



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

2. National AML/CFT policies and coordination

Effectiveness and technical compliance



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2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings

Spain faces a range of money laundering (ML) and terrorist financing (TF) risks, and the following are particularly important in the Spanish context:

- Organised criminal groups, comprised of both Spanish nationals and/or foreign criminals, are active in Spain. Real estate transactions have been involved in recent significant criminal cases and appear to be a major means of ML in Spain. Many of these cases have involved foreign criminals resident in Spain laundering the proceeds of foreign predicate offences through Spain.
- The money or value transfer service (MVTs) sector has proven vulnerable to exploitation by organised criminal groups seeking to move their illicit gains out of the country.
- Spain is a trans-shipment point for the illicit flows of drugs entering Europe from North Africa and South America, and their related criminal proceeds are transferred to third countries. Cash smuggling across Spain's borders with Morocco in Ceuta and Melilla have been linked to drug trafficking, evasion of Moroccan customs duties, counterfeiting of goods, and human trafficking.
- Tax crimes, including VAT fraud and evasion of customs duties, are a problem, and there have been a number of large cases in this area.
- Spain has traditionally faced significant TF risks from separatist groups (e.g., ETA), and there is also an ongoing threat from Islamist terrorist groups. These groups use a variety of funding methods including taverns and lotteries (for ETA), and self-funding (for the Islamist cells). Transfers to Algeria, Mali, Pakistan, and (more recently) Syria have also been observed.

Spain has a good understanding of its ML/TF risks, which is the foundation for national strategies across the AML/CFT system.

The Commission for the Prevention of Money Laundering and Monetary Offences (the Commission) enables the key AML/CFT authorities to coordinate in the development and implementation of AML/CFT policies and activities. Additionally, there are numerous interagency working groups and mechanisms to facilitate operational coordination.

2.1 Background and Context

2

(a) Overview of AML/CFT Strategy

2.1. Spain has a national *Strategy for the Prevention of Money Laundering*, agreed by the Commission and based on risk analyses by a number of agencies, which identifies the following as priorities:

- a. improvement of the institutional framework, to better assess and understand money laundering and terrorist financing risks and threats in the future
- b. reinforcement of compliance by obliged persons including supervision, guidance, and developing proportionate requirements for smaller entities
- c. improving the level of transparency (regarding beneficial ownership and bank accounts holdings)
- d. actions in specific sectors or areas of concern including movements of cash, money remitters, and real estate, and
- e. geographical risks.

2.2. The national *Strategy for the Prevention of Money Laundering* sits alongside national strategies in other areas, notably the *National Security Strategy*, which defines a global and all-embracing frame of reference in security matters, the *Integral Strategy against International Terrorism and Radicalization* (EICTIR), and the *Strategy to combat organised crime*.

(b) The Institutional Framework

2.3. The FIU and AML/CFT supervisor for all sectors is the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC). In the financial sector, SEPLAC coordinates its supervisory activities with the prudential regulators: the Bank of Spain, Directorate-General for Insurance and Pension Funds (DGSFP), and National Securities Exchange Commission (CNMV).

2.4. Spain has a complex network of law enforcement agencies (LEAs) and intelligence services, including specialised units focused on ML/TF, which are part of the Ministry of the Interior. Two national police forces—the National Police and the Civil Guard—have nation-wide competence to investigate all crimes and handle immigration matters. There are regional police forces in the Basque Country, Catalonia, and Navarre. In addition, there are judicial police: dedicated law enforcement units which support specialised prosecutors and investigating judges who may direct an investigation. The Customs Surveillance authorities are authorised to investigate and pursue certain crimes, and are also part of the judicial police. The Centre of Intelligence against Organised Crime (CICO) is responsible for gathering criminal intelligence and de-conflicting police investigations at the operational level. The country's main intelligence service is the National Intelligence Service (CNI), although the National Police and Civil Guard also have their own information services.

2.5. The Customs authorities are located within the Tax Agency, and the Civil Guard also plays a role in border control. The Customs Surveillance authorities have exclusive jurisdiction over issues involving foreign trade (cargo movements in and out of Spain, including those made by planes and lorries, with countries that are not part of the Customs Territory of the European Union).

2.6. The Public Prosecution is a constitutional body with legal personality, integrated with functional autonomy within the judiciary: *Law 50/1981*. It has both general prosecutors (competent to prosecute all crimes) and specialist prosecutors with particular competencies in financial crimes. The Ministry of Justice is the central authority for mutual legal assistance. There are regional courts throughout the country and a

specialised court, the National High Court, with special jurisdiction to handle all cases involving terrorism and related ML.

(c) Coordination and Cooperation Arrangements

2.7. The main coordination mechanism for developing and coordinating Spain's AML/CFT policies is the Commission for the Prevention of Money Laundering and Monetary Offences (the Commission) which is part of the Ministry of the Economy and is comprised of over 20 key agencies, some of whom also have specific coordination functions. For example, the National Centre for Counter-terrorism Coordination (CNCA) of the Ministry of the Interior is mainly responsible for coordinating counter-terrorism efforts, and the Inter-Ministerial Body on Exports of Defence and Dual-use Materials (JIMDDU) is responsible for counter-proliferation and coordinating the export control regime.

