

FATF



Anti-money laundering and  
counter-terrorist financing  
measures

# Spain

1st Regular Follow-up Report &  
Technical Compliance Re-Rating

March 2018

Follow-up report





The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

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## SPAIN: 1<sup>st</sup> REGULAR FOLLOW-UP REPORT

### 1. INTRODUCTION

The mutual evaluation report (MER) of Spain was adopted on October 2014. This follow-up report analyses Spain's progress in addressing the technical compliance deficiencies identified in its MER. Re-ratings are given where sufficient progress has been made. This report also analyses Spain's progress in implementing new requirements relating to FATF Recommendations which have changed since the MER was adopted: Recommendations 5, 7 and 8. Overall, the expectation is that countries will have addressed most if not all technical compliance deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress Spain has made to improve its effectiveness. A later follow-up assessment will analyse progress on improving effectiveness which may result in re-ratings of Immediate Outcomes at that time.

### 2. FINDINGS OF THE MUTUAL EVALUATION REPORT

The MER rated Spain as follows for technical compliance:

**Table 1. Technical compliance ratings, October 2014**

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
C	LC	LC	C	LC	PC	PC	LC	C	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	C	C	C	C	PC	LC	C	C	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	LC	C	LC	LC	LC	C	LC	C	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
C	C	C	C	C	C	C	C	LC	C

*Note:* There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

*Source:* Spain Mutual Evaluation Report, October 2014, <http://www.fatf-gafi.org/countries/s-t/spain/documents/mer-spain-2014.html>.

Given these results and Spain's level of effectiveness with the different Immediate Outcomes, the FATF placed Spain in regular follow-up.<sup>1</sup> The following expert assessed Spain's request for technical compliance re-rating and prepared this report:

<sup>1</sup> Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up is based on the FATF's traditional policy that deals with members with significant deficiencies (for technical compliance or effectiveness) in their AML/CFT systems, and involves a more intensive process of follow-up.

- Mr. Diego Bartolozzi, Unità d'Informazione Finanziaria – Banca d'Italia, FIU Italy (Law enforcement/ Financial Expert).

Section 3 of this report summarises Spain's progress made in improving technical compliance. Section 4 sets out the conclusion and a table showing which Recommendations have been re-rated.

### 3. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

This section summarises Spain's progress to improve its technical compliance by:

- Addressing the technical compliance deficiencies identified in the MER, and
- Implementing new requirements where the FATF Recommendations have changed since the MER was adopted (R.5, R.7 and R.8).

#### 3.1. Progress to address technical compliance deficiencies identified in the MER

Spain has made progress to address the technical compliance deficiencies identified in the MER in relation to the following Recommendations:

- R.6, R.7 and R.16, rated PC
- R.5 and R.39, rated LC

As a result of this progress, Spain has been re-rated on Recommendations: 5, 16 and 39. The FATF welcomes the steps that Spain has taken to improve its technical compliance with Recommendations: 6 and 7; however, insufficient progress has been made to justify a re-rating of these Recommendations. The FATF also welcomes additional progress presented by Spain for Recommendations 2, 3, 10, 17, 22, 24, 25, 26 and 28, all of which is briefly summarized in section 3.3 below.

##### 3.1.1. Recommendation 6 (R.6) (Originally rated PC – no re-rating)

In relation to UNSCR 1267/1989 and 1988, the main deficiency was that the implementation of targeted financial sanctions (TFS) did not, and does not occur “without delay”, thereby raising the question of whether such implementation takes place without prior notice to the designated person or entity. In 2013 (before Spain was assessed in 2014), transposition times ranged from 7 to 29 days for UNSCR 1989 designations, and 7 days to 3.5 months for UNSCR 1988 designations. Since the MER was adopted, the delays in transposing lists into the EU legal framework have been reduced. However, some delays remain. Implementation during 2017 took an average of 5.6 days.<sup>2</sup>

In relation to UNSCR 1373, the main deficiencies were the absence of a clear mechanism to request non-EU countries to give effect to the EU list and no clear channels or procedures at the domestic level to give effect to actions initiated

<sup>2</sup>. Considering the number of days between the UN designation and the EU regulation and publication may be calculated by referencing to the UN listing (<https://www.un.org/sc/suborg/en/sanctions/8/press-releases>) and the publication in the EU Official Journal (<http://eur-lex.europa.eu/oj/direct-access.html>).

domestically. Under the EU legal framework, listed EU internals were not subject to freezing measures, and domestic measures did not fill the gap.

