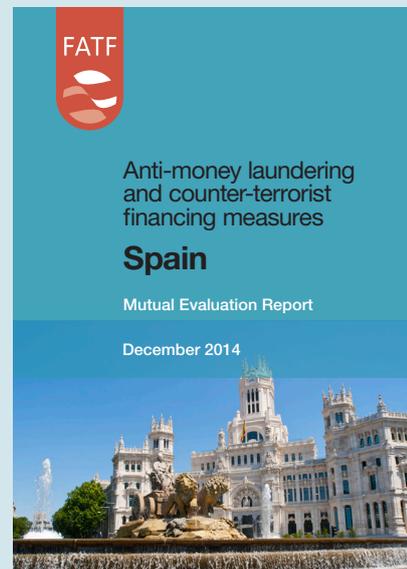




## *Anti-money laundering and counter-terrorist financing measures - Spain*

### **4. Terrorist financing and financing of proliferation**

Effectiveness and technical compliance



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## 4 TERRORIST FINANCING AND FINANCING OF PROLIFERATION

4

### Key Findings

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

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

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

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

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

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

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

## 4.1 Background and Context

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

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

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

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

## 4.2 Technical Compliance (R.5-8)

### *Recommendation 5 – Terrorist financing offence*

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

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

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

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

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

### *Recommendation 7 – Targeted financial sanctions related to proliferation*

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

### *Recommendation 8 – Non-profit organisations*

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

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

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

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

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

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

- a. collecting funds for a terrorist organisation (ETA) through mobile taverns (*txoznas*) and raffles (*Sentence AN No.39/2008*), lotteries (*Sentence AN No.4382/2010* which was a case of attempted TF), and through carrying out an extortion campaign to collect a so-called “revolutionary tax” (*Sentence AN No.3108/2011*)
- b. collecting funds for a terrorist organisation (Al Ansar which is related to al-Qaeda) through alms collection (*Sentence AN No.5304/2011*)
- c. coordinating and managing a business group which was responsible for financing a terrorist organisation (ETA) through a complex network of large companies and profitable business, including a travel agency, a party supply rental company, a financial management company, and an insurance company (*Sentence AN No.73/2007*)
- d. funding travel expenses and providing material support (such as accommodation) for an Islamist terrorist movement (*Sentence AN No.1943/2011* which was also a case of self-funding)
- e. moving money through a hawaladar to Algeria on behalf of Islamist terrorist groups (*Sentence AN No.2591/2010*) and through MVTS and cash couriers to various North African countries (*Sentence AN No.1943/2011*)
- f. moving funds to commit a terrorist attack (a car bombing against a synagogue on the island of Djerba in Tunisia) (*Sentence AN No.6284/2006*), and
- g. using funds to help the terrorists who fled after committing the 11-M train bombing attacks in Madrid (*Sentence AN No.1943/2011*).

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

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

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

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

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

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

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

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

**Table 4.1. Terrorist financing investigations**

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

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

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

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

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

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

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

4

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

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

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

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

*(d) Sanctions*

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

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

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

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

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

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

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

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

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

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

## Overall conclusions on Immediate Outcome 9

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

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

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

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

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

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

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

**Box 4.2. Funding mechanisms for ETA**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *(b) Implementation of targeted financial sanctions*

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

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

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

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

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

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

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

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

*(c) Abuse of the non-profit sector*

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

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

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

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

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

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

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

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

### Overall conclusions on Immediate Outcome 10

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

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

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

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

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

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

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

## 4.5 Effectiveness: Immediate Outcome 11 (PF Financial Sanctions)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Overall conclusions on Immediate Outcome 11

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

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

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

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

## 4.6 Recommendations on Terrorist Financing and Financing of Proliferation

### *Recommendations on IO.9*

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

### *Recommendations on IO.10*

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

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

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

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

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

### *Recommendations on IO.11*

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

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

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

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

4

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## 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### Recommendation 5 - Terrorist financing offence

a4.1. In its 3<sup>rd</sup> MER, Spain was rated largely compliant with these requirements (para.113-129). The main technical deficiencies were that the offence did not cover: the financing of a sufficient range of terrorist acts; providing or collecting funds for a terrorist organisation or individual terrorist for any purpose; and funds from a legitimate source. The offence also required the funds to have been actually used to carry out or attempt or be linked to a specific terrorist act, and did not apply criminal liability to legal persons. Spain has subsequently amended its legislation to address many of these deficiencies.

a4.2. *Criterion 5.1.* The TF offences covers all of the terrorist acts described in article 2(a) and 2(b) of the TF Convention: *Penal Code (as amended by Organic Law 5/2010) art.576 & 576bis(1)*.

a4.3. *Criterion 5.2.* The TF offences cover any person who, directly or indirectly, provides or collects funds intending them to be used, or knowing they shall be used, fully or partially to commit any of the terrorism offences of articles 571-580, or to deliver them to a terrorist organisation or group. The TF offences also cover any acts of collaboration, including providing any economic aid to the activities or purposes of terrorist organisations or groups: *Penal Code art.576 & 576bis(1)*. However, the financing of an individual terrorist (who is not part of a terrorist organisation/group) for purposes unrelated to the commission of a terrorist act is not covered.

