



Anti-money laundering and counter-terrorist financing measures - Spain

3. Legal systems and operational issues

Effectiveness and technical compliance



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3. LEGAL SYSTEMS AND OPERATIONAL ISSUES

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Key Findings

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

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

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

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

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

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

3.1 Background and Context

(a) Legal system and offences

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

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

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

Money Laundering and Confiscation

Recommendation 3 – Money laundering offence

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

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

Recommendation 4 – Confiscation and provisional measures

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

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

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

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

Operational and Law Enforcement

Recommendation 29 – Financial intelligence units

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

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

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

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

Recommendation 31 – Powers of law enforcement and investigative authorities

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

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

Recommendation 32 – Cash couriers

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

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

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

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3.3 Effectiveness: Immediate Outcome 6 (Financial intelligence)

(a) Use of financial intelligence and other relevant information

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

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

Box 3.1. The Financial Ownership File

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

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

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

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

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

(b) Types of reports received and requested

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

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

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

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

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

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

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Table 3.1. Reports received and requested by SEPBLAC

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

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

(c) *FIU analysis and dissemination*

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

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

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

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

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

Table 3.2. Results of disseminations from SEPBLAC to LEAs

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

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

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

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

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

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

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

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

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

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

(d) Cooperation and exchange of information

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

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

following an unauthorised disclosure which resulted in a counterpart FIU suspending relations with SEPBLAC, these issues have been addressed⁶. SEPBLAC significantly enhanced its controls and developed specific procedures (based on article 46 of the *AML/CFT Law*) governing the exchange and subsequent use of information from foreign counterparts. As a result of these measures, the counterpart FIU reopened relations with SEPBLAC in July 2013, and no further incidents have been reported.

Overall conclusions on Immediate Outcome 6

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

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

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

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

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

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

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

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

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

Table 3.3. Money Laundering Investigations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Different types of ML cases pursued

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

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

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

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

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

Table 3.4. Money laundering prosecutions – Criminal trials completed annually for ML offences¹

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

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

Table Notes:

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

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

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

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

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

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

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

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

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

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

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

- a. associations pursuing goals or using means criminalised in the *Penal Code* are outlawed: *Constitution art.22*
- b. when determining whether a legal person's purposes are lawful or simply concealing the commission of crimes, the corporate veil may be lifted to reach the natural persons behind it
- c. anyone representing or acting on behalf of a legal person in committing a felony or misdemeanour may be held personally liable: *Penal Code art.31*, and
- d. if a felony or misdemeanour is committed within or through, in collaboration with, or by means of a legal person, that legal person may be subject to accessory penalties, including the dissolution of the legal person: *Penal Code art.129 and 520*.

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

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

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

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

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

Overall conclusions on Immediate Outcome 7

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

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

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

3.5 Effectiveness: Immediate Outcome 8 (Confiscation)

(a) Confiscation as a policy objective

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

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

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

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

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

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

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

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

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

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

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

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

3

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

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

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

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

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

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

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

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

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

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

Table 3.7. Breakdown of funds confiscated in connection with drug trafficking offences (amounts realised after auction), in EUR¹

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

Overall conclusions on Immediate Outcome 8

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

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

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

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

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

3.6 Recommendations on legal system and operational issues

Recommendations on IO.6

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

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

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

Recommendations on IO.7

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

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

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

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

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

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

Recommendations on IO.8

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

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

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3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Recommendation 3 - Money laundering offence

a3.1. In its 3rd MER, Spain was rated largely compliant with these requirements (para.85-112). The main technical deficiencies were that the criminalisation of ML did not cover self-laundering, the possession or use of proceeds, and criminal liability for legal persons. Spain addressed these deficiencies by amending the *Penal Code* through Organic Law 5/2010.

a3.2. *Criterion 3.1.* Money laundering is criminalised on the basis of the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention)* and the *United Nations Convention Against Transnational Organised Crime (Palermo Convention)*¹: *Penal Code art.301*.

a3.3. *Criteria 3.2 & 3.3.* Spain uses an all crimes approach. All offences punishable by more than three months imprisonment are predicate offences for ML. Tax offences became predicate offences for ML with the reform of the *Penal Code* in 2010, and this has since been confirmed by the Spanish courts: e.g., *White Whale, STS 974/2012*. A sufficient range of offences in all 21 categories of designated predicate offence are covered.

a3.4. *Criterion 3.4.* The ML offence covers “assets” a term defined in the *Civil Code* to mean every type of tangible or intangible property: *art.334-347*. This covers any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime.

