



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

6. Supervision

Effectiveness and technical compliance



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6. SUPERVISION

Key Findings

In general Spain has a strong system of supervision. Spain has a single supervisor (SEPBLAC) responsible for AML/CFT supervision of the financial sector, in cooperation with sector prudential supervisors. Spain has also shown that its financial supervision and monitoring processes have prevented criminals from controlling financial institutions. The supervisory process has also resulted in identifying, remedying and sanctioning violations of obligations, and failings of AML/CFT risk management processes. The types and range of remedial actions and sanctions applied in the obliged sectors appear to be satisfactory.

SEPBLAC's approach to risk analysis is comprehensive. It drives both the risk assessment process and the supervisory approach. The Bank of Spain has improved its engagement with the AML/CFT supervisory regime. Feedback to obliged entities is generally adequate in most sectors where STR filings are strongest.

Prudential supervisors of the insurance and securities sectors continue to rely on SEPBLAC's AML/CFT risk assessments, and take a primarily rules-based approach. Spain should promote a better understanding of the risks in these sectors.

Engagement with high-risk non-financial sectors should be improved. Existing guidance appears to focus more on compliance elements in a rules-based fashion and less on the elevated risks. Spain should improve the risk-focus of sector guidance and outreach on the identified high risk areas of real estate and foreign criminal networks given the importance of these in the fight against ML and TF. SEPBLAC should also work to improve its relations with and oversight of the legal sector given lawyers' role in company formation, and its worrying self-perception as a low risk sector.

6.1 Background and Context

6.1. Spain has a dual-track supervisory regime, with a single supervisor (SEPBLAC) responsible for AML/CFT supervision in all financial and DNFBP sectors, in cooperation with sector supervisors. In the banking sector, the Bank of Spain shares responsibility with SEPBLAC for AML/CFT inspections. In the securities and insurance sectors, SEPBLAC carries out thematic AML/CFT inspections and also directs The National Securities Exchange Commission (CNMV) and the Directorate-General for Insurance and Pension Funds (DGSFP) to conduct financial institution-specific inspections as needed. In the DNFBP sectors, there is a range of other supervisors, professional bodies, self-regulatory bodies (SRBs), and central prevention bodies.

6.2. The structure of Spain's financial sector effectively places much of the burden of implementing AML/CFT controls on the banks, since many other financial sector firms either form part of banking conglomerates, or market their products through banks and require use of existing bank accounts. There is a corresponding focus on banking supervisors when looking at the supervision of AML/CFT obligations. The number of obliged entities in each sector is set out below.

Table 6.1. Obligated Entities

Financial institutions	Subtotal	Total
Core Principles financial institutions		
Banks (Banks and saving banks) (a)		69
<i>National banks</i>	48	
<i>Subsidiaries of foreign banks</i>	21	
Securities (Broker-dealers, Dealers and Portfolio Managers) (b)		84
Insurers (Life insurance) (c)		136
Other financial institutions		
Credit Cooperatives		68
Credit Finance Institutions (EFC)		50
Collective Investment		108
Pension Funds (d)		37
Mutual Guarantee (e)		23
Payment Entities (MVT) (f)		31
E-money		2
Private Equity (g)		139
Bureaux de change (h)		285
Entities licensed to Buy & Sell foreign currency		9
Entities licensed to Buy foreign currency		176
Branches of foreign financial institutions		
EU Banks		78
Non-EU Banks		8
EU Securities		36
EU Insurers		18
EU Collective Investment		9

Table 6.1 Obligated Entities (continued)

Financial institutions	Subtotal	Total
Payment Entities (MVT) (i)		8
EU E-money		1
DNFBPs		
Casinos and gambling		87
<i>Casinos</i>	41	
<i>Lotteries and games of chance</i>	46	
Legal professionals		3 970
<i>Notaries</i>	2 891	
<i>Registrars</i>	1 079	
<i>Lawyers (j)</i>	-	
Auditing		2 603
Accountants & Tax advisors		1 115
Trust and Company Service Providers		19
Real estate agents		4 227
Dealers in precious metals or stones		-
Table Notes:		
(a) 92 registered but only 69 active in October 2013. 15 structurally supervised entities represent 86% of total sector assets.		
(b) 17 entities represent 70% of total sector assets.		
(c) 4% of life policies are distributed by 2 786 insurance brokers.		
(d) entities whose sole activity is managing pension funds.		
(e) 7 entities represent 70% of total sector activity.		
(f) 49 registered but only 31 active in October 2013. 14 entities transfer 82% of total amount.		
(g) 58% of which are Private Equity Management Companies.		
(h) Related to the tourism sector, 1,964 businesses may buy foreign currency as an ancillary activity.		
(i) Including two entities that operate through agents networks.		
(j) Source: General Counsel of Spanish Bars. 131,337 lawyers in Spain. Performing activities foreseen in the AML/CFT Law: estimated by surveys conducted by General Counsel; near 400 declared to be performing those activities.		

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6.2 Technical Compliance (R.26-28, R.34, R.35)

Recommendation 26 – Regulation and supervision of financial institutions

6.3. **Spain is largely compliant with R.26.** Licensing regimes are in place for all parts of the financial sector; including fit and proper tests. SEPBLAC and the Bank of Spain both follow a well-developed risk-based approach to supervision, and the banking sector is also supervised well in accordance with the Core Principles. There are some weaknesses in the implementation of the insurance Core Principles (as noted by the IMF), and in the implementation of the risk-based approach in the non-banking financial sector, since neither the insurance nor the securities supervisors take account of ML/TF risks in their supervisory plans.

Recommendation 27 – Powers of supervisors

6.4. **Spain is compliant with R.27.** Spain has implemented most of the requirements of R.27, and all supervisors have adequate powers and sanctions - though the administration of financial sanctions is complex because of the governance relationship between SEPBLAC, the Commission, and the Commission Secretariat. Financial sanctions are proposed by SEPBLAC and/or the sector supervisors, but are legally required to be approved by the Commission before being imposed.

Recommendation 28 – Regulation and supervision of DNFBPs

6.5. **Spain is largely compliant with R.28.** Spain applies largely the same AML/CFT requirements to both financial institutions and DNFBPs, set out in the *AML/CFT Law*, with SEPBLAC responsible for supervision of all AML/CFT obligations, in cooperation with the applicable sector supervisors, where these exist. The assessment of R.26 and R.27 above largely also applies to the DNFBPs with respect to AML/CFT supervision, though the bodies responsible for licensing and accreditation are different for each sector.