(d) Country's assessment of Risk

2.8. Spain does not have a single integrated national risk assessment for ML, but has prepared a range of risk assessments, including focused assessments of specific sectors or themes, and assessments at the national level of issues relevant to ML and TF. Some of these assessments have a very narrow scope (e.g., a single border crossing), while others are more wide-ranging, although not necessarily limited to ML/TF risks (e.g., assessments of organised crime and associated ML). These assessments were prepared by several agencies including the Commission and its support bodies (Treasury and SEPBLAC), the National Centre for Counter-terrorism Coordination (CNCA), and the Centre of Intelligence against Organized Crime (CICO). Each assessment is different, but in general the assessments use a range of information sources, and benefit from input and review by other relevant agencies, even whilst being issued under the authority of an individual body.

2.9. The conclusions of Spain's various risk assessments are in general reasonable and internally consistent, well-supported by the specific information assessed, and largely accord with the assessment team's analysis of the risks, as set out in the previous chapter.

2.2 Technical Compliance (R.1, R.2, R.33)

Recommendation 1 – Assessing Risks and applying a Risk-Based Approach

2.10. **Spain is compliant with R.1.** Together, the framework of specific risk assessments and operational analyses, and the strategies which are based on them, adequately identify and assess the risks. The Commission has recently strengthened the institutional arrangements for risk assessments through the establishment of a risk committee within the Commission. Spain applies a comprehensive risk-based approach to the scope of ML obligations (which in addition to all sectors specified by the FATF, also apply to real estate developers, art dealers, the national administrator of the Emission Allowance Registry, and SAREB), and addresses preventive measures, supervision, and the work of operational authorities.

Recommendation 2 – National Cooperation and Coordination

2.11. **Spain is largely compliant with R.2.** The Commission is the designated authority responsible for coordinating and determining Spain's national AML/CFT policies, and regularly updating them consistent with the ML/TF risks identified: *AML/CFT Law art.44*. There are sufficient mechanisms in place to ensure adequate coordination and cooperation on AML/CFT matters at both the policy making and operational levels. However, coordination mechanisms to combat the financing of proliferation of weapons of mass destruction (WMD) are limited.

2.12. A positive feature is that Spain has imposed specific obligations on the competent authorities aimed at maintaining a collaboration regime. For example, by law, any authority, civil servant, supervisor or judicial body is required to report to the Commission or SEPBLAC any activity that may constitute ML/TF or possible breaches of the AML/CFT obligations which are discovered in the course of their work: *AML/CFT Law art.48.1*.

Recommendation 33 - Statistics

2

2.13. **Spain is compliant with R.33.** The Commission is responsible for developing statistics on ML/TF, with input from all relevant competent authorities, and periodically issues a comprehensive ML/TF statistics document: *AML/CFT Law art.44.n*.

2.14. A positive feature is that all competent authorities are required by law to submit statistics to the Commission, and Spain has created the National Commission on Judicial Statistics which is responsible for providing statistical data on judicial proceedings related to crimes of ML or TF: *AML/CFT Law art.44.n*.

2.3 Effectiveness: Immediate Outcome 1 (Risk, Policy and Coordination)*(a) Country's understanding of its ML/TF risks*

2.15. **Generally, Spain appears to demonstrate a high level of understanding of its risks.** Spain has articulated a sound AML/CFT strategy and as part of that process has produced a wide variety of risk assessments from several sources addressing aspects of the ML and TF risks in Spain. It identifies real estate and foreign criminals as presenting high levels of risk, and the supervisory and law enforcement agencies (LEAs) seem to be attuned to these risks. As noted in relation to R.1, Spanish authorities have produced a variety of risk assessments focused on: terrorism and its financing; organised crime and the associated ML; the financial and DNFBP sectors; specific types of financial and DNFBP activity; and border-crossing points. The detailed basis for each assessment is different, but in general they use multiple sources of information and data, apply well-developed analytic methods, and have inter-agency input to their conclusions. The assessments share a focus on the practical needs of their users (e.g., for planning related to law enforcement operations or inspections of obliged entities), which is set out below. The risk assessments provided to assessors were high quality, in particular by providing specific and operationally relevant conclusions to their primary users.

(b) National AML/CFT policies and activities to address the ML/TF risks

2.16. **The Commission is the agency responsible for overall coordination of the regime and high-level assessment of risks,** but in practice the Commission as a body mostly approves material given to it by SEPBLAC, the Commission Secretariat, or other Commission members. To date, the Commission has largely not taken an active view on the contributions of agencies, but has taken their conclusions as its starting point. More recently the Commission has become involved in developing the national AML strategy. It is too soon to know what impact this will have on the regime in the longer term (for example, whether there will be more centralised power of direction over the work of individual competent authorities). This work may move the Commission into a more proactive stand of evaluating other agencies' work in terms of assessing whether they are identifying the right risks.

2.17. **SEPBLAC has demonstrated a high level of understanding of the risks.** Risk analysis is sophisticated and appears to drive SEPBLAC's performance of its responsibilities in both its roles as an FIU and a supervisor. In particular, there is a high degree of communication within SEPBLAC between its two key functions (of FIU and AML/CFT supervisory authority), which enhances both its ability to understand the risks and its ability to supervise obliged entities in a risk-based way. SEPBLAC is clearly the driving force behind most of the material and information related to risks presented to and formally approved by the Commission, although other agencies, particularly the Treasury and LEAs, also present their reports.

