Law 10/2010 of 28 April, on the prevention of money laundering and terrorist financing

This is an unofficial translation. It is provided for information purposes only.

JUAN CARLOS I

KING OF SPAIN

A TODOS LOS QUE LA PRESENTE VIEREN Y ENTENDIEREN.

SABED: QUE LAS CORTES GENERALES HAN APROBADO Y YO VENGO EN SANCIONAR LA SIGUIENTE LEY.

EXPLANATORY STATEMENT.

The money laundering prevention policy emerged in the late 1980s in response to growing concerns raised by the financial crime resulting from drug trafficking.

The risk of the penetration of important sectors of the financial system by criminal organisations, to which the existing instruments failed to provide an adequate response, gave rise to a coordinated international policy whose most significant effect was the creation in 1989 of the Financial Action Task Force (FATF). The FATF Recommendations, adopted in 1990, quickly became the international standard in this area and were the direct inspiration for the First EU Directive (Council Directive 91/308/EEC of 10 June 1991).

However, an increased understanding of the techniques used by money laundering networks and the natural development of such a new public policy have, in recent years, led to a number of changes in the international standards and hence, in Community law.

In this context, the Act hereunder transposes Directive 2005/60/EC of the European Parliament and Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, developed by Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures

for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, and establishes the system of penalties laid down in Regulation (EC) No. 1781/2006 of the European Parliament and Council of 15 November 2006 on information on the payer accompanying transfers of funds.

Nonetheless, it should be noted that the Third Directive or Directive 2005/60/EC, which essentially incorporates the FATF Recommendations into Community law, following their review in 2003, merely provides a general framework that must not only be transposed but also completed by the Member States, giving rise to considerably lengthier and more detailed national standards. In other words, the Directive does not establish a comprehensive framework for the prevention of money laundering and terrorist financing to be implemented by the institutions and persons covered without further specification from their national legislatures. Moreover, the Third Directive is a minimum standard, as clearly stated in its article 5, that must be reinforced or extended taking into account the specific risks of each Member State, which is why this Act, like the current Specific Measures for the Prevention of Money Laundering Act 19/1993 of 28 December 1993, contains certain provisions that are stricter than those of the Directive.

Nonetheless, from a technical point of view, a total transposition has been made, adapting the terminology and systems of the Directive to native legislative practices. For example, the term persons with public responsibility (“personas con responsabilidad pública”) has been used in place of what the Directive calls politically exposed persons ("personas del medio político"), on the grounds that this is more accurate and expressive in Spanish. The current system has also been maintained as far as possible, where it did not contradict the new Community law, in order to reduce the costs of adaptation for institutions and persons covered by the Act. Lastly, the rank has been raised of various provisions contained in the Royal Decree 925/1995 of 9 June, developing Act 19/1993 of 28 December, resulting in a significantly more extensive law. From a critical point of view, this technique could be labelled as overly regulatory; however, it is deemed preferable because it covers specific duties imposed on the institutions and persons covered by the Act, which find a more suitable fit in a law..

Lastly, it should be noted that the systems for the prevention of money laundering and terrorist financing have been unified, thus ending the current dispersion. Pursuant to international standards on the prevention of money laundering, which have fully incorporated the fight against terrorist financing, the Third Directive, unlike the texts of 1991 and 2001, refers to "the prevention of the use of the financial system for the purpose of money laundering and terrorist financing."

In Spain, the Specific Measures for the Prevention of Money Laundering Act 19/1993 of 28 December, exists alongside the Prevention and Freezing of Terrorist Financing Act 12/2003 of 21 May. As its title suggests, Act 12/2003 of 21 May was not limited to regulating the freezing or blocking of funds with a possible terrorist link, as was its original intention; instead, it has mimicked the prevention obligations of Act 19/1993 of 28 December, which is clearly a dysfunctional situation.

Hence, without prejudice to the maintenance of Act 12/2003 of 21 May on freezing funds, the preventive aspects both of money laundering and terrorist financing are now regulated herein in a single piece of legislation. Freezing, as an operational decision, will remain within the power of the Ministry of the Interior, while the Commission for the Prevention of Money Laundering and Monetary Offences, which reports to the Secretariat of State for the Economy, will be assigned the power, with the participation of the financial supervisors, to initiate and carry out preliminary investigations in sanction proceedings for failure to comply with prevention obligations. This will put an end to the current duality of the legislation while maintaining the authority of the Commission on Terrorist Financing Monitoring to agree on the blocking or freezing of funds where justified.