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6.6. There are weaknesses in the powers of authorities to prevent criminals or their associates from being accredited, or from owning, controlling, or managing a DNFBP. In some DNFBP sectors (accountants, dealers in precious metals and stones, and TCSPs) there are no such requirements. In others (lawyers, solicitors, notaries, and real estate agents) the requirements are limited to prohibiting initial accreditation of convicted criminals, and do not address beneficial ownership. And in some, notably the legal profession, professional who are convicted of a criminal offence after being initially accredited in a profession, are temporarily disbarred by a court as part of a criminal sentence, but cannot be prevented from resuming their profession status.

Recommendation 34 – Guidance and feedback

6.7. **Spain is compliant with R.34.** The competent authorities and supervisors have established guidelines and provide feedback to assist FIs/DNFBPs to apply national AML/CFT measures, and detect and report suspicious transactions.

Recommendation 35 - Sanctions

6.8. **Spain is compliant with R.35.** Spain has a comprehensive system of penalties and sanctions for failure to comply with the relevant AML/CFT obligations, and since the last evaluation has significantly increased the maximum fine which can be imposed for compliance failures. In the most serious cases, the maximum penalty that can be applied to an obliged entity may include a fine of up to EUR 1.5 million and a public reprimand, or withdrawal of authorisation, and sanctions for directors or senior managers. Criminal sanctions may also be applied, e.g., in cases of serious negligence by persons who are legally obliged to collaborate with the authorities in the prevention of TF, but who fail to detect or prevent a TF offence.

Box 6.1. Passporting and home-host supervision

Under the EU's "passporting system" a financial institution organised under the laws of an EU Member State (home Member State) can provide services with or without an establishment in any other EU Member State, following prior notification and authorisation. The decision to issue an authorisation valid for either another Member State, several or the whole of the EU is the responsibility of the competent authority of the home Member State. Such a financial institution may then provide services or perform activities in the other Member States concerned (host Member States), either through an establishment or through the free provision of services, without the need to obtain additional authorisations in each host Member State. The prudential supervision of the financial institution in home and host Member states concerned is the responsibility of the home Member State, in close

cooperation with the host authorities.¹ Notification and supervision regimes vary depending on the financial services concerned and the risks to which the financial institutions are exposed. Supervisory cooperation will change in November 2014 when the Single Supervisory Mechanism (SSM) takes effect for significant banks (based on a variety of criteria including size and economic importance). This will create a new system of financial supervision for significant banks involving the ECB and the national competent authorities of participating EU countries. The SSM will apply mainly to supervision of significant banks and not so much for less significant banks. It will not apply at all to other non-bank financial institutions.

For AML/CFT requirements, the EU follows a territorial approach. It requires Member States to impose preventive obligations on financial institutions established on their territory. Although branches of FIs do not have to be authorised in the host country (as noted above), they are nevertheless directly subject to the host state's AML/CFT obligations. The practical supervision of the financial institution may vary according to the type of financial services provided, the risks at stake, and the degree of physical presence of the institutions in the host Member State. It also varies according to practices in different EU countries.

- For a financial institution conducting its activities under the right of establishment in a host country (e.g., by establishing branches), AML/CFT supervision in the host country is performed by the host country's competent authorities in cooperation with the home Member State's competent authorities.
- For a financial institution, such as a remittance provider, which uses a network of agents, the agents are not normally directly subject to the host state's AML/CFT obligations. At prudential level supervision is done by the home Member State in close cooperation with the host Member State and the home Member State may delegate certain controls on the host's territory to the host country supervisor, such as onsite inspections. However, the territorial nature of the *EU AML Directive* implies that agents, acting on behalf of the financial institution, have to comply with the AML/CFT requirements of the host country. Although this is not an explicit requirement, this is usually accomplished by way of the contract signed between the agent and the financial institution. The financial institution in the home Member State is fully liable for any acts of their agents, branches or entities to which they outsource. Financial institutions thus have to respect the AML/CFT rules of the host country.
- For a financial institution providing services without a physical presence (in Spain's case, approximately 850 credit, payment, and e-money institutions and 650 insurers), supervision is the responsibility of the home Member State in close cooperation with the host Member State (as noted above). EU supervisors have to cooperate and exchange information with regard to non-compliance issues which relate to prudential supervision or market conduct supervision, based on EU laws and regulations. However, in the area of AML/CFT supervision there is no specific guidance or technical standard from the EU, which has led to different supervisory approaches in EU countries with respect to AML/CFT supervision of entities that provide services without an establishment.

Spain's approach is based on their *AML/CFT Law*, which goes beyond the EU passporting rules. Spain applies the *AML/CFT Law* to all persons or entities that carry out the relevant activities in Spain, whether through branches, agents or the provision of services without physical presence. Spain therefore requires all EU authorised institutions providing services in Spain to appoint a suitable compliance officer and report STRs to SEPBLAC. Spain fully supervises compliance by entities acting

¹ Further information on passporting issues is available from: www.eba.europa.eu/documents/10180/16094/Passporting-Guidelines.pdf; or [www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/1178/COM_SEC\(2011\)1178_EN.pdf](http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2011/1178/COM_SEC(2011)1178_EN.pdf).

through branches and agents. It does not supervise entities acting under the free provision of services for AML/CFT compliance or participate in joint examinations, but relies on the home supervisor for this (in close cooperation, as mentioned above).

In the case of Jyske Bank Gibraltar Ltd. (“Jyske”), this bank operated in Spain without an establishment, as allowed under the passporting system described above. Spain was unable to obtain reporting information from Jyske, and requested a preliminary ruling from the European Court of Justice on the question of whether Spain could compel Jyske to provide information directly to SEPBLAC, including both filing of STRs and responding to further requests for information from the Spanish FIU. The Court confirmed that subject to the conditions that no effective mechanism ensuring full and complete cooperation between the Member States exists which would allow those crimes to be combated effectively, and on condition that the legislation is proportionate, EU law would not preclude Spanish legislation which requires credit institutions, operating in Spain without being established there, to forward directly to the Spanish authorities information necessary for combatting ML and TF.²

2 <http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-04/cp130054en.pdf>.

6.3 Effectiveness: Immediate Outcome 3 (Supervision)

(a) *Measures to prevent criminals and their associates from entering the market*

6.9. **Financial sector supervisors apply sound fit and proper standards, supplemented by criminal background checks conducted by SEPBLAC.** The process applied by Bank of Spain is effective, and they can demonstrate several cases in which applications were rejected for reasons of fitness or propriety. The insurance and securities supervisors apply a similarly comprehensive approach (with some weaknesses in the implementation of the insurance Core Principles as noted above). SEPBLAC has the authority to provide input on all fit and proper testing in all financial and DNFBP sectors.