a4.4. *Criterion 5.3.* Spain has terrorist financing offences that extend to any funds whether from a legitimate or illegitimate source. Article 576bis covers *funds*—a term which, on its face, does not extend to assets of every kind, as is required by R.5. Article 576 covers any type of “economic” aid (a term which broad enough to be consistent with the definition of *funds* in the Glossary to the *FATF Recommendations*). There are no restrictions in the legislation that would prevent the TF offences from covering funds/economic aid from legitimate or illegitimate sources.

a4.5. *Criterion 5.4.* The TF offences do not require that the funds or economic aid were actually used to carry out or attempt a terrorist act or are linked to a specific terrorist act.

a4.6. *Criterion 5.5.* The intent and knowledge required to prove the offence can be inferred from objective factual circumstances (see also criterion 3.8).

a4.7. *Criterion 5.6.* Natural persons convicted of TF are punishable by five to 10 years imprisonment, and a fine of 18 to 24 months (approximately EUR 1 115 to EUR 298 000).<sup>1</sup> Within this range, the level of sanction imposed must be proportionate to the circumstances. If the funds are used to execute specific terrorist acts, the offence shall be punished as co-perpetration or complicity, as appropriate, which means that significantly higher sanctions apply: 20 to 30 years if someone dies; 15 to 20 years if someone is seriously injured; and 10 to 15 years if someone is injured less seriously: *art.576bis and 572*. As for whether these sanctions are dissuasive, heavier sanctions apply to TF offences than for other types of financial crime in Spain, even in circumstances where no terrorist act is executed. This does not seem unreasonable since, unlike other types of financial crime, TF may have life-threatening consequences. The sanctions available in Spain fall within the range of sanctions available in other FATF members for TF offences.

1 Fines are expressed in days or months (meaning a period of 30 days): *Penal Code art.50*. The daily rate is from EUR 2 to EUR 400 for natural persons, and EUR 30 to EUR 5 000 for legal persons. The court determines the extent of the fine, within these limits, taking into account the amount of the fine in relation to the economic situation of the convicted person (equity, income, family obligations, and other charges).

a4.8. *Criterion 5.7.* Since its last evaluation, Spain has extended its TF offences by applying criminal liability and sanctions to legal persons (other than certain State-owned enterprises, as described above in R.3) which are punishable by: a fine from two to five years (approximately EUR 22 300 to EUR 9.3 million) (if the offence committed by a natural person has a punishment of imprisonment exceeding five years); a fine from one to three years (approximately EUR 740 to EUR 745 000) (if the offence committed by a natural person has a punishment of imprisonment of between two and five years); dissolution, suspension of activities or closure of premises and establishments for up to five years; temporary (for up to 15 years) or permanent prohibitions on carrying out certain activities; being barred from obtaining public subsidies and aid, entering into contracts with the public sector, or enjoying tax or Social Security benefits and incentives for up to 15 years; or judicial intervention to safeguard the rights of the workers or creditors for up to five years: *Penal Code art.31bis & 576bis(3)*.

a4.9. *Criterion 5.8.* A full range of ancillary offences are available including: attempt, conspiracy, provocation, solicitation, and collaboration. Principals to the offence include anyone who directly induces another to commit a crime or co-operates by committing an act without which the crime could not have been committed. Accessories are those who co-operate in carrying out the offence with prior or simultaneous acts: *Penal Code art.15, 28, 29, 579(1) & 576(2)*.

a4.10. *Criterion 5.9.* TF offences are predicate offences for ML (see R.3).

a4.11. *Criterion 5.10.* The TF offence applies, regardless of whether the person is alleged to have committed the offence(s) in the country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur. Spanish courts have broad jurisdiction to hear cases for crimes and misdemeanours committed in Spanish territory or committed aboard (see also criterion 3.6). Additionally, Spanish courts recognise acts as crimes when committed by Spanish citizens or foreigners abroad when those acts can be considered terrorism: *Spanish Judiciary Act art.23*.

a4.12. *Weighting and conclusion:* In practice, situations involving the financing of an individual terrorist (who is not otherwise part of a terrorist group) for purposes completely unrelated to a terrorist act are much less common than the financing of a terrorist act or the material support of a terrorist organisation for any purpose. Likewise, financing activity is more often done through the provision/collection of funds, than through the provision/collection of other types of property (although the latter does occur) (criterion 5.3). In any case, even if this circumstance (which is not covered by article 576bis) does arise, Spain will usually be able to prosecute this activity using the article 576 collaboration offence. Although certain State-owned enterprises are exempt from criminal liability (criterion 5.7), the possibility of one being knowingly involved in TF does not appear to be likely and this factor is also mitigated for reasons described in R.3. Consequently, these deficiencies are not considered to be serious. **R.5 is rated largely compliant.**

### Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

a4.13. In its 3<sup>rd</sup> MER, Spain was rated largely compliant with these requirements (para.145-194). The main technical deficiencies were: gaps in the scope of the freezing measures pursuant to the European Union (EU) Regulations (limited definition of *funds*—an issue which has improved since then, and EU internals not subject to freezing measures); very little guidance to FIs/DNFBPs on how to implement these requirements; and no clear and publicly known delisting and unfreezing procedures. Additionally, the domestic freezing mechanism set out in Law 12/2003 (which applies to EU internals and could, therefore, help to fill some gaps in the EU framework) had not been practically implemented, and was still not implemented at the time of Spain's 4<sup>th</sup> FUR four years later (in 2010). There were also some concerns about effectiveness which do not fall within the scope of a technical compliance assessment under the *2013 Methodology*. Spain recently enacted new legislation aimed at addressing these issues.

a4.14. *Criterion 6.1.* In relation to designations under UN resolutions 1267/1989 and 1988:

- a. The Foreign Affairs and Cooperation Ministry (MAEC) is responsible for proposing designations to the UN 1267/1989 and 1988 Committees on behalf of Spain, through its

Permanent Mission to the United Nations (UN).

