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**Brussels, 22 October 2012**

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REV 1**

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**EVALUATION REPORT ON THE  
FIFTH ROUND OF MUTUAL EVALUATIONS  
"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"**

**REPORT ON SPAIN**

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## 1 INTRODUCTION

At the meeting of the Multidisciplinary Group on Organised Crime (MDG)<sup>1</sup> on 26 February 2008, the Presidency proposed three possible topics for the fifth round of mutual evaluations<sup>2</sup>, two of which received substantial support. At the MDG meeting on 6 May 2008, the majority of delegations were in favour of selecting financial crime and financial investigations. On 17 June 2008, the Group decided that the subject of the fifth round was to be "financial crime and financial investigations". The scope of the evaluation covers numerous legal acts relevant to countering financial crime. However, it was also agreed that the evaluation should go beyond simply examining the transposition of relevant EU legislation and take a wider look at the subject matter<sup>3</sup>, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG<sup>4</sup>.

The importance of the evaluation was emphasised by the Czech Presidency when the judicial reaction to the financial crisis was being discussed<sup>5</sup>. The significance of the exercise was once again underlined by the Council when establishing the EU's priorities for the fight against organised crime based on OCTA 2009 and ROCTA<sup>6</sup>.

Topics relating to the evaluation, in particular the improvement of the operational framework for confiscating and seizing the proceeds of crime, were mentioned by the Commission in its Communication on an area of freedom, security and justice serving the citizen<sup>7</sup>.

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<sup>1</sup> Since 1 July 2010 the responsibilities for this process have been transferred to the Working Party on General Affairs and Evaluations (GENVAL).

<sup>2</sup> 6546/08 CRIMORG 34.

<sup>3</sup> 10540/08 CRIMORG 89.

<sup>4</sup> 16710/08 CRIMORG 210.

<sup>5</sup> 9767/09 JAI 293 ECOFIN 360.

<sup>6</sup> 8301/2/09 REV 3 CRIMORG 54.

<sup>7</sup> 11060/09 JAI 404.

Experts with substantial practical knowledge in the field of financial crime and financial investigation were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG.

At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits<sup>8</sup>. Spain was the twenty-fifth Member State to be evaluated during this round of evaluations.

The experts charged with undertaking this evaluation were Ms Teresa Almeida (Public prosecutor, *Departamento de Investigação e Acção Penal de Lisboa*, Lisbon/Portugal), Mr Per Hansson (Deputy Chief Public Prosecutor, Swedish National Economic Crimes Bureau, Malmö/Sweden) and Mr Milosz Sulima-Kotarski (Acting Head of Unit, Ministry of Finance, Warsaw/Poland). Four observers were also present: Mr Mahrez Abassi (Deputy National Member of France and Chair of the Economic and Financial Crime Team, Eurojust, The Hague/Netherlands), Mr Rafael Rondelez (Criminal Finances and Technology Unit, Europol, The Hague/Netherlands), Mr Stefan de Moor (European Anti-Fraud Office - OLAF, Brussels/Belgium) together with Ms Kristi Raba and Mr Peter Nath from the General Secretariat of the Council. The European Commission, DG HOME, did not participate in this on-site visit.

This report was prepared by the expert team with the assistance of the Council Secretariat, based on findings arising from the evaluation visit that took place between 7 and 11 November 2011, and on Spain's detailed replies to the evaluation questionnaire.

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<sup>8</sup> 5046/1/09 REV 1 CRIMORG 1.

## 2 NATIONAL SYSTEM AND CRIMINAL POLICY

### 2.1 Specialized units

In Spain there is a wide array of specialised units dealing with investigations into economic and financial crime within the law enforcement agencies and in the institutions under the Ministry of Justice (e.g. courts and prosecution services).

Likewise, there are specialised units in the Autonomous Police Forces that exist in the Basque Country, Navarre and Catalonia that have full-range police forces of their own: *Ertzaintza* (Public Guard or People's Guard) in the Basque Country, *Policía Foral* in Navarre and *Mossos d'Esquadra* in Catalonia.

#### 2.1.1 Investigative authorities

##### 2.1.1.1 Police

Legal bases

The organisational and functional setup of the Spanish law enforcement agencies is derived from the principles laid down in Article 104 of the Spanish Constitution<sup>9</sup> that, together with Organic Law 2/86 of 13 March on Law Enforcement Agencies and further legislation<sup>10</sup>, defines the specific powers of the National Police Force (*Cuerpo Nacional de Policía - CNP*) and the Civil Guard Force (*Guardia Civil*).

Moreover, Article 126 of the Spanish Constitution stipulates that "the judicial police are answerable to the judges, the Courts and the Public Prosecutor when exercising their duties of crime detection and the discovery and apprehension of criminals, under the terms established by the law".

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<sup>9</sup> Spanish Constitution of 1978, Article 104:  
 "1. The Security Forces and Corps serving under the Government shall have as their mission the protection of the free exercise of rights and liberties and the guaranteeing of the safety of citizens.  
 2. An organic law shall determine the duties, basic principles of action and statutes of the Security Forces and Corps."

<sup>10</sup> These are inter alia the Judicial Police Royal Decree (R.D. 769/1987) and the Decree on the Structure of the Ministry of Interior (R.D: 1181/2008).



Articles 547, 548 and 546 of the Organic Law 6/1985 of 6 July on Judicial Power (*Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial*) stipulate the tasks of the criminal police: according to this law their role is to support prosecutors, judges and courts during the different phases of an investigation. These tasks are common to all members of law enforcement agencies within their respective competencies, irrespective of whether they are under the authority of the central, autonomous or local governments.

#### *2.1.1.1.1 National Police Force (CNP)*

Within the National Police Force (*Cuerpo Nacional de Policía - CNP*) there are units and groups specialised in financial crime at territorial level, under the command of the Central Financial and Tax Crime Unit (*Unidad de Delitos Económicos y Fiscales - UDEF*).

The Central Financial and Tax Crime Unit (*UDEF*) under the Criminal Police General Department (*CGPJ*) was set up by Order 2103/2005 of 1 July 2005.

The mission of the *UDEF*, a unit with nationwide competence, is investigating and prosecuting financial and tax crimes at national and international level and lending to all the territorial units operational coordination as well as technical support.

The Central *UDEF* consists of the following sub-units:

1. The Financial and Economic Crime Squad, investigating financial crimes committed against the Treasury and the Social Security, money laundering, financial fraud, stock market crime and serious fraud;
2. The Unit attached to the Special Prosecutor's Office for Preventing Financial Crimes related to Corruption. Its missions as criminal police will be decided by the attachment organisation;
3. The Technological Investigation Squad, investigating and prosecuting criminal activities related to the use of new technologies and cyber-crime;
4. The Monetary Crime Investigation Squad, dealing with the investigation of crime related to activities under control, surveillance or inspection of competent organisations on money laundering prevention;

5. The Bank of Spain Investigation Squad, investigating crimes linked to the counterfeiting of the euro and foreign currency; in this role, it works as a national central office;
6. The Unit attached to the Special Prosecution Office for the Repression of Financial Crimes Related to Corruption whose mission as criminal police in this regard is governed by the Prosecutor's Office;
7. The Unit attached to the Special Anti-Drugs Prosecutor's Office;

As far as the territorial units are concerned, in each of the 50 Spanish provinces and the cities of Ceuta and Melilla there are Special Units for tax and financial and money laundering crimes which depend organically on their territorial authorities and functionally on the Economic and Tax Crime Central Unit.

#### 2.1.1.1.2 *Civil Guard Force*

The main task of the Civil Guard Force (*Guardia Civil*) in Spain lies in exercising public order functions; in this respect all Civil Guard officers enjoy the same powers as the National Police Force and furthermore, those laid down in Article 12 of Organic Law 2/86 related to specific powers of the *Guardia Civil*.

In the *Guardia Civil* there are two specialized units dealing with financial and economic crime:

- the Criminal Police Technical Unit (*Unidad Técnica de la Guardia Civil - UTPJ*) and
- the Operational Central Unit (*Unidad Central Operativa - UCO*);

The *UTPJ* is the central criminal police service in the *Guardia Civil*. Within this unit there is a department on economic and technological crime with subdivisions that are dealing with economic crime and asset recovery and one that is physically located in the Spanish Financial Intelligence Unit (*Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales - SEPBLAC*).

The *UCO* has a department on economic and technological crime with subdivisions for a) economic crime, b) fraud and smuggling, c) cybercrime, d) corruption and e) a detachment in the Office of the Anti-Corruption Prosecutor.

It falls within the remit of these two units to investigate and analyse cases of financial crime. Both units report directly to the Civil Guard Criminal Police Headquarters.

The Civil Guard deployed 54 units across the territory of Spain. Such units conduct, among others, economic and financial investigations, which involve the basis of the Civil Guard deployment within the national investigation framework. The Central Units work on complicated cases and they support investigations carried out by territorial units.

### 2.1.2 Financial Intelligence Unit (FIU)

The Executive Service of the Commission for Prevention of Money Laundering (*Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales - SEPBLAC*) is the Spanish Financial Intelligence Unit (FIU). Its essential task is contributing to investigating financial crimes and analysing the information received from persons or entities that are obliged to submit reports to the *SEPBLAC* as stipulated by the Law 10/2010 of 28 April on Money Laundering and Terrorism Financing Prevention, the legal act that has transposed Directive 2005/60/EC<sup>11</sup> (the third European Directive on Money Laundering – 3<sup>rd</sup> AMLD) into Spanish law. According to *SEPBLAC*'s functions that have been laid down in Article 45.4 of Law 10/2010, the Executive Service is able to draw up reports on financial intelligence revealing money laundering or terrorism financing traces. Eventually the clients of such information are the relevant police authorities for investigating money laundering crimes or the predicate offence (National Police Force, Civil Guard and Autonomous Police Forces), public prosecutor's offices, tax administration or the customs authorities.

The *SPEBLAC* forms part of the structures under the Commission for the Prevention of Money Laundering and Monetary Offences<sup>12</sup> that is in charge of promoting and coordinating the implementation of Law 10/2010 and is, for that purpose, supported by the *SEPBLAC* and a Commission Secretariat. The Commission reports directly to the Undersecretary for Economy.

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<sup>11</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ L 309, 25.11.2005, pp. 15-36.

<sup>12</sup> Cf. Law 10/2010, Article 44

The functions of the Commission Secretariat are performed by a unit of the Ministry for Economy at deputy general directorate level. A Commission Secretary that also chairs the Committees heads it.

Organisationally and functionally the *SEPBLAC* is accountable to the Commission for the Prevention of Money Laundering and Monetary Offences, whose composition is specified in Art. 44 of Law 10/2010 and Art. 20 of the Royal Decree 925/1995 of 9 June 1995, endorsing the regulations of the Law 19/1993 of 28 December 1993 on particular measures concerning money laundering prevention.

The staff of *SEPBLAC* consists of officers from the Bank of Spain, the State Agency on Tax System Administration (*Agencia Estatal de Administración Tributaria - AEAT*), the National Police Force (*CNP*) and the Civil Guard Force (*Guardia Civil*).

### **2.1.3 Asset Recovery Office (ARO) and other similar bodies**

#### *2.1.3.1 Asset Recovery Office (ARO)*

At the time of the on-site visit there were different bodies involved in implementing Council Decision 2007/845/JHA, namely:

(a) The Intelligence Centre against Organised Crime (*CICO*)

The Intelligence Centre against Organised Crime (*Centro de Inteligencia contra el Crimen Organizado - CICO*) serves as the ARO-designated contact point. It receives ARO requests, distributes them to the Asset Tracing Office of the National Police (*Oficina de Localización de Activos - OLA*) and to the Criminal Police Technical Unit (*Unidad Técnica de Policía Judicial - UTPJ*) of the Civil Guard Force (*Guardia Civil*) and transmits results to the requesting authority. In addition to this it collects and stores the statistics of the requests received.

(b) The Anti-Drugs Prosecution Office

Like the *CICO*, the Anti-Drugs Prosecution Office is an ARO-designated contact point.

(c) The Asset Tracing Office

The Asset Tracing Office (*Oficina de Localización de Activos - OLA*) is located within the police's Financial and Tax Crime Central Unit (*UDEF*). It responds to the requests received from the *CICO* by conducting the relevant police investigations, i.e. by consulting different sources and databases and taking the appropriate measures. Once the investigations are completed, it sends the results to the *CICO*.

Any requests in this field are executed via INTERPOL, EUROPOL, the Schengen Information System (SIS), foreign liaison officers or in direct contact with police forces in other Member States. *OLA* supports all National Police Corps (*CNP*) units in matters concerning the tracing of assets by making available to them data contained in non-law enforcement databases, e.g. the Land and Real Estate Register, the Commerce Register or the Registry of the General Council of Public Notaries (cf. chapter 3.1.1 of this report) and monitors compliance with norms regulating access to the FIU within the National Police Corps (*CNP*).

*OLA* is exclusively staffed with officers from the *CNP*. They are appointed by the head of the Central Financial and Tax Crime Central Unit (*UDEF*) within the framework of his competences and ultimately by the Criminal Police General Commissioner.

Representatives from *CICO*, the Anti-Drugs Prosecution Office and *OLA* are regularly attending the meetings of the ARO Platform.

Regarding the duty of exchanging best practices as set out in Council Decision 2007/845/JHA, *UDEF* has initiated an EU project and implementing it together with seven AROs from other Member States. The project extending over 27 months benefits from Union funding in the framework of the Commission's ISEC programme. Its principal outcome will be an advanced university course at European level from the Rey Juan Carlos University of Madrid and a white paper on best practice for asset recovery.

(d) In the Civil Guard the abovementioned functions are carried out by the Criminal Police Technical Unit (*Unidad Técnica de Policía Judicial - UTPJ*).

Representatives of the *Technical Unit* of the Guardia Civil Force attend the meetings of the ARO Platform.

Future implementation of Framework Decision 2007/845/JHA

With regard to the implementation of Framework Decision 2007/845/JHA, the Spanish Code of Criminal Procedure has been amended through Organic Law 5/2010 and an Article 367 septies has been added that describes the procedures to be applied once an asset recovery office (ARO) has been established. However, as the detailed regulations required for its implementation had not been completed at the time of the on-site visit, it continues to be the responsibility of the different bodies described under (a) to (c) above.

The **future ARO**, which would also operate as an asset administration office, coordinated with the National Action Plan on Drugs, will have the following characteristics:

It will have the status of a criminal police entity and a specific regulation (pending adoption at the time of the evaluation) shall govern its organisational and operational set up, define its powers as well as its duties.

This ARO will only cover cases related to criminal proceedings (organized crime) but not those related to civil matters, taxation or minor offences.

At the request of the prosecuting authorities, a judge or a court will be able to assign the ARO to trace, seize, manage and sell or use assets derived from criminal activities.

Pending the introduction of the procedure, judicial authorities will be able to rule that confiscated items, provided they can be the subject of legal trade, might be provisionally used by the ARO or, through it, by any other criminal police unit responsible for the repression of organised crime.

The National Plan on Drugs will act as an ARO within the sphere of its competence, in accordance with the provisions of the Code of Criminal Procedure, the Criminal Code and other law and by-law provisions by which it is governed.

*2.1.3.2 Pre-trial investigation authorities*

The whole pre-trial phase of an investigation is conducted under the supervision of an investigating magistrate. The involvement of an investigating magistrate is compulsory in all criminal proceedings, except for cases against minors (between 14 and 18 years of age), where prosecutors are in charge of the investigation.

In crimes that are prosecuted at the provincial courts or the ordinary criminal courts an ordinary investigating magistrate, whose territorial competence is based on the place where the relevant crime has occurred, directs the pre-trial investigation.

Moreover, the Spanish legal system provides for specialized investigating magistrates (the so-called central investigating magistrates) who, according to Art. 88 *LOPJ* (*Ley Orgánica del Poder Judicial* - Organic Law of the Judiciary) are responsible for directing the pre-trial investigation in cases that will be prosecuted by the Criminal Central Judge (*el Juzgado Central de lo Penal*) or by the Criminal Chamber of the National High Court (*Sala de lo Penal de la Audiencia Nacional*), which are referred to in Art. 65 *LOPJ*.