6.10. **However, legal powers to prevent criminals or their associates from being accredited as a DNFBP are very limited in some sectors.** Of greatest concern is the legal profession, where a lawyer who is convicted of a criminal offence after being initially accredited in a profession, cannot be prevented from resuming his or her profession (except for a temporary period of disbarment ordered by a court as part of a criminal sentence). Some prominent cases have seen lawyers convicted of a money laundering offence for their part in establishing and operating major money laundering operations, serve a prison sentence and/or period of disbarment, and then return to carrying out their former business as a lawyer.

6.11. **Although supervision of licensed MVTS operators has been strengthened, the authorities may not be active enough in identifying unlicensed operators in the MVTS sector.** Possible unlicensed operators are identified through reports to supervisors and through analysis of STRs, and adequate powers exist to sanction such activity. However, neither SEPBLAC nor the Bank of Spain has programmes in place to monitor the marketplace for illicit MVTS operators, and the number of entities investigated or sanctioned for such activity is low. Since 2006, six institutions have been sanctioned for operating as money remitters without a license, and two for providing payment services without a license - an overall average of one case each year.

6.12. **Authorities do take a more proactive approach in other sectors which face a high-risk from unlicensed operators.** In 2012, the Directorate General of Gambling (DGOJ) identified and verified 17 websites providing unauthorised online gambling accessible to the Spanish market. These were subject to disciplinary proceedings.

(b) Supervision for compliance with AML/CFT requirements & identification of ML/TF risks

6.13. **As the main AML/CFT supervisor, SEPBLAC takes a highly sophisticated risk-based approach to supervision across different sectors and within each sector.** SEPBLAC has developed a detailed risk analysis methodology for each sector of obliged entities, drawing on a wide range of information (in particular on strategic analysis by SEPBLAC's FIU function). The results of this analysis feed into the ongoing risk assessment process as well as the supervisory approach, which reflects the distribution of risks between different sectors, within each sector, and across thematic activities. SEPBLAC inspections are organised according to this risk model, rather than a periodic cycle. This process has been particularly effective in detecting risks in the MVTs sector (discussed in Box 3.2), and the results also appear to be effective.

6.14. **There is a well-developed risk-based approach to supervision in the banking sector, with good coordination between supervisors.** The Bank of Spain and SEPBLAC have both developed risk matrices which inform their supervisory programmes. The Bank of Spain's matrices largely deal with assessed risk by financial institution. Both agencies share the results of their risk assessments with each other, which helps each of them adjust their focus and collaboratively develop supervision plans to address identified risks and issues. There are no impediments to the full exchange of supervisory information.

6.15. **The Bank of Spain conducts comprehensive prudential supervision of the banking sector.** The Bank of Spain and SEPBLAC conducted joint structured supervision of Spain's fifteen biggest banks in 2012 and again in 2013. Such structured supervision involves the use of a permanent on-site team of inspectors, to conduct comprehensive inspection covering all supervised obligations. This initiative was a stock-take following the new *AML/CFT Law* enacted in 2010 and has allowed both agencies to acquire a comprehensive view of Spain's financial sector. However, the Bank of Spain does not conduct supervision of branches and subsidiaries outside Spain, although this is recommended by the Basel Committee on Banking Supervision in its guidance.

6.16. **Coordination between supervisors seems to work well.** Coordination is done both bilaterally, and through the Commission. In the banking sector, both SEPBLAC and the Bank of Spain feed the results of their supervision to the other and to the Commission, and thus the authorities are able to develop a holistic risk assessment of the sector. Given that the Spanish financial sector is large, this is an important advantage. The supervisory membership of the Commission seems comprehensive and there seem to be no missing or unrepresented supervisors.

6.17. **The CNMV and DGSFP are both capable supervisors, but do not focus on AML/CFT.** Both CNMV and DGSFP have AML supervisory methodologies of their own and apply these in specific financial institutions as directed by SEPBLAC. Their general level of supervisory competence and their prudential approach to supervision also seem adequate overall. However, they are less proactive than the Bank of Spain in their AML/CFT supervision. Rather than developing a specific ML/TF inspection programme, they provide SEPBLAC with a list of planned prudential inspections, and seek SEPBLAC's advice on which companies should have an AML inspection. This approach may indicate either a lack of understanding of the risks, or a lack of AML expertise.

6.18. **In the securities sector, the prudential supervisor seems to have an incomplete understanding of ML/TF the risks.** The CNMV has a different perception from SEPBLAC about the level of ML/TF risk in the securities sector. CNMV considers the sector as a whole to be low risk for ML and TF, while SEPBLAC considers some business lines to be high-risk, and the sector as a whole to be medium-risk. The understanding of CNMV of the ML/TF risk seems to be centred on the risks of handling cash and interacting with customers, with limited appreciation of the potential for securities transactions themselves to be used for ML or TF. The view that the securities sector is low risk is also inconsistent with the situations in other countries, as securities dealers usually operate on an account-basis where a client can deposit funds (by cash or transfer) and conduct trading transactions in a manner similar to banking transactions. The supervisor's view is shared by many securities firms themselves, with the result that the sector does not pay adequate attention to the higher-risk business lines, including equity management and collective investment schemes. The CNMV has not developed its own risk matrix, and does not reflect ML/TF risks in its supervision.

6.19. **SEPBLAC's inspection activities, in all sectors, are focused on thematic or topical issues identified by its risk analysis.** Rather than conduct comprehensive inspections covering all AML/CFT obligations, SEPBLAC identifies several thematic issues for a sector (e.g., the implementation of targeted financial sanctions), and prepares a focused inspection programme based on examination of specific indicators on those themes. The programme is then used as the basis for a series of short, focused thematic inspections of a number of firms in the relevant sector. This supervisory model results in inspections which are brief and of limited scope - in contrast with the comprehensive and permanent inspection approach of other supervisors. SEPBLAC's annual inspection plan set out a total of 102 inspections in the period from September 2013 to June 2014, of which 52 were thematic inspections involving some entities also subject to prudential supervision.

6.20. **Perhaps due to its central involvement in inspection, SEPBLAC may not yet have sufficient resources to adequately cover the range of obliged entities it supervises in the DNFBP sector.** Table 6.2 sets out the number of DNFBPs in Spain subject to SEPBLAC's oversight.

6.21. **In the financial sectors, SEPBLAC enjoys good support from the sector supervisors, especially the Bank of Spain.** The majority of SEPBLAC supervisory staff also have experience in banking supervision at the Bank of Spain. In the DNFBP sectors, the situation is less supportive. Some DNFBP sectors have active supervisors and are used to inspection (e.g., the casinos and online gambling sectors), or have central prevention units which, due to their statutory mandate, greatly facilitate the supervision of the sector (e.g., notaries and registrars). However, some DNFBP sectors do not have a non-AML supervisor.

