employees shall not constitute a breach of the restrictions on disclosure of information imposed by contract or by any legislative or regulatory provision, and shall not result in any liability to the aforesaid persons.

## SECTION 2. SPECIAL REGIME

**Article 16.** *Scope and content.*

1. The persons engaging in the activities referred to in article 2.2 shall be subject to the following obligations:

a) To request the documents stated in 2 and 3 of article 3, establishing the identity of clients effecting transactions for amounts greater than 8,000 euros or their equivalent in foreign currency. This threshold shall not apply to the obligated parties referred to in paragraphs c) and d) of article 2.2, who shall nonetheless procure the identification of their clients. With regard to notaries, this identification requirement shall be understood to be without prejudice to any additional conditions established in sector-specific legislation.

When it is noted that clients have subdivided a transaction in order to evade the identification requirement, the subdivisions shall be added together and identification duly sought.

In the case of gambling casinos, the identification requirements stated herein shall apply to the following transactions:

1. The delivery of cheques to clients resulting from the exchange of chips.
2. Fund transfers effected by casinos at the request of their clients.

3. The issuing by casinos of certificates accrediting the winnings obtained by players.
4. 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.

b) 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 activities referred to in article 1, and directly inform the Executive Service 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 the Executive Service of transactions with regard to which there is some indication or evidence of a link with money laundering, and which fall within the categories described in paragraph a) above.

The reports to which this section refers shall comply with the requirements laid down in article 7.4.

The Minister for Economic and Financial Affairs may from time to time issue an order making it incumbent upon certain categories of people engaging in the activities stated in article 2.2 to report the transactions included in article 7.2.

c) The documents accrediting transactions which exceed 30,000 euros or the equivalent in foreign currency shall be kept on record for six years, as shall copies of the documents identifying the persons referred to in paragraph a) above. This monetary threshold shall not apply to the obligated parties stated in paragraphs c) and d) of article 2.2, who shall nonetheless preserve the aforementioned documents for a period of six years.

The term indicated shall be reckoned as from the execution date of the corresponding transaction.

With regard to notaries, this obligation to keep documents on record shall be understood as without prejudice to the terms of sector-specific legislation.

d) In all other cases, the provisions of articles 8 to 15 inclusive shall apply.

2. The obligations set out in article 3.4 of Law 19/1993 of 28 December shall not apply to 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 said 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 proceedings.

Lawyers and court representatives shall remain bound by their duty of professional secrecy in accordance with current legislation.

## CHAPTER III

### Penalty proceedings

#### **Article 17.** *Penalty proceedings.*

1. The procedure for exercising the penalty powers envisaged in chapter II of Law 19/1993 shall be as regulated by Royal Decree 2119/1993 of 3 December on the penalty proceedings applicable to financial market operators.

2. In deciding whether to institute proceedings, the Secretariat of the Commission, as the competent body, may authorise preliminary steps to be taken pursuant to article 12 of the Regulations on the exercise of disciplinary authority approved by Royal Decree 1398/1993 of 4 August.

3. When the offending party is a financial institution or requires administrative authorisation to operate, no penalty may be imposed without a report from the institution or administrative authority responsible for its supervision, as provided in articles 82 and 83 of Law 30/1992 of 26 November on the Legal Regime governing the Public Administration and the Common Administrative Procedure.

4. Penalty proceedings for the breach of the obligations set out in article 3.9 of Law 19/1993 of 28 December shall be as laid down for the exercise of the disciplinary powers of the public authorities.

In the event of failure to make a mandatory declaration or misrepresentation in the data consigned, with what are deemed to be serious implications, the National Law Enforcement and Security Agencies or the Customs and Excise Department shall seize all the means of payment found except for a minimum subsistence allowance to be determined by order of the Minister for Economic and Financial Affairs. The seizure certificate, which shall be immediately forwarded for investigation to the Executive Service, and to the Commission Secretariat for the appropriate examination to be conducted, should clearly state whether the means of payment were found in a place or situation denoting a clear intention to conceal them. The means of payment seized shall in any case be lodged with the Bank of Spain or deposited in the same currency in the accounts held at the said institution by the Commission for the Prevention of Money Laundering and Monetary Offences.