## 2.1.4 Judicial authorities

### 2.1.4.1 Prosecution services

#### 2.1.4.1.1 Anti-Corruption and Organised Crime Public Prosecutor's Office

At prosecutorial level, the **Anti-Corruption and Organised Crime Public Prosecutor's Office** can act before the *Audiencia Nacional* or before any other Court in Spain. Apart from the central structures, this Anti-Corruption and Organised Crime Public Prosecutor's Office has delegates in those autonomous communities where it has been deemed necessary.

For cases where the intervention of the Anti-Corruption and Organised Crime Public Prosecutor's Office is not considered necessary the territorial prosecutor's offices have specialised prosecutors dealing with economic crimes.

The Anti-corruption and Organised Crime Public Prosecutor's Office deals *inter alia* with the investigation of any kind of legal business, transactions or assets being related to activities from organised crime groups or to economic profits from criminal actions and connected crimes.

The mission of the Anti-Corruption and Organised Crime Public Prosecutor's Office is to investigate and to prosecute the most serious financial crimes.

Prosecutors serving in this Office have the same powers as other public prosecutor's offices with some special characteristics (e.g. longer investigations), and their competence extends over the entire territory of Spain.

The Office is headed by the chief prosecutor who directly reports to the general prosecutor. Its staff consists of 16 prosecutors working in its head office and 15 prosecutors deployed throughout the territory of Spain, two attached police units (18 officials), one support unit from the Tax Agency (10 staff) and another one from the General Auditing Department (7 staff), and furthermore, 26 administrative staff.

Public prosecutors serving in the Office are required to have at least 10 years of professional experience in this function.

A similar structure exists with regard to drug trafficking in the **Anti-Drugs Prosecutor's Office**, with a centralised office and delegates in various provinces. Such prosecutors deal with high profile drug trafficking and money laundering related thereto.

#### *2.1.4.2 Judges involved in the pre-trial phase*

The role of the judges in a pre-trial investigation has already been described in detail in chapter 2.1.3.2.

#### *2.1.4.3 Courts*

Criminal cases are assigned to the different types of courts according to their seriousness. The Spanish legal system distinguishes between minor offences, those of medium seriousness<sup>13</sup> and serious crimes.

At territorial level the trial of an offence of minor or medium seriousness falls into the competence of an ordinary criminal court where the trial will be presided by an individual judge. In such instance, the court will be in charge of prosecuting cases sanctioned with a prison sentence of no more than five years or a fine, or with any other punishment for a combined period of no more than ten years, and in the case of offences carried out incidentally or not by offenders or any other individual, when the commission of the offence or its evidence is related to such an offence.

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<sup>13</sup> Cf. Article 14.3 of the Code of Criminal Procedure.



Serious cases (i.e. when the punishment is higher than the limits for a criminal court) are heard at a provincial courts which are divided into chambers made up of three judges.

Within the Spanish legal system there are no specialized courts for financial crimes. However, certain cases fall under the competence of the special courts, the Central Criminal Court and the Criminal Chamber of the National High Court (*Audiencia Nacional*), both for the investigation and adjudication.

These special courts are in charge of prosecuting (as first and only instance) certain serious cases of financial and economic crime as well as those having been committed in an organised manner. On the basis of Articles 65 and 89 *bis* of the Organic Law of the Judiciary (*LOPJ*), these courts will deal with the following forms of delinquency:

- (a) Counterfeiting of currency, credit cards and traveller checks, if these crimes have been committed in an organised manner,
- (b) Market fraud seriously harming trade, the national economy, the national wealth or a group of people across the jurisdiction of one provincial court,
- (c) Trafficking in drugs or narcotic substances, counterfeiting of food, medical or pharmaceutical substances, if such crimes have been committed in an organised manner or resulting in damage across court jurisdictions,
- (d) Any crime committed outside the national territory, when the Spanish courts are in charge of their prosecution, in accordance with the laws or the corresponding treaties;

For these crimes the Central Criminal Court is competent to prosecute the cases of minor and medium seriousness while the Criminal Chamber of the National High Court (a chamber made up of three judges) will hear the serious cases.

The only instance above the National High Court is the Supreme Court.

Members of the Judicial Service serving in the National High Court (either in its Criminal Chamber or in the Central Criminal Court) are appointed according to seniority. The only exception to this general rule relates to the President of the Criminal Chamber of the National High Court, who is appointed among the magistrates on the basis of personal and professional merits.

### 2.1.5 Under the administration of the Ministry of Finance

There are several entities under the Spanish Ministry of Finance playing a role in the containment of financial and economic crime whose function and organisational setup will be explained in more detail in the following paragraphs.

#### 2.1.5.1 Tax Administration

The State Agency on Tax System Administration (*Agencia Estatal de Administración Tributaria - AEAT*) is an important player in fighting economic and financial crime in Spain. The *AEAT* maintains a Centralized Database (see point.3.1.1.11 below) which is consulted by the law enforcement agencies (subject to prosecutor's or judicial authorization) in the course of their investigations. The data base is also consulted by the Anti-Corruption and Organised Crime Public Prosecutor's Office through its unit assigned to the *AEAT*.

Apart of the informative role, the *AEAT* takes an active role fighting economic and financial crime with the use of a specialized structure within the customs - the Customs Surveillance Deputy Directorate (*Dirección Adjunta de Vigilancia Aduanera - DAVA*), which will be further described below. Moreover, other operations and investigations conducted by the *AEAT* concerning financial crime have to be added, *inter alia* the fight against corruption or the external commerce fraud investigations.

#### 2.1.5.2 Customs

The Customs Surveillance Deputy Directorate (*DAVA*) is an entity within the Customs and Excise Department reporting directly to the State Agency on Tax System (*AEAT*).

The mission of *DAVA* is preventing and investigating financial crimes that fall within the competence of the Customs and Tax Authorities, committed on Spanish territory, within its airspace or territorial waters.

*DAVA* has two general departments: operations and logistics. The operations department deals with the investigations at central level. At territorial level, there are operational regional areas under the authority of Customs and Excise regional offices and operational provincial units.

When acting as criminal police, these units have all the powers vested in them by the Smuggling Law and the Code of Criminal Procedure. When acting in the framework of a customs or tax procedure, they will have powers vested in them by the general regulation on tax and customs.

## 2.1.6 Financial Supervisory Authority

### 2.1.6.1 Bank of Spain

One of the supervisory functions in the financial sector in Spain is executed by the Bank of Spain (*Banco de España*). The basic purpose of banking supervision is to safeguard the stability of the financial system, in order to prevent the vital role of the banking sector in the economy from suffering significant shocks or even collapsing.<sup>14</sup> The Bank of Spain therefore focuses on the solvency and conduct of supervised institutions.

### 2.1.6.2 National Securities Market Commission (CNMV)

“The National Securities Market Commission (*Comisión Nacional del Mercado de Valores - CNMV*) is the agency in charge of supervising and inspecting the Spanish Stock Markets and the activities of all the participants in those markets. It was created by the Securities Market Law, which instituted in-depth reforms of this segment of the Spanish financial system. Law 37/1998 updated the aforementioned Law and established a regulatory framework that is fully in line with the requirements of the European Union (...).

The purpose of the *CNMV* is to ensure the transparency of the Spanish market and the correct formation of prices in them, and to protect investors. The *CNMV* promotes the disclosure of any information required to achieve these ends, by any means at its disposal; for this purpose, it uses the latest in computer equipment and constantly monitors the improvements provided by technological progress.”<sup>15</sup>

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<sup>14</sup> This information has been derived from the website of the Spanish National Bank (*Banco de España*): [http://www.bde.es/webbde/en/supervision/funciones/funciones\\_obj.html](http://www.bde.es/webbde/en/supervision/funciones/funciones_obj.html)

<sup>15</sup> <http://www.cnmv.es/portal/quees/Funciones/Funciones.aspx?lang=en>

### 2.1.6.3 General Directorate of Insurance and Pensions

The General Directorate of Insurance and Pensions (*Dirección General de Seguros y Pensiones - DGSFP*) is an administrative body subordinate to the Spanish State Secretariat for Economic Affairs (*Secretaría de Estado de Economía*) of the Ministry of Economy and Finance of Spain, under Royal Decree 1127/2008 of 4 July. It supervises and controls Spain's insurance and pension fund sector. It is responsible for ensuring that the sector functions properly and for providing customers of insurance agencies and members of pension funds with appropriate protection. To that end, it is empowered to regulate, issue instructions to and supervise the institutions that compose the sector, thus guaranteeing proper operation in accordance with current legislation.

## 2.1.7 Level of Expertise and Training

### 2.1.7.1 National Police Force - CPN

The police staff working in the units dealing with financial and economic crime hold a diploma of a criminal police officer issued by the National Police Force (*CPN*) and the Legal Studies Centre from the Ministry of Justice.

This central unit totally made up of the National Police Force. More than 80% are holding the rank of superintendent or inspector, 20% are sergeants and constables.

In the National Police's Financial and Tax Crime Unit (*UDEF*) officers (i.e. rank of inspector and above) hold mainly a university degree either in law or economics.

Officers who want to join the *UDEF* have to undergo a special selection procedure. In order to filter out the most appropriate candidates for joining the investigation teams of the specialised units, the previous curriculum of an officer is analysed, followed by an interview of all applicants before a decision on recruitment is taken.

Apart from the training shared by all police, officers are given training courses by the Specialisation and Updating Centre (Training Division) on different subjects concerning financial investigations. The Intelligence Centre against Organised Crime (*CICO*) under Secretary for Security (Ministry of Interior), also organizes specialized training..

Academic degrees in fields relevant to fighting financial and economic crime are also awarded by external organisations working in the area of preventing and fighting money laundering. Some of their subjects cover the following:

- Money laundering and corruption
- Financial crimes
- Technological crimes

Apart from this permanent training, officers can also participate in courses in different crime fields. These courses are dealing with organised crime, drug trafficking, trafficking in human beings, illegal trafficking of vehicles, etc.

#### *2.1.7.2 Guardia Civil*

The *Guardia Civil* has a three-tier training system with basic, intermediate and advanced training modules that enables officers to specialise in certain fields.

At basic level there are the criminal police basic course, the criminal police command course, the criminalist basic course, a complementary course by the Ministry of Justice as well as refresher courses. Specialisation with regard to economic and financial crime starts at intermediate level where the *Guardia Civil* training scheme foresees *inter alia* a basic course in economic crime investigation as well as a basic course in cyber investigations. For the advanced level there are training modules in economic crime investigations but also courses in crime analysis, a superior course in crime science as well as courses to complement any knowledge that has previously been acquired in other fields of policing. Internal as well as external training is given also on matters pertaining to financial investigations.

Staff working in the specialised *Guardia Civil* units dealing with financial and economic crime holds the diploma of a Criminal Police Officer issued by the *Guardia Civil* and the Legal Studies Centre of the Ministry of Justice.

### 2.1.7.3 *Judges and Magistrates*

The Judicial School of the General Council of the Judiciary includes training courses in its annual general advanced training programmes for professional judges serving both in specialized prosecution bodies and in those responsible for conducting the pre-trial investigations. All Spanish judges and magistrates may attend these training activities on a voluntary basis. Within the annual framework these offer a variety of different subjects. In recent year's programmes, a variety of topics have been included, e.g. specific courses in foreign languages (legal English, legal French, legal German, legal Italian and legal English for international cooperation in criminal matters), accounting, financial and organized crime as well as international cooperation in criminal matters.

Besides the general training activities targeted at all members of the judiciary, there are also yearly specific training programs for the magistrates serving in the National High Court (either in its Criminal Chamber, in the Central Criminal Court or in the Central Magistrates' Courts).

As far as the prosecutors are concerned, they receive training at the Centre for Legal Studies, subordinated to the Ministry of Justice in collaboration with the Technical Secretariat of the General Prosecutor's Office. According to the Spanish authorities, due attention is paid in the training curriculum to financial crime, organized crime, international cooperation as well as foreign languages, while on-line training is being highly promoted.

### 2.1.7.4 *Customs Surveillance Deputy Directorate (DAVA)*

In order to join the Customs Surveillance Deputy Directorate (*DAVA*), future officials are required to pass a public exam to enter the service at three different levels: agent's rank (eligible for secondary school graduates), senior rank and executive rank (eligible for university graduates).

Following their initial training, *DAVA* trainee officials would then continue with a practical internship specifically aimed at their future assignment and the financial investigation matters they are going to be entrusted with. This internship forms part of a permanent training programme at the Institute of Fiscal Studies

## 2.2 Criminal Policy

### 2.2.1 Proceeds-oriented Policy

In answering the questionnaire the Spanish authorities have explained that their national criminal investigations were not driven by a “proceeds-oriented” policy but were oriented at confiscation and seizure of assets from criminal organizations as a means of fighting against and dismantling this type of criminal activities.

### 2.2.2 Official investigation or prosecution policy to trace crime proceeds (financial investigation)

The criminal police authorities and those holding similar investigative powers, both at national level and at the level of the autonomous communities, are the entities that have previously been elaborated in chapter 2.1. The Spanish authorities have clearly stated that all these units, when investigating, are acting under the supervision of public prosecutors, judges and courts; furthermore, if the case necessitates doing so, they cooperate with the tax authorities and the Customs Surveillance Directorate. However, it was clearly pointed out that there were no special policies for this type of criminal investigation. The main objective of investigations pertaining to the area of financial and economic crime in its widest sense according to the Spanish authorities was the following:

- With regard to tax fraud: to regularize the fiscal situation of tax evaders and to recuperate the tax payments that have been defrauded;
- With regard to money laundering: to seize the proceeds from criminal activities (smuggling and drug trafficking), in order to prevent criminals using them, and to stop the financing sources;

According to the information received at the time of the on-site visit, the Asset Tracing Office (*OLA*) set up as one measure to implement the Council Decision 2007/845/JHA was mainly focused on responding to the requests from other Member States and is barely used in national cases.

Spanish authorities informed after the on-site visit that in December 2010 the General Prosecutor issued guidelines (Circular 4/2010) to Spanish prosecutors to prioritize and impulse the patrimonial investigation in criminal proceedings that have patrimonial consequences.

### **2.2.3 Priority accorded to the investigation/prosecution of acquisitive crime**

The evaluation team was informed that no special priority was given to the investigation and prosecution of economic and financial crime as compared to other forms of crime, in fact priority accorded was similar priority to that relating to other crimes against property.

In their responses to the questionnaire the Spanish authorities maintained that for certain units, for instance the Customs Surveillance Deputy Directorate (*DAVA*), that have been established with this main objective, this obviously constituted a priority derived from their yearly and multi-annual action programmes.

### **2.2.4 Tracing, seizure and confiscation of assets as separate goal of investigations**

In their answers to the questionnaire the Spanish authorities have highlighted that in order to secure the tracing, seizure and confiscation of assets as separate goal of investigations they had established within their law enforcement system special units in every police force and the two specialized public prosecutor's offices: firstly the Public Prosecutor's office on Corruption and Organized Crime with their assigned police units and support units from the tax authority (*AEAT*) which have been described as being part of a global strategy against smuggling and fraud, and secondly the Anti-Drugs Public Prosecutor's Office that also has a police unit attached to it.

Furthermore, such specialized units to conduct this type of investigations also exist at the central and territorial level.



