



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

8. International cooperation

Effectiveness and technical compliance



8

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8. INTERNATIONAL COOPERATION

Key Findings

Spain can provide a wide range of international cooperation including mutual legal assistance (MLA), extradition, and other forms of cooperation, and is able to do so in a timely manner. These mechanisms are particularly effective in the EU context, as there is a comprehensive legal framework that provides simplified procedures for judicial cooperation, extradition, and the execution of foreign confiscation orders.

Overall, the Spanish authorities are proactive in seeking international cooperation to pursue criminals and their assets. Spain has successfully investigated and prosecuted a number of large complex ML cases involving transnational criminal organisations through international cooperation with their operational and law enforcement counterparts. FIU to FIU cooperation works well. International cooperation on AML/CFT supervision has been limited, but there are no obstacles.

Asset sharing appears to work particularly well with EU counterparts, and is also possible with non-EU counterparts although the procedures and mechanisms are less comprehensive in this context and should be strengthened.

8

8.1 Background and Context

8.1. International cooperation is particularly important given Spain's context. Spain faces high ML risks from foreign criminals who launder the proceeds of foreign predicates in the country, mainly through the real estate sector. As well, Spain is a major trans-shipment point and gateway to Europe for drugs entering Europe from South America and North Africa, and the cross-border transportation of the related proceeds to third countries. Countries with which Spain has significant international ML links are China, Colombia, Italy, Mexico, Morocco, Pakistan, Russian Federation, Serbia, and the United Kingdom. Spain also faces high TF risks from domestic terrorist groups (such as ETA) which have close links with France, and Islamist terrorist groups which have close links to North African countries. The Central Authority for mutual legal assistance, including extradition, is the Ministry of Justice.

8.2 Technical compliance (R.36-40)

Recommendation 36 – International instruments

8.2. **Spain is compliant with R.36.** Spain has signed and ratified the Vienna, Palermo, Terrorist Financing, and Merida Conventions, and enacted legislative measures to fully implement their requirements.

8

Recommendation 37 – Mutual legal assistance

8.3. **Spain is compliant with R.37.** Spain has a legal basis that allows it to rapidly provide the widest possible range of mutual legal assistance (MLA) in relation to investigations, prosecutions and related proceedings involving ML, TF and associated predicate offences.

8.4. A positive feature which facilitates timely response to MLA requests from EU Member States is that these can be forwarded directly between competent judicial authorities (judges, courts or prosecutors) and it is not necessary to go through the Ministry of Justice: *RD 453/2012 art.6, Convention on Mutual Assistance in Criminal Matters between the Member States of the EU (2000) (mandatory), Convention implementing the Schengen Agreement (as a rule, optionally)*. Another positive feature is that dual criminality is not required, even when coercive measures are requested.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

8.5. **Spain is compliant with R.38.** Spain has the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize or confiscate the laundered property and proceeds from, and instrumentalities used (or intended for use) in ML, TF and predicate offences, or property of corresponding value.

8.6. A positive feature is that Spain is able to provide assistance to requests for co-operation made on the basis of non-conviction based confiscation proceedings and related provisional measures in circumstances that go beyond those required by R.38. For requests from any country (EU or non-EU), such circumstances include when: the statute of limitations has expired but the assets' unlawful origin can be proven; where the perpetrator is exempt from criminal liability because of mental disorder, intoxication, acting in self-defence, etc. (*Penal Code art.20*); or where the assets are perishable, abandoned, more expensive to maintain than their value, dangerous to keep, will depreciate substantially over time, or are destined for an unknown location (*Criminal Procedure Code art.367(4) & (5)*). Non-conviction based confiscation is possible for all requests from other EU member states¹: *Law 4/2010 art.3.2 & 15-18*. Another positive feature is that dual criminality

1 For example, Spain enforces *misure di prevenzione* orders for confiscation. *Misure di prevenzione* are preventive measures under Italian legislation that may be applied, regardless of whether an offence was committed or not. Their purpose is to avoid other offences being perpetrated by persons belonging to groups that represent a risk for the community (e.g., organised crime groups).

is not required, even when coercive measures are requested.

Recommendation 39 - Extradition

8.7. **Spain is largely compliant with R.39.** Spain is able to execute extradition requests in relation to ML/TF without undue delay through clear processes for the timely execution of extradition requests. The Ministry of Justice is the central authority in such matters: *Law 4/1985 art.6-22 (for non-EU countries) and Law 3/2003 (for EU countries)*. In situations where the request is from a non-EU country and the underlying case falls within the jurisdiction of the Spanish courts, the case is submitted to competent authorities for the purpose of prosecution of the offences set forth in the request. Dual criminality is required when extraditing to non-EU countries. As Spain has not criminalised the financing of an individual terrorist (who is not otherwise part of a terrorist group) for a purpose unrelated to the commission of a terrorist act, it would be unable to meet the dual criminality requirement in such cases.

8.8. The system has two positive features: extradition mechanisms for EU member states are simplified and do not require dual criminality (*Law 3/2003 art.12*); and in urgent cases, the defendant may be provisionally arrested, pending receipt of the formal extradition request (*Law 4/1985 art.8*).

Recommendation 40 – Other forms of international cooperation

8.9. **Spain is compliant with R.40.** All of the competent authorities (including SEPBLAC, the prudential supervisors, LEAs and the Tax Agency) have a solid legal basis and mechanisms that enable them to provide a wide range of international cooperation in relation to ML, TF and predicate offences in a rapid, constructive and effective manner, both spontaneously and upon request.

8.3 Effectiveness: Immediate Outcome 2 (International Cooperation)

(a) Providing and seeking mutual legal assistance

8.10. **International cooperation is a particularly important issue in the Spanish context, given the risks** that Spain faces as both a destination country for foreign proceeds, a trans-shipment point for drug related proceeds destined for third countries, and a target for transnational organised crime groups and international terrorist groups.