a3.5. *Criteria 3.5.* When proving that property is the proceeds of crime, it is not necessary that a person be convicted of a predicate offence, or that the predicate offence was the subject of prior judicial proceedings: *Penal Code art.298-301*.

a3.6. *Criteria 3.6.* The ML offence expressly covers predicate offences that occurred fully or partly in another country: *Penal Code art.301(4)*. Spanish courts have jurisdiction to hear cases for crimes and misdemeanours committed in Spanish territory or aboard Spanish airlines or ships, without prejudice to the provisions of international treaties to which Spain is a party. Spanish courts will also recognise acts as crimes under Spanish penal law (even if committed outside of Spanish territory) provided that the people criminally liable are Spanish or foreigners who acquired Spanish nationality after perpetrating the act, and: the act is punishable in the place it was carried out²; the aggrieved party or Public Prosecutor has made a complaint before the Spanish courts; and the offender has not been acquitted, pardoned, or sentenced and served time abroad: *Spanish Judiciary Act art.23*.

a3.7. *Criteria 3.7.* The ML offence covers self-laundering: *Penal Code art.301(1)*.

a3.8. *Criteria 3.8.* Case law and legal tradition permit the mental element of the offence to be inferred from objective factual circumstances and allow for the indirect proof of ML (for example, by proving unjustified increases of assets with no (or an unlikely or irrational) legal explanation, or demonstrating movements of capital without any commercial purpose).

a3.9. *Criteria 3.9.* Natural persons convicted of intentional ML are subject to imprisonment of six months to six years, a fine of one to three times the value of the assets, and/or disbarment from exercising a profession or industry for one to three years. If the offence is continuing, the penalty may be elevated to the upper half grade penalty (i.e., up to 9 years imprisonment): *Penal Code art.74.1*. Within this range, the level of sanction imposed must be proportionate to the circumstances. Sanctions at the higher end of the

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

2 The provisions of an applicable international treaty or rules of an international organisation to which Spain is a party may deem this requirement unnecessary.

range are applied in cases involving drug, corruption, embezzlement, fraud, or organised crime offences, and town planning felonies: *Penal Code art.301 & 302*. Bosses, managers or officers of organisations dedicated to ML are punishable by 6 to 9 years imprisonment, or if the offence is continuing by up to 13 years and 6 months imprisonment: *Penal Code art.302 & 74.1*. Provocation, conspiracy and solicitation to commit ML are punishable by a sentence of one or two degrees lower than those specified above: *Penal Code: art.304*. Certain professions who commit ML offences while carrying out their professional duties are subject to special barring for three to ten years from public employment and office, profession, trade, industry or commerce: *Penal Code art.303*³. As for dissuasiveness, from a technical standpoint, these sanctions fall within the lower half of the range of sanctions applied by other FATF members for ML, and are within the range of sanctions available for almost all other types of financial crime in Spain⁴. A concern is that disbarment at the higher range (up to 10 years which is available for some other professions) is not available for lawyers, notaries or trust and company service providers, despite their important role as gatekeepers in complex ML schemes.

a3.10. *Criteria 3.10*. Legal persons (other than certain State-owned enterprises) convicted of ML are subject to a fine of one to three times the value of the assets, and/or temporary⁵ or permanent closure of the establishment or premises. Sanctions at the higher end of the range are applied in cases involving drug or organised crime offences. This does not preclude parallel civil or administrative proceedings, and is without prejudice to the criminal liability of natural persons: *Penal Code art.301(1), 33(7) & 31bis*.

a3.11. *Criterion 3.11*. A full range of ancillary offences to the ML offence is available, including attempt, conspiracy, incitement, and solicitation. Those who aid and abet, or facilitate and counsel the offence are to be considered as principal offenders and are subject to the same penalties: *Penal Code art.16.1, 17, 27-29, 62, 304*.

a3.12. *Weighting and conclusion*: All but two of the criteria are fully met. Criteria 3.9 and 3.10 are both met to a large extent, but nevertheless have deficiencies that should be addressed. Disbarment sanctions for professional gatekeepers are not sufficiently dissuasive. As well, certain State-owned enterprises are exempt from criminal liability; however, deficiency is somewhat mitigated because the exemption does not apply if the legal person in question was formed in order to avoid possible criminal liability, and personal liability for the individuals involved in the offence still apply: *Penal Code art.31bis(5)*. The dissuasiveness of sanctions (criterion 3.9) is a concern that also impacts effectiveness (10.7). **R.3 is rated largely compliant.**