## 2.3 Conclusions

### 2.3.1 Investigative Services

- The main actors entrusted with tackling economic and financial crime in Spain are the National Police Force (*Cuerpo Nacional de Policía - CNP*), the National Guard (*Guardia Civil*) and Customs Surveillance Deputy Directorate (*Dirección Adjunta de Vigilancia Aduanera – DAVA*). Both of them are interlinked through various coordination and cooperation mechanisms at different levels, from the Ministry of the Interior to the operational units. It was explained that the policy followed was such that the units must ensure to cooperate as closely as possible within their sphere of competence. Although the Spanish authorities have admitted that the nature of coordination and cooperation matters between the two entities was provoking the odd discussion and quarrel cooperation was said to generally work well.
- Besides, there are systems of coordination outside the central structure with e.g. a National Anti-terrorist Co-ordination Centre (*CNCA*) and the Joint Command Executive Committee (*CEMU*) that are both directly attached to the Minister of Interior. Regarding the financial crime the main task on coordination is a competence of the Intelligence Centre against Organised Crime (*CICO*)
- There are several specialised and appropriately staffed units at the central level, supplemented by detachments from the National Police Force and the Civil Guard to entities that are performing special functions such as for instance the Spanish Financial Intelligence Unit (*SEPBLAC*) or the Anti-Corruption Prosecutor's Office.
- Although the expert team had no opportunity to visit any of the units below the central level they have been informed that in parallel to these centralised structures the functional subdivision of tasks is mirrored at regional, provincial and local level, albeit with fewer staff performing the same range of tasks.
- There are technical facilities that ensure the sharing of data among the major services dealing with financial crime. Several police and judicial databases that are jointly used and fed by the National Police Force and the Civil Guard are the mainstay in facilitating cooperation and coordination between these two police services.

- During the on-site visit the police services maintained that fighting the financial aspects of crime was regarded as a priority in Spain and that this was also reflected in strategic policy documents e.g. the National Plan on Drugs. The expert team was however, given no further evidence about such strategy papers, if any.
- The way in which the National Police Corps' Central Intelligence Unit (*U.C.I.C.*) was however, presenting their work suggested that such a policy was actually implemented as they explained that an investigation could be joined at any stage or the collated information used at the end of an investigation in order to pursue its financial aspects further.
- Statistics show that the number of financial crime investigations registered in the Spanish National Police Intelligence Database has been on a steady rise since 2000, peaking at 525 investigations in 2010 and a total of 492 active investigations at the time of the on-site visit in November 2011. The large majority of these investigations were into money laundering with 340 investigations for 2010 and 314 active investigations at the time of the visit. This was followed by investigations into unauthorized disclosure of confidential information with 67 cases in 2010 although only 17 active investigations at the time of the on-site visit.<sup>16</sup>
- At the time of the on-site visit the Civil Guard Force was conducting 402 financial investigations, about half of which were cases of fraud, followed by 58 cases of corruption while money laundering was ranking fourth with 29 open cases. In 2010 the Civil Guard Force had arrested 503 persons for suspicion of money laundering and 330 persons for suspicion of public corruption in more than 40 investigations.
- In 2010 alone the Civil Guard Force solved 1 082 cases of cyber fraud.
- To accomplish this, the Civil Guard had a complement of 297 criminal investigation staff for financial crimes that were performing their duties in the following units: criminal intelligence / asset recovery: 9, FIU (*SEPBLAC*): 3, *UCO*: 80, economic crime: 26, money laundering: 21, corruption: 23, Office of the Anti-corruption Prosecutor: 10, regional unit in Catalonia: 17, provincial units: 188. Furthermore staff especially assigned to countering terrorism financing were 20 in the Central Unit and 3 in the FIU.

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<sup>16</sup> The Spanish National Police reported after the visit that in 2010, 1 585 persons had been arrested on suspicion of money laundering and 375 persons on suspicion of corruption. For 2011, the figures were 1 525 and 300 respectively.

- The Customs Surveillance (*DAVA*) has the quality of criminal police with regard to investigations into customs and tax cases, particularly exercised when investigating smuggling of drugs, cigarettes but also in fighting money laundering. In exercising their tasks they can use the whole inventory of naval and air deployment of the Customs Surveillance along the long coastlines of continental Spain and in the territorial waters surrounding the islands. It was noteworthy that the *DAVA*, following the seizure of drugs, was investigating the personal assets of the perpetrator groups as well as possible money laundering related to drug-trafficking organisations and the owners of the means of transports that were used in the smuggling. Although the statistics presented by the Customs and Excise Department were only available up to 2006 their tendency with regard to the assets laundered in cases of money laundering also showed an upward trend that equalled an impressive 305m euro in 2006. There have been some high-profile operations during the first half of the first decennium that have led to considerable seizures in assets, real estate and means of transport.
- With regard to interpreting the statistics the evaluation of the Spanish system has again revealed the need for a unison definition of financial crime in order to allow better comparison across the EU and to possibly facilitate a meaningful and timely allocation of resources that are bound to be restricted. The experts therefore deemed it appropriate to suggest to the European Union Member States to contemplate on such a definition.
- The *SEPBLAC*, the Spanish Financial Intelligence Unit, a FIU of the administrative type, seems to be well interconnected with the law enforcement system from its organisational layout, as detachments from the different services are directly seated inside the FIU, allowing for close cooperation and coordination. The information received during the visit there has, however, raised some concerns regarding possible weaknesses regarding the actual operations and the implementation of those cooperation and coordination mechanisms.
- Although the expert team was informed that legal instruments obliging law enforcement agencies to provide their feedback to *SEPBLAC* on the results of AML investigations (i.e. convictions, confiscations etc.) were already in force (Art. 46.2 of Law 10/2010 of 28 April on the Prevention of Money Laundering and Terrorist Financing) *SEPBLAC* admitted that so far

this law had only been partially implemented and that the only functioning feedback instruments were those elaborated for the *CNP*. Moreover, the feedback being provided by *CNP* to *SEPBLAC* was limited to the investigations initiated on the basis of intelligence provided by *SEPLAC* and did not cover the investigations initiated by the *CNP* on the basis of the intelligence received by *CNP* from other sources or its own analysis. After the on-site visit the Spanish authorities informed that customs biannually submit feedback on the reports submitted by *SEPBLAC* with the result of individual issues from which were informed by *SEPBLAC*. The *Guardia Civil* informed after the on-site visit that they had agreed with *SEPBLAC* to apply an automatic feedback system for such communications already in 2007 and that this had been in place since the implementation of the agreement; however, the necessary steps to connect to the systems had so far not been taken on the part of *SEPBLAC*. The expert team therefore concluded that a prerequisite for the ability of *SEPBLAC* to perform an appropriate strategic analysis of trends in ML/TF and subsequently, decide on its operational priorities and resource allocation, required the feedback from all investigating law enforcement agencies and the judiciary.

- Furthermore, and of a much higher impact was the fact that the *SEPBLAC* obviously has no powers to block suspicious transactions. And finally, the fact that information transmitted with *SEPBLAC* reports appeared to bear no evidence value in legal proceedings, but was merely labelled as ‘financial intelligence’ seemed to be a suboptimal use of resources.
- *CNP* was not in a position to provide the number of money laundering investigations that had been initiated by *SEPBLAC* information, explaining that investigations conducted by the Central *UDEF* might comprise *SEPBLAC* as initial source. However, while every investigation submitted by *SEPBLAC* is crosschecked by the police against any active and passive investigation conducted by the *UCIC*, other cases may have undergone an assessment on the police significance of the information and initial steps of a police investigation are made in other types of investigations that might also involve the judiciary in some cases.

For their part, the *CNP* informed that reports or national judicial request and international mutual legal assistance requests were the primary reasons for starting an investigation and that during the time period following the on-site visit there were 722 active investigations in money laundering, embezzlement of funds and VAT fraud.

On the Civil Guard side, they reported three investigations on the basis of the *SEPBLAC* information as per April 2012 while at that time they were conducting 39 investigations into money laundering and 480 into economic crime.

- At the time of the on-site visit full implementation of the Council Decision 2007/845/JHA was still under way. Therefore, the tasks to be performed by an Asset Recovery Office (ARO) were still divided across several organisational units in different law enforcement bodies. However, given the prospect of the future establishment of an ARO (that would also comprise the task of managing seized assets), the outlines of which have been presented to the experts, this will definitely be a giant leap ahead with regard to a more stringent application of a national approach to asset recovery and management. This conclusion has also to be understood against the background that at the time of the on-site visit the management of assets seemed to be scattered across *CICO* and the judiciary. The experts would therefore deem it appropriate to recommend a speedy and comprehensive implementation of the plans that have been presented, also with a view to accelerating and intensifying cooperation between the AROs of the EU Member States.

### 2.3.2 Prosecution services and judiciary

- From information collected after the on-site visit it appeared that the judiciary, apart from an annual report from the prosecution service, did not provide any specific statistical feedback to law enforcement, *CICO* in particular, regarding statistics on convictions as well as assets frozen or confiscated.
- In Spain there are domestic networks for international cooperation both at the level of the prosecution and of the judges. The former is directed and coordinated by the International Cooperation Unit of the General Prosecutor's Office while the latter is organized by the Judicial Council. The existence of such networks both of which are holding annual reunions was considered a good practice as the informality of these networks may contribute to the quality of investigations and cooperation, both at national and European level.

### 2.3.3 Training

- The on-site visit did not confirm the existence of a comprehensive, advanced training program on investigations for economic/financial crime tailored to the needs of law enforcement agencies and other actors involved in such investigations.

While regular training programmes are in place, they seemed to have been designed separately by each institution. This may appear to be fully justified due to the differences in their mission and remit. Bearing in mind, however, that financial/economic investigations are a cross-cutting issue involving police forces, customs, tax authorities, other supporting actors and the judiciary at all levels, a comprehensive training delivered to all actors could substantially add value to the coordination and standardization of investigative and supportive activities of different institutions involved.

- Organised and promoted by the *CNP*, there has been a first course from the Centres of Excellence on Asset Recovery and Training (CEART) financed via the ISEC Programme in 2011 and 2012 to train experts on asset recovery and financial investigations. The 120-hour post-graduate course is run in cooperation with the Universidad Rey Juan Carlos de Madrid. The course was attended by 24 participants from EU Member States.

In the *Guardia Civil* a basic course on financial investigation is conducted every year with participants from criminal analysis, investigation and terrorist financing units. Collaboration in the field of training also includes the University Institute of Investigation Interior Security, made up of *Guardia Civil* and the national University of Distance Education.

However, despite these initiatives the information on training of the law enforcement entities revealed that there was no broad experience in acquiring EU funds for specific training so that the experts concluded that there was some leeway in intensifying these possibilities.

- With regard to training the experts noted with great interest that the *Guardia Civil* had produced a handbook on the investigation of assets (*Manual de Investigación Patrimonial*), dating from 2005, and although the team did not have the opportunity to study the handbook in depth they thought that the initiative and quality of the manual needs to be commended. In this respect it also needs to be mentioned that Spain has also recently participated in the production of a European handbook on financial investigations that is available via Europol and the European Commission, the dissemination of which among practitioners the experts deemed most important.

- Under the auspices of the *Guardia Civil* a 'European Handbook on Financial Investigation' has been developed. Its preparation was coordinated by the *Guardia Civil* and comprised participation of the State Agency on Tax System Administration, the General Directorate of the Treasury, the General Council of Notaries, the *SEPBLAC*, the University of Granada and KPGM.
- The fact that *SEPBLAC* analysts and other staff are participating in training courses for police officers both as experts and as students seemed to be a good approach to facilitate a common knowledge of the possibilities and necessities of both institutions.

#### 2.3.4 Criminal Policy

- Considering the specificities of the country the evaluation team concluded that Spain has built a balanced and well operating system to fight economic and financial crime. The examples of successful operations that had been conducted by the individual entities have left no doubt that there was a general strive among the stakeholders to deprive criminals of their criminal gains. However, on the other side the expert team despite the existence of a Spanish Security Strategy, noted an insufficient definition of priorities in order to set up a specific strategy for the specialised investigations of financial crime and the financial aspects of crime.
- Although during the visit examples of documents depicting the policy in countering certain aspects of financial and economic crime have been mentioned (e.g. the Spanish Strategy against organised crime 2011-2014), the expert team had however, no opportunity to study these documents in depth and had to assume that all stakeholders were following such an approach. Notwithstanding the fact that valuable initiatives, e.g. the establishment of an economic intelligence system were in the process of being launched as a direct consequence from the 2011-2014 Strategy the experts were of the opinion that - given the size of the country and the distribution of tasks and competences - the whole system could possibly benefit from a national strategy paper on financial and economic crime and the financial aspects of crime that would have a certain 'umbrella' function and could be used as a yardstick to direct the effort in this field while at the same time measuring any progress made.

- The assumption that no dedicated national strategy was in force with regard to financial crime and the financial aspects of crime was confirmed by information that was provided after the visit on the Spanish Security Strategy that had been adopted in June 2011 and that emphasises organised crime as being one of the most serious threats against state security in Spain. The permanent secretary from the Ministry of Interior is entrusted with the strategic implementation, promoting, monitoring, assessment of plans, measures and actions of the strategy.
- It was maintained that following the adoption of the Spanish Security Strategy coordination meetings have taken place in order to further elaborate the Spanish strategy against organised crime 2011-2014, an exercise where all law enforcement agencies have been participating and contributing.
- However, it was not demonstrated that co-ordination mechanisms were in place to ensure the compatibility of individual law enforcement agencies' strategies with the general strategy.
- Different stakeholders have however, strategic guidelines that govern the combating financial and economic crime and taken appropriate action.

As concerns *AEAT*, guidelines exist at the policy level, such as the preliminary plan of the Law on Fighting the Tax Fraud adopted by the Ministries' Council on 13 May 2012, or the Resolution of 24 February 2012 from the General Directorate of the State Tax Agency to adopt the general guidelines of the Annual Plan of Tax Control and Customs for 2012.

- Within the prosecution services the fight against economic and financial crime has been prioritised for many years; this has materialized in creating the Special Anticorruption Prosecution Office with specific competencies in that area. Furthermore, a prosecution office to coordinate economic crime was set up within the General Prosecutor's Office whose functions include coordinating actions of the specialized economic crimes sections from the territorial prosecution offices, with the objective to develop systems of unifying criteria.



### 3 INVESTIGATION AND PROSECUTION

#### 3.1 Information and databases available

##### 3.1.1 Databases and Registers

###### 3.1.1.1 General

The specialised units from the law enforcement agencies (National Police Corps and Civil Guard Force) and the Customs Surveillance Deputy Directorate (*DAVA*) that are conducting investigations into financial and economic crime are using both, the information sources that are common when investigating the majority of crimes as well as specific information sources required to conduct such investigations, the most important of which are explained in more detail in the paragraphs below.

Many of these sources are used on a routine basis during investigations but only those databases that are specifically used to investigate financial and economic crime will in the following be referred to in more detail.

###### 3.1.1.2 Access to bank account information

At the time of the on-site visit Spain had no centralised register of bank accounts.

The creation of a **Financial Ownership Register** (*Registro de Titularidades Financieras*) stipulated in Article 43 of Law 10/2010 that foresees establishing such a registry had been initiated although it was at that moment still pending the regulatory development and the ensuing implementation.

###### 3.1.1.3 Conditions of access to databases and registers at national level

As a general principle all police authorities have access to databases at national level, with the exception of the Central Database of the State Tax Administration Agency (*AEAT*), which is accessible only to *AEAT* units and departments and whose data can only be disclosed to third parties within the terms established by the General Tax Law, and, where not authorized under this law, by a court order.

Access to information kept by the Social Security General Fund (*Tesorería General de la Seguridad Social*), the AEB and CECA requires judicial authorisation.

At the time of the on-site visit the Spanish authorities provided information that they were in the process of setting up the future Financial Ownership Register (*Registro de Titularidades Financieras*) that will be accessible to judicial authorities or members of a prosecutor's office investigating cases related to money laundering or terrorist financing.