2.18. **Law enforcement agencies and prosecutors seem to have a sound understanding of the risks** which affect their specific areas of focus. Their understanding is supported by many of the risk assessments undertaken by SEPBLAC and other agencies (which in some cases are targeted on producing analysis to assist operational agencies rather than national policymakers – an approach that should be encouraged). For example, the CICO and the CNCA produce reports examining organised crime groups operating in Spain. These reports go to the Ministry of the Interior which assists the LEAs to better understand risk and how

these criminal groups launder proceeds. These reports are also used by the LEAs for training purposes, and by operational staff who use this information in their daily field work.

2.19. **Spain also recognises the role that prosecutors play in having a comprehensive strategy and approach to addressing risks ML, TF and other security risks:** *Spanish Security Strategy, p.12 & 44.* Some specialised operational units, in particular the specialised prosecutors - are in a position to identify and understand trends in the typologies and methodologies used by criminals to launder money, and present very sophisticated and well-informed views on the key ML and TF risks. This understanding is clearly deployed to good effect in the course of their case work. However, it is not clear that the rich understanding of trends and methods that these specialised units have is being successfully communicated back to national authorities or incorporated into their strategic analysis or risk assessment. There may be room for staff of SEPBLAC and the Commission to improve their understanding of the risks by having greater contact with operational agencies.

2.20. **Terrorism and terrorist financing risks are assessed in an integrated way by the National Centre for Counter-terrorism Coordination (CNCA).** The CNCA seems to have a well-developed understanding of the terrorist threat at a national level, and a very detailed picture of the financial and support structures, methods, and techniques employed by each of the terrorist groups involved. This is based on a wide range of material, and specialised analysts. Indeed, the analysis by CNCA formed the basis of Spain's input to the *Europol TE-SAT 2013 – EU Terrorism Situation and Trend Report* (see section 1.2). One notable strength is that the CNCA's analysis of the financing and facilitation systems of each terrorist group is integrated with its wider analysis to give a complete picture of each active group, which can be used by other operational agencies as a basis for comprehensive strategies to disrupt and dismantle their capability.

2.21. **The risk-based approach applied by supervisors is discussed in more detail under Immediate Outcome 3.** As the main AML/CFT supervisor, SEPBLAC takes a highly sophisticated risk-based approach to supervision across different sectors and within each sector. There is a well-developed risk-based approach in the banking sector, with good coordination between SEPBLAC and the Bank of Spain, which has developed its own risk matrices since the previous evaluation. However, in the securities and insurance sectors, the prudential supervisors seem to have an incomplete understanding of the ML/TF risks and continue to rely on SEPBLAC's risk assessment.

2.22. **The mandate of the Commission and its support functions demonstrate that Spain takes the risks of ML and TF seriously, and many of the risks identified in the various risk assessments are well reflected in the national strategies.** This is visible in particular in the decisions to apply preventive measures obligations to additional entities, beyond those set out in the FATF standards or EU directive, on the basis of identified risks. These additional entities include real estate developers, art dealers, the national administrator of the Emission Allowance Registry, and SAREB, all of which have been identified as posing a high-risk, or having been involved in significant ML cases. Company and land registrars are also subject to AML/CFT preventative measures, including STR reporting requirements, in view of their role and the information they have on companies and real estate transactions.

2.23. **Specific measures applied in other sectors also reflect the results of Spain's risk analysis.** In the case of the MVTs sector, which saw significant criminal misuse a few years ago (see Box 3.2), analysis of past criminal conduct has been used to identify a number of vulnerabilities and risk indicators. Additional measures have been put in place to address these, including requiring the industry to systematically report all transactions in a form which enables data analysis by SEPBLAC so as to identify patterns of activity which may indicate the recurrence of criminal abuse.

(c) Exemptions and application of enhanced measures

2.24. **Spain has only one full exemption from AML obligations:** for money exchange by hotels in tightly limited circumstances: *AML/CFT Law art.2.3, RD 304/2014 art.3.* Spain's *AML/CFT Law* also allows for simplified due diligence involving prescribed categories of clients, locations, and financial products, which are set out in Royal Decree 304/2014 (which entered into force during the onsite visit). The specific categories in Spain's regulations include some which are based: on the categories set out as low-risk examples in the FATF standards (e.g., publicly-owned enterprises); on the existence of a harmonised regulatory framework (e.g., financial institutions or publicly listed companies in EU countries); and/or specifically on

risk assessments, either conducted at the EU level (for the “equivalence list” of countries in which reliance is permitted), or in Spain (e.g., collection of tourism commissions). These derogations, although not explicitly covered in the risk assessment material provided to the assessment team, are generally consistent with them and with the examples forming part of the Methodology.

2.25. **Spain requires enhanced measures to be applied in specific circumstances set out in the AML/CFT Law and associated regulation.** These include a range of situations, products, customer characteristics, and geographic factors, which are consistent with the overall and specific risk assessments reviewed by the team. While Spain’s risk assessments clearly cover the real estate sector and foreign criminals, these are not required to be subject to enhanced due diligence, although they are covered by a number of risk indicators which may trigger obliged entities themselves to apply enhanced measures.

(d) Objectives and activities of competent authorities

2.26. **Both the objectives and day-to-day activities of the law enforcement and operational authorities reflect the risks that have been identified.** One example is the use of gold which was identified as a new ML risk following the economic crises which resulted in an increase in gold trafficking and VAT fraud. There was also an increase in the number of small shops that buy/sell small amounts of gold, some of which were found to be selling stolen goods, or acquiring gold bars to turn into cash (or vice-versa). In response to these risks, the LEAs have proposed to control these establishments and have increased their investigations of them. SEPBLAC has also been assessing transactions involving the industry, and have sent these reports to the LEAs. Additionally, the authorities provided a case example (*Operation Habanas*) in which the AEAT and the National Police disrupted a network with more than 180 companies involved in tax fraud and ML around the precious metals trade in Spain. The police actions have resulted in limiting the ML activities involving this commodity.