Recommendation 4 - Confiscation and provisional measures

a3.13. In its 3rd MER, Spain was rated largely compliant with these requirements (para.130-144). The deficiency related to effectiveness which is not considered as part of the technical compliance assessment under the *2013 Methodology*. Since then, Spain has implemented new legislation aimed at strengthening its framework of confiscation and provisional measures.

a3.14. *Criterion 4.1*. Amendments to the *EU Council Framework Decision 2005/212/JHA on Confiscation on Crime-related proceeds, Instrumentalities and Properties* have been transposed into Spanish legislation: *Penal Code art.127*. These provisions provide for the confiscation of all proceeds, laundered property, instrumentalities of crime, property related to any criminal activities committed within the context of a criminal or terrorist organisation, and property of equivalent value, regardless of whether the property is held by criminal defendants or third parties.

3 Entrepreneurs, financial sector intermediaries, medical practitioners, civil servants, social workers, teachers or educators.

4 The exception is TF offences for which much heavier sanctions. However, this does not seem unreasonable since, unlike ML, TF can result in life-threatening consequences.

5 If the closing is temporary, its duration may not exceed five years.

a3.15. *Criterion 4.2.* Spain has implemented the following measures to enable the judicial police to confiscate property and take provisional measures:

- a. The judicial police have the power to identify, trace and evaluate property by making the necessary queries, conducting entries and searches (with judicial authorisation), and carrying out the investigations needed to collect all items, instruments or criminal evidence which are at risk of disappearing, and making that property available to the judicial authority.
- b. The Criminal Court may authorise the judicial police to carry out provisional measures, such as freezing or seizing, to prevent any dealing, transfer or disposal of property that is subject to confiscation. The Criminal Court is the only authority that can authorise provisional measures, and it may do so *ex parte*.
- c. The Criminal Court may authorise the judicial police to take steps to prevent or void actions that prejudice Spain's ability to freeze or seize or recover property that is subject to confiscation.⁶
- d. The judicial police are authorised to undertake a broad range of investigative measures in support of such actions, including controlled delivery of seized property to further an investigation, and delay of seizures in organised crime investigations if such delay might prejudice the investigation.⁷

a3.16. *Criterion 4.3.* The rights of *bona fide* third parties are protected: *Penal Code art.127*.

a3.17. *Criterion 4.4.* Spain has designated authorities responsible for managing and, when necessary, disposing of property frozen, seized or confiscated including the Asset Recovery Bureau (ORA) of CICO (comprised of officers from the National Police, Civil Guard, and Customs Surveillance), and the Asset Tracing Offices (OLA) of the National Police and the Civil Guard (see R.30). Spain has comprehensive procedures for: disposing of frozen/seized assets when it would be more costly to preserve them; selling, auctioning or destroying confiscated assets; managing the proceeds of sale; managing judicial deposits and confiscations of cash, assets or values in the Ministry of Justice Account for Deposits and Consignations; and regulating a fund derived from goods seized in relation to drug trafficking and related offences.⁸

a3.18. *Weighting and conclusion:* Spain meets all four criteria of R.4. **R.4 is rated compliant.**

Operational and Law Enforcement

Recommendation 29 – Financial intelligence units

a3.19. In its 3rd MER, Spain was rated largely compliant with these requirements (para.195-228). The deficiency related to effectiveness, an aspect which is not assessed as part of technical compliance under

6 For example, the judge may order a bond or may order attachment of assets sufficient to secure any pecuniary liabilities (such as a fine) which may ultimately be imposed.

7 *Criminal Procedure Law* art.263bis, 282, 282bis, 334, 338, 367 quarter to 367 septies, 374, 589, 592, 600, 738.2 & 783, 764; *Penal Code* art.374 & 374.1 for drug and related ML offences; and *Tax Code* art 81 for tax crimes and related non-tax crimes.

8 *Penal Code* art.127(5) (for criminal offences) and 374 (for drug and related ML offences), and *Criminal Procedure Law* (as amended by *Law 18/2006* and *Law 13/2009*) art.338, 367bis to 367 septies, 600 & 738.

the *2013 Methodology*. Since Spain's last mutual evaluation, the FATF Standards have been significantly strengthened in this area by imposing new requirements which focus on the FIU's strategic and operational analysis functions, and the FIU's powers to disseminate information upon request and request additional information from reporting entities.

a3.20. *Criterion 29.1.* Spain has established an FIU—the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC)—which has responsibility for acting as a national centre for receiving and analysing suspicious transaction reports (STRs) and other information relevant to ML/TF and associated predicate offences, and for disseminating the results of that analysis: *AML/CFT Law art.45(4)(a)-(d), RD 304/2014 art.67(1)*.

