

## Executive Summary

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

### A. Key Findings

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

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

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

- **Nevertheless, the dissuasiveness and proportionality of sanctions for money laundering offences is a concern.** Fines are often in the millions of euro, but the terms of imprisonment being imposed in practice are low, even in serious ML cases, as are the terms of disbarment for professionals found to be complicit money launderers.
- **Authorities have effectively shut down the financing and support networks of ETA, one of the main domestic terrorist threats to Spain.**
- **However, Spain's implementation of targeted financial sanctions relating to terrorism suffers from serious technical and practical deficiencies.** Spain uses procedures set at the EU level that impose an unacceptable delay on the transposition of new designated entities into sanctions lists, and Spain has never proposed or made any designations itself and chooses not to utilise this tool.
- **Policy and operational coordination on combating proliferation financing is weak.** There is coordination on proliferation-related targeted financial sanctions, and some success in uncovering evasion. However, coordination between export control authorities and AML/CFT authorities is lacking.
- **There are significant gaps in the legal obligations regarding wire transfers,** which do not include obligations regarding information on the beneficiary of a wire transfer, and apply very limited requirements for intermediary financial institutions. This reflects the fact that the EU Wire Transfer regulation has not been updated following the revision of the FATF Standards.
- **Lawyers do not adequately apply the required preventive measures.** The profession has limited awareness of their ML/TF risks and obligations, and effective controls are not in place. This is of particular concern given lawyers' role in sophisticated ML networks within Spain.
- **Measures for enabling access to beneficial ownership information, in particular, the notary profession's Single Computerised Index, are an example of good practice in the context of Spain's legal system.**
- **The authorities and the money or value transfer services sector have taken significant steps to mitigate ML/TF risks, particularly those from agents.** These include a register of high risk agents; stronger internal controls; and systematic reporting with ongoing monitoring by the supervisor. **Nevertheless, some weaknesses remain** regarding the identification of unlicensed operators, and the supervision of MVTs operating under EU passporting rules.

## B. Risks and General Situation

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

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

## C. Overall Level of Compliance and Effectiveness

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **D. Priority Actions**

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

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

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

**Table 1. Effective Implementation of Immediate Outcomes**

<b>Effectiveness</b>	
<b>1. Risk, Policy and Coordination</b>	<b>Substantial</b>
<p>Overall, Spain has done a good job in identifying, assessing and understanding its ML/TF risks and has effective mechanisms in most areas to mitigate these risks. The competent authorities are engaged, well-led and coordinated by the Commission. Coordination is good at the policy level and among supervisors at the policy and operational levels. However, the number and overlapping responsibilities of LEAs makes de-confliction a necessity and coordination a challenge.</p> <p>Given the relatively short period of time the risk-based approach has been formalised among obliged entities as a group, the banking sector has the best understanding of the risks and implements a sound risk-based approach. However, the understanding of risk and implementation of risk-based measures is variable in other sectors. There is also some variability in how well Spain uses the risk assessment to address priorities and policies. The system has resulted in some mitigation of ML and TF risks. However, there is inadequate cooperation and coordination between the competent authorities responsible for export control, and other competent authorities (such as SEPBLAC) who can add value in the area of detecting proliferation-related sanctions evasion.</p>	
<b>2. International Cooperation</b>	<b>Substantial</b>
<p>Spain demonstrates many of the characteristics of an effective system in this area, and only moderate improvements are needed. It generally provides constructive and timely information or assistance when requested by other countries, including: extradition; the identification, freezing, seizing, confiscation and sharing of assets; and providing information (including evidence, financial intelligence, supervisory and available beneficial ownership information) related to ML, TF or associated predicate offences. Some problems have arisen in the context of Spain making requests to and sharing assets with non-EU countries with legal systems which are very different to Spain's. However, these issues do not appear to be overly serious or systemic.</p> <p>Spain routinely seeks international cooperation to pursue criminals and their assets and, in general, this works well. Cooperation with tax havens presents challenges. However, Spain has had some success in resolving some of these issues (for example, involving international cooperation with Andorra, San Marino and Switzerland). The exception is mutual legal assistance and extradition requests to Gibraltar, with whom Spain deals indirectly through the UK authorities which causes delays.</p> <p>All of the law enforcement and prosecutorial authorities met with during the on-site visit viewed international cooperation as a critical matter of high importance. They are focused on providing information, evidence and assistance in a constructive and timely manner, and also proactively seeking international cooperation, as needed. Spain relies heavily on cooperation with its foreign counterparts (particularly when pursuing cases involving the laundering of foreign predicate offences, or the activities of trans-national organised crime groups) and has achieved success in high profile ML and TF cases (for example, White Whale, Malaya, dismantling of ETA's economic and financing network).</p> <p>Spain was also able to provide concrete examples of organised crime groups and financing networks of terrorist groups which have been dismantled through these efforts. This is an important factor in the Spanish context, given the nature of its ML/TF risks.</p>	