The competence to conduct penalty proceedings shall lie with the Secretariat of the Commission for the Prevention of Money Laundering and Monetary Offences. In the course of penalty proceedings, when a defendant is required to deposit a sum as security against their eventual liability, the remainder of the amount seized shall be returned.

The competence to resolve the said proceedings shall correspond to the Chairman of the Standing Committee of the Commission for the Prevention of Money Laundering and Monetary Offences, whose decision shall bring the administrative proceeding to an end. Decisions shall in all cases be informed by a mandatory report from the Executive Service which will state whether the origin of the funds has been proven or otherwise.

The term for delivering and notifying a decision is set at six months. This term may exceptionally be extended to 12 months by means of a reasoned resolution of the Secretariat, when circumstances so require and all other available means have been exhausted.

**Article 18.** *Enforcement and publication of penalties.*

1. The enforcement of executory penalties shall correspond to the Commission Secretariat.
2. Nevertheless, when its statutes establish specific enforcement responsibilities according to the penalty imposed and the offending party, the Secretariat of the Commission shall notify the decision taken to the relevant supervisory institution or administrative authority.
3. The penalty of a public reprimand, on becoming executory under administrative proceeding, shall be enforced in the manner stated in the decision and shall in any case be published in the Official State Gazette [Boletín Oficial del Estado].

## CHAPTER IV

### Commission for the Prevention of Money Laundering and Monetary Offences

**Article 19.** *Functions.*

The Commission for the Prevention of Money Laundering and Monetary Offences created by virtue of article 13 of Law 19/1993 shall carry out the functions assigned to it in the said article.

**Article 20.** *Composition and operation.*

a

- a) The Chief Prosecutor of the Special Drug Trafficking Prevention and Control Office.
- b) The Chief Prosecutor of the Special Office for Economic Offences relating to Corruption.
- c) The Director-General of Police.
- d) The Director-General of the Guardia Civil [Spanish Civil Guard].
- e) The Director-General of the Treasury and Financial Policy.
- f) The Head of the Customs and Excise Department of the Inland Revenue.
- g) The Head of the Financial and Tax Inspectorate of the Inland Revenue.
- h) The Director-General of Insurance and Pension Funds.
- i) A Director-General of the National Securities Markets Commission.
- j) A Director-General of the Bank of Spain.
- k) The Director-General of Trade and Investment.
- l) The Executive Director of Intelligence in the National Intelligence Service.
- m) The Head of the Spanish Data Protection Agency.
- n) The Head of the Technical Office of the State Secretary for National Security.
- ñ) The Director of the Executive Service of the Commission.
- o) 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.
- p) 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.

The members of the Commission must attend its meetings personally. Delegation shall only be permitted for exceptional motives which must be notified to the Secretariat within ten days of the notice of the meeting being sent.

2. Without prejudice to the specific provisions of these Regulations, the Commission shall be governed by the provisions of Chapter II, Title II of Law 30/1992 of 26 November on the Legal Regime governing the Public Administration and the Common Administrative Procedure.

#### **Article 21.** *Standing Committee.*

The Commission may operate in plenary session and through a Standing Committee, whose functions, apart from those established by the Commission, shall be to raise proposals to the plenary session further to the fulfilment of its remit. The composition of the Standing Committee shall be as follows:

- a) The Chairman, who shall be the Director-General of the Treasury and Financial Policy.
- b) The Director-General of the Police.
- c) The Director-General of the Guardia Civil.
- d) The Head of the Customs and Excise Department of the Inland Revenue.
- e) The Head of the Financial and Tax Inspectorate of the Inland Revenue.
- f) The Bank of Spain Director-General sitting on the Commission.
- g) The Executive Director of Intelligence of the National Intelligence Service.
- h) A representative of the State Secretariat for National Security.
- i) A representative of the Crown Prosecutors' Office.
- j) The Director of the Executive Service of the Commission.
- k) 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 Standing Committee.
- l) 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. The autonomous regions in question shall inform the Chairman annually regarding which of them will participate in Standing Committee meetings. If no such designation is made, they shall attend the meetings of the Standing Committee in alphabetical order with rotation on an annual basis. Nevertheless, the said autonomous regions may take each others' places at Standing Committee meetings by mutual accord and having notified the Committee Chairman of their decision with at least 24 hours' notice.

**Article 22.** *Support bodies.*

Pursuant to article 15 of Law 19/1993, the Commission shall have the following support bodies: the Commission Secretariat and the Executive Service of the Commission.

**Article 23.** *Commission Secretariat.*

The Sub Directorate-General of Inspection and Control of Capital Movements under the Directorate-General of the Treasury and Financial Policy shall, in addition to the responsibilities assigned to it regarding cross-border transactions and exchange controls, act as the Commission Secretariat referred to in article 15.1 of Law 19/1993. Specifically, it shall be responsible for:

a) 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.

b) 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 said officers shall recommend the appropriate decision to the Commission so the latter may proceed as stated in article 12.1 of Law 19/1993 with regard to the authority empowered to impose penalties.

**Article 24.** *Executive Service.*

1. The Executive Service of the Commission, referred to in article 15.2 of Law 19/1993 shall be attached to the Bank of Spain, which shall also appoint its Director.

2. 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.

3. At the proposal of the Commission, the Ministry of Economic and Financial Affairs and the Bank of Spain shall designate members of their staff to work for the Executive Service, assigning them to the posts and administrative grades required in each case. Such staff shall retain the posts held in their original departments or agencies whilst carrying out their new functions.

Similarly, the Commission may call on any of its member organisations to collaborate with the Executive Service by providing the experts considered necessary for carrying out its functions.

Staff serving in the Executive Service, irrespective of their origin, shall be subject to strict conflict of interest rules as regards engaging in other professional activities, public or private.

**Article 25.** *Police units attached to the Executive Service.*

1. The following police units shall be attached to the Executive Service:

- a) The present Monetary Offences Investigation Unit, under the Directorate-General of Police.
- b) The Investigation Unit of the Guardia Civil.

2. Without prejudice to the functions and competences corresponding to them as judicial police, the two aforementioned units shall have the specific functions of collaborating with the Executive Service, to which they shall be attached, in the discharge of the duties assigned to it under article 15.2 of Law 19/1993 of 28 December, as a result of charges being brought or of a court order or at the decision of the Commission or the Executive Service, exercising the legal powers conferred to this end.

3. The Minister for Home Affairs, at the proposal of the Commission, may second such National Police Force or Guardia Civil officials to the police units attached to the Executive Service as are deemed necessary for the proper discharge of its functions.

Likewise, the competent bodies within the autonomous regions referred to in article 20 shall, at the Commission's proposal, second such members of their police forces to the Executive Service as are deemed necessary for the proper discharge of its functions.

**Article 26.** *Duties of professional secrecy of the authorities and staff at the Commission's service.*

1. 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 authorization has been granted by the Commission.

2. The following items are exempted from the requirements laid down in the preceding paragraph:

a) The dissemination, publication or communication of data in cases where the party involved gives his or her express consent thereto.

b) The publication of consolidated data for statistical purposes, or notes in summary or consolidated form, so individual parties cannot be identified, even indirectly.

c) The supply of information at the request of parliamentary commissions and judicial or administrative authorities legally empowered to make such requests.

The exchange of information between the Executive Service and the tax authorities established in the General Taxation Law shall be governed by an agreement concluded between the Executive Service and the Inland Revenue.