a3.21. *Criterion 29.2.* SEPLAC serves as the central agency for the receipt of disclosures filed by reporting entities, including: a) STRs filed by reporting entities as required by R.20 and R.23; and b) other systematic reporting required by national legislation, including cash transaction reports, reports on transactions with higher risk jurisdictions, transportations of currency and bearer negotiable instruments (BNI), aggregated information on money remittances and wire transfers, statistical information on foreign transactions and capital movements, and information on opening or closing of current accounts, savings accounts, securities accounts and term deposits.⁹

a3.22. *Criterion 29.3.* SEPBLAC is legally empowered to require from all reporting entities all information and documentation needed to perform its functions: *AML/CFT Law art.21*. SEPBLAC also has access to a wide range of administrative, law enforcement, and financial information (including tax¹⁰ information)¹¹, apart from its own database, that it requires to properly undertake its functions.

a3.23. *Criterion 29.4.* SEPBLAC undertakes operational analysis based on the information received from reporting entities and the other information available to it (as described in criterion 29.3). The analysis is aimed at identifying specific targets, following the trail of particular activities or transactions, and determining links between those targets and possible proceeds of crime, ML/TF and predicate offences: *AML/CFT Law art.45(4)(d)*. SEPBLAC is also required to undertake strategic analysis and has issued strategic analysis reports on a number of priority issues such as MVTS, tax issues, cash movements and seizures, terrorism, and Nigerian fraud scams: *RD 304/2014 art.67(5)*.

a3.24. *Criterion 29.5.* SEPBLAC is authorised to disseminate (spontaneously or upon request) the results of its operational analysis, in the form of Financial Intelligence Reports, to competent judicial bodies, the Public Prosecutor's Office, the police and administrative authorities. SEPBLAC uses dedicated, secure and protected telematics channels to disseminate and receive information from the National Police and the Civil Guard, the tax and customs authorities, and foreign FIUs.

a3.25. *Criterion 29.6.* SEPBLAC protects its information by:

- a. Rules governing the security and confidentiality of information. The data, documents and information received, processed, maintained or disseminated by SEPBLAC shall be

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⁹ *AML/CFT Law art.20, 36, 43 45(4)(c) & 48.2.*

¹⁰ *Collaboration Agreement For the Exchange Of Information Between the AEAT and SEPBLAC* governing the exchange of information between SEPLAC and the State Tax Agency (AEAT), based on art.33 of the *AML/CFT Law* and art.94 of the *Tax Code*.

¹¹ **Financial:** Tax records, asset registers, land/property ownership records, company records, customer transactions of banks and other FIs, licensing and compliance records, licences on conducting different types of currency transactions, the Financial Ownership File (described in Box 3.1), and the notarial Single Computerised Index (described in Box 4.1). **Administrative:** Registers of physical persons, visas, passports, citizenship records, social security information on physical persons, and address information. **Law enforcement:** records before court decision, criminal records after conviction, and customs records.

confidential and may not be disclosed except in defined cases: *AML/CFT Law art.45(4), 46 & 49.*

- b.** SEPBLAC staff members have clear instructions governing security, confidentiality and the handling of information, and are subject to security clearance.¹² Breaching confidentiality duties may constitute a criminal offence or a disciplinary infringement: *Penal Code art.198, Law 13/1994 art.6.*
- c.** Access to SEPBLAC's facilities and information, including IT systems, is restricted and protected: *SEPBLAC Instruction on Information Security.* SEPBLAC itself is housed in secure, guarded and anonymous premises.

a3.26. *Criterion 29.7.* The following factors are relevant to SEPBLAC's operational independence and autonomy.

- a.** SEPBLAC is organically and functionally attached to the Commission, but acts with operational autonomy and independence: *RD 304/2014 art.67(4).* The Director of SEPBLAC is appointed by the Commission which also oversees SEPBLAC by approving its organisational structure and operational guidelines. These guidelines are general in nature and do not refer to operational matters such as specific STRs or other sources of information which are to be disseminated by SEPBLAC on a strictly technical basis. Such operational decisions are left to SEPBLAC's discretion: *AML/CFT Law art.44.2(d), 44.2(f) & 46.1.*
- b.** SEPBLAC is able to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information: *AML/CFT Law art.48.3.* Memoranda of understanding (MOUs) with other FIUs are authorised by the Commission and signed by the SEPBLAC director.
- c.** SEPBLAC has legally established core functions: *AML/CFT Law art.45.4, RD 304/2014 art.67.*
- d.** SEPBLAC is able to obtain and deploy the resources needed to carry out its functions, on an individual and routine basis, free from any undue political, government or industry influence or interference: *AML/CFT Law art.45.3 RD 304/2014 art.67(7).*

a3.27. *Criterion 29.8.* SEPBLAC is a founding member of the Egmont Group.