8.11. **Spain provides constructive and timely MLA and extradition across the range of international co-operation requests, and the quality of assistance provided by Spain is generally high.** Indeed, Spain is very responsive to requests for international cooperation, and the quality of assistance provided by Spain is generally high, as was confirmed from feedback which was received from 24 countries².

8.12. **International cooperation works particularly well in the EU context where an extensive legal framework, often involving simplified measures, applies.** Within the EU, the courts of all EU member states are able to cooperate directly, without need of support from their respective Ministries of Justice. Requests from other EU member states relating to the recovery of assets are always channelled through the CICO which also acts as the platform for the Assets Recovery Office. Statistics available on MLA facilitated through the CARIN network show that Spain is the most requested country (77 requests were answered by Spanish police, out of the total 320 requests made through the CARIN network). This fact is consistent with Spain's high assessed risks as a destination country for the proceeds of foreign predicate offences, and frequent laundering through Spain's real estate sector. The average time taken to process an incoming request is 14.5 days, depending on the complexity and urgency of the matter.

² Armenia; Australia; Austria; Azerbaijan; Belgium; Brazil; Canada; France; Greece; Hong Kong, China; Ireland; Isle of Man; Japan; Mexico; Morocco; Paraguay; Peru; Qatar; Russian Federation; San Marino; Sweden; Slovenia; United Kingdom; and United States.

8.13. **International cooperation is more challenging outside of the EU context.** The Ministry of Justice processes all international cooperation requests sent to and received from non-EU countries (except those relating to confiscation and sharing of assets). Generally, these systems work well. However, a few incidents were reported of requests being received in the incorrect form or without adequate supporting information. Such requests were not immediately actionable for various technical reasons, which delayed execution of the request by the foreign authorities. A few difficulties in arranging for asset sharing between Spain and non-EU countries were also reported. These problems generally related to cooperation with non-EU countries with very different legal systems or rules of evidence from those of Spain and, in any event, do not appear to be systemic.

8.14. **Some of these issues may also relate to the need for more resources,** particularly for processing international requests related to the confiscation and sharing of assets, or for ensuring that foreign counterparts are aware of which person(s) within the Central Authority are responsible for processing such requests. The contact point for all requests is one person within the Office of the Special Prosecutor Against Drug Trafficking, with support from CICO and the International Prosecutor Cooperation Office. This does not seem adequate, given the high volume of requests received in this area.

8.15. **Spain regularly seeks legal assistance for international co-operation to pursue domestic ML, associated predicate offences and TF offences, particularly where such cases have transnational elements (something that occurs quite often in the Spanish context).** Many of Spain's large ML cases have international links and have been successfully investigated and prosecuted, often with international legal assistance, and the assets later shared with foreign counterparts. These cases are a measure of Spain's success in this area.

8.16. **Spain also provided the following statistics on the number of MLA and extradition requests made and received.**

8.17. **Spain actively seeks international cooperation for the purpose of tracing assets that may be subject to investigation.** For example, in *Preliminary Proceedings 275/08* of the Spanish High Court, Spain requested cooperation from numerous countries in tracing the proceeds from corruption offences. As a result of Spain's request, over EUR 39 million were blocked in Switzerland and an additional EUR 4.5 million were blocked in Monaco.

8.18. **Spain plays a very significant role in asset tracing and recovery within the European Union** via the ORA (the Asset Recovery Office of Europol), with the support of the National Police and the Civil Guard. From 2007 to 2010, 50% of the requests for asset tracing submitted by all of the countries in the EU were received in Spain. Spain provided some specific examples of how it responds to requests from other countries to assist in the tracing, freezing/seizing and recovery of assets. For example, see *Letter Rogatory 20/12* (judicial assistance provided by the Spanish authorities for the recovery of assets derived from corruption in Italy), and *Letter Rogatory 19/13* (judicial assistance provided to the Netherlands for freezing assets relate to a ML investigation).

8.19. **Spain provided examples of measures it has taken to facilitate its access to effective and timely assistance, where problems have arisen.** For example, international cooperation with Morocco was greatly enhanced through the EU-Moroccan twinning project through which Spain and France were appointed to support Morocco in reinforcing its AML/CFT national regime through training and awareness raising campaigns. This was an important development given the drug trafficking and terrorist financing risks Spain faces from certain parts of North Africa.

Box 8.1. International cooperation to investigate & prosecute ML

Sentence AN 3395/2010: Members of a Russian organised crime group laundered the proceeds of foreign predicate offences, primarily through Spain's real estate sector. One controlled several casinos in the Russian Federation. Spain undertook active international cooperation with:

- the United States through which information was obtained about a company involved in the ML scheme
- the Russian Federation which resulted in information being obtained concerning the defendants' ML operations through four casinos they controlled in Moscow; and
- the United Arab Emirates which culminated in one defendant being extradited from Dubai to Spain.

The following important legal principles were confirmed by this case:

- **The Spanish courts have jurisdiction to try cases involving the laundering of proceeds from crimes perpetrated abroad.** One defendant had been convicted in 2006 in Georgia for belonging to a criminal organisation. Therefore, due to the res judicata principle, he could not be convicted in Spain of the same offence. However, he could still be prosecuted in Spain for laundering the proceeds of those foreign predicates and, one of the consequences of the 2006 conviction is that his equity is considered to be the proceeds of crime.
- **In the absence of an extradition agreement, extradition can take place on the principle of reciprocity.** One defendant was arrested in the United Arab Emirates (Dubai), and extradited back to Spain for trial. He unsuccessfully challenged the extradition request on the basis that Spain had no extradition agreement with the United Arab Emirates (UAE).
- **Circumstantial evidence can be used to prove the ML offence** (e.g., large sums of money or increases in equity which cannot be explained from normal business practices or commerce, or the absence of any lawful business which could justify the increase in equity or transactions).