2.27. **For supervisors, there is a high degree of consistency between their objectives and activities in the AML/CFT supervisory space and risk-based national policies.** SEPBLAC’s activities and objectives clearly deal with the ML/TF risks. However, there is a difference of approach between the “prudential” supervisors (who focus primarily on the overall risk in a given institution) and SEPBLAC (which focuses on thematic risks common to a number of institutions). The thematic focus of SEPBLAC supervision is a good example of its focus on specific risks (e.g., the work in the MVTs sector noted above demonstrates a strong focus on foreign criminals). Outside the financial sector, the Notaries’ Central Prevention Unit (the OCP) has introduced risk indicators and analytical tools focused on the risks involved in the activities reflected in the notarial acts, and is also seeking to address the specific risks around the misuse of legal persons through development of its databases (described in Box 7.1).

(e) Cooperation and coordination

2.28. **The Commission is the overarching coordination body and all the relevant competent authorities are required by legislation to be members of the Commission.** The Commission acts through its Executive Service (SEPBLAC) and its Secretariat (the Sub-directorate General of Inspection and Control of Capital Movements of the Treasury). The structure and the membership of the Commission seem to make it fairly successful as a policy coordination body. However, the role of the Commission is to ensure inter-agency coordination at the level of strategies and policies, and it is not well-suited to facilitating coordination at a practical or operational level. That task is done by other bodies and mechanisms.

2.29. **On terrorism and TF, coordination is done through a dedicated body:** the National Centre for Counter-terrorism Coordination (CNCA). This body has deep operational connections with all the relevant agencies, and is able to effectively coordinate analysis, strategy, and tactical counter-terrorist activity.

2.30. **For criminal cases, Spain has three national law enforcement organisations with powers to investigate money laundering cases** – the National Police, the Customs Surveillance Unit and the Civil Guard. In addition, there are specialised prosecutors and investigating judges who may direct an investigation, and dedicated law enforcement units which support them (e.g., judicial police). The very complex structure of Spain’s law enforcement agencies makes de-confliction of their work an important operational priority, and also makes coordination challenging.

2.31. **De-confliction of law enforcement investigations into organised crime is done through the Centre of Intelligence against Organised Crime (CICO).** All law enforcement agencies are required to submit case information (e.g., names and addresses of suspects) to a CICO database before commencing an investigation. The database registers the agency's interest, and generates an alert in the event that a different law enforcement agency subsequently registers an interest in the same person. When conflicts are identified, they are resolved bilaterally between the interested agencies, normally with the agency that was first to register its interest taking the lead. There are no coordination (or de-confliction) opportunities for cases involving names or major targets that have not been entered into the main database, as these will not be flagged by the system. This mechanism is limited to addressing conflicts between two agencies which have target overlaps, as CICO has more of an analytical role (rather than an operational one). This system seems to be moderately effective at resolving conflicts caused by the complex structure of law enforcement, but efforts are taken to reduce overlapping investigations by different agencies.

2.32. **There is also evidence that Spanish law enforcement agencies are able to coordinate with each other in practice.** The assessment team was provided with several examples in which the Civil Guard, National Police, and Customs Surveillance Unit were working on aspects of the same very large and complex ML cases. Having said that, operational task forces led and coordinated by the investigative judge and involving multiple LEAs are the exception and not the rule.

2.33. **On supervision, there seems to be genuine practical coordination.** SEPBLAC has developed and implemented a sophisticated risk matrix which informs the overall approach to supervision across all sectors, including DNFBPs. SEPBLAC exerts a high degree of oversight and coordination in the supervisory functions at large, and is legally required to provide input on fitness and propriety in all licensing applications. In the banking sector, SEPBLAC works closely with the Bank of Spain to receive and comment on the Bank's AML/CFT examinations as well as conduct thematic examinations itself. In the insurance and securities sectors, SEPBLAC plays a more directive role and ensures the sector supervisors examine the institutions that SEPBLAC is most concerned about. There is ongoing and continuous discussion between SEPBLAC and the sector supervisors at management and working levels. However, there may be room for improvement in the level of engagement by the insurance and securities sectors.

2.34. **On proliferation financing, the picture is mixed.** There are coordination mechanisms regarding the implementation of targeted financial sanctions related to proliferation. In this regard, the Commission acts as a coordination body in this area and its membership has been expanded to include institutions with competence in this field, including the relevant Ministry of Foreign Affairs department. The Secretariat of the Commission is the national authority for the execution of targeted financial sanctions and reports periodically to the Commission. However, Spain's ability to detect attempts to evade sanctions through the use of shell companies, is significantly curtailed by the disconnect between the export control regime and the AML/CFT authorities. There is very limited and irregular exchange of information or coordination between Spain's export control regime and its AML/CFT system; and (except for isolated cases) Spain largely does not make use of opportunities for financial measures or financial intelligence to support the implementation of counter-proliferation activities, or vice-versa.