To address these deficiencies, Spain issued a Guidance of good practices for the implementation of targeted financial sanctions and countermeasures. This guidance covers, among other things, the means of obtaining lists of designated persons and entities, dealing with databases, record-keeping, and dealing with matches. In particular, good practice 8 notes that entities should be familiar with and consider United Nations lists even before approved by the European Commission (Commission) which could help speed up the process. Spain also approved Royal Decree 413/2015 in May 2015, which further develops the role of the Commission for the Surveillance of Terrorist Financing Activities (Watchdog Commission) created in 2003. These instruments clarify the channel and procedures for giving effect to actions initiated domestically. However, they do not create a clear mechanism to request non-EU countries to give effect to the EU list. Authorities indicated that the Ministry of Foreign Affairs, as member of the Watchdog Commission, is able to channel petitions to third countries, with all relevant safeguards, however this is not specifically included as part of the Watchdog Commission's functions (art. 5).

Regarding the application of freezing measures to listed EU internals, a matter that was also outstanding, the EU sanction framework was also updated after Spain MER, among others, to include the possibility of designating and freezing the assets of individuals related to ISIL (Da'esh) and Al-Qaeda, without distinction of nationality (that is, including EU internals) through EU Council Regulation 2016/1686 and EU Common Position Paper 2016/1693 issued 20 September 2016. At the same time, art.10 of Royal Decree 413/2015, regulating the Watchdog Commission, enables the Commission to designate terrorist organizations or individuals at its own initiative, without regard for nationality and would therefore cover EU internals.

There was also some concern with regard to extending freezing measures and prohibitions coverage to funds or assets controlled by, or indirectly owned by, or derived from assets owned by, or owned by a person acting at the direction of, a designated person or entity (definition of funds in the EU framework) which is pending to be addressed.

Spain has made progress in addressing the technical deficiencies identified in relation to R.6. However, moderate shortcomings remain and, consequently, the level of compliance with R.6 remains PC.

### ***3.1.2. Recommendation 7 (R.7) (Originally rated PC – no re-rating)***

Similarly to R.6, the deficiency was that the implementation of sanctions does not occur “without delay”, which raises the question of whether TFS are being implemented without prior notice to the designated person or entity.

Since the MER was adopted, the EU has implemented a separate and wider sanctions regime for Iran through which measures are immediately applicable and enforced. This means that there is no longer a delay in relation to implementing TFS against Iran. Additionally, the transposition of additions to the UN list of sanctioned designated persons and entities concerning DPRK (i.e. for instance for designations made through UNSCR 2270 (2016), have been generally reduced from 7 to 2 days,

although longer delays still exist. Listings from 5th August and 11th September 2017, took five and six days to implement.<sup>3</sup>

In addition to this, as noted above, Spain issued guidance for entities to be familiar with and consider UNSCRs before they are approved by the Commission. This is however, not yet in line with the FATF Standards which define implementation “without delay”<sup>4</sup>, as implementation that occurs, ideally, within a matter of hours of a designation by the UNSC or its relevant Sanctions Committee. To help mitigate risks, the European Union has adopted measures that limit for instance the type and number of bank accounts that both the Embassy and its officials can handle: in accordance to Regulation (EU) 2017/1509 concerning restrictive measures against the Democratic People’s Republic of Korea and repealing Regulation (EC) No 329/2007, all accounts held or controlled by a DPRK diplomatic mission or consular post, and their DPRK members should be closed and the opening of only one account per mission, post and member may be authorised.

Spain has partially addressed the technical deficiency identified in relation to R.7. However, the delay in implementing TFS against DPRK still remains. For that reason, the level of compliance with R.7 remains PC.

Spain noted that draft legislation is underway to ensure that new listings come into effect directly and immediately, once they are approved by the UNSC, which is relevant for both Recommendations 6 and 7.

### **3.1.3. Recommendation 16 (R.16) (Originally rated PC – re-rated to C)**

The main deficiencies were that: a) obligations on ordering financial institutions (FIs) did not include the requirements related to the beneficiary of a wire transfer; and b) intermediary FIs were not required: to ensure that all beneficiary information received and accompanying a wire transfer, was kept with the transfer and to take reasonable measures to identify cross-border wire transfers that lack originator information or beneficiary information. There was also no requirement to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take appropriate follow-up action.

Since the MER was adopted, EU Regulation (2015/847 of the European Parliament and of the Council of 20 May 2015) was issued which includes requirements in terms of the originator (payer) and beneficiary (payee) information, which must accompany and be kept with the transfer of funds, among others. These regulations came into force on 26 June 2017, thereby addressing the deficiencies. On that basis, R.16 is re-rated to C.

<sup>3</sup> Considering the number of days between the UN designation and the EU regulation and publication may be calculated by referencing to the UN listing (<https://www.un.org/sc/suborg/en/sanctions/8/press-releases>) and the publication in the EU Official Journal (<http://eur-lex.europa.eu/oj/direct-access.html>).

<sup>4</sup> See general Glossary in the FATF Recommendations.