Operation Avispa (Wasp): Members of a Russian organised crime group laundered the proceeds of foreign predicate offences, primarily through Spain's real estate sector. With the support of SEPBLAC, a profile was developed of certain operations which had as their common denominator the use of these companies as intermediaries for significant movements of funds, often originating from or destined for tax havens. The funds did not arise from commercial/business transactions and involved unusual increases in assets. Spain undertook active international cooperation with the French Judicial Police, Belgian Police, Federal Criminal Police Office of Germany (BKA), Israeli police forces, INTERPOL and EUROPOL. This cooperation made it possible to gather invaluable information on the activities of these organised crime groups. In total, 28 arrests were made. The authorities blocked/seized over 800 current accounts distributed among 42 banking institutions in Spain were blocked, several safe deposit boxes, EUR 83 009 cash, USD1 424, EUR 100 000 in promissory notes, 41 luxury vehicles, and a large number of rural and urban properties (including luxury mansions, and a housing development).

Table 8.1. International cooperation

International cooperation ¹	2010	2011	2012
Mutual legal assistance (MLA)			
Requests received from other countries on ML	88	91	65
- Requests on ML executed (as at October 2013)	64	68	38
Requests sent by Spain to other countries on ML	24	28	35
- Requests on ML executed (as at October 2013)	15	18	15
Requests received from other countries on TF	1	1	0
Requests sent by Spain to other countries on TF	0	1	0
Requests received from other countries on ML	88	91	65
MLA requests received by the Special Anti-Drug Prosecutor's Office (National Court)			
For asset tracing (with a related freezing/confiscation request)	5	0	12
For asset tracing (without a related freezing/confiscation request)	11	10	10
Requests received from EU member states	9	7	16
Requests received from non-EU member states	7	3	6
Total	16	10	22
Extradition requests			
Requests received from other countries on ML	9	12	8
- Granted	8	4	6
- Denied	0	1	0
- Pending (as at July 2013)	1	7	2
Requests sent by Spain to other countries on ML	6	11	9
- Granted	3	4	3
- Denied	0	1	0
- Pending (as at July 2013) ²	3	4	5
Requests received from other countries on TF ³	0	0	1
Requests sent by Spain to other countries on TF	0	0	0

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 27 (p.41), Table 28 (p.42), and Table 46 (p.62).

Table Notes:

1 The monetary values in this table are approximate (the figures have been rounded up/down).

2 Two extradition requests were withdrawn in 2011, and 1 was withdrawn in 2012.

3 All letters rogatory in relation to TF in 2010 to 2012 were answered. These statistics do not include letters rogatory regarding the distinct offences of terrorism and related offences.

Box 8.2. Examples of international cooperation for the purpose of tracing and confiscating assets

Operation Brancato: This is an investigation of the Cosa Nostra mafia organisation and a business group responsible for gasification procedures in certain parts of Sicily. The operation was carried out mainly in Italy and has led to EUR 48 million worth of freezing orders on several companies and assets owned by the heirs to the main person under investigation. The investigation involved Spain's Central Unit for Economic and Tax Crime, and the Barcelona Judicial Police Provincial Brigade, working in cooperation with the Italian Guardia di Finanza (Palermo). Financial investigations by the Spanish police units enabled the Italian judicial authorities to issue international letters rogatory which led to the freezing of 2 real estate properties in Spain (declared sales value of almost EUR 1.6 million), 5 cars, bank products held at various banks, and a property development company.

Operation Champi: This operation resulted in disbanding a criminal organisation (comprised mainly of Netherlands citizens) that specialised in mass installation of hydroponic marijuana plantations along the Costa del Sol, and subsequent distribution of the drugs to the Netherlands. The organisation also distributed ecstasy (MDMA) in Spain which was acquired from the Netherlands. The investigation involved the Civil Guard, Office for Asset Localisation and Group II of the Drugs of UDYCO Costa del Sol, the Equity Investigations and Asset Localisation Group of Malaga Judicial Police Provincial Brigade, and the Combined Malaga Customs Surveillance Unit. During the investigation, Spain requested information from the Netherlands Asset Recovery Office, and made requests for the enforcement of freezing orders which led to 18 properties in the Netherlands being frozen (with a declared value of over EUR 2.2 million). An additional 3 properties in Spain were frozen, as were 20 vehicles (valued at EUR 110 000), over EUR 24 000 cash, drugs, and various instrumentalities of crime. Nineteen people were arrested, and prosecution is ongoing.

8

8.20. **Spain is at high risk for large complex ML schemes, most of which involve complex and opaque structures of legal persons and arrangements, some of which are abroad in off-shore centres.** Spain requests international cooperation in such cases, and cited examples of good cooperation with some offshore centres, including Andorra, Monaco, and San Marino.

8.21. **International cooperation between Spain and Gibraltar is not adequate, which carries the combined risk of being an offshore centre with a thriving trust and company formation sector.** Spanish authorities told the assessment team that Gibraltar companies, and trusts created in Gibraltar, have appeared as money laundering vehicles in some ML schemes. However, Spanish authorities note that they do not receive adequate cooperation from Gibraltar authorities. Lack of cooperation may be exacerbated by the channels through which cooperation requests are addressed to Gibraltar. Although Spain requests direct FIU-to-FIU cooperation through the Egmont network, Spain will not undertake direct cooperation in other contexts, and instead channels requests to the Gibraltar authorities through the UK authorities, which can result in significant delay.

