COMMISSION FOR THE PREVENTION OF MONEY LAUNDERING AND MONETARY OFFENCES

SAMPLE CATALOGUES OF RISK TRANSACTIONS RELATED TO MONEY LAUNDERING AND TERRORIST FINANCING

MONEY TRANSFER SERVICES AND CURRENCY EXCHANGE

Introduction and regulatory framework

Act 10/2010, of 28 April on the prevention of money laundering and the financing of terrorism establishes the status of obliged persons regarding money transfer services and entities engaged in currency exchange.

This status implies a legal duty to comply with a series of obligations to prevent money laundering and terrorist financing as outlined in the Act and the implementing regulations.

Among these obligations, Article 17 of Act 10/2010, of 28 April, states that the obliged persons shall closely examine any act or transaction, regardless of the amount, which, due to its nature, may be related to money laundering or terrorist financing, preparing a written report of the examination results. In particular, the obliged persons shall closely examine any transaction or pattern of behaviour that is complex, unusual or does not have an apparent economic or lawful purpose, or shows signs of fraud or simulation.

This legal obligation also implies that the obliged persons, by establishing the internal control measures referred to in Article 26, shall define the manner of fulfilment of this duty of special examination and shall prepare **a list of transactions likely to be related to money laundering or terrorist financing, and shall ensure its dissemination among its managers, employees and agents**, and the periodic review of the list.

Therefore, the Commission for the Prevention of Money Laundering and Monetary Offences, in the exercise of its functions, in collaboration with associations of money transfer services and in order to make it easier for these entities to comply with this legal obligation, has prepared this sample catalogue of risk transactions, which lists examples of transactions which may be linked to money laundering and terrorist financing.

Content and purpose of the risk transactions catalogue

This sample catalogue of risk transactions aims to guide those money transfer services and entities engaged in currency exchange listed as obliged persons under Act 10/2010, for the compliance of the obligation of special inspection. For this purpose it contains a series of behaviours or patterns to be taken into account by those obliged within this sector when developing their own list of risk transactions as required by law.

The obliged persons must always bear in mind that this catalogue does not comprehensively list all possible cases of risk transactions possibly linked to money laundering and terrorist financing, on the contrary, the obliged person must develop its own list of transactions adapted to its experience and risk assessment, although the guidelines of this sample catalogue are designed to assist and guide the obliged persons towards compliance.

The inclusion of transactions in this catalogue does not imply that they are necessarily linked to money laundering or terrorist financing activities, merely that they are "likely" to be linked to these activities, to the extent that they comprise a number of risk factors.

The role of the obliged persons is to determine, through the special inspection, if the specific transactions detected, which are included in their own list of risk transactions, display signs of being linked to money laundering or terrorist financing. In particular, they shall report to the Executive Service of the Commission (SEPBLAC) any transactions showing obvious inconsistencies with the nature, turnover or operational background of the customers, provided that, after the special inspection, no economic or professional justification to carry out such transactions is found.

Thus, it is possible that, after performing the special inspection of certain transactions, it is concluded that they do not present evidence of being related to money laundering or terrorist financing, despite their inclusion in this catalogue, and accordingly they shall not be reported to SEPBLAC.

It is important to emphasise that the special inspection is essential, and therefore SEPBLAC may not be reported to merely based on the fact that the transactions are included in this catalogue. The institutions must perform the special inspection in all cases, but only when finding circumstantial evidence shall they issue the relevant communication.

Similarly, it should be noted that the legislation on this subject has a clearly preventive nature, in order to prevent funds coming from criminal activities from being channelled through the sector. Therefore, it is essential to strengthen two types of measures:

- Firstly, those designed to detect suspicious transactions before they are carried out, in order to prevent illicit proceeds from entering the system.

- Secondly, those enabling an in-depth examination of transactions, so as to obtain enough data to prevent future transactions that follow the same pattern.

Finally, credit institutions should be reminded that the reports sent to SEPBLAC under the provisions of Article 18 of Act 10/2010, should contain the information and data required in paragraph 2 of this Article, and in any case must be a result of a special structured inspection of the transactions.

Precondition for the existence of risk:

In all cases the specific transaction or behaviour observed should not be consistent with:

i. the customer's profile, based on the information to be obtained by the entity regarding the customer's activity, or

ii. the usual and expected trade or activities thereof, based on the customer's operational background

Risk-increasing factor:

Any of the parties' presence in tax havens or high-risk territories is an additional factor that increases the risk of the transaction or behaviour.