### **3.1.4. Recommendation 39 (R.39) (Originally rated LC – re-rated to C)**

The one deficiency in compliance with this Recommendation was that the TF offence did not cover the financing of an individual terrorist (who is not part of a terrorist organisation/group) for purposes unrelated to the commission of a terrorist act, and this was a deficiency in connection with extraditions where dual criminality was a requirement. As explained under Recommendation 5 below, Spain amended its Criminal Code through Organic Act 2/2015, for the TF offence to cover the financing of an individual terrorist (who is not part of a terrorist organisation/group) for purposes unrelated to the commission of a terrorist act and further expanded the offence to cover travel for terrorism purposes and receiving and providing training. For that reason, R. 39 is re-rated to C.

## **3.2. Progress on Recommendations which have changed since adoption of the MER**

### **3.2.1. Recommendation 5 (R.5) (Originally rated LC – re-rated to C)**

On February 2016, a new requirement was added to R.5, obliging countries to criminalise the financing of foreign terrorist fighters. Spain has fully implemented this requirement by enacting article 575 of Organic Act 2/2015, which specifically criminalises providing or receiving terrorist training, and travelling to a foreign territory for the purposes of terrorism. The concept of “foreign territory” may seem limited as it would not cover foreigners travelling to Spain, however, article 577 provides for broader forms of co-operation which can cover this aspect. Spain presented case law to this effect.

The MER also identified three technical deficiencies in Spain’s implementation of R.5: a) the TF offence did not cover the financing of an individual terrorist (who is not part of a terrorist organisation/group) for purposes unrelated to the commission of a terrorist act; b) the definition of “funds” did not cover assets of every kind; and c) certain state-owned enterprises were exempt of criminal liability. Since the MER was adopted, Spain has amended its Criminal Code through Organic Act 2/2015, to replace providing “funds” to a terrorist organisation, with making “goods and assets” available to the perpetrator of the felony of terrorism. This covers an individual terrorist (including one who is not part of a terrorist organisation/group) and includes assets of every kind. In relation to criminalizing the financing of an individual for “any purpose”, this is covered by the concept of any form of co-operation or collaboration contained in art. 577 of Organic Act 2/2015, and was confirmed by case law provided by Spain, with regard to TF convictions of persons unrelated to a specific terrorist act, where it was demonstrated that the crime established by new art. 577-1 consists in an external help voluntarily provided by someone who, without being integrated in the organization, performs an activity that, in itself considered, does not appear connected with any concrete criminal activity but can still be considered TF. Art. 577 contains a list of activities “ad exemplum”, which includes providing or disposing accommodation, among others, as types of collaboration, but other forms of collaboration can also be considered, as these are just an example.

In relation to certain state-owned enterprises being exempt of criminal liability, Organic Act 1/2015 amended several provisions of Spain’s Criminal Code and in

particular, it clarified the concept of liability of legal persons, where only “public administration” persons, which are bodies that exercise public powers of sovereignty and administration, as well as International Organizations, are out of the scope of criminal liability, based on the principle that the State cannot exercise the *ius puniendi* on itself. On the contrary, other enterprises or corporations owned or controlled by the State, previously excluded, are now liable. This addressed the deficiency.

Spain has implemented the new requirements of R.5 and addressed the three technical deficiencies identified in the MER. Therefore, R.5 is re-rated to C.

### **3.2.2. Recommendation 8 (R.8) (Originally rated LC – rating remains LC)**

In June 2016, R.8 and its Interpretive Note were significantly revised and, therefore, the analysis of R.8 in the MER is not entirely relevant. For the purposes of this report, Spain has provided information to demonstrate its compliance with the R.8’s new requirements. An analysis of this information shows that:

1. Based on previous reviews of the sector’s potential vulnerabilities to terrorist activities, Spain has identified and continues to identify those Non-Profit Organisations (NPOs) which fall under FATF’s definition, the nature of threats posed by terrorist entities to the NPOs considered to be at TF risk, and how some terrorist actors abuse those NPOs, in the context of preparing its unified National Risk Assessment. Spain has also reviewed and will continue to review the adequacy of measures relating to NPOs at risk of TF abuse.
2. Spain has clear policies to promote accountability, integrity and public confidence in the administration and management of NPOs, depending on the type of NPO (i.e. specific requirements for foundations, associations, etc.). Spain has undertaken outreach and educational activities for NPOs. Spain also worked with the sector’s monitoring bodies to develop a best practices paper: *Guidance for bodies entrusted with ensuring that foundations and associations are not used for ML/TF (the Guidance)* which sets out what different aspects should be reviewed and an oversight strategy. Further measures could be taken towards encouraging NPOs to conduct transactions via regulated financial channels.
3. To promote effective supervision or monitoring of NPOs in line with risk, SEPBLAC issued the above noted Guidance in June 2015. This guidance specifically mentions that reviews should be risk-based and requires a classification of the foundations and associations, according to the level of risk, their activity, geographical scope and/or volume of funds managed.
4. Spain has measures to monitor compliance with the requirements of this Recommendation and can apply sanctions for AML/CFT related breaches. See the description in Spain’s 2014 MER.
5. Spain’s national co-operation and co-ordination is developed through the National Centre for Counter-Terrorism and Anti-Money Laundering Coordination, which involves several ministerial departments, including



Justice (department specialized in relationship with religious entities). Spain has been successful in investigating and prosecuting activity connected to the collection and movement of terrorist funds through the NPO sector. Spain is also able to ensure that there is access to information on the administration and management of NPOs, through registries and databases.

