



FINANCIAL ACTION TASK FORCE

# Mutual Evaluation Fourth Follow-Up Report

Anti-Money Laundering and Combating the  
Financing of Terrorism

# SPAIN

22 October 2010

Following the adoption of its third Mutual Evaluation (MER) in June 2006, in accordance with the normal FATF follow-up procedures, Spain was required to provide information on the measures it has taken to address the deficiencies identified in the MER. Since June 2006, Spain has been taking action to enhance its AML/CFT regime in line with the recommendations in the MER. The FATF recognizes that Spain has made significant progress and that Spain should henceforward report on a biennial basis on the actions it will take in the AML/CFT area.

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## THIRD MUTUAL EVALUATION OF SPAIN: FOURTH FOLLOW-UP REPORT

### Application to move from regular follow-up to biennial updates

*Note by the Secretariat*

#### I. Introduction

1. The third mutual evaluation report (MER) of Spain was adopted on 23 June 2006. At the same time, Spain was placed in a regular follow-up process<sup>1</sup>. Spain reported back to the FATF in June 2008, June 2009 and February 2010. Spain indicated that it would report to the Plenary again in October 2010 concerning the additional steps taken to address the deficiencies identified in the report and apply to move from regular follow-up to biennial updates.

2. This paper is based on the procedure for removal from the regular follow-up, as agreed by the FATF plenary in October 2008<sup>2</sup>. The paper contains a detailed description and analysis of the actions taken by Spain in respect of the core and key Recommendations rated PC or NC in the mutual evaluation, as well as a description and analysis of the other Recommendations rated PC or NC, and for information a set of laws and other materials (Annex 1). The procedure requires that a country “has taken sufficient action to be considered for removal from the process – to have taken sufficient action in the opinion of the Plenary, it is necessary that the country has an effective AML/CFT system in force, under which the country has implemented the following Recommendations at a level essentially equivalent to a C or LC, taking into consideration that there would be no re-rating”: Recommendations 1, 3 - 5, 10, 13, 23, 26, 35 - 36, and 40 and Special Recommendations I – V (set of core and key Recommendations). Spain was rated partially compliant (PC) or non-compliant (NC) on the following Recommendations:

Partially compliant (PC)	Non-compliant (NC)
<b>Core Recommendations<sup>3</sup></b> R.5 (Customer due diligence)	<b>Core Recommendations</b> None
<b>Key Recommendations<sup>4</sup></b> R. 23 (Regulation, supervision & monitoring) SR I ( Implementation of UN instruments)	<b>Key Recommendations</b> None

<sup>1</sup> For details regarding the follow-up process, please refer to the FATF mutual evaluation procedures dealing with the follow-up process (§35 and following).

<sup>2</sup> Third Round of AML/CFT Evaluations Processes and Procedures, paragraph 39c. and 40.

<sup>3</sup> According to the FATF mutual evaluation follow-up procedures, the core Recommendations are: R.1, R.5, R.10, R.13, SR.II and SR.IV.

<sup>4</sup> According to the FATF mutual evaluation follow-up procedures, the key Recommendations are: R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR.I, SR III and SR.V.

Partially compliant (PC)	Non-compliant (NC)
<p><b>Other Recommendations</b></p> <p>R. 8 (New technologies &amp; non face-to-face business)</p> <p>R. 12 (Designated non-financial businesses &amp; professions [DNFBP])</p> <p>R. 16 (DNFBP)</p> <p>R. 18 (Shell banks)</p> <p>R. 25 (Guidelines &amp; feedback)</p> <p>R. 29 (Supervisors)</p> <p>R. 30 (Resources, integrity &amp; training)</p> <p>R. 32 (Statistics)</p> <p>R. 33 (Legal persons)</p>	<p><b>Other Recommendations</b></p> <p>R.6 (PEPs)</p> <p>R.7 (Correspondent banking)</p> <p>R. 24 (DNFBP – Regulation, supervision &amp; monitoring)</p>

3. As prescribed by the Mutual Evaluation procedures, Spain provided the Secretariat with a full report on its progress. The Secretariat has drafted a detailed analysis of the progress made for Recommendations 5, 23 and SRI (see rating above), as well as an analysis of all the other Recommendations rated PC or NC. A draft analysis was provided to Spain (with a list of additional questions) for its review, and comments received; comments from Spain have been taken into account in the final draft. During the process, Spain has provided the Secretariat with all information requested.

4. As a general note on all applications for removal from regular follow-up: the procedure is described as a *paper based desk review*, and by its nature is less detailed and thorough than a mutual evaluation report. The analysis focuses on the Recommendations that were rated PC/NC, which means that only a part of the AML/CFT system is reviewed. Such analysis essentially consists of looking into the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been made, effectiveness is taken into account to the extent possible in a paper based desk review and primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudice the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in every case, as comprehensive as would exist during a mutual evaluation.

## II. Main conclusion and recommendations to the Plenary

5. **Core Recommendations:** Spain has taken substantive action towards improving compliance with Recommendation 5, and nearly all of the deficiencies identified in the MER relating to the customer due diligence (CDD) framework have been addressed by the new AML/CFT law. Although a few shortcomings remain, Spain has taken sufficient action to bring its compliance to a level essentially equivalent to LC.

6. **Key Recommendations:** as far as Recommendation 23 is concerned, Spain has made some progress, e.g. in the frequency of SEPBLAC and the Bank of Spain inspections, and the extension of fit and proper tests. Some actions remain in order to fully address the deficiencies highlighted in the MER (that relate to effectiveness issues), but Spain's overall compliance is equivalent to LC.

7. With regard to Special Recommendation I<sup>5</sup>, Spain has fully addressed the shortcomings identified in the MER in relation to its TF offence. Spain has also taken some actions to address some of the shortcomings in relation to SR III (keeping in mind that Spain was rated LC on SR III). In parallel to these domestic initiatives, the report notes some important developments that have occurred in relation to UNSCR 1267 and 1373 at EU level since the adoption of the MER and which could impact Spain's ability to comply with SR III (see para. 82 and 83). However, a clear judgement on the impact of these changes is very difficult to make in the context of this desk review. It also raises a procedural issue, since looking into this issue in detail would require examining a Recommendation that was rated LC at the time of the MER based on new developments. This is not dealt with by the follow-up procedures. In the light of all of this, it is proposed that the progress made by Spain in relation to its TF offence and some requirements under SR III is considered sufficient to conclude that Spain's compliance with SRI is equivalent to an LC. This does not prejudice in any way the conclusions of a more thorough assessment of Spain's (or any other EU country) compliance with SR III and linked Recommendations that will have to take place in the context of a proper evaluation based on the developments occurring at EU level.

8. **Other Recommendations:** Spain has achieved a sufficient level of compliance with Recommendations 6, 7, 8, 12, 16, 18, 24, 29 and 30. Spain has also made efforts to improve its compliance with Recommendations 25, 32 and 33, though deficiencies remain and implementation of these recommendations has not yet reached a level equivalent to an LC rating.

9. **Conclusion:** Overall, Spain has reached a satisfactory level of compliance with the Core and Key Recommendations. Consequently, it is recommended that this would be an appropriate circumstance for the Plenary to remove Spain from the regular follow-up process, with a view to having it present its first biennial update in October 2012.

### III. Overview of Spain's progress

#### A. Overview of the main changes since the adoption of the MER

10. The most significant change in the AML/CFT regime was the enactment of Act 10/2010 on prevention of money laundering and terrorist financing, which entered into force on 30 April 2010 and which transposes the European Directive 2005/60/EC (the Third Money Laundering Directive). The new law brings together the preventive systems for money laundering and terrorist financing, previously split under AML Law 19/1993 and Law 12/2003. Under the new regime, preventive requirements fall under the scope of Act 10/2010, with compliance supervision being the responsibility of SEPBLAC (FIU) and sanctioning powers falling under the Ministry of Finance. The blocking and freezing of funds potentially linked to terrorism continue to be governed by Act 12/2003 under the authority of the Ministry of Home Affairs through the Commission on Terrorist Financing Monitoring. Royal Decree 925/1995 (that sets out detailed requirements that add to the Act and that were in force at the time of the adoption of the MER in 2006) remains in force insofar as the measures are not incompatible with the new Act and until a new Royal Decree implementing the Act comes into force (by April 2011).

11. The new Act brings some significant changes including the extension of the predicate offence to include all crimes (until now under the administrative regime only offences punished with more than three year imprisonment were considered), the inclusion of self-laundering, the coverage of more businesses (such as TCSPs, Property and Trade Registries), and the strengthening of CDD measures including in relation to beneficial ownership. The Act also includes new requirements dealing with, *inter alia*, PEPs,

<sup>5</sup> The factors underlying the PC rating of SR I related both to the lack of implementation of the Terrorist Financing Convention and to the lack of implementation of the UN resolutions relating to the prevention and suppression of TF. Spain was rated LC in relation to SR III.

correspondent banking, products and new technological developments favouring anonymity or reliance on third parties to conduct CDD. A new element is the creation of a system to track financial assets through the creation of a file containing data declared by credit institutions and which will be accessible by competent authorities.

12. At the institutional level, SEPBLAC, formerly an integral part of the Bank of Spain, is now under the umbrella of the Commission for the Prevention of Money Laundering (an inter-ministerial body in charge of the co-ordination of the AML/CFT preventive regime). Notwithstanding the supervisory powers of SEPBLAC and in order to ensure a more extensive and effective supervision, Act 10/2010 empowers the Commission to sign agreements with the various prudential supervisors thus enabling these bodies to monitor the compliance of reporting entities with AML/CFT requirements.

13. The changes brought by the new legislation have been broadly disseminated. During the drafting of the law, there was a public hearing process, where representatives of the private sector had meetings with the legislature and presented comments on the draft bill. Meetings with various bodies involved, among others, associations from banks, saving banks, insurance companies and brokers, collective investment schemes and pension funds, lawyers, notaries, tax advisors, money remittance companies, real estate sector, etc. The draft law was made public on the Parliament's website from November 2009 to April 2010. Additionally, before and since the law was passed, Spanish authorities presented the amendments introduced by the law in a number of seminars.

14. The other major legislative change is the amendment of the Penal Code, enacted on 22 June 2010 through Organic Law 5/2010. The amended text explicitly criminalises self laundering, establishes criminal responsibility of legal persons and criminalises the provision or collection of funds with the intention that they should be used or in the knowledge that they are to be used by a terrorist group or to commit a terrorist act.

15. In addition, Spain has approved several pieces of secondary legislation: (1) Ministerial Orders EHA/2619/2006 and EHA/114/2008 further details the AML requirements for institutions engaged in currency exchange and money remittance on the one hand, and for the notaries on the other hand; (2) Ministerial Order EHA/2444/2007 provides further requirements and guidance to external auditors in their task of assessing AML/CFT internal controls of reporting entities.

## **B. The legal and regulatory framework**

16. "Acts" and "organic laws" are primary legislation in Spain. The Government may also issue secondary legislation, including "ministerial orders" or "royal decrees". The legal instruments adopted in 2010 to strengthen the AML/CFT regime in Spain can therefore be considered equivalent to "law or regulation" for the purposes of the AML/CFT Methodology.

## **IV. Review of the measures taken in relation to the Core Recommendations**

### **Recommendation 5 – rating PC**

***R. 5 (Deficiency 1): When CDD is required: there is no direct obligation to undertake CDD measures when financial institutions have doubts about the veracity or adequacy of previously obtained customer identification data (C.5.2).***

17. This deficiency is now fully addressed. Section 7.1 paragraph 3 of Act 10/2010 explicitly requires the conduct of CDD measures in such situations ("*in all events, the institutions and persons covered by this Act shall implement the due diligence measures when there is suspicion of money*").

laundering or terrorist financing, regardless of any derogation, exemption or threshold, or when there are doubts about the veracity or adequacy of previously obtained data”).

18. It is noticeable that Act 10/2010 does not establish any monetary threshold for the application of CDD measures (Article 3.1 of the Act states the following: “*the institutions and persons covered by this Act shall identify the natural or legal persons intending to enter into business relationships or act in any transaction*”). Spanish authorities indicate that, in line with the wording of the Act, CDD measures must be conducted in the case of occasional transactions as foreseen in Recommendation 5 and irrespective of any threshold. Article 10.3 of the Act introduces a caveat since it states that the future Royal Decree might allow financial institutions and DNFBPs not to apply some or all CDD measures to occasional customers performing transactions under a threshold to be determined, but which, as a general rule, will not exceed EUR 1 000. For occasional transactions that are not wire transfers, and until the approval of a new Royal Decree, the thresholds set out in Royal Decree 925/1995 are still applicable (EUR 3 000 for occasional customers of financial institutions, EUR 8,000 in the case of some DNFBPs). The applicable thresholds are below the accepted FATF threshold of EUR 15 000. With regard to occasional transactions that are wire transfers, Article 4 of Royal Decree 925/1995 expressly requires conducting CDD measures for all wire transfers (regardless of their value). In the case the Royal Decree to be adopted sets out a threshold for occasional wire transfers, it will not exceed EUR 1,000 in accordance with Article 10.3 of the Act. Spanish law therefore now requires financial institutions and DNFBPs to conduct normal CDD measures (including the identification of the beneficial owner<sup>6</sup>) for any wire transfers and irrespective of the agreed FATF EUR/USD 1 000 threshold (if a threshold was introduced by regulation, it would not exceed EUR 1 000).

***R. 5 (Deficiency 2): Required CDD measures: (1) the current provisions do not set out requirements in relation to the verification of identification data for natural persons or for legal entities (except the verification of information related to the nature of the business) (C.5.3); (2) no specific provisions have been adopted for legal arrangements (especially for trusts) (C.5.4).***

19. *Verification of identification data for natural and legal persons.* Act 10/2010 requires in article 3.2 the verification of the identity of all customers<sup>7</sup>, whether regular or not. Documents that may be accepted for verification purposes are to be detailed in the future regulation implementing the Act (Royal Decree to be adopted by April 2011), but an express mention is made in the Act that such documents must be reliable and irrefutable documentary evidence. This deficiency has been addressed.

20. Royal Decree 925/1995 (article 3), modified by Royal decree 54/2005 of 21 January 2005, provides that at the time of initiating business relations or conducting any transactions, covered entities should obtain from their customers, whether regular or not, documents proving their identity. Such documents are as follows: (a) when the customer is a natural person, a Spanish ID, residence permit, passport or an identity document valid in the country of origin of the customer, provided it has a photograph of the holder; (b) for customers that are legal persons, an official document confirming their name, legal form, registered address and corporate purpose, without prejudice to the mandatory communication of their tax identification number. With regard to legal persons, these documents are official documents proving the existence of the legal person and include information on its directors/administrators. Articles 8 and 9 of the Law on Public Limited Companies states that the deed of incorporation and the bylaws must include the elements underlined above and also the names of the

<sup>6</sup> Article 4.1 sets out the following: “*the institutions and persons covered by this Act shall identify the beneficial owner and take appropriate steps to verify the identity of the latter before entering into business relations or executing any transactions*”.

<sup>7</sup> Act 10/2010 does not systematically refer to the notion of “customer” but “participant” that is considered to be a wider concept than customer *i.e.* the requirements fall on anybody (natural person, legal person or legal arrangement) that makes or participates in any transaction.

persons empowered to manage and represent the company. On the other hand, Article 94 of the Royal Decree 1784/1996 regulating the Trade Registry requires registering the beginning or end of the appointment of the administrators of any company and also the powers of representation. The certificates of the Trade Register that can be obtained through Internet incorporate all this updated information.

21. *Verification of identification data for legal arrangements.* Article 7.4 of Act 10/2010 provides that “*the institutions and persons covered by this Act shall apply the due diligence measures set forth in this Chapter to trusts and other legal arrangements or patrimonies without legal personality which, despite lacking legal personality, may act in the course of trade*”<sup>8</sup>.

22. The requirement to identify the trustees and the persons representing the company is also foreseen in Article 3 of Act 10/2010, which calls for the identification of all the participants. The term participants includes not only the customer that is the legal person or arrangement but also the persons representing the legal person or the legal arrangement (i.e. the trustee). In addition Article 4.c) requires the identification of the natural person holding or controlling 25% or more of the assets of a legal arrangement (i.e. the trustee).

23. Under the Act, the CDD measures involve: customer identification and verification (articles 3 and 7); beneficial ownership (article 4, *see deficiency 3*); information on the purpose and intended nature of the business relationship (article 5), on-going due diligence (article 6) and third-party reliance (article 8).

24. The requirements set out in Act 10/2010 are in line with the FATF standards. Deficiency 2 has been addressed.

***R. 5 (Deficiency 3): Identification of beneficial owners: financial institutions are left with very general and imprecise requirements (this raises the issue of effective implementation of the requirement) (C.5.5).***

25. Section 4 of Act 10/2010 provides for detailed CDD requirements concerning beneficial ownership. Financial institutions and DNFBPs covered by the Act are required to identify the beneficial owner and take adequate measures to verify the identity of the latter. They also have to take appropriate steps to identify the structure of ownership and controls of legal persons. Section 4 b and c) define the beneficial owner for legal persons and arrangements whilst Section 4 a) essentially relates to natural persons. Spanish authorities indicate that as a whole these provisions cover, for all types of customers, the concept of natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted as defined by the FATF.

26. For the purpose of the Act, *beneficial owner* means the (a) *natural person or persons<sup>9</sup> on whose behalf a transaction or activity is being conducted or takes part in any transaction;* (b) *natural person or persons who ultimately owns or controls, directly or indirectly, a percentage of more than 25 percent of the capital or voting rights of a legal person, or who otherwise exercises control, directly or indirectly, over the management of a legal person. Companies listed on a regulated market of the European Union or equivalent third countries are excepted;* (c) *natural person or persons who are the beneficiary of or control over 25 percent or more of the property of a legal arrangement or entity that administers or distributes funds, or, where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest it is set up or operates”.*

<sup>8</sup> Trusts cannot be incorporated or constituted in Spain. However, Article 4.4 also applies to foreign legal arrangements, i.e. trusts incorporated in a third country that intend to conduct business in Spain.

<sup>9</sup> For a particular legal person or arrangement, more than one person could own or control more than 25% of the assets and be considered as beneficial owner.

27. The Act introduces an exemption from the obligation to identify the beneficial owner in relation to “companies listed on a regulated market of the European Union or equivalent third countries”. In the case of listed companies on a recognised stock exchange, the FATF standards do not require identifying and verifying the identity of the shareholders of that public company (it is assumed that the information is publicly available).

28. The institutions and persons covered by the Act are also required to gather information from customers to determine whether they are acting on their own or for third parties. Where there are indications or certainty that clients are not acting on their own, the institutions and persons covered by the Act shall gather the information required in order to find out the identity of the persons on whose behalf they are acting.

29. The institutions and persons covered by the Act are required to take adequate measures to ascertain the ownership and control structure of the legal person. Spanish authorities indicate that this is an *obligation de résultat* and not merely an *obligation of moyens*; therefore, this implies that the obliged entities are required, when there is a chain of legal entities in the chain of ownership, to determine the natural persons who are the ultimate beneficial owners. Consequently, if the required result is not achieved, there is a formal prohibition from establishing or maintaining the business relationship (Article 4.4 of the Act). The Act leaves the determination of the means to achieve this result to the discretion of the obliged entities although supervisory authorities can check ex post the reasonability of the implemented policies<sup>10</sup>.

30. Such requirements also apply to legal arrangements (as mentioned above, the customer due diligence measures set forth in the Act equally apply to trusts and other legal arrangements or entities without legal personality). The verification of beneficial ownership information is also set out in Article 3.2 of Act 10/2010.

31. In the case of corporations that issue bearer shares, the previous prohibition is applicable unless the obliged subject ascertains by other means (see footnote 10) the ownership and control structure<sup>11</sup>. This provision is not applicable to companies that decide to convert their shares into registered securities or book entries (see Article 4.4 of the Act).

32. Act 10/2010 imposes very detailed requirements in relation to beneficial ownership. In that sense, deficiency 3 has been addressed. It should be noted however that the general concept of “natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted” as defined by the FATF is not very clearly reflected in the Act. Finally, since a new legal framework is now in place, it is important that the Spanish authorities ensure an adequate and effective implementation of the requirements on beneficial ownership by all reporting entities.

<sup>10</sup> Examples of such means are obtaining the deed of incorporation and up-dated by-laws of limited liability companies since ownership changes must be registered before a notary (most of the companies in Spain are LLCs), obtaining information through the National Exchange Commission, obtaining a copy of the corporate tax declaration form (shareholders with more than 5% of the shares must be declared, more than 1% if it is a listed company), obtaining the shareholders’ book, certification by the administrator of the legal person, commercial reports, etc.

<sup>11</sup> Spanish authorities indicate that the number of companies holding bearer shares in Spain has decreased significantly due to the minimum capital requirements for the creation of a joint stock company (*sociedad anónima* - which are the only ones that can issue bearer shares) and to the fact that companies with bearer shares cannot be traded on the stock market.

**R. 5 (Deficiency 4): Ongoing Due Diligence: there is no clear or direct obligation in the Royal Decree requiring financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant (C.5.7.2).**

33. Article 6 of Act 10/2010 introduces a direct requirement to keep documents, data and information held in relation to the customer up-to-date (“the institutions and persons covered by this Act shall conduct ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with their knowledge of the customer, its business and risk profile, including the source of funds and to ensure that the documents, data and information held are kept up-to-date”). Deficiency 4 has been addressed.

**R. 5 (Deficiency 5): Risk: (1) RD 925/1995 is silent on the type of additional identification and “know-your-customer” measures to be taken by financial institutions when facing a higher risk transaction or customer (this raises the issue of effective implementation of the requirement) (C.5.8); (2) with regard to low risk situations, the current exemptions mean that, rather than reduced or simplified CDD measures, no CDD measures apply whatsoever for these cases. This appears to be an overly broad exemption from CDD requirements although Article 5 of RD 925/1995 (special examination of certain transactions) is fully applicable to these situations (C.5.9); (3) there is no direct or clear provision setting out that the current exemptions are not acceptable whenever there is a suspicion of money laundering or terrorist financing (C.5.11).**

34. The previous AML/CFT regime already envisaged a risk-based approach, by identifying several situations requiring enhanced KYC measures and some low-risk situations, where the application of CDD measures was exempted. Covered entities were also requested to consider risk in their internal procedures concerning customer acceptance, due diligence and monitoring. Act 10/2010 strengthens the risk-based approach and further details those enhanced CDD measures that should be taken in particular situations.

35. *High risk scenarios.* Enhanced due diligence measures are dealt with in Section 3 of Chapter II (articles 11-16) of the Act. The law identifies the additional CDD measures to be applied for:

- Non-face-to-face business relationships and transactions (art. 12) (see below comments to deficiencies in relation to Recommendation 8);
- Cross-border banking relationships (art. 13). The previous regime identified these relationships as high-risk ones but was silent on the measures to be adopted by covered institutions. Act 10/2010 details such requirements (see the comments below on deficiencies in relation to Recommendation 7);
- PEPs (art. 14). The previous regime did not have any provision concerning PEPs, although the guidelines issued by the Commission for the Prevention of Money Laundering recommended and SEPBLAC required entities to consider them as potentially high-risk customers and therefore to include enhanced identification and control mechanisms in their internal control procedures. Act 10/2010 details the specific additional measures to be taken for these customers (see the comments below on deficiencies in relation to Recommendation 6).

36. Act 10/2010 also identifies private banking, money remittance services and currency exchange services (art. 11) and products and transactions favouring anonymity and new technological developments (art. 16) as areas presenting higher risks for money laundering and terrorist financing, and requires covered entities to apply appropriate additional CDD measures to mitigate those risks. Companies holding bearer shares are considered as high-risk customers.

37. The list of higher risk scenarios contained in the Act is not intended to be exhaustive since Article 11 also opens the possibility for a royal decree to be adopted identifying other situations that may

be regarded as high-risk scenarios. In addition, Article 11 requires entities subject to the Act to apply, on a risk-sensitive basis, enhanced CDD measures in the situations that according to their assessment might present higher money laundering or terrorist financing risks. To this end, Article 7 obliges them to put in place a policy of customer acceptance, taking into account the risk associated with the customer, the business relationship, the product or the transaction and to apply CDD measures accordingly. The risk analysis carried out by the entity must be available in writing and at the disposal of the competent authorities.

38. Currently determination of the specific CDD measures to be taken in high-risk scenarios is left to the discretion of the entities subject to the Act that are required to prove to the competent authorities the adequacy of the extra measures taken. The Act only describes the enhanced CDD measure that need to be taken when dealing with PEPs (see Article 14.2 of the Act). Spanish authorities indicate that the future royal decree might foresee the application of specific enhanced CDD measures in some or all of the identified high-risk scenarios in line with Article 14.2 (approval by senior management, enhanced monitoring, determination of the source of funds...) and where appropriate. The Spanish authorities are encouraged to provide examples of enhanced CDD measures relating to Article 14.2 et seq.

39. *Low-risk scenarios.* Articles 9 and 10 of the Act respectively identify some situations where covered entities are allowed not to apply the full range of CDD measures for low-risk customers, products or transactions. In all cases, the entities covered by the Act must identify the natural or legal persons intending to enter into a business relationship or to act in any transaction (art. 3.1 of the Act). In case of identified low-risk customer/transaction/product, the entities covered by the Act are exempted from the following CDD requirements: (i) verification of the customer identity; (ii) identification and verification of the beneficial owner; (iii) obtaining information in relation to the purpose and nature of the business relationship and (iv) ongoing monitoring of the business relationship.