Indicators and examples of potential risk transactions

A. RISKS ASSOCIATED WITH THE CUSTOMER'S IDENTIFICATION

I. Formal identification

a. Document

1. Customers under doubt regarding their possible attempt to operate under a false name or by providing incorrect data.

2. Customers attempting to use documentation of doubtful legality (mainly passports from not very common countries), authenticity, documents possibly manipulated to include the customer's photo or description that does not match his or her appearance, or expired documents[1].

3. Customer submitting photocopies of official documents rather than the originals when identification is requested.

4. Customers giving the same address or telephone number as those of another seemingly unrelated customer.

5. Customers that, when about to perform a transaction and on learning that they are required to show their ID, decide not to complete the transaction or alter the amount involved.

6. Customers who refuse or are unable to submit their ID or personal data required by the establishment.

7. Customers who provide different identity details with each transaction:

    a. By giving a different name or spelling it differently or altering the order of names or their spelling.

    b. By giving a different address or spelling it differently or changing the numbers.

    c. By submitting a different type of identification.

[1] If there is a reasonable doubt, the entity should reject the transaction.

b. The customer's nationality or residence:

Customers or representatives who are residents or citizens of countries and territories designated for this purpose by the order of the Minister of Economy and Finance as high-risk countries (especially those known as money laundering areas, as producers of drugs or for harbouring terrorist groups) or countries with financial secrecy.

c. Front-men

1. Customers who state or seem not to act on their own behalf, or who introduce or act as introducer of another customer with the intention of avoiding or relaxing the entity's due diligence.

2. Customers who convey the feeling of being directed by a third party, especially when they seem unaware of the specifics of the transaction under way.

3. Using third parties to carry out transactions for the sole purpose of receiving funds from abroad and forwarding them to other recipients abroad.

4. Any dealings with representatives in which the identity of the true holder or beneficiary or relevant person is concealed, contrary to standard procedure for the type of business.

5. Currency exchange for cash for tourism or travel by an occasional customer who appears to act on behalf of a third party with the intention of using the currency for a different purpose.

d. Transferees

1. Customers who seem to be nervous, unsure or who need to make enquiries when submitting the required information about the transferee.

2. Customers using clearly fictitious transferee names (e.g. names of famous actors or singers).

3. Transfers for which it is impossible or extremely difficult to know the name of the beneficiary.

4. Report issued by the payer or receiver at destination sent to the bank of origin warning that a beneficiary is receiving transfers from other fund senders or is involved in a criminal list or is wanted by the law of in his or her country.

Other

1. Customers with published criminal or police records (e.g. in the media) or related with persons subject to transactional bans or linked to terrorist financing activities.

2. Customers who are considered to be included in the category of Persons with Public Accountability (Politically Exposed Persons[2]) or who are known to be relatives or partners thereof.

3. Transactions carried out by foundations or associations formed in Spain and mainly composed of foreign nationals.

II. Material identification (customer's business due diligence)

1. Doubts[3] regarding the veracity of the data provided by the customers on their activity, the source or destination of the funds.

2. Transactions which, based on their amount or frequency, are not consistent with the customer's economic status or business income.

3. Companies or employers who, acting as customers:

   a. are involved in transactions that are usually performed with high denomination notes when the characteristics of their business do not justify this;

[2] Politically exposed persons according to the Financial Action Task Force (FATF) or Persons with Public Accountability under Act 10/2010, of 28 April, are individuals who are or have been entrusted with prominent public functions in a foreign country (e.g., heads of state or government, senior politicians, senior members of the high ranking military judiciary, senior executives of state enterprises). Business relationships with family members or close associates of PPEs involve similar reputational risks as those of the PPEs themselves. Obliged persons must take into account the legal updates of this definition.

[3] If there is a reasonable doubt, the entity should reject the transaction.

b. order or receive transfers to / from people in other countries without an apparent business purpose or giving an explanation inconsistent with the nature of their business or activity;

c. are reluctant to provide complete information on the type of business, purpose of the transaction or any other information required by the establishment.

4. Customers who use general expressions to specify the source of funds such as savings, work, sales, etc., without any reference to the operation or activity generating the funds.

5. Customers who, when about to carry out the transaction and upon learning that additional information is required, decide not to complete the transaction or change its amount in an attempt to evade that obligation.