CHAPTER I.
GENERAL PROVISIONS.

Article 1. Subject matter, scope and definitions.

1. The purpose of this Act is to safeguard the integrity of the financial system and other economic sectors by establishing obligations in respect of the prevention of money laundering and terrorist financing.

2. For the purposes of this Act, the following conduct shall be regarded as money laundering:

a) The conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such activity to evade the legal consequences of his or her actions.

b) The concealment or disguise of the true nature, source, location, disposition, movement, beneficial ownership of property or rights, knowing that such property is derived from criminal activity or involvement in criminal activity.

c) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is derived from criminal activity or from an act of participation in criminal activity.

d) Participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the actions mentioned in the foregoing points.

Money laundering shall exist even where the conduct described in the foregoing points was carried out by the person or persons who carried out the criminal activity that generated the property.

For the purposes of this Act, property deriving from criminal activity means assets of every kind whose acquisition or possession originates from a crime, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets, and the amount defrauded in the case of tax fraud.

Money laundering shall be regarded as such even where the activities which generated the property were carried out in the territory of another Member State or in that of a third country.

3. For the purposes of this Act, 'terrorist financing' means the provision, depositing, distribution or collection of funds or property, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, to carry out any of the terrorist offences punishable under the Criminal Code.

Terrorist financing shall be regarded as such even where the provision or collection of money or property were carried out in the territory of another State.

4. Equivalent third countries shall be those states, territories or jurisdictions so determined by the Commission for the Prevention of Money Laundering and Monetary Offences, at the proposal of its Secretariat, due to their establishing equivalent requirements to those of Spanish law.

The qualification of a state, territory or jurisdiction as an equivalent third country shall not in any event have retroactive effect.

The General Secretariat of the Treasury and International Financing shall maintain on its website an updated list of States, territories or jurisdictions which have the status of equivalent third countries.

Article 2. Obliged entities.

1. This Act shall apply to:

a) Credit institutions.

b) Insurance companies authorised to operate in the field of life insurance and insurance brokers acting in connection with life insurance or other investment related-services, with the exceptions laid down in the regulations.

c) Investment services firms.

d) Management companies of investment funds and investment companies whose management is not assigned to a management company.

e) Pension fund management entities.

f) Management companies of venture capital entities and venture capital companies whose management is not assigned to a management company.

g) Mutual guarantee companies.

h) Payment institutions and electronic payment institutions.

i) Persons whose business activity includes currency exchange.

j) Postal services in respect of giro or transfer activities.

k) Persons professionally involved in brokering loans or credits, as well as persons who, without being licensed as credit institutions, carry out professionally any of the activities covered by the First additional provision of Act 3/1994, of 14 April 1994, adapting Spanish legislation on credit institutions to the Second Banking Co-ordination Directive and introducing other changes relative to the financial system.

l) Property developers and persons whose business activities include those of agency, commission or brokerage in real state trading.

m) Auditors, external accountants and tax advisers.

n) Notaries and registrars of property, trade and personal property.

ñ) Lawyers, barristers and other independent professionals when they participate in the design, implementation or advice on activities on behalf of clients relating to the buying and selling of real state or business entities, the management of funds, securities or other assets, the opening or management of current, savings or securities accounts, the organisation of contributions necessary for the creation, operation or management of companies or the creation, operation or management of trusts, companies or similar structures, or when acting on behalf of clients in any financial or real estate transaction.

o) Persons who on a professional basis and in accordance with the specific rules applicable in each case provide the following services for the account of third parties: forming companies or other legal persons; acting as or arranging for another person to act as a director, a non-director secretary to the board or an external advisor of a company, a partner of a partnership or a similar position in relation to other legal persons; providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement; acting as or arranging for another person to act as a trustee of a trust or similar legal arrangement, or acting as or arranging for another person to act as a shareholder for another person, other than a company listed on a regulated market of the European Union that is subject to disclosure requirements in conformity with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

p) Casinos.

q) Professional dealers in jewels, precious stones or precious metals.

r) Professional dealers in works of art or antiques.

s) Persons whose business activity includes those set down in article 1 of Consumer Protection in the Procurement of Goods with a Price Refund Offer Act 43/2007, of 13 December.

t) Persons engaged in the deposit, custody or professional transfer of funds or means of payment.

u) Persons responsible for the management, operation and marketing of lotteries or other gambling activities, whether they be in the customer's physical presence or by electronic, IT, telematic or interactive means. In the case of lotteries, sports-charitable pari-mutuel betting, contests, bingos and type "B" amusement machines, only in respect of prize payment transactions.

v) Natural persons engaged in the movement of means of payment, under the terms laid down in article 34.

w) Professional dealers in goods, under the terms set out in article 38.

x) Foundations and associations, under the terms provided for in article 39.

y) Managers of payment systems, clearing systems and those for the settlement of securities and financial derivatives, as well as managers of credit cards or debit cards issued by other entities, under the terms established in article 40.