- b.** The LEAs and National Intelligence Agency (CNI) are responsible for detecting, investigating and identifying targets for designation, and can use the same powers as when they investigate any crime. Members of the Watchdog Commission<sup>2</sup> may propose designations, based on the information gathered in their respective departments. In practice, designations would be proposed by the security forces.
- c.** The MAEC applies an administrative standard of proof when deciding whether or not to propose a UN designation. The decision is not conditional on the existence of a criminal proceeding.
- d. & (e)** The question of whether Spain follows the UN procedures/forms and provides sufficient information is not relevant because, although it has a process for submitting designations to the UN (as described in subparagraphs a to c above), in practice, it has not yet done so.

a4.15. *Criterion 6.2.* For 1373 designations, both EU and domestic measures apply.

- a.** At the EU level, the Council of the EU is the competent authority for making designations: *Council Reg.2580/2001, CP 931/2001/CFSP*. At the domestic level, the MAEC is responsible for proposing designations to the EU on behalf of Spain through its Permanent Mission to the EU. The Watchdog Commission is also authorised to initiate freezing action: *Law 12/2003*.
- b.** The mechanisms described in criterion 6.1 apply to identifying targets for 1373 designations.
- c.** At the EU level, when requests are received, CP 931 Working Party (WP) of the Council of the EU examines and assesses whether the person meets the 1373 designation criteria.<sup>3</sup> All Council working parties consist of representatives of the governments of the Member States. At the domestic level, when requests are received, the Watchdog Commission is authorised to issue freezing orders in relation to persons (including EU internals) who meet the 1373 criteria.<sup>4</sup>
- d.** CP 931 WP applies a “reasonable basis” evidentiary standard of proof, and the decision is not conditional on the existence of criminal proceedings: *CP 2001/931/CFSP art.1(2) & (4)*. Likewise, the Watchdog Commission applies an administrative burden of proof, unconditional on the existence of criminal proceedings: *AML/CFT Law art.42(1)*.
- e.** At the EU level, requests to third countries are not addressed in CP 2001/931/CFSP or Regulation 2580/2001. It is common practice that a number of countries (in particular, those who are preparing to join the EU) are asked to align themselves with any new CFSP Decision. The requests are, in so far as known, made by the Council Presidency (i.e., the Member State that chairs most of the Council meetings, including the CP 931 Working Party) and prepared by the Council Secretariat. All designations must be supported by sufficient

2 The Watchdog Commission is comprised of representatives from the Public Prosecutor, Ministry of Justice, Ministry of the Interior, and Ministry of Finance. Its President is the State Secretariat for Security.

3 The criteria specified in Common Position (CP) 2001/931/CFSP are consistent with the designation criteria in resolution 1373.

4 The criteria specified in Law 12/2003 are consistent with the designation criteria in resolution 1373 (for the Watchdog Commission); *AML/CFT Law art.42(1)* (for the Council of Ministers).

information to identify the specific designated persons and exculpate those bearing the same or similar names: *CP 2001/931/CFSP art.1(5)*. The law does not specify clear channels or procedures for requesting other countries to give effect to actions initiated under the Watchdog Commission freezing mechanism.<sup>5</sup>

a4.16. *Criterion 6.3.*

- a. The competent authorities have sufficient legal authorities and procedures to collect or solicit information to identify persons/entities who meet the designation criteria. The MAEC and Ministry of Interior have a mechanism for collaborating and sharing information on Spain's proposals for UN designations, although as Spain has not yet proposed any designations, this mechanism has not been used in practice: *Action Protocol (July 2013) Clause 1*. The Watchdog Commission discusses designation proposals and related information queries. All EU Member States are required to provide each other with the widest possible range of police and judicial assistance in these matters, inform each other of any measures taken, and cooperate and supply information to the relevant UN Sanctions Committee.<sup>6</sup>
- b. Designations take place without prior notice to the person/entity identified<sup>7</sup>. For asset freezing, the Court of Justice of the EU makes an exception to the general rule that notice must be given before the decision is taken in order not to compromise the effective of the first freezing order. The listed individual or entity has the right to appeal against the listing decision in Court, and seek to have the listing annulled.

a4.17. *Criterion 6.4.* Implementation of targeted financial sanctions (TFS), pursuant to resolutions 1267/1989 and 1988, does not occur "without delay". Because of the time taken to consult between European Commission departments and translate the designation into all official EU languages, there is often a delay between when the designation and freezing decision is issued by the UN and when it is transposed into EU law under Regulation 881/2002. As regards Resolution 1988, similar issues arise when the Council transposes the decision under Regulation 753/2011. In 2013, transposition times ranged from 7 to 29 days for resolution 1989 designations, and 7 days to 3.5 months for resolution 1988 designations<sup>8</sup>. New designations are treated as being urgent and are generally processed in times at the lower end of this range. Other amendments to the list (such as deletions) are less urgent and will take more time to be transposed into EU regulation. Spain recently amended the *AML/CFT Law* to enable the Council of Ministers, on the proposal of the Minister for Economy and Competitiveness, to implement TFS without waiting for designations to be transposed into EU regulation: *art.42(1)-(2)*. However, this mechanism is untested and it is unclear, on the face of the legislation, whether the Council of Ministers could take its decision quickly enough to implement TFS under resolutions 1267/1989 and 1988 without delay. For resolution 1373, TFS are implemented without delay because, once the decision to freeze has been taken, Council Regulation 2580/2001 is immediately applicable to all EU Member States and the Watchdog Commission resolutions are immediately effective in Spain.

a4.18. *Criterion 6.5.* Spain has the following legal authorities and procedures for implementing and enforcing TFS:

- a. For resolutions 1267/1989 and 1988, there is an obligation to freeze all funds, financial

A4

<sup>5</sup> **Draft Legislation:** In Spain, regulations are currently being drafted with an aim to clarify this aspect.