B. RISKS ASSOCIATED WITH TRANSACTIONAL CHARACTERISTICS OR CUSTOMER BEHAVIOUR

Customer behaviour

Structuring or splitting transactions (individually or in groups) and evasion of thresholds requiring compulsory and systematic reporting of transactions referred to in paragraph 2 of Article 7 of the Regulation (known as systematic reporting), the identification of customers or the storage of copies.

1. Customer or customers who alone or in coordination perform repeated transactions in time for amounts under 3,000 € or very close to this amount to avoid the detection by the obliged persons of patterns of transfers or currency exchange amounts , compliance with obligations to provide additional information or systematic reporting.

   In particular, in the case of repeated transfers with the same beneficiary with different originators, or those being sent to high-risk areas or countries known for their connections with drug trafficking or terrorist financing.

2. Customers transferring to different people from the same family circle without being members of said family.

3. Customers who act in groups, each ordering operations with similar characteristics, especially if instructions are given from one of them or from a third party.

4. Transfers of funds received and sent by the same customer on the same day or within a relatively short period of time.

5. Customers who are the beneficiaries of multiple transfers that appear to have been submitted in an organised manner to avoid the obligation to provide additional information or to report:

   a. By the same originator, each just below the required threshold.

   b. By multiple originators from a single office, within minutes of each other and all just below the threshold required.

6. Customers who decide not to complete a transaction or change the amount to avoid the threshold requiring further information.

7. Customers ordering transactions that have the same characteristics (amount, country of destination, city of destination, etc) as those ordered by other customers shortly before, or providing the same address or phone details as those previously provided by other customers in similar transactions.

Characteristics of the banknotes or means

1. Requests for high denomination notes or other currencies, in cash, in transactions of amounts that do not seem justified based on information held on the customer.

2. Customers attempting to mix real money with counterfeit currency and submitting the notes stacked untidily to avoid control.

3. Customers exchanging currency and requesting that the foreign currency banknotes in the highest possible denomination.

4. Simultaneous exchange of currencies when not seemingly justified based on knowledge of the customer.

5. Customers who begin to change large notes for small notes or vice versa when they do not normally use cash for payment.

6. Customers who attempt to carry out transactions delivering very dirty, wet, mouldy or strange-smelling notes (e.g. chemical smell).

7. Customers changing a lot of small notes for large denomination notes or for a bearer instrument.

Origin or destination of the transaction for transfers

1. Customers sending or receiving transfers to or from countries other than those of which are nationals.

2. Operations with no apparent business reason or not consistent with the customer's business or operational background, having their origin or destination in countries and territories designated for this purpose by the order of the Minister of Economy and

Competitiveness or the Minister of Finance, as high-risk countries (especially those known as money laundering areas, as producers of drugs or for harbouring terrorist groups) or countries with financial secrecy or involving persons residing therein.

3. Receiving one or more transfers for amounts under three thousand Euros, ordered from a developed country, especially if containing any reference to lottery or gambling winnings.

Other risk criteria

1. Companies that receive or send international transfers of large amounts, in respect of payments or collections for computer supplies, mobile phones or similar, with a large number of transactions over a short period of time, then stopping or being replaced by new companies occupying their position.

2. Companies which, acting as customers, make payments through transfers to a limited number of alleged suppliers with funds previously received in cash or via transfers from alleged customers , showing coinciding positions with those of the alleged suppliers.

3. Customers who are beneficiaries of small transfers ordered by individuals from abroad, but which together add up to a significant lump sum, without any apparent business.

4. Repayment or cancellation of transfers sent or received.

5. Operations that appeared to be linked to immigration and not regularly repeated.

6. Customers who consistently conduct their transactions at peak hours of activity in order to avoid thorough analysis.

7. Customers who, for no apparent reason, receive large amounts of money.

8. Transfers that are payments or collections with no apparent links to genuine contracts, goods or services.

9. Customers transferring an unusual amount compared to the amounts transferred in the past.

10. Transactions that are unusual or inconsistent with the customer's financial activities, or transactions that do not appear to have a regular business purpose.

11. Customers showing unusual curiosity about the entity’s internal control measures and procedures regarding money laundering.

12. Customers with a reluctant or evasive attitude regarding the transaction.

13. Striking behaviour of customers, especially if they are not concerned about transfer fees, or the applicable exchange rate, either for large quantities or when cheaper alternative means exist.