This Act shall be considered to cover non-resident persons or entities that, through branches or agents or the provision of services without permanent establishment, carry out activities in Spain of a similar nature to the persons or entities referred to in the previous subparagraphs.

2. This Act shall be considered to apply to the natural or legal persons carrying out the activities referred to in the previous paragraph. However, when natural persons act as employees of a legal person, or provide permanent or occasional services for the latter, the obligations imposed under this Act shall correspond to such legal person in respect of the services rendered.

Obliged entities will be also subject to the obligations hereunder with respect to transactions performed through agents or other persons acting as mediators or intermediaries of the latter.

3. Persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or terrorist financing may be excluded in the regulations. Gambling activities with a low risk of money laundering or terrorist financing may be fully or partially exempted.

4. For the purposes of this Act, the obliged entities listed from a) to i) of paragraph 1 shall be regarded as financial institutions.

5. The information and internal control obligations set out in Chapters III and IV of this Law shall apply to the national administrator of the greenhouse gas emission rights registry envisaged in Law 1/2005 of 9 March 2005 regulating the regime for the trading of greenhouse gas emission allowances, with the legally determined exceptions.

CHAPTER II.
DUE DILIGENCE.

SECTION 1. NORMAL DUE DILIGENCE MEASURES.

Article 3. Formal identification.

1. Obliged entities shall identify the natural or legal persons intending to enter into business relations or to act in any transaction.

Under no circumstances shall obliged entities maintain business relationships or carry out transactions with natural or legal persons who have not been duly identified. In particular, the opening, contracting or maintenance of accounts, passbooks, assets or instruments that are numbered, encrypted, anonymous or under fictitious names shall be prohibited.

2. Before entering into the business relationship or executing any transactions, obliged entities shall verify the identity of the participants using reliable and irrefutable documentary evidence. If the identity of the participants cannot be initially verified by documentary evidence, article 12 may be applied, unless there are elements of risk in the transaction.

The documents to be considered as proof of identification shall be established in the regulations.

3. In life insurance, the identity of the policyholder must be verified before conclusion of the contract. The identity of the beneficiary of the life insurance must be verified in all cases before payment of the benefit under the contract or the exercise of the rights of redemption, payment or pledge granted by the policy.

Article 4. Identification of the beneficial owner.

1. Obliged entities shall identify the beneficial owner and take appropriate steps to verify the identity of the latter before entering into business relations or executing any transactions.

2. For the purposes of this Act, beneficial owner shall mean:

a) Natural person or persons on whose behalf it is intended to establish a business relationship or intervene in any transaction.

b) Natural person or persons who ultimately owns or controls, directly or indirectly, a percentage of more than 25 percent of the capital or voting rights of a legal person, or who by other means exercises control, directly or indirectly, over a legal person. The criteria applicable for the purposes of determining control shall be, inter alia, those set forth in Article 42 of the Spanish Commercial Code.

Indicators of control by other means shall be, inter alia, those specified in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of

certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

Constituting exceptions are the companies listed on a regulated market that is subject to disclosure requirements in conformity with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information.

c) In the case of trusts, such as the Anglo-Saxon trust, all the following persons shall have the status of beneficial owner:

(1) the settlor;

(2) the trustee(s);

(3) the protector, if any;

(4) the beneficiaries or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the category of persons in whose main interest the legal arrangement or entity is set up or operates;

(5) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means.

d) In the case of legal arrangements similar to trusts, such as fiducias or the German treuhand, obliged entities shall identify and adopt appropriate measures to check the identity of persons holding equivalent or similar positions to those listed in points (1) to (5) above.

3. Obliged entities shall gather information on clients to determine whether they are acting on their own or for third parties. Where there are indications or certainty that clients are not acting on their own, the institutions and persons covered by this Act shall gather the information required in order to find out the identity of the persons on whose behalf they are acting.

4. Obliged entities shall take appropriate steps to identify the structure of ownership and control of legal persons, legal arrangements without legal personality, trusts and any other similar arrangement.