The Financial Ownership Register was said to be operational during the period following the visit. This register is set out by Article 43 of Prevention of Money Laundering and Terrorist Financing Law of 28 April 2010<sup>17</sup>. It establishes the obligation for financial institutions to declare the opening

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<sup>17</sup> Law 20/2010, Article 43 stipulates on the Financial Ownership Register:  
“1. In order to forestall and prevent money laundering and terrorist financing, credit institutions shall report to the Executive Service, at intervals determined in the regulations, on the opening or cancellation of current accounts, savings accounts, securities accounts and term deposits.  
The statement shall, in any event, contain the data identifying the holders, representatives or authorised persons, together with all other persons with withdrawal powers, the date of opening or cancellation, the type of account or deposit and the information identifying the reporting credit institution.  
2. The reported data shall be included in a publicly owned register, called a Financial Ownership Register, for which the Secretariat of State for the Economy will be responsible. The Executive Service, as processor, shall, in accordance with Organic Law 15/1999, determine the technical characteristics of the database and approve the appropriate instructions.  
3. When investigating crimes related to money laundering or terrorist financing, the examining judges, the Public Prosecutor's Office and, upon judicial authorisation or that of the Public Prosecutor, the law enforcement agents may obtain information reported to the Financial Ownership Register. The Executive Service may obtain the above data in the exercise of its powers. The State Tax Administration Agency may obtain the above data as laid down in General Tax Law 58/2003 of 17 December.  
Any request for access to the data of the Financial Ownership Register shall be adequately reasoned by the requesting body, which shall be responsible for the correct form of the demand. In no case may access to the Register be demanded for any purpose other than the prevention or suppression of money laundering or terrorist financing.  
4. Without prejudice to the powers that correspond to the Spanish Data Protection Agency, a member of the Public Prosecutor's Office appointed by the General Public Prosecutor in accordance with the procedures set forth in the Organic Statute of the Public Prosecutor's Office, who, in the exercise of this activity, is not carrying out his/her duties in any of the bodies of the Public Prosecutor's Office responsible for prosecuting crimes of money laundering or terrorist financing, shall ensure correct use of the register, for which purpose he/she may request full justification of the reasons for any access.”

or cancellation of accounts, savings accounts, securities accounts and term deposits, at intervals determined by the regulation. The statement shall contain, in any case, the personal information of the owners or authorized representatives, as well as any other person with powers of disposition.

The Ministry of Economy will be responsible for the data in the Financial Ownership Register. This register will be accessible to judges and the prosecution service. By prior authorization from a judicial or prosecuting authority, the law enforcement services can obtain data reported from the Financial Ownership Register whenever the need arises during an investigation into crimes related to money laundering or terrorist activity financing.

Moreover, both the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (*SEPBLAC*), and the State Tax Administration Agency (*AEAT*), will have access to this register while exercising their powers.

Any request for access to data held in the Financial Ownership Register needs to be adequately motivated by the issuing authority, which will be responsible for the rightfulness of the request.

The expert team was informed that despite the legal prerequisites, it was even at the time of the on-site visit possible to obtain a fairly accurate knowledge about any information that will in future be held in this register through various sources, mainly the ability to access tax data held by the *AEAT*. This data is updated every year with the information that banks are obliged to provide under the provisions of Royal Decree 1065/2007 of 27 July, Article 37<sup>18</sup>.

#### *3.1.1.4 Property Register*

The Property Register is a public register, whose main function is to register ownership of an estate in accordance with the private property right for any individual or legal entity.

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<sup>18</sup> Article 37 states the following:  
“1. Credit institutions and other entities that, according to current regulations are dealing with traffic banking or credit, will be obliged to file annual information relating to all accounts held by such entities or made available by them to third party establishments within or outside the Spanish territory.”  
In the case of accounts opened in establishments situated outside Spanish territory no obligation exists to provide information on non-residents or entities without a permanent establishment on Spanish territory.

Investigating units can access the information held by the Register either directly via a webpage<sup>19</sup>, or in an indirect way by means of a request to the Property Register to get the registration background of the estate in question.

The public prosecutor's office and the judiciary have no direct access to the Property Register but only via the aforementioned request.

The Spanish investigative authorities considered the information available from the Property Register being very important for their work as it can reveal the following information:

- The number of properties attributed to a legal owner,
- The local registry office into whose jurisdiction the property falls,
- A thorough description of the estate,
- The full identity data of the owner or owners,
- The financing circumstances relating to the different acquisitions and sales of which the estate may have been the object,
- A chronological list of all previous owners of the estate

The records also hold information on all charges and encumbrances on the estate with all the data related to them, such as possible mortgages and their value, payments in kind, any embargo processes which may affect the estate, and any prohibition pronounced by a court to dispose of it in the course of a civil, penal or any other proceedings. Finally, detailed data about the public deeds used to carry out the different alienations as well as a series of diverse additional data according to any incidental events that would have affected the referred estate can be obtained.

Likewise there is also an indices' record, from which further information about the properties owned by an individual or a legal entity can be obtained throughout the country, indicating in which specific property office that ownership is recorded.

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<sup>19</sup> <http://www.registradores.org/>

Incomplete information on real estate agents

With regard to property the following aspect deserves particular attention when trying to obtain information from *SEPBLAC*: developers and anyone carrying out professional activities as a real estate agent, sales commission or middle man in the sale of real estate is considered as obligated individual or entity according to Law 10/2010, Article 2.1 (l) The *SEPBLAC* has a database of obligated individuals and entities having appointed a representative (Law 10/2010, Article 26.2). If a natural person carries out such activity however, the appointment of a representative is not compulsory<sup>20</sup>. Therefore, this database does not comprise all real estate companies in Spain.

3.1.1.5 *Land Registry (Cadastral Office)*

The General Cadastral Register (*Registro General del Catastro*) classifies real estate into two categories: rural and urban estates.

The access to this database by the investigating law enforcement units, the prosecutor's office or the judiciary is carried out directly by means of accessing the Virtual Cadastre (*Oficina Virtual del Catastro*) webpage.

More specifically, the register contains the following information on real estate:

- All real estate of a legal owner, including their detailed description;
- Cadastral reference number;
- Size;
- In case of fractional ownership: the share of the individual owners;

In case where the address or the estate's cadastral reference number is known, the following information can be obtained directly:

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<sup>20</sup> *SEPBLAC* has informed after the on-site visit that according to Art. 26.2 of Law 10/2010 states the representative of any obliged natural person or entrepreneur (not applicable to legal persons) is the holder of the activity. As a consequence, this representative does not need to be formally appointed, but exists and has to comply with the AML regulation which includes, among others, providing the FIU with the information it might require., *SEPBLAC* has already some years ago published on its website the "Representative appointment form (F22)" for all the obliged legal and natural persons and, as of December 31, 2011, 4 485 representatives of the real estate sector had been appointed.

- Names of all those individuals who have cadastral titles with respect to a particular estate (if e.g. the information given relates to an apartment block instead of only a single apartment).
- By introducing an individual's two surnames and the tax identification number (*NIF*) or VAT identification number (*CIF*), the register will provide the precise position of an apartment in a block. Thus it is even possible to obtain the personal data of the neighbours of the individual under investigation.

### 3.1.1.6 Commercial Register

The Commercial Register (*Registro Mercantil*) holds all records on public limited corporations and limited companies that have set up business in Spain.

Investigating units can access this database either directly via the webpage of the Registry Office or indirectly by means of a request to the Registry Office to obtain the historical registration of the company and the data related to it. The latter form of access is used by the prosecutor's office and the judiciary.

The information obtained from the Commercial Register can be very comprehensive since it contains all data relating to a company from its establishment to its liquidation, as well as the deposit of closing balance and the company's foundation articles.

Among the most important information that the Commercial Register can unveil to the investigating units is the identity of individuals or legal entities who have established a company, the real owners as well as the names of the persons managing the company.

It has to be added that in addition to accessing their national register Spanish investigative authorities are using online access to different commercial registers of other countries in cases where this is possible for public consultation.

### 3.1.1.7 *Movables Property Register*

The Movables Property Register (*Registro de Bienes Muebles*) is a public register, where properties of an individual or a legal entity are recorded.

This database can be accessed directly by means of a request to the Register to obtain the historical registration relating to properties. The public prosecutor's office and the judicial authorities have access to the Register in an indirect way by the respective request.

It is noteworthy that this register also comprises the national Spanish register of aircraft and maritime vessels.

### 3.1.1.8 *General Council of the Notaries*

The General Council of the Notaries (*Consejo General del Notariado*) will only unveil information it holds in its databases in cases of an investigation into money laundering or terrorism financing. Access to this database is provided online. The public prosecutor's office and the judiciary have direct access to the register as well as the National Police and *Guardia Civil*.

The information needed for an investigation is obtained basically from the data supplied by the so-called 'Only One Index', a digital database holding information on all transactions made in the presence of a public notary in Spain. This database contains all public instruments since 1<sup>st</sup> January 2004 as well as data related to around 230 types of businesses or legal acts. The public notaries' offices update the register monthly and transmit the data online to the Council of the Notaries.

If the description of a legal instrument in the 'Only One Index' appears to be bearing relevance for an investigation and the authorities deem it necessary to obtain access, they will direct their request to the Council of Notaries. The Council will then forward the request to the public notary who is under an obligation to produce it.

The Spanish authorities have emphasised in their answers to the questionnaire that the quality of the information thus obtained was sometimes decisive for the success of an investigation.

### 3.1.1.9 Private Commercial databases

A number of private commercial databases to which the Spanish authorities have subscribed to are being used, e.g. AXESOR and INFORMA. Both of them provide information that supplement the data that are held in the commercial register. The provider DUN & BRADSTREET is used for obtaining data on foreign companies, allowing investigative authorities to access business data related to any company in the world. The access to such databases is online.

The general prosecutor's office and the judiciary have no direct access to these databases. They can however, obtain the information by requesting the investigating units to access the databases for them.

According to the information received, the commercial database AXESOR is the one most intensively used for investigations.

With respect to companies figuring in AXESOR, the register contains a wide range of financial and commercial data related to them. It contains e.g. information on possible legal titles against a company and occasionally the amount of debts as well as the name of the company's creditor can be derived from the database.

Another interesting feature allows automatically linking a company that is the object of a request with any other company with whom it has any relationship, giving as a consequence of it all available information about the latter.

### 3.1.1.10 AEAT Centralized Database

The staff assigned to the Tax Agency (*AEAT*) has direct access to the information contained in the *AEAT* centralized database. Investigators require a judicial authorization or in this case, a request made by the general prosecutor's office to obtain access to this source of information. *DAVA* has direct access to the information contained in the *AEAT* centralized database, as they are a part of *AEAT* no judicial authorisation or request for access is required. Each court (*sedes judiciales*) has a terminal which is linked to the *AEAT* central database and that is at the disposal of the public prosecutor. Moreover, the Anti-Corruption Prosecutor's Office has a unit assigned to the *AEAT* whose mission is the consultation of the data that figure in the centralized *BDC* database.



The centralized database of the *AEAT* contains substantial information on the financial and business activity of an individual or a legal entity. When accessed in the course of an investigation it can reveal *inter alia* a multitude of detailed information on the business relationship with a given bank. On bank accounts the information that the *AEAT* can provide includes the fiscal data about persons and legal entities transmitted from the banks to the *AEAT*. This data comprises comprehensive information on the financial and business relationship that an individual or a legal person may have with a certain bank, both as a customer and a shareholder. The downside of this data is that it always refers to the previous financial year and therefore the information will always suffer from a time lag at the time of a request that amount to 364 days in the worst case.

#### *3.1.1.11 The SEPBLAC database*

Law enforcement and judicial authorities can indirectly obtain information held in the *SEPBLAC* database (suspect communications, systematic reporting and capital movements). Although *SEPBLAC* will inform these bodies when it considers that the evidence suffices to initiate an investigation, this information will at all times be dealt with as financial intelligence and not as a formal report.

*SEPBLAC*'s own sources of information the contents of which is accessible to investigation units are explained in the following sub-chapters.

##### *3.1.1.11.1 Suspect operations*

Parties subject to the general regime of the prevention of money laundering and terrorist financing are obliged to cooperate with the *SEPBLAC* and therefore have to immediately report any suspicion or certainty of money laundering.

This obligation comprises also operations that are abnormal with regard to either the customer's nature or volume of activity or the history of operations, unless it can be established that a financial, professional or business-related justification for those operations exists.

#### 3.1.1.11.2 Monthly declaration of operations

The SEPBLAC periodically receives information on a number of operations from the obliged entities, namely the following:

- Any operations involving the physical movement of coins, banknotes, travellers' cheques, cheques, or any other bearer instrument issued by financial institutions – with the exception of those which are credited or debited to a customer's account – in an amount exceeding 30 000 euro or its equivalent in a foreign currency. Natural or legal persons engaged in currency exchange or the despatch of money transfers, whether it is their main profession or not, shall notify the Executive Service, in operations related to the above mentioned activities, of those involving the physical movement of coins, banknotes, travellers' cheques or payable-to-bearer cheques in an amount exceeding 3 000 euro or its equivalent in a foreign currency.
- Any operations with or by a natural or legal person residing in the countries or territories designated to this end in an Order of the *Ministerio de Economía y Hacienda*, or acting on their behalf, in addition to operations involving transfer of funds to or from such countries or territories, irrespective of where the residence of the persons involved may be, whenever the aforementioned operations exceed the amount of 30 000 euro or its equivalent in a foreign currency.
- Any other operations that may be included in the implementation rules of the Regulation at the proposal of the Commission for the Prevention of Money Laundering and Monetary Offences.

#### 3.1.1.11.3 Capital Movements

Order EHA/1439/2006 of 3 May 2006<sup>21</sup>, regulating the declaration of monetary instruments movements for the purpose of capital laundering prevention, provides that any natural persons or legal persons subject to private law who, acting in their own name or on behalf of a third party, carry out certain movements of monetary instruments, are obliged to declare them to be transported by filing the so-called Form S-1 in advance.

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<sup>21</sup> With this Order Spain has implemented Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community (OJ L 309, 25.11.2005, pp. 9-12).

Upon entering or leaving the Spanish territory, the carrier of monetary instruments in excess of 10 000 euro per person and trip is obliged to declare the movement of such instruments beforehand under the provisions of the abovementioned order.

Likewise, in the case of carrying means of payment within the national territory amounting in excess of 100 000 euro, the carrier must declare them in advance.

The monthly declaration of operations (DMO) provides the following information concerning capital movements:

- Entrances into Spain of cash or other assimilated means of payment for an amount of 10 000 € or more.
- Exits from Spain of cash or other assimilated means of payment for an amount of 10 000 € or more.
- Movements within Spain of cash or other assimilated means of payment for an amount of 100.000 € or more.
- Deposits / withdrawals in credit institutions of cash or other assimilated means of payments equal to an amount of 100 000 € or more, specifying whether the form S1 has been filled out or not.

### *3.1.1.12 The Bank of Spain Database*

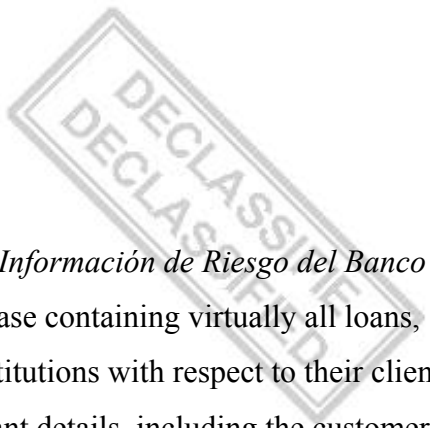
Judicial authorities have direct access to the Bank of Spain Database (consisting of Balance of Payments and the Central Credit Register (*CIRBE*)) by requesting the Bank of Spain, whereas in the framework of the cooperation between *SEPBLAC* and the investigative units, financial intelligence reports might include information from the Balance of Payments and/or the Central Credit Register

#### *3.1.1.12.1 Balance of Payments Register*

The Balance of Payments Register is a database of all payments made between resident and non-resident persons exceeding 12 500 euro (before 2001, payments exceeding 3 000 euro). Details to be provided and that can be retrieved from the database are:

- Name of the person executing the operation (resident in Spain)
- Originating financial institution

- Date
- Amount (in euro and in the original currency)
- Type of movement: Receipts and Disbursements; Business or Services-related transactions
- Correspondent country
- Currency
- Type of Item or service underlying the transaction.



#### 3.1.1.12.2 Central Credit Register of the Bank of Spain

The Central Credit Register of the Bank of Spain (*Central de Información de Riesgo del Banco de España - CIRBE*) is a public service, which maintains a database containing virtually all loans, credits, guarantees/securities and overall risks of financial institutions with respect to their clients. For each risk, the reporting institutions submit the most relevant details, including the customer's identity. For example the name and tax identification number of the debtor in a mortgage loan are registered in the *CIR* in addition to the amount of his/her debt at the end of each month.