a3.28. *Weighting and conclusion:* Spain meets all eight criteria of R.29. **R.29 is rated compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

a3.29. In its 3rd MER, Spain was rated largely compliant with these requirements (para.229-251 and 300-301). The deficiency related to effectiveness which is not assessed as part of technical compliance under the *2013 Methodology.*

a3.30. *Criterion 30.1.* Spain has a comprehensive institutional framework of judicial police, prosecutors and judges designated with responsibility for ensuring that ML/TF and predicate offences are properly investigated. Two major police corps—the National Police (CNP) and Civil Guard are responsible for combating any crime, including ML/TF, under the direction of the State Secretary (Deputy Minister) for Security (Ministry of Interior): *Criminal Procedure Law art.282 & 282bis.* The Customs Surveillance authorities are authorised to investigate and pursue certain crimes, and are part of the judicial police. Additionally, Catalonia,

12 SEPBLAC's *Instruction on Information Security* has been individually distributed to all personnel.

LEGAL SYSTEM AND OPERATIONAL ISSUES

the Basque Country and Navarre have police corps, acting under the direction of regional authorities. All general prosecutors are competent to try ML cases, and any trial court has competence over such proceedings within its territory. Additionally, Spain has police units, prosecutors and courts specialised in investigating and prosecuting specific predicate offences and related ML, including:

- a. Within the CNP: the Central Unit against Economic and Fiscal Crime (UDEF)¹³ (all national/international economic and tax crimes), the Unit Against Drugs Organised Crime (UDYCO) (drug and organised crime offences), and the General Information Office (crimes related to the activities of persons subject to AML/CFT regulation and developing intelligence against terrorism).
- b. Within the Civil Guard: the Office of Information combats terrorism and its financing at the local level (*provincias*) through the Groups Information Command (GICs), and centrally at the national level by the Information Service which has a Section of Economic Research which is in charge of complex investigations and also advises the GICs in this area. The Office of Judicial Police combats ML at the local level by different judicial police units situated in each of Spain's provinces. At the central level, the most specialised ML investigations are carried out by the Central Operation Unit (UCO) which has a ML Group for this purpose. Additionally, there is a Financial Intelligence unit at the Technical Unit of the Judicial Police (UTPJ).
- c. Within the Tax Agency (AEAT): the Customs Surveillance Unit (which has Customs Fiscal Specialised Units) is in charge of investigating and pursuing certain crimes and misdemeanours including tax fraud, corruption, smuggling, and transportation of means of payment. The Department of Customs and Excise is responsible for all customs controls, including those relating to movements of means of payment in the customs area, and may fulfil this responsibility using its own officials (e.g., members of the Customs Surveillance) or with support of the Civil Guard. The Adjoint Directorate of Customs Surveillance (in the Customs and Excises Department) investigates tax irregularities relating to customs and excise, and is authorised to seize the profits of criminal activities irrespective of their form: *Organic Law 12/1995*. The Equity Investigation Department in the General Sub-directorate of Operations coordinates the AML actions of the Customs Surveillance, including payment methods control operations and actions taken in the fight against tax fraud in support of other Departments, and develops plans and strategies.
- d. Within the Public Prosecution: the Special Prosecutor (SP) against Drug Trafficking (drug traffic and related ML), the SP Against Corruption and Organised Crime (corruption, organised crime and related ML, other than when to drug trafficking offences or terrorism), and the Prosecutor Office of the National High Court (TF and related ML): *Organic Statute of Public Prosecutor art.19.4.n, 19.4.q & 19.3(a) to (c)*.
- e. The National High Court has exclusive competence over proceedings involving TF and related ML.

a3.31. *Criterion 30.2*. All units and research groups of the judicial police are authorised to conduct financial investigations related to their criminal investigations, both in parallel and simultaneously, under the supervision of the Judicial Authority and the Prosecutor. They can also refer cases to other agencies to follow up with such investigations, where appropriate, regardless of where the predicate offence occurred. The Civil Guard uses the System of Investigation (SINVES) to support and coordinate its investigations and referrals to other agencies. A similar system—the Coordination of Investigation System (SCI)—is used to coordinate the different investigative units at the national level.