(b) Providing and seeking other forms of international cooperation

8.22. **The Spanish authorities also seek and receive other forms of international co-operation for AML/CFT purposes.** Cooperation among LEAs, particularly with those of other EU member states, occurs regularly and involves both information exchange and joint investigations. For example, 64 joint investigations were carried out in 2013 with other EU Member States' LEAs. Spain maintains a web of Police and Liaison Magistrates abroad to facilitate such cooperation. Joint investigations are also regularly carried out with non-EU countries, and Spain has signed specific MOUs with countries in North Africa and the Maghreb, Latin America, and Asia to counter specific ML/TF threats originating in certain countries. Spain is also a member of the CARIN network through the UDEF (Financial and Tax crimes Unit), which is also the central point of the Stolen Assets Recovery Initiative (StAR).

Table 8.2. Other forms of International cooperation

	2010	2011	2012
FIU cooperation			
Requests received from foreign FIUs	458	563	507
- Requests fulfilled	430	537	490
- Requests rejected	28	26	17
Requests sent by SEPBLAC to foreign FIUs	375	379	392
Total requests made & received by SEPBLAC	833	942	899
Unprompted communications received from foreign FIUs	48	70	92
Unprompted communications from SEPBLAC to foreign FIUs	24	29	22
Total unprompted communications made & received by SEPBLAC	72	99	114
Law enforcement/police cooperation			
Requests received from foreign authorities on ML	550	668	718
Requests sent by the Spanish authorities on ML	71	75	86
Supply of information to foreign authorities on TF		6 ¹	
Requests sent by Spanish authorities to foreign authorities on TF		59 ²	

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2013), Table 23 (p.45), Table 24 (p.46), and Tables 46 & 47 (p.62).

Table Notes:

- 1 five of these communications of information concerned international terrorist organisations.
- 2 three requests concerned domestic organisations, seven concerned international organisation & one concerned proliferation/dual use technology.

8.23. **FIU-to-FIU cooperation also occurs regularly**, with SEPBLAC regularly seeking such assistance to support its own analysis, and providing information to other FIUs both spontaneously and upon request.

8.24. **Although Spain is able to provide international cooperation by SEPBLAC (as an AML/CFT supervisor) and the Core Principles supervisors, and has entered into MOUs to facilitate such cooperation, in practice, this tool is not used frequently**. SEPBLAC has shared its findings on the MVTs with other supervisors. The Bank of Spain has only once received a request on AML/CFT from another supervisor and referred it to SEPBLAC.

8.25. **Spain provided statistics (Table 8.2) showing its willingness and capacity to provide international assistance to and seek it from foreign counterparts**. Based on the feedback provided from 24 countries, there are no serious problems to report in this area.

(c) *International exchange of basic & beneficial ownership information of legal persons/arrangements*

8.26. **Most of the authorities involved in providing MLA or other types of international cooperation do not keep statistics on how many MLA requests are for basic/beneficial ownership information on legal persons and arrangements**. Such requests are common, but are often included as part of a much broader request involving multiple elements. Only, Spain's Asset Recovery Office was able to provide any statistics in this area, estimating that about 20% of the requests Spain receives relate to legal persons, and 80% relate to legal persons. For outgoing requests, 13% relate to legal persons, and 87% relate to natural persons. These requests are processed in the same way as other MLA requests, as described above.

8.27. **Spain has access to a range of basic and beneficial ownership information of legal persons**, as described in Immediate Outcome 5. However, much less information is available on legal arrangements, even though CDD obligations have been in place since 2010 requiring obliged entities to identify the key parties associated with trusts. Some weaknesses also remain in the implementation of preventive measures against the misuse of legal persons and arrangements, as set out above, which may limit the information Spanish authorities can access, either on their own behalf or in response to foreign requests.

Overall conclusions on Immediate Outcome 2

8.28. **Spain demonstrates many of the characteristics of an effective system in this area, and only moderate improvements are needed.** It generally provides constructive and timely information or assistance when requested by other countries, including: extradition; the identification, freezing, seizing, confiscation and sharing of assets; and providing information (including evidence, financial intelligence, supervisory and available beneficial ownership information) related to ML, TF or associated predicate offences. Some problems have arisen in the context of Spain making requests to and sharing assets with non-EU countries with legal systems which are very different to Spain's. However, these issues do not appear to be overly serious or systemic.

8.29. **Spain routinely seeks international cooperation to pursue criminals and their assets and, in general, this works well.** Cooperation with tax havens presents challenges. However, Spain has had some success in resolving some of these issues (for example, involving international cooperation with Andorra, San Marino and Switzerland). The exception is MLA and extradition requests to Gibraltar, with whom Spain deals indirectly through the UK authorities which causes delays.

8.30. **All of the law enforcement and prosecutorial authorities met with during the onsite visit viewed international cooperation as a critical matter of high importance.** They are focused on both providing MLA in a constructive and timely manner, and also proactively seeking international cooperation, as needed. Spain relies heavily on cooperation with its foreign counterparts (particularly when pursuing cases involving the laundering of foreign predicate offences, or the activities of trans-national organised crime groups) and has achieved success in high profile ML and TF cases (for example, *White Whale*, *Malaya*, dismantling of ETA's economic and financing network).

8.31. **Spain was also able to provide concrete examples of organised crime groups and terrorist groups which have been dismantled through these efforts.** This is an important factor in the Spanish context, given the nature of its ML/TF risks.

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

8.33. **Overall, Spain has achieved a substantial level of effectiveness with Immediate Outcome 2.**

8.4 Recommendations on International Cooperation

8.34. The Ministry of Justice should ensure that staff who are responsible for submitting requests to foreign countries have sufficient training in how to submit actionable requests, particularly for non-EU countries with significantly different legal systems, and rules of evidence.

8.35. Spain should develop more specific procedures to facilitate asset sharing, particularly with non-EU countries.

8.36. Spain should allocate more resources to processing international cooperation requests related to

confiscation and asset sharing. Spain should consider sharing the competencies of the current contact point (who is currently one person located within the Office of the Special Prosecutor Against Drug Trafficking) with other judicial authorities, such as the Office of the Special Prosecutor against Corruption and Organised Crime, and implementing mechanisms to facilitate better coordination between the judges and the contact point in such cases.