(f) Awareness of risk in the private sector

2.35. **Most of the risk assessments noted above are not made public,** except in the context of the national strategies based on them, which include risk information only in highly edited form. SEPBLAC is seen as a leader by the private sector even where they sometimes disagree with SEPBLAC's objectives or expectations. Nevertheless, in order to inform the private sector about risk analysis, the Commission also issues and provides the different sectors with "Risk Catalogues"¹ which give guidance to the private sector to help identify high-risk transactions, and "Risk Maps" with strategic analysis of STRs produced by SEPBLAC. However many of these pieces of guidance are "checklists" of red-flag indicators, which are customised for the sector concerned. While these include indicators relating to risks identified by authorities (e.g., the risk

1 The risk catalogues are produced by the Commission, coordinated by the Treasury, and include inputs from different sources (international exercises, private sector inputs, SEPBLAC, experiences from other LEAs).

posed by foreign criminals operating in Spain), they do not set out clearly the nature of the underlying risks or the specific typologies associated with them.

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2.36. **Some sectors nevertheless seem to have a good understanding of the risks.** Obligated entities in the banking sector (which sources the majority of STRs) seem reasonably well aware of the ML and TF risks. The banking sector has been exposed to the risk-based approach since prior to its formalisation in the *AML/CFT Law*, and generally shows a more developed approach. External auditors seem to understand the risks in the financial sector well, also because of their legal role in annually reviewing financial institutions' internal controls. Casinos also seem to have a good grasp of the risks and a good working relationship with the authorities. Notaries also have a good understanding of the risks, particularly in relation to real estate transactions and company formation.

2.37. **Obligated entities told the assessment team they were not asked to or able to provide input into risk assessments** conducted by SEPBLAC and others, and they consistently stated that they want and need more information from SEPBLAC. With the exception of the banking sector, obliged entities generally believe the risks to their sector are lower than stated by SEPBLAC or the various risk assessments. In some cases this is very unrealistic (e.g., lawyers). These factors suggest that these sectors may not yet be fully engaged in the process. And, although external auditors understand the risks in the financial sector, they are not so much aware of their own risks as obliged entities themselves.

2.38. **A particular concern is that awareness of ML/TF risks outside the banking sector is often focused on the risks of handling cash and of direct customer contact by banks.** In these sectors, there is a lower level of understanding of the risks (notably in the securities sector, and the legal sector), and as a result, there is a general (erroneous) perception that ML/TF risks reside mainly or only in the banking sector. The fact that Spain has not discussed the overall results of its risk assessments with the private sector seems to reinforce this perception by obliged entities.

Overall conclusions on Immediate Outcome 1

2.39. **Overall, Spain has done a good job in identifying, assessing and understanding its ML/TF risks and has effective mechanisms in most areas to mitigate these risks.** The competent authorities are engaged, well-led and coordinated by the Commission. Coordination is good at the policy level and among supervisors at the policy and operational levels. However, the number and overlapping responsibilities of LEAs makes de-confliction a necessity and coordination a challenge.

2.40. **Given the relatively short period of time the risk-based approach (RBA) has been formalised among obliged entities as a group, the banking sector has the best understanding of the risks and implements a sound risk-based approach.** However, the understanding of risk and implementation of risk-based measures is variable in other sectors. There is also some variability in how well Spain uses the risk assessment to address priorities and policies, and there are also issues about how well Spain coordinates its efforts to combat the threats associated with the financing of WMD proliferation. The system has resulted in some mitigation of ML and TF risks.

2.41. **Overall, Spain shows a substantial level of effectiveness for Immediate Outcome 1.**

2.4 Recommendations on National AML/CFT Policies and Coordination

2.42. A number of moderate improvements are needed to Spain's AML/CFT system:

- a. Spain should implement additional coordination measures to combat the proliferation of WMD and the associated financing. In particular, Spain should address the gap between the Commission's mandate and the export controls regime. These measures are described in more detail in the recommendations on IO.11 (paragraph 4.70).

- b.** Taken together, the risk assessments and their analyses amount to a national risk assessment in practice, but it would be worthwhile working on a strategy to “join up” all these assessments into an overarching risk analysis in which risks known to be associated with each other (for example, the real estate sector and lawyers) could be addressed in a more holistic way.
- c.** The authorities should take measures to ensure greater participation in the risk assessment process by the obliged sectors and continue to ensure coordinated participation in the risk assessment process by the constituent members of the Commission.
- d.** Spain should improve guidance for obliged entities about the risks to supplement the catalogues and risk map, and to correct the misunderstanding in some sectors of the nature and level of risks they face. In particular, there should be more focus on the risks posed by foreign criminals and ML through the real estate sector. This could be done through enhanced guidance and typologies for the relevant sectors, which would be of use both to the private sector (suitably sanitised) and government agencies, or through publication of a national assessment.
- e.** Spain should take measures to encourage the insurance and securities sectors to improve their understanding of the ML/TF risks.
- f.** The DNFBPs appear to have a low level of understanding of the risks. Aside from the notaries sector, which has developed a Central Prevention Unit (OCP), DNFBP sectors have not been very proactive in addressing risk understanding. Spain should take measures to address these issues in order to improve the overall level of understanding in these sectors.
- g.** Spain should enhance the use of joint investigative task forces, with a focus on equitable asset sharing, including a fair and balanced recognition and reward system for cooperating agencies. The policy should provide prosecutors and judges with an enhanced role in supervising and coordinating joint investigations, including the management of resources from multiple sources and conflict resolution.
- h.** To enhance the effectiveness of the risk assessment mechanism, Spain should involve the private sector in the risk assessment process in future and in a manner appropriate to the circumstances. For example, information could be obtained from the private sector directly through consultation during the risk assessment process, or indirectly through the supervisory process and subsequently fed into the risk assessment process.