40. According to Article 9.1, the following customers are considered as low-risk:

- The public entities (i.e. the public administrations and public enterprises) of the member states of the European Union or equivalent third countries;
- Financial institutions with registered offices in the European Union or equivalent third countries provided that they are supervised for compliance with customer due diligence;
- Listed companies whose securities are admitted to trading on a regulated market in the European Union or equivalent third countries.

41. Low-risk products, according to Article 10.1, are as follows:

- a) life insurance policies where the annual premium is no more than EUR 1 000 or the single premium is no more than EUR 2 500, except when the transactions appear to be linked;
- b) additional social welfare instruments provided that the liquidity is limited to the situations covered in the regulations on pension plans and funds and provided that they may not be used as collateral for a loan;
- c) collective insurance entailing pension commitments subject to certain conditions, among others that they cannot be used as collateral for loans;
- d) electronic money in the terms to be defined in the Regulation.

42. Article 9.3 states that in all events, the institutions and persons subject to the Act must gather sufficient information to establish whether the customer qualifies for an exemption as laid down in Article 9.

43. Although Article 9.3 imposes a minimum requirement on entities subject to the Act (i.e. the identification of the customer or “participant” in the transaction or the business relationship (see footnote 6), the exemptions stated in Article 9.1 and Article 10.1 are not fully in line with the FATF standards since the standards do not allow for an exemption from identifying the beneficial owner. Exempting from ongoing monitoring of the business relationship is not foreseen either.

44. The FATF recognises that government administrations or enterprises, financial institutions – provided that they are subject to requirements to combat money laundering and terrorist financing consistent with the FATF Recommendations and are supervised for compliance with those requirements – and public companies that are subject to regulatory disclosure requirements (i.e. that are listed on a stock exchange or similar situations) are possible examples of customers where the ML/TF risk may be lower. In Spain, financial institutions with registered offices in the European Union or equivalent third countries, provided that they are supervised for compliance with customer due diligence, are customers to which reduced may CDD apply. Spanish authorities indicate that it is the responsibility of the public authorities (and not to the entities subject to the Act themselves) to determine which financial institutions within the EU and any third country are adequately supervised and can be exempted from the application of certain CDD measures. In addition, it is the responsibility of the Commission for the Prevention of Money Laundering to determine what countries should be regarded as equivalent third countries, on the basis that they have similar preventive legal regimes to that of Spain. It is the responsibility of the authorities to make these analyses and to provide entities subject to the Act with a list of the cases where 9.1.b) is applicable and more broadly with a list of countries regarded as equivalent. Such a list has been published through the Treasury Resolution of 10 September 2008. This resolution transposes the EU Common Understanding between Member States on third country equivalence. The Treasury intends to publish on its web page an updated list of countries, territories or jurisdictions considered as equivalent third countries.

45. It has to be noted that simplified CDD measures are not allowed systematically in the above mentioned situations since by order of the Ministry of Finance, the application of simplified due diligence may be excluded for certain customers<sup>12</sup>.

46. The list of low ML/TF risk products set out in Article 10.1 is generally in line with the FATF standards (see C.5.9 of the Methodology). With regard to “electronic money as defined in the Regulation” (the royal decree to be adopted), it is intended to address Article 11.d) of the Third EU Directive<sup>13</sup>. In the absence of the royal decree that will set out the details of this exemption, this provision is not in force yet.

47. Articles 9 and 10 provide that the application of simplified due diligence measures in respect of other customers, products or transactions representing a low risk of money laundering or terrorist financing, may be authorised in the regulation (the royal decree to be adopted). Spanish authorities indicate that, based on a preliminary analysis, they have not identified additional categories of customers that might present a low risk for ML/TF and that they do not envisage development of this exemption further in the future royal decree. Article 10.3 (second paragraph) states that “the non-application of all or some of the due diligence measures in respect of transactions not exceeding a quantity threshold that, either

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<sup>12</sup> The Ministry of Economy has not yet published a relevant order. This mechanism is a safeguard for potential situations in which entities in EU countries are not satisfactorily applying AML/CFT measures or specific entities pose a significant risk (having been involved in ML/TF schemes...).

<sup>13</sup> “Electronic money, as defined in Article 1(3)(b) of Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (1), where, if the device cannot be recharged, the maximum amount stored in the device is no more than EUR 150, or where, if the device can be recharged, a limit of EUR 2 500 is imposed on the total amount transacted in a calendar year, except when an amount of EUR 1 000 or more is redeemed in that same calendar year by the bearer as referred to in Article 3 of Directive 2000/46/EC”

individually or on aggregate over certain periods of time, will not exceed in general EUR 1 000, may be authorised in the regulation”. The grounds for this provision is that low-value transactions (or low-value linked transactions) do not, *prima facie*, present significant risks, and therefore the decision not to require the application of some or all CDD measures can be justified. Spanish authorities point out that the exemption relates to transactions (so in case of regular customers CDD would always have to be conducted) and that the EUR 1 000 threshold is well below the amounts foreseen in the FATF standards in the case of occasional transactions.

48. *Conclusion.* The Act has not fully addressed the shortcoming identified in the MER in the sense that the current exemptions with regard to low-risk situations from identifying the beneficial owner and from ongoing monitoring of the business relationship are not in line with the FATF standards. The Spanish authorities believe that the caveat foreseen in Article 9.3 is sufficient to address this concern since in order to comply with Article 9.3, some verification measures are needed to a certain extent. Moreover, although the entities subject to the Act are authorised not to take on-going monitoring measures, they still have to comply with Article 17 of the Act that requires some special attention to unusual and other transactions, which, in practice, is very closely linked to the on-going monitoring requirement.

49. *Cases where there is a suspicion of money laundering or terrorist financing.* The deficiency identified in the MER has been addressed. Articles 9 and 10 of the Act contain an express prohibition to apply simplified CDD measures when there is a suspicion of ML or TF (reference is made in both articles to the third paragraph of art. 7.1, which requires the application of all CDD measures whenever there is any suspicion of money laundering or terrorist financing regardless of any derogation, exemption or threshold or when there are doubts about the veracity or adequacy of previously obtained data).

50. Deficiency 5 has been partially addressed.

***R. 5 (Deficiency 6): Failure to satisfactorily complete CDD: there is no legislation that requires reporting financial institutions to refuse to establish a customer relationship or carry out a transaction if customer identification (including beneficial owner identification) cannot be carried out or if identification documents believed to be incorrect cannot be verified although Spanish authorities explained that it is understood in the formulation of Law 19/1993 (Article 3.1) that failure to carry out the mandatory identification process must have the consequence that the customer relation will be refused. Further, there is no requirement to terminate an existing business relationship. Finally, there is no requirement for financial institutions to consider making a STR when the institution is unable to satisfactorily complete CDD (C.5.15 and C.5.16).***

51. Act 10/2010 addresses these deficiencies. Article 7.3 prohibits entities subject to the Act from establishing or maintaining a business relationship or from conducting any transaction when the CDD measures cannot be implemented, and require them in these cases to analyse the act or transaction, to establish the findings in writing and, when appropriate, to submit an STR.

52. In addition to the general prohibition from operating when appropriate CDD measures cannot be conducted, Act 10/2010 systematically forbids the entry into or continuation of a business relationship or the conduct of any transaction in two situations: (i) when there is a failure to identify the customer; (ii)

when there is a failure to ascertain the ownership or control structure of a legal person (see articles 3.1<sup>14</sup> and 4.4<sup>15</sup>).

**R. 5 (Deficiency 7): Existing customers: there are no specific legal or regulatory measures in place as to how reporting entities should apply CDD measures to their existing pool of customers although Article 5 of RD 925/1995 (special examination of certain transactions) is fully applicable in these circumstances (C.5.17 and C.5.18).**

53. This deficiency has been fully addressed. Act 10/2010 prioritises the application of required CDD measures to potentially high-risk clients (Article 7.2<sup>16</sup>) and adds that all existing customers must have been subject to the CDD provisions required by the Act within a period of 5 years after the coming into force of the Act (see Seventh transitional provision of the Act).

### **Recommendation 5, Overall conclusion**

54. Spain has made significant progress in improving compliance with R. 5. The new Act 10/2010 imposes requirements that adequately address the main concerns raised in the MER with regard to circumstances when CDD is required, the required CDD measures, the identification of beneficial owners, the ongoing due diligence requirement, the measures in place in case institutions fail to satisfactorily complete CDD and the CDD measures in relation to existing customers. Some deficiencies remain, essentially in relation to low-risk scenarios where some full exemptions from CDD for certain customers still exist that go beyond the FATF standards. Nevertheless, Spain has addressed the major concerns that were identified in relation to R.5, and the CDD legal framework has been enhanced to a level that is essentially equivalent to an LC.

## **V. Review of the measures taken in relation to the Key Recommendations**

### ***Recommendation 23***

55. *General.* SEPBLAC is responsible for supervising all reporting financial institutions in the AML/CFT area. At the institutional level, SEPBLAC, formerly placed under the authority of the Bank of Spain, is now under the umbrella of the Commission for the Prevention of Money Laundering (the inter-ministerial body in charge for the co-ordination of the AML/CFT preventive regime). In Spain supervisory powers are separated from the sanctioning ones. According to article 61 of the Act, sanctioning responsibility lies, broadly speaking, with the Commission for the Prevention of ML. Based on the inspection report prepared by the supervisors, the Standing Committee decides when to open a sanctioning procedure. The procedure is then conducted by the Secretariat of the Commission (the Treasury) and sanctions confirmed by the Council of Ministers, the Ministry of Economy, or the Director of the Treasury

<sup>14</sup> “Under no circumstances shall the institutions and persons covered by this Act maintain business relationships or carry out transactions with natural or legal persons who have not been duly identified. In particular, the opening, contracting or maintenance of accounts, passbooks, assets or instruments that are numbered, encrypted, anonymous or under fictitious names shall be prohibited”.

<sup>15</sup> “The institutions and persons covered by this Act will not establish or maintain business relationships with legal persons whose ownership or control structure has not been possible to ascertain”.

<sup>16</sup> “[...], the institutions and persons covered by this Act shall apply the due diligence measures provided for in this Chapter not only to all new customers but also to existing customers, on a risk-sensitive basis. In any event, the institutions and persons covered by this Act shall apply the due diligence measures to existing customers when these contract new products or when a transaction takes place that is significant for its volume or complexity”.

depending on the seriousness of the violation. Neither SEPBLAC nor the prudential supervisors can impose sanctions<sup>17</sup>.

56. Act 10/2010 acknowledges that a SEPBLAC supervisory action should be complemented by the actions carried out by the different prudential supervisors. The Commission for the Prevention of Money Laundering is empowered to sign agreements with each of the prudential supervisors in order to coordinate and harmonise their AML/CFT inspection and monitoring activities with those carried out by SEPBLAC (see art. 44.2. m). This provision entails a substantial change from the former regime, where the prudential supervisors could include in their inspections AML/CFT aspects, the results of which would be afterwards communicated to SEPBLAC. Under the new regime, whilst SEPBLAC remains the main AML/CFT supervisor, the prudential supervisors will also conduct full AML/CFT inspections and monitoring. The agreements with the prudential supervisors, which will replace the ones currently in force, are in preparation and they will include an annex with a “inspection manual” in order to ensure the quality and the consistency of all supervisory activities.

***R. 23 (Deficiency 1): Key financial supervision (insurance companies, credit co-operatives and stock brokerage firms and to a lesser extent credit institutions) is producing a low number of reports on AML/CFT issues to transmit to SEPBLAC and therefore the compliance of these institutions with the FATF standards is not being adequately measured.***

57. Since the adoption of the MER in 2006, efforts have been made to strengthen the co-ordination between SEPBLAC and the three prudential supervisors.

58. *AML/CFT functions of the Bank of Spain (Directorate General of Supervision, DGS).* A major recent milestone was the signing of a new MOU between the Bank of Spain and SEPBLAC on 29 February 2008, replacing the old one from 2005. The main new points of the agreements are:

- The Bank of Spain is able to review the AML/CFT procedures of the supervised entities and has agreed to submit specific reports to SEPBLAC on the findings of the inspections;
- SEPBLAC will provide feedback to the Bank of Spain on the measures adopted following the information received by the Bank of Spain and of any injunctions made to the entities under its supervision;
- The possibility of carrying out simultaneous inspections by both institutions has been confirmed and implemented. Recently there were two co-ordinated inspections of credit institutions (one in 2009 and another in 2010);
- To ensure a better co-ordination, the Bank of Spain and SEPBLAC have, since 2008, exchanged their inspections plans;
- The Bank of Spain has developed, in co-ordination with SEPBLAC, two inspections manuals, one for the supervision of credit institutions (2007) and the other for the sector of currency exchange and remittance (2009). Both manuals covers aspects such as: internal AML/CFT policy and procedures, KYC, record-keeping, detection and reporting of suspicious transactions, training

<sup>17</sup> Based on the inspection report, the Act foresees two types of actions: recommendations and corrective measures. Recommendations are made by the Supervisors (prudential or SEPBLAC). They are meant to improve the AML/CFT procedures of the entity, without the existence of violation, and compliance with them is not compulsory. Supervisors (prudential and SEPBLAC) can also propose to the Standing Committee of the Commission for the Prevention of ML that it require covered entities to adopt corrective measures to remedy deficiencies in the implementation of the Act. Implementation of those corrective actions is monitored by the Standing Committee and its non-compliance is subject to sanctions.

to employees, procedures for subsidiaries and branches, agents and other intermediaries, internal compliance review and external auditor reviews;

- Creation of a Commission to monitor the implementation of the agreement, with the participation of both parties. The generic role of this Commission is to promote the co-ordination between the SEPBLAC and the Bank of Spain and to monitor the implementation of the MoU. Two meetings have taken place, with a periodicity of six months.

59. The Bank of Spain carries out its inspections under a methodology called "Monitoring Banking Activity Under the Risk Based Approach" (SABER by its Spanish acronym). The review of compliance with AML/CFT requirements has been expressly incorporated into the risk matrix in the evaluation of internal governance of institutions. The number of specific AML/CFT inspections carried out by the Bank of Spain since 2006 is as follows (please note that the number of on-site inspections includes AML/CFT on-site inspections, as well as inspections with a specific component of AML/CFT):

	2006	2007	2008	2009	2010 (until 31.05.2010)
On-site inspections	21	21	23	16	5
Off-site inspections	17	23	29	15	2
Total	38	44	52	31	7

60. Off-site inspections include monitoring the advance in the implementation of the corrective measures required and the revision of the reports issued by the external expert according to Ministerial Order EHA/2444/2007. In addition, it must be noted that the two main banks (holding 43% of the assets) are subject to on-going *in situ* monitoring, which includes, the compliance of AML/CFT requirements.

61. Out of the 172 thematic AML/CFT (on-site and off-site) inspections carried out by the Bank of Spain from 2006 to 31.05.2010, 49 turned into written communications of deficiencies to SEPBLAC (i.e. 28 % of them<sup>18</sup>).

62. In addition to these specific actions, all prudential supervision by the Bank of Spain incorporates to a certain extent the AML/CFT control procedures in financial institutions. For instance, during on-site inspections, the credit files are reviewed, including the KYC policy. Other aspects are also assessed, such as the organisational structure of the financial institution. Yet these actions are not included among those mentioned in the previous paragraphs.

63. *AML/CFT functions of the Directorate-General for Insurance and Pension Funds (DGSFP) as prudential supervisor of insurance companies and the National Securities Exchange Commission (CNMV).* The existing agreements at the time of the MER between SEPBLAC and these supervisors are still in force. Both of them include the contents of the supervision carried out by the CNMV and the DGSFP, i.e., description of the information to be required of the supervised institution, samples and checks to be made. In 2008, SEPBLAC trained the staff of the DGSFP specifically in charge of AML/CFT inspections. The staffs of both the DGSFP and the CNMV participated in their respective AML/CFT training on AML/CFT supervision organised jointly by SEPBLAC and the Bank of Spain. In addition, one person of the CNMV was seconded to SEPBLAC for 6 months. Both agreements include the possibility of conducting joint inspections (one was carried out in 2007 by the DGSFP and SEPBLAC).

64. From 2007 to 2009, the CNMV conducted 9 on-site inspections with a specific AML/CFT component, 6 are planned for 2010. The DGSFP carried out 8 on-site inspections between 2007 and 2009 and 3 more were planned up to June 2010 in the AML/CFT area.

<sup>18</sup> In 2004, out of the 90 inspections by the Bank of Spain, only 10 turned into communications to SEPBLAC of violations (i.e. 11%).

65. *Conclusion.* One important step since the adoption of the MER has been the renegotiation of the MOU between SEPBLAC and the Bank of Spain in order to enhance the co-operation between the two institutions in the AML/CFT area (e.g. SEPBLAC is required to provide feedback to the Bank of Spain on the measures adopted following the information communicated by the Bank of Spain and joint inspections that have taken place). The adoption of the Bank of Spain inspections manuals in co-operation with SEPBLAC is also a positive step that shows better co-ordination efforts between the two authorities. Finally, the bigger volume of written communications of deficiencies generated by the Bank of Spain for SEPBLAC's review should be noted as a positive move. This is in line with the recommendations set out in the MER. Act 10/2010 also strengthens the supervisory powers of the three prudential supervisors, which, in the longer term, should improve the overall supervisory framework. However, one concern remains in relation to the number of AML/CFT inspections carried out by the prudential supervisors in the insurance and securities sectors (3 AML/CFT inspections per year take place on average in the securities and insurance sectors). SEPBLAC still very much relies on the prudential supervisors to support its AML/CFT supervisory role; however, the very limited number of inspections carried out by the insurance and securities supervisors does not allow adequate measurement of the compliance of the insurance and securities entities with the FATF standards. In that sense, this deficiency has not been fully addressed.

***R.23 (deficiency 2): the very limited resources of SEPBLAC with regard to AML/CFT issues may be negatively influencing the effectiveness of the overall AML/CFT supervision.***

66. At the time of the on-site visit, SEPBLAC had two full time staff dedicated to inspections. The MER acknowledged the limited resources of SEPBLAC and judged them inadequate for a broad inspection programme.

67. SEPBLAC's human resources dedicated to AML/CFT supervision have multiplied by five since the MER was adopted. Currently there are 10 people working full time on supervision, supported by 17 staff on a part-time basis. In addition, several mechanisms have been put in place to increase the effectiveness of AML/CFT supervision:

- More intensive use of a risk-based approach in supervision. Article 47.1 of Act 10/2010 introduces a new requirement that both SEPBLAC and the prudential supervisors must present on annual basis their "Orientation Inspection Plans" for the approval by the Commission for the Prevention of ML, justifying the grounds for the inspection plan. Deviations from the plan must be reasonably justified to the Commission. However, although not formally required by law, SEPBLAC was already undertaking supervision on a risk-based approach based on two pillars:
  - The annual inspection plan of SEPBLAC is based on: a) the risk of the entity, which is determined by the alerts created by SEPBLAC with regard to the levels of STR and systematic reporting made by the entities and to the alerts provided by the prudential supervisors; b) the risk of the sector's being abused for ML & TF purposes (see more information on this below in relation to Recommendation 29);
  - The introduction at the beginning of 2009 of a new instrument "The ML risk map" for credit institutions. This instrument consists of introducing ten additional areas that must be complied with by credit institutions when submitting a STR (risk elements, whether the report originated from centralised alerts, communication from employees, activity sector of the reported person, underlying criminal activity when possible, etc.). This information allows SEPBLAC to make a preliminary comparison of the reporting level and reported transactions submitted by the different credit institutions and to develop a more focused inspection program both in terms of the institutions to be supervised and the specific aspects of the supervision.

- The increasing level of supervisory actions undertaken by the Bank of Spain and the mechanisms provided by Act 10/2010 to formalise and strengthen its supervisory role (see comments above in relation to deficiency 1);
- Taking into account that SEPBLAC cannot inspect all covered entities, they are required to have their AML/CFT procedures and its effective implementation assessed by an external expert. The Order of the Ministry of Finance EHA/2444/2007 of 31 July 2007 details the content and the model of the external expert report. Act 10/2010 strengthens the existing requirements. Article 28 of the new Act requires all reporting parties to go through such an external examination on an annual basis although in the two following years it is allowed to replace the full examination by a follow-up report on the adoption of the identified measures. Additionally it introduces a direct requirement for the board of directors or main director of the institution to adopt the necessary measures to solve identified deficiencies. The results of the examination must be available for SEPBLAC and the Commission for the Prevention of ML, which in turn can require the adoption of corrective measures. Obligated entities can voluntarily submit their manual on internal controls to SEPBLAC, which will assess its adequacy and if appropriate propose corrective measures (art. 26);
- Act 10/2010 promotes the creation of SROs both as a mechanism to improve compliance of the DNFBPs as well as to settle enhanced co-operation mechanisms with the competent authorities (art. 27 of Act 10/2010) (see Rec.16 below).

68. The overall framework explained above is designed to ensure that a wider scope of entities are effectively supervised through the co-operation and co-ordination of all the parties involved in supervision, both from the public and private sector. In fact, the supervisory actions during the last 3 years are as follows:

	Total (from 2007 to 31/05/2010)
On-site inspections SEPBLAC	83
On-site inspections Bank of Spain	65
On-site inspections CNMV	15
On-site inspections DGSFP	11
<b>Total on-site</b>	<b>174</b>
Entities supervised off site, SEPBLAC	315
Entities supervised off site, Bank of Spain	69
<b>Total off-site</b>	<b>384</b>
<b>Total</b>	<b>558</b>

\* Data for 2010 are not available. Please note that the data above refer to inspections that are either specific to AML/CFT or that contain a specific module on such aspects. Broader inspections where AML/CFT issues can be circumstantially looked at in a minor extent are not included. The off-site supervisions include review of the AML/CFT procedures of the entities or the monitoring of degree of the implementation of the corrective measures recommended by the supervisors. In this regard SEPBLAC monitored the implementation of 891 corrective measures by covered entities in 2009.

69. The number of SEPBLAC inspections has increased quite substantially (28 AML/CFT inspections had taken place between 2001 and 2005, 83 have taken place in less than 3 years (from 2007 to 31 May 2010). Spanish authorities have allocated more resources to SEPBLAC in order to carry out its supervisory mission, which has contributed to enhancing the effectiveness of the overall AML/CFT supervision. In that sense, deficiency 2 has been addressed.

***R. 23 (deficiency 3): Specific requirements for doing background checks on new directors and new officers in the situation of changes after initial incorporation should be clarified.***

70. Prudential rules of financial entities subject to the Core Principles require for the creation of such entities that shareholders with significant holdings, board members and senior managers must be fit and proper, which includes checking that they have no criminal records (including money laundering). Relevant dispositions are R.D. 1245/1995 (for entities supervised by the Bank of Spain), R.D. 217/2008 (for the securities sector) and R.D. 2486/1998 (for the insurance sector).

71. Law 5/2009 of 29 June 2009 has transposed the EC Directive 2007/44 on the procedural rules and evaluation criteria for the prudential assessment of acquisition and increase of holdings in the financial sector. Pursuant to this law, any intended acquisition of qualifying holdings in the capital of a financial institution (over 10% or reaching certain thresholds) is subject to the authorisation of the prudential supervisor. Criteria for authorisation include assessing the reputation (integrity and professional capacity) of the acquirer, and of the new administrators or directors managing the institution as a consequence of the acquisition. The law introduces as a reason for denying the authorisation the fact that there are reasonable grounds to suspect that, in connection with the proposed acquisition, ML or TF has been committed or attempted, or that the proposed acquisition could involve the risk thereof. In all circumstances the prudential supervisor will request a report from SEPBLAC on this matter. The provisions of this law have been further detailed in amended article 58 of Law 26/1988 of and Circular 1/2009 of 18 December 2009 for entities under the supervision of the Bank of Spain, R.D. 1820/2009 of 7 December 2009 for the securities sector and R.D.1821/2009 for the insurance sector.

72. Suitable commercial and professional reputation of shareholders of money or value transfer companies, and of their directors and senior managers was already a requirement for obtaining the authorisation of the Bank of Spain under the R.D. 2660/1998. Recent legal changes include the approval of Law 16/2009 of 13 November 2009 transposing EC Directive 2007/64 on payment services within the EU. Provisions include that the same requirements for obtaining the authorisation of the Bank of Spain will have to be met to keep such an authorisation. Hence, failure to meet good reputation or professional suitability requirements may be a cause for cancellation of the authorisation to operate. The draft regulation further detailing such obligations and governing the register of significant shareholders, directors and senior managers of these entities is well advanced.