14. Remote transfer of funds when it is suspected that this procedure is carried out to try to evade the entity’s controls or if there are doubts about the customer’s identity.

15. Customers who regularly perform transactions in an establishment that is not in the area where they live or work.

16. Customers receiving multiple transfers of small amounts and on the same day or within a few days or begins to order transfers to another person in another city or country for an amount corresponding to the sum of the previous amounts.

17. Customers attempting to bribe, coerce or induce the employee to not comply with any of the measures provided for by law or by the entity itself in relation to the prevention of money laundering.

18. Customers refusing to provide the entity with any additional information about themselves that would allow access to discounts or other offers or schemes that would confer them a preferred customer status.

19. Currency exchange transactions of a currency other than that of the customer’s country of origin.

20. Customers making large purchases of travel cheques without a relevant travel plan.

21. Customers requesting large sums of foreign currency to be changed to another foreign currency.

22. Frequent or significant currency exchanges from Euros to foreign currencies or vice versa, without being justified by the customer's professional or commercial activity.

23. Unusual transactions in which the customer is unable to explain the reason for them.

24. Sudden increase in the size and frequency of transfers made by an individual.

25. Associations or foundations that promptly send funds in a significant amount to countries where there is no evidence of their regular activity or of the existence of a disaster or an advertising campaign to justify the collection and subsequent transfer of funds to those countries.

C. RISKS ASSOCIATED WITH THE SUSPICIOUS BEHAVIOUR OF THE OBLIGED PERSON'S EMPLOYEES OR AGENTS.

1. Employees of an establishment exhibiting a higher standard of living than their salary would allow for or showing sudden changes in behaviour, such as avoiding taking holidays.

2. Employees who compared to others of the same establishment have handled an uncommonly large number of transactions or unusually large transactions, which may mean that they have agreed or been forced to serve one or more specific customers.

3. Agents of an entity in which the number of new customers in relation to the number of regular customers is higher than usual, especially if the new customers' transactions differ from those of regular customers.

4. Agents of an obliged person undertaking a much larger amount of transactions than the average volume carried out by other agents with no apparent reason to justify this.

5. Agents carrying out a substantial volume of transactions to a particular destination whose average value is well above the average value of transactions placed to the same destination by the other agents of that payment institution.

6. Agents carrying out a substantial volume of transactions whose destination is the same city or region, without good cause.

7. Agents concentrating their transactions on very close dates or at odd hours, without good cause.

8. Agents experiencing a significant increase in the volume of transactions, without good cause, especially if the increase is due to the growth of transactions to or from a particular country.

9. Agents recording as emigrant remittances those transactions in which it is observed that the names of the senders and respective recipients match less frequently than usual.

10. Agents with a substantial volume of transactions in which the senders and recipients appear interrelated, without good cause,

either because different senders send money to the same or different beneficiaries, or because different beneficiaries receive money from the same originator(s).

11. Agents whose customers order transactions to a higher number of different beneficiaries than usual, or receive money from a higher number of payers than usual.

12. Agents having a substantial volume of transactions in which the originators are identified by means of a passport.

13. Agents with a high number of senders whose nationality or country of birth differs from the country of destination of the payment transactions.

14. Agents who repetitively include in their clients' files the same or slightly varying details in certain fields (address, telephone number, activity, etc.).

15. Agents with a high number of payment transactions in which beneficiaries declare to receive money for the same reason, which is unusual (for example, the purchase of a car).

16. Agents recording transactions for customers who directly inform the entity that they have not been carried out.

17. Agents whose copies of originators' identity documents show signs of forgery, alteration or manipulation.

18. Agents who fail to properly keep the ballots certifying the completion of transactions or when a substantial number of such ballots are not signed by the senders or the signatures do not match those on the identity of such senders.

19. Agents depositing the funds of the payment transactions in the bank account in advance.

20. Agents depositing funds in the bank account of the entity in instalments to evade identification, or at offices far away from where transactions are theoretically captured, or through deposits placed by third parties, unknown to the money transfer institution.

21. Agents appearing as the originators of transfers to different countries or beneficiaries.

22. Agents whose customers make a large number of orders for amounts just under 3,000 Euros.

23. Agents who are reluctant to comply with the internal control measures of the money transfer institution in the prevention of money laundering, claiming, for example, the measures provided by other entities are more permissive.