6.22. **Casinos are supervised by the autonomous regional authorities and there is a generally adequate level of support for SEPBLAC.** However, there is some uncertainty about the numbers of lawyers subject to the AML/CFT regime. The estimated number of 400 is based on a sector assessment. Auditors, accountants and tax advisors are a relatively large group with varying levels of knowledge. The real estate sector is large and regarded as high risk by SEPBLAC. In summary, excluding Casinos, Notaries and Registrars, the DNFBP sector is a group of non-homogenous sectors where SEPBLAC acknowledges more supervision is needed. This is likely to present challenges in terms of volumes of work and specialised sector knowledge.

Table 6.2. DNFBPs

	Number
Casinos and gambling	87
Notaries	2 891
Registrars	1 079
Lawyers	See Note A
Auditors	2 603
Accountants & Tax advisors	1 115
Trust and Company Service Providers	19
Real estate agents	4 227
Dealers in precious metals or stones	See Note B
Casinos and gambling	87

Table Notes:

Note A: The authorities advised there are 131 337 lawyers in Spain. Of this number, almost 115 000 are in active practice. It is estimated by the legal sector itself that the number of lawyers who perform activities subject to the AML/CFT Law is 400.

Note B: Article 2q of the *AML/CFT Law* applies the AML obligations to professional dealers in jewels, precious stones or precious metals. Law 7/2012 (art.7) prohibits them from engaging in cash transactions equal to or greater than EUR 2 500.

6.23. **SEPBLAC's Supervisory Division at the time of the on site visit employed 15 professionals**, all of whom have a university degree and most of whom have a professional background at Directorate General of Supervision of Bank of Spain. The Division is functionally structured into groups, responsible respectively for off-site and onsite supervision. A *Strategy for Supervisory Division* was updated in 2013, as well as the operations manual for supervisory staff. As a result of this strategy SEPBLAC has identified a need for a 60% increase in staffing, which would result in an increase of 9 people for a total of 24.

6.24. **Supervision of MVTs has been significantly increased since 2009**, when SEPBLAC (in its FIU role) identified that persons linked to criminal organisations were acting as agents of money remitters and conducting organised and large-scale ML. This activity included more than 500 agents with links to criminal activity, seven MVTs with very serious deficiencies, and a total of over EUR 600 million was laundered through this route. The response to this case has included significantly strengthening the preventive measures applied to the sector. However, it remains a very high risk for both ML and TF.

6.25. **Nevertheless, weaknesses remain with respect to passported MVTs providers.** With respect to MVTs institutions licensed in Spain, the supervisory regime has been greatly intensified in recent years, following the detection of significant criminal abuse in the MVTs sector by agents (see Box 2). From 2010 to 2012, SEPBLAC carried out 13 AML inspections of payment institutions. It found serious weaknesses in 6 of these that enabled their agents to launder more than EUR 600 million. Two of these firms were large international operators. Three operators shut down voluntarily and two were subject to LEA investigations because of the agents and some managers. SEPBLAC now applies a much higher level of ongoing scrutiny on MVTs operators using such techniques as regular reporting of information relating to the entry of agents into the MVTs sector.

6.26. **Some MVTs providers offer services in Spain through local agents, but are incorporated and licensed in another EU Member State.** It is not clear that the supervisory arrangements in place under EU passporting rules deliver adequate supervision of these entities (see Box 9). Home-host cooperation seems to be limited and at most reactive. SEPBLAC shared their results on the MVTs case with the home supervisor(s), but there is no indication that the home supervisor(s) took any action with respect to their MVTs in Spain.

(c) Remedial actions and sanctions for non-compliance with AML/CFT requirements

6.27. **Financial sector supervisors apply a wide variety of supervisory actions clearly directed at remedial efforts.** Obligated entities are expected to implement these requirements under their internal controls, and these interventions are followed up and evaluated closely by the supervisors. Plenty of examples were produced and discussed. As a consequence of on-site and off-site inspections carried out, SEPBLAC directed more than 290 remedial actions to be taken in the period 2010 to 2012. During the same period, prudential supervisors imposed eight sanctions for breaches of licensing requirements. However, in the larger banks the Bank of Spain does not conduct supervisory visits to the branches or subsidiaries of financial institutions outside Spain (despite the guidance of the Basel Committee to the contrary) believing these operations to be the responsibility of host supervisors.

6.28. **Financial penalties are applied where non-compliance issues requires additional action beyond a supervisory instructions, or where an entity is not taking the necessary steps to implement the required remedial actions.** Over the period 2010 to 2012, the Commission applied 26 disciplinary procedures and financial penalties totalling nearly EUR 6.7 million over all sectors. Of this amount, slightly less than half was applied in the financial sector. The most significant underlying breaches were deficiencies in the design or implementation of internal controls (28% of cases), training (18%), special review (14%) and record-keeping (12%). Although the amount of fines seems low given the substantial size of the financial sector overall, the assessment team has kept in mind that during this period there has been substantial consolidation in the banking sector, the RBA has been introduced, and implementing regulations (*RD 304/2014*) only came into effect during the on-site visit. Sanctions rose in 2012 as supervisors began to apply the larger penalties introduced with the 2010 *AML/CFT Law*.

6.29. **In addition to financial penalties and remediation, supervisors can also reprimand financial institutions and DNFBPs, and apply individual sanctions against managers.** In the period from 2010 to 2012, 22 entities received a private reprimand, and two entities (a bank and an MVTs) were publicly reprimanded. Sanctions were also applied to four managers, in two MVTs operators, one of whom was publicly reprimanded, and another temporarily disqualified from managerial positions in any obliged entity.

Table 6.3. Disciplinary procedures

	2010	2011	2012
Total Remedial Actions	122	128	41
Financial institutions	74	50	41
DNFBPs	48	78	-
Total Punitive Procedures	6	7	13
Financial institutions	3	3	5
<i>Banks</i>	2	1	1
<i>Securities</i>	0	1	0
<i>Insurance</i>	0	0	2
<i>Payment institutions (money remitters)</i>	1	1	2
DNFBPs	3	2	6
<i>Dealers in precious metals and stones</i>	1	0	6
<i>Notaries</i>	1	0	0
<i>Lawyers</i>	0	2	0
<i>Real estate</i>	1	0	0
Managers	0	2	2
Total fines (in EUR)	1 940 000	1 496 000	3 242 010

(d) Impact of supervisory actions on compliance

6.30. **Feedback from the private sector indicates that the actions of supervisors have had a positive impact on the level of compliance in the financial sector.** SEPBLAC is clearly viewed as the AML/CFT authority in all sectors, but in the banking sector, the Bank of Spain is also seen as an authority particularly in the areas of internal controls which it supervises prudentially. The special examinations in 2011 and 2012 following the new legislation constituted a comprehensive stock-take in Spain's largest conglomerates. The impact of these supervisory measures in that sector are evident in the level of compliance and understanding of the sector.