<sup>6</sup> Reg.881/2002 art.8 & 2580/2001 art.8, CP 2001/931/CFSP art.4.

<sup>7</sup> Reg. 1286/2009 preamble para.5 and art.7(a)(1), Law 12/2003 art.2(4), AML/CFT Law art.42(1), Reg. art.47(3).

<sup>8</sup> In the 3rd round of mutual evaluations, these delays ranged generally between 10 to 60 days.

assets or economic resources of designated persons/entities.<sup>9</sup> However, as described in criterion 6.4, long transposition times mean that this does not happen without delay and raises the question of whether the freezing action, in practice, takes place without prior notice to the designated person/entity. It is not yet known whether the new as-yet-untested Council of Ministers mechanism can act quickly enough to solve the problem, and this is not clear on the face of the legislation. For resolution 1373, the obligation to freeze all funds/assets of designated persons/entities applies immediately to all EU Member States, and without notice to the designated persons/entities: *Reg.2580/2001 art.2(1)(a)*. Listed EU internals<sup>10</sup> are not subject to the freezing measures of Regulation 2580/2001, but are subject to increased police and judicial cooperation among Member States: *CP 2001/931/CFSP footnote 1 of Annex 1*. The *Treaty of Lisbon (2007)* provides a legal basis upon which to do so, but the EU has not implemented such a mechanism: *art.75*. The Watchdog Commission Resolutions to take freezing action apply immediately in Spain, and may be applied to EU internals, but these measures do not adequately fill the gaps in the EU legal framework: *Law 12/2003*.

- b. For resolutions 1267/1989 and 1988, the freezing obligation extends to all funds/other assets that belong to, are owned, held or controlled by a designated person/entity. The obligations to freeze the funds or assets of persons and entities to be frozen when acting on behalf of, or at the direction of, designated persons or entities is met by the requirement to freeze funds or assets “controlled by” a designated entity, which extends to persons acting on their behalf in relation to those funds: *Regulations 881/2002 art.2(2)*. For resolution 1373, the freezing obligation does not cover a sufficiently broad range of assets under the EU framework (although subsequent regulations cover a wider range of assets): *Reg.2580/2001 art.1(a) & 2(1)(a), Law 12/2003 art.1.1*.
- c. At the EU level, EU nationals and persons within the EU are prohibited from making funds/ other assets available to designated persons/entities, as required by R.6.<sup>11</sup> At the domestic level, prohibitions in the Watchdog Commission resolutions are not sufficiently broad; however, this not a deficiency because these aspects are covered under the EU legislation: *Law 12/2003 art.1.3*.
- d. Once the UN or EU makes a designation, Spain’s Permanent UN or EU Mission informs the Foreign Ministry, which communicates the designation and supporting information to the other relevant ministries and departments in Spain. Designations made pursuant to the EU regulations are published in the EU Official Journal (OJEU), and on the Internet<sup>12</sup> (users may subscribe to an automatic alert notification). Designations or restrictive financial measures adopted by the Watchdog Commission or the Council of Ministers are published in the Spanish State Official Gazette (BOE). Direct pre-notification to FIs/DNFBPs is possible. Guidance to FIs/DNFBPs and other persons/entities that may be holding targeted funds/

9 Regs. 881/2002 art.2(1), 1286/2009 art.1(2), 753/2011 art.4, and 754/2011 art.1.

10 *EU internals* are persons who have their roots, main activities and objectives within the EU.

11 Reg.881/2002 art.2(2), 1286/2009 art.1(2), 753/2011 art.4 & 754/2011 art.1.

12 [http://eeas.europa.eu/cfsp/sanctions/index\\_en.htm](http://eeas.europa.eu/cfsp/sanctions/index_en.htm).

other assets is publicly available.<sup>13</sup> The authorities can also provide additional guidance on a case-by-case basis.

- e. Natural and legal persons (including FIs/DNFBPs) are required to provide immediately any information about accounts and amounts frozen: *Reg.881/2002 art.5.1, Reg.2580/2001 art.4, Reg.753/2011 art.8*. Any freezing or blocking of funds/economic resources shall be immediately reported in writing to the Secretariat General: *RD 304/2014 art.47(3)*. Additionally, public authorities and FIs are required to notify the Watchdog Commission of any type of (attempted) deposit that may be performed in the frozen account: *Law 12/2003 art.4(b), (d) & (e)*.
- f. The rights of *bona fide* third parties are protected: *Reg.881/2002 art.6, Reg.753/2001 art.7, Reg.2580/2001 art.4, AML/CFT Law art.42(1), and Law 12/2003 art.5*.

a4.19. *Criterion 6.6*. There are mechanisms for de-listing and unfreezing the funds/other assets of persons/entities which do not, or no longer, meet the criteria for designation.