#### 3.1.1.13 The Spanish Banking Association (AEB) and the Spanish Confederation of Savings Banks (CECA).

Access to information held by the Spanish Banking Association (*Asociación Española de Banca - AEB*) and the Spanish Confederation of Savings Banks (*Confederación Española de Cajas de Ahorro - CECA*) is always carried out under a court order or at the request of the prosecution authorities. The purpose of such a request would be to discover in real time the financial institutions and savings banks where the suspects have any financial products.

#### 3.1.1.14 National Organisation of Lottery and Gambling

All investigating authorities can indirectly access the database held by the National Organisation of Lottery and Gambling (*Loterías y Apuestas del Estado*). It registers any information regarding tickets that have won in lottery draws incumbent on the organisation, including the persons who have cashed in the prizes.

### 3.1.1.15 Social Security General Fund

Access to data held by the Social Security General Fund (*Tesorería General de la Seguridad Social*) is always carried out under a court order or at the request of the prosecution authorities. It contains *inter alia* information on the employment record of natural persons. As regards legal persons, it serves to identify their employees.

## 3.2 Cooperation at national level

### 3.2.1 Identification of bank accounts

With regard to

- (a) the identification of an unknown bank account belonging to a specified person
- (b) the identification of the unknown owner of a specified bank account
- (c) the identification of operations from and to a specified bank account in a specified period in the past,
- (d) the monitoring of operations to and from a specified bank account in the future,

all four measures are available during an investigation under several legal bases and require in any event the cooperation of financial entities or the State Agency on Tax System Administration (*AEAT*).

#### 3.2.1.1 Legal Framework

The access to information with regard to the identification of bank accounts referred to under (a) to (d) in chapter 3.2.1 can only be granted by a court or prosecutor order. Such a request is normally forwarded by an interested party or actor involved during the investigation phase, i.e. generally by the police units, a prosecutor or a judge. Apart from basic principles of the Spanish legal system there are specialised legal provisions forming the legal framework for the release of such information that are applicable depending on the particular constellation of the case; they are namely the following:

– Article 118 of the Spanish Constitution<sup>22</sup>

– Article 17 of Organic Law 6/1985 of the Judicial Power of 1 July 1985

1. All individuals and public or private entities are legally obligated to comply with a request to assist a judge or a court in the course of a trial and for the execution of judgments, with the exceptions provided for in the Constitution and laws and without prejudice to the compensation of the expenses and remunerations that can be claimed in compliance with the law.

2. Public administrations, authorities and government employees, associations, and public and private entities, and individuals, shall observe the sentences and, where applicable, shall comply with them and with other final resolutions of judges and courts or other enforceable judgments by law.

– Article 262 of the Code of Criminal Procedure.

Should persons be aware, for professional or job reasons, of any public offence, they are bound to immediately report the facts to the General Prosecutor's Office or to the competent Court or to the examining magistrate and, in case of a crime being committed in the act, to the nearest municipal police agent or national police officer.

Failure to comply with the requirement to report is subject to a disciplinary sanction, as provided for in Article 259.

In case of medical doctors, surgeons or chemists failing to comply with this duty in the exercise of their professional activities, the fine would be more than 250 pesetas and not less than 125 pesetas<sup>23</sup>.

In case of government employees, the facts will be reported to their immediate superior for administrative purposes.

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<sup>22</sup> Article 118 of the Spanish Constitution of 1978 stipulates:  
“1. It is compulsory to execute the sentences and other final judgements of Judges and Courts, as well as to collaborate with them as they may require during the course of trials and execution of judgments.”

<sup>23</sup> Art. 262 of the Spanish Code of Criminal Procedure has retained the currency denomination in pesetas; cf.: *Enjuiciamiento Criminal, Ministerio de Justicia, Agencia Estatal Boletín Oficial del Estado*, 2<sup>nd</sup> ed. Madrid, 2011, p. 75.

The provisions of this Article refer to the failure when it does not cause any liability according to the law.

- Art. 95.1.a) of the General Tax Law 58/2003 of 17 December 2003.

According to Article 95.1 of the General Tax Law information data, reports or criminal records that the tax administration may obtain in the performance of its duty, will not be disclosed to a third party and solely be used for the specific tax purposes and for the imposing sanctions as may be entrusted with, unless the disclosure is aimed to the following:

a) To cooperate with courts and the General Prosecutor's Office, in the investigation and prosecution of crimes that are not only prosecutable at the request of the offended person.

- The Organic Law on the Repression of Smuggling 12/1995, of 12th December in its Article 10 (2) of provides for the assessment of goods:

For the assessment of the goods, merchandise, substances or items under Article 2(2)(e-f) of Law 12/1995 and likewise assessment of illicit goods, the judge shall call upon all competent services, consulting services and reports deemed necessary

- Law 50/1981 of 30 December regulating the organic statute of the General Prosecutor's Office.

Article 5 (2) para. 1 of Law 50/1981 stipulates that the General Prosecutor's Office will carry out or conduct any proceedings entrusted by the Code of Criminal Procedure, in order to clear up the reported facts or facts stated in police proceedings. No precautionary measures or human rights restrictions can be presumed from the proceedings carried out. Nevertheless, the public prosecutor may order a preventive detention.

- Any public prosecutor is authorised to access bank information data. When he requires to do so this is not considered to be an infringement of citizen's rights (as opposed to e.g. the interception of communications, inputs and registering).

- Organic Law 15/1999 of 13 December on Data Protection of Personal Data

Article 11 (2) (d) of Law 15/1999 stipulates the following:

“1. Personal data subjected to processing may be communicated to third persons only for purposes directly related to the legitimate functions of the transferor and transferee with prior consent of the data subject

2. The consent required under the previous paragraph shall not be required:

d) When the communication to be effected is destined for the Ombudsman, the Office of Public Prosecutor, judges, courts or the court of auditors in the exercise of the functions assigned to them. Not shall consent be required when the communication is destined to regional government authorities with functions analogous to the Ombudsman or the court of Auditors.”

#### 3.2.1.2 *Types of crimes covered*

All the measures referred to under (a)-(d) in chapter 3.2.1 may be applied for any offence and their implementation is regarded crucial by the Spanish authorities in the context of financial crime.

#### 3.2.1.3 *Duration of a measure regarding a bank account*

In cases (a), (b) and (c) the measure would be applied occasionally, but in case of (d), even though this is not frequent, an update of data might be requested during a brief period of time, i.e. six months, always given the previous judicial consent.

#### 3.2.1.4 *Other conditions necessary to obtain the measure*

No specific and relevant conditions are necessary other than those generally required when rights are restricted by a legal measure and that are governed by the following basic legal principles:

- Suitability: the measure should be adequate to achieve the stated objectives.
- Necessity: Goods and interests should deserve, need and require protection, to be considered appropriate to apply a penal protection measure.
- Proportionality: The measure should be adequate to the gravity of the offence and dangerousness of the perpetrator.

#### 3.2.1.5 *Competent authorities*

Usually, law enforcement agencies are the relevant authorities requesting to conduct such measures; this request subsequently requires the authorisation from a public prosecutor or a judge.

It is also possible that the public prosecutor or a judge decide to have such a measure conducted *motu proprio*, they would then request the appropriate law enforcement agency to start the process.



3.2.1.6 *Information of persons affected by the measure*

Persons affected by such measures are informed after they have been applied, i.e. at the stage of the indictment in the event they are finally accused in the criminal procedure. With the indictment a defendant is presented with the reasons for which charges have been pressed against him and is also informed about his or her rights (i.e. right for a defence lawyer, to remain silent and to plead not guilty).

3.2.1.7 *Secrecy obligations or privileges impeding or affecting the measure*

In Spain neither banking secrecy nor the professional secrecy of a lawyer constitute an obstacle to obtaining information on bank accounts, although banks always require a maximum of specific details in the injunctions authorising these kind of measures.

3.2.1.8 *Practical enforcement of the measures*

In Spain there is no standard protocol or procedure for enforcing the measures under (a)-(d) referred to in chapter 3.2.1. The Spanish authorities however, have summarized their enforcement methodology as follows:

(i) For locating financial products:

The investigative authorities will obtain a judicial order which is then usually dealt with by the legal or compliance department of the financial institution that is addressed;

In such a case the assistance of the Spanish Banking Association (*AEB*) and the Spanish Confederation of Savings Banks (*CECA*) can be sought if the investigation requires to do so (if e.g. the entities with whom the individuals under investigation have deposited their financial products are unknown). These associations are responsible for disseminating the injunction to all partners.

According to Article 25 of Law 10/2010, obligated parties are required to retain certain documentation for a minimum period of 10 years; furthermore, Article 21.2 of Law 10/2010 stipulates that this information be provided “*in a thorough and diligent way*”.

Alternatively the centralized database (*BDC*) of the Tax Administration Agency (*AEAT*) can be used.

(ii) For requesting movements of current accounts that have been located:

The investigative authorities will obtain a judicial or prosecutor order, addressed to the legal or compliance department of the financial institution in order to obtain the following documentation:

- Application of existing movements falling into the period in question. All evidence must be provided in paper and electronic MS<sup>®</sup>-Excel format or the so-called STANDARD 43,
- Photocopies of signature cards, opening contracts, identity documents and identification of the codes enclosed in each of the notes,
- Identification of the account holder, account of source and/or destination in the case of transfers of any kind,
- Credit or debit cards attached to the account and access to electronic banking,
- Request for personal or mortgage loans that have been refused,
- Information on deposit boxes and access to them;

*3.2.1.9 Transmission of information in cases of monitoring*

In cases of monitoring operations to and from a specified bank account in the future (cf. point (d) in chapter 3.2.1), the internal services of the bank are required to collect the information (either from the bank branch where the account is held or if the information is retrievable from the bank's database, from their own headquarters, which via the legal or compliance department would forward the information to the requesting law enforcement authorities). This process would be repeated in case any further information is needed during a particular operation.

### 3.3 Cooperation at European level

#### 3.3.1 Legal Framework

Spain has ratified the 2001 Protocol to the Convention on Mutual Legal Assistance between Member States of the EU<sup>24</sup> in 2005. The Spanish authorities have informed that it has not been necessary to introduce new measures specifically aimed at transposing the Protocol or the Convention, since at the time of its ratification they already were able to implement all the measures provided for therein.

The Spanish authorities have confirmed that information referred to under (a) to (c) in chapter 3.2.1 could be provided to law enforcement authorities of another EU Member State, but, as it occurs in the domestic sphere, it would necessitate the issuing of a search warrant to access such data.

Spain has implemented the Framework Decision 2006/960/JHA<sup>25</sup> by Law 31/2010 of 27 July on simplifying exchange of information and intelligence between the security services of Member States of the European Union. Article 9(2)(3) of said Law clearly indicates what the conditions under which the exchange of information can be effected are:

*“3. It will be ensured that the provision of information and intelligence to the relevant security authorities of other Member States is not subject to stricter conditions than those applicable at national level for the supply and application of information and intelligence. In particular, it is not conditional the provision of information or intelligence to obtain judicial authorization, if the competent Spanish security services could access it without a warrant, in case it had been an internal procedure.*”

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<sup>24</sup> Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union; OJ C 326, 21.11.2001, pp. 1-8.

<sup>25</sup> Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union; OJ L 386, 29.12.2006, pp. 89-100.

4. Where in accordance with the provisions of our legislation, the access to information requested only could be possible under judicial authorization, the competent Spanish security services must apply for prior judicial authorization to the competent court for access and delivery of requested information. In its ruling, the court will apply the same criteria as if it were an exclusively internal affair, without prejudice to the first and second paragraphs of Article 11.”

In the customs field information can be exchanged based on the Mutual Administrative Assistance Treaty (Naples II Convention). The exchange of bank information obtained under the tax and customs procedures is restricted to the instruments of international cooperation and mutual assistance in tax or customs matters.

### 3.3.2 Information requests via the ARO

Requests to the Spanish asset recover office are received through the *CICO*, who forward them to the National Police Force (*OLA*) or the Civil Guard (*UTPJ*) by applying the following determining criteria:

1. If a preliminary investigation on the same case exists that has been initiated by either the National Police Force (*CNP*) or the Civil Guard (*GC*);
2. In absence of such a previous investigation on the same case it will be assigned to the competent body in the territorial jurisdiction where the assets have been located or the person under investigation resides;
3. In case that such a previous investigation exists but neither the territory in which the assets are located can be established *a priori* nor the person investigated is residing, the *CICO* will assign the case alternatively to the *OLA* or the *UTPJ*.

Investigators from the *OLA* or *UTPJ* carry out the police investigation into assets and individuals. Once the investigation is completed, the investigators will report their results to the *CICO* from where it will be forwarded to the requesting ARO.

The Spanish authorities wished to emphasise however, that information requests occur which are not channelled via the ARO, but directly via the police service conducting the investigations (e.g. via liaison officers, bilaterally, Interpol, Europol, SIS etc.).

### 3.3.3 Competent authorities

#### 3.3.3.1 *Acting as issuing State*

Regarding the measures referred to under (a) to (d) in chapter 3.2.1 the Spanish judiciary and the prosecution services requesting the information are, in conformity with the 2000 Convention, directly communicating with the judicial authorities of the receiving state.

#### 3.3.3.2 *Acting as receiving State*

When receiving a request from another State, the general rule is the direct communication between judicial authorities (including prosecutors). Nevertheless some requests continue to arrive through the Central Authority this is something that Spain as an executing State cannot control.

Under Spanish law, only the judicial authorities (judges, courts and prosecutors) can issue or receive applications. It is however, possible that the police may appeal to the judicial authorities to issue letters rogatory (substantiated by tangible evidence and reasons to justify such act), although it rests with the relevant prosecutor or judiciary to take the final decision regarding the steps to be taken.

### 3.3.4 Problems encountered

The Spanish authorities have indicated that they had encountered problems in this process although they were in a position to reflect upon the experience of some national stakeholders only. The main problems that were highlighted had been the following:

- Delay in time management and answering the letters rogatory on the part of the requested state;
- Lacking spirit of cooperation from single foreign judicial authorities that, even when their country had ratified the 2001 Protocol, have denied access to the requested bank information for reasons of bank secrecy so that it was necessary to appeal to a second court of the country in question in order to obtain the requested banking information.

### **3.4 Financial investigations and use of financial intelligence**

#### **3.4.1 Legal framework**

The Spanish authorities have maintained that financial investigations (i.e. investigations into the financial and economical aspects of a particular crime) that are carried out within the framework of criminal investigations have no specific legal framework beyond the one that is applied for 'normal' criminal investigations. However, in terms of money laundering and terrorist financing, Law 10/2010 has led to the establishment of *SEPBLAC* as Spanish Financial Intelligence Unit (FIU) as well as to a comprehensive organizational framework for preventing the use of the financial system and other subjects obliged in money laundering.

From the perspective of international law it is noteworthy that Spain has ratified the 2005 Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism (the "Warsaw" Convention)<sup>26</sup> on 26 March 2009 and that it has entered into force on 1 July 2010.

#### **3.4.2 Special legal powers and tools for investigating the financial aspects of criminal activities**

Although the Spanish authorities did not specify any special legal powers and tools for investigating the financial aspects of crime within their legal system, they emphasised that their legal framework for the investigation of money laundering was fairly advanced and that it compared favourably to the most advanced legislation of other countries. Furthermore, it was their understanding that financial investigations constituted one of the most effective tools when investigating this type of crime.

#### **3.4.3 Use and effectiveness of financial investigations in specific crimes**

It was explained however, that the policy of criminal investigations in Spain was such that the investigation into the assets commences and is run in parallel with the one into the primary offence and that the financial part of the investigation is considered being an integral part of the whole investigation.

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<sup>26</sup> CETS 198

Practical experience in Spain has shown financial investigations to be mostly related to crimes of economic nature (e.g. fraud, deceptions, tax fraud etc.).

The Spanish authorities have emphasised in their answers to the questionnaire that with relation to other investigations (not only related to economic crimes) into the financial aspects of crime, those conducted into human trafficking cases have shown the most remarkable effectiveness.

Furthermore, offences relating to the financing of terrorism as well as those related to intellectual property were mentioned as bringing a certain level of success.