6.31. **The work of SEPBLAC in analysing the problems caused by rogue MVTs agents is a clear example of how their work as a supervisor has impacted compliance.** SEPBLAC analysis has identified methodologies and techniques through which bad agents were able to execute illicit transfers. This analysis has enabled the sector to put in place specific controls to prevent a recurrence of this activity, and has refocused the sector's risk mitigation activity on to agents and away from customers. In addition, the intensified supervision of the sector in recent years, and the additional measures which were put in place, have left a high level of awareness and compliance in the sector, and an early-warning system to identify future illicit activity. Nevertheless, the frequency and intensity of on-site supervision of MVTs operators and agents remains low, given the high level of risk involved.

6.32. **Supervision appears to have had a positive impact on some DNFBP sectors, notably notaries and registrars.** Both professions benefit from having central prevention units which appear to strengthen

the profession's capacity to cooperate with competent authorities and to respond to instructions from supervisors.

6.33. **However, supervision is in the process of being established in the legal profession, and its impact so far is low.** This is shown in part by the low level of awareness of ML/TF risks within the sector. According to SEPBLAC's annual inspection plan, the first six onsite inspections in this sector will take place in the period from September 2013 to July 2014. In addition SEPBLAC states that there 5 real estate inspections will be conducted in June 2014. An additional 14 real estate companies (6 agencies and 8 developers) will be inspected in 2014/2015. Although this number seems low give the size of the sector, the authorities advise that a risk-based approach was used in selecting the inspections: one RE agency is associated with a high-risk sub-sector (luxury properties on the Costa del Sol), and the other four on the basis of systematic transactions reported to SEPBLAC.

(e) Promoting a clear understanding of ML/TF risks and AML/CFT obligations

6.34. **SEPBLAC is seen as an open, authoritative and approachable organisation.** Numerous examples were given of where SEPBLAC gave advice, input and information in all sectors. The Bank of Spain promotes a strong focus on AML/CFT measures by banks. Its AML/CFT supervisory framework should be adjusted to improve the definition of ML/TF and ensure that banks do not equate low "residual" ML/TF risk with low (inherent) risk as defined by the FATF. The insurance and securities supervisors both have weaknesses in their understanding of the risks, which prevent them from communicating them effectively to the sector. There is a risk of confusion when firms in these sectors hear different risk assessments from different supervisors, and this contributes to the low level of awareness of ML/TF risks among insurance and securities firms.

6.35. **There is not enough guidance on AML/CFT high risks and related obligations.** On the risks, some sectors which are acknowledged to be high risk (such as the real estate sector and foreign criminals) are not the subject of specific guidance, information or typologies which could help obliged entities to detect and report suspicious activity. On the obligations, Spain's AML/CFT laws and regulations have changed significantly in recent years (and even months), and obliged entities are hungry for further guidance on how the new requirements should be implemented, in particular on how specific practical difficulties can be overcome (such as the identification of domestic PEPs).

6.36. **External auditors (who review firms' internal controls) are an important channel for informal advice to financial institutions and DNFbps on the implementation of AML/CFT obligations.** There may be scope to make use of them as a way to disseminate good practice more widely within the financial and DNFBP sectors.

Overall conclusions on Immediate Outcome 3

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

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

6.39. **SEPBLAC's approach to risk analysis is elaborate.** It drives both the risk assessment process and the supervisory approach. The Bank of Spain has improved its engagement with the AML/CFT supervisory regime. Nevertheless, there are some areas where moderate improvements are needed, as outlined below.

Based on the comprehensive risk assessments done by SEPBLAC, its effective partnership with the Bank of Spain in the banking sector, its work in the MVTS sector, its directive stance in the remainder of the financial sectors, and its understanding of the risks in the DNPBP sector which will inform its approach in that sector going forward, **Spain has achieved a substantial level of effectiveness for Immediate Outcome 3.**

6.4 Recommendations on Supervision

6.40. Based on the findings discussed above, the assessment team make the following recommendations for moderate improvements to the AML/CFT supervisory process in Spain.

6.41. Spain should improve the risk-focus of sector guidance and outreach on the identified high risk areas of real estate and foreign criminals, particularly in respect of preventative measures related to beneficial ownership, given the importance of these in the fight against ML and TF. Guidance should include specific information or typologies with relevant indicators to the private sector on the risks related to foreign criminals in combination with real estate in order for the private sector to be able to detect related ML and report STRs. Spain should also prioritise guidance on the implementation of more detailed obligations as set out in Royal Decree 304/2014.

6.42. The Bank of Spain should ensure that the AML/CFT supervisory risk matrix focuses on ML/TF risk as defined by the FATF (notably, the risk of ML/TF, rather than the risk of non-compliance or the resulting native impact on reputation). The risk assessment model should be based on inherent ML/TF risk and adequate risk mitigation, as suggested in paragraphs 8 and 9 of the Interpretive Note to R.1.

6.43. The Bank of Spain should consider expanding its supervisory inspections to branches and subsidiaries outside Spain, for the purpose of assessing internal controls applied on a group-wide basis by financial institutions. These inspections could be targeted, using a risk-based approach, to higher risk countries and/or high risk themes, identified in the Spanish risk assessment material hosting the operations of Spanish banks.

6.44. Substantial additional resources should be made available for AML/CFT supervision. Based on existing and expected workloads, a 60% increasing in staffing is planned by SEPBLAC. SEPBLAC should continue to monitor the resources needed for on-and off-site supervision of obliged entities in the DNFBP sector, paying particular attention to sector knowledge, training, and work volumes.

6.45. Spain should encourage the DGFSP to improve its compliance with *the IAIS Core Principles*, and encourage it and the CNMV to better develop their understanding of ML/TF risks in their sectors.

6.46. Authorities should take more proactive measures to identify and sanction unlicensed MVTS operators.

6.47. Spain should consider taking further fit and proper measures to prevent or restrict convicted money launderers from practising professionally as obliged entities under the *AML/CFT Law*. Such measures might include: implementing a registry of professionals (lawyers, notaries, and financial service providers) who have been publicly barred from their profession due to criminal activity, to enable obliged entities, employers, and customers to take account of the risks; applying significantly longer (or even permanent) periods of professional disbarment as a criminal sanction; or applying prohibitions on conducting certain kinds of high-risk business (e.g., company formation) after resuming the profession.