Bibliography

Committee for the Prevention of Money Laundering and Monetary Offences (2013), Statistics Report 2010-2012, www.tesoro.es/doc/EN/EXCamp/Documento%20de%20Acrobat.pdf

8. INTERNATIONAL COOPERATION

Recommendation 36 – International instruments

a8.1. In its 3rd MER, Spain was rated largely compliant with the requirements relating to the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention)* and *United Nations Convention Against Transnational Organised Crime (Palermo Convention)*, and partially compliant with the requirements relating to the *International Convention or the Suppression of the Financing of Terrorism (TF Convention)* and UN resolutions (para.625-633). The main deficiencies related to the criminalisation of ML (possession or use, and self-laundering were not covered), gaps in the scope of the TF offence, shortcomings in the CDD requirements, and problems in the implementation of relevant UN resolutions. Since its last evaluation, Spain has enhanced its implementation of the *Vienna, Palermo* and *TF Conventions* by broadening the scope of its ML and TF offences, applying criminal liability to legal persons, and strengthening CDD requirements.

a8.2. *Criterion 36.1.* Spain has signed and ratified the *Vienna Convention* (signed 20 December 1988, and ratified on 13 August 1990), *Palermo Convention* (signed 13 December 2000, ratified 1 March 2002), *TF Convention* (signed 8 January 2001, ratified 9 April 2002), and the *United Nations Convention Against Corruption (Merida Convention)* (signed 16 September 2005, ratified 19 June 2006).

a8.3. *Criterion 36.2.* Spain has enacted legislative measures to fully implement the Vienna, Palermo, TF, and Merida Conventions: Review of Implementation of the United Nations Convention Against Corruption: Finland & Spain (UNODC Implementation Review Group Report, 2011). It should be noted that the Convention requirements do not encompass all of the FATF requirements.

a8.4. *Weighting and conclusion:* Spain meets both criteria of R.36. **R.36 is rated compliant.**

Recommendation 37 - Mutual legal assistance

a8.5. In its 3rd MER, Spain was rated compliant with these requirements, and no technical deficiencies were identified (para.634-654 and 661-663). Since then, Spain has implemented additional measures to enhance its ability to provide mutual legal assistance (MLA) to its EU counterparts.

a8.6. *Criterion 37.1.* Spain has a legal basis that allows it to rapidly provide the widest possible range of MLA in relation to investigations, prosecutions and related proceedings involving ML/TF and associated predicate offences. The legal framework is comprised of a network of international treaties and Conventions (for which internal implementation is not needed)¹, the *Spanish Judiciary Act* (governing MLA in the absence of a bilateral or international agreement) (art.276 & 277), the *Declaration of the Ministry of Foreign Affairs for the provisional application of the EU Agreement on Mutual Legal Assistance in Criminal Matters* (published 2003), and the principle of reciprocity. Spain has also addressed deficiencies in its criminalisation of ML and TF which further enhances its ability to provide MLA.

a8.7. *Criterion 37.2.* The Ministry of Justice is the central authority for transmitting and executing MLA requests. MLA requests are generally processed in the chronological order of their arrival, but can be prioritised in more urgent cases. The Ministry of Justice has an electronic system which allows monitoring of progress by recording all MLA requests sent or received and each step of the process.

a8.8. *Criterion 37.3.* MLA is not prohibited or made subject to unreasonable or unduly restrictive conditions. The only restrictions are those specifically provided for in treaties or conventions, or resulting from reciprocity. Spanish courts and judges can only refuse judicial assistance if the request relates to a

1 Spanish Constitution art.96.

INTERNATIONAL COOPERATION

suit which is subject to the sole and exclusive jurisdiction of the Spanish Courts, does not meet the basic requirements to establish its authenticity, is not drafted in Spanish, or the subject matter clearly breaches Spanish public policy principles.

a8.9. *Criterion 37.4.* Spain does not refuse MLA requests on the sole ground that they involve fiscal matters (which are ML predicate offences). Most bilateral and multilateral conventions to which Spain is a party specifically clarify that fiscal offences are not to be excluded from the ambit of MLA. Likewise, requests are not refused on grounds of secrecy or confidentiality requirements of FIs/DNFBPs (except where legal professional privilege or legal professional secrecy applies).

a8.10. *Criterion 37.5.* The international Conventions and bilateral agreements signed by Spain generally include specific clauses requiring the confidentiality of MLA requests to be maintained.

a8.11. *Criteria 37.6 & 37.7.* As a general rule, Spain does not require dual criminality to respond to MLA requests, even where coercive measures are requested, provided that the underlying conduct is an offence in the requesting country. Dual criminality is not required for the execution of European arrest warrant and surrender procedures between Member States: *Law 3/2003 art.9 and preamble*.

a8.12. *Criterion 37.8.* The same powers and investigative techniques used by judges and prosecutors under the Spanish *Criminal Procedure Law* may be used in the context of a request for international mutual assistance: *for example, art.263bis (controlled delivery), art.282bis (undercover operations), art.579 (intercepting communications), art.764 (seizing vehicles)*.

a8.13. *Weighting and conclusion:* Spain meets all eight criteria of R.37. **R.37 is rated compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

a8.14. In its 3rd MER, Spain was rated compliant with these requirements (paragraphs 655-663).