73. The Bank of Spain already keeps a register of shareholders with qualifying holdings or of those having a lower ownership that may exercise a meaningful control over the institutions under its supervision. It also keeps a register of directors and senior executives. On an annual basis and whenever there is a change in the directors or senior managers the institution is required to submit updated information to the Bank of Spain. The Bank of Spain issued Circular 1/2009 on 18 December 2009 providing entities under its supervision with detailed instructions on the content, periodicity and models of the information to be submitted. In particular, its annex V provides financial entities and other entities supervised by the Bank of Spain with a form that must be submitted to the latter whenever a new board member or senior manager is appointed. It specifically establishes that the institution is responsible for the veracity of the data provided and contains a statement whereby the institution declares having received a sworn declaration by the newly appointed person of fulfilling the reputation and integrity requirements determined in the relevant sectoral legislation for holding the position to which he has been appointed. The professional background of the designated person must be attached. Thus, whenever a new board member or senior manager is appointed there exists a verification that entitles Bank of Spain to deny his appointment, should the appointee fail to fulfil the required standards.

74. Additionally, Rule 4.6 of said Circular requires that any change occurring in the previously declared data (either in the composition of board or senior management or in the personal data affecting

one of the members) must be communicated to the Bank of Spain by submitting the same form used for the initial declaration.

75. The Supervision services of Bank of Spain may verify at any time that an institution complies with its obligations described above.

76. Similar registers are kept by the CNMV in the securities sector and by the General Directorate for Insurance and Pension Funds.

77. The mentioned provisions in the prudential legislation have also been incorporated in the AML/CFT Act 10/2010. Art. 30.2 of Act 10/2010 introduces a direct requirement for covered parties to set in writing and implement adequate policies and procedures to ensure high ethical standards in the recruitment of employees, directors and agents. This requirement applies not only to financial institutions but to all covered parties. Additionally, art. 45.4 i) and j) require a report from SEPBLAC analysing the risk of ML/TF in order to authorise the creation of financial institutions and the significant acquisitions of capital.

78. Spain has adopted comprehensive “fit and proper” provisions. Deficiency 3 has been fully addressed.

***Recommendation 23, overall conclusion:***

79. In relation to the effectiveness of its AML/CFT supervisory regime, Spain reports some improvements, mostly related to the number of inspections carried by SEPBLAC and the Bank of Spain. The measures put in place suggest that the authorities are serious about putting in place a more effective supervisory system. In that respect, the provisions adopted in Act 10/2010 should contribute, in the longer term, to strengthening the overall supervisory regime. However, the reported results for the insurance sector and for the securities sector are less impressive up to now. In the light of the information made available however, it is suggested that Spain has so far undertaken sufficient action to address the shortcomings related to Recommendation 23 and that it has reached a satisfactory level of compliance, comparable to a largely compliant rating. It is however important that Spain continue strengthening the AML/CFT supervision of financial institutions, especially in the securities and insurance sectors.

***Special Recommendation I***

***SR.I (deficiency 1): Implementation of the Security Council Resolutions: Spain has not fully implemented the relevant Resolutions since: (1) Spain has issued very little guidance to financial institutions and other persons/entities that may be holding targeted funds/assets, which raises issues of effectiveness of the freezing mechanisms in operation in Spain; (2) Spain has not established or made clear and publicly known the necessary procedures for de-listing and unfreezing in appropriate cases; (3) the obligation to criminalise the collection of funds with the intention that they should be used or in the knowledge that they are to be used, in order to carry out terrorist acts is not covered to the full extent; (4) the definition of funds in the EC Regulations is not quite broad enough; and (5) the EU freezing mechanisms are not applicable to EU internals and the new domestic legal framework in Spain – which could fill the gap in the scope of application of the EU mechanisms – has yet to be fully implemented in practice.***

80. *New developments in Spain since the adoption of the MER.* The Directorate General of the Treasury, which is the competent authority for the freezing of funds, offers institutions further guidance through its web site ([www.tesoro.es/sp/expcam/SancionesFinancinInternac.asp](http://www.tesoro.es/sp/expcam/SancionesFinancinInternac.asp)). The site describes the legal framework for freezing and has a link to the updated EU terrorist consolidated list. Entities are

informed that they should immediately freeze any assets of a customer whose name is on the list and may afterwards request the help of the Treasury to solve any concerns over homonyms or identity. They are also informed that the Treasury is the contact point regarding the listed exemptions for freezing (basic expenditures, etc.). The Treasury talks to the major professional bodies on a regular basis (including in relation to de-listing/unfreezing mechanisms) and closer contacts take place with the DNFBPs.

81. The amended Penal Code has addressed the deficiency identified in relation to the TF offence (see deficiency 2 below).

82. *New developments at EU level in relation to S/RES/1267(1999) since the adoption of the MER.* There have been new developments at EU level in relation to S/RES/1267(1999) since the adoption of the MER. Following legal challenges in 2008-9, the Council of the European Union adopted Council Regulation No. 1286/2009 on 22 December 2009, amending Regulation (EC) No.881/2002. Regulation 1286/2009 sets out revised listing and review procedures at EU level. These new procedures appear to not fully comply with some requirements of Special Recommendation III, notably the requirement to freeze without delay. At this time it is not totally clear how the new EU Regulation impacts on assessment of SR III. The Secretariat will continue to discuss the issue with the European Commission.

83. *New developments at EU level in relation to S/RES/1373(2001) since the adoption of the MER.* Council Decision 2009/1004/CFSP was adopted on 22 December 2009 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (i.e. freezing mechanisms and the widest possible police and judicial co-operation). The Lisbon Treaty provides a new legal base for measures targeting “EU internal terrorists” in Article 75 TFEU.<sup>19</sup> It remains unclear whether the EU intends to extend freezing measures to individuals and entities with the so-called “internal qualification” on the basis of Article 75 TFEU and when this may happen.

84. Concerning the applicability of EU freezing mechanisms to EU internals, it must be noted that in Spain Law 12/2003 provides for a mechanism to designate and apply freezing actions domestically. This legal framework has not been fully implanted yet and the situation remains unchanged since the adoption of the MER.

85. *Conclusion.* At the time of the drafting of the MER, the assessment team rated SR III as PC. However, the FATF Plenary decided to upgrade it to LC. Therefore Spain’s compliance with SR III was assessed largely compliant. Since the adoption of the MER, Spain has improved the quality of the guidance to financial institutions and other persons/entities that may be holding targeted funds/assets, addressing some of the efficiencies identified in the MER. The main developments have occurred at EU level (see above) that impact the implementation of both S/RES/1267(1999) and S/RES/1373(2001). However, a clear judgement on the impact of these changes is very difficult to make in the context of this desk review. It also raises a procedural issue, since looking into this issue in detail would require examining a Recommendation that was rated LC at the time of the MER based on new developments. This is not dealt with by the follow-up procedures.

<sup>19</sup> Article 75 TFEU is part of the Title V Area of Freedom, Security and Justice and reads as follows: “Where necessary to achieve the objectives set out in Article 67, as regards preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities. The Council, on a proposal from the Commission, shall adopt measures to implement the framework referred to in the first paragraph. The acts referred to in this Article shall include necessary provisions on legal safeguards.”

**SR.I (deficiency 2): Implementation of the Terrorist Financing Convention: Spain has not fully implemented Article 2(1) in connection with Article 2(3) which criminalises not only of the provision of funds for terrorist acts but also of merely collecting funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts (as that term is defined in the said Article of the Convention) – regardless of whether an actual terrorist offence is carried out. To the extent that Articles 2(1) and 2(3) of the Terrorist Financing Convention are not fully implemented, the same would seem to apply correspondingly with respect to Articles 2(4) and 2(5) on accessory offences. The shortcomings in effective CDD requirements under Spanish law demonstrate that Article 18(1)(b) of the Terrorist Financing Convention has not – to the full extent – been properly implemented.**

86. This deficiency is fully addressed in the amended Penal Code, by the introduction of art. 576 bis as explained above. The terrorist financing offence will not be linked to the commission of a terrorist act, but it will also include the mere provision of funds to or collection of funds for terrorists groups or organisations. CDD requirements have been strengthened and are generally in line with the international standards (see the analysis in relation to Recommendation 5 above).

**Special Recommendation I, overall conclusion:**

87. Spain has also taken some actions to address some of the shortcomings in relation to SR III (keeping in mind that Spain was rated LC on SR III). In parallel to these domestic initiatives, the report notes some important developments that have occurred in relation to UNSCR 1267 and 1373 at EU level since the adoption of the MER and which could impact Spain’s ability to comply with SR III (see para.82-83). However, a clear judgement on the impact of these changes is very difficult to make in the context of this desk review. It also raises a procedural issue, since looking into this issue in detail would require examining a Recommendation that was rated LC at the time of the MER based on new developments. This is not dealt with by the follow-up procedures. In the light of all of this, it is proposed that the progress made by Spain in relation to its TF offence and some requirements under SR III is considered sufficient to conclude that Spain’s compliance with SR I is equivalent to an LC.

## **VI. Review of the measures taken in relation to other Recommendations rated NC or PC**

### **Recommendation 6 (NC)**

***Rec. 6: Spain has not implemented adequate AML/CFT measures concerning the establishment of customer relationships with politically exposed persons (PEPs).***

88. Article 14 of Act 10/2010 requires covered entities to apply enhanced CDD measures in their business relationships or transactions with PEPs. PEPs are defined as (1) those natural persons who are or have been entrusted with prominent public functions in other countries, as well as (2) their close family members and (3) their close associates. All three concepts are defined in article 14<sup>20</sup>.

<sup>20</sup> The following definitions apply: “(a) natural persons who are or have been entrusted with prominent public functions means heads of state, heads of government, ministers, secretaries of state or undersecretaries, parliamentarians, supreme court judges, constitutional court judges or judges of other high-level judicial bodies whose decisions are not normally subject to appeal except in exceptional circumstances, including equivalent members of the Public Prosecutor's Office, the members of courts of auditors or boards of central banks, ambassadors and chargés d'affaires, top military personnel of the armed forces and members of the administrative, management or supervisory bodies of public companies. These categories shall, where applicable, include European Commission and international positions. None of these categories shall be understood as covering middle ranking or more junior officials. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due

89. It is not compulsory to consider someone a PEP when he/she has ceased to hold a prominent public function for at least two years, but article 14 expressly requires treating these cases on a risk-sensitive basis. Therefore, when appropriate, such persons would still fall under the definition of PEPs.

90. In the above circumstances, entities subject to the Act are required to conduct the following measures, in addition to normal CDD:

- a) To implement appropriate procedures on a risk-sensitive basis to determine whether the customer or the beneficial owner is a PEP. These procedures should be included in the customer admission policy of the entity;
- b) To obtain the approval by at least the immediate senior manager, before establishing the business relationship;
- c) Take adequate measures to establish the source of wealth and the source of funds;
- d) Conduct enhanced on-going monitoring of the business relationship.

91. Article 14 is applicable to existing customers who become PEPs in the course of the business relationship.

92. Article 14 also introduces provisions concerning domestic PEPs. Taking into account its large number there is no systematic requirement to cross-check if all customers of an institution are PEPs. However, when a potentially suspicious or an unusual transaction or act is identified, institutions are required to take appropriate measures to determine the participation of a PEP. In those cases the transaction must be carefully examined, the results kept in writing and, when appropriate, a STR submitted.

93. This deficiency has been addressed.

### **Recommendation 7 (NC)**

***Rec. 7: Spain has not implemented adequate AML/CFT measures concerning establishment of cross-border correspondent banking relationships.***

94. With regard to cross-border banking relationships or similar relationships with institutions from countries not belonging to the EU, article 13 of Act 10/2010 requires credit institutions and payment entities to:

- a. Gather sufficient information about a respondent institution to understand the nature of the respondent's business and to determine from publicly available information its reputation and the quality of its supervision.
- b. Assess the respondent institution's anti-money laundering and anti-terrorist financing controls. The Act does not specify that such controls should be adequate and effective (see language in C.7.2 of the Methodology);
- c. Obtain approval from, at least, the immediate senior manager with directive responsibility before entering into new correspondent banking relationships.

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*diligence, when a person has ceased to be entrusted with a prominent public function for at least two years, it will not be compulsory to regard him/her as a person with public responsibility; (b) immediate family members: the spouse or any person with a stable link through a similar emotional relationship, as well as parents and children, and the spouses or any persons with a stable link to the children through a similar emotional relationship; (c) by persons known to be close associates: any natural person who is known to own or control a legal person or arrangement together with any of the individuals referred to in (a), or who maintains other close business relations with the same, or owns or controls a legal person or arrangement known to have been formed for the benefit of the latter”.*

d. Document the respective responsibilities of each institution.

95. The use of payable through accounts is forbidden (article 13.3).

96. The provisions set out in Article 13 are broadly in line with the requirements of Recommendation 7. However, they only apply to cross-border correspondent banking relationships with financial institutions outside the EU.

### **Recommendation 8 (PC)**

***Rec. 8 (deficiency 1): Spain has no specific regulation concerning non-face to face business transactions.***

97. Non face-to-face business relationships and transactions are regulated in article 12 of Act 10/2010. Article 12.2 introduces a new requirement for obliged persons to establish policies and procedures to address the specific risks associated with non-face-to-face business relationships and transactions. These procedures are to be documented and be available to the FIU, according to article 26 of Act 10/2010.

98. In addition, the Act maintains the requirements previously in force with regard to business relationships and transactions made by telephone, electronic or telematic means with customers not physically present. In these cases it is required that one of the following conditions be met:

- a. The customer's identity is verified as defined in the applicable regulations on electronic signatures;
- b. The first deposit originates from an account opened in Spain, the EU or third equivalent countries, in the same customer's name;
- c. The requirements to be determined in regulations are met (such requirements have not been adopted yet).

99. In any case, institutions must obtain a copy of the documents required to comply with CDD requirements within one month of entering the business relationship. When institutions observe discrepancies between the data supplied by the customer and other information in its possession, face-to-face identification is required.

100. If during the business relationship institutions consider the risk to be above average, they are required to conduct additional CDD measures.

101. This deficiency has been addressed.

***Rec. 8 (deficiency 2): there is no general requirement that financial institutions have policies in place to deal with the misuse of technological developments.***

102. Article 16 of Act 10/2010 introduces a direct requirement for covered entities to pay special attention to any money laundering or terrorist financing threat that may arise from new technological developments and to take appropriate measures to prevent their use for money laundering or terrorist financing purposes. Obligated persons must conduct a specific analysis of those threats, which should be documented and available to the competent authorities. This deficiency has been addressed.

**Recommendation 12 (PC)**

***Rec. 12 (deficiency 1): (1) the same concerns in the implementation of Recommendation 5 apply equally to reporting financial institutions and reporting nonfinancial businesses and professions. All existing requirements in relation to the identification of beneficial ownership and additional identification/know-your customer rules (especially for higher risk activities) do not apply to DNFBPs; (2) Spain has not implemented adequate AML/CFT measures concerning Recommendation 6 that are applicable to reporting non-financial businesses and professions; (3) Spain has some regulation in place that addresses the issue of non-face to face relationships (when establishing customer relationships) but that does not extend to non-face to face transactions and there is no clear general guidance regarding emerging technological developments (Recommendation 8).***

103. As a general remark, it should be noted that the scope of application of the former AML/CFT regime already went beyond FATF requirements, since for example lotteries or professional transporter of funds were considered obliged parties. Act 10/2010 includes new obliged parties such as trade and property registrars, dealers in goods (when payment is made in cash for a value exceeding EUR 15 000), managers of payment systems and of clearing and settlement of securities systems. Also notaries are obliged parties with regards to the whole range of acts/transactions they may conduct not limited to the specific situations that FATF requires.

104. The former AML legislation provided for two different sets of obligations: a general regime for financial institutions and a special regime for non financial ones. The CDD requirements for DNFBPs were less demanding regarding the identification of beneficial ownership and enhanced CDD measures. Act 10/2010 eliminates such distinction and provides for a unique set of rules for all reporting parties. Therefore, all the provisions concerning Recommendation 5, 6 and 8 mentioned above are applicable to both financial institutions and the DNFBPs. These deficiencies have been addressed.

***Rec. 12 (deficiency 2): with regard to Recommendation 10, there are some concerns with regard to the implementation of the record keeping obligation by casinos.***

105. Article 25 of Act 10/2010 increases from 5 to 10 years the record-keeping period for CDD and transaction documents. Article 25 applies to all obliged entities, including casinos. Spanish authorities indicate that there is no contradiction between provisions of Act 10/2010 and the Personal Data Protection Act 15/1999, which in its article 4.5 provides that “*personal data will be deleted when they are no longer necessary or pertinent for the purposes they were gathered or registered*”. Article 32 of Act 10/2010 expressly provides that the requirements of the Data Protection Act to obtain the consent of the affected person to process personal data or the provisions related to access, rectification, deletion or opposition by the affected person will not be applicable to the data and documents obtained by covered entities to fulfil their obligations under the AML/CFT Act. Since this deficiency related very much to an implementation issue, it is not possible in the context of this desk review to check whether it has been fully addressed. However, it is important to note that the Spanish legislation on record-keeping is in line with the international standards.

***Rec. 12 (deficiency 3): more generally, the implementation of the FATF requirements (both ML and TF) by DNFBPs raises very serious concerns.***

106. In order to improve effectiveness, the MER recommended increased monitoring of DNFBPs and improving the awareness in the different sectors. As indicated below in relation to Recommendations 24 and 25, it seems that the Spanish authorities have taken some positive actions to address this shortcoming.

**R12, Overall conclusion**

107. Spain has made substantial progress in improving compliance with Recommendation 12 although it is too early to judge the implementation of Act 10/2010.

**Recommendation 16 (PC)**

***Rec. 16 (deficiency 1): the same deficiencies in the implementation of Recommendations 13 and 15 apply equally to reporting financial institutions and reporting non-financial businesses and professions.***

108. The deficiencies in the legal regime for Recommendations 13 and 15 have been addressed with the new AML/CFT Law and the amended Penal Code. In particular, the requirement to report an attempted suspicious transaction that was implicit before has been directly introduced in article 18.1 of Act 10/2010. The scope of predicate offences has also been widened, since the former limit in the preventive regime of a minimum 3 years imprisonment has been removed. Equally, the definition of ML under article 1 includes now self-laundering and the possession or use of proceeds of crime. These elements have also been incorporated in the amended Penal Code under the article 301.

109. Concerning Recommendation 15, article 30.3 of Act 10/2010 introduces a direct requirement for all entities subject to the Act to set in writing and implement adequate policies and procedures to ensure high ethical standards in the recruitment of employees, directors and agents.

110. These deficiencies have been addressed.

***Rec. 16 (deficiency 2): considering the calls for more guidance as voiced by all sectors during the on-site visit, there are preliminary concerns about the effectiveness of implementation for Recommendation 16 in all of its aspects.***

111. Guidance actions are described under Recommendation 25. Spain also indicates that the better awareness of the DNFBP vis-à-vis AML/CFT issues has resulted in a substantial increase in the number of submitted STRs, as the table below shows:

Reporting entities	2002-2004	2007-2009
Real state promoters	9	54
Gambling casinos	3	13
Notaries	15	662
Lawyers		89
Accountants, tax advisors, auditors		17
Lotteries		32
Traders on jewellery, precious stones and metals		3
Professional dealers in works of art, antiques or stamps		1
Professional transport of funds		23
Total	27	845

112. It should be noted that, except for the casinos, real estate activities and traders in precious stones and metals, the reporting obligation only entered into force in 2005 (statistics on the MER cover the period through 2004). Notaries became subject to reporting requirements that very same year whilst until then they had been “collaborators” with a weaker reporting duty. Since the time of the MER, not only has the overall number of STRs submitted by DNFBPs increased, representing approximately 10 to 15% of the total STRs received by SEPBLAC, but it can also be seen that all categories of DNFBPs are submitting STRs. The number of STRs submitted by lawyers, a source of concern at the time of the MER, has shown a growing trend of around 30% from 2007 to 2009. Spain has been able to show some positive developments in relation to Recommendation 16 in the DNFBPs sector although effectiveness cannot be fully addressed in the context of this desk review.

### ***R16, Overall conclusion***

113. Spain has made substantial progress in improving compliance with Recommendation 16, although the low level of reporting by certain DNFBPs persists (such as the dealers in precious metals and stones). The efforts by Spanish authorities to improve guidance, outreach, and supervision seem to have produced some positive results.

### **Recommendation 18 (PC)**

***Rec. 18: there is no legally binding prohibition on financial institutions on entering into or continuing correspondent banking relationships with shell banks; nor is there any obligation on financial institutions to satisfy themselves that a correspondent financial institution in a foreign country does not permit its accounts to be used by shell banks.***

114. Article 13.2 of Act 10/2010 states that “credit institutions shall not enter into or continue correspondent relationships with shell banks. Likewise, credit institutions shall take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a bank that is known to permit its accounts to be used by shell banks”. The FATF standard is more straightforward (it does not foresee that the correspondent bank *must be known* to be permitting its accounts to be used by shell banks); this deficiency has been addressed although not in its entirety.

### **Recommendation 24 (NC)**

***Rec. 24 (deficiency 1): there is no proper supervision or monitoring for AML/CFT requirements in place for DNFBPs.***

115. Spanish authorities indicate that SEPBLAC’s supervisory actions regarding DNFBPs have increased very significantly in recent years, representing in 2009 more than 42% of the on-site inspections carried out by SEPBLAC. Likewise the authorities indicate that the number of corrective actions applied in 2009 increased by more than 500 %. These supervisory actions were accompanied by a punitive proceedings when the Standing Committee, on a proposal from the Commission Secretariat, decided that an offence under the Prevention of Money Laundering And Terrorist Financing Act has occurred. These actions have resulted in a greater commitment from these institutions as reflected in the substantial increase in reports received. Supervisory actions carried out by SEPBLAC with regard to DNFBPs are as follows:

	2007	2008	2009	jun-10	Total
On-site	5	5	14	12	36
Off-site	7	6	6	n.a.	19
<b>Total</b>	<b>12</b>	<b>11</b>	<b>20</b>	<b>12</b>	<b>55</b>

116. In the period analysed, there have been 36 on-site inspections of DNFBBs in comparison with the 15 conducted between 2001 and 2004, the period analysed in the MER. At that time, inspections were focused on real state companies, whilst in recent years the scope has widened. In 2008 on-site inspections focused on lawyers and in 2009 on dealers in jewellery and precious stones and metals, the sectors that raised most concern in the MER. In addition to the on-site inspections, 19 entities are being monitored for their implementation of the corrective measures imposed by SEPBLAC (a total of 891 corrective measures resulted in monitoring in 2009).

117. Taking into account that the resources of any FIU are always limited in relation to the number of entities subject to supervision, SEPBLAC's direct supervision is complemented by several supervisory mechanisms:

- Obligated entities are required to have their AML/CFT procedures assessed by an external expert. The Order of the Ministry of Finance EHA/2444/2007, of 31 July 2007, details the content and the model of the external expert report and Act 10/2010 strengthens the requirements on this field. Previously, DNFBBs could opt to go through the external review every three years provided that they annually conducted an internal review of their procedures. Article 28 of the new Act requires all reporting parties to undergo the external examination on an annual basis although in the two following years it was permitted to replace the full examination by a follow-up report on the adoption of identified remedial measures. Additionally it introduces a direct requirement for the board of directors or main director of the institution to adopt the necessary measures to resolve identified deficiencies. The results of the examination must be available to SEPBLAC and the Commission for the Prevention of ML, which can require the implementation of corrective measures. Obligated entities can voluntarily submit their manual on internal controls to SEPBLAC, which will assess its adequacy and if appropriate propose corrective measures (article 26);
- Act 10/2010 promotes the creation of SROs both as a mechanism to improve compliance of the DNFBBs as well as to settle enhanced co-operation mechanisms with the competent authorities (article 27 of Act 10/2010). One of the functions of the SROs is to review and approve in writing the policy of customer acceptance of their members, which must be risk-based;
- The SRO for notaries, which had been established at the time of the MER is now fully operational. One of the functions of the SRO is to develop the AML/CFT prevention manual and procedures to be implemented by the notaries. The manual is published on the Intranet of the SRO and is subject to the assessment of the external expert mentioned above. Additionally, the SRO must annually review the effective application of such procedures by the notaries;
- Finally, Act 10/2010 provides for more severe and dissuasive sanctions. First the law includes a higher number of violations, and additionally, minimum penalties for serious offences have been multiplied by ten whilst for the most serious ones the increase is over 60% (articles 56 and 57). In addition, the amended Penal Code in its article 576 bis, subsection 2, establishes criminal liability for those entities subject to the Act that, through serious negligence in the compliance with preventive measures, do not detect or prevent any of the conduct typified as TF.

118. The effectiveness of the compliance regime applicable to DNFBBs cannot be fully assessed in the context of this desk review. However, it seems that the Spanish authorities have taken serious actions to enhance the supervision of DNFBBs in the AML/CFT area although the number of on-site inspections relative to the number of entities to be supervised remains low. Overall, the level of monitoring of the DNFBBs seems to have improved.

***Rec. 24 (deficiency 2): Spain not taken any measures vis-à-vis Internet casinos***

119. Internet casinos are not permitted or authorised in Spain. However, Spain has not taken any measures to identify whether there are any Spanish residents/citizens who own or operate: (1) an internet casino; (2) a company that runs an internet casino; or (3) a server that is located in Spain and which hosts an internet casino. Moreover, Spain has not issued any guidance to reporting financial institutions or non-financial institutions alerting them to the possible existence of such entities and advising them of how to treat them. This deficiency has not been addressed.

***R24, Overall conclusion***

120. Despite the outstanding issue of Internet casinos and to the extent that can be judged in this report, Spain has taken serious steps to improve its level of compliance with Recommendation 24.