Moreover it was mentioned that in other crimes, such as those related to child pornography, obtaining an economic benefit constituted an important aggravating factor and therefore financial investigations have shown to be very relevant.

#### **3.4.4 Continuation of an investigation into the financial aspects of crime after closure of a case**

Once a case has been closed, the financial aspects can still be continued with measures aimed at locating the assets without however, applying coercive measures.

Given that the legal constellation would allow doing so, a new criminal investigation into money laundering could be opened with the preceding offence for which a sentence has been passed as predicate offence. All necessary measures would then again be available for these new criminal proceedings. Owing to its different methodology and time duration this element of Spanish criminal law is considered a powerful tool that has reportedly been used with some success after investigations into drug trafficking.

#### **3.4.5 Involvement of private experts during investigations**

In principle private sector experts may participate within the framework of criminal proceedings; they may e.g. act as expert witnesses, as foreseen in the Spanish Code of Criminal Procedure (Articles 456 *et seq.*) However, although such participation is possible, it is usually preferred to appoint public sector professionals, who are supposed to act with greater impartiality.

### 3.4.6 Financial intelligence

#### 3.4.6.1 *Financial investigations in the intelligence phase*

The Spanish authorities affirmed that they were conducting financial investigations in the intelligence phase prior to opening an investigation as part of plans to prevent tax fraud and the growth of the underground economy.

While there is presently no specific legal framework, Law 10/2010 provides that within the scope of the prevention of money laundering and terrorist financing, the FIU intelligence will serve as the basis of financial investigations<sup>27</sup>.

#### 3.4.6.2 *Financial intelligence information as a starter for criminal and financial investigations*

Financial intelligence information is usually considered a very common way to trigger off a criminal investigation.

All information emanating from the FIU is considered as criminal intelligence and is therefore used by investigators. The information from the FIU can be the source of an investigation, but it may also be the case that once an investigation is initiated information may be requested from the FIU.

#### 3.4.6.3 *Cooperation with and collection of financial intelligence from other authorities in the intelligence phase*

All stakeholders dealing with financial and economic crime (i.e. law enforcement authorities, FIU, prosecutors, judges, etc.) are in constant contact and there is an active information exchange, the benefit of which is mirrored by the results achieved. Sometimes however, other authorities are consulted as well in order to obtain additional information such as social security authorities and others.

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<sup>27</sup> Articles 36 and 37.



### 3.5 Cooperation with Europol and Eurojust

#### 3.5.1 Cooperation with Europol

##### 3.5.1.1 Experience to date

Support available through Europol is in general regarded as efficient, necessary and facilitating the work of the Spanish police services.

Regarding their cooperation with Europol, the Spanish authorities reported that one of the more recent operations was carried out by the National Police in cooperation with the SCDEA (Scottish Crime and Drug Enforcement Agency) in the framework of an investigation known as SNAPPER. This operation highlighted just as how important the cooperation with Europol via the Spanish Europol National Unit (ENU) was considered, particularly the bilateral and direct exchange of information to eliminate ambiguities that may occur during the course of an investigation that sometimes require immediate clarification.

Europol's Analytical Working Files (AWF) are regarded as key elements of cooperation and AWF SUSTRANS is used in the context of conducting financial crime investigations.

It was also noteworthy that the evaluation team was informed about Spanish law enforcement authorities setting-up a joint investigation team (JIT) with the help of Europol during the time of the on-site visit.

##### 3.5.1.2 Expectations regarding Europol support

In answering the questionnaire the Spanish authorities had listed a number of expectations regarding the support that the European Police Office could lend to financial investigations in general and in countering financial crime in Spain in particular, namely the following actions:

- Promoting the employment of the Europol Criminal Assets Bureau (ECAB), the platform that helps the investigators of financial crimes in the Member States to track proceeds from criminal activities, when these assets have been shifted outside the investigators' jurisdictions within the EU;
- Promoting the use of SIENA - the Europol secure Exchange of Information application - by the AROs (Spain participates in SIENA, the *CICO* having been designated national contact point);

- Assessing the possibilities of Europol to provide assistance to Member States in their fight against both, ‘traditional’ money laundering and new forms of crime committed via the Internet (as referred to in the OCTA 2011) with a particular view to the following:
  - = Development of specialized training programs in cooperation with CEPOL,
  - = Development of a specific money laundering expert’s platform,
  - = Development of a specific programme for financial support to operations against money laundering,
- Promoting the use of the Europol Analysis Work File SUSTRANS on suspicious transactions as the central point for sharing and analysing criminal intelligence linked to money laundering,
- Designating Europol as the central bureau at EU level for fighting money laundering, in line with the approach to fight counterfeiting of the euro,
- Coordinating and encouraging investigations as well as collecting and analysing intelligence concerning such investigations;

### **3.5.2 Cooperation with Eurojust**

#### *3.5.2.1 Experience to date*

Although it was stated by the Spanish authorities that their experience with Eurojust was based on fewer cases than with Europol the cooperation has nevertheless proven to be very fruitful. It was felt that Eurojust’s specific powers had added value in coordinating with units from other Member States during fraud investigations.

#### *3.5.2.2 Expectations regarding Eurojust support*

In answering the questionnaire the Spanish authorities had listed a number of expectations regarding the support that Eurojust could lend to financial investigations in general and in countering financial crime in Spain in particular, namely the following actions:

- Facilitating communication between judges and public prosecutors from different Member States, fostering their mutual trust and flexibility in their taking of decisions,
- Coordinating with entities from other Member States in judicial investigations of fraud,
- Facilitating contacts amongst the European judicial authorities in general;

### 3.6 Conclusions

- The Spanish law enforcement and judicial authorities investigating cases of financial and economic crime can either directly or indirectly access a large number of databases allowing them to acquire the data that is necessary to conduct their work and establish the relations that an individual or a legal person might have with regard to assets that either are or can become relevant during an investigation as objects of freezing or confiscation.
- However, when specifically looking at the accessibility of bank account data the situation is somewhat unsatisfactory: although it was conceded during the on-site visit that the Spanish prosecution services can access data on bank accounts without a judicial order, the overall situation to obtain bank account information appeared to be not particularly orientated to the needs of the law enforcement services.
- At the time of the visit Spain did not have a central register of bank accounts that would allow the investigative services to easily and swiftly establish the owner of a certain bank account or identify the bank accounts that an individual might have.
- The expert team noted with interest that the Law 10/2010 foresees a centralised register where financial institutions will in future be obliged to transmit information on bank accounts in the widest sense into a centralised data base, the so-called Financial Ownership Register. However, this new database was said to be only accessible for investigating cases related to money laundering and terrorist financing this being a weakness of the otherwise laudable initiative. Law enforcement authorities would still need prior authorization from a judicial or prosecution authority to access this data. The expert team was therefore not convinced whether this innovation whose regulatory and technical implementation was still pending at the time of the on-site visit would bring about the desired impact for the whole range of economic and financial crime. The experts saw it therefore fit to recommend considering to extend the reasons for access to the data contained in the Financial Ownership Register to economic and financial crime delinquency beyond money laundering and terrorist financing. Moreover, they would see benefits to consider granting the law enforcement authorities access to the register, that would allow them to speedily conduct the initial stages of an investigation, e.g. on the basis of a hit/no hit system. The experts would therefore encourage the Spanish authorities to reflect on granting such access that would certainly be more in line with the realities of practices in the financial sector where assets can be transferred within very short periods across the boundaries of jurisdictions.

- The expert team was informed that even at the time of the on-site visit it was already possible for the Spanish investigative authorities to obtain a fairly accurate knowledge about any information that will in future be stored in the Financial Ownership Register, particularly via the centralized database of the tax administration (*AEAT*). However, it was also conceded in this respect that data from the *AEAT* centralized database was only updated once a year with the information that banks were obliged to provide under the current legal regime. Very cautiously concluded such time lag with regard to financial and economic crime would again render certain information obsolete for an active investigation and therefore the expert team would strongly encourage the Spanish authorities to swiftly proceed with the implementation of the Financial Ownership Register.
- As concerns financial intelligence information as a starter for criminal and financial investigations the expert team were left with the impression that the focus rested very much on the FIU. It was not demonstrated whether other forms of financial intelligence that could e.g. emanate from police and customs investigations and their subsequent analysis were producing financial intelligence that would lead to further investigative action by the appropriate services. As this aspect was neither presented in the answers to the questionnaire nor during the on-site visit the impression was that law enforcement services acted rather on a responsive basis and communication was perceived as a one-way-street, down from the FIU.

## 4 FREEZING AND CONFISCATION

### 4.1 Freezing

#### 4.1.1 At national level

##### 4.1.1.1 *Legal basis*

The legal basis for freezing is established in Articles 589 to 614 of Title IX of the Code of Criminal Procedure for bail and seizure. Under the Spanish legal system both bail and seizure can be reduced or increased in relation to the defendant's increasing or decreasing pecuniary responsibilities (cf. Code of Criminal Procedure, Articles 611 and 612).

##### 4.1.1.2 *Types of crime for which the measure can be obtained*

Freezing orders can be applied to any kind of criminal offence whenever criminal indications against an individual arise from the investigations and if resulting pecuniary responsibilities have to be met.

##### 4.1.1.3 *Duration of the measure*

The effect of freezing orders may last until the court has passed a judgement and decided whether assets will finally be confiscated or have to be released..

##### 4.1.1.4 *Other conditions necessary to obtain the measure*

There are no other relevant applicable circumstances to obtain a freezing order, except for those applicable to all precautionary measures (*fumus boni iuris y periculum in mora*).

##### 4.1.1.5 *Competent authority*

In Spain, the relevant judicial authority that is entitled to issue a freezing order can be either any judge or court, or any public prosecutor during a pre-trial investigation that requires to issue an evidence protection order, as long as the act of freezing does not interfere with fundamental rights.

As for the execution of freezing orders and evidence protection orders issued by a requesting Member State, it is the investigating magistrates (with territorial competence over the area where the assets subject to seizure are located or where the evidence must be secured) who are empowered to perform such duty, as are public prosecutors to execute evidence protection orders.

#### *4.1.1.6 Information of persons affected by the measure*

If it occurs during the proceedings, persons affected by the measure are informed by means of a written document and through their lawyer.

#### *4.1.1.7 Legal remedies for the person concerned by the measure*

Persons concerned by a freezing order can lodge an appeal against the investigating magistrates' decisions before a collegial court.

#### *4.1.1.8 Withdrawal of a freezing order*

A freezing order can be withdrawn either by appealing before the judiciary that issued it, or if the causes that led to its issuing have become void.

#### *4.1.1.9 Management of seized assets*

According to the information received, Spain has no centralised regime or specialised body for managing seized assets.

A judge, a court or a public prosecution office will normally be in charge of managing and protecting the assets although in some circumstances the criminal police, under the guidance of the judicial authorities, may directly be entrusted with this task. In the case of proceedings related to drug trafficking or a predicate offence to money laundering the police authorities may request to be vested with the management of the seized assets, and its acceptance will be considered pursuant to Article 374.1.3° of the Spanish Penal Code.

With reference to the aforementioned offences, pursuant to Law 17/2003 of 29 May, the **National Plan on Drugs** (*Plan Nacional sobre Drogas*) administers, manages and impounds assets derived from drug trafficking and related offences under direct management and supervision of the **Board of Forfeiture Coordination**. The National Plan on Drugs also provides technical and material support to the Board of Forfeiture Coordination.

*4.1.1.10 Involvement of the ARO during this procedure*

The *CICO* forms part of the Board of Forfeiture Coordination at the Fund of Proceeds from Drug Trafficking and Related Offences.

**4.1.2 Cooperation at European level - Implementation of Framework Decision  
2003/577/JHA**

Spain has transposed the Council Framework Decision 2003/577/JHA<sup>28</sup> by Law 18/2006 of 5 June for EU efficiency on forfeiture orders and evidence protection orders in criminal proceedings.

Law 18/2006 contains a provisional measure that enables the new law to be applied for forfeiture orders and evidence protection orders issued after its entry into force even retroactively, i.e. if the offence has been committed prior to the entry into force of the law. By contrast, orders that were already being processed would not be affected, and would carry on pursuant to the previous measures based on the 2000 MLA Convention<sup>29</sup> until their conclusion.

**4.1.3 Mutual assistance in the area of freezing**

*4.1.3.1 Statistics*

Pursuant to Article 3.3 of Law 18/2006, public prosecutors are under an obligation to send quarterly lists to the General Public Prosecutor displaying all resolutions taken, respectively issued in Spain, which will then be forwarded to the Ministry of Justice for statistical purposes. The Spanish authorities have informed after the on-site visit that the Unit of International Cooperation of the Spanish Prosecutor's Office had in the year of the visit established an electronic register of MLA request which permit to explore statistics. At the time of the evaluation however, no freezing orders had been emitted or received at the time of the visit this process had not yet been implemented.

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<sup>28</sup> Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, OJ L 196, 2.8.2003, p. 45.

<sup>29</sup> Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union; OJ C 197, 12.7.2000, pp. 1-23.

Statistics on mutual legal assistance requests from the last years are available broken down according to the kind of competent court (i.e. High Court of Justice of the Autonomous Communities, provincial courts, criminal courts, courts of first instance) and by provinces and kinds of request (communication laws, urgent proceedings and arrest warrants). However, no statistics are available broken down by the type of crime; subsequently no specific data on organized crime proceedings are available. The Spanish authorities have elaborated that such information has only been recorded as from the second quarter of 2011.

In its Annual Report the Prosecution Service has been providing statistics concerning MLA request received and executed by the prosecutors, including information on the requesting countries and the executing offices.

#### *4.1.3.2 Experience when acting as an issuing State*

##### *4.1.3.2.1 Competent authority*

Pursuant to Article 3.1 of Law 18/2006, either judicial authorities competent to issue a forfeiture order or any judge or court that becomes aware of any case in which this measure should be applied, or any public prosecutor carrying out investigation proceedings in which an evidence protection order must be applied is competent to issue a freezing order, as long as it does not curtail fundamental rights. These authorities are also the ones mentioned in part (c) of the certificate provided for in Article 9 of FD 2003/577/JHA as there is no distinction of different authorities in both part (a) and (c).

##### *4.1.3.2.2 Guidance on freezing order*

All the information relating to the freezing order is described in Law 18/2006 of 5 June for EU efficiency on forfeiture orders and evidence protection orders in criminal proceedings, including the certificate template.

Guidance on the freezing of assets is regulated by Instruction 6/2007 of the General Public Prosecutor's Office (*Fiscalía General del Estado*), which describes the proceedings of the prosecution service in detail:



## RESTREINT UE/EU RESTRICTED

- (a) In case of bank accounts or other banking and financial products, the only action necessary is to freeze the assets contained therein pursuant to the proceedings; money will be transferred to the court's account for the same procedural purpose. In the case of objects not deteriorating with time such as jewels, these will be deposited with the General Deposit Fund.
- (b) In case of securities and shares of stock, distinction must be made for the different types and accordingly, the most appropriate measure for each type has to be adopted; shares from public limited companies must be deposited, administered and barred from being sold. Furthermore, the company must be notified in order to transfer any dividend into the court's trust deposit account, pursuant to the proceedings. The company must also inform the court of any decision affecting its value, such as an increase in capital on pre-emptive right. Cash equivalent securities must be deposited in the court's trust deposit account, and short or long-term securities must be cashed upon expiration and deposited in the aforementioned account.
- (c) Real estate must be subject to precautionary notation on the registration of real property at the relevant Land Registry Office and, where appropriate, a receiver must be appointed in order to achieve as much profit as possible and minimize deterioration of the properties.
- (d) Eventually, once the requirements laid down by Article 367 quarter of the Code of Criminal Procedure have been satisfied, and referring to the rest of the property and in case of the property seized due to drug trafficking crimes, precursors or money laundering related to the previous ones, the existence of a request concerning the use of the mentioned property by the criminal police shall be considered in the first place, in accordance with the purposes provided in Article 374, Para. 1, Rule 3 of the Code of Criminal Procedure so that the seized property –if it were lawful trade- may be provisionally used by the mentioned authorities with the adequate guarantees for its storage during the litigation proceedings. Should that use be impossible or not necessary, the property shall be alienated in accordance with any of the ways provided for in the Code of Criminal Procedure, i.e. either through a person or specialized entity, or a public auction.