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

### 3. Supervision

**Substantial**

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

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

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

### 4. Preventive Measures

**Moderate**

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

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

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

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

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

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

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

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

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

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

**5. Legal Persons and Arrangements****Substantial**

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

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

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

**6. Financial Intelligence****High**

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

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

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

## 7. ML Investigation and Prosecution

**Substantial**

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

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

## 8. Confiscation

**Substantial**

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

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

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

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

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

## 9. TF Investigation and Prosecution

**Substantial**

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

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

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

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

## 10. TF Preventive measures & financial sanctions

**Moderate**

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

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

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

## Effectiveness

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

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

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

## 11. PF Financial sanctions

**Moderate**

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

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

**Table 2: Compliance with FATF Recommendations**

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. <b>Assessing risks &amp; applying a risk-based approach</b>	C	
2. <b>National cooperation and coordination</b>	LC	<ul style="list-style-type: none"> <li>• There is inadequate cooperation and coordination between the competent authorities responsible for export control, and other competent authorities (such as SEPBLAC) who can add value to the detection and investigation of proliferation-related sanctions violations.</li> </ul>
3. <b>Money laundering offence</b>	LC	<ul style="list-style-type: none"> <li>• Sanctions for professional gatekeepers (terms of disbarment) are not sufficiently dissuasive.</li> <li>• Certain State-owned enterprises are exempt from criminal liability.</li> </ul>
4. <b>Confiscation and provisional measures</b>	C	
5. <b>Terrorist financing offence</b>	LC	<ul style="list-style-type: none"> <li>• The TF offence does not cover the financing of an individual terrorist (who is not part of a terrorist organisation/group) for purposes unrelated to the commission of a terrorist act.</li> <li>• The TF offence in article 576bis only covers funds (not assets of every kind).</li> <li>• Certain State-owned enterprises are exempt from criminal liability.</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
<b>6. Targeted financial sanctions related to terrorism &amp; TF</b>	PC	<ul style="list-style-type: none"> <li>• For resolutions 1267/1989 and 1988, implementation of targeted financial sanctions does not occur “without delay”, which also raises the question of whether the freezing action, in practice, takes place without prior notice to the designated person/entity.</li> <li>• For resolution 1373:               <ol style="list-style-type: none"> <li>a. there are no clear mechanisms at the EU level for requesting non-EU countries to give effect to the EU list and, no clear channels or procedures at the domestic level for requesting other countries to give effect to actions initiated under the Watchdog Commission freezing mechanism.</li> <li>b. listed EU internals are not subject to the freezing measures of EU Regulation 2580/2001, and domestic measures do not adequately fill this gap.</li> <li>c. the freezing obligation does not cover a sufficiently broad range of assets under the EU framework, and domestic legislation does not fill these gaps</li> <li>d. the prohibitions are not sufficiently broad.</li> </ol> </li> </ul>
<b>7. Targeted financial sanctions related to proliferation</b>	PC	<ul style="list-style-type: none"> <li>• Delays in transposing the UN obligations into the EU legal framework mean that targeted financial sanctions are not implemented without delay, which also raises the question of whether the freezing action, in practice, takes place without prior notice to the designated person/entity.</li> </ul>
<b>8. Non-profit organisations</b>	LC	<ul style="list-style-type: none"> <li>• Not all associations are subject to clear policies to promote transparency, integrity, and public confidence in their administration and management.</li> <li>• Spain’s extremely fragmented pattern of information held by different registries and authorities may make difficult the effective gathering of general information on the sector and might lead to uneven monitoring.</li> </ul>

### Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
9.	Financial institution secrecy laws	C	
10.	Customer due diligence	LC	<ul style="list-style-type: none"> <li>There is no requirement to consider an STR in all cases where CDD cannot be completed, although the general STR and special review obligations do partially address this requirement.</li> </ul>
11.	Record keeping	C	
12.	Politically exposed persons	C	
13.	Correspondent banking	C	
14.	Money or value transfer services	C	
15.	New technologies	C	
16.	Wire transfers	PC	<ul style="list-style-type: none"> <li>Obligations on ordering FIs do not include requirements relating to information on the beneficiary of a wire transfer.</li> <li>Obligations on beneficiary FIs do not include requirements relating to information on the beneficiary of a wire transfer.</li> <li>Intermediary FIs are not required to:               <ol style="list-style-type: none"> <li>ensure that all beneficiary information received and accompanying a wire transfer, is kept with the transfer;</li> <li>take reasonable measures to identify cross-border wire transfers that lack originator information or required beneficiary information, or</li> <li>have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take the appropriate action.</li> </ol> </li> </ul>

## Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
17.	Reliance on third parties	LC	<ul style="list-style-type: none"> <li>The level of country risk is not taken into account when considering whether reliance is permitted on a third party in another EU country.</li> </ul>
18.	Internal controls and foreign branches and subsidiaries	C	
19.	Higher-risk countries	C	
20.	Reporting of suspicious transaction	C	
21.	Tipping-off and confidentiality	C	
22.	DNFBPs: Customer due diligence	LC	<ul style="list-style-type: none"> <li>The deficiency identified in relation to R.10, relating to failure to complete CDD, also applies in the case of DNFBPs.</li> <li>The level of country risk is not taken into account when considering whether reliance is permitted on a third party in another EU country—a deficiency identified in relation to R.17 that is only relevant to some types of DNFBP.</li> </ul>
23.	DNFBPs: Other measures	C	

## Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
24.	<b>Transparency and beneficial ownership of legal persons</b>	LC	<ul style="list-style-type: none"> <li>• There are no specific mechanisms to ensure the accuracy of declarations by customers, or of the records held by companies on beneficial ownership, such as inspections, or penalties for providing false or incomplete information.</li> <li>• For public companies (SA) which are not publicly listed on a stock exchange, there are insufficient transparency requirements on transfers of shares.</li> <li>• There is no specific liability or sanction in cases where a company fails to maintain accurate information on its beneficial ownership, or where it makes a false or incomplete declaration to a financial institution or DNFBBs, and sanctions for filing false information only exist with respect to information given to tax authorities, notaries, or the CNMV.</li> <li>• Only SEPBLAC assesses the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership information, but the other authorities do not do this in a systematic way, and results are not collated.</li> </ul>
25.	<b>Transparency and beneficial ownership of legal arrangements</b>	LC	<ul style="list-style-type: none"> <li>• Specific sanctions for failing to comply with their obligations apply to professional trustees and fiduciarios, but do not apply to non-professional trustees.</li> </ul>
26.	<b>Regulation and supervision of financial institutions</b>	LC	<ul style="list-style-type: none"> <li>• For core principles institutions, there are deficiencies in how some core principles relevant to AML/CFT are being implemented.</li> <li>• The prudential supervisors in the insurance and securities sectors do not have a sufficiently well-developed RBA to supervision.</li> </ul>
27.	<b>Powers of supervisors</b>	C	
28.	<b>Regulation and supervision of DNFBBs</b>	LC	<ul style="list-style-type: none"> <li>• The powers to prevent criminals or their associates from being accredited, or from owning, controlling, or managing a DNFBB are limited.</li> </ul>
29.	<b>Financial intelligence units</b>	C	

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
30. Responsibilities of law enforcement and investigative authorities	C	
31. Powers of law enforcement and investigative authorities	C	
32. Cash couriers	C	
33. Statistics	C	
34. Guidance and feedback	C	
35. Sanctions	C	
36. International instruments	C	
37. Mutual legal assistance	C	
38. Mutual legal assistance: freezing and confiscation	C	
39. Extradition	LC	<ul style="list-style-type: none"> <li>Because Spain has not criminalised the financing of an individual terrorist (who is not part of a terrorist organisation/group) for purposes unrelated to the commission of a terrorist act, extradition to non-EU countries would not be possible in such cases because the dual criminality requirement cannot be met.</li> </ul>
40. Other forms of international cooperation	C	