a8.15. *Criterion 38.1.* Spain has the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize or confiscate the laundered property and proceeds from, and instrumentalities used (or intended for use) in ML/TF and predicate offences, or property of corresponding value. The legal framework, mechanisms and investigative powers described in R.37, also apply in relation to MLA requests to take provisional measures or confiscate property. Dual criminality is not required for the execution of freezing/seizing orders that are issued by other EU member states, and simplified procedures apply in such cases: *Law 18/2006 art.10-13, Law 4/2010 art.14-18.* Spain has signed 21 bilateral treaties with non-European countries that expressly include confiscation clauses, and do not require dual criminality. Key aspects of the legal framework are set out in Law 4/2010 (art.14-18), Resolution 1/2005 (art.75, 78, 80, 81, 84 & 85), and bilateral treaties with non-EU countries.

a8.16. *Criterion 38.2.* Spain is able to provide assistance to requests for co-operation made on the basis of non-conviction based confiscation proceedings and related provisional measures when the perpetrator is dead, absent or unknown, or in cases of flight. Such assistance is provided on the basis of the *Criminal Procedure Law* (art.786.1), *Penal Code* (art.127.4), Law 4/2010 (art.3.2 & 15-18) (for EU countries), bilateral MLA treaties (for non-EU countries), or such requests are processed on the basis of reciprocity.

a8.17. *Criterion 38.3.* Spain has: (a) arrangements for co-ordinating seizure and confiscation actions with other countries; and (b) mechanisms for managing, and when necessary disposing of, property frozen, seized or confiscated: *Law 18/2006, Law 1/2008, and Law 4/2010 (for EU Member States), and procedures set out in bilateral treaties or, alternatively, on the principle of reciprocity (for non-EU Member States).* Spain has designated authorities responsible for coordinating such actions with their foreign counterparts including those described in criterion 4.4, and designated points of contact for international asset recovery initiatives and networks (e.g., Europol, Interpol, CARIN). The procedures described under R.37 for the management and disposal of seized assets also apply in the context of responding to MLA requests.

a8.18. *Criterion 38.4.* Spain is able to share confiscated property with other countries, particularly when

confiscation is directly or indirectly a result of co-ordinated law enforcement actions: *Law 4/2010 art.24 (which obliges sharing among EU Member States), and asset sharing provisions in bilateral/multilateral agreements and treaties with non-EU countries*. Confiscated assets of drug trafficking or related crimes are added to a special fund for the development of programs of prevention and co-ordinated law enforcement actions—the possible recipients of which include international agencies, supranational entities, and the governments of foreign states: *Law 17/2003 art.3.1(h)*.

a8.19. *Weighting and conclusion: R.38 is rated compliant.*

Recommendation 39 – Extradition

a8.20. In its 3rd MER, Spain was rated compliant with these requirements (para.s652-654 and 664-679).

a8.21. *Criterion 39.1.* Spain is able to execute requests in relation to ML/TF without undue delay.

- a. Both ML and TF are extraditable offences: *Law 4/1985 art.2.*
- b. Spain has implemented clear processes for the timely execution of extradition requests, and Ministry of Justice is the central authority in such matters: *Law 4/1985 art.6-22 (for non-EU countries), Law 3/2003 (for EU countries), Criminal Procedure Law art.824-833.* Spain has signed bilateral extradition treaties with a total of 36 states, and also grants extradition on the basis of reciprocity: *Spanish Judiciary Act art 277-278.* The system for prioritising, managing and keeping track of MLA requests (described in R.37) also applies to extradition requests, and the law specifies deadlines for processing such requests: *Law 4/1985 art.9, Law 3/2003.*
- c. Spain does not place unreasonable or unduly restrictive conditions on the execution of requests: *Law 4/1985 art.4-5, Law 3/2003 art.12.* The *Spanish Constitution* provides that political crimes are excluded from extradition, but terrorism is not considered as political crime: *art.13.1.* This provides some important clarity on the scope of the political crimes exemption, which is important in Spain's context given its level of terrorism risk.

a8.22. *Criterion 39.2.* Spain is able to extradite its own nationals, and will not oppose their extradition, provided that the requesting State also agrees to extradite its nationals on a reciprocal basis. The European Arrest Warrant is based on the principle of mutual recognition and does not include nationality in the list of possible reasons for denial: *Law 3/2003 art.12.* Spain will not extradite its own nationals to non-EU countries if the underlying case falls within the jurisdiction of the Spanish courts. In such cases, Spain will submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request: *Law 4/1985 art.3.2.*

a8.23. *Criterion 39.3.* Dual criminality is required for extradition to non-EU countries. This requirement is deemed to be satisfied regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence: *Law 4/1985.* Because Spain has not criminalised the financing of an individual terrorist (who is not otherwise part of a terrorist group) for purposes completely unrelated to a terrorist act, it would be unable to meet the dual criminality requirement in such cases.

a8.24. *Criterion 39.4.* Spain has implemented simplified extradition mechanisms in relation to extradition among EU member states, in line with the European Arrest Warrant procedures, for which no dual criminality is required: *Law 3/2003.*

a8.25. *Weighting and conclusion:* The deficiency identified in criterion 39.3 is not considered to be significant for two reasons. First, in practice, such factual cases rarely arise. Second, only creates an issue when extraditing to a non-EU country (dual criminality is not required when extraditing to EU countries). **R.39 is rated compliant.**

Recommendation 40 – Other forms of international cooperation

a8.26. In its 3rd MER, Spain was rated largely compliant with these requirements (para.680-694). The deficiency related to effectiveness which is not assessed as part of compliance with the *2013 Methodology*.