4.1.3.2.3 *Securing the validity of evidence in the executing State*

Generally, there are no special procedures as referred to in Article 5(1), second alinea, of FD 2003/577/JHA which must be observed in the executing State in order to ensure that evidence taken is valid and that, should they exist, they would be presented in the specific request.

4.1.3.2.4 *Preferred transmission channels*

The Spanish authorities conceded that there was some flexibility as far as the transmission channels utilized were concerned. However, given that the transmission options used are not effectively monitored, such flexibility is regarded with some scepticism by the Spanish authorities, and they also noted that there were sometimes reiterations, a lack of statistical monitoring, etc.

From the information received during the on-site visit it was deduced that Eurojust appeared one of the favourite channels used for transmission purposes, although it has to be taken into account that a multitude of communication channels are employed. However, due to the absence of reliable data this only appeared to be an assumption on the side of the Spanish authorities.

The entities that are fulfilling ARO functions would only be involved in the issuing when called upon by the competent authority.

Any formal or informal request may be received through either the contact point ARO (the *CICO*) for the ARO requests or the office charged with the localisation of assets, or the Technical Unit of the criminal police.

Such a request may also originate from another ARO abroad and either arrive through a contact point belonging to the CARIN network, or through a direct connection with the requesting authority, or through INTERPOL, EUROPOL, SIS, or via any other means. It would be appropriately responded within the framework of the exchange of police intelligence. Those answers would be limited by the possible adoption of coercive measures in accordance with Law 31/2010, July 27, on simplifying the exchange of information and intelligence in the EU.

4.1.3.2.5 *Difficulties observed*

In their answers to the questionnaire the Spanish authorities have reported difficulties in the process of freezing that is possibly rooted in the particular distribution and assignment of responsibilities derived from the territorial competence of an investigating magistrate at a court of first instance.

The courts of first instance have been endowed with powers to execute freezing requests and evidence protection orders sent by another EU Member State in accordance with the Organic Law 5/2006 of 5 June, as a complementary part of the Law on the efficiency of both seizure orders and evidence protection in criminal proceedings within the EU, amended by the Organic Law 6/1985 of 1 July of the Judicial Authorities.

Article 15 of the Code of Criminal Procedure stipulates that when the specific court of first instance remains unknown, the general rule of competence shall be applied. Subsequently the investigating magistrate with local competence over a place where the assets being submitted to temporary seizure are located will assume competence in such a case.

Without any indication of the place in which the offence or crime was committed, competent judges and courts, where appropriate, shall try the lawsuit or trial according to the following rules:

- According to the city, administrative area, or constituency where material evidence of the crime was found,
- According to the city, administrative area, or constituency where the alleged defendant was apprehended,
- According to the residence of the alleged defendant,
- Anyone that would have taken note of the crime.

Should the competence among those judges or courts emerge, preference will be given according to the range previously mentioned.

As soon as the alleged place where the crime has been committed is known, the judge or the court effectively trying the lawsuit shall decline jurisdiction in favour of the competent one and, where appropriate, have the defendants available to this one, and, in the same resolution, transfer the proceedings and the seized effects.

In practice, the issue of transferring proceedings obviously leads to clumsy procedural issues and therefore the Spanish authorities deemed it appropriate to recommend seeking the help of the EJM Atlas, or preferably the national member of Eurojust, both of which are expected to facilitate the task of identifying the appropriate (with regard to the territorial competence) judicial authority in a given case.

A mechanism that is reportedly used more and more by the requesting authorities is to send the MLA request to the Prosecution Service. Since they are operational throughout the territory of Spain they can execute the request or, should this become necessary, direct it to the competent judge. In 2011, 1 557 MLA requests have been executed by the Prosecution Service.

#### *4.1.3.3 Consultation with executing states*

The Spanish authorities have reported in their replies that in order to discuss specific aspects of a request, they had recent experience of a bilateral meeting between the Spanish and the Netherlands authorities, organised by Eurojust. Several judges as well as public prosecutors and police officers from each country had taken part in the meeting and supported the notion to institutionalise such meetings.

It was felt by the Spanish authorities that such meetings in a bilateral or multilateral set-up that could be supplemented by a multidisciplinary approach would serve as an impetus to the implementation phase of newly introduced legal instruments.

Furthermore, said meeting had unveiled the lack of a feedback process regarding the progress upon executing a freezing order. Information about the state of affairs is normally not obtained until the former has been finally executed. It was expected that such open communication channel would be beneficial to supplement information or to clarify doubts that occur when receiving translated documents. The Spanish authorities have however, maintained that this was also the case with regard to their own information policy regarding their acting as executing State.

#### 4.1.3.4 *Experience when acting as an executing State*

##### 4.1.3.4.1 *Mechanisms of receipt*

To date, and as in other international requests for judicial cooperation, any means are allowed if the authenticity of the issuing authority can be verified. The Spanish authorities stated that they prefer to receive a certificate in Spanish, although some authorities in the country will also handle documents in other languages.

##### 4.1.3.5 *Quality of requests received*

In that respect the Spanish authorities have reported that in their experience the information regarding the identification of assets and owners (e.g. location, ownership, etc.) has at times been incomplete or erroneous and that such flaws could be rectified before certificates are issued by establishing a direct line of communication in order to exchange police or judicial intelligence.

There is no formal process for a quality review regarding requests. Each local criminal court examines the request and, in case it is considered necessary and appropriate, they would ask for information or additional documentation.

At the time of the on-site visit no instance was known where the execution of a freezing order had not been authorised, solely because the issuing Member State had failed to respond to a request from the Spanish authorities for additional information or respectively documents. The Spanish authorities have stated that due to the relatively limited time since Law 18/2006 of 5 June has been transposed they were still lacking experience to give a valid statement.

##### 4.1.3.5.1 *Competent authorities and role of ARO*

The allocation of a request to a specific pre-trial chamber (*juzgados de instrucción*) to seize property or secure evidence, received from the judicial authorities of another Member State of the European Union, has been regulated in accordance with Organic Law 5/2006 of 5 June.

The entities fulfilling ARO functions will act for that purpose only if requested, either in order to provide support or when needed by the judiciary or the General Prosecutor's Office. At the time of the on-site visit neither the *CICO* nor the *OLA* nor the *UTPJ* had a role in this respect.

#### 4.1.3.5.2 *Legal remedies*

With regard to legal remedies available for persons affected by a freezing order, the Spanish authorities have provided no information.

#### 4.1.4 **Assessment of FD 2003/577/JHA by the Spanish authorities**

In general the Spanish authorities have held a favourable view regarding FD 2003/577/JHA and its transposition into national law. In their opinion the transition from traditional cooperation methods to a system based on mutual recognition provided added value by itself. With it a speedier transfer, a limitation of the causes for rejection and an enhanced visibility of the European judicial area were ranking among the primary achievements. By not having to process all requests through a central authority, (in case of Spain, a National High Court or the Spanish *Audiencia Nacional*) the process becomes much swifter and more flexible, allowing for an enhanced management capacity.

In view of the Spanish authorities all parties involved (judges and public prosecutors, but also police agencies) should become more aware of these possibilities and advantages by using this instrument. It was also deemed convenient for those persons who are in charge of applying the criminal policy in practice to start using these instruments.

On a general note the fact that isolated cases of judicial authorities in Member States have been noted where mutual recognition was excessively hampered was met with grave concern. The Spanish authorities gave an account of their experience and have highlighted a certain tendency that prevailed in some Member States to review the relevant matter from the perspective of the executing State's legislation rather than recognizing and implementing it in accordance with the applicable EU legal instruments.

On the other hand, it has been observed that certificates have been sometimes issued with incomplete or inadequate information, without having previously requested information on the assets to be seized through the ARO or via any other existing channel of information. This has in consequence resulted in seizure requests for non-existent assets or property or to deficient seizure certificates.

## **4.2 Confiscation (including FD 2005/212/JHA and FD 2006/783/JHA)**

### **4.2.1 Confiscation at national level**

#### *4.2.1.1 Legal basis*

Confiscation at national level is regulated by the provisions laid down in the Spanish Code of Criminal Procedure, the Penal Code and moreover, in the Organic Law against Smuggling (i.e. a special penal law).

#### *4.2.1.2 Types of crime for which confiscation is possible*

Under the Spanish legal system, confiscation is in principle available for any crime, either as main or accessory punishment, or for covering the civil liability and the victims' compensation out of these assets.

#### *4.2.1.3 Competent authorities*

The authority competent to decide on an act of confiscation and to enforce it is the sentencing judge or the criminal court.

#### *4.2.1.4 Information of persons affected*

Persons affected by an act of confiscation are informed through the proclamation of the verdict by which the confiscation has been ordered.

#### *4.2.1.5 Legal remedies for a person affected*

Any person affected by a confiscation order has the same rights of appeal as against any other criminal proceedings that can be lodged against the judgement.



*4.2.1.6 Involvement of the ARO during this procedure*

Being an integral part of the criminal police, those entities fulfilling ARO functions will only act for that purpose if requested, either in order to provide support or when needed by the judiciary or the General Prosecutor's Office. At the time of the on-site visit neither the *CICO* nor the *OLA* nor the *UTPJ* had a role in this respect.

*4.2.1.7 Possibilities for extended powers of confiscation*

As concerns the extended powers of confiscation related to possibilities for confiscation referred to in Article 3(2) of the Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property<sup>30</sup> the Spanish authorities have maintained that such confiscation would be conducted within the same substantial and procedural legal framework as for 'ordinary' cases of confiscation.

*4.2.1.8 Confiscation of property owned by corporations*

It was confirmed that in Spain it was possible to 'pierce the corporate veil' and confiscate property owned by corporations in cases where the corporation has not been prosecuted, but the court assumes that beneficial owners who have been convicted own the property. Furthermore, it is also possible to confiscate property in cases where the court assumes the property is owned by beneficial owners who have not been convicted, except however, for *bona fide* third parties. In any event the property or asset confiscation requires to be ordered by a judgement.

**4.2.2 Confiscation at European level**

Spain has transposed the Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders<sup>31</sup> by Law 4/2010 of 10 March, on the implementation of confiscation orders within the EU.

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<sup>30</sup> Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property; OJ L 68, 15.3.2005, pp. 49-51.

<sup>31</sup> Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders; OJ L 328, 24.11.2006, pp. 59-78.



#### 4.2.2.1 *Competent authority*

The authority competent to issue a confiscation order and to execute a confiscation order is the criminal court, according to the criteria for the investigating magistrates that have already been referred to in the context of the freezing of assets.

#### 4.2.2.2 *Practical guidance*

The Spanish authorities have maintained that all aspects relating to the practical guidance would emanate from the text of Law 4/2010 of 10 March, which also resulted in the setting up of a model certificate. No further guidance has been issued.

#### 4.2.2.3 *Experiences as requesting and requested State*

The Spanish authorities reported that with a view to the shortness of the period that has effectively elapsed since the transposition of the 2006 Framework Decision, only limited relevant experience has been gathered, primarily focusing on errors or mistakes regarding the correct identification of the assets.

As an executing State - although it was assumed that this would apply to the role of issuing State as well - one of the most common reasons for a failure to execute a foreign confiscation order was the lack of prior exchange of information to verify the information contained in the certificate. As it was the case in the execution of freezing orders the Spanish authorities deemed it e.g. beneficial to always verify whether the assets to be confiscated actually exist and identify them carefully prior to confiscating them. Furthermore, it has proven to be convenient to establish the current ownership as well as the current state of the assets (as they might e.g. be subjected to taxation or be under investigation by another judiciary etc.). All this could be achieved by exchanging police information.

*4.2.2.4 Legal basis for cooperation with Member States that have not yet implemented  
FD 2006/783/JHA*

In the event of a third country either not having implemented FD 2006/783/JHA or rejecting the certificate, the Spanish authorities would revert to the instrument of mutual legal assistance using the means of letters rogatory. In this respect they emphasized that sometimes, letters rogatory were even used for the same purpose in legal proceedings with countries that had implemented FD 2006/783/JHA. The reason given as an explanation for this was that letters rogatory were considered to usually provide a broader framework when it came to carrying out any kind of investigation and other proceedings related to confiscation but which were not strictly acts of confiscation (e.g. entry and registration, interviews, arrests etc.).

### **4.3 Conclusions**

- As far as the experts were able to assess the system from the information provided by the Spanish authorities in their written replies to the questionnaire and the information gathered during the on-site visit the Spanish legal regime for freezing and confiscation is sound and Spain has implemented the most important legal European Union instruments regarding freezing and confiscation.
- Statistics are vital to planning and to optimizing business processes at every stage of the law enforcement and judicial business process. The fact that pursuant to Article 3.3 of Law 18/2006, public prosecutors are under an obligation to send quarterly lists to the General Public Prosecutor, displaying all resolutions taken, respectively issued in Spain, which should then be forwarded to the Ministry of Justice for statistical purposes and this process has – according to the information received - not been implemented at the time of the on-site visit, would call for a swift rectification of the current situation.
- As regards statistics on mutual legal assistance requests the Spanish authorities have only started as from the second quarter of 2011 onwards to collect statistics broken down by the type of crime; subsequently specific data on organized crime proceedings – the category into which many of the economic and financial crimes fall - are only available after that period. The expert team was therefore not in a position to conclude on the development and trend in this area.

- Although the Spanish authorities had a favourable view regarding Council Framework Decision 2003/577/JHA and its transposition into national law, it was felt that national authorities involved in the procedures were still lacking awareness of the possibilities and advantages of this instrument.
- Furthermore the opinions gathered in the answers to the questionnaire and during the on-site visit have clearly shown that direct contacts prior to a formal application of an EU legal instrument have been beneficial for its later execution.
- During the course of a coordination meeting between Spanish and Netherlands authorities that had been organised by Eurojust it became apparent that the lacking feedback process regarding the progress upon executing a freezing order was felt to be an area that could be improved for the benefit of the authorities involved in such an operation. Information about the state of affairs in such a case is normally not obtained until the freezing order has been finally executed. While maintaining that they did not practice a pro-active approach themselves when executing a freezing order, the Spanish authorities expected that such feedback could help to actively provide supplementary information or to help clarifying doubts with regard to translated documents.

## **5 PROTECTION OF THE FINANCIAL INTERESTS OF THE EUROPEAN UNION**

### **5.1 Available mechanisms, particularly cooperation with OLAF**

#### **5.1.1 Measures to ensure pro-active transmission of information to OLAF**

The European Anti Fraud Office (OLAF) carries out administrative investigations; therefore communications from Spain with OLAF are mainly based on cases in which OLAF has evidence related to the alleged commission of crimes against the financial interests of the EU. In these cases, OLAF and law enforcement authorities in Spain maintain direct contact so that they can coordinate and get support regarding the investigations into crimes against the financial interests of the EU. In this respect the Spanish authorities highlighted the area of fighting cigarette smuggling where OLAF's unit B 3 and the Spanish authorities were said to be in constant contact with each other.

Furthermore, in order to foster awareness about issues pertaining to the protection of the financial interests of the EU and the role of OLAF, the training plans of prosecutors as well as those of the police units entrusted with financial investigations contain elements relating thereto. It also needs to be mentioned that training courses on the computing channels of transmission of information MAB (Mutual Assistance Broker) and FIDE (Customs File Identification Database), both administered by OLAF, have been conducted in Spain.

#### **5.1.2 Information of OLAF on the outcome of relevant cases**

In order to facilitate an active exchange between the Spanish judiciary and OLAF, the Office of the Prosecutor General<sup>32</sup>, the Anti-Corruption Prosecutor's Office and OLAF have signed a memorandum of understanding, which includes the designation of contact points at both offices to ensure that information from OLAF is received and to improve monitoring of cases being investigated or under trial.

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<sup>32</sup> The Spanish authorities have clarified after the on-site visit that the MoU was signed only by the General Prosecutor, who has powers to bind all prosecutors and offices, including the Anticorruption Prosecutor's Office.