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

## CHAPTER V

### Collaboration Regime

#### SECTION 1. INTERNAL COLLABORATION

**Article 27.** *Duties of authorities and officials.*

1. Any authority discovering facts that may constitute an indication or evidence of laundering of the proceeds of the activities referred to in article 1 shall inform the Executive Service thereof in writing. They shall also furnish the Executive Service with any information it requires in the discharge of its duties.

The courts shall forward evidence to the Executive Service, on the instruction of the Crown Prosecutor's Office or upon their own motion, when they discern indications of possible offences under prevention of money-laundering legislation in the course of judicial hearings.

2. Similarly, public officials and other persons working for the public authorities who become apprised of facts of the nature referred to in the preceding section shall report them to the head of the department or agency in which they are serving for the purposes of 1 above.

3. Especially bound by this duty of collaboration shall be property and mercantile registrars, who shall inform the Executive Service in writing of transactions and contracts which come to their knowledge in the course of their business, for the purposes stated in section 1 above.

**Article 28.** *Collaboration by certain supervisory agencies.*

Pursuant to article 16.2 of Law 19/1993, when the Executive Service is exercising its duties with regard to financial institutions subject to special legislation, the Bank of Spain, the National Securities Markets Commission, the Directorate-General of Insurance and Pension Funds or other supervisory body, and likewise the corresponding regional agency where appropriate, shall supply all the information and collaboration necessary for carrying out such duties.

In any event, 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 state and regional level, as appropriate, shall provide a reasoned report to the Executive Service when, in the course of their inspection or supervisory labours, they detect possible breaches of the obligations established in Law 19/1993 of 28 December concerning specific measures to prevent money laundering.

## SECTION 2. INTERNATIONAL COLLABORATION

**Article 29.** *Information exchange.*

1. In accordance with the guidelines to be laid down by the Commission, the Executive Service and, where appropriate, the Secretariat of the Commission shall collaborate with and exchange information directly or through international organisations with the authorities of other States exercising comparable competences, within the framework of related international conventions and agreements and of Community legislation.

2. Collaboration and exchange of information with States which are not members of the European Union shall be governed by the provisions of the relevant international treaties and conventions and, where appropriate, by the general principle of reciprocity. In any event, the authorities of such States must abide by the same rules of professional secrecy as apply to the Spanish authorities.

**Article 30.** *Scope of information requests.*

The Commission and, where appropriate, the Commission Secretariat and Executive Service may call on the competent authorities of other European Union Member States, and be called on by the same, to provide data, reports or records relative to the forestalling and prevention of the use of the financial system and other sectors of economic activity for the purposes of money laundering.

2. Both the Commission and its Secretariat or the Executive Service shall fulfil all the information requests addressed to them, where these are necessary and supplement the investigations conducted in the requesting State to obtain the corresponding data, reports or records.

**Article 31.** *Processing of information requests.*

1. When the Commission, its Secretariat or the Executive Service receives a request for information on a priority basis in connection with the combating of money laundering, and issued by the competent authority or agency of the requesting State, the Executive Service or the Secretariat, within their respective areas of competence, shall expedite its processing, where necessary instructing the relevant management centres to complete the measures or actions for dealing with the request in the shortest possible time.

2. Where there are serious obstacles to obtaining the information requested, or when the circumstances envisaged in the following article intervene, the Minister for Economic and Financial Affairs shall be informed accordingly and shall convey this fact to the competent authority or agency of the requesting State, stating the nature of the obstacles or circumstances in question.

**Article 32.** *Restrictions on the exchange of information.*

In complying with calls for information from other States, account shall be taken of any factors relating to sovereignty, security, national policy and other vital national interests.

**Single additional provision.** *Term for furnishing information on control and reporting units.*

The obligated parties referred to in article 11.6 hereinabove shall inform the Executive Service regarding the structure and operation of their control and reporting units within three months of the entry to force of these Regulations, or of the start-up of their activity as the case may be.