¹³ UDEF also provides operational coordination and technical support to the corresponding territorial departments: *INT/2103/2005 Order of 1 July 1 as amended by INT/2103/2005 Order of 1 July*.

a3.32. *Criterion 30.3.* Spain has designated competent authorities to expeditiously identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. Within the CNP, the Assets Investigation Section integrates all of the units responsible for carrying out ML investigations. Within the Civil Guard: all judicial police units and research groups have competence and capacity to undertake economic research related to their criminal investigations; the Asset Tracing Office (OLA) cooperates with foreign authorities conducting financial investigations; the Customs Fiscal Specialised Units monitor Spain's customs entry points and focus on ML and cross-border transportations of cash; and the Territorial Fiscal Units undertake "fiscal patrolling" along Spain's coastal areas and land borders.

a3.33. *Criterion 30.4.* The Tax Agency (AEAT) is not considered to be a LEA. However, as explained above in criterion 30.1, the Customs Surveillance Unit (which is a department of the AEAT) is an LEA (albeit not a security body): *Organic Law 2/1986 art.9*. The Tax Auditing Department of the AEAT undertakes administrative investigations of the predicate offence of tax crimes (specifically tax irregularities on direct and indirect taxation, except custom and excises). If ML/TF is detected during an investigation, it must be reported to a prosecutor or judge, along with any recommendations for invoking provisional measures. The Tax Auditing Department has powers to freeze or seize the proceeds of tax frauds: *Tax Code art.81*.

a3.34. *Criterion 30.5.* The Money Laundering and Anti-Corruption Central Investigation Unit of the CNP and the Central Operation Unit (UCO) of the Civil Guard are specialised judicial police units designated to investigate corruption and related ML. A Special Prosecutor Office against Corruption and Organised Crime was also created to deal with these specific types of offences and related ML. These authorities have sufficient powers to identify, trace, and initiate the freezing and seizing of assets.

a3.35. *Weighting and conclusion:* Spain meets all five criteria of R.30. **R.30 is rated compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

a3.36. In its 3rd MER, Spain was rated largely compliant with these requirements (para.252-256 and 300). The deficiency related to effectiveness which is not assessed as part of technical compliance under the 2013 Methodology.

a3.37. *Criterion 31.1.* The competent authorities conducting investigations of ML/TF and associated predicate offences can obtain access to all necessary documents and information for use in those investigations, prosecutions, and related actions. The judicial police can obtain judicial authorisation for the production of records which may be used for evidentiary purposes and that are held by FIs/DNFBPs and other natural/legal persons. Upon request and warrant, financial information can also be gathered through the EUROPOL 09-EU-US TFTP Agreement: *EU Financial Investigation Handbook pages 252-256*. The judicial police, judges and courts also have the power to search persons and premises, take witness statements, require monitoring of a specific account, and gather evidence for use in legal proceedings: *Criminal Procedure Law art.334, 410-450 & 545-578*.

a3.38. *Criterion 31.2.* The competent authorities are able to use the wide range of investigative techniques contained in the *Criminal Procedure Law* for investigating ML/TF and associated predicate offences including undercover operations, intercepting communications, accessing computer systems, and controlled delivery: *art.263 bis, 282 bis & 579-588*.

a3.39. *Criterion 31.3.* There are a number of mechanisms through which the judicial police, prosecutors and security forces can identify whether natural or legal persons hold or control accounts, or have ownership of assets—none of which requires prior notification to the owner of the account/asset or the requested entity. Under order of a court or prosecutor, the judicial police can obtain this information directly from the Tax Database or the Tax Agency can communicate directly with SEPBLAC: *AML/CFT Law art.49.2(e)*. The authorities can also access directly: public registries of land (*cadastre*), commerce (*informa*) and moveable property; the Justice Minister Register on life insurance; the notaries' Single Computerised Index (described in Box 4.1 of the MER); the Registry of Social Security (TGSS); the Bank of Spain CIRBE on the Balance of Payments; and the Financial Ownership File (described in Box 3.1 of the MER).