a8.27. *Criterion 40.1.* Spain's competent authorities can rapidly provide a wide range of international co-operation (spontaneously or upon request) related to ML/TF and associated predicate offences.²

a8.28. *Criterion 40.2.*

- a. The competent authorities have a lawful basis for providing cooperation.³
- b. Nothing prevents them from using the most efficient means to cooperate.
- c. All authorities (including SEPBLAC, the prudential supervisors, LEAs, and the Tax Agency) use clear and secure gateways, mechanism or channels: *Law 31/2010; Council Framework Decision 2006/960/JHA; EU Council Reg.904/2010 para.33-37*.
- d. The competent authorities have processes for prioritising and executing requests: supervisory and FIU requests must be prioritised and handled in the shortest possible time.⁴ For LEAs, deadlines to send information to EU counterparts are specified in legislation and applied in practice to non-EU counterparts—from 8 hours for urgent requests when the information is directly accessible, to 14 days for other requests: *Law 31/2010 art.10*.
- e. The competent authorities have clear processes for safeguarding the information received.⁵

a8.29. *Criterion 40.3.* SEPBLAC, the prudential supervisors, the LEAs, and the Tax Agency have a comprehensive network of bilateral and multilateral agreements, MOUs and protocols to facilitate MLA with a wide range of foreign counterparts.

a8.30. *Criterion 40.4.* SEPBLAC proactively provides feedback to its foreign counterparts, whenever possible, on the use of the information provided and the outcome of the analysis conducted: *19th Egmont Principle, Warsaw Convention art.46.12*. The other competent authorities also provide timely feedback in various ways upon request.⁶

2 SEPBLAC AML/CFT Law art.48, CD 2000/642/JHA; **Bank of Spain** Law 13/1994 art.7.8; **DGSFP** RD 6/2004 art.2.2 & 77; **CNMV** Law 24/1988 art.91; *MOU on Cooperation between the EU Financial Supervisory Authorities, Central Banks and Finance Ministers on cross-border financial stability* (2008) (the *MOU on Cooperation between the EU FSAs*); **LEAs** Organic Law 2/1986 art.12.1, Law 31/2010 art.12; **Tax Agency** EU Council Reg.904/2010 para.33-37, Law 31/2010 art.5, Law 15/1999 art.2.

3 SEPBLAC AML/CFT Law art.48(3); **Bank of Spain** Law 13/1994 art.7.8, RD 1298/1986; **DGSFP** RD 6/2004 art.2.2 & 77; **CNMV** Law 24/1988 art.91; **LEAs** Organic Law 2/1986 art.12.1, Law 31/2010 art.9, Organic Law 2/1986 art.12.1(f), treaties; **Tax Agency** Law 15/1999, Council Reg.904/2010 para.33-37.

4 RD 925/1995 art.29.1 & 31.

5 SEPBLAC AML/CFT Law art.49, Reg. art.65.6; *Instruction on Information Security*; **Bank of Spain** RD 1298/1986; **DGSFP** RD 6/2004 art. 22-534, certification in *UNE-ISO/IEC 270001:2007 standards on information security management*; **CNMV** Law 24/1988 art.90 & 91bis; **LEAs** Law 31/2010 art.5; **Tax Agency** Law 15/1999 art.2.

6 **Bank of Spain** RD 1298/1986, art.6; **DGSFP** RD 6/2004, art.22-quarter, 77 & 75; **CNMV** Law 24/1988, art.91.5; **LEAs** Law 31/2010, art.8.3; bilateral agreements; feedback from other countries concerning the timeliness of feedback.

a8.31. *Criterion 40.5.* The competent authorities do not prohibit or place unreasonable or unduly restrictive conditions on information exchange or assistance, and do not refuse requests for assistance on any of the four grounds listed in this criterion.⁷ Spain confirms that situations where information exchange is not possible are extremely rare.

a8.32. *Criterion 40.6.* The competent authorities have in place controls and safeguards to ensure that information exchanged is used only for the intended purpose, and by the authorities for whom the information was sought or provided, unless prior authorisation has been given by the requested authority.⁸

a8.33. *Criterion 40.7.* Competent authorities are required to maintain appropriate confidentiality for any request for cooperation and the information exchanged, consistent with data protection obligations.⁹

a8.34. *Criterion 40.8.* The competent authorities can conduct inquiries on behalf of their foreign counterparts, and exchange all information that would be obtainable by them if such inquiries were being carried out domestically.¹⁰ Specific inquiries and information exchanges relating to AML/CFT are handled by SEPBLAC. The prudential supervisors also have broad powers to conduct inquiries on behalf of their foreign counterparts and exchange information on prudential matters.

a8.35. *Criterion 40.9.* SEPBLAC exchanges information with foreign FIUs in accordance with the Egmont Group principles or under the terms of the relevant MOU, regardless of the other FIU's status as administrative, law enforcement, judicial or other FIU.¹¹ The legal basis for providing cooperation is described in criterion 40.2(a).

a8.36. *Criterion 40.10.* SEPBLAC proactively provides feedback to its foreign counterparts, as required by this criterion (also see criterion 40.4 above).

a8.37. *Criterion 40.11.* SEPBLAC is authorised to exchange all information required to be accessible or obtainable directly or indirectly by the FIU (in particular under R.29), and any other information which it has the power to obtain or access, directly or indirectly, at the domestic level, subject to the principles of reciprocity. Additionally, any authority, officer or supervisor is obliged to collaborate with SEPBLAC: *AML/CFT Law art.21, 48.1 & 48.3.*

a8.38. *Criterion 40.12.* SEPBLAC is the designated AML/CFT supervisor for FIs and DNFBP, and is authorised to cooperate with foreign authorities with analogous functions, regardless of their respective nature or status, in line with the applicable international standards for supervision: *AML/CFT Law art.48(3).* As described in criterion 40.2(a), the prudential supervisors also have a legal basis to cooperate with their foreign counterparts.

a8.39. *Criterion 40.13.* SEPBLAC has broad powers to obtain information domestically (including information held by financial institutions and the information available to SEPBLAC through the exercise

⁷ RD 304/2014 art.60-61; **SEPBLAC** CD 2000/642/JHA art.4.3, Law 10/2010 art.48.2; **Bank of Spain** RD 1298/1986; **DGSFP** RD 6/2004; **CNMV** Law 24/1988 art.90.4(g) & art.91.5; **LEAs** Law 31/2010, art.9.3-9.7 & art.11; bilateral agreements.