**Single transitional provision.** *Content and schedule of reports regarding certain transactions.*

Until the issue of the implementing provisions to the present Regulations, all mandatory reports to the Executive Service as specified in article 7.2 shall be furnished on a monthly basis and shall contain the following information:

- a) List and identification particulars of natural and legal persons participating in the transaction.
- b) List of the transactions and dates in question, with an indication of their nature, the currency in which they were transacted, the amount, the place or places where the transaction took place and the instruments of payment or collection used.
- c) Any other data which the Executive Service may stipulate in the discharge of its duties.

The above documentation shall be sent to the Executive Service between the first and the fifteenth day of each month, and shall include a list of the transactions carried out during the immediately preceding month.

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**<sup>1</sup> Preamble and transitional and final provisions of Royal Decree 54/2005 of 21 January:**

The reform of Law 19/1993 of 28 December concerning specific measures to prevent money laundering enacted by Law 19/2003 of 4 July on the legal regime applicable to capital movements and cross-border transactions and on specific measures to prevent money laundering equates to a substantial rewrite of our anti-money laundering legislation in the light of Directive 2001/97/EC of the European Parliament and Council dated 4 December 2001. Nevertheless, some of the new law's provisions require implementing regulations in order to exercise their full effect.

This has called for the reform of the Regulations to Law 19/1993 of 28 December, as approved by Royal Decree 925/1995 of 9 June, in order to incorporate the novelties deriving from Law 19/2003 of 4 July. The opportunity has also been taken to introduce certain changes counselled by the experience gained since 1995, dictated by organisational and institutional changes in the Spanish administration, or inspired by the standards issued by bodies like the Financial Action Task Force, the Basle Committee on Banking Supervision, the International Association of Insurance Supervisors (IAIS), the International Organisation of Securities Commissions (IOSCO) or International Financial Institutions.

Now, therefore, at the proposal of the Minister for Economic and Financial Affairs, with the prior approval of the Minister of Public Authorities, with the agreement of the Council of State and after deliberation by the Council of Ministers at its meeting of ... January 2005,

I DECREE:

(...)

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**Single transitional provision.** *Provisional validity of the list of tax havens.*

Until such time as the Minister for Economic and Financial Affairs issues the list of countries or territories referred to in articles 5 and 7 of the Regulations to Law 19/1993 of 28 December concerning specific measures to prevent money laundering, as approved by Royal Decree 925/1995 of 9 June, the list established in Royal Decree 1080/1991 of 5 July, supplemented by an Order of the Minister for Economic Affairs dated 24 October 2002, or the provisions replacing them, shall remain in force for the purposes set out in the said legal and regulatory texts.

**First final provision.** *Amendment of Royal Decree 1245/1995 of 14 July on the incorporation of banks, cross-border activity and other issues relating to the legal regime of credit institutions.*

Royal Decree 1245/1995 of 14 July on the incorporation of banks, cross-border activity and other issues relating to the legal regime of credit institutions is amended as indicated below:

One. Article 1, section 1, to read as follows:

"1. The Minister for Economic and Financial Affairs shall be responsible for authorising the incorporation of banks, following reports from the Bank of Spain and the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences in their respective areas of competence."

Two. A new paragraph i) is added to article 2, section 1, to read as follows:

"i) It shall have suitable internal control and reporting units and procedures to forestall or prevent the conduct of any transaction linked to money laundering under the terms established in articles 11 and 12 of the Regulations to Law 19/1993 of 28 December, concerning specific measures to prevent money laundering, as approved by Royal Decree 925/1995 of 9 June."

Three. Paragraph b) of article 3, to read as follows:

"b) A programme of activities specifying the type of business envisaged, administrative and accounting organisation, internal control procedures and the internal control and reporting units and procedures established to forestall and prevent the conduct of transactions linked to money laundering."