2. NATIONAL AML/CFT POLICIES AND COORDINATION

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

a2.1. These requirements were added to the *FATF Recommendations*, when they were last revised in 2012 and, therefore, were not assessed during Spain's third mutual evaluation which occurred in 2006.

a2.2. *Criterion 1.1.* Spain has prepared a range of risk assessments, including focused assessments of specific sectors or themes, and assessments at the national level of issues relevant to money laundering (ML) and terrorist financing (TF). Some of these assessments have a very narrow scope (e.g. a single border crossing), while others are wide-ranging, though not necessarily limited to ML/TF risks (e.g. assessments of organised crime and associated ML, and assessments of terrorism, including TF and other forms of support). The sectoral and geographical assessments reviewed by the team are of good quality, use multiple sources of information, are prepared through inter-agency processes, identify and assess important ML/TF risks, and set out operationally-relevant conclusions. For example:

- a. The National Centre for Counter-terrorism Coordination (CNCA), (Ministry of Home Affairs) which is responsible for integrating, analysing, and evaluating all information on terrorism, has undertaken assessments of terrorist finance within its terrorism analysis.
- b. The Centre of Intelligence against Organised Crime (CICO) (Ministry of Home Affairs) has produced detailed risk analysis of organised crime activity in Spain and associated ML activity.
- c. Treasury, SEPBLAC, and other anti-money laundering (AML) / counter-terrorist financing (CFT) authorities have prepared specific ML/TF risk assessments of particular sectors (real estate, money or value transfer services (MVTs), legal persons, cash movements), and border crossing points.
- d. ML/TF risk analysis of financial and designated non-financial businesses and professions (DNFBP) sectors and financial institutions (FIs) is undertaken as the basis for the SEPBLAC's annual inspection plan and approach to risk-based supervision.
- e. SEPBLAC also prepares a risk map analysis based on suspicious transaction reports (STRs) and systematic reporting of certain operations.
- f. The Commission for the Prevention of Money Laundering and Monetary Offences (the Commission) also issues "risk catalogues" which give guidance to the private sector to help identify high-risk transactions.

a2.3. *Criterion 1.1* requires countries to "identify and assess the ML/TF risks for the country". This does not have to be done through a single national risk assessment. ML/TF risks to a country can be adequately identified and assessed through a series of focused assessments on specific sectors and threats, provided that those focused assessments together cover the full range of ML/TF risks, and the country can identify the implications of those focused assessments for AML/CFT policy and operations at a national level. In Spain's case, the scope of its focused ML/TF assessments collectively is relatively broad and they address the major risks identified by the assessment team. Spain also has national strategy-making processes which identify the implications of risk assessments for AML/CFT policies and operations at national level, in particular the preparation of the national *Strategy for the Prevention of Money Laundering*. Taken together, the underlying framework of specific risk assessments and operational analyses, and the strategies which are based on them, can be considered to adequately identify and assess the risks.

a2.4. *Criterion 1.2.* The CNCA is responsible for coordinating actions to assess terrorism and TF risks. The Commission for the Prevention of Money Laundering and Monetary Offences (the Commission), through its financial intelligence committee, has responsibility for assessing ML risk and has done so, e.g. through the

NATIONAL AML/CFT POLICIES AND COORDINATION

sectoral and border assessments noted above: *Royal Decree (RD) 304/2014, art. 65*. However, this requirement is new, and the risk assessments prepared to date were conducted by several different agencies and without formal coordination.

a2.5. *Criterion 1.3.* Several of the above risk assessments are regularly updated, including the CICO assessments, the SEPBLAC risk map and Annual Inspection Plan, and the CNCA's assessments.

a2.6. *Criterion 1.4.* The Commission has responsibility to coordinate with public authorities and provide guidance to obliged entities. The risk assessments noted above are made available to other relevant public authorities though in some cases their distribution is tightly controlled. Spain indicates that information derived from the SEPBLAC risk map and other risk analysis is provided to reporting entities as feedback: *RD 304/2014 art.65(1)(f)*.

a2.7. *Criterion 1.5.* On the basis of its work mentioned above, Spain has implemented the following strategies related to ML/TF: (a) the *National Security Strategy* which identifies the major risks facing Spain (published May 2013); (b) the *Strategy Against Organised Crime (2011-2014)* (approved 2011); (c) the *Strategy for the Prevention of Money Laundering* (approved 2013); and (d) the *Integral Strategy against International Terrorism and Radicalization (EICTIR)* which is currently being discussed by the National Centre for Counter-terrorism Coordination (Ministry of Home Affairs).

a2.8. Additionally, Spain has introduced legislative measures to address new risks when these have been identified. For example, see the December 2013 amendments to Law 10/2010 (the *AML/CFT Law*), which applied suspicious transaction reporting and internal controls obligations to the national administrator of the Emission Allowance Registry, and the decision to apply AML/CFT obligations to SAREB (Spain's "Bad Bank").