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a3.40. *Criterion 31.4.* The competent authorities investigating ML, TF and associated predicate offences are able to ask for all relevant information held by the FIU (SEPBLAC), and may use such information as intelligence to further their investigations. SEPBLAC is legally responsible for providing assistance to judicial bodies, the Public Prosecutor's Office, the criminal police and the competent administrative bodies: *AML/CFT Law art.45.4.*

a3.41. *Weighting and conclusion:* Spain meets all four criteria of R.31. **R.31 is rated compliant.**

Recommendation 32 – Cash Couriers

a3.42. In its 3rd MER, Spain was rated largely compliant with these requirements (para.302-329). The deficiency related to effectiveness which is not assessed as part of technical compliance under the 2013 *Methodology*.

a3.43. *Criterion 32.1.* Spain has implemented a declaration system for incoming and outgoing cross-border transportations of currency and BNI which are made by travellers (cash couriers), through the mail or in cargo.¹⁴ The declaration obligation applies to both natural and legal persons acting on their own or behalf of a third party, and applies to the full range of currency and BNI, as that term is defined in the glossary to the *FATF Recommendations*.

a3.44. *Criterion 32.2.* Spain has implemented a written declaration system for all travellers carrying amounts above the EUR 10 000 threshold (or its equivalent foreign currency): *AML/CFT Law art.34.1(a)*. The declaration shall contain accurate data on the bearer, owner, recipient, amount, nature, origin, intended use, route, and means of transport used. The obligation to declare is deemed breached if the information submitted is incorrect or incomplete.¹⁵

a3.45. *Criterion 32.3* - This criterion is not relevant, as it only applies to disclosure systems.

a3.46. *Criterion 32.4.* Upon discovery of a false declaration or failure to declare, Customs officials and police officers have broad powers to control and inspect natural persons, their baggage, and their means of transport, in accordance with customs law.¹⁶

a3.47. *Criterion 32.5.* Failure to comply with the declaration obligation constitutes a serious offence. The fine is from EUR 600 (minimum) up to twice the value of the means of payment (maximum) which is significantly higher than the sanctions which were in place at the time of Spain's last mutual evaluation.¹⁷ To ensure proportionality, the applicable penalty for breaching the declaration obligation is determined by considering any aggravating circumstances, including the mode of concealment, amount undeclared, lack of proof of the origin of the funds, intentionality or repetition of the conduct, etc.: *AML/CFT Law art.52.3(a), 57.3 & 59.3.*

a3.48. *Criterion 32.6.* All information obtained through the declaration is submitted to SEPBLAC through an electronic database managed by the Tax Agency. When there is a seizure, the record is immediately sent to

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14 *AML/CFT Law art.34, EU Reg.1889/2005 art.3, Order of the Ministry of Economy and Finance EHA/1439/2006 art.1, Organic Law 12/1995 art.1, RD 304/2014 art.46.*

15 *AML/CFT Law art.34.1(a), 34.4, and declaration form (Form S-1) set out in the Order of the Ministry of Economy and Finance (EHA/1439/2006).*

16 *AML/CFT Law art.35.1, EC Reg. 2913/92 art.4(14) & 13, Organic Law 12/1995 art.16.1, Ministerial Order 1439/2006 art.5, and Departmental Customs Note on the Cash Movements Declaration Process issued by the Deputy Directorate General on Customs Management (12 February 2007).*

17 When Spain was last assessed, the applicable penalties were EUR 600 to a maximum of half the amount of the means of payment utilised: 3rd MER, para.320.

SEPBLAC for investigation and to the Commission for instituting sanction proceedings, if appropriate: *AML/CFT Law art.35.2 & 36, RD 304/2014 art.45(2), Order EHA/1439/2006 art.8*. SEPBLAC is also informed in cases where there is no seizure: *RD 304/2014 art.45(3)*.

a3.49. *Criterion 32.7*. At the domestic level, Spain has implemented information exchange mechanisms, specialised units and joint police/customs cooperation centres at the EU internal borders to ensure that there is adequate coordination among customs, immigration and other related authorities on issues related to the implementation of R.32. Declarations that could be relevant for fiscal purposes are reported directly to the Tax Agency. Information related to seizures is available to the Tax Agency and Spain's security forces which handle immigration matters: *AML/CFT Law art.36, Order EHA/1439/2006 art.8(3)*. Breaches of the declaration obligation are reported to the Commission which centralises this information and periodically forwards it to the LEAs, the National Intelligence body (CNI), CICO, the customs supervision services of the AEAT, and SEPBLAC: *AML/CFT Law art.36*. The CNP and Civil Guard can obtain information from the Commission when their investigations involve people with seized money. The Cash Control Group¹⁸ coordinates all activities related to the movement of means of payment. There are Joint Police and Customs Cooperation Centres at the EU internal borders¹⁹, and agreements in place to strengthen and expand cooperation between the authorities responsible for law enforcement internally within the EU in the common border areas.

a3.50. *Criterion 32.8*. Customs officers and police are able to "control" (in other words, stop) currency/BNI to verify compliance with the declaration obligation. They are empowered to seize the means of payment when there is a suspicion of ML/FT, a false declaration, or a failure to submit the declaration: *AML/CFT Law art.35.1 & 35.2; RD 304/2014 art.45(1) & (2), and art.46*.