**Second final provision.** *Amendment of Decree 1838/1975 of 3 July on the incorporation of savings banks and the distribution of their net surpluses.*

Decree 1838/1975 of 3 July on the incorporation of savings banks and the distribution of their net surpluses is amended as indicated below:

One. Article 1, to read as follows:

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"Article 1. The Minister for Economic and Financial Affairs shall be responsible for authorising the incorporation of new Spanish savings banks and of subsidiaries and branches of foreign savings banks, following a report from the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences, in the area of its competence, and at the proposal of the Bank of Spain, provided the said savings banks, subsidiaries and branches meet the conditions set out in the following articles."

Two. Paragraph b) of article 2, section 1, to read as follows:

"b) A programme of activities specifying the type of business envisaged and the structure and organisation of the savings bank, which shall be staffed by persons having the necessary experience and repute to carry out their functions, and the internal control and reporting units and procedures to be established to forestall and prevent the conduct of transactions linked to money laundering."

Three. A new paragraph three is added to article 4, to read as follows:

"i) Likewise, it shall have suitable internal control and reporting units and procedures to forestall or prevent the conduct of any transaction linked to money laundering under the terms established in articles 11 and 12 of the Regulations to Law 19/1993 of 28 December, concerning specific measures to prevent money laundering, as approved by Royal Decree 925/1995 of 9 June."

**Third final provision.** *Amendment of the Regulations to Law 13/1989 of 26 May on credit cooperatives, as approved by Royal Decree 84/1993 of 22 January.*

The Regulations to Law 13/1989 of 26 May on credit cooperatives, as approved by Royal Decree 84/1993 of 22 January are amended as indicated below:

One. Article 1, section, to read as follows:

"1. The Minister for Economic and Financial Affairs shall be responsible for authorising the formation of credit cooperatives, following reports from the Bank of Spain and the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences in their respective areas of competence, bringing the administrative proceeding to an end. Authorisation may be refused for failure to comply with the conditions established in articles 2, 3 and 4 or for the reasons stated in article 5."

Two. A new paragraph h) is added to article 2, section 1, to read as follows:

"h) Have suitable internal control and reporting units and procedures to forestall or prevent the conduct of any transaction linked to money laundering under the terms established in articles 11 and 12 of the Regulations to Law 19/1993 of 28 December, concerning specific measures to prevent money laundering, as approved by Royal Decree 925/1995 of 9 June."

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Three. Paragraph b) of article 4, section 1, to read as follows:

“b) A programme of activities specifying the type of business envisaged, the organisational structure of the institution, the relation between its operations and the financial needs of its members, and the internal control and reporting units and procedures to be established to forestall and prevent the conduct of transactions linked to money laundering.”.

**Fourth final provision.** *Amendment of Royal Decree 2660/1998 of 14 December regulating the exchange of foreign currency in establishments open to the public other than credit institutions.*

Royal Decree 2660/1998 of 14 December regulating the exchange of foreign currency in establishments open to the public other than credit institutions is amended as indicated below:

One. Article 3, section 1, to read as follows:

“1. The Bank of Spain is the body empowered to authorise the exercise of currency exchange operations in the establishments dealt with in this Royal Decree, following a report from the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences in the area of its competence. The corresponding licences shall 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 shall specify the activities that may be carried out by the corresponding currency exchange establishment.

The Bank of Spain shall 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.”.

Two. A new paragraph e) is added to article 4, section 2, to read as follows:

“e) Have suitable internal control and reporting units and procedures to forestall or prevent the conduct of any transaction linked to money laundering under the terms established in articles 11 and 12 of the Regulations to Law 19/1993 of 28 December, concerning specific measures to prevent money laundering, as approved by Royal Decree 925/1995 of 9 June.”.

Three. Paragraph c) of article 5, section 3, to read as follows:

“c) A programme of activities specifying the type of business envisaged, basic data on the staff and technical resources at the company's command, its organisational structure, and the internal control and reporting units and procedures to be established to forestall and prevent the conduct of transactions linked to money laundering.”.