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Recommendation 26 – Regulation and supervision of financial institutions

a6.1. In its 3rd MER, Spain was rated partially compliant with these requirements. Spain exited the follow-up process in 2010 on the basis that these had mostly been adequately addressed. Both the FATF requirements and Spain's legal framework have changed enough that a new analysis is needed for this assessment.

a6.2. *Criterion 26.1.* SEPBLAC is responsible for supervising the compliance of all reporting FIs with their AML/CFT obligations, while sanctions responsibility lies, broadly speaking, with the Commission: *AML/CFT Law art.47 & 61*. SEPBLAC carries out its supervision in cooperation with the prudential supervisor for each sector, on the basis of specific MOUs with the Bank of Spain, the National Securities Exchange Commission (CNMV) and the Directorate-General for Insurance and Pension Funds (DGSFP). SEPBLAC remains the main AML/CFT supervisor. The prudential supervisors also conduct full AML/CFT inspections and monitoring, coordinated with SEPBLAC's own inspection plan. If a prudential supervisor identifies breaches of AML/CFT obligations, the Commission is responsible for any sanctions.

a6.3. *Criterion 26.2.* All Core Principles FIs are required to be licensed.¹ Operating an unlicensed FI constitutes an offence under each of the relevant laws.² The licensing regime for MVTs is considered under R.14. Authorisation from the Ministry of Economy and Finance is required for the creation of a payment institution (or the establishment of a branch in Spain). The Ministry must receive a report from SEPBLAC on all requests, and may refuse authorisation for lack of appropriate internal controls, or because of the business and professional repute of the shareholders, administrators, or directors. Authorised institutions are included in a publicly available register. Licensing or operation of shell banks is prohibited, as is doing business with them: *RD1245/1995 art.2, AML/CFT Law art.13.2*.

a6.4. *Criterion 26.3.* Comprehensive criminal ownership and “fit and proper” provisions have been adopted through Law 5/2009 and other supporting laws and regulations. These include setting out grounds on which persons may fail to meet either test, requirements for precautionary assessment of acquisitions and increases in shareholdings in the financial sector, and procedures for submitting information on management and significant shareholders to the Bank of Spain.

a6.5. *Criterion 26.4.* Spain undertook three IMF assessments in the context of its June 2012 Financial Sector Assessment Program (FSAP), of compliance with the Basel Core Principles, the IAIS Insurance Core Principles, and the IOSCO Objectives and Principles. The FATF has used the results of those FSAPs as a basis for assessment of this criterion.

a6.6. In the Banking sector, the IMF found that the core supervisory process at the Bank of Spain is strong, but identified several areas where Spain is not compliant with the Core Principles. The most relevant to AML/CFT supervision was a weakness in BCP1.4 on the sanctioning powers of the Bank of Spain, which must recommend sanctions to the Ministry of the Economy. The authorities note that this issue was addressed following the 2012 FSAP through new provisions which empower the Bank of Spain to apply sanctions, but require it to inform the Minister in cases where sanctions are imposed for very serious infractions: *RD 24/2012, Law 9/2012*.

1 Institutions from other EU countries that operate in Spain without a physical presence, are identified by SEPBLAC through a combination of cross-checks with prudential supervisors records, outreach programmes, and notifications from foreign supervisors. Institutions are informed of their obligations and asked to appoint a reporting officer. Supervisory action has been taken in some cases.

2 Law 26/1988 art.28 (for banks), Law 24/1988 art.66 (for investment services companies), RD 6/2004 art.5 (for insurance providers), and Law 35/2003 art.0ff and 41ff (for collective investment institutions).

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a6.7. The Bank of Spain has implemented a supervisory framework which addresses financial risks to which banks are exposed. Under this framework, the risk of ML and TF is captured under reputational risk and is also part of the risk of non-compliance with legal regulations and internal rules (one of the operational risk factors the Bank of Spain requires to be included in banks' risk matrices). The Bank of Spain has also developed a separate risk matrix for AML/CFT supervision, appended to the framework, which states: "Although money laundering and/or financing of terrorism transactions may not have a relevant direct impact on entities' solvency, the latter may be significantly eroded by the indirect consequences of the deterioration of entities' reputation as a result of these transactions, in addition to the damage such transactions may cause to the reputation of the system as a whole." This definition of ML/TF risk, as an indirect source of solvency risk, does not conform to the FATF definition of such risk.

a6.8. In the Insurance sector, the IMF found several relevant deficiencies. Of particular concern is the finding that Spain does not observe IAIS Principle 21 (countering fraud in insurance). The FSAP concluded that Spain also had a number of principles which are only partly observed:

- a. *ICP2 (Supervisor)* - There are gaps in the powers and capacity of the supervisor, and DGSFP does not have the resources needed for a more risk-focused supervisory approach.
- b. *ICP7 (corporate governance)* - The corporate governance requirement is limited, and there are no comprehensive requirements on the role and accountability of the Board and Senior Management.
- c. *ICP 8 (risk management and internal controls)* - There is a lack of specific details on the scope of internal controls and reporting duties (on internal controls deficiencies).³
- d. *ICP 18 (intermediaries)* - There is a lack of supervision of exclusive intermediaries, due to DGSFP's limited resources.

a6.9. In the Securities Sector, the FSAP found that implementation of the Core Principles was generally sound, but identified a relevant weakness in the implementation of principle 31 (internal controls), in that the CNMV makes limited use of on-site inspections. However, this weakness is not highly relevant to the current AML/CFT assessment, as it relates principally to the supervision of banks, where CNMV is not responsible for AML/CFT supervision.

a6.10. MVTS are subject to monitoring by the Bank of Spain and SEPBLAC (see criterion 14.3). With respect to other non-Core Principles FIs, SEPBLAC has blanket responsibility for monitoring and inspection of all obliged entities, and carries this out in accordance with a risk-based Annual Inspection Plan: *AML/CFT Law art.47 & 44.2(g)*. Overall this criterion is only partly met, as the deficiencies highlighted in the supervision of the insurance sector are significant, and are particularly relevant to the implementation of AML/CFT measures.