**Recommendation 25 (PC)*****Rec. 25 (deficiency 1): there is a need for more specific, timely and systematic feedback to reporting entities especially the status of STRs and the outcome of specific cases.***

121. Article 46.2 of Act 10/2010 addresses the issue of feedback to reporting entities. On the one hand, it provides that law enforcement and prosecutors or other administrative bodies will inform SEPBLAC about the outcome of the reports that they have received. SEPBLAC, in turn, may provide such feedback to the reporting entities, which must respect the confidentiality of this information.

122. In addition, the article introduces the obligation for SEPBLAC to assess the quality of STRs and to periodically notify the results of that assessment to the reporting party.

123. Before the enactment of the new AML Law, SEPBLAC was providing feedback to a certain extent. Whenever the STR did not meet the minimum requirements provided in article 7.4 of the R.D 995/1995, the STR was sent back to the reporting institution with instructions about how to improve it, generally by deepening the analyses made by the institution.

124. The “Money Laundering Risk Map” introduced in 2009 is also a very valuable instrument to provide feedback to credit institutions. This is a mechanism developed jointly with them, which recognises the benefits of getting access to summarised data of the STRs received by SEPBLAC. A short questionnaire with the main aspects of the suspicious transaction was prepared and incorporated into the STR model. Feedback is provided in two ways. First SEPBLAC assesses the quality of each STR submitted by a particular credit institution and provides them with summarised feedback. Secondly SEPBLAC makes a thorough analysis of all the factors of the questionnaire. Credit institutions are divided in 3 groups according to the size of their assets. Each of them receives the information about its group and the general information about all entities. This way, the credit institution can compare itself with other institutions of a similar size in terms of the kind of transactions that it is or not reporting, the risk elements that it is taking into account, etc. Thus, the credit institution can detect its weaknesses in the detection and analyses of potentially suspicion transactions.

125. The information gathering process began in April 2009 and in April 2010 the first report was sent to the credit institutions. Later this year, the communication to be sent by SEPBLAC will include for 2009 (i) the average quality of the STRs of the entity; (ii) percentage and list of the STRs of the entity which were filed; (iii) list of the STRs of the entity which were disseminated to the competent authorities for further investigation and the related predicate offence. Percentages of the big financial groups are also accompanied to allow comparison.

126. Spain indicates that the possibility of extending this feedback system to other reporting parties will be analysed in the future.

127. Spain seems to have taken some positive actions in this area in line with the recommendations made in the MER. This deficiency has been addressed.

**Rec. 25 (deficiencies 2 and 3): (1) there is a lack of sector-specific AML/CFT guidance; (2) there are not sufficient guidelines related to AML/CFT issues available to DNFBPs.**

128. In terms of sectoral guidance and measures to increase awareness of the AML/CFT requirements, the Treasury, SEPBLAC and the SRO of the notaries have undertaken significant steps.

129. *Treasury initiatives.* The Treasury, as regulator, is about to begin a review process of the different sectoral guidelines to help covered subjects identify transactions potentially linked to ML and TF. The Spanish authorities indicate that these guidelines have been issued for banks, insurance, real estate, casinos, securities companies and agencies and management companies of investment funds, legal professionals (lawyers, auditors, accountants,...), money remitters and currency exchange houses, professional dealers in jewels, precious stones or metals and professional dealers in works of art or antiques.

130. The Spanish authorities also indicate that, at the request of representatives of the real estate sector, the Secretariat of the Commission prepared in 2009 a document for guidance on good practices in this sector aimed at helping the establishment of internal control procedures for the prevention of money laundering and terrorist financing. The document is not normative, but merely indicative and therefore not enforceable. It is general in nature and is intended to serve as a simple aid or illustrative guide for each entity in order to elaborate its own manual of procedures tailored to the characteristics and peculiarities of its structure and business.

131. *SEPBLAC initiatives.* The Secretariat of the Commission's web site also contains specific legislation and procedures related to money laundering and terrorist financing helping institutions to comply with their regulatory requirements.

132. SEPBLAC regularly provides information about new trends, patterns and methods which may be used for money laundering or terrorist financing. The standards of FATF, EU, Basel Committee on Banking Supervision, IOSCO and IAIS have been mentioned explicitly in this regard. SEPBLAC's site also contains updated information about new findings and typologies.

133. Sector-specific guidelines provide practical information and good generic industry practice instructions in order to assure the best comprehension of the risks involved. The following guidelines can be found on SEPBLAC website: "Key factors for the prevention of money laundering in the management of transfers"; "Guidelines for preventing the risk of money laundering in the equity market"; "Guidelines for the prevention of money laundering risks in correspondent banking".

134. SEPBLAC has also issued detailed guidance to Reporting FIs and DNFBPs concerning how to comply with the reporting obligations. In addition, the SEPBLAC annual reports contain sanitised cases related to ML.

135. *Initiatives of the SRO for Notaries.* The functions of the SRO for notaries include:

- Developing and disseminating the internal control procedures to be applied by notaries, and assessing, jointly with the notaries their effectiveness;

- Providing guidance to the sector. To this end, the SRO has issued a series of communications through its Intranet in order to disseminate and help notaries interpret the legal provisions that have been enacted<sup>21</sup>.

136. The SRO has also developed a matrix of risk indicators for the different types of transactions in which notaries can participate (incorporation of legal persons, purchasing/sale of companies or shares, real estate transactions...). Risk indicators include those related to customers and to transactions. The risk indicator matrix is aimed at helping notaries detect ML suspicious transactions. In order to achieve a high quality for the STRs submitted by the notaries to the SRO, the electronic reporting system requires them to justify the circumstances inherent to each of the risk elements occurring in the transaction. The SRO also provides feedback by disseminating annually around 10 to 15 sanitised cases submitted to SEPBLAC, explaining the grounds justifying the suspicion.

137. Another task of the SRO is to answer enquiries from the notaries. In the last three years the SRO answered more than 400 enquiries. Finally, the SRO is also responsible for developing a training plan for notaries. The Unit for Procedures, Compliance and Training has developed with a team of experts two on-line training courses, offered on a continuous basis: a more comprehensive one for the notaries themselves and another one for the employees of the notaries. All notaries and their employees are required to take this course. From September 2006 to March 2010, 1,128 notaries and 4,241 employees successfully completed the training course on prevention of ML.

138. To conclude, over the years both SEPBLAC and the Secretariat of the Commission hold regular meetings with representatives from financial institutions and DNFBPs, such as the Spanish Banking Association, the General Council of Notaries, representatives of dealers in precious metals and stones and lawyers. Focus groups have also been set up for casino, real estate agents, precious stones and precious metals dealers and TCSPs to discuss issues relating to the implementation of the FATF Recommendations to these sectors. Furthermore sector-specific training seminars are also organised upon request of the relevant sectors. With the enactment of the new AML/CFT Law, the Secretariat of the Commission has presented the new points introduced into the legal framework to the insurance sector, real estate sector and compliance officers in general. An information session was also held with the Spanish Banking Association in order to clarify the interpretation of specific provisions. This should be added to the ongoing consultation process that took place during the drafting of the AML Law.

139. The table below shows the training organised by or with participation of SEPBLAC in the last three years.

	2007	2008	2009	MID-2010
Financial Institutions	9	9	5	3
Non financial Institutions	15	8	7	4

140. In addition, SEPBLAC has in the same period held meetings with 137 reporting parties with the aim to improve compliance by the private sector.

<sup>21</sup> Some examples are: (1) communication 1/2008 providing guidance for the interpretation and implementation of the Ministerial Order EHA 114/2008 (related, among others, to the customer identification and record keeping requirements, internal procedures, and the cross-checking of designated persons and entities by UNSC Resolutions/EC Regulations); (2) communication 2/2008 on how to report transactions involving more than EUR 100.000 in cash, which did not fulfill the declaration requirement; (3) communication 2/2010 informing on the relevant modifications introduced by the recently enacted AML/CFT law and the practical implications for the notaries.

141. In relation to deficiencies 2 and 3, Spain has taken some important steps in line with the recommendations set out in the MER. It is however essential that the authorities continue to enrich and update the existing guidance based on the new requirements set out in Act 10/2010. This deficiency has not been fully addressed

***Rec. 25 (deficiency 4): the absence of proper guidance in the CFT area may jeopardise successful practical application of the Spanish CFT system and may hamper the efficiency of the system in place.***

142. Spanish authorities indicate that SEPBLAC has a department, staffed with 6 people, specifically devoted to monitoring and analysing TF related STRs. Those statistics are only disseminated to the Terrorist Financing Watchdog Commission. In that respect, the deficiency highlighted in the MER has not been addressed.

### ***R25, Overall conclusion***

143. Despite the progress made in relation to the quality and quantity of the feedback delivered to reporting entities and the efforts made to develop further sector-specific guidance, the deficiencies identified in the MER in relation to Recommendation 25 have not been fully addressed.

### **Recommendation 29 (PC)**

***Rec. 29: The number of on-site supervisory visits that result in inspections reports on compliance with AML/CFT requirements is low given the number of regulated financial institutions. This raises concerns in term of effectiveness of the supervision regime in place.***

144. The comments made in relation to Recommendation 23 are relevant here. This deficiency has been addressed, as far as the banking sector is concerned. The effectiveness of the supervisory regime in place in the insurance and securities sectors remains an issue. However, in line with the analysis set out above in relation to Recommendation 23, it is reasonable to conclude that this deficiency has been largely addressed.

### **Recommendation 30 (PC)**

***Rec. 30 (deficiencies 1 and 2): (1) considering the large number of entities that SEPBLAC is responsible for supervising, its number of staff is inadequate; (2) the analysis staff of SEPBLAC is distracted from its main functions due to supervision tasks.***

145. The comments made in relation to Recommendation 23 are relevant here. In this regard, Spanish authorities have taken some positive steps in line with the recommendations made in the MER.

***Rec. 30 (deficiency 3): the independence of SEPBLAC is called into question since it is housed within the Bank of Spain has no autonomous budget and its director is appointed by the Bank of Spain.***

146. Act 10/2010 changes the preventive AML/CFT institutional framework. SEPBLAC is now subordinate to the Commission for the Prevention of ML (co-ordination organism with the participation of prosecutors and all competent ministries and agencies). The Commission appoints the Director of SEPBLAC, approves its organisational chart and its budget. Once approved, SEPBLAC's budget will be integrated into the budget of the Bank of Spain as an independent and autonomous line (art. 44. d),e),f) and art.45.3). Spain has taken some appropriate steps to address the shortcoming identified in the MER.

**Rec. 30 (deficiency 4): insufficient resources are allocated to prosecution authorities.**

147. Spanish authorities indicate that there has been a significant increase in the staff allocated to prosecution authorities.

- At the time of the MER the Special Prosecutor's Office for Narcotics employed 9 prosecutors and 20 deputy prosecutors, the latter in charge of drug-related money laundering offences at provincial level. Current staff totals 42 prosecutors, as follows: 12 prosecutors at central level, 24 deputy prosecutor. In Málaga and Barcelona the deputy prosecutors support 4 and 2 prosecutors respectively. Steps are well advanced in order to allocate a specialised economic unit to the Office.
- In 2005 the Special Prosecutor's Office for Economic Crime Related to Corruption had 67 people: 10 prosecutors, 3 specialised units of the Judicial Police, Tax Fraud and Public Accounts auditors and 22 support staff. By the end of 2009 the allocated resources were 96 people: 30 prosecutors (15 at central level and 15 deputies), 26 support staff, and the human resources of the specialised units has also increased significantly.

148. Spanish authorities indicate that more resources have been allocated to prosecution authorities, which is in line with the recommendation made in the MER. Overall, Spain has taken serious steps to address the deficiencies highlighted in the MER in relation to Recommendation 30.

**Recommendation 32 (PC)****Rec. 32 (deficiency 1): Spain has not conducted a proper review of its AML/CFT regime.**

149. Spain indicates that the authorities are currently conducting a review of the threats and weaknesses that might impact the Spanish AML/CFT regime. No proper review is available yet. Despite some positive developments in collecting relevant data (see deficiency 2 below), this shortcoming has not been addressed.

**Rec. 32 (deficiencies 2, 3, 4, 5, 6, 7, 8): (1) there are no comprehensive statistics on money laundering investigations, prosecutions and convictions; (2) there are no comprehensive statistics on terrorist financing investigations, prosecutions and convictions; (3) there are very limited statistics on the number of cases and the amounts of property frozen seized and confiscated relating to money laundering, terrorist financing and criminal proceeds; (4) Spain does not collect statistics on whether the request for mutual legal assistance was granted or refused and on how much time was required to respond; (5) Spain does not collect statistics on the number of requests for extradition for ML/TF cases and does not collect data on whether the request was granted or refused and how much time was required to respond; (6) Spain does not maintain statistics on the number of formal requests made or received by SEPBLAC without distinguishing between the requests that were granted or refused; (7) no figures are available on the number of spontaneous referrals made by SEPBLAC to foreign authorities.**

150. Article 44.n) of Act 10/2010 empowers the Commission for the Prevention of ML to develop statistics on ML/TF, for which all competent authorities must provide their support. The Commission has identified four crucial actors which have been officially requested to provide their help in the development of appropriate statistics according to the requirements of international standards:

- The Office of Internal Security Studies (“Gabinete de Estudios de Seguridad Interior”, GESI), to support, through statistics and studies and research on the status

and trends of safety, senior and executive bodies of the Ministry of Interior in the drafting of policies and in making decisions related to this matter;

- Judicial Commission of Statistics: Art. 44 n) of the AML Law explicitly states that the National Judicial Commission will provide statistics on cases on ML and TF (including in relation to international co-operation);
- Since the MER, SEPBLAC has developed more comprehensive statistics that currently comprise: STRs received by the various reporting parties, outcome of the STRs, requests for information from the various domestic competent authorities, international co-operation, on-site inspections, off-site inspections, number of corrective measures requested during the year and corrective measures subject to monitoring, reports on ML/TF issued for the consideration of the prudential supervisors before granting approval for the creation of a new financial entity, reports issued on ML/TF at the acquisition of significant holdings;
- The Commission Secretariat as a body responsible for collecting information relating to cross-border cash movements should also collect statistics.

151. This is work in progress. It is not possible to assess the impact of the new measures, but it seems that Spain is addressing the issues raised in the MER on the lack of reliable statistics. Spain is already able to provide a broader range of statistics and the creation of the Judicial Commission of Statistics is a very positive step. The authorities indicate that there are no accurate statistics on TF issues yet since until the recent amendment of the Penal Code it was not considered as a stand-alone crime.

### ***R32, Overall conclusion***

152. Spain seems to have taken the issue of lack of statistics very seriously. However, Spain has still not conducted a proper review of its AML/CFT regime. The deficiencies in relation to Recommendation 32 have not been fully addressed.

### **Recommendation 33 (PC)**

***Rec. 33 (deficiency 1): Spanish law, although requiring transparency with respect to immediate ownership, does not require adequate transparency concerning beneficial ownership and control of legal persons.***

153. The formation of legal companies in Spain requires the intervention of a public notary and the registration of the notarial deed in the Trade Register. Only after this registration is legal personality granted. Notaries were already subject to the former AML/CFT preventive measures, but Act 10/2010 incorporates Trade Registrars as obliged entities.

154. With the enactment of Act 10/2010, notaries are required to identify the beneficial owner, whenever a legal person is constituted, since provisions in article 4 are applicable to them (see comments in relation to Recommendation 5 above). Spanish authorities indicate that this means that notaries, as with all entities subject to the Act, will not intervene in any act when they are not able to ascertain the ownership and control structure of the legal person, and that they are furthermore obliged to identify the

beneficial owner in the terms explained under Recommendation 5. The Act also introduces the duty of the notaries to deny or refrain from participating in any act when there is a “fair cause” based on the presence of some of the risk indicators identified by the SRO (the refusal to provide identification information or documents is one of them) or when there are reasonable grounds of simulation or law fraud (article 19).

155. Changes in the ownership of legal persons must be made through a notary or through a financial depositary institution. Both are covered subjects of Act 10/2010 and are therefore affected by the beneficial ownership provisions under article 4.

***Rec. 33 (deficiency 2): there are similar doubts also about the availability of adequate, accurate and current information on beneficial ownership and control of legal persons using bearer shares.***

156. Apart from the general provisions explained above, article 4.4 of Act 10/2010 introduces specific measures aimed at enhancing transparency of legal persons using bearer shares. Notaries in Spain must obtain, verify and retain records on beneficial ownership and control of legal persons using bearer shares. This information is held by each notary (see deficiency 3 below). There is also a legal presumption that the structure of corporations with bearer shares is not transparent. Therefore, the Act provides for an express prohibition to establish or maintain business relationships with such companies, unless the obliged subject is able to ascertain its ownership and control structure. It is therefore an “*obligation de résultat*” that means in practise that the incorporation or transmission of ownership of corporations with bearer shares will not be possible without the intervention of the notary or the depositary financial institution.

157. Despite the process intended to foster the dematerialisation of securities, which has been going on in Spain since 1998, some securities continue to exist in paper format. These securities can be (1) securities registered in the name of a nominee, or (2) bearer securities. If the securities are registered in the name of a nominee, the nominee name in which the security is registered can be ultimately traced back to the person who is the owner. As with dematerialised bearer securities, the change of ownership must be registered in a paper-based book entry held by the company and the company’s register will show the new registered owner. Under Act 10/2010, the depositary financial institution or any other obliged entity (including a notary) is required to ask for information from the customer (legal person) about the identity of the owner. The customer (legal person) must provide this information and copies of the registry to the depositary financial institution or any other obliged entity. There are however still cases where the shares are represented in bearer certificates. Since 1998 (Additional Provision Three of Law 24/1998 of the Securities Market), the possession of the bearer share certificate is not enough to prove ownership. In addition, the transfer of the ownership of the security has to be performed through (1) a notary, (2) a securities firm, or (3) a credit institution for the ownership transfer in order to be valid. Transfers taking place in other types of situations are not recognised and therefore are not valid. Notaries, securities firms and credit institutions must keep records of the transaction and make them available to interested parties.

***Rec. 33 (deficiency 3): access to information on beneficial ownership and control of legal persons, when there is access to such information, is often not timely.***

158. Pursuant to article 10 of the Ministerial Order 114/2008, notaries are required to record in a database the information of the acts that they undertake. The Notaries SRO maintains a database with the information recorded by all notaries. Law enforcement authorities can access automatically on-line all the information contained in the database. SEPBLAC has also immediate access. Any further request from competent authorities (e.g. copies of the acts of incorporation, etc.) is immediately provided by the SRO. From 2007 to 2009, the SRO received almost 25 000 requests of information from law enforcement authorities and a considerable number of requests for documents. After the enactment of the Act 10/2010, the SRO is now planning to develop a database of beneficial owners which will be equally accessible to competent authorities.

159. Spain has worked towards improving the timely access to information on beneficial ownership and control of legal persons using some form of a centralised information system through the notaries. The database containing beneficial ownership is however not operational yet. Despite some positive developments, the difficulties in ensuring that competent authorities can have timely access to adequate, accurate and current information on beneficial ownership and control seems to persist with respect to legal persons using bearer shares.

***R33, Overall conclusion***

160. Spain seems to have taken the issue of transparency of legal persons very seriously. However, the deficiencies in relation to Recommendation 33 have not been fully addressed.

## ANNEX I

### RELEVANT PROVISIONS OF THE PENAL CODE AS AMENDED BY ORGANIC LAW 5/2010 OF 22<sup>ND</sup> JUNE 2010

Art. 31 bis has been introduced in relation with criminal responsibility of the legal persons.

1. In the cases provided for in this Code, legal persons will be criminally responsible for crimes committed in the name or on behalf of them, and in their benefit, by their legal representatives and administrators of fact or of law. In these cases, legal persons will also be criminally responsible for crimes committed in the performance of social activities for and on benefit from them, by whom, being subject to the authority of natural persons mentioned in the previous paragraph, could have carry out the facts as a result of not having exercised proper control over them taking into account the concrete circumstances of the case.

2. The criminal responsibility of legal persons will be enforceable provided the confirmation of the perpetration of a crime that had to be committed by the person holding the offices or functions mentioned in the previous section, even though the specific natural person responsible has not been individualized or the proceedings against her have not been possible managed. When as a result of the same facts natural and legal persons were imposed the penalty fine, Judges or Courts shall modulate the respective amounts, so that the resulting sum is not disproportionate related to the seriousness of those.

#### CHAPTER XIV “OF MONEY LAUNDERING”

Any person who acquires, possesses, uses, converts or transfers property knowing that its origin is an illicit activity, committed by him or by any third person, or performs any other act to conceal or disguise its illicit origin, or to help another person who may have participated in the breach or breaches of the law to avoid the legal consequences of such actions will be punished with a prison term of between six months and six years and fined an amount equivalent to three times the value of the goods in question. In these cases, the judges or tribunals, taking into account the seriousness of the offence and the personal circumstances of the delinquent can also impose on the delinquent, the special punishment of prohibition from exercising the profession or industry for a period of between one to three years and to order the temporary or permanent closure of the establishment or premises. If closure is temporary it cannot exceed more than five years.

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

The punishment will be also imposed in its upper half when the goods have their origin in any one of the crimes covered in Chapters V, VI, VII, VIII, IX and X of Title XIX or any of the crimes of Chapter I of Title XVI.

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

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

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

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

## JUSTIFICATION

Adjust the Penal Code as provided in Articles 6.1.b) and 6.2.e) to the United Nations Convention against Transnational Organized Crime (the instrument of ratification was published in Official Gazette on September 29, 2003) and recommendation I of Financial Action Task Force (FATF).

### *Article 302*

“1. In the cases provided for in the preceding article, prison terms will be imposed in the upper half of the scale to those persons who belong to an organisation dedicated to the purposes mentioned, and the maximum sentence to the managers, administrators, or foremen of the organisations referred to.

2. -In these cases, when in accordance with Article 31 bis a legal person is responsible, it will impose the following penalties:

- a) —Fine of two to five years, if the offence committed by the natural person brings with more than five years prison penalty.
- b) -Fine of six months to two years in the remaining cases.

In light of the rules laid down in Article 66a, judges and courts may also impose the penalties set out in subparagraphs b) to g) of paragraph 7 of Article 33. ”

Additional amendments have been included with regards to money laundering related to tax crimes.

IN GENERAL TERMS, THE CRIMES OF TERRORISM ARE PUNISHED ACCORDING TO THE SECOND SECTION OF CHAPTER V OF TITLE XXII OF BOOK II OF THE PENAL CODE, IN ACCORDANCE WITH THE FOLLOWING ARTICLES:

### *Article 571. [Devastation or Fire]*

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

### *Article 572. [Attacks on the person]*

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

- 1° A prison term of between twenty and thirty years if they are responsible for a person's death.
- 2° A prison term of between fifteen and twenty years if they cause injuries of the types foreseen in Articles 149 and 150 or kidnap a person.
- 3° A prison term of between ten and fifteen years if they cause any other injury or illegally detain a person, or threaten, or intimidate a person.
2. If the attacks are made against the people mentioned in paragraph 2 of Article 551 or against members of the Armed Forces or the State's Security Forces or Bodies, Police of the Autonomous Communities or Local Authorities, the punishment will be imposed in its upper half.

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

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

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

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

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

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

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

1. Any person who carries out or facilitates any act of collaboration with the activities or aims of an armed group, organisation, association or terrorist group will be punished by a prison term of five to ten years and a special sanction of suspension of rights between eighteen and twenty four months.
2. Acts of collaboration are understood to include providing information or surveillance of people, property or installations, the construction, fitting out, cession or use of housing or deposits, the concealment or transfer of people linked to armed groups, organisations or terrorist groups, as well as the organisation of training practices, attendance at same and in general, any other equivalent way of cooperating, helping, or mediating either financially or in any other fashion with the activities of said armed groups, organisations, associations, or terrorist groups.

When the information or surveillance of the people mentioned in the preceding paragraph endangers the life, physical integrity, freedom or wealth of said persons, the punishment provided for in section 1, will be

imposed at its upper half. If the risk foreseen materialises, the event will be punished as a co-perpetrator or accomplice according to the circumstances.

***Article 576 bis is added, written as follows:***

«1. Any person who, by any means, directly or indirectly provides or collects funds with the intention that they should be used, or in the knowledge that they are to be used, in full or in part, to commit the offences included in this Chapter or to make them available to a terrorist organisation or group, will be punished by prison term of five to ten years and special sanction of suspension of rights between eighteen to twenty-four months.

If the funds are eventually used for the commission of specific terrorist acts, the conduct will be sanctioned as co-perpetrator or accomplice, as appropriate, provided that it entails a more serious punishment.

2.— Any person who, being specifically obliged by law to collaborate with the authorities in the prevention of the financing terrorism activities, and that because of serious negligence in the fulfilling of the above mentioned obligations, will cause that any of the described conducts in subsection one of this section will not be detected or stopped, will be punished with the sanction therein established inferior in one or two grades.

3. When, according to the provisions of article 31 bis of this Penal Code, a legal person will be responsible for the crimes included in this article, the following sanctions will be applied:

- a)—Fine of two to five years, if the crime committed by the natural person brings with more than five years prison penalty.
- b)—Fine of one to three years if the offence committed by a natural person brings with more than two years prison penalty not included in the former subsection.