a2.9. *Criterion 1.6.* Spain gives specific exemptions from AML/CFT obligations for foreign exchange by hotels, and for notaries when performing acts with no economic or patrimonial content: *AML/CFT Law art. 2.3, and RD 304/2014 art.3*. There are also exemptions from the internal control requirements for smaller entities which are DNFBPs or insurance brokers (employing less than 10 persons, with less annual turnover or total annual balance of EUR 2 million, and who are not part of a business group that exceeds these figures). These entities are subject to CDD, record keeping and reporting obligations, but are exempted from the detailed requirements relating to internal controls which are prescribed by articles 31 to 39 of Royal Decree 304/2014 (e.g., developing a prevention manual, establishing an internal control body, having AML/CFT procedures approved by a board of directors), on the basis that the organisational requirements that make sense in bigger companies are not practical in smaller entities. This is consistent with the Interpretive Note to R.18 which states that the "*type and extent of measures to be taken should be appropriate having regard to the risk of ML and TF and the size of the business*".

a2.10. *Criterion 1.7.* There are several different mechanisms through which Spain requires enhanced measures or additional consideration of higher risks, including the following:

- a. Enhanced measures for some general high-risk activities (e.g., private banking, PEPs etc.) are required by law: *AML/CFT Law arts.11-16*.
- b. AML/CFT obligations apply to the following entities in addition to those required by the *FATF Recommendations*. These include registrars, the Emission Allowance Registry, real estate developers and promoters, and notaries (who are required to apply CDD for all acts they authorise, rather than only specific acts).
- c. Additional controls apply to bearer shares, religious entities, foundations, and associations.
- d. Enhanced due diligence is required for specific cases including: private banking services; foreign exchange transactions above EUR 6 000/quarter; funds remittance transactions above EUR 3 000/quarter; and business relationships with companies which have bearer shares: *RD 304/2014, art.19*.

- e. There are requirements for systematic reporting of large transactions in cash or involving higher-risk countries.
- f. On specific risks (e.g. agents of MVTs providers), the authorities conduct outreach and communication with relevant sectors.

a2.11. *Criterion 1.8.* Spain allows simplified measures to be applied by FIs and DNFBPs in circumstances that have been assessed by Spain to be low risk following public consultation, and which are identified in Regulation: *AML/CFT Law arts.9 & 10, RD 304/2014 art.16.*

a2.12. *Criterion 1.9.* Spain's supervision and monitoring of FIs/DNFBPs includes supervisory obligations in relation to ML/TF risk assessment and mitigation, as set out in the *AML/CFT Law*. The relevant supervisor for all FIs/DNFBPs is SEPBLAC (acting in cooperation with the sectoral supervisors). The analysis conducted under Recommendations 26 and 28 found that SEPBLAC has adequate inspection powers, there are comprehensive sanctions available to the authorities, and supervision appears to be carried out according to a risk-based approach (RBA).

a2.13. *Criterion 1.10.* Measures relating to this criterion are included in legislation, and in guidance on internal controls issued by SEPBLAC. FIs and DNFBPs are required to:

- a. apply all customer due diligence (CDD) measures, but determine the degree of their application on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction, as set down in the explicit customer admissions policy referred to in article 26: *AML/CFT Law art.7*
- b. give special attention to products or transactions favouring anonymity and new developing technologies, analyse them for ML/TF risk, document the results of such analysis, and make those results available to the competent authorities: *AML/CFT Law art.16*, and
- c. adopt adequate policies of risk assessment and management, as part of their internal controls, and adopt an explicit customer admission policy, including a description of kinds of customers potentially presenting a higher risk: *AML/CFT Law art.26, RD 304/2014 art.32 and 33.*

a2.14. FIs and DNFBPs must be able to demonstrate to the competent authorities that the extent of the measures is appropriate in view of the ML/TF risks identified through a prior risk analysis which must be set down in writing. Regulations set out some of the risk factors that FIs/DNFBPs must take into account and require them to produce a risk analysis, document that analysis and review it regularly, and implement appropriate measures to manage and mitigate the risks identified: *RD 304/2014 arts.19, 22 & 32.*

a2.15. *Criterion 1.11.* FIs and DNFBPs are required to implement internal control procedures including ML/TF risk management, and risk-based customer acceptance procedures: *AML/CFT Law art.26*. An external review of each FI/DNFBP's internal controls, including their policies for risk assessment and mitigation, must be conducted every three years (and updated annually). Such reviews must be conducted by qualified external experts, indicate any changes required to the internal controls, be considered by the FI/DNFBP's board within three months, and be made available to SEPBLAC. This requirement may considerably strengthen the day-to-day oversight of firms' risk-based obligations, and allows SEPBLAC as a supervisor to focus on more significant cases: *see also R.18 and RD 304/2014 art.31-33.*

a2.16. *Criterion 1.12.* Simplified measures are only permitted in low risk cases which are defined in regulation. These include low risk customers (e.g. public law entities within the EU) and low risk products or transactions (e.g. life insurance policies solely insuring the risk of death): *RD 304/2014 art.15-16.*

a2.17. *Weighting and conclusion:* Spain meets all 12 criteria of R.1. **R.1 is rated compliant.**

A2

Recommendation 2 - National Cooperation and Coordination

a2.18. In its 3rd mutual evaluation report (MER), Spain was rated largely compliant with these requirements: *paragraphs (para.) 617-624*. The main deficiency related to the effectiveness of interagency co-operation which is not assessed as part of technical compliance under the *2013 Methodology*. Subsequent new legislation has further improved Spain's national cooperation and coordination mechanisms.