a6.11. *Criterion 26.5*. Spain notes that SEPBLAC's AML/CFT supervision of FIs is risk-based, and its dual role as the FIU and the supervisory authority provides synergies between both functions (i.e., the FIU is a key source of information used in assessing the risks at national, sectoral, and institutional levels). SEPBLAC reviews financial institutions' ML/TF risks and policies, internal controls and procedures. It also conducts some analysis of ML/TF risks in Spain and in specific sectors, in order to evaluate ML/TF risks in the sector and determine supervisory cycles through the Annual Inspection Plan. Risk-based AML/CFT supervision is coordinated with the prudential supervisors.

a6.12. *Criterion 26.6*. SEPBLAC conducts risk assessments of each sector, and then of each institution, as a

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3 Spain notes that steps are being taken to address the issues relating to ICPs 7 and 8 in the context of the implementation of the EU Solvency II Directive. These include the introduction of European Insurance and Occupational Pensions Authority (EIOPA) Preparatory Guidelines from January 2014 which set out specific requirements on corporate governance, risk management, internal controls, and internal audit.

basis for preparing its Annual Inspection Plan. Assessments are updated at least annually (when preparing the annual inspection plan) and in cases where this is suggested by FIU analysis of STRs, or where there is a change of ownership or increase in shareholdings. The Bank of Spain conducts a risk-based supervisory approach by which supervisory plans and resources can be allocated to the institutions according to their risk profile and their systemic importance. The supervisory plan is updated at least yearly and adjusted as needed. CNMV supervision is risk based, but does not specifically include ML/TF risk factors. DGSFP supervision does not seem to follow a RBA.

a6.13. *Weighting and conclusion:* For core principles institutions, there are some deficiencies in how some core principles relevant to AML/CFT are being implemented (criterion 26.4), and the prudential supervisors in the insurance and securities sectors do not have a sufficiently well-developed RBA to supervision. However, SEPBLAC's application of risk-based oversight in the insurance and securities sectors mitigates most of these risks. **R.26 is rated largely compliant.**

Recommendation 27 – Powers of supervisors

a6.14. In its 3rd MER, Spain was rated partially compliant with these requirements, mainly due to concerns about the effectiveness of the supervisory regime, based on the very low number of inspections. The introduction of the *AML/CFT Law* in 2010 comprehensively updated the applicable legislation, so the past analysis has not been re-used.

a6.15. *Criterion 27.1.* SEPBLAC has powers to supervise and monitor compliance of FIs with AML/CFT requirements.

a6.16. *Criterion 27.2.* SEPBLAC has authority to conduct inspections of FIs, according to an Annual Inspection Plan: *AML/CFT Law art.47.1.*

a6.17. *Criterion 27.3.* SEPBLAC has authority to access all relevant information, and broad powers to require cooperation by obliged entities, including the power to compel the production of information: *AML/CFT Law art.47.2.* The three prudential supervisors have similar powers under the relevant legislation.

a6.18. *Criterion 27.4.* There are a broad range of sanctions which can be applied if an obliged entity fails to meet its responsibilities under the *AML/CFT Law*, and specific processes for applying such sanctions. The power to apply sanctions rests with the Commission. Sanctions for breaches identified by SEPBLAC are initiated by the Commission Secretariat, which is responsible for administrative proceedings. Proposed sanctions are then considered by the Commission, following which, sanctions for serious or very serious breaches must be approved by the Minister of Economy and Finance, or the Council of Ministers, respectively. The impact of sanctions on the stability of the institution must be considered before serious sanctions can be applied.

a6.19. *Weighting and conclusion:* Spain meets criteria 27.1, 27.2, and 27.3. With respect to 27.4, it is clear that powers exist to apply sanctions in the case of breaches of AML/CFT obligations, but there is a question about whether the responsible supervisor has sufficient authority to apply those sanctions itself. There are no indications that ministerial approval interferes with the autonomy of supervisory decisions (except where those potentially affect the stability of financial institutions). On the basis of articles 44 and 45 of the *AML/CFT Law*, it seems appropriate to consider the Commission (including the Commission Secretariat, and SEPBLAC (in its role as the AML/CFT supervisor)) as a single entity for the purposes of this Recommendation. The complex process outlined above for approving sanctions could therefore be considered an internal procedure of the supervisor, and consistent with FATF requirements. **R.27 is rated compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

a6.20. In its 3rd MER, Spain was rated non-compliant these requirements. The *AML/CFT Law* established a single legal basis for AML/CFT obligations of both FIs and DNFBPs, with SEPBLAC being responsible for AML/CFT supervision, working in cooperation with the relevant sectoral supervisors.

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a6.21. *Criterion 28.1.* All physical casinos must have a licence prior to conducting business, as described in the 2006 evaluation. Internet casinos must be licensed, and there is an authority responsible for issuing licenses and overseeing the gambling sector: *Law 13/2011*. Persons or corporate entities with a criminal record or those penalised for serious offences relating to ML/TF are excluded from holding such licenses. The initial licensing process assesses the applicant, its standing and the AML/CFT measures adopted, with mandatory involvement by SEPBLAC. This includes reviewing the beneficial ownership of casino operators. There is no requirement in AML/CFT laws or regulations relating to changes in the ownership or management of an already-licensed casino, but licensing authorities (at regional level) exercise oversight of transfers of ownership.

a6.22. *Criterion 28.2.* SEPBLAC is the designated competent authority responsible for monitoring and ensuring compliance of all DNFBPs with AML/CFT requirements. As noted in R.23, all required categories of DNFBPs are included in this regime.

a6.23. *Criterion 28.3.* All categories of DNFBPs are subject to supervision by SEPBLAC, in accordance with SEPBLAC's supervisory strategy and inspection plan.

a6.24. *Criterion 28.4.* SEPBLAC's powers to monitor and ensure compliance are the same for FIs and DNFBPs, and are sufficiently broad and adequate (see R.27). There is a comprehensive system of administrative penalties and sanctions for failure to comply with the requirements of the *AML/CFT Law* for DNFBPs (see R.35). However, the powers to prevent criminals or their associates from being accredited, or from owning, controlling, or managing a DNFBP are limited. DNFBPs are required to implement policies to ensure high ethical standards in their staff. There are some regulatory prohibitions on persons with a criminal record being initially accredited as a lawyer, solicitor, notary, or real estate agent. However, there are several significant gaps: (a) there are no such requirements for accountants, dealers in precious metals and stones, or TCSPs (other than the requirements applicable to TCSPs who are lawyers, solicitors, notaries or accountants); (b) the professional accreditation requirements for lawyers, solicitors, notaries, and real estate agents are limited to prohibiting initial accreditation of convicted criminals; (c) there are no provisions relating to the beneficial ownership and control of DNFBPs which are legal persons (with the exception of casinos, above); and (d) there are no provisions relating to changes in the beneficial ownership and control of DNFBPs (including casinos, as noted above). Most significantly, a professional who is convicted of a criminal offence *after* being initially accredited in a profession, cannot be prevented from resuming their former profession (except for a temporary period of disbarment (normally five years) ordered by a court as part of a criminal sentence, which is rather low). Requirements on DNFBPs to ensure high ethical standards in their staff may prevent convicted professionals being hired as a member of staff in a DNFBP, but not from practising on their own behalf. This is a significant risk given the central role of lawyers in most organised ML cases in Spain. Spanish authorities note that this is due to a constitutional prohibition on permanently depriving a person of their livelihood.