- a. For 1267/1989 and 1988 designations, Spain uses the mechanisms described in criterion 6.1 to officially submit de-listing requests to the relevant UN Sanctions Committees.
- b. For 1373 designations, amendments to Regulation 2580/2001 are immediately effective in all EU Member States. The Watchdog Commission shall lift its freeze when its investigations do not evidence that the affected assets are related to the financing of terrorist activities: *Law 12/2003*. The Secretariat General of the Treasury—through the Sub-directorate General of Inspection and Control of Capital Movements (Sub-directorate General)—is the competent authority in charge of authorising the unfreezing of funds according to procedures established in regulation: *RD 304/2014 art.49(1)*.
- c. For 1373 designations, Spain uses the mechanisms described in criterion 6.2 to officially submit de-listing requests to the Council of the EU. Designated persons/entities are informed about the listing, its reasons and legal consequences, and have rights of due process. There are comprehensive procedures for allowing, upon request, a review of the designation decision before a court or other independent competent authority. The CP 931/Reg.2580/2001 list is reviewed *ex officio* at least every six months. A listed individual or entity can write to the Council to have the designation reviewed or can challenge the relevant Council Implementing Regulation in Court: *Treaty on the Functioning of the European Union (TFEU), art.263, 4<sup>th</sup> paragraph*. Article 275 also allows legal challenges of a relevant CFSP Decision. At the domestic level, resolutions of the Sub-directorate General are subject to appeal before the Secretariat General: *RD 304/2014 art.49(5)*.
- d. & (e) For 1267/1989 and 1988, designated persons/entities are informed about the listing, its reasons and legal consequences, and have rights of due process. At the EU level, there are legal authorities and procedures for de-listing, unfreezing, and allowing a review of the designation by the European Commission (resolution 1267/1989) or the Council of the EU (resolution 1988). The designation can also be reviewed using the UN mechanisms of the UN Office of the Ombudsperson (1267/1989 designations) or the UN Focal Point mechanism (1988 designations). These procedures may take place in parallel: *Reg.881/2001 art.7a & Reg.753/2011 art.11*. Spain can put forward delisting requests to the UN on its own motion. The European Commission or the Council of the EU should inform the designated individual/entity about the appropriate UN channels and procedures.

13 [www.tesoro.es/SP/expcam/CongelacionFondos.asp](http://www.tesoro.es/SP/expcam/CongelacionFondos.asp); *EU Best Practices for the Implementation of Restrictive Measures* issued by the European Council covers identifying designated persons, freezing assets, resolving false positives, delisting, unfreezing assets and humanitarian exemptions.

- f. Spain has implemented publicly known procedures for obtaining assistance in verifying whether a customer's identity matches that of a designated person/entity.<sup>14</sup> Upon verification that the person/entity involved is not designated, the funds/assets must be unfrozen: *Reg.881/2002, Reg.2580/2001 & Law 12/2003*.
- g. De-listings and other changes to lists of designated persons/entities are published and guidance is available as described in criterion 6.5.

a4.20. *Criterion 6.7.* At both the EU and domestic level, there are mechanisms for authorising access to frozen funds or other assets which have been determined to be necessary for basic expenses, the payment of certain types of expenses, or for extraordinary expenses: *Reg.881/2002 art.2a, Reg.753/2011, Reg.2580/2001 art.5-6, RD 304/2014 art.47 & 49, and Law 13/2003 art.2.3*.

a4.21. *Weighting and conclusion:* The ability to freeze without delay is the fundamental feature that distinguishes TFS from taking provisional measures in the context of an ordinary criminal proceeding. Consequently, the deficiencies described in criteria 6.5(a) and 6.4 are serious. The deficiency described in criterion 6.5(a) is also serious, given the terrorist risks which Spain has historically faced from EU internals—for example, from members of the Euskadi Ta Askatasuna (ETA). **R.6 is rated partially compliant.**

## Recommendation 7 – Targeted financial sanctions related to proliferation

a4.22. These requirements were added to the *FATF Recommendations*, when they were last revised in 2012 and, therefore, were not assessed during Spain's 3<sup>rd</sup> mutual evaluation which occurred in 2006.

a4.23. *Criterion 7.1.* Spain primarily relies on the EU framework for its implementation of R.7.<sup>15</sup> R.7 requires implementation of proliferation-related targeted financial sanctions (TFS) to occur *without delay*—a term that, in this context, is defined to mean “ideally, within a matter of hours”.<sup>16</sup> Although the EU regulations are effective immediately in all EU Member States from the date of their publication, the delays in transposing the UN obligations into the EU legal framework (an issue that is discussed in more detail in R.6) mean that, in practice, TFS are not implemented without delay. As noted above in criterion 6.4, it is not known whether the new as-yet-untested Council of Ministers mechanism will address this problem. The practical impact of this deficiency may be mitigated in part by the separate and wider EU sanctions regimes applied to entities from Iran and DPRK. In addition, there is an EU authorisation process imposing comprehensive controls on transfers of funds between the EU and Iran, including prior authorisation (in article 30 of Regulation 267/2012, implementing the financial vigilance provisions of UNSCR1929). While this requirement implements a different UN obligation and is beyond the scope of R.7, it could potentially also be used to prevent the execution of transactions with designated entities during the period between their UN listing and the EU transposition.

a4.24. *Criterion 7.2.* The Sub-directorate General of Inspection and Control of Capital Movements is responsible for implementing TFS in this area.