6. In terms of international co-operation, Spain uses general procedures and mechanisms to handle NPO-related requests instead of identifying additional points of contact or procedures for requests involving NPOs. The assessment of R.37-40 did not identify any substantial problems which would affect co-operation regarding NPOs.

Spain has identified those organizations that meet FATF's definition of NPO and has followed an approach that takes into consideration the risks these entail. However, Recommendation 8 requires further understanding and identification of those NPOs that are most vulnerable to TF risk, together with the adjustment of laws, regulations and others in consequence, and this has not occurred to a full extent. There are some minor shortcomings to do with the need for further outreach and in particular, to encourage NPOs to use financially regulated channels. The level of compliance with this Recommendation should therefore remain at LC.

### 3.3. Brief overview of progress in other Recommendations rated LC

Spain also reported progress on Recommendations 2, 3, 10, 17, 22, 24, 25, 26 as well as on 28:

**Recommendation 2 (rated LC):** Since the MER was adopted; Spain created a coordination group on financial sanctions within the Ministry of Foreign Affairs. A network of focal points was created which includes authorities from the Ministry of the Interior, Ministry of Public Works (State Air Safety Agency, State Ports), Ministry of Finance and Public Administration (which includes customs). Members of the coordination body receive monthly updates on the sanction regimes, meet on an ad-hoc basis, and can easily exchange information relevant for their purposes through the network.

**Recommendation 3 (rated LC):** Spain amended its Criminal Code through Organic Act 1/2015, to deal with the fact that certain state-owned enterprises were exempt from criminal liability. See Recommendation 5.

**Recommendations 10, 17 and 22 (all rated LC):** Spain is currently preparing draft legislation to address CDD shortcomings. For R.22, the Commission for the Prevention of Money Laundering and Monetary Offences (Commission) also issued in January 2016, Guidelines for obligated entities, regarding geographic risk, and elements to consider in their risk analysis.

**Recommendations 24 and 25 (both rated LC):** In the context of transposing the EU directives regarding transparency and beneficial ownership of legal persons into its domestic legislation, Spain is preparing draft legislation aimed at addressing its shortcomings in this area.

**Recommendation 26 (rated LC):** Since the MER was adopted; SEPBLAC took several steps to apply risk-based oversight in the insurance and securities sectors.

During 2014-2016, SEPBLAC intensified its collaboration with both sector's prudential supervisors and participated in elaborating their annual inspection plans according to the RBA.

**Recommendation 28 (rated LC):** Spain is studying and designing mechanisms to further prevent criminals or their associates from being accredited, or from owning, controlling, or managing other categories of DNFBPs.

#### 4. CONCLUSION

Overall, Spain has made progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on three Recommendations.

Recommendations 5 and 39 were re-rated to C, considering an amendment to the Penal Code which addressed deficiencies in Spain's TF offence. R.16 was also re-rated to C, taking into account revised EU regulation regarding the information that must accompany wire transfers.

Recommendations 6 and 7 will remain at PC, considering that TFS are not implemented without delay.

Spain has also taken steps to implement the new requirements of R.8 which was revised after the MER was adopted. For R.8, the current rating of LC is retained on the basis that Spain has identified those organizations that meet FATF's definition of NPO and has followed an approach that is broadly in line with the new requirements of R.8, although some minor shortcomings remain (e.g. the need for further outreach to encourage NPOs to use financially regulated channels).

Overall, in light of Spain's progress since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows in the table below.

**Table 2. Technical compliance with re-ratings, February 2018**

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
C	LC	LC	C	C	PC	PC	LC	C	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	C	C	C	C	C	LC	C	C	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	LC	C	LC	LC	LC	C	LC	C	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
C	C	C	C	C	C	C	C	C	C

*Note:* There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Spain will remain in regular follow-up, and will continue to report back to the FATF on progress to strengthen its implementation of AML/CFT measures.



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March 2018

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

### 1st Regular Follow-up Report & Technical Compliance Re-Rating

This report analyses Spain's progress in addressing the technical compliance deficiencies identified in the FATF assessment of their measures to combat money laundering and terrorist financing of December 2014.

The report also looks at whether Spain has implemented new measures to meet the requirements of FATF Recommendations that changed since the 2014 assessment.

Follow-up report