a6.25. *Criterion 28.5.* SEPBLAC's AML/CFT supervision of FIs and DNFBPs is risk-based. As noted in relation to R.26, SEPBLAC conducts risk assessments of each sector and each institution, as a basis for preparing its Annual Inspection Plan. Assessments are updated at least annually (when preparing the annual inspection plan), and in cases where this is suggested by FIU analysis of STRs, or where there is a change of ownership or increase in shareholdings.

a6.26. *Weighting and conclusion:* Spain has implemented a comprehensive regulatory and supervisory regime for all DNFBPs, supported by supervisory powers that are generally sufficient except in one area (see criterion 28.4). **R.28 is rated largely compliant.**

Recommendation 34 – Guidance and feedback

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a6.27. In its 3rd MER, Spain was rated partially compliant these requirements on the basis that there was insufficient feedback on STRs, no sector-specific guidance, and insufficient CFT guidance. Spain has subsequently addressed these deficiencies.

a6.28. *Criterion 34.1.* The Commission has issued a significant amount of guidance which is periodically updated and aimed at assisting FIs and DNFBPs in their implementation of AML/CFT measures. The

Commission also publishes general information and guidelines on its website covering topics such as its structure and composition, general information on AML/CFT obligations, NPOs, voluntary tax compliance programmes and non-cooperative jurisdictions. It also has a channel to answer written questions, an FAQ section of the website, and a telephone Q&A service.

a6.29. The Treasury has published guidance on its website concerning cash movements⁴ and the implementation of targeted financial sanctions. The Deputy Directorate-General of Inspection and Control of Capital Movements has held numerous meetings and delivered training sessions to entities subject to the *AML/CFT Law* (often in collaboration with the sectorial associations).

a6.30. SEPBLAC and Bank of Spain have issued extensive guidance (both general and for specific sectors), risk information, sanitised cases, AML/CFT typologies, upcoming technological projects and developments, information on the last international developments, etc.). SEPBLAC also gives specific guidance to new financial companies on the suitability of their proposed AML/CFT controls (see criterion 26.2), and holds bilateral meetings to solve specific issues upon request of obliged entities. Feedback to reporting entities on STRs includes: acknowledging receipt or rejection of an STR; annual feedback on STR reporting; and a risk map containing aggregated data that shows reporting entities what they are detecting in comparison with their sector and how to improve their AML/CFT procedures.⁵

a6.31. The Notaries' Centralised Unit has provided guidance on practical implementation of the AML/CFT obligations, ML/TF risk factors and mitigating measures, sanitised cases, and offers on-line AML/CFT training courses (an intensive course for notaries, and another for their employees). It has also developed AML/CFT procedures to be applied by all notaries, and disseminated other relevant information to assist the sector in implementing these requirements

a6.32. The AML Centre of Spanish Registrars (CRAB) has elaborated guidance and developed electronic screening tools to assist all of Spain's company, land and movable assets registers in their detection and reporting of STRs.

a6.33. *Weighting and conclusion:* Spain meets the criterion of R.34. **R.34 is rated compliant.**

Recommendation 35 – Sanctions

a6.34. In its 3rd MER, Spain was rated largely compliant with these requirements. Spain has passed a new law in this area (the *AML/CFT Law*) which requires fresh analysis.

a6.35. *Criterion 35.1.* There is a comprehensive system of penalties and sanctions for failure to comply with the requirements of the *AML/CFT Law: chapter VIII*. The law defines three categories of administrative offences and, for each category, sets out the specific offences or conducts which constitute the offence, the sanctions which may be applied, and process for their application. The classes of offence and applicable penalties are:

- a. *Very Serious offences* - (e.g., tipping-off or failure to report a transaction internally been flagged as suspicious). Penalties include a fine of over EUR 150 000 and up to EUR 1.5 million (or 5% of the net worth of the sanctioned entity, or twice the value of the transaction), and either a public reprimand, or withdrawal of the entity's authorisation.
- b. *Serious Offences* - (e.g., failures to comply with obligations to identify the customer or beneficial owner). Penalties include a fine of between EUR 60 001 and EUR 150 000 (or 1% of net worth / 150% the value of the transaction(s)) and a public or private reprimand.

4 www.tesoro.es/SP/expcam/MovimientosdeEfectivo.asp.

5 www.sepblac.es.

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- c. *Minor Offences* - (all other offences, including occasional infringements of some of the *serious* offences, if there are no indications of ML/TF). Penalties include a private reprimand, and/or a fine of up to EUR 60 000.

a6.36. In addition to the administrative sanctions set out above, criminal sanctions can be applied for some misconduct. Spain has criminalised TF perpetrated through serious negligence by perpetrators who are legally obliged to collaborate with the authorities in the prevention of TF, but who fail to detect or prevent a TF offence due to their serious negligence in the fulfilment of those obligations: *Penal Code art.301-304 on ML, and art.576 bis 2 on TF*. Criminal sanctions under these articles can be imposed both on the obliged entity and on its directors and senior managers: *Penal Code art.31bis*. The same action cannot be the basis for both criminal and administrative sanctions, and there is a requirement to suspend administrative sanctions proceedings while criminal proceedings for the same offence are considered. Sanctions apply for failure to comply with the requirements of R.6, 8, and 10-23.

a6.37. *Criterion 35.2*. Directors and senior management can be sanctioned personally in the case of very serious offences or serious offences. Penalties applicable to individuals for *very serious* offences include a fine of between EUR 60 000 and EUR 600 000, removal from office and 10 years disqualification from holding a management or administrative position in either that entity, or in any regulated entity. Penalties applicable to individuals for *serious* offences include a fine of between EUR 3 000 and EUR 60 000, and either a public or private reprimand, or suspension from office for up to one year.

a6.38. *Weighting and conclusion*: Spain meets both criteria of R.35. **R.35 is rated compliant.**

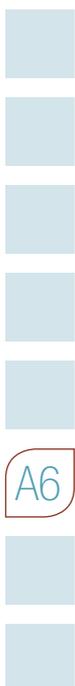


Table of Acronyms

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