**JUSTIFICATION**

Adjust Article 576 of the Penal Code to the International Convention for the Suppression of the Financing of Terrorism (the instrument of ratification was published in the Official Gazette on May 23, 2002) and Special Recommendation II of the Financial Action Task Force (FATF).

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

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

***Article 578. [Preparatory actions]***

Any promotion or justification through any public means of expression or publicity relating to the crimes provided for in Articles 571 to 577 of this Code or paying homage to people who may have participated in their execution or the performance of actions that entail discrediting, humiliating or insulting the victims of

the crimes of terrorism or their families will be punished with the prison term of one to two years. The Judge will also be empowered to decree in the sentence during the period of time laid down in it, any one or more of the prohibitions provided for in Article 57 of this Code.

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

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

When it is not covered by the previous paragraph or by any other section of this Penal Code establishing a higher penalty, the distribution or public dissemination by any means of messages or slogans aimed at inciting, promoting or favouring the commission of any of the crimes foreseen in this Chapter, generating or increasing the risk of its effective commission, will be punished with a prison term of six months to two years.

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

3. Those convicted to serious jail time penalties for one more crimes foreseen in this Chapter will be also subject to supervised release of 5 to ten years, or of one to five years in cases of less serious jail time penalties. Notwithstanding the previous statement, in case of a non serious only crime, committed by a first-time offender, the Court will or not impose the supervised release penalty according to the danger of the criminal.

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

**Article 580. [International recurrence]**

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

## ANNEX 2

### **PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING ACT [ACT 10/2010 OF 28 APRIL. PUBLISHED IN THE OFFICIAL STATE GAZETTE: 29<sup>TH</sup> APRIL 2010]**

JUAN CARLOS I  
KING OF SPAIN

To all those who see or hear the present.

Know: that the Parliament has approved and I hereby give my assent to the following Act:

#### **CONTENTS**

- Chapter I. General provisions (articles 1 and 2)
- Chapter II. Due diligence (articles 3-16)
- Chapter III. Reporting obligations (articles 17-25)
- Chapter IV. Internal control (articles 26-33)
- Chapter V. Means of payment (articles 34-37)
- Chapter VI. Other provisions (articles 38-43)
- Chapter VII. Institutional organisation (articles 44-49)
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Additional provision

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#### **EXPLANATORY STATEMENT**

The money laundering prevention policy emerged in the late 1980s in response to growing concerns raised by the financial crime resulting from drug trafficking.

The risk of the penetration of important sectors of the financial system by criminal organisations, to which the existing instruments failed to provide an adequate response, gave rise to a coordinated international policy whose most significant effect was the creation in 1989 of the Financial Action Task Force (FATF). The FATF Recommendations, adopted in 1990, quickly became the international standard in this area and were the direct inspiration for the First EU Directive (Council Directive 91/308/EEC of 10 June 1991).

However, an increased understanding of the techniques used by money laundering networks and the natural development of such a new public policy have, in recent years, led to a number of changes in the international standards and hence, in Community law.

In this context, the Act hereunder transposes Directive 2005/60/EC of the European Parliament and Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, developed by Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, and establishes the system of penalties laid down in Regulation (EC) No. 1781/2006 of the European Parliament and Council of 15 November 2006 on information on the payer accompanying transfers of funds.

Nonetheless, it should be noted that the Third Directive or Directive 2005/60/EC, which essentially incorporates the FATF Recommendations into Community law, following their review in 2003, merely provides a general framework that must not only be transposed but also completed by the Member States, giving rise to considerably lengthier and more detailed national standards. In other words, the Directive does not establish a comprehensive framework for the prevention of money laundering and terrorist financing to be implemented by the institutions and persons covered without further specification from their national legislatures. Moreover, the Third Directive is a minimum standard, as clearly stated in its article 5, that must be reinforced or extended taking into account the specific risks of each Member State, which is why this Act, like the current Specific Measures for the Prevention of Money Laundering Act 19/1993 of 28 December 1993, contains certain provisions that are stricter than those of the Directive.

Nonetheless, from a technical point of view, a total transposition has been made, adapting the terminology and systems of the Directive to native legislative practices. For example, the term *persons with public responsibility* ("personas con responsabilidad pública") has been used in place of what the Directive calls *politically exposed persons* ("personas del medio político"), on the grounds that this is more accurate and expressive in Spanish. The current system has also been maintained as far as possible, where it did not contradict the new Community law, in order to reduce the costs of adaptation for institutions and persons covered by the Act. Lastly, the rank has been raised of various provisions contained in the Royal Decree 925/1995 of 9 June, developing Act 19/1993 of 28 December, resulting in a significantly more extensive law. From a critical point of view, this technique could be labelled as overly regulatory; however, it is deemed preferable because it covers specific duties imposed on the institutions and persons covered by the Act, which find a more suitable fit in legal regulations.

Lastly, it should be noted that the systems for the prevention of money laundering and terrorist financing have been unified, thus ending the current dispersion. Pursuant to international standards on the prevention of money laundering, which have fully incorporated the fight against terrorist financing, the Third Directive, unlike the texts of 1991 and 2001, refers to "the prevention of the use of the financial system for the purpose of money laundering and terrorist financing."

In Spain, the Specific Measures for the Prevention of Money Laundering Act 19/1993 of 28 December, exists alongside the Prevention and Freezing of Terrorist Financing Act 12/2003 of 21 May. As its title suggests, Act 12/2003 of 21 May was not limited to regulating the freezing or blocking of funds with a possible terrorist link, as was its original intention; instead, it has mimicked the prevention obligations of Act 19/1993 of 28 December, which is clearly a dysfunctional situation.

Hence, without prejudice to the maintenance of Act 12/2003 of 21 May on freezing funds, the preventive aspects both of money laundering and terrorist financing are now regulated herein in a single piece of legislation. Freezing, as an operational decision, will remain within the power of the Ministry of the Interior, while the Commission for the Prevention of Money Laundering and Monetary Offences, which reports to the Secretariat of State for the Economy, will be assigned the power, with the participation of the financial supervisors, to initiate and carry out preliminary investigations in punitive proceedings for failure to comply with prevention obligations. This will put an end to the current duality of the legislation while maintaining the authority of the Commission on Terrorist Financing Monitoring to agree on the blocking or freezing of funds where justified.

## CHAPTER I

### General provisions

#### *Article 1. Subject matter, scope and definitions.*

1. The purpose of this Act is to safeguard the integrity of the financial system and other economic sectors by establishing obligations in respect of the prevention of money laundering and terrorist financing.
2. For the purposes of this Act, the following conduct shall be regarded as money laundering:
  - (a) The conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such activity to evade the legal consequences of his actions.
  - (b) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or involvement in criminal activity.
  - (c) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is derived from criminal activity or from an act of participation in criminal activity.
  - (d) Participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the actions mentioned in the foregoing points.

Money laundering shall exist even where the conduct described in the foregoing points was carried out by the person or persons who carried out the criminal activity that generated the property.

For the purposes of this Act, property deriving from criminal activity means assets of every kind whose acquisition or possession originates from a crime, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets, and the amount defrauded in the case of tax fraud.

Money laundering shall be regarded as such even where the activities which generated the property were carried out in the territory of another Member State or in that of a third country.

3. For the purposes of this Act, 'terrorist financing' means the provision, depositing, distribution or collection of funds or property, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the terrorist offences punishable under the Criminal Code.

Terrorist financing shall be regarded as such even where the provision or collection of money or property were carried out in the territory of another State.

4. For the purposes of this Act and without prejudice to the Additional provision, equivalent third countries shall be those states, territories or jurisdictions so determined by the Commission for the Prevention of Money Laundering and Monetary Offences due to their establishing equivalent requirements to those of Spanish law.

The qualification of a state, territory or jurisdiction as an equivalent third country shall not in any event have retroactive effect.

#### *Article 2. Institutions and persons covered by this Act.*

1. This Act shall apply to:
  - (a) Credit institutions.

- (b) Insurance companies authorised to operate in the field of life insurance and insurance brokers acting in connection with life insurance or other investment related-services, with the exceptions laid down in the regulations.
- (c) Investment services firms.
- (d) Management companies of investment funds and investment companies whose management is not assigned to a management company.
- (e) Pension fund management entities.
- (f) Management companies of venture capital entities and venture capital companies whose management is not assigned to a management company.
- (g) Mutual guarantee companies.
- (h) Payment entities.
- (i) Persons whose business activity includes currency exchange.
- (j) Postal services in respect of giro or transfer activities.
- (k) Persons professionally involved in brokering loans or credits, as well as persons who, without obtaining prior authorisation, such as credit institutions, carry out any of the professional activities covered by the First additional provision of Act 3/1994, of 14 April 1994, adapting Spanish legislation on credit institutions to the Second Banking Co-ordination Directive and introducing other changes relative to the financial system.
- (l) Property developers and persons whose business activities include those of agency, commission or brokerage in property trading.
- (m) Auditors, external accountants and tax advisers.
- (n) Notaries and registrars of property, trade and personal property.
- (ñ) Lawyers, barristers and other independent professionals when they participate in the design, implementation or advice on transactions on behalf of clients relating to the buying and selling of property or business entities, the management of funds, securities or other assets, the opening or management of current, savings or securities accounts, the organisation of contributions necessary for the creation, operation or management of companies or the creation, operation or management of trusts, companies or similar structures, or when acting on behalf of clients in any financial or property transaction.
- (o) Persons who on a professional basis and in accordance with the specific rules applicable in each case provide the following services to third parties: forming companies or other legal persons; acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership or a similar position in relation to other legal persons; providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement; acting as or arranging for another person to act as a trustee of an express trust or similar legal arrangement, or acting as or arranging for another person to act as a shareholder for another person, other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards.
- (p) Casinos.
- (q) Professional dealers in jewels, precious stones or metals.
- (r) Professional dealers in works of art or antiques.

- (s) Persons whose business activity includes those set down in article 1 of Consumer Protection in the Procurement of Goods with a Price Refund Offer Act 43/2007, of 13 December.
- (t) Persons engaged in the deposit, custody or professional transfer of funds or means of payment.
- (u) Persons responsible for the management, operation and marketing of lotteries or other gambling activities in respect of prize payment transactions.
- (v) Natural persons engaged in the movement of means of payment, under the terms laid down in article 34.
- (w) Professional dealers in goods, under the terms set out in article 38.
- (x) Foundations and associations, under the terms provided for in article 39.
- (y) Managers of payment systems, clearing systems and those for the settlement of securities and financial derivatives, as well as managers of credit cards or debit cards issued by other entities, under the terms established in article 40.

This Act shall be considered to cover non-resident persons or entities that, through branches or agents or the provision of services without permanent establishment, carry out activities in Spain of a similar nature to the persons or entities referred to in the previous subparagraphs.

2. This Act shall be considered to apply to the natural or legal persons carrying out the activities referred to in the previous paragraph. However, when natural persons act as employees of a legal person, or provide permanent or occasional services for the latter, the obligations imposed under this Act shall correspond to such legal person in respect of the services rendered.

The institutions and persons covered by this Act will be also subject to the obligations hereunder with respect to transactions performed through brokers or other persons acting as mediators or intermediaries of the latter.

3. Persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or terrorist financing may be excluded in the regulations.

4. For the purposes of this Act, the institutions and persons covered by this Act listed from (a) to (i) of paragraph 1 shall be regarded as financial institutions.

## **CHAPTER II**

### **Due diligence**

#### ***SECTION 1. NORMAL DUE DILIGENCE***

##### *Article 3. Formal identification.*

1. The institutions and persons covered by this Act shall identify the natural or legal persons intending to enter into business relations or to act in any transaction.

Under no circumstances shall the institutions and persons covered by this Act maintain business relationships or carry out transactions with natural or legal persons who have not been duly identified. In particular, the opening, contracting or maintenance of accounts, passbooks, assets or instruments that are numbered, encrypted, anonymous or under fictitious names shall be prohibited.

2. Before entering into the business relationship or executing any transactions, the institutions and persons covered by this Act shall verify the identity of the participants using reliable and irrefutable documentary evidence. If the identity of the participants cannot be initially verified by documentary evidence, article 12 may be applied, unless there are elements of risk in the transaction.

The documents to be considered as proof of identification shall be established in the regulations.

3. In life insurance, the identity of the policyholder must be verified before conclusion of the contract. The identity of the beneficiary of the life insurance must be verified in all cases before payment of the benefit under the contract or the exercise of the rights of redemption, payment or pledge granted by the policy.

*Article 4. Identification of the beneficial owner.*

1. The institutions and persons covered by this Act shall identify the beneficial owner and take appropriate steps to verify the identity of the latter before entering into business relations or executing any transactions.

2. For the purposes of this Act, beneficial owner shall mean:

(a) Natural person or persons on whose behalf a transaction or activity is being conducted or intervene in any transaction.

(b) Natural person or persons who ultimately owns or controls, directly or indirectly, a percentage of more than 25 percent of the capital or voting rights of a legal person, or who otherwise exercises control, directly or indirectly, over the management of a legal person. Companies listed on a regulated market of the European Union or equivalent third countries are excepted.

(c) .Natural person or persons who ultimately own or control over 25 percent or more of the property of a legal arrangement or entity that administers or distributes funds, or, where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest is set up or operates;

3. The institutions and persons covered by this Act shall gather information on clients to determine whether they are acting on their own or for third parties. Where there are indications or certainty that clients are not acting on their own, the institutions and persons covered by this Act shall gather the information required in order to find out the identity of the persons on whose behalf they are acting.

4. The institutions and persons covered by this Act shall take appropriate steps to identify the structure of ownership and control of legal persons.

The institutions and persons covered by this Act will not establish or maintain business relationships with legal persons whose ownership or control structure has not been possible to ascertain. In the case of corporations whose share are represented by bearer titles, the preceding prohibition will be applicable unless the obliged subject ascertains by other means the ownership and control structure. This provision will not be applicable to the conversion of bearer titles in registered titles or book entries.

*Article 5. Purpose and nature of the business relationship.*

The institutions and persons covered by this Act shall obtain information on the purpose and intended nature of the business relationship. In particular, the institutions and persons covered by this Act shall gather information from their clients to find out the nature of their professional or business activities and shall take reasonable steps to verify the accuracy of this information.

Such measures shall include the establishment and implementation of procedures to verify the activities declared by clients. Such procedures shall take into account the different levels of risk and be based on obtaining from clients documents relating to the stated activity or on obtaining information regarding the latter from a source other than the client.

*Article 6. Ongoing monitoring of the business relationship.*

The institutions and persons covered by this Act shall conduct ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with their knowledge of the customer, the business and risk profile, including the source of funds and to ensure ~~ensuring~~ that the documents, data and information held are kept up-to-date.

*Article 7. Application of due diligence measures.*

1. The institutions and persons covered by this Act shall apply each of the customer due diligence measures provided for in the previous articles, but may determine the degree of application of the measures provided for in articles 4, 5 and 6 on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction, which circumstances are set down in the explicit policy on customer admissions referred to in article 26.

The institutions and persons covered by this Act shall be able to demonstrate to the competent authorities that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing through a prior risk analysis which must, in any event, be set down in writing.

In all events, the institutions and persons covered by this Act shall implement the due diligence measures when there is suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold, or when there are doubts about the veracity or adequacy of previously obtained data.

2. Without prejudice to the second subparagraph of article 3.1, the institutions and persons covered by this Act shall apply the due diligence measures provided for in this Chapter not only to all new customers but also to existing customers, on a risk-sensitive basis.

In any event, the institutions and persons covered by this Act shall apply the due diligence measures to existing customers when these contract new products or when a transaction takes place that is significant for its volume or complexity.

The provisions of this paragraph shall be without prejudice to the liability applicable through the breach of obligations in force before the coming into force of this Act.

3. The institutions and persons covered by this Act shall not enter into business relationships or execute transactions when they cannot apply the due diligence measures required in this Act. If this is found to be impossible during the course of the business relationship, the institutions and persons covered by this Act shall terminate the latter and conduct the special review set out in article 17.

The refusal to enter into business relations or execute transactions or the termination of the business relationship due to the impossibility of applying the due diligence measures hereunder shall not entail any liability for the institutions and persons covered by this Act, except if this should involve unfair enrichment.

4. The institutions and persons covered by this Act shall apply the due diligence measures set forth in this Chapter to trusts and other legal arrangements or patrimonies which, despite lacking legal personality, may act in the course of trade.

5. Casinos shall identify and verify with documentary proof the identity of all persons intending to enter the establishment. The identity of such persons shall be recorded, subject to compliance with the provisions of article 25.

Likewise, casinos shall identify all persons intending to perform the following transactions:

(a) The delivery of cheques to customers as a result of the exchange of chips.

- (b) Transfers of funds made by casinos at the request of customers.
- (c) The issue by casinos of certificates providing evidence of the gains obtained by players.
- (d) The purchase or sale of gambling chips with a value of EUR 2,000 or more.

With the implementation by casinos of the requirements of this section, the due diligence measures required under this Act shall be understood to have been met.

*Article 8. Third-party application of due diligence measures.*

1. The institutions and persons covered by this Act may rely on third parties under this Section to apply the due diligence measures provided for in this Section, with the exception of ongoing monitoring of the business relationship.

Nonetheless, the institutions and persons covered by this Act shall maintain full responsibility for the business relationship or transaction, even when the breach is attributable to the third party, without prejudice, where applicable, to the liability of the latter.

2. The institutions and persons covered by this Act may rely on third parties covered by the legislation on prevention of money laundering and terrorist financing of other Member States of the European Union or equivalent third countries, even if the documents or data required by the latter are different to those under this Act.

It shall be prohibited to rely on third parties resident in third countries not classified as equivalent or with regard to which the European Commission adopts the decision referred to in the Additional provision of this Act.

3. Reliance on third parties for the implementation of due diligence measures shall require the prior execution of a written agreement between the institution or person covered by this Act and the third party to formalise the respective obligations.

Third parties shall make information obtained in application of the due diligence measures immediately available to the institution or person covered by this Act. Likewise, the third parties shall send to the institution or person covered by this Act, at the request of the latter, a copy of the relevant documents pursuant to this section.

4. The provisions of this article shall not apply to outsourcing or agency relationships where, on the basis of a contractual agreement, the outsourcing service provider or agent is to be regarded as part of the institution or person covered by this Act.

The institutions and persons covered by this Act, notwithstanding maintaining full responsibility for the customer, may accept the due diligence measures implemented by their subsidiaries or branches established in Spain or in third countries.

**SECTION 2. SIMPLIFIED DUE DILIGENCE**

*Article 9. Simplified customer due diligence measures.*

1. Without detriment to the third subparagraph of article 7.1, the institutions and persons covered by this Act shall not be subject to apply the customer due diligence provided for in articles 3.2, 4, 5 and 6 in respect of the following customers:

- (a) The public entities of the Member States of the European Union or equivalent third countries.
- (b) Financial institutions with registered offices in the European Union or equivalent third countries provided that they are supervised for compliance with customer due diligence.

(c) Listed companies whose securities are admitted to trading on a regulated market in the European Union or equivalent third countries.

The application of simplified due diligence measures is prohibited in the case of third countries not classified as equivalent or in respect of which the Commission adopts the decision referred to in the Additional provision of this Act.

By order of the Minister of Economy and Finance, the application of simplified due diligence may be excluded for certain customers.

2. The application of simplified due diligence in respect of other customers representing a low risk of money laundering or terrorist financing may be authorised in the regulations.

3. In all events, the institutions and persons covered by this Act shall gather sufficient information to establish whether the customer qualifies for an exemption as laid down in this article.

*Article 10. Simplified due diligence with respect to products or transactions.*

1. Without detriment to the third subparagraph of article 7.1., , the institutions and persons covered by this Act are authorised not to apply the customer due diligence measures provided for in articles 3.2, 4, 5 and 6 in respect of the following products or transactions:

(a) life insurance policies where the annual premium is no more than EUR 1,000 or the single premium is no more than EUR 2,500, except if the transactions appear to be linked.

(b) The additional social welfare instruments listed in article 51 of Personal Income Tax and Partial Amendment to Company Tax, Non-resident Income Tax and Wealth Tax Act 35/2006, of 28 November, provided that the liquidity is limited to the situations covered in the regulations on pension plans and funds, and that they may not be used as collateral for a loan.

(c) Collective insurance entailing pension commitments referred to in the First additional provision of the consolidated text of the Pension Plans and Funds Act, approved by Royal Legislative Decree 1/2002 of 29 November, provided that they meet the following requirements:

1. They introduce pension commitments deriving from a collective agreement or a redundancy procedure approved by the relevant labour authorities.

2. They do not allow for the payment of premiums by the insured worker that, combined with those paid by the employer policyholder, total an amount exceeding the limits set by article 52.1(b) of Personal Income Tax Act 35/2006, of 28 November, for the complementary social security instruments listed in article 51 of the latter.

3. They cannot be used as collateral for a loan and do not allow for redemption situations other than the exceptional situations of liquidity provided for in pension plan legislation or listed in article 29 of Royal Decree 1588/1999, of 15 October, approving the regulations on pension commitment arrangements by companies with employees and beneficiaries.

(d) Electronic money as defined in the regulations.

2. The institutions and persons referred to in article 2.1(b) are authorised not to apply the customer due diligence provided for in article 6 in respect of life insurance premiums paid by bank transfer, standing order or personal cheque from a credit institution domiciled in Spain, the European Union or equivalent third countries. This provision shall be without prejudice to the application of customer due diligence before entering into the business relationship or before payment of the benefit deriving from the contract or exercise of the rights to redemption, payment or pledge granted by the policy.

3. The application of simplified due diligence in respect of other products or transactions representing a low risk of money laundering or terrorist financing may be authorised in the regulations.

Likewise, the non-application of all or some of the due diligence measures in respect of transactions not exceeding a quantity threshold that, either individually or on aggregate over certain periods of time, will not surpass in general 1.000 euros, may be authorised in the regulations.

In particular, simplified customer due diligence may be authorised under the terms determined in the regulations, in life insurance policies that insure only the risk of death, including those that provide for additional guarantees of monetary compensation for partial, total or absolute permanent disability or temporary disability.

4. The institutions and persons covered by this Act shall in any case gather sufficient information to establish whether the exemptions provided in this article are applicable.

### **SECTION 3. ENHANCED DUE DILIGENCE MEASURES**

#### *Article 11. Enhanced customer due diligence.*

The institutions and persons covered by this Act shall, in addition to the normal due diligence measures, apply enhanced measures in the cases provided for in this section and in any other that, for its high risk of money laundering or terrorist financing, is determined by the regulations.

Likewise, the institutions and persons covered by this Act shall apply, on a risk-sensitive basis, enhanced customer due diligence measures in situations which by their nature can present a higher risk of money laundering or terrorist financing. In any event, private banking activity, money remittance services and foreign exchange operations shall have this consideration.

The regulations may specify the enhanced customer due diligence measures required in the areas of business or activities that can pose a higher risk of money laundering or terrorist financing.

#### *Article 12. Business relationships and transactions without physical presence.*

1. The institutions and persons covered by this Act may enter into business relations or execute transactions by telephone, electronic and telematic means with customers who are not physically present, provided that one of the following conditions is met:

(a) The customer's identity is accredited in accordance as defined in the applicable regulations on electronic signatures.

(b) The first deposit originates from an account in the same client's name opened in Spain, the European Union or in equivalent third countries.

(c) The requirements to be determined in the regulations are judged to be met.

In any event, within one month of entering into the business relationship, the institutions and persons covered by this Act must obtain from these customers a copy of the documents required to practice due diligence.

Where discrepancies are observed between the data supplied by the customer and the other information accessible or in the possession of the institution or person covered by this Act, face-to-face identification will be required.

The institutions and persons covered by this Act shall take additional due diligence measures when in the course of the business relationship they determine? Judge the risk to be above risks above the average risk level.

2. The institutions and persons covered by this Act shall establish policies and procedures to address the specific risks associated with non-face-to-face business relationships and transactions.

*Article 13. Cross-border correspondent banking.*

1. In respect of cross-border correspondent banking relationships with respondent institutions from third countries, credit institutions shall apply the following measures:

- (a) Gather sufficient information about a respondent institution to understand the nature of the respondent's business and to determine from publicly available information its reputation and the quality of its supervision.
- (b) Assess the respondent institution's anti-money laundering and anti-terrorist financing controls.
- (c) Obtain approval from at least the immediate senior manager with directive responsibility before establishing new correspondent banking relationships.
- (d) Document the respective responsibilities of each institution.

2. Credit institutions shall not enter into or continue correspondent relationships with shell banks. Likewise, credit institutions shall take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a bank that is known to permit its accounts to be used by shell banks.

For this purpose shell bank means a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group.

3. The credit institutions covered by this Act shall not engage in or continue correspondent banking relationships that, either directly or through a sub-account, enable the customers of the respondent credit institution to execute transactions.

4. The provisions of this article shall also be applicable to payment institutions.

*Article 14. Politically exposed persons*

1. The institutions and persons covered by this Act shall apply enhanced customer due diligence measures in business relationships or transactions with politically exposed persons.

Politically exposed persons means natural persons who are or have been entrusted with prominent public functions in other Member States of the European Union or in third countries and immediate family members, or persons known to be close associates, of such persons.