**Fifth final provision.** *Amendment of Royal Decree 692/1996 of 26 April on the legal regime of financial credit entities.*

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Royal Decree 692/1996 of 26 April on the legal regime of financial credit entities is amended as indicated below:

One. Article 3, section 1, to read as follows:

"1. The Minister for Economic and Financial Affairs shall be responsible for authorising the formation of financial credit entities following reports from the Bank of Spain and the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences in their respective areas of competence. The licence shall state the activities that may be carried out by the financial credit entity according to the programme submitted by the same."

Two. A new paragraph h) is added to article 5, section 1, to read as follows:

"h) It shall have suitable internal control and reporting units and procedures to forestall or prevent the conduct of any transaction linked to money laundering under the terms established in articles 11 and 12 of the Regulations to Law 19/1993 of 28 December, concerning specific measures to prevent money laundering, as approved by Royal Decree 925/1995 of 9 June."

Three. Paragraph b) of article 6, section 1, to read as follows:

"b) A programme of activities specifying the type of business envisaged, administrative and accounting organisation, internal control procedures and the internal control and reporting units and procedures established to forestall and prevent the conduct of transactions linked to money laundering."

**Sixth final provision.** *Amendment of Royal Decree 867/2001 of 20 July on the legal regime for investment firms.*

A new paragraph is added to section 1.f) of article 14 of Royal Decree 867/2001 dated 20 July on the legal regime for investment firms, to read as follows:

"The entity shall in any event have suitable internal control and reporting units and procedures to forestall or prevent the conduct of any transaction linked to money laundering under the terms established in articles 11 and 12 of the Regulations to Law 19/1993 of 28 December, concerning specific measures to prevent money laundering, as approved by Royal Decree 925/1995 of 9 June."

**Seventh final provision.** *Amendment of the Regulations to Law 46/1984 of 26 December regulating collective investment undertakings, as approved by Royal Decree 1393/1990 of 2 November.*

A new paragraph d) is added to article 9, section 2 of the Regulations to Law 46/1984 of 26 December regulating collective investment undertakings, as approved by Royal Decree 1393/1990 of 2 November, to read as follows:

"d) Have suitable internal control and reporting units and procedures to forestall or prevent the conduct of any transaction linked to money laundering under the terms established in articles 11 and 12 of the Regulations to Law

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19/1993 of 28 December, concerning specific measures to prevent money laundering, as approved by Royal Decree 925/1995 of 9 June.”.

**Eighth final provision.** *Amendment of the Regulations setting out the organisational and supervisory framework for private insurance, as approved by Royal Decree 2486/1998 of 20 November.*

A new paragraph 9 is added to article 24, section 1 of the Regulations setting out the organisational and supervisory framework for private insurance, as approved by Royal Decree 2486/1998 of 20 November, to read as follows:

“9. Suitable internal control and reporting units and procedures to forestall or prevent the conduct of any transaction linked to money laundering under the terms established in articles 11 and 12 of the Regulations to Law 19/1993 of 28 December, concerning specific measures to prevent money laundering, as approved by Royal Decree 925/1995 of 9 June. In the case of firms acting through insurance brokers or agents, specific procedures and conditions shall be laid down to guarantee compliance with the obligations stated in the said Regulations.”.

**Ninth final provision.**      *Entry to force*

The present Royal Decree shall come into force three months after its publication in the Official State Gazette [Boletín Oficial del Estado].

Notwithstanding the foregoing, paragraphs h), i) and j) of section 2 of article 2, section 6 of article 3 and paragraphs c), d) and e) of section 2 of article 5 of the Regulations shall come into force twelve months after the publication of this Royal Decree. As regards the new transactions brought within the scope of article 7.2 of the Regulations, obligated parties shall include them starting from the first monthly report due in after twelve full calendar months have elapsed from the date of publication of this Royal Decree.

Done in Madrid, on 21 January 2005.  
JUAN CARLOS R.

Second Vice President of the Government  
and Minister for Economic and Financial Affairs,  
PEDRO SOLBES MIRA