### **5.1.3 Possible role of the European Commission in a criminal investigation**

In principle the Spanish legal system would allow a role for the European Commission in a criminal investigation as a civil party or even as a plaintiff. In practice, the European Commission, as a civil party, has already played a role in some proceedings related to the fraud against the Union budget. In their answers to the questionnaire the Spanish authorities have therefore advocated that the European Commission should pursue a more active role in exercising their right to civil action and that this could lend more thrust to convince judges of the real and effective damage caused to the financial interest of the EU.

When required, OLAF's officials can take part as experts. Furthermore, the Spanish authorities deemed it helpful if the European Commission would be kept informed about its rights as a victim of a fraud in order to assume a role as an affected civil party in the criminal proceedings.

The Prosecutor's Office must exert civil action in all cases, except cases of renounce made by the victim, regardless of the circumstances. Therefore this also applies to those cases where Spain and the European Commission share the management of funds (e.g. the Agricultural Expenditure Fund or Structural Funds).

### **5.1.4 Participation of OLAF officials in a criminal investigation**

OLAF officials may in principle participate in a criminal investigation in Spain. There have been examples of such participation that have lent substantial support to the investigations and the Spanish authorities have been full of praise for the advantages: given the extent of the knowledge of OLAF staff regarding the matter and/or the specific case, no one can explain the characteristics of the case better than them. It was however, pointed out that those OLAF officials who have taken part in an investigation can testify as experts in the same case in court.

### **5.1.5 OLAF participation in a joint investigative team (JIT)**

The participation of OLAF officials in a joint investigation team (JIT) is possible in Spain. The second additional provision of Law 11/2003, regulating the Joint Investigation Teams within the

EU, envisages the possibility for staff from OLAF, EUROJUST and EUROPOL to participate in a JIT. In such cases, OLAF could support the investigation regarding the crimes affecting the financial interests of the EU, either by sharing its skills about the subject, or by providing information to other Member States etc.

### **5.1.6 Experience with JITs dealing with fraud against the financial interests of the European Communities**

At the time of the on-site visit, there had not yet been any experience regarding a joint investigation team dealing with fraud against the financial interests of the European Union. In 2006 there had been an OLAF proposal to establish a JIT between Spain and Bulgaria. The rate of progress in the negotiations however, led to its cancellation from the Spanish side as the part of the investigation to be developed in Spain was finished at the time when the coordination meeting in EUROJUST finally took place.

### **5.1.7 Coordination of contacts with OLAF**

There is no such thing as a coordinating body, which could centralize the contacts of the appropriate Spanish authorities with OLAF. As for fraud prevention, OLAF works with the agencies known as “partners”. The contacts with OLAF are bilateral, i.e. OLAF contacts the competent law enforcement authority in the specific field of its investigation (agricultural fraud, structural funds, direct costs, cigarette smuggling, customs fraud etc.)

The Spanish authorities cooperating with OLAF are more specifically the following:

- The Spanish Public Prosecutor’s Office usually transfers those cases initially communicated by OLAF to the Special Anti-Corruption Prosecutor’s Office,
- The Guardia Civil collaborates with OLAF through the Tax Department, and through the Central Operative Unit in crime investigation cases,
- The Fiscal and Economic Crime Unit as a specialized unit of the National Police Corps competent exclusively with fiscal fraud,
- The Customs and Excise Department is in close cooperation with OLAF with a view to solving and detecting various kinds of financial crimes and crimes with economic effects, such as cigarette smuggling and customs fraud;

### 5.1.8 Expectations with regard to support from OLAF

The Spanish authorities have voiced that with regard to support from OLAF they would expect support for coordination of investigations in cases falling within the remit of OLAF. Furthermore, transmission of information and technical assistance provided by OLAF's experts would be regarded as beneficial.

## 5.2 Conclusions

- When conducting on-the-spot-checks with economic operators in Spain, in order to control EU financed projects, OLAF obtains the necessary assistance from Spanish competent authorities, both at central and at regional level.
- Also, OLAF has not experienced any obstacles in the direct transmission of information from its investigations to the Spanish judicial authorities. Contacts are structured through the MoU, which has been signed between OLAF and the General Prosecutor's Office (thus also binding the Anticorruption Prosecutor's Office and the General Prosecution Service).<sup>33</sup>
- OLAF's role in assisting during investigations into EU fraud and corruption against EU financial interests is recognised by the Spanish judicial authorities.
- Moreover, the Spanish legislation mentions expressly the possible participation of OLAF in joint investigation teams.
- Spain has ratified the different Protection of the EU Financial Interests (PFI) instruments and complies with the obligations, provided for by them. Spain has adopted new legislation about the criminal responsibility of legal persons in 2010.
- With reference to Art. 26.5 of the 2009 Eurojust Decision<sup>34</sup>, The Spanish National Member of Eurojust is however, not empowered to receive information relating to OLAF-investigations.<sup>35</sup>

<sup>33</sup> Cf. also footnote 32.

<sup>34</sup> Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 138, 4.6.2009, pp. 14-32.

<sup>35</sup> Following the on-site visit the Spanish authorities have informed that this situation derived from the pending implementation of the new Eurojust Decision into Spanish law. However and even though it is not specifically mentioned in the current law, even the current legal framework allowed to transmit such information to the National Member.

## 6 RECOMMENDATIONS

### 6.1 Recommendations to Spain

Given the present legal and organisational set-up, while taking into account the specificities of the Spanish governmental, judicial and administrative services, the evaluation team came to the conclusion that cooperation between the different players works very well in general terms. All practitioners met seemed to be highly motivated and dedicated in exercising their duties. Nevertheless the evaluation team saw it fit to make a number of suggestions for the attention of the Spanish authorities.

The experts would like to summarise their suggestions in the form of the following recommendations:

Spain should:

1. Speedily implement the detailed regulations required for setting up the new structures for the Asset Recovery Office (ARO) to ensure its functioning; (cf. 2.2.2 and 2.3.1)
2. Consider vesting *SEPBLAC* with the powers to block suspicious transactions; (cf. 2.3.1).
3. Ensure that law enforcement entities comply with their obligation to feedback to the *SEPBLAC*; (cf. 2.3.1).
4. Ensure that law enforcement authorities and the *SEPBLAC* receive feedback from the judiciary on the outcome of investigations triggered by the aforementioned entities; (cf. 2.3.1 and 2.3.2).
5. Consider an exchange on the planning and contents of training arrangements between the National Police Corps and the Civil Guard Force; (cf. 2.3.3).
6. Explore the possibility to pursue more actively acquiring EU funds for specific training; (cf. 2.3.3)
7. Consider elaborating a national strategy to counter economic and financial crime; (cf. 2.3.4)
8. Swiftly proceed with implementing the Financial Ownership Register (*Fichero de Titularidades Financieras*); (cf. 3.1.1.4, 3.1.1.11 and 3.6)



9. Consider extending the grounds for access to the data contained in the Financial Ownership Register to economic and financial crime delinquency beyond money laundering and terrorist financing; (cf. 3.1.1.4 and 3.6)
10. Consider granting the law enforcement authorities direct access to the Financial Ownership Register that would allow them to speedily conduct the initial stages of an investigation; (cf. 3.1.1.4 and 3.6).
11. Swiftly implement the obligation as foreseen pursuant to Article 3.3 of Law 18/2006 and ensure that statistical data is forwarded to the Ministry of Justice in order to facilitate planning and streamlining of business processes in the area of freezing and confiscation (cf. 4.1.3.1 and 4.3).
12. Encourage a more intensive feedback process regarding the progress of pending freezing orders while at the same time pursuing a more pro-active approach in this process; (cf. 4.1.3.3 and 4.3).
13. Take the necessary measures for the Eurojust National Member to be regarded as competent authority for the purposes of Regulation (EC) No 1073/1999 and Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by OLAF; (cf. 5.2)<sup>36</sup>
14. Conduct a follow-up on the recommendations given in this report eighteen months after the evaluation and report on progress to the Working Party on General Affairs, including Evaluations (GENVAL).

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<sup>36</sup> Although the Spanish authorities have maintained that even the current legal framework would enable them to transmit information related to OLAF investigations to their national Eurojust Member, the evaluation team upheld this recommendation due to the pending implementation of the 2009 Eurojust Decision.

**6.2 Recommendations to the European Union, its Member States, institutions and agencies**

The Member States should:

15. Consider – preferably together with Europol – agreeing on a joint definition of financial crime for the benefit of a more effective approach to tackle the phenomena subsumed there under and to enable them to more effectively and timely allocate the resources available to counter such forms of crime; (cf. 2.3)
16. Clarify in their procedural framework the position of OLAF in giving technical and operational assistance to judicial investigations, including within the frame of joint investigation teams, in accordance with Art. 7.1 of the 2<sup>nd</sup> Protocol to the Convention on the protection of the European Communities' financial interests; (cf. 5.2)

ANNEX A: PROGRAMME FOR THE ON-SITE VISIT

5<sup>th</sup> ROUND OF MUTUAL EVALUATIONS - Spain

MONDAY, 7<sup>th</sup> NOVEMBER

Arrival of delegations at the airport and transfer to the hotel

TUESDAY, 8<sup>th</sup> NOVEMBER

10:00 to 11:00 Welcome reception for the delegation  
11:00 to 11:30 Break/coffee  
11:30 to 13:15 Spanish National Police (*CNP*): Tax and Economic Crime Unit.  
13:15 to 14:00 *UCIC*: Criminal Intelligence Central Unit  
14:00 to 14:30 *CNP*: International Police Cooperation Unit  
14:30 to 16:00 Lunch  
16:30 to 17:30 National Bank of Spain: Working meeting with staff officers in charge of the *SEPBLAC* – FIU (Financial Intelligence Unit)

WEDNESDAY 9<sup>th</sup> NOVEMBER

10:00 to 11:30 *Guardia Civil, UTPJ*: Working meeting with experts related to *AROS, OLA*, laundering money and economic crime)  
11:30 to 12:30 Break/coffee  
12:30 to 13:30 Intelligence Centre Against the Organized Crime  
13:30 to 14:30 Lunch  
14:30 to 15:30 Transfer to Toledo  
15:30 a 17:30 Information tour of Toledo  
17:30 to 18:30 Transfer to Madrid



**RESTREINT UE/EU RESTRICTED**

THURSDAY 10<sup>th</sup> NOVEMBER

10:00 to 11:00	Assistant Directorate of Customs
11:00 a 12:00	Break/coffee
12:00 to 13:00	Spanish Public Prosecutor's Office
13:30 a 14:30	Ministry of Justice – General Council of the Judiciary
14:30 to 16:00	Lunch
16:30 to 18:30	<i>Audiencia Nacional</i>
21:00	Official dinner

FRIDAY 11<sup>th</sup> NOVEMBER

10:00 to 12:30	Police Facilities of <i>Canillas</i> ; final lecture, questions and any other business
13:00 to 14:30	Farewell cocktail
15:00	Transfer of delegation to the airport

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**ANNEX B: LIST OF PERSONS INTERVIEWED/MET**

As the Spanish authorities have not provided a full list of persons met during the visit, only the coordinators are listed in this annex.

**Cuerpo Nacional de Policía**

Federico Millán Maricalva	Jefe de la Sección de Coordinación internacional de la CGPJ
José Manuel Colodrás Lozano	UDEF Central - Oficina de Localización de Activos
Francisco Gil Montero	Jefe de la UCIC
Hector Moreno García	Jefe U.N. EUROPOL

**Cuerpo de la Guardia Civil**

Juan Gama Dordio	UTPJ (Sección Cooperación Internacional)
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**Justicia**

Beatriz DIZ	(Jefa de Área) Subdirección General de Cooperación Judicial Internacional
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**Fiscalía General del Estado**

José Antonio del Cerro Estaban	
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**SEPBLAC - F.I.U.**

Juan Ramírez Baratech	Responsable del Área de Secretaría Técnica
Pedro de la Lama	

**Vigilancia Aduanera**

Alberto Thiery Manrique	Jefe de Area de Investigación Patrimonial
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**C.I.C.O.**

Andrés Pérez López	Jefe del Servicio de Relaciones Internacionales
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## ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	SPANISH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
AEB	<i>Asociación Española de Banca</i>	Spanish Banking Association
AEAT	<i>Agencia Estatal de Administración Tributaria</i>	State Agency on Tax System Administration
AML	-/-	Anti money laundering
ARO	<i>Oficina de recuperación de activos</i>	Asset Recovery Office
AWF	<i>Fichero de trabajo de análisis</i>	Analytical Work File
BDC	<i>BDC</i>	Centralized database of the AEAT
CARIN	-/-	Camden Assets Recovery Inter-Agency Network
CEART	-/-	Centres of Excellence on Asset Recovery and Training
CECA	<i>Confederación Española de Cajas de Ahorro</i>	Spanish Confederation of Savings Banks
CEMU	<i>Comité Ejecutivo de Coordinación</i>	Joint Command Executive Committee
CGPJ	<i>Comisión General de Policía</i>	Criminal Police General Department
CICO	<i>Centro de Inteligencia contra el Crimen Organizado</i>	Intelligence Centre against Organised Crime
CIF	<i>Código de identificación fiscal</i>	VAT identification number

**RESTREINT UE/EU RESTRICTED**

<i>CIRBE</i>	<i>Central de Información de Riesgos del Banco de España</i>	Central Credit Register of the Bank of Spain
<i>CNCA</i>	<i>Centro Nacional de Coordinación Antiterrorista</i>	National Anti-terrorist Co-ordination Centre
<i>CNMV</i>	<i>Comisión Nacional del Mercado de Valores</i>	National Securities Market Commission
<i>CNP</i>	<i>Cuerpo Nacional de Policía</i>	National Police Force
<i>CPC</i>	<i>Dirección General de Seguros y Pensiones</i>	Criminal Procedure Code
<i>DAVA</i>	<i>Dirección Adjunta de Vigilancia Aduanera</i>	Customs Surveillance Deputy Directorate
<i>DGSFP</i>	<i>Dirección General de Seguros y Pensiones</i>	Directorate-General of Insurance and Pensions
<i>ENU</i>	-/-	Europol National Unit
<i>FIDE</i>	-/-	OLAF Customs File Identification Database
<i>GC</i>	<i>Guardia Civil</i>	Civil Guard Force
<i>JHA</i>	-/-	Justice and home affairs
<i>JIT</i>	<i>Equipos conjuntos de investigación</i>	Joint investigation team
<i>LOPJ</i>	<i>Ley Orgánica del Poder Judicial</i>	Organic Law of the Judiciary
<i>MAB</i>	-/-	Mutual Assistance Broker
<i>MDG</i>	<i>Grupo multidisciplinar sobre la delincuencia organizada</i>	Multidisciplinary Group on Organised Crime
<i>MLA</i>	<i>Asistencia judicial</i>	Mutual legal assistance

**RESTREINT UE/EU RESTRICTED**

NIF	<i>Número de Identificación Fiscal</i>	Tax identification number
OCTA	<i>Evaluación de la amenaza de la delincuencia organizada</i>	Organised Crime Threat Assessment
OJ	<i>Diario Oficial de la Unión Europea</i>	Official Journal of the European Union
OLA	<i>Oficina de Localización de Activos</i>	Asset Tracing Office of the National Police
OLAF	<i>Office européen de lutte anti-fraude</i>	European Anti-Fraud Office
PC	<i>Código Penal</i>	Penal Code
ROCTA	<i>Evaluación de la amenaza de la delincuencia organizada rusa</i>	Russian Organised Crime Threat Assessment
SAR	-/-	Suspicious Transaction Report
SEPBLAC	<i>Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales</i>	Spanish Financial Intelligence Unit
SIENA	-/-	Europol secure network for the exchange of information
SIS	-/-	Schengen Information System
STR	-/-	Suspicious Transaction Report
UCO	<i>Unidad Central Operativa</i>	Operational Central Unit
UDEF	<i>Unidad de Delitos Económicos y Fiscales</i>	Central Financial and Tax Crime Unit
UTPJ	<i>Unidad Técnica de la Guardia Civil</i>	Criminal Police Technical Unit
VAT	<i>IVA - impuesto sobre el valor agregado</i>	Value added tax