- a. The EU regulations require all natural and legal persons within the EU to freeze the funds/other assets of designated persons/entities. This obligation is triggered as soon as the regulation is approved and the designation published in the OJEU. However, delays in transposing the UN designations into EU law means that freezing may not happen without

14 Website of the Treasury and Financial Policy General Secretariat.

15 Resolution 1718 on the Democratic People's Republic of Korea (DPRK) is transposed into the EU legal framework through Council Reg. 329/2007, Council Decision (CD) 2013/183/CFSP, and CD 2010/413. Resolution 1737 on Iran is transposed into the EU legal framework through Council Reg. 267/2012.

16 See the glossary to the *FATF Recommendations*.

delay for entities which are not already designated by the EU, and raises the question of whether the freezing action, in practice, takes place without prior notice to the designated person/entity. It is not yet known whether the authorisation process noted above, or Spain's new Council of Ministers mechanism will fully address this problem (see also criteria 6.4 & 6.5a).

- b.** The freezing obligation extends to the full range of funds or other assets required by R.7.
- c.** The regulations prohibit funds/other assets from being made available, directly or indirectly, to or for the benefit of designated persons/entities, unless otherwise licensed, authorised or notified in accordance with the relevant UN resolutions: *Reg.329/2007 art.6.4 & Reg.267/2012 art.23.3*.
- d.** Mechanisms for communicating designations are the same as described above in criterion 6.5(d). Guidance to FIs/DNFBPs and others who may be holding targeted funds/other assets is publicly available.<sup>17</sup> If more specific guidance is required, FIs/DNFBPs may contact the Treasury directly to resolve any potential doubts or questions.
- e.** Natural and legal persons are required to provide immediately any information about accounts and amounts frozen: *Reg.329/2007 art.10, Reg.267/2012 art.40, and RD 304/2014 art.47(3)*.
- f.** The rights of *bona fide* third parties are protected: *Reg.329/2007 art.11 & Reg.267/2012 art.42*.

a4.25. *Criterion 7.3.* EU Member States are required to take all measures necessary to ensure that the EU regulations in this area are implemented, and have effective, proportionate and dissuasive sanctions available for failing to comply with these requirements.<sup>18</sup> SEPBLAC is responsible for monitoring and ensuring compliance with these obligations, and the supervisory regime is generally sound (see R.26, R.27 and R.28): *AML/CFT Law art.45.4f & 42(3)*. Failure to comply with these requirements is punishable by administrative and criminal sanctions as described in R.35: *AML/CFT Law art.51-52*.

a4.26. *Criterion 7.4.* The EU Regulations contain procedures for submitting delisting requests to the UN Security Council for designated persons/entities that, in the view of the EU, no longer meet the criteria for designation:

- a.** The Council of the EU communicates its designation decisions and the grounds for listing, to designated persons/entities who have rights of due process. The Council of the EU shall promptly review its decision upon request, and inform the designated person/entity. Such a request can be made, irrespective of whether a de-listing request is made at the UN level (for example, through the Focal Point mechanism). Where the UN de-lists a person/entity, the EU amends the relevant EU Regulations accordingly.<sup>19</sup>

A4

17 Treasury published *Guidance on Restrictive Measures Adopted in View of the Situation of Iran: Financial Sanctions*: [www.tesoro.es/doc/SP/expcam/Normativa/Sanciones%20internacionales%20Iran.%20%20Enero%202014.pdf](http://www.tesoro.es/doc/SP/expcam/Normativa/Sanciones%20internacionales%20Iran.%20%20Enero%202014.pdf); see also the *EU Best Practices for the effective implementation of restrictive measures*.

18 Reg.329/2007 art.14 & Reg.267/2012 art.47.

19 Reg. 329/2007 art.13.1(d) & (e), Reg.267/2012 art.46, and CP 2006/795/CFSP art.6.

- b. Spain has implemented publicly known procedures for obtaining assistance in verifying whether a customer's identity matches that of a designated person/entity<sup>20</sup>. Upon verification that the person/entity involved is not designated, the funds/assets must be unfrozen.
- c. There are specific provisions for authorising access to funds or other assets, where the competent authorities of Member States have determined that the exemption conditions set out in resolutions 1718 and 1737 are met, and in accordance with the procedures set out in those resolutions<sup>21</sup>. These include a web-platform where entities can request on-line authorisation to transfer funds to or from an Iranian person, entity or body above the threshold (according to the more restrictive legislation enacted by the EU).
- d. De-listings and other changes to the EU list are published and communicated to FIs and DNFBPs, and guidance is available, as described in criterion 7.2(d).

a4.27. *Criterion 7.5.*

- a. The addition to frozen accounts of interest, other earnings, or payments due under contracts, agreements or obligations that arose prior to the date of designation is permitted, provided that such amounts also become subject to the freeze<sup>22</sup>.
- b. Payment of amounts due under contracts entered into prior to designation is authorised, provided it has been determined that the contract and payment are not related to any of the items or activities prohibited under resolution 1737 (on Iran), and upon prior notification to the UN 1737 Sanctions Committee: *Reg.267/2012 art.24 & 25.*

a4.28. *Weighting and conclusion:* The ability to freeze without delay is the fundamental feature that distinguishes TFS from taking provisional measures in the context of an ordinary criminal proceeding. Consequently, the deficiencies described in criterion 7.1, and 7.2(a) are serious issues. **R.7 is rated partially compliant.**