⁸ **SEPBLAC** CD 2000/642/JHA art.5; **Bank of Spain** RD 1298/1986 art.6; **DGSFP** UNE-ISO/IEC 27001:2007 **CNMV** Law 24/1988; **LEAs** Law 31/2010 art.8, bilateral agreements.

⁹ **SEPBLAC AML/CFT Law art.48.3; financial supervisors MOU on Cooperation between the EU FSAs**, Law 24/1988 art.90.4(j) applicable to CNMV; **LEAs** Law 31/2010 art.5, bilateral agreements.

¹⁰ **SEPBLAC AML/CFT Law art.48.3**, CD 2000/642/JHA, *Egmont Group Principles for Information Exchange between FIUs*; **LEAs** Law 31/2010 art.9, bilateral agreements.

¹¹ Council December 2000/642/JHA, art.3, 9th Egmont principle, *Warsaw Convention*, art.4.

INTERNATIONAL COOPERATION

of its FIU functions as described in criterion 29.3, and exchange it with foreign supervisors in a manner proportionate to their respective needs: *AML/CFT Law art.21 & 48.3.*

a8.40. *Criterion 40.14.* The financial supervisors are able to exchange the following types of information when relevant for AML/CFT purposes, with other supervisors that have a shared responsibility for financial institutions in the same group:

- a. Regulatory information, such as information on the domestic regulatory system and general information on the financial sector is public and can be exchanged without restriction.
- b. Prudential information, such as information on the FI's business activities, beneficial ownership, management, and fit and properness, can be obtained by SEPBLAC from the prudential supervisors: *AML/CFT Law art.48(2).* The prudential supervisors can also exchange such information directly with their foreign counterparts.¹²
- c. AML/CFT information, such as internal AML/CFT procedures and policies of FIs, CDD information, customer files, samples of accounts and transaction information can be exchanged by SEPBLAC with its foreign counterparts *AML/CFT Law art.21 & 48.3.*

a8.41. *Criterion 40.15.* SEPBLAC has broad powers to conduct inquiries on behalf of foreign counterparts and, as appropriate, to authorise or facilitate their ability to conduct their own inquiries in Spain, in order to facilitate effective group supervision. In doing so, SEPBLAC is authorised to obtain from the prudential supervisors all of the cooperation necessary: *AML/CFT Law art.48(2) & 48.3, Council Decision 2000/642/JHA.* The prudential supervisors are also authorised to conduct inquiries on behalf of foreign counterparts in relation to prudential matters which, in the EU context, is facilitated through the *MOU on Cooperation between the EU FSAs.*

a8.42. *Criterion 40.16.* SEPBLAC is authorised to disseminate information exchanged only with the prior authorisation of the requested financial supervisor, and has controls and safeguards in place to ensure that information is used appropriately.¹³ The prudential supervisors have similar provisions.¹⁴

a8.43. *Criterion 40.17.* The National Police and the Civil Guard use simplified procedures for exchanging information and intelligence between the law enforcement authorities of EU Member States: *Law 31/2010; Council Framework Decision 2006/960/JHA.*

a8.44. *Criterion 40.18.* The LEAs are able to use their powers and investigative techniques (as described in R.31) to conduct inquiries and obtain information on behalf of their foreign counterparts. Restrictions on use imposed by the requested LEAs are observed, and are generally set out in bilateral treaties as specific conditions for the exchange of information. The LEAs also respect conditions on use prescribed by the agreements between Interpol and Europol (see also criterion 40.2(c) above).

a8.45. *Criterion 40.19.* The LEAs are able to form joint investigative teams with their foreign counterparts to conduct cooperative investigations, and, when necessary, establish bilateral or multilateral arrangements to enable such joint investigations. Joint investigations among EU Member States are facilitated by various mechanisms and joint investigation teams (JITs).¹⁵ JITs can include LEAs from non-EU countries when there

12 **Bank of Spain** RD 1298/1986 art.6; **DGSFP** RD 6/2004 art.71; **CNMV** Law 24/1988 art.4.

13 AML/CFT Law art.49(2), CD 2000/642/JHA art.5 (see also criterion 40.6).

14 *MOU on Cooperation between the EU FSAs* Clause 8.1; RD 6/2004 art.75.4 (for **DGSFP**), specific provisions in bilateral/multilateral agreements (for **CNMV**).

15 Law 11/2003, Council Framework Decision 2002/465/JAI on JITs, Council Resolution of 26 February 2010 on a Model Agreement for setting up a JIT, and Council document *JITs Manual* (4 November 2011).

is an agreement of all other parties.¹⁶ Spain has also enacted legislation on the criminal liability of joint investigative team officials when acting in Spain: *Organic Law 3/2003*.

a8.46. *Criterion 40.20.* SEPBLAC is specifically allowed to undertake indirect information exchange with other FIUs or AML/CFT supervisors requesting information. The Bank of Spain, DGSFP and CNMV can also undertake diagonal cooperation.¹⁷ The LEAs are allowed to undertake indirect information exchange with non-counterparts in a timely way. Such cooperation is subject to the same conditions as apply in the domestic context: *Law 31/2010 art.9.6*.

a8.47. *Weighting and conclusion:* Spain meets all 20 criteria of R.40. **R.40 is rated compliant.**

16 See the following Europol link for further details: <https://www.europol.europa.eu/content/page/joint-investigation-teams-989>.

17 **Bank of Spain** (Law 13/1994 art.7.8, RD 1298/1986 art.6.1, Internal Bank of Spain Rules art.23); **CNMV** (Law 24/1988, art.91 & 91bis); **DGSFP** (*General Protocol on the collaboration on the insurance supervisory authorities of the members states of the EU*).

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