For these purposes, the following definitions shall apply:

- (a) natural persons who are or have been entrusted with prominent public functions means heads of state, heads of government, ministers, secretaries of state or undersecretaries, parliamentarians, supreme court judges, constitutional court judges or judges of other high-level judicial bodies whose decisions are not normally subject to appeal except in exceptional circumstances, including equivalent members of the Public Prosecutor's Office, the members of courts of auditors or boards of central banks, ambassadors and *chargés d'affaires*, top military personnel of the armed forces and members of the administrative, management or supervisory bodies of public companies.

These categories shall, where applicable, include European Commission and international positions. None of these categories shall be understood as covering middle ranking or more junior officials.

Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence, when a person has ceased to be entrusted with a prominent public function for at least two years, it will not be compulsory to regard him/her as a person with public responsibility.

(b) Immediate family members: the spouse or any person with a stable link through a similar emotional relationship, as well as parents and children, and the spouses or any persons with a stable link to the children through a similar emotional relationship.

(c) By persons known to be close associates: any natural person who is known to own or control a legal person or arrangement together with any of the individuals referred to in (a), or who maintains other close business relations with the same, or owns or controls a legal person or arrangement known to have been formed for the benefit of the latter.

2. In addition to normal customer due diligence, in business relationships or transactions with politically exposed persons, institutions and persons covered by this Act shall:

(a) Implement appropriate risk-based procedures to determine whether the intervenant or beneficial owner is a politically exposed person. These procedures will be included in the explicit policy on customer admissions referred to in article 26.1.

(b) Obtain approval from at least the immediate senior manager, before entering into business relationships with politically exposed persons.

(c) Take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction.

(d) Conduct enhanced ongoing monitoring of the business relationship.

Exceptions to the application of some or all of the measures provided for above may be set down in the regulations for certain categories of institutions and persons covered by this Act.

3. When, due to the circumstances set down in article 17, a special review is required, the institutions and persons covered by this Act shall take the appropriate measures to assess the possible participation in the act or transaction of any person who holds or has held during the previous two years a representative public office or senior position in the Spanish government, or of their immediate family members, or persons known to be their close associates.

#### *Article 15. Data processing of politically exposed persons.*

1. For application of the measures set out in the preceding article, institutions and persons covered by this Act may create files containing the identifying data of politically exposed persons, even if they do not maintain a business relationship with them.

For this purpose, institutions and persons covered by this Act may gather the information available on politically exposed without the consent of the data subject, even if this information is not available in sources that are available to the public.

The data contained in the files created by the institutions and persons covered by this Act may only be used for performance of the enhanced due diligence measures provided for in this Act.

2. It will also be possible for third parties other than the institutions and persons covered by this Act to create files that contain information identifying individuals with the status of politically exposed persons for the sole purpose of cooperating with the institutions and persons covered by this Act in the performance of enhanced customer due diligence.

The persons or entities that create these files may not use the data for any purpose other than that designated in the previous subparagraph.

3. The processing and transfer of data referred to in the previous two paragraphs shall be subject to the Personal Data Protection Organic Act 15/1999, of 13 December, and its implementing regulations.

Nonetheless, it will not be necessary to inform those concerned of the inclusion of their data in the files referred to in this article.

4. The institutions and persons covered by this Act and third parties referred to in paragraph 2 shall establish procedures for the continuous updating of the data contained in the files on politically exposed persons..

In any event, the high-level security measures provided for in the personal data protection legislation shall be applied to the file.

*Article 16. Products or transactions favouring anonymity and new technological developments.*

The institutions and persons covered by this Act shall pay special attention to any money laundering or terrorist financing threat that may arise from products or transactions that might favour anonymity, or from new technological developments, and take appropriate measures to prevent their use for money laundering or terrorist financing purposes.

In such cases, institutions and persons covered by this Act shall conduct a specific analysis of possible money laundering or terrorist financing threats, which should be documented and made available to the competent authorities.

### CHAPTER III

#### Reporting obligations

*Article 17. Special review.*

The institutions and persons covered by this Act shall pay special attention to any event or transaction, regardless of its size, which by its nature, could be related to money laundering or terrorist financing, and record the results of their study in writing. In particular, the institutions and persons covered by this Act shall closely examine any transaction or pattern of behaviour that is complex, unusual or with no apparent economic or lawful purpose, or which denotes signs of deception or fraud.

When establishing the internal controls referred to in article 26, the institutions and persons covered by this Act shall specify the way in which this obligation to conduct a special examination is to be fulfilled. Such specifications shall include the preparation and dissemination among executives, employees and agents of a list of transactions particularly liable to be related to money laundering or terrorist financing, which should be regularly updated and the use of appropriate IT tools to conduct each analysis, bearing in mind the type of transactions, business sector, geographical scope and volume of information.

The regulations may determine operations that will in all events be subject to special review by the institutions and persons covered by this Act.

*Article 18. Suspicious transactions reporting.*

1. The institutions and persons covered by this Act shall, on their own initiative, notify the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences ' (hereinafter the Executive Service) of any fact or transaction, even the mere attempt, regarding which, following the special review referred to in the previous article, there is any indication or certainty that it bears a relation to money laundering or terrorist financing.

In particular, the Executive Service shall be notified of transactions that, with regard to the activities listed in article 1, reveal an obvious incongruity with the nature, volume of activity or transaction history of the customers, provided that the special review referred to in the preceding article does not bring to light any economic, professional or business justification for the execution of the transactions.

2. The communications referred to in the previous section shall be made without delay in accordance with the relevant procedures under article 26 and shall, in any case, contain the following information:

- (a) List and identification of the natural or legal persons taking part in the transaction and the nature of their participation.
- (b) The activity which the natural or legal persons participating in transactions are known to engage in, and the congruence between this activity and the transactions made.
- (c) A list of transactions and their dates stating their nature, the currency in which they were transacted, the amounts and place or places involved, their purpose and the means of payment or collection used.
- (d) The steps taken by the institution or person covered by this Act to investigate the transactions being notified.
- (e) A statement of all the circumstances of whatever kind giving rise to the suspicion or certainty of a link with money laundering, or evidencing the lack of economic, professional or business justification for the activities carried out.
- (f) Any other data relevant to the prevention of money laundering or terrorist financing determined in the regulations.

In any case, the notification made to the Executive Service shall be preceded by a structured process of a special review of the transaction in accordance with the provisions of article 17. In cases where the Executive Service considers that the special review conducted is insufficient, it will return the notification to the institution or person covered by this Act for the latter to conduct a more thorough review of the transaction, succinctly indicating the reasons for its return and the content to be reviewed.

In the case of merely attempted transactions, the institution or person covered by this Act shall record the transaction as not executed and report to the Executive Service on the information obtained.

3. Reporting on grounds of indication shall be carried out by the institutions and persons covered by this Act on the medium and in the format determined by the Executive Service.
4. Directors or employees of institutions and persons covered by this Act may report directly to the Executive Service on the transactions of which they are aware and consider there to be indications or the certainty of a relation to money laundering or terrorist financing in cases where, after being brought to light internally, the institution or person covered by this Act failed to inform the reporting director or employee of the outcome of his/her notification.

*Article 19. Abstention from execution.*

1. The institutions and persons covered by this Act shall refrain from carrying out any transaction of those referred to in the previous article.

However, when such abstention is not possible or may hinder the investigation, the institutions and persons covered by this Act shall be free to perform it notifying the Executive Service immediately thereafter in accordance with the provisions of article 18. The notification to the Executive Service shall, in addition to the information referred to in article 18.2, indicate the grounds for executing the transaction.

2. For the purposes of this Act, just cause for the refusal of notarial authorisation or for their duty of abstention shall mean the presence in the transaction either of various risk indicators identified by the centralised prevention body or clear indication of law deception or fraud. Hence, without prejudice to article 24, the notary shall obtain from the customer the information needed to assess the concurrence of such indicators or circumstances in the transaction.

With regard to registrars, the obligation to abstain referred to in this article shall not in any case prevent the entry of the legal act or transaction in the land, trade or movable property registers.

*Article 20. Systematic reporting.*

1. In all events, the institutions and persons covered by this Act shall report the Executive Service at the established frequency on the transactions determined in the regulations.

Notwithstanding the foregoing, if the transactions subject to systematic reporting contain indications or the certainty of being related to money laundering or terrorist financing, the provisions of articles 17, 18 and 19 shall apply.

Certain categories of institutions and persons covered by this Act may be exempted in the regulations from the obligation to systematically report on transactions.

In the absence of transactions to report on, institutions and persons covered by this Act shall indicate this circumstance to the Executive Service at the frequency determined in the regulations.

2. Systematic reporting shall be carried out by the institutions and persons covered by this Act on the medium and in the format determined by the Executive Service.

*Article 21. Cooperation with the Commission for the Prevention of Money Laundering and Monetary Offences and its support bodies.*

1. The institutions and persons covered by this Act shall supply the documentation and information required of them by the Commission for the Prevention of Money Laundering and Monetary Offences and its support bodies in the exercise of their powers.

The requirements shall specify the documentation to be supplied or the circumstances that have to be reported, and shall expressly state the term in which these should be presented. At the end of the submission period for the required documentation or information, if the latter has not been supplied or is incomplete due to the omission of data hampering proper review of the situation, the obligation under this article shall be deemed to have been breached.

2. The institutions and persons covered by this Act shall, within the framework of the internal controls referred to in article 26, put in place systems allowing them to respond fully and rapidly to enquiries from the Commission for the Prevention of Money Laundering and Monetary Offences, its support bodies and other legally competent authorities regarding whether they maintain or have maintained during the previous ten years a business relationship with specified natural or legal persons and regarding the nature of that relationship.

*Article 22. Exemption.*

Lawyers shall not be subject to the obligations under articles 7.3, 18 and 21 with respect to the information that they receive from any of their clients or obtain on the latter when ascertaining the legal position for their client or performing their duty of representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, irrespective of whether such information was received or obtained before, during or after such proceedings.

Notwithstanding the provisions of this Act, lawyers shall remain subject to their obligation of professional secrecy in accordance with the legislation in force.

*Article 23. Exemption from liability.*

The disclosure of information in good faith to the competent authorities under this Act by the institutions and persons covered by this Act or, exceptionally, by its employees or directors shall not constitute a breach of any restriction on the disclosure of information imposed by contract or by any legislative,

regulatory or administrative provision, and shall not involve the institutions and persons covered by this Act, their directors or employees in liability of any kind.

*Article 24. Prohibition of disclosure.*

1. The institutions and persons covered by this Act and their directors and employees shall not disclose to the customer concerned or to third persons the fact that information has been transmitted to the Executive Service, or that a transaction is under review or may be under review in case it is related to money laundering or terrorist financing.

This prohibition shall not include disclosure to the competent authorities, including centralised prevention bodies, or disclosure for law enforcement purposes in the context of a criminal investigation.

2. The prohibition laid down in the previous paragraph shall not prevent:

(a) The reporting of information between financial institutions belonging to the same group. For this purpose, the definition of group laid down in article 42 of the Code of Commerce shall apply.

(b) Disclosure between the institutions and persons covered by this Act referred to in points m) and ñ) of article 2.1, when they perform their professional activities, whether as employees or not, within the same legal person or a network. For these purposes, a "network" shall mean the larger structure to which the person belongs and which shares common ownership, management or compliance control.

(c) Disclosure related to a single client and a single transaction involving two or more institutions or persons, between financial institutions or between the institutions and persons covered by this Act referred to in points m) and ñ) of article 2.1, provided that they are from the same professional category and are subject to equivalent obligations as regards professional secrecy and personal data protection. The information exchanged shall be used exclusively for the purposes of the prevention of money laundering and terrorist financing.

The exceptions laid down in the preceding subparagraphs shall also apply to disclosure between persons or institutions domiciled in the European Union or in equivalent third countries.

Disclosure shall be prohibited with persons or institutions domiciled in third countries not classified as equivalent or in respect of which the Commission adopts the decision referred to in the Additional provision of this Act.

3. Where the institutions and persons covered by this Act referred to in article 2.1(m) and ñ) seek to dissuade a client from engaging in illegal activity, this shall not constitute a disclosure within the meaning of paragraph 1.

*Article 25. Record keeping.*

1. The institutions and persons covered by this Act shall keep the documentation gathered for the compliance with the obligations under this Act for a minimum period of ten years.

In particular, institutions and persons covered by this Act shall keep for its use in any investigation or analyses of possible money laundering or terrorist financing by the Executive Service or by other competent authorities:

(a) Copy of the documents required under customer due diligence measures for a minimum period of ten years following the end of the business relationship or carrying-out of the transaction.

(b) Original or copy admissible in court proceedings of the documents or records duly evidencing the transactions, the participants in the latter and the business relationships, for a minimum period of ten years following the carrying-out of the transaction or the end of the business relationship.

2. The institutions and persons covered by this Act, with the exceptions determined in the regulations, shall store copies of the identification documents referred to in article 3.2 on optical, magnetic or computer media to assure their integrity, correct reading of the data, impossibility of their manipulation and proper conservation and location.

In any case, the record keeping system of the institutions or persons covered by this Act shall guarantee the proper management and availability of the documentation, both for internal control purposes and for responding to the requirements of the authorities in a timely manner.

## CHAPTER IV

### Internal control

#### *Article 26. Internal controls.*

1. The institutions and persons covered by this Act, with the exceptions determined in the regulations, shall adopt in writing and implement adequate policies and procedures of customer due diligence, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication in order to forestall and prevent operations related to money laundering or terrorist financing. These policies and procedures shall be communicated to branches and majority-owned subsidiaries located in third countries.

The institutions and persons covered by this Act, with the exceptions determined in the regulations, shall adopt in writing and implement an explicit policy for client admission. The said policy shall include a description of the kinds of clients potentially carrying a higher-than-average risk, in accordance with the factors defined by each institution or person covered by this Act with reference to the international standards applicable to each case. Client admission policies shall be progressive, with extra precautions taken for those exhibiting a higher-than-average risk.

Where there is a centralised prevention body for the collegiate professions covered by this Act, the latter shall be responsible for the approval in writing of the aforementioned policy of customer admissions.

2. The institutions and persons covered by this Act shall designate a director or management figure in the company as a representative to the Executive Service. In the case of employers or professional individuals, the owner of the business shall act as representative to the Executive Service. With the exceptions determined in the regulations, the nomination of the representative, together with a detailed description of his/her career, shall be referred to the Executive Service, which may make reasoned objections or observations. The representative to the Executive Service shall be responsible for fulfilment of the reporting obligations set out in this Act, for which he/she shall have unlimited access to any information in the possession of the institution or person covered by this Act.

The institutions and persons covered by this Act shall establish an appropriate internal control body responsible for implementing the policies and procedures referred to in paragraph 1. The internal control body, which, where appropriate, will consist of representatives from the different business areas of the institution or person covered by this Act, shall make a clear record of the arrangements adopted, at the intervals determined in the internal control procedure. The categories of institutions and persons covered by this Act for which the constitution of an internal control body is not required may be specified in the regulations. In such cases, the functions of said body shall be performed by the representative to the Executive Service.

The representative to the Executive Service and the internal control body shall have the material, human and technical resources in the exercise of their functions. The regulations shall determine for certain categories of institutions and persons covered by this Act the need to set up technical units for the processing and analysis of the information.

The anti-money laundering and anti-terrorist financing bodies shall, in all cases, operate with functional separation from the internal auditing department or unit of the institution or person covered by this Act.

3. The institutions and persons covered by this Act, with the exceptions determined in the regulations, shall adopt an appropriate manual for the prevention of money laundering and terrorist financing, which shall be kept up to date with complete information on the internal controls referred to in the previous paragraphs. The manual shall be available to the Executive Service for performance of its supervisory and inspection duties, and the latter may propose to the Standing Committee of the Commission for the Prevention of Money Laundering and Monetary Offences the formulation of requirements to urge institutions and persons covered by this Act to take appropriate corrective action.

The institutions and persons covered by this Act may voluntarily submit their manual to the Executive Service, so that the latter may determine the adequacy of the internal controls established or intended to be established. Compliance of the manual with the recommendations of the Executive Service shall entail fulfilment of the obligation under this paragraph.

4. The internal controls under this article may be established at group level, in accordance with the definition in article 24.2(a), provided that such decision is reported to the Executive Service, specifying the institutions and persons covered by this Act included in the structure of the group.

*Article 27. Centralised prevention bodies.*

1. By Order of the Minister of Economy and Finance, the constitution of centralised prevention bodies (SROs) may be agreed for the collegiate professions covered by this Act.

The centralised prevention bodies shall strengthen and channel the cooperation of collegiate professions with the judicial, police and administrative authorities responsible for the prevention and fighting of money laundering and terrorist financing, regardless of the direct responsibility of the professionals covered by this Act. The representative of the centralised prevention body shall have the capacity of representative of the professional members for the purposes of article 26.2.

2. The centralised prevention bodies shall examine, either on their own initiative or at the request of their members, the transactions referred to in article 17, and shall report them to the Executive Service in the event of the circumstances laid down in article 18. The members shall supply the centralised prevention body with all the information it requires of them in the exercise of its functions. Likewise, in accordance with the provisions of article 21, the members shall provide all of the documentation and information required of them by the Commission for the Prevention of Money Laundering and Monetary Offences and its support bodies, either directly or through the centralised prevention body, in the exercise of their powers.

3. With the exception of the public officials referred to in article 2.1(n), membership of centralised prevention bodies for the institutions and persons covered by this Act shall be voluntary.

*Article 28. External review.*

1. The internal controls referred to in article 26 shall be subject to an annual review by an external expert.

The results of the review shall be written up in a report which details the internal control measures in place, assesses their operational efficiency and proposes changes or improvements as required. However, in the two years following the issue of this report, it may be replaced by a monitoring report issued by the external expert, dealing only with the appropriateness of the measures taken by the institution or person covered by this Act to remedy the deficiencies detected.

The models of the external expert reports may be approved by Order of the Minister of Economy and Finance.

The report shall be submitted no later than three months from its issue date to the Board of Directors or, where appropriate, to the management board or top management body of the covered subject, which shall take the necessary steps to remedy the deficiencies detected.

2. The institutions or persons covered by this Act shall entrust the external review to persons having the right academic and professional profile to perform the task correctly.

Those intending to act as external experts shall notify it to the Executive Service before commencing their activity and report the Executive Service every six months of the list of covered subjects covered by this Act whose internal controls they have reviewed.

The institutions and persons covered by this Act may not entrust the external review to any natural person who has rendered them any other kind of paid service in the three years prior to the report or rendering such service in the three years following its issue.

3. The report shall in any event be made available to the Commission for the Prevention of Money Laundering and Monetary Offences and its support bodies for the five years following the date of issue.

4. The obligation under this article shall not be applicable to individual professionals and entrepreneurs.

*Article 29. Employee training.*

The institutions and persons covered by this Act shall take appropriate measures to ensure that their employees are aware of the requirements of this Act.

These measures shall include the duly accredited participation of the employees in specific ongoing training courses designed to detect transactions that may be related to money laundering or terrorist financing and to instruct them on how to proceed in such cases. The training shall be covered by an annual plan, designed taking into account the risks of the business sector of the institution or person covered by this Act and approved by the internal control body.

*Article 30. Protection and suitability of employees, directors and agents.*

1. The institutions and persons covered by this Act shall take appropriate measures to keep secret the identity of employees, directors or agents who have made a report to the internal control bodies.

All authorities and officials shall take appropriate measures to protect employees, directors or agents of the institutions and persons covered by this Act who report suspicions of money laundering or terrorist financing from being exposed to threats or hostile action.

The representative referred to in article 26.2 shall appear in all manner of administrative or judicial proceedings relating to the data gathered in the reports to the Executive Service or any additional information that may refer to the latter when it is considered essential to obtain clarification, confirmation or additional information from the institution or person covered by this Act.

2. The institutions and persons covered by this Act shall set forth in writing and implement adequate policies and procedures to ensure high ethical standards in the recruitment of employees, directors and agents.

*Article 31. Branches and subsidiaries in third countries.*

1. The institutions and persons covered by this Act shall apply in their branches and majority-owned subsidiaries located in third countries measures at least equivalent to those laid down by Community law with regard to the prevention of money laundering and terrorist financing.

The Executive Service may oversee the suitability of such measures.

2. When the legislation of the third country does not permit application of measures equivalent to those laid down in Community law, the institutions and persons covered by this Act shall adopt in respect of their branches and majority-owned subsidiaries additional measures to effectively address the risk of money laundering or terrorist financing, and they shall notify the Executive Service, which may propose to the Standing Committee of the Commission for the Prevention of Money Laundering and Monetary Offences the formulation of requirements for the adoption of mandatory measures.

The Secretariat of the Commission for the Prevention of Money Laundering and Monetary Offences (hereinafter the Commission Secretariat) shall report the European Commission those cases where the legislation of the third country does not permit the application of equivalent measures and where action could be taken in the framework of an agreed procedure to pursue a solution.

*Article 32. Protection of personal data.*

1. The processing of personal data and of files, whether automated or otherwise, created for fulfilment of the provisions of this Act shall be subject to the provisions of the Organic Act 15/1999 and its implementing regulations.

2. The data subject's consent shall not be required for the processing of data necessary for compliance with the reporting obligations referred to in Chapter III.

The aforementioned consent will also not be required for the reporting of data referred to in said Chapter and, in particular, for that provided for in article 24.2.

3. Under article 24.1, and in relation to the obligations referred to in the previous paragraph, the communication obligation provided for in article 5 of Act 15/1999 shall not apply to the processing of data.

Likewise, the rules laid down in said Organic Act referring to the exercise of rights of access, rectification, cancellation and opposition shall not apply to the files and processing covered by this provision. In the event of the exercise of these rights by the data subject, institutions and persons covered by this Act shall be restricted to stating the provisions of this article.

The provisions of this paragraph shall also apply to files created and managed by the Executive Service for fulfilment of the functions provided by this Act.

4. The centralised prevention bodies referred to in article 27 shall have the status of data processors for the purposes specified in the legislation on personal data protection.

5. The high-level security measures laid down in the legislation on personal data protection shall apply to the files referred to in this article.

*Article 33. Exchange of information between institutions and persons covered by this Act and centralised fraud prevention files.*

1. Subject to the provisions of article 24.2, in the event of concurrence of the exceptional circumstances determined in the regulations, the Commission for the Prevention of Money Laundering and Monetary Offences may agree to exchange information concerning certain types of transactions other than those provided for in article 18 or to customers subject to certain circumstances, provided that this takes place between institutions and persons covered by this Act from one or more of the categories mentioned in article 2.

The agreement shall in any event determine the type of transaction or class of customer in respect of whom the exchange of information is authorised and the types of institution or person covered by this Act that can exchange information.

2. Likewise, institutions and persons covered by this Act may exchange information relating to the transactions referred to in articles 18 and 19 with the sole purpose of preventing or forestalling transactions related to money laundering or terrorist financing when the characteristics or operation of the specific case suggest the possibility that, following its rejection, a transaction wholly or partially similar to the latter may be attempted with other institutions and persons covered by this Act.
3. The institutions and persons covered by this Act and competent judicial, police and administrative authorities in the prevention or suppression of money laundering and terrorist financing may consult the information contained in the files created in accordance with the provisions of the legislation in force on personal data protection by private entities in order to prevent fraud in the financial system, provided that access to such information is necessary for the purposes described in the previous paragraphs.
4. Access to the data referred to in this article shall be limited to the internal control bodies referred to in article 26, including the technical units formed by the institutions and persons covered by this Act.
5. The provisions of Organic Act 15/1999 regarding the requirement for consent of the data subject, the reporting obligation to the latter and the exercise of the rights of access, rectification, cancellation and opposition shall not apply to the exchanges of information under this article.

The high-level security measures laid down in the legislation on personal data protection shall apply to the processing of the reports referred to in this article.

## CHAPTER V

### Means of payment

#### *Article 34. Obligation to declare.*

1. Under the terms established in this Chapter, prior declaration shall be made by natural persons who, acting on their own account or for the account of a third party, perform the following movements:
  - (a) Withdrawal or entry into national territory of means of payment for an amount of EUR 10,000 or its equivalent in foreign currency.
  - (b) Movements within national territory of means of payment for an amount of EUR 100,000 or more or its equivalent in foreign currency.

For these purposes, movement shall mean any change of location or position verified abroad in the address of the carrier of the means of payment.

Natural persons acting on behalf of companies that, duly authorised and registered by the Ministry of the Interior, engage in the professional transportation of funds or means of payment shall be exempted from the obligation to declare under this article.

2. For the purposes of this Act means of payment shall mean:
  - (a) Paper money and coins, domestic or foreign.
  - (b) Bearer cheques denominated in any currency.
  - (c) Any other physical medium, including electronic, designed to be used as payment to the bearer.
3. In case of withdrawal or entry into national territory, the obligation to declare laid down in this article shall extend to movements for amounts exceeding EUR 10,000 or its equivalent in foreign currency in bearer negotiable instruments, including monetary instruments such as travellers cheques, negotiable instruments, including cheques, promissory notes and payment orders, whether in bearer form, endorsed without restriction, made out to a fictitious payee or any other form in which ownership thereof is

transferred on delivery, and incomplete instruments, including cheques, promissory notes and payment orders that are signed but omit the name of the payee.