a3.51. *Criterion 32.9*. Information obtained from the declaration system or from any related controls or inspections conducted may be transferred to the competent authorities of other countries: *Law 10/2010 art.37*. The information to be collected and maintained on the declaration form includes: the amount of the declared means of payment, the identification data (date/country of birth, nationality, name, address) of the bearer and declarant, etcetera.

a3.52. *Criterion 32.10*. The information collected pursuant to the declaration obligation is subject to confidentiality: *AML/CFT Law art.49, EU Reg.515/97 art.8*. There are specific safeguards in the legislation to ensure that the declaration obligation does not restrict trade payments or the freedom of capital movements: *Law 19/2003 art.1.2*.

a3.53. *Criterion 32.11*. Persons carrying out physical cross-border transportations of currency/BNI that are related to ML/TF or predicate offences are subject to the sanctions applicable the ML/TF offences, as described in R.3 and R.5. The confiscation of any smuggled goods, items, proceeds or their equivalent value is authorised: *Organic Law 12/1995 art.5*.

a3.54. *Weighting and conclusion*: Spain meets all 11 criteria of R.32. **R.32 is rated compliant.**

18 The Cash Control Group is chaired by the Treasury and comprised of representatives from the Treasury SEPBLAC, the security forces responsible for handling immigration matters (the National Police and the Civil Guard), the CNI, Customs, and the Customs Surveillance.

19 See the *Departmental Customs Note on Police & Customs Cooperation Centres* (26 January 2009) which sets out criteria and standard procedures to be applied in these Customs and Police Cooperation Centres.

Table of Acronyms

AEAT	Tax Agency
AECID	Spanish Agency for International Cooperation and Development
AML/CFT	Anti-money laundering / counter-terrorist financing
Art.	Article / articles
BNI	Bearer negotiable instruments
BOE	Spanish State Official Gazette
CD	Council Decision
CDD	Customer due diligence
CICO	Centre of Intelligence against Organised Crime
CIRBE	Bank of Spain database on the Balance of payments
CNCA	National Centre for Counter-terrorism Coordination
CNI	National Intelligence Centre
CNMV	National Securities Market Commission
CNP	National Police
Commission	Commission for the Prevention of Money Laundering and Monetary Offences
CP	Common Position
CRAB	AML Centre of the Spanish Registers
DGSFP	Directorate-General for Insurance and Pension Funds
DNFBPs	Designated non-financial businesses and professions
DPRK	Democratic People's Republic of Korea
EDD	Enhanced due diligence
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
ETA	Euskadi Ta Askatasuna
EU	European Union
FIs	Financial institutions
FIU	Financial intelligence unit
FSAP	Financial Sector Assessment Program
FUR	Follow-up report
JI	Service of Information (Civil Guard)
JIMDDU	Inter-ministerial Body on Material of Defence and Dual-use
JIT	Joint Investigation Teams
LEAs	Law enforcement authorities
MAEC	Foreign Affairs and Cooperation Ministry
MER	Mutual evaluation report
Merida Convention	United Nations Against Corruption

TABLE OF ACRONYMS

ML	Money laundering
MLA	Mutual legal assistance
MOU	Memorandum of Understanding / Memoranda of Understanding
MVTS	Money or value transfer services
NPO	Non-profit organisation
OCP	General Council of Notaries Centralized Prevention Unit
OJEU	EU Official Gazette (OGEU),
OLA	Asset Tracing Office (Civil Guard)
ORA	Asset Recovery Office (CICO)
Palermo Convention	United Nations Convention Against Transnational Organised Crime, 2000
Para.	Paragraph / paragraphs
R.	Recommendation / Recommendations
Reg.	Regulation
RD	Royal Decree
SEPBLAC	Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences
SINVES	System of Investigation (Civil Guard)
SP	Special Prosecutor
SRI	System of Register of Investigation (CNP)
STR	Suspicious transaction report
TCSP	Trust and company service provider
TF Convention	International Convention for the Suppression of the Financing of Terrorism, 1999
TF	Terrorist financing
TFS	Targeted financial sanctions
TGSS	Registry of Social Security
UDEF	Central Unit against Economic and Fiscal Crime (National Police)
UDYCO	Unit Against Drugs Organised Crime (National Police)
UN	United Nations
UTPJ	Judicial Police Technical Unit (Civil Guard)
Vienna Convention	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
WP	Working Party