## Recommendation 8 – Non-profit organisations

a4.29. In its 3<sup>rd</sup> MER, Spain was rated largely compliant with these requirements. However, that assessment pre-dated the adoption in 2006 of an Interpretive Note, which means that on this Recommendation, Spain has not previously been assessed against the detailed requirements of R.8.

a4.30. The concept of an NPO has not been legally developed in Spain, other than in the context of tax purposes and the listing of NPOs which can be subject to favourable tax treatment: *Law 49/2002 art.2 and Additional Disposition 8 & 9*. The sector is primarily made up of different types of entities: associations<sup>23</sup> (70% by number), foundations (23%) and religious entities (the remaining 7%, together with federations of associations or foundations). In terms of donations/resources, foundations receive 60%; religious entities receive 22%; and associations of public interest (q.v.) receive 17%. There are separate legal, registration and

20 Website of the Treasury and Financial Policy General Secretariat.

21 Reg.329/2007 art.7 & 8, and Reg.267/2012 art.24, 26 & 27.

22 Reg.329/2007 art.9, and Reg.267/2012 art.29.

23 The Spanish concept of *association* includes many entities such as clubs, interest groups, etc. which are outside the scope of the FATF definition of NPOs, as they do not primarily engage in raising or disbursing funds.

oversight regimes for each type of NPO.<sup>24</sup> On the risks of the NPO sector, Spain notes that ETA has in the past created NPOs (particularly cultural associations) specifically as a means of financing terrorism. There are also concerns about religious entities receiving funds from overseas as a risk relating to the wider context of potential terrorist activity (in particular radicalisation) rather than directly to the diversion of NPO funds to finance terrorism.

a4.31. *Criterion 8.1.* Spain reviewed the NPO sector and applicable legislation in 2012. (A previous review was conducted in 2004). The 2012 review included extensive information on the sector, and recommended additional legislative measures for well-resourced NPOs. Those measures, eventually applying to all foundations and associations, were introduced by article 42 of RD 304/2014.

a4.32. *Criterion 8.2.* Spanish authorities have produced a best practices paper, in cooperation with key NPO sector stakeholders, which is publicly available and has been disseminated to NPOs registries and groups. There has also been engagement with the sector on self-regulatory initiatives and on the implementation of the new obligations in RD 304/2014. Outreach is not always focused on TF, however wider terrorism risks associated with NPOs (principally radicalisation) are addressed through outreach to minority communities.

a4.33. *Criterion 8.3.* Different policies apply to each type of NPO. Each of the relevant laws includes general provisions regarding the purpose and governance of that NPO type. There is a general obligation to ensure that foundations or associations are not used for ML/TF, or to channel funds to terrorist groups: *AML/CFT Law art.39*. There are further specific measures which must be applied by NPOs in order to access particular streams of funding, including special tax status, funds from the Spanish Agency for International Cooperation and Development (AECID), funds managed through the *Pluralismo y Convivencia* foundation<sup>25</sup>, or other public funds. The criterion is not fully met with respect to all associations which have weaker general good governance obligations than foundations and religious entities (unless they pursue a purpose of general interest that is recognised as such by the Public Administration, and/or as any other NPO, they receive public funds): *see Organic Act 1/2002 art.32.1 for the definition of "associations of public interest"*.

a4.34. *Criterion 8.4.* This criterion is not meant to apply to all NPOs. The measures required vary according to the type of NPO concerned, and its activities and funding sources. There are general requirements applicable to each type of legal entity and, overall, the measures specified by this criterion cover "*the NPOs which account for (i) a significant portion of the financial resources under the control of the sector; and (ii) a substantial share of the sector's international activities*", as is required by R.8:

- a. Foundations are required to implement all of the elements set out in the criterion: maintaining information on the NPO (item a), issuing annual financial statements (b), having controls to account for funds (c), and licensing /registration (d), are required by Law 50/2002. A "know your beneficiaries" rule (e) and the maintenance of transaction records (f) are required by the *AML/CFT Law: art.39*. Additionally, there are external audit requirements for large foundations with assets/income above EUR 2 400 000 and/or more than 50 staff.
- b. Associations are required to implement most of these elements: (a) and (b) are required by Law 1/2002, and elements (e) and (f) are required by the *AML/CFT Law*. There are no mandatory requirements to have controls to account for funds (c), or to be licensed /

A4

24 The legal requirements applying to NPOs are set out in: Law 50/2002 for foundations, Organic Law 1/2002 for associations, and Organic Law 7/1980 for religious entities. Additional requirements for foundations and associations are included in Spain's *AML/CFT Law*. There are further relevant requirements in various other laws and regulations which apply to subsets of the NPO sector such as associations of public purpose, international development NPOs, NPOs subject to a special tax regime, and overseas- or state-funded religious entities.

25 The *Pluralismo y Convivencia* is a public foundation whose purposes include providing economic support to religious minorities. In this framework, it has developed a project which channels foreign finance to minority religious groups. To ensure transparency before the Spanish state and foreign donors, it keeps a follow-up of the origin, destination, and use of funds.

registered (d). Nevertheless, Spanish authorities consider that a large majority of associations have registered.