a2.19. *Criterion 2.1*. Spain has a national *Strategy for the Prevention of Money Laundering*, a *Strategy against International Terrorism and Radicalisation*, a *Strategy against Organised Crime*, and a *National Security Strategy* which identified TF and counter-proliferation as priority areas of action. These policies are, in practice, informed by the risks that Spain has identified. Spain's national AML/CFT policies are to be regularly updated and shall be consistent with the identified ML/TF risks: *RD 304/2014 art.62(1)*.

a2.20. *Criterion 2.2*. Spain has designated the Commission for the Prevention of Money Laundering and Monetary Offences (the Commission), which works under the Secretariat of State for the Economy (Ministry of the Economy), as the key mechanism for implementing and coordinating national AML/CFT policies: *AML/CFT Law art. 44, RD 304/2014 art.62*.

a2.21. *Criterion 2.3*. The Commission is comprised of over 20 of Spain's key AML/CFT agencies, including policy makers, the financial intelligence unit (SEPBLAC which is also the Executive Service of the Commission), law enforcement authorities (LEAs), supervisors, customs and tax authorities, intelligence services, data protection authorities, the judiciary, etc. It is responsible for developing and implementing AML/CFT policies and activities, facilitating domestic coordination and cooperation at the policy and operational level, and plays a role in sanctioning breaches of the AML/CFT requirements, as described in R.35: *AML/CFT Law art.44, RD 304/2014 art.63-65*. The Commission acts in Plenary, and through its Standing Committee (responsible for disciplinary proceedings for breaches of the *AML/CFT Law*) and its Financial Intelligence Committee (responsible for national ML/TF risk assessments). Its Secretariat is the Secretariat General of the Treasury and Financial Policy (Sub-Directorate General of Inspection and Control of Capital Movements). The Commission can convene whenever necessary, but is required to meet at least twice a year. Financial supervisors have a comprehensive series of cooperation and coordination agreements requiring SEPBLAC (as the AML/CFT supervisor) and the prudential supervisors—Bank of Spain, Directorate-General for Insurance and Pension Funds (DGSFP), and National Securities Exchange Commission (CNMV)—to cooperate, share information and coordinate inspection processes (see R.26 and R.40). LEAs also have additional coordination mechanisms including, collaboration and information exchange agreements, and joint working groups/teams¹ to facilitate investigations on priority issues (see also R.30).

a2.22. *Criterion 2.4*. Co-operation and coordination mechanisms to combat the financing of proliferation of weapons of mass destruction, other than those related to targeted financial sanctions (TFS), are limited. On targeted financial sanctions relating to PF, the Secretariat of the Commission is responsible for implementation, and there is a dedicated sanctions coordinator within the Ministry of Foreign Affairs. On wider measures to combat proliferation, the coordination mechanism is the Inter-ministerial Body on Material of Defence and Dual-use (JIMDDU) (comprised of over 10 relevant authorities including defence, security, trade, tax, export, foreign affairs, and intelligence services), which is in charge of coordinating the control of exports of dual use material, and determining policies and procedures in this area. Coordination between the JIMDDU and the ML Commission is limited. Although some of the member agencies of the JIMDDU are also represented on the Commission, they do not include the Commission secretariat or SEPBLAC, and there are no regular mechanisms through which it can coordinate or share information with other relevant authorities, such as SEPBLAC, who could add value in this area. However, there is inadequate cooperation and coordination between the competent authorities responsible for export control, and other competent authorities (such as SEPBLAC) who can add value to the detection and investigation of proliferation-related sanctions evasion.

1 For example, CICO (see R.1), the Specialised Group on Movements of Cash (see R.32), the CNCA which addresses CFT issues with broad representation from all the relevant departments, and the Terrorist Finance Watchdog Commission (see R.6).

a2.23. *Weighting and conclusion:* Spain's risks of proliferation-related sanctions evasion are genuine (as described in section 4.1 of the MER), and it has identified this as a priority area of action (see criterion 2.1). Nevertheless, there are gaps in coordination related to the export control regime. **R.2 is rated largely compliant.**

Recommendation 33 - Statistics

a2.24. In its 3rd MER, Spain was rated partially compliant with these requirements (paragraph 695). The main technical deficiencies were that Spain only kept very limited statistics which were not very comprehensive. Spain subsequently addressed these deficiencies by amending the *Penal Code* through Organic Law 5/2010: *4th follow-up report (FUR) of Spain para.149-152*. Since its last evaluation, Spain enacted new legislation empowering the Commission to develop ML/TF statistics.

a2.25. *Criterion 33.1.* The Commission gathers statistics annually from 25 agencies (including the National Commission on Judicial Statistics which is responsible for providing statistical data on judicial proceedings related to crimes of ML/TF) and issues a comprehensive ML/TF statistics document every few years: *AML/CFT Law art.44.n*. Going forward, it will issue this document annually. These statistics are collected "to serve as an aid for decision-making on the overall improvement of the mechanism for combating ML and TF": *Statistics Report (2010-2012) page 4*. The statistics in the report are comprehensive, include numerous detailed breakdowns, and cover:

- a. STRs received, analysed, and disseminated by SEPBLAC
- b. other types of reporting
- c. ML/FT investigations, prosecutions, and convictions
- d. property frozen, seized, and confiscated
- e. mutual legal assistance (MLA) or other international requests for cooperation made or received
- f. domestic cooperation requests, and
- g. supervisory actions.

a2.26. *Weighting and conclusion:* Spain meets the criterion of R.33. **R.33 is rated compliant.**





Table of Acronyms

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

TABLE OF ACRONYMS

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