4. The declaration provided for in this article shall conform to the approved model and shall contain accurate data on the bearer, owner, recipient, amount, nature, origin, intended use, route and method of transport of the means of payment. The obligation to declare shall be deemed breached if the information recorded is incorrect or incomplete.

The declaration model, once fully completed, shall be signed and presented by the person transporting the means of payment. Throughout the movement, the means of payment must be accompanied by the duly endorsed and relevant statement and be transported by the person listed as the carrier.

By Order of the Minister of Economy and Finance, the model, form and place of declaration shall be regulated and the figures set down in points (a) and (b) of paragraph 1 may be amended.

*Article 35. Control and seizure of means of payment.*

1. In order to verify compliance with the obligation to declare established in the previous article, customs officials or police officers shall be empowered to control and inspect natural persons, their baggage and their means of transport.

The control and inspection of goods shall be verified in accordance with customs law.

2. Failure to declare, where this is required, or the lack of veracity in the reported data, provided that this can be estimated as particularly relevant, shall lead to the seizure by the acting customs officials or police officers of all means of payment found, except for the minimum for survival, which may be determined by order of the Minister of Economy and Finance.

For this purpose, in any event, the lack of full or partial veracity of the data relating to the bearer, owner, consignee, origin and intended use of the means of payment as well as the excess or reduction in the amount declared in respect of the real amount by more than 10 percent or EUR 3,000 will be considered particularly relevant.

Likewise, seizure shall take place when, despite having declared the movement or not exceeding the declaration threshold, there are indications or certainty that the means of payment are related to money laundering or terrorist financing, or where there is reasonable doubt as to the veracity of the information provided in the statement.

The seized means of payment shall be paid into the accounts opened in the name of the Commission for the Prevention of Money Laundering and Monetary Offences in the seized currency, and the acting police officers or customs officials shall not be subject to the provisions of article 34.

The record of the seizure, which shall be sent immediately to the Executive Service for investigation and the Commission Secretariat for instituting, if appropriate, the relevant punitive proceedings, should clearly indicate whether the seized means of payment were found in a location or situation revealing the clear intention to conceal them. The record of the seizure shall have probative value, notwithstanding the evidence that could be brought forward by the interested parties in defence of their rights or interests.

3. When in the course of judicial proceedings non-fulfilment of the obligation to declare provided for in the previous article is observed, the court shall notify the Commission Secretariat, providing the latter with the seized means of payment not subject to criminal liability and proceeding as laid down in the previous paragraph.

*Article 36. Information processing.*

The information obtained as a result of the obligation to disclosure must be submitted to the Executive Service through electronic, computerised or telematic means on the standard computer media determined by the Executive Service. Information on seizures shall be centralised within the Commission Secretariat.

The tax authorities and law enforcement agents shall have access to the information referred to in the previous subparagraph in the exercise of their powers.

*Article 37. Exchange of information.*

The information obtained from the declaration provided for in article 34 or from the controls referred to in article 35 may be transferred to the competent authorities of other states.

Where there are indications relating the product to fraud or any other illegal activity adversely affecting the financial interests of the European Community, such information shall also be forwarded to the European Commission.

## CHAPTER VI

### Other provisions

*Article 38. Trade of goods.*

Natural or legal persons who are professional dealers in goods shall be bound by the obligations laid down in articles 3, 17, 18, 19, 21, 24 and 25 in respect of transactions in which receipts or payments are made with the means of payment referred to in article 34.2 of this Act and for amounts exceeding EUR 15,000, whether made in one or several transactions that appear to be linked in some way.

On a risk-sensitive basis, all or some of the other obligations under this Act may be extended in the regulations in respect of the aforementioned transactions.

*Article 39. Foundations and associations.*

The Department for foundations and the board of trustees, in the exercise of the functions assigned to them by Foundations Act 50/2002 of 26 December, and staff with responsibilities in the management of foundations shall ensure that these are not used for money laundering or to channel funds or resources to individuals or entities linked to terrorist groups or organisations.

For these purposes, all foundations shall keep for records the period laid down in article 25 identifying all persons who contribute or receive gratis funds or resources from the foundation, under the terms of articles 3 and 4 of this Act. These records shall be made available to the Department for Foundations, the Commission on Terrorist Financing Monitoring, the Commission for the Prevention of Money Laundering and Monetary Offences or its support bodies, and the administrative or judicial authorities with powers in the prevention or prosecution of money laundering or terrorism.

The provisions of the previous subparagraphs shall also apply to associations and compliance with the provisions of this article shall correspond in such cases to the governing body or general assembly, the members of the representative body that manages the interests of the association and the body responsible for verifying its constitution, in the exercise of the functions assigned to it by article 34 of Right of Association Organic Act 1/2002, of 22 March.

Given the threats posed to the sector, the other obligations provided for in this Act may be extended to foundations and associations in the regulations.

*Article 40. Partner management entities.*

Managers of payment systems and systems for the clearing and settlement of securities and financial derivatives, together with managers of credit cards or debit cards issued by other entities shall cooperate with the Commission for the Prevention of Money Laundering and Monetary Offences and its support bodies by delivering the information they possess on completed transactions, as provided in article 21.1.

*Article 41. Money remittances.*

In the money remittance transactions referred to in article 2 of Payment Services Act 16/2009 of 13 November, the corresponding transfers shall be effected through accounts opened with credit institutions, both in the destination country of the funds and in any other in which the overseas correspondents or intermediate clearing systems operate. Entities providing money remittance services shall only arrange contracts with overseas correspondents or clearing intermediate systems that have in place appropriate methods of fund clearance and prevention of money laundering and terrorist financing.

Funds thus managed must be used solely and exclusively for the payment of the ordered transfers and may not be used for other purposes. In any case, payment to the correspondents that pay the beneficiaries of the transfers shall necessarily take place in credit accounts opened in the country where such payment is made.

At all times, the entities referred to in this article shall ensure that the transaction is monitored until it is received by the final beneficiary, and this information shall be made available in accordance with the provisions of article 21.

*Article 42. International financial countermeasures.*

Without prejudice to the direct effect of Community regulations, the Council of Ministers, on a proposal from the Minister of Economy and Finance, may prohibit, restrict or impose conditions on financial transactions with countries, entities or persons with respect to which an organisation, institution or international group decides or recommends the adoption of financial countermeasures.

*Article 43. Financial ownership file.*

1. In order to forestall and prevent money laundering and terrorist financing, credit institutions shall report to the Executive Service, at intervals determined in the regulations, on the opening or cancellation of current accounts, savings accounts, securities accounts and term deposits.

The statement shall, in any event, contain the data identifying the holders, representatives or authorised persons, together with all other persons with withdrawal powers, the date of opening or cancellation, the type of account or deposit and the information identifying the reporting credit institution.

2. The reported data shall be included in a publicly owned file, called a Financial Ownership File, for which the Secretariat of State for the Economy will be responsible.

The Executive Service, as processor, shall, in accordance with Organic Act 15/1999, determine the technical characteristics of the database and approve the appropriate instructions.

3. When investigating crimes related to money laundering or terrorist financing, the examining judges, the Public Prosecutor's Office and, upon judicial authorisation or that of the Public Prosecutor, the law enforcement agents may obtain information reported to the Financial Ownership File. The Executive Service may obtain the above data in the exercise of its powers. The State Tax Administration Agency may obtain the above data as laid down in General Tax Act 58/2003 of 17 December.

Any request for access to the data of the Financial Ownership File shall be adequately reasoned by the requesting body, which shall be responsible for the correct form of the demand. In no case may access to

the File be demanded for any purpose other than the prevention or suppression of money laundering or terrorist financing.

4. Without prejudice to the powers that correspond to the Spanish Data Protection Agency, a member of the Public Prosecutor's Office appointed by the Attorney General in accordance with the procedures set forth in the Organic Statute of the Public Prosecutor's Office, who, in the exercise of this activity, is not carrying out his/her duties in any of the bodies of the Public Prosecutor's Office responsible for prosecuting crimes of money laundering or terrorist financing, shall ensure correct use of the file, for which purpose he/she may request full justification of the reasons for any access.

## CHAPTER VII

### Institutional organisation

*Article 44. Commission for the Prevention of Money Laundering and Monetary Offences .*

1. The promotion and coordination of the implementation of this Act shall correspond to the Commission for the Prevention of Money Laundering and Monetary Offences , subordinate to the Secretariat of State for the Economy.

2. The following shall be functions of the Commission for the Prevention of Money Laundering and Monetary Offences:

(a) Management and promotion of activities for the prevention of the use of the financial system or of other economic sectors for the laundering of capital, as well as the prevention of administrative infractions related to the regulations concerning economic transactions with other countries.

(b) Cooperation with the law enforcement agents, coordinating the investigation and prevention activities carried out by the other organs of the Public Administrations with competence in the matters referred to in the preceding subparagraph.

(c) Rendering the most effective possible assistance in these matters to the judicial organs, the Public Prosecutor's Office and the criminal police.

(d) Appointment of the Director of the Executive Service. The appointment shall be proposed by the Chairman of the Commission for the Prevention of Money Laundering and Monetary Offences , in consultation with the Bank of Spain.

(e) Approval, in consultation with the Bank of Spain, of the budget of the Executive Service.

(f) Provision of ongoing guidance for the actions of the Executive Service and approval of its organisational structure and operational guidelines.

(g) Approval, on a proposal from the Executive Service and, in case of agreement, the supervisory bodies of the financial institutions, of the Annual Inspection Plan for institutions and persons covered by this Act, which shall be privileged.

(h) Development of requirements for institutions and persons covered by this Act in the scope of compliance with the requirements of this Act.

(i) Serving as a channel for cooperation in such matters between the Public Administration and the representative organizations of institutions and persons covered by this Act.

(j) Adoption of guidelines for action for institutions and persons covered by this Act.

(k) Reporting on draft provisions to regulate matters related to this Act.

(l) Submission to the Minister of Economy and Finance proposals for sanctions whose imposition is the responsibility of the Minister or of the Council of Ministers.

(m) Agreement on the coordination of the actions of the supervisory bodies of financial institutions through the signing of the appropriate agreements with the Executive Service in matters of supervision and inspection of compliance with the obligations imposed on such bodies under this Act, to ensure that they carry out their duties efficiently. These agreements may provide that, subject to the powers of supervision and inspection of the Executive Service, the aforementioned supervisory bodies monitor compliance with the obligations laid down in Chapters II, III and IV of this Act with respect to institutions and persons covered by this Act and that they adopt the role of making recommendations and proposing requirements to be formulated by the Standing Committee of the Commission for the Prevention of Money Laundering and Monetary Offences .

(n) Development of statistics on money laundering and terrorist financing, for which all bodies with powers in the matter must provide their support. In particular, the National Commission on Judicial Statistics shall provide statistical data on judicial proceedings related to crimes of money laundering or terrorist financing.

ñ) Other functions assigned to it in the legal provisions in force.

3. The Commission for the Prevention of Money Laundering and Monetary Offences shall be presided by the Secretary of State for the Economy and shall have the composition that shall be established by regulation. In any case, it shall include appropriate representation of the Public Prosecutor's Office, the ministries and institutions with competence in this matter, the supervisory bodies of financial institutions and the Autonomous Communities with competence for the protection of individuals and property and the maintenance of public safety.

The Commission for the Prevention of Money Laundering and Monetary Offences may act in plenary session or through a Standing Committee whose composition shall be determined by regulation and presided over by the Director-General for the Treasury and Financial Policy, shall exercise the functions provided for in points (f), (g) and (h) of the previous paragraph, and any other that the plenary session expressly delegates to it. Attendance of the plenary session of the Commission for the Prevention of Money Laundering and Monetary Offences and its Standing Committee shall be personal and non-delegable.

Other committees attached to the Commission for the Prevention of Money Laundering and Monetary Offences may be determined by regulations..

4. The Commission for the Prevention of Money Laundering and Monetary Offences and the Commission on Terrorist Financing Monitoring shall cooperate to the fullest extent possible in the exercise of their respective competences.

*Article 45. Support bodies of the Commission for the Prevention of Money Laundering and Monetary Offences .*

1. The Commission for the Prevention of Money Laundering and Monetary Offences shall carry out its mission with the support of the Commission Secretariat and the Executive Service.

2. The functions of the Commission Secretariat shall be carried out by the department, with the rank at least of Sub-Directorate general, among those in the Secretariat of State for the Economy as determined in the regulations. The person in charge of this organizational unit shall serve, ex officio, as Secretary of the Commission and its Committees.

The Commission Secretariat shall, inter alia, investigate the punitive proceedings as may be appropriate for breach of the obligations under this Act and shall recommend the appropriate decision to the Standing Committee. The Commission Secretariat shall send to the institutions and persons covered by this Act the

requirements of the Standing Committee and shall report to the latter on the fulfilment of these requirements.

3. The Executive Service is a body attached organically and functionally to the Commission for the Prevention of Money Laundering and Monetary Offences, which, through its Standing Committee, shall provide ongoing guidance for its actions and approve its operating guidelines.

The powers relating to the economic, budgetary and hiring regime of the Executive Service shall be exercised by the Bank of Spain in accordance with its specific rules, which entity shall sign the appropriate agreement with the Commission for the Prevention of Money Laundering and Monetary Offences for these purposes.

Employees of the Bank of Spain serving on the Executive Service shall continue their employment relationship with the Bank of Spain, shall depend functionally on the Executive, and shall be subject to the regulations governing the employee system of the Bank of Spain.

The budget of the Executive, following its approval by the Commission for the Prevention of Money Laundering and Monetary Offences, shall be integrated, with the due separation, into the budget estimate for operating and investment expenses referred to in article 4.2 of Bank of Spain Act 13/1994, of 1 June. The expenses made against said budget shall be charged to the Bank of Spain, which shall compensate these in the manner indicated in paragraph 5.

4. The Executive Service, without prejudice to the powers conferred on the law enforcement agents and other public authorities, shall perform the following functions:

- (a) Render the necessary assistance to the judicial bodies, the Public Prosecutor's Office, the criminal police and the competent administrative bodies.
- (b) Submit to the bodies and institutions mentioned in the foregoing points actions with reasonable indications of a crime or, where appropriate, breach of administrative law.
- (c) Receive the reports under articles 18 and 20.
- (d) Analyse the information received and take the necessary action in each case.
- (e) Execute the orders of and follow the guidelines given by the Commission for the Prevention of Money Laundering and Monetary Offences or its Standing Committee, and submit to the latter any reports that it requests.
- (f) Monitor and inspect fulfilment of the obligations of institutions and persons covered by this Act, in accordance with article 47.
- (g) Make recommendations to institutions and persons covered by this Act in order to improve internal controls.
- (h) Propose to the Standing Committee the formulation of requirements for the institutions and persons covered by this Act.
- (i) Report, with the exceptions determined in the regulations, in the procedures for the creation of financial institutions, on the adequacy of internal controls under the schedule of activities.
- (j) Report, with the exceptions determined in the regulations, on the precautionary assessment of acquisitions and increases in shareholdings in the financial sector.
- (k) Others provided for in this Act or assigned to it through the legislation in force.

5. The Bank of Spain, for expenses incurred under the budget approved by the Commission on Money Laundering and Financial Crime Prevention, shall draw up duly justified accounts, which it shall refer to the Directorate-General for the Treasury and Financial Policy. The above Directorate, after verifying said

accounts, shall pay the amount to the Bank of Spain, charging against the non-budget item created for this purpose by the state Comptroller's Office.

The balance presented by the above concept shall be settled by charging against the benefits paid in annually by the Bank of Spain to the Treasury.

6. The patrimonial liability of the State for the actions of the bodies of the Commission for the Prevention of Money Laundering and Monetary Offences shall be chargeable, if applicable, to the Minister of Economy and Finance under the terms established by the Legal Regime of the Public Authorities and Common Administrative Procedure Act 30/1992, of 26 November.

*Article 46. Financial intelligence reports.*

1. The Executive Service shall analyse the information received from institutions and persons covered by this Act or other sources, referring, if it detects indications or certainty of money laundering or terrorist financing, the relevant financial intelligence report to the Public Prosecutor's Office or competent judicial, police or administrative authorities.

The information and documents available to the Executive Service and the financial intelligence reports shall be confidential and any authority or official who accesses its content must keep the latter secret. In particular, in no event shall the identity be disclosed of the analysts who participated in the preparation of the financial intelligence reports or of the employees, directors or agents who reported the existence of indications to the internal control bodies of the institution or person covered by this Act.

Financial intelligence reports shall not have probative value and may not be incorporated directly into judicial or administrative proceedings.

2. The bodies that receive financial intelligence reports shall report regularly to the Executive Service on the outcome of the latter. The Commission for the Prevention of Money Laundering and Monetary Offences may agree on a procedure with the recipient bodies for the assessment of financial intelligence reports.

The Executive Service may report the institutions and persons covered by this Act on the outcome of their reports. The information provided by the Executive Service to the institutions and persons covered by this Act shall be confidential and must be kept secret by its recipients.

The Executive Service shall assess the quality of the reports made in accordance with article 18, periodically reporting the management body or board of the institution or person covered by this Act on this assessment.

*Article 47. Monitoring and inspection.*

1. The Executive Service shall monitor compliance with the obligations laid down in this Act, altering its actions, with respect to financial institutions, to the agreements concluded pursuant to article 44. In any event, the Executive Service may conduct in respect of institutions and persons covered by this Act the necessary inspections to verify compliance with the obligations relating to the functions assigned to them.

The inspections of the Executive Service and, in case of agreement, of the supervisory bodies of the financial institutions, shall be covered by an Annual Guidance Plan that will be adopted by the Commission for the Prevention of Money Laundering and Monetary Offences, without prejudice to the fact that the Standing Committee may, through reasoned agreement, conduct further inspections.

The Executive Service, and in case of agreement, the supervisory bodies of the financial institutions, shall on an annual basis submit a reasoned report to the Commission for the Prevention of Money Laundering and Monetary Offences on actions that were included in the previous year's Plan but which were not able to be carried out, where applicable.

2. The institutions and persons covered by this Act and their employees, directors and agents shall cooperate to the fullest extent possible with the staff of the Executive Service, providing unrestricted access to as much information or documentation as is required, including books, accounts, records, software, magnetic files, internal reports, minutes, official statements and any other related matters subject to inspection.

3. The Executive Service or the supervisory bodies referred to in article 44 shall forward the relevant inspection report to the Commission Secretariat, which will propose the appropriate measures to the Standing Committee. Likewise, the Executive Service or the supervisory bodies referred to in article 44 may propose to the Standing Committee the adoption of requirements urging institutions and persons covered by this Act to take the corrective measures deemed necessary.

The inspection reports of the Executive Service or of the supervisory bodies shall have probative value, notwithstanding the evidence that may be brought forward by the interested parties in defence of their rights or interests.

*Article 48. Cooperation arrangements.*

1. Any authority or official discovering facts that may constitute an indication or evidence of money laundering or terrorist financing, either during the inspections of monitored institutions or in any other way, shall report such circumstance to the Executive Service. Without prejudice to any possible criminal liability, non compliance with this obligation by public officials who are not institutions and persons covered by this Act under article 2 shall be subject to disciplinary action in accordance with the specific legislation applicable to them. This same obligation shall be extensive to any information they are called on to provide by the Commission for the Prevention of Money Laundering and Monetary Offences and its support bodies in the discharge of their duties.

In any event, the Bank of Spain, the National Securities Market Commission, the Directorate-General for Insurance and Pension Funds, the Directorate-General for Registers and Notaries, the Institute of Accounting and Auditing, professional bodies and the competent state or autonomous bodies, as appropriate, shall provide a reasoned report to the Commission Secretariat when they detect possible breaches of the obligations established herein in the course of their inspection or supervisory labours.

Judicial bodies shall forward evidence to the Commission Secretariat, on the instruction of the Crown Prosecutor's Office or upon their own motion, when they detect signs indicative of a breach the obligations under this Act that not constitute an offence.

2. When exercising its functions in relation to financial institutions subject to special legislation, the Executive Service may obtain from the Bank of Spain, the National Securities Market Commission or the Directorate-General for Insurance and Pension Funds, as appropriate, all of the information and cooperation necessary to carry them out.

Without prejudice to the previous subparagraph, the Executive Service shall have direct access to statistical information on capital movements and foreign economic transactions reported to the Bank of Spain in accordance with the provisions of the legislation applicable to such transactions. Likewise, the managing bodies and the Treasury General of Social Security shall transfer the personal data and information they may have obtained in the exercise of their functions to the Commission for the Prevention of Money Laundering and Monetary Offences, at the request of its Executive in the exercise of the competences conferred on it by this Act.

3. , The Executive Service and, where appropriate, the Commission Secretariat shall, in accordance with the guidelines established by the Commission for the Prevention of Money Laundering and Monetary Offences, cooperate with the authorities of other States with analogous functions.

The exchange of information shall be conditioned by the provisions of international treaties or conventions or, as applicable, by the general principle of reciprocity, and shall be conditional on the acceptance by such foreign authorities of the same obligations of professional secrecy as are applicable for the Spanish authorities.

The exchange of information by the Executive Service with foreign Financial Intelligence Units shall be in accordance with the Egmont Group principles or under the terms of the relevant memorandum of understanding. Memoranda of understanding with Financial Intelligence Units shall be signed by the Director of the Executive Service, following authorisation by the Commission for the Prevention of Money Laundering and Monetary Offences .

The exchange of information by the Commission Executive with Financial Intelligence Units from EU States shall be in accordance with Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information, or regulation replacing it.

*Article 49. Confidentiality.*

1. All persons who carry out or have carried out an activity for the Commission for the Prevention of Money Laundering and Monetary Offences or any of its bodies, and who have had knowledge of its actions or confidential data are required to maintain due secrecy. Failure to comply with this obligation shall incur the liabilities set down in the legislation. Such persons may not publish, communicate or show classified data or documents, even after leaving the service, without the express permission of the Commission for the Prevention of Money Laundering and Monetary Offences .

2. The data, documents and information held by the Commission for the Prevention of Money Laundering and Monetary Offences or any of its bodies pursuant to the functions assigned to them in the legislation shall be confidential and may not be disclosed except in the following cases:

- (a) The disclosure, publication or transmission of data when the person involved expressly consents to it.
- (b) The publication of aggregated data for statistical purposes, or reports in summary or aggregate form, such that the individuals or subjects involved cannot be identified even indirectly.
- (c) The furnishing of information at the demand of parliamentary enquiry committees.
- (d) The furnishing of information at the request of the Public Prosecutor's Office and the administrative or judicial authorities that, under the provisions of regulations with the force of law, are required for this purpose. In such cases, the applicant authority shall explicitly invoke the legal provision enabling the request for information and shall be responsible for the request being made in the correct form.
- (e) The request for reports or for information by the Commission for the Prevention of Money Laundering and Monetary Offences or its support bodies, without prejudice to the duty of confidentiality of the person or institution from whom or which the report or information is requested.

Notwithstanding the provisions of General Tax Act 58/2003 of 17 December, the exchange of information between the Executive Service and the tax authorities shall take place preferably in the form determined by agreement between the Commission for the Prevention of Money Laundering and Monetary Offences and the Spanish State Tax Administration Agency.

The Commission Secretariat may provide the tax authorities and the law enforcement agents with information of relevance for tax or police operations.

3. The authorities, persons or public institutions receiving confidential information from the Commission for the Prevention of Money Laundering and Monetary Offences or its support bodies shall also be subject to the duty of confidentiality established in this article, taking appropriate action to guarantee its confidentiality and using it only in the context of carrying out the functions legally assigned to them.

## CHAPTER VIII

### Penalty system

#### *Article 50. Categories of offence.*

The administrative offences provided for in this Act shall be classified as very serious, serious and minor.

#### *Article 51. Very serious offences.*

1. The following shall constitute very serious offences:

- (a) Failure to fulfill the reporting duty referred to in article 18, when a director or employee of the institution or person covered by this Act has internally revealed the existence of indications or certainty that a fact or transaction was related to money laundering or terrorist financing.
- (b) Failure to fulfill the obligation to cooperate under article 21 following written request from the Commission for the Prevention of Money Laundering and Monetary Offences .
- (c) Breach of the disclosure prohibition under article 24 or the duty of confidentiality provided for in articles 46.2 and 49.2(e).
- (d) Resistance to or obstruction of inspections, following an explicit request in writing from the acting staff.
- (e) Failure to comply with the obligation to take corrective action at the petition of the Standing Committee referred to in articles 26.3, 31.2, 44.2 and 47.3 in the event of unwillingness to comply.
- (f) The commission of a serious offence when a final penalty was imposed on the institution or person covered by this Act through administrative proceedings during the preceding five years for the same type of offence.

2. As provided for in the Community regulations establishing specific restrictive measures in accordance with articles 60, 301 or 308 of the Treaty establishing the European Community, the following shall constitute very serious breaches of this Act:

- (a) Wilful breach of the obligation to freeze or block the funds, financial assets or economic resources of designated natural or legal persons, institutions or groups.
- (b) Wilful breach of the prohibition on making funds, financial assets or economic resources available to designated natural or legal persons, entities or groups.

#### *Article 52. Serious offences.*

1. The following shall constitute serious offences:

- (a) Failure to comply with formal identification obligations, under the terms of article 3.
- (b) Failure to comply with obligations to identify the beneficial owner, under the terms of article 4.
- (c) Failure to comply with the obligation of obtaining information on the purpose and nature of the business relationship under the terms of article 5.
- (d) Failure to comply with the obligation of implementing measures for ongoing monitoring of the business relationship, under the terms of article 6.
- (e) Failure to comply with the obligation of applying customer due diligence for existing customers under the terms of article 7.2 and the Seventh transitional provision.