- c. Additional requirements apply to entities with *Association of public interest* status (which associations must apply for, in order to receive special tax treatment), or for entities receiving public funds or funds from the *Pluralismo y Convivencia* foundation, and for entities with substantial financial sources or activities abroad. *Associations of public interest* do face obligations corresponding to (c) and (d). Of 41 748 associations in Spain, 2 077 have *Association of public interest* status, and 1 944 are registered with the tax agency. Spain considers that these include most of the associations which the FATF's definition would class as NPOs.
- d. Religious entities are required to implement some of these elements: elements (a) and (d) are required by Organic Law 7/1980, but are not required to apply elements (b), (c), (e), or (f), with the exception of: entities receiving funding through the *Pluralismo y Convivencia* foundation or public funding (controls are limited to the co-funded projects or activities); or entities with special tax status (which are required to implement elements (b) and (c)).
- e. Recent regulation applies further obligations to all foundations and associations (but not to religious entities). These include requirements to identify and verify the identity of all persons receiving funds, and all persons donating EUR 100 or more.<sup>26</sup> They are also required to ensure the suitability of their governing body, to have internal controls and maintain records, to report suspicious activity to SEPBLAC, and to cooperate with the ML Commission: *Royal Decree 304/2014 art. 42*.

a4.35. Though the measures applied to foundations are complete, there are significant gaps in the requirements which apply to religious entities, and one requirement (registration) which is not applied to non-public interest associations. Nevertheless, this criterion is still met because the particular subset of the NPO sector to which such preventive measures must be applied is covered, as is noted in the chapeau of the preceding paragraph. The Spanish authorities note that most of the associations and religious entities which meet the FATF definition of an NPO, qualify as *Associations of public interest* in Spanish law, and are therefore subject to the additional requirements set out above. It should also be noted that most of the associations of public interest appear to provide services (e.g., health care, education), rather than expressive activities (e.g., programmes focused on sports and recreation, arts and culture, interest representation, and advocacy which are identified as lower risk). Indeed, the recent FATF typologies report on the *Risk of Terrorist Abuse in Non-Profit Organisations* (2014) noted that: “based on available information, the conclusion emerges that ‘service NPOs’ are most frequently abused by terrorist movements”: para.63.

a4.36. *Criterion 8.5*. Compliance must be monitored by the relevant registry or protectorate, and corresponds closely to the obligation to file accounts. For foundations, the protectorate reviews the annual accounts and supporting information provided by each foundation. In cases of non-compliance, the protectorate may revoke acts, dismiss trustees, or take control, and ultimately suspend or dissolve a foundation. There is no mandatory monitoring for associations or religious entities (though there is monitoring of public interest associations or entities receiving funding through the *Pluralismo y Convivencia* foundation, or any other public funding, and the Tax Agency conducts monitoring of NPOs with special tax status). Where monitoring is conducted, sanctions for non-compliance are in general to withhold the special status or privilege that the requirements are linked to. Failure to meet the obligations under the *AML/CFT Law* are governed by the sanctions regime set out in that act (as described under R.35).

26 The requirement to identify donors exceeds the measures required by Recommendation 8, but was introduced by Spain in 2003, in response to the use of associations by separatist terrorist groups to collect and move funds anonymously. This requirement does not pose an excessive additional burden because NPOs already have to identify their donors and report them to the Tax Agency, so their donors may enjoy tax benefits.

## TERRORIST FINANCING AND FINANCING OF PROLIFERATION

a4.37. *Criterion 8.6.* Spain has a very complex institutional system for the oversight of NPOs. In total there are 8 national and 76 regional bodies which hold information on NPOs. There are 17 autonomous communities in Spain, each of which maintains a registry of associations and a protectorate for foundations. Some autonomous communities include more than one province, and maintain separate provincial registries. Ceuta and Melilla also maintain registries. In total there are 59 regional registries of Associations. There are separate national registries for foundations (held by the Ministry of Education, Culture & Sport), associations (held by the Ministry of Home Affairs), and religious entities (held by the Ministry of Justice), which hold information on entities which are active at national level. For associations, the national registry also indicates which of the regional registries holds information on a given association. In addition, information on NPOs is held by the Tax Authority, SEPBLAC, AECID, the Notary profession's Single Computerised Index, and the *Pluralismo y Convivencia* foundation.

a4.38. Spain has taken the following steps to ensure domestic cooperation, access to information, and reporting of suspicious transactions related to NPOs: a general STR reporting obligation on all public officials; limited information exchange between national and regional registries (to enable authorities to identify which registry holds information on a particular association); and the use of national databases (including the financial ownership file and the notary profession's database which centralises information on foundations, both discussed under R.24). The LEAs have access to this information for investigative purposes. While elements (b) and (c) of the criterion are met, Spain's extremely fragmented pattern of information held by different registries and authorities makes it more difficult to ensure effective exchange of general information on the sector and to raise TF awareness among all involved authorities.

a4.39. *Criterion 8.7.* Spain uses the general procedures and mechanisms for international cooperation to handle requests relating to NPOs, and does not identify additional points of contact or procedures for requests involving NPOs. The assessment of R.37-40 has not identified any substantial problems which would affect cooperation regarding NPOs.

a4.40. *Weighting and conclusion:* Spain's understanding of the risks is good, and its outreach to the NPO sector is adequate. The preventive measures and monitoring criteria are met with respect to foundations and associations of public interest (including some religious entities), which account for most of the sector's financial resources and international activities (although gaps remain for some other types of NPOs). Spain has fragmented institutional arrangements for NPO registration and supervision, but has extensive cooperation and coordination mechanisms to mitigate difficulties arising from this. **R.8 is rated as largely compliant.**

## 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