- (f) Failure to comply with the obligation of applying enhanced customer due diligence, under the terms of articles 11 to 16.
- (g) Failure to comply with the obligation of special review, under the terms of article 17.
- (h) Failure to comply with the obligation of reporting on grounds of indication, under the terms of article 18, where this should not be classified as very serious breach.
- (i) Failure to comply with the obligation of abstaining from execution, under the terms of article 19.
- (j) Failure to comply with the obligation of systematic reporting, under the terms of article 20.
- (k) Failure to comply with the obligation of cooperating under article 21 except by written request from one of the support bodies of the Commission for the Prevention of Money Laundering and Monetary Offences .
- (l) Failure to comply with the record-keeping obligation, under the terms of article 25.
- (m) Failure to comply with the obligation of approving in writing and implementing adequate internal control policies and procedures under the terms of article 26.1, including the written approval and implementation of an explicit policy for customer admissions.
- (n) Failure to comply with the obligation of reporting the Executive Service on the proposed appointment of the representative of the institution or person covered by this Act, or refusal to address the objections or observations made under the terms of article 26.2.
- (ñ) Failure to comply with the obligation of setting up adequate internal control bodies, including, where appropriate, technical units, that operate under the terms provided in article 26.2.
- (o) Failure to comply with the obligation of providing the representative to the Executive Service and the internal control body with the material, human and technical resources necessary in the exercise of their functions.
- (p) Failure to comply with the obligation of adopting and making available to the Executive Service an appropriate and updated manual for the prevention of money laundering and terrorist financing under the terms of article 26.3.
- (q) Failure to comply with the obligation of external review, under the terms of article 28.
- (r) Failure to comply with the obligation of employee training, under the terms of article 29.
- (s) Failure to comply with the obligation of adoption by institutions and persons covered by this Act of the appropriate measures for maintaining the confidentiality of the identity of employees, directors or agents who have reported to internal control bodies, under the terms of article 30.1.
- (t) Failure to comply with the obligation of applying in respect of branches and majority-owned subsidiaries located in third countries the measures provided for in article 31.
- (u) Failure to comply with the obligation of implementing international financial countermeasures, under the terms of article 42.
- (v) Failure to comply with the obligation under article 43 of reporting on the opening or cancellation of current accounts, savings accounts, securities accounts and term deposits.
- (w) Failure to comply with the obligation to take corrective action at the petition of the Standing Committee referred to in articles 26.3, 31.2, 44.2 and 47.3 where there is no unwillingness to comply.
- (x) Entering into or continuing business relationships or executing prohibited transactions.

(y) Resistance to or obstruction of inspections, when there is no express written request from the acting staff.

2. Unless there are indications or certainty of money laundering or terrorist financing, the offences described in points (a), (b), (c), (d), (e), (f) and (l) of the previous paragraph may be classified as minor when the breach by the institution or person covered by this Act must be regarded as merely occasional or isolated on the basis of the percentage of incidences in the sample of compliance.

3. The following shall constitute serious breaches of this Act:

(a) Failure to comply with the obligation of declaring the movements of means of payment, under the terms of article 34.

(b) Failure by foundations or associations to comply with the obligations under article 39.

(c) Failure to comply with the obligations laid down in article 41, except where such failure is to be qualified as very serious in accordance with article 51.1(b).

4. As provided for in the Community regulations establishing specific restrictive measures in accordance with articles 60, 301 or 308 of the Treaty establishing the European Community, the following shall constitute serious breaches of this Act:

(a) Failure to comply with the obligation to freeze or block the funds, financial assets or economic resources of designated natural or legal persons, institutions or groups, where this should not be classified as very serious breach.

(b) Failure to comply with the obligation to make funds, financial assets or economic resources available to designated natural or legal persons, institutions or groups, where it should not be classified as very serious breach.

(c) Failure to comply with the obligations of reporting to and notifying the competent authorities specifically established in Community regulations.

5. Failure to comply with the obligations under articles 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of Regulation (EC) No. 1781/2006 of the European Parliament and Council of 15 November 2006 on information on the payer accompanying transfers of funds shall constitute serious breaches of this Act.

#### *Article 53. Minor offences.*

Notwithstanding the provisions of article 52.2, failure to comply with the obligations specifically set out in this Act that do not constitute serious or very serious breaches as laid down in the previous two articles shall constitute minor breaches.

#### *Article 54. Liability of directors and officers.*

In addition to the liability corresponding to the institution or person covered by this Act even by way of simple failure to comply, those holding administrative or management positions in the latter, whether sole proprietorships or collegiate bodies, shall be liable for any breach should this be attributable to the latter's wilful misconduct or negligence.

#### *Article 55. Enforceability of administrative liability.*

Administrative liability for breach of this Act shall be enforceable even if after the breach the institution or person covered by this Act ceases to engage in business or his/her administrative authorisation for operating is revoked.

In the case of dissolved companies, the former shareholders shall be jointly and severally liable for the administrative penalties imposed to a maximum of what they would have received as their liquidation proceeds, without prejudice to the liability of the directors, administrators or liquidators.

*Article 56. Penalties for very serious offences.*

1. For the commission of very serious offences, the following penalties may be imposed:

- (a) Public reprimand.
- (b) Fine between a minimum of EUR 150,000 and a maximum amount that may be imposed up to the highest of these figures: 5 percent of the net worth of the institution or person covered by this Act, twice the economic substance of the transaction, or EUR 1,500,000.
- (c) In the case of institutions requiring administrative authorisation for their operation, withdrawal of this authorisation.

The penalty provided for in point (b), which will be compulsory in all events, shall be imposed simultaneously with one of those listed in points (a) or (c).

2. In addition to the applicable penalty to be imposed on the institution or person covered by this Act for the commission of very serious offences, one or more of the following penalties may be imposed on those responsible for the offence, having held administrative or management positions in the entity:

- (a) Fine for each of between EUR 60,000 and EUR 600,000.
- (b) Removal from office, with disqualification from holding administrative or management positions in the same entity for a maximum period of ten years.
- (c) Removal from office, with disqualification from holding administrative or management positions in any entity of those covered by this Act for a maximum period of ten years.

The penalty provided for in point (a), which will be compulsory in all events, may be simultaneously imposed with one of those listed in points (b) and (c).

*Article 57. Penalties for serious offences.*

1. For the commission of serious offences, the following penalties may be imposed:

- (a) Private reprimand.
- (b) Public reprimand.
- (c) Fine between a minimum of EUR 60,001 and a maximum amount that may be imposed up to the highest of these figures: 1 percent of the net worth of the institution or person covered by this Act, the sum of the economic substance of the transaction, plus 50 percent or EUR 150,000.

The penalty provided for in point (c), which will be compulsory in all events, shall be imposed simultaneously with one of those listed in points (a) or (b).

2. In addition to the applicable penalty to be imposed on the institution or person covered by this Act for the commission of serious offences, one or more of the following penalties may be imposed on those responsible for the offence, having held administrative or management positions in the entity:

- (a) Private reprimand.
- (b) Public reprimand.
- (c) Fine for each of between EUR 3,000 and EUR 60,000.

(d) Temporary suspension from office for a period not exceeding one year.

The penalty provided for in point (c), which will be compulsory in all events, shall be imposed simultaneously with one of those listed in points (a), (b) or (d).

3. In the case of breach of the obligation to declare under article 34, the penalty of a minimum fine of EUR 600 shall be imposed, with a maximum amount of up to twice the value of the means of payment used.

*Article 58. Penalties for minor offences.*

For the commission of minor offences, one or both of the following sanctions may be imposed:

- (a) Private reprimand.
- (b) Fine of up to EUR 60,000.

*Article 59. Penalty scale.*

1. Penalties shall be scaled on the basis of the following:

- (a) The sum of the transaction or the proceeds, if any, as a result of the omissions or acts constituting the offence.
- (b) The circumstance of having acted or failing to act to remedy the breach on one's own initiative.
- (c) Final administrative penalties imposed for various types of offence on the institution or person covered by this Act in the preceding five years under this Act.

In any case, the penalty shall be scaled such that the commission of the offences shall not be more beneficial for the offender than compliance with the breached regulations.

2. To determine the applicable penalty from among those listed in articles 56.2, 57.2 and 58, the following circumstances shall be taken into consideration:

- (a) The degree of liability or intention in the facts in which the person concerned is involved.
- (b) The past conduct of the person concerned, in the guilty entity or in any other, in connection with the requirements provided for in this Act.
- (c) The nature of the representation held by the person concerned.
- (d) The financial standing of the person concerned, when the penalty is a fine.

3. To determine the applicable penalty for breach of the obligation to declare under article 34, the following shall be considered aggravating circumstances:

- (a) A considerable movement, considered in any case to be that which duplicates the declaration threshold.
- (b) The lack of proof of the legal origin of the means of payment.
- (c) Inconsistency between the activity of the person concerned and the amount of the movement.
- (d) The fact of finding the means of payment in a place or situation that reveals a clear intention to conceal them.
- (e) Final administrative penalties for breach of the obligation to declare imposed on the subject concerned within the last five years.

*Article 60. Limitation period for offences and penalties.*

1. Serious and very serious offences shall be limited to five years, and mild offences to two years, from the date on which the offence was committed. For offences arising from continuous activity, the start date for calculation purposes will be that of the termination of the activity or the last act with which the offence were committed. In the case of failure to comply with customer due diligence obligations, the limitation period shall begin on the date of termination of the business relationship, and for the obligation of record keeping, on expiry of the period referred to in article 25.

The limitation period shall be interrupted by any action by the Commission for the Prevention of Money Laundering and Monetary Offences or its support bodies, carried out with the formal knowledge of the institution or person covered by this Act, leading to the inspection, monitoring or control of all or part of the obligations herein. It shall also be interrupted by the initiation, with the knowledge of those concerned, of punitive proceedings or criminal prosecution for the same facts or for others in which it is rationally impossible to separate those punishable under this Act.

2. The penalties imposed under this Act shall be limited to three years in the case of very serious offences, to two years in the case of serious offences, and to one year in the case of minor offences, from the date of notification of the penalty decision.

The limitation period shall be interrupted in the event of an administrative or court agreement to suspend execution of the penalty decision.

*Article 61. Punitive proceedings and injunctive relief.*

1. The Standing Committee, on a proposal from the Commission Secretariat, shall initiate and, where applicable, dismiss the punitive proceedings as may be appropriate for the commission of offences under this Act.

The power to initiate or conclude the dismissal of the punitive proceedings for breach of the obligation to declare under article 34 shall correspond to the Commission Secretariat.

2. The Commission Secretariat shall carry out the preliminary investigation of the punitive proceedings as may be appropriate for the commission of offences under this Act.

The competent body for initiating punitive proceedings may agree, when beginning the proceedings or during the latter, to the provision of a sufficient guarantee to deal with the potential liabilities incurred. In the case of proceedings for breach of the obligation to declare under article 34, the amount seized in accordance with article 35.2 shall be deemed to have been furnished as a guarantee, and the Commission Secretariat may agree to enlarge or reduce said guarantee during investigation of the punitive proceedings.

The punitive proceedings applicable to failures to comply with the obligations under this Act shall be those set down, in general, in the exercise of punitive powers by the government.

3. The Council of Ministers, on a proposal from the Minister of Economy and Finance, shall have jurisdiction to impose penalties for serious breaches. The Minister of Economy and Finance, on a proposal from the Commission for the Prevention of Money Laundering and Monetary Offences, shall have jurisdiction to impose penalties for serious breaches. The Director-General for the Treasury and Financial Policy, on a proposal from the investigating judge, shall have jurisdiction to impose penalties for minor breaches.

When the accused is a financial institution or requires administrative authorisation in order to operate, for the imposition of penalties for serious or very serious breaches, it shall be mandatory to request from the institution or administrative body responsible for its monitoring a report on the potential impact of the proposed penalty or penalties on the stability of the institution involved in the proceedings.

Jurisdiction for determining the punitive proceedings for breach of the obligation to declare under article 34 shall, on a proposal from the investigating judge and following the report of the Executive Service, correspond to the Director-General for the Treasury and Financial Policy, whose decisions shall bring the administrative procedures to an end.

4. In the punitive proceedings initiated by the Commission Secretariat, the deadline for ruling on proceedings and reporting the decision shall be one year from the date of notification of the commencement of proceedings, without prejudice to the possible suspension by the investigating judge of the period calculated in the cases mentioned in article 42.5 of Legal Regime of the Public Authorities and Common Administrative Procedure Act 30/1992 of 26 November, and the six-month extension to said time limit which may be duly agreed by the Commission Secretariat, on a proposal from the investigating judge, under the provisions of article 49 of said Act.

Expiry of the time periods established in the previous paragraph shall determine the expiry of the administrative punitive proceedings. In such event, a decision initiating new proceedings must be enacted so long as the limitation period for the offence has not ended, in accordance with the provisions of article 60.

5. The implementation of final penalty rulings in administrative proceedings shall correspond to the Commission Secretariat.

The penalty of public reprimand, once it has become final in administrative proceedings, shall be enforced in the manner established in the decision and, in any event, shall be published in the *Boletín Oficial del Estado* (Official State Gazette).

With regard to the implementation and publicising of penalties and other issues relevant to the penalty system, in general, the provisions of the specific laws applicable to the different institutions and persons covered by this Act shall apply or, failing this, the Discipline and Intervention of Credit Institutions Act 26/1988, of July 29.

*Article 62. Concurrent penalties and criminal association.*

1. The offences and penalties provided in this Act shall be without prejudice to those laid down in other laws and the acts and omissions described as crimes and the penalties laid down in the Penal Code and special criminal laws, except as established in the following paragraphs.

2. Conduct that would have been punished criminally or administratively cannot be punished under this Act when individual identity, fact and legal basis are observed.

3. At any time in the administrative punitive proceedings where it appears that the facts may constitute a criminal offence, the Commission Secretariat shall report such circumstance to the Public Prosecutor's Office, requesting evidence of the actions taken to this effect and shall agree to suspension of the proceedings until the notice described under the first subparagraph of the next paragraph is received or until a final verdict is delivered.

4. If the Public Prosecutor's Office finds no grounds to initiate criminal proceedings against any or all of the institutions and persons covered by this Act, it shall notify the Commission Secretariat so that the latter may continue the administrative punitive proceedings.

If, on the other hand, the Public Prosecutor's Office files a complaint or suit, it shall communicate this circumstance to the Commission Secretariat together with the outcome of such actions, when this becomes known.

5. The judgement given in the administrative punitive proceedings shall, in all cases, observe the facts declared and proven in the sentence.

Additional provision. Loss of status as equivalent third country.

States, territories or jurisdictions in respect of which the European Commission adopts a decision pursuant to article 40.4 Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing shall lose their equivalent third-country status for the purposes specified in articles 4.2, 8.3, 9.1, 12.1 and 24.2.

The Directorate General of Treasury and Financial Policy shall maintain an up-to-date list on its website of the states, territories or jurisdictions enjoying the status of equivalent third countries.

First transitional provision. Implementing regulations of Act 19/1993 of 28 December.

Until the coming into force of Royal Decree 925/1995 of 9 June, developing the Specific Measures for the Prevention of Money Laundering Act, and its implementing measures, shall remain in force insofar as they are not incompatible with the latter.

Second transitional provision. Penalty system.

The penalty provisions of Specific Measures for the Prevention of Money Laundering Act 19/1993 of 28 December shall be applicable to offences committed before the entry into force of this Act.

Third transitional provision. Power to initiate punitive proceedings.

Until the coming into force of the regulations of this Act, the power to initiate punitive proceedings shall continue to be exercised by the Secretariat of the Commission for the Prevention of Money Laundering and Monetary Offences .

Fourth transitional provision. Payment services.

Currency exchange offices authorised to manage overseas transfers shall be considered to be included among the institutions and persons covered by this Act referred to in article 2 insofar as they have not been transformed into credit or payment institutions in accordance with paragraph 1 of the Second transitory provision of Payment Services Act 16/2009, of 13 November.

Fifth transitional provision. Attachment of the Executive Service.

Until the coming into force of the agreement referred to in article 45.3, the Executive Service shall remain attached to the Bank of Spain, established in article 24.1 of the Royal Decree 925/1995 of 9 June, implementing the Act 19/1993, of 28 December.

Sixth transitional provision. System for implementing the pension liabilities of entities with bearer shares.

For the purposes of article 4.4, collective insurance contracts and pension plans formalised before the coming into force of this Act that establish pension liabilities for companies in compliance with the provisions of the First additional provision of the consolidated text of the Pension Plans and Funds Act, approved by Royal Legislative Decree 1/2002 of 29 November, shall remain in force for the implementation of said liabilities.

Seventh transitional provision. Application of due diligence for existing customers.

Notwithstanding the provisions of article 7.2, institutions and persons covered by this Act shall apply to all existing customers the due diligence measures set out in Chapter II within five years of the coming into force of this Act.

Eighth transitional provision. Agreements with the supervisory bodies of financial institutions.

Until the signing of the agreements referred to in article 44.2(m), the existing cooperation agreements between the supervisory bodies of financial institutions and the Commission for the Prevention of Money Laundering and Monetary Offences ' Executive shall remain in force.

Repealing article.

Without prejudice to the Second transitional provision, on the coming into force of this Act, Specific Measures for the Prevention of Money Laundering Act 19/1993, of 28 December, shall be repealed.

First final provision. Amendment to Prevention and Blocking of Terrorist Financing Act 12/2003, of 21 May.

1. Prevention and Blocking of Terrorist Financing Act 12/2003, of 21 May, shall be renamed "Blocking of Terrorist Financing Act 12/2003, of 21 May".

2. Article 4 of Act 12/2003 is amended as follows:

"Article 4. The institutions and persons covered by this Act.

The public authorities and the subjects referred to in article 2 of the Prevention of Money Laundering and Blocking of Terrorist Financing Act are required to cooperate with the Commission on Terrorist Financing Monitoring and, in particular, to carry out the necessary measures to enforce the blocking laid down in article 1; in particular they shall:

- a) Prevent any act or transaction involving the withdrawal of balances and positions of any kind, money, securities and other instruments related to blocked capital movements or payment operations or transfers, except those sending new funds and resources to blocked accounts.
- b) Report the Commission on any form of entry made to the blocked account, without prejudice to the execution of the transaction.
- c) Notify the Commission, on its own initiative, of any application or request received in which the originator, issuer, holder, beneficiary or recipient is a person or entity in respect of which the Commission has adopted a measure.
- d) Furnish the aforementioned Commission with the information it requires in the exercise of its powers.
- e) Not disclose either to the customer or to third parties the fact that information has been transmitted to the Commission.

3. Article 6 of Act 12/2003 is amended as follows:

"Article 6. *Supervision and penalty system.*

1. The supervisory and inspection duty of the Commission for the Prevention of Money Laundering and Monetary Offences' Executive referred to in article 47 of the Prevention of Money Laundering and Blocking of Terrorist Financing Act extends to the fulfilment of the obligations established in this Act.

Where the inspection reports referred to in article 47.3 of the Prevention of Money Laundering and Blocking of Terrorist Financing Act reveal breach of any of the obligations under article 4 of this Act, the Standing Committee of the Commission for the Prevention of Money Laundering and Monetary Offences shall report the Commission for Terrorist Financing Monitoring on such circumstance.

2. Breach of the duties under this Act shall be considered a very serious offence for the purposes set down in Chapter VIII of the Prevention of Money Laundering and Blocking of Terrorist Financing Act and shall be punished as provided therein.

The references in said Chapter to the Secretariat and the Standing Committee of the Commission for the Prevention of Money Laundering and Monetary Offences shall be understood as being made to the Secretariat of the Commission on Terrorist Financing Monitoring and the Commission on Terrorist Financing Monitoring, respectively.

The Minister of the Interior has the jurisdiction to propose the imposition of sanctions for offences committed under this Act, while the power to apply penalties falls upon the Council of Ministers."

4. Article 9 of Act 12/2003 is amended as follows:

*"Article 9. Commission on Terrorist Financing Monitoring.*

1. The Commission on Terrorist Financing Monitoring is set up as the body charged with agreeing the blocking of all transactions defined in article 1 of this Act, and with the exercise of all powers necessary to fulfil the provisions of the latter.

2. The Commission will be attached to the Ministry of the Interior and composed of:

(a) Chair: Secretary of State for Security.

(b) Members:

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

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

(c) Secretary: the person who runs the office whose functions are carried out by the Secretariat of the Commission referred to in paragraph 4.

The chair of the Commission, if he/she should see fit, may convene experts in the areas of their competence for specific advice on any of the matters in question. The Director of the Commission for the Prevention of Money Laundering and Monetary Offences ' Executive shall attend the meetings of the Commission on Terrorist Financing Monitoring in an advisory capacity.

3. The members of this Commission are subject to the liability regime established by law and, in particular, to the obligations deriving from knowledge of the information received and transferred personal data, which may only be used in the exercise of the powers assigned by this Act. The experts advising the Commission shall be subject to the same liability regime for all things known to them by reason of their attendance of the Commission.

4. The Commission shall exercise its powers with the support of the Secretariat, which has the consideration of a body of the Commission. The functions of the Secretariat shall be carried out by the department, with the rank of at least under-directorate general, of those of the Ministry of the Interior determined in the regulations.

The Secretariat shall, inter alia, investigate the punitive proceedings as may be appropriate for breach of this Act and submit the appropriate motion to the Commission.

5. Compliance with the reporting obligations referred to in article 4 of this Act shall be fulfilled through the Secretariat of the Commission.

6. The Commission for the Prevention of Money Laundering and Monetary Offences and the Commission on Terrorist Financing Monitoring shall cooperate to the fullest extent possible in the exercise of their respective powers. Under the terms agreed by the two Commissions and without prejudice to article 45.3 of the Prevention of Money Laundering and Blocking of Terrorist Financing Act, the Commission for the Prevention of Money Laundering and Monetary Offences ' Executive shall report at the meetings of the Commission on Terrorist Financing Monitoring on its activity in relation to facts or transactions revealing indications or certainty of a relationship with terrorist financing and, in particular, on the financial intelligence reports it may have drafted in connection with this matter.

The powers of the Commission shall be without prejudice to those assigned by the Prevention of Money Laundering and Blocking of Terrorist Financing Act to the Commission for the Prevention of Money Laundering and Monetary Offences .

Second final provision. Amendment to Legal Regime of Capital Movements and Foreign Economic Transactions and Specific Measures for the Prevention of Money Laundering Act 19/2003, of 4 July.

1. The Legal Regime of Capital Movements and Foreign Economic Transactions and Specific Measures for the Prevention of Money Laundering Act 19/2003, of 4 July, is renamed "Legal Regime of Capital Movements and Foreign Economic Transactions Act 19/2003, of 4 July".

2. Article 12(2) of Act 19/2003 is amended as follows:

"2. The power to initiate and carry out preliminary investigations in punitive proceedings resulting from the application of the arrangements in the Law and to impose the appropriate penalties shall be governed by the following:

(a) The Secretariat of the Commission for the Prevention of Money Laundering and Monetary Offences shall have the power to initiate and carry out preliminary investigations in punitive proceedings.

(b) The Council of Ministers, on a proposal from the Minister of Economy and Finance, shall have jurisdiction to impose penalties for very serious breaches.

(c) The Minister of Economy and Finance, on a proposal from the Secretary of State for the Economy, shall have jurisdiction to impose penalties for serious breaches.

(d) The Director-General for the Treasury and Financial Policy, on a proposal from the investigating judge, shall have jurisdiction to impose penalties for minor breaches."

Third final provision. Amendment to Collective Investment Undertakings Act 35/2003, of 4 November.

*Article 43.1(j) of Collective Investment Undertakings Act 35/2003, of 4 November, is amended as follows:*

"j) With adequate internal control procedures and mechanisms to ensure sound and prudent management of the company, including risk management procedures and IT control and security mechanisms, and bodies and procedures to prevent money laundering and terrorist financing, a related transactions system and an internal code of conduct. The management company must be structured and organised so as to minimise the risk of the interests of the CIU or of its clients being affected by conflicts of interest between the company and its customers, between customers, between one of its customers and a CIU or between two CIUs."

Fourth final provision. Basic nature and jurisdictions.

This Act shall have the consideration of basic legislation in accordance with article 149.1.11. and 13 of the Constitution.

Fifth final provision. Development in regulations.

The government is empowered to approve, within one year of the coming into force of this Act, the regulations for its implementation and development.

Sixth final provision. Implementation of Community law.

This Act incorporates into Spanish law Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for money laundering and terrorist financing, developed by Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

Seventh final provision. Coming into force.

This Act shall come into force on the day after its publication in the Official State Gazette.

Excluded from the foregoing are the obligation to store copies of identification documents on optical, magnetic and computer media, provided for in article 25.2, and the obligations laid down in article 41,

which shall come into force two years and one year, respectively, after the publication of this Act in the Official State Gazette.

Now therefore,

I order all Spanish persons and authorities to observe and ensure observance of this Act.

Madrid, 28 April 2010.

JUAN CARLOS R.

The Prime Minister,

JOSÉ LUIS RODRIGUEZ ZAPATERO