Obliged entities will not establish or maintain business relationships with legal persons or legal arrangements without legal personality whose ownership and control structure has not been possible to ascertain. In the case of corporations whose shares are represented by bearer shares, the preceding prohibition will be applicable unless the obliged entity ascertains by other means the ownership and control structure. This provision will not be applicable to the conversion of bearer shares in registered shares or book entries.

Article 5. Purpose and nature of the business relationship.

Obliged entities shall obtain information on the purpose and intended nature of the business relationship. In particular, obliged entities shall gather information from their clients in order to find out the nature of their professional or business activities and shall take reasonable steps to verify the accuracy of this information.

Such measures shall include the establishment and implementation of procedures to verify the activities declared by clients. Such procedures shall take into account the different levels of risk and be based on obtaining from clients documents relating to the stated activity or on obtaining information regarding the latter from a source other than the client.

Article 6. Ongoing monitoring of the business relationship.

Obliged entities shall conduct ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with their knowledge of the customer, the business and risk profile, including the source of funds and to ensure that the documents, data and information held are kept up-to-date.

Article 7. Application of due diligence measures.

1. Obliged entities shall apply each of the customer due diligence measures provided for in the previous articles, but may determine the degree of application of the measures provided for in articles 4, 5 and 6 on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction, which circumstances are set down in the explicit customer admissions policy referred to in article 26.

Obliged entities shall be able to demonstrate to the competent authorities that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing through a prior risk analysis which must, in any event, be set down in writing.

In all events, the institutions and persons covered by this Act shall implement the due diligence measures when there is suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold, or when there are doubts about the veracity or adequacy of previously obtained data.

2. Without prejudice to the second subparagraph of article 3.1, the institutions and persons covered by this Act shall apply the due diligence measures provided for in this Chapter not only to all new customers but also to existing customers, on a risk-sensitive basis.

In any event, obliged entities shall apply the due diligence measures to existing customers who contract new products or conduct a transaction that is significant for its volume or complexity.

The provisions of this paragraph shall be without prejudice to the liability applicable through the breach of obligations in force before the coming into force of this Act.

3. Obliged entities shall not enter into business relationships or execute transactions when they cannot apply the due diligence measures required in this Act. If this is found to be impossible during the course of the business relationship, obliged entities shall terminate the latter and conduct the special review set out in article 17.

The refusal to enter into business relations or execute transactions or the termination of the business relationship due to the impossibility of applying the due diligence measures hereunder shall not entail any liability for obliged entities, except if this should involve unfair enrichment.

4. Obliged entities shall apply the due diligence measures set forth in this Chapter to trusts and other legal arrangements or patrimonies which, despite lacking legal personality, may act in the course of trade.

5. Casinos shall identify and verify with documentary proof the identity of all persons intending to enter the establishment. The identity of such persons shall be recorded, subject to compliance with the provisions of article 25.

Likewise, casinos shall identify all persons intending to perform the following transactions:

a) The delivery of checks to customers as a result of the exchange of chips.

b) Transfers of funds made by casinos at the request of customers.

c) The issue by casinos of certificates providing evidence of the gains obtained by players.

When transactions for a value of EUR 2,000 or more are carried out in a single operation or in several operations which appear to be linked, whether it be at the time of receiving gains or of purchase or sale of gaming chips, casinos must apply to the other customer due diligence measures as provided in this Section.

6. Operators of gambling conducted by electronic, IT, telematics and interactive means shall identify and check the identity of any persons seeking to participate in such gambling or betting, as provided by law.

When transactions for a value of 2,000 euro or more are carried out in a single operation or in several operations which appear to be linked, whether it be at the time of receiving gains and/or of placing bets, said gambling operators must apply the other customer due diligence measures as provided in this Section.

Operators of gambling conducted with physically present customers shall apply due diligence measures when they carry out transactions for a value of 2,000 euro or more in a single operation or in several operations which appear to be linked.

7. Legal authorisation not to apply all or some of the due diligence or document retention measures may be granted for occasional transactions which do not exceed a quantitative threshold, whether individually or cumulatively over time.

Article 8. Third-party application of due diligence measures.

1. Obliged entities may rely on third parties subject to this law, and on the organisations or federations of these obliged entities, to apply the due diligence measures provided for in this Section, with the exception of ongoing monitoring of the business relationship regulated in Article 6. This limitation shall not apply in the case of groups.

Nonetheless, obliged entities shall maintain full responsibility for the business relationship or transaction, even when the breach is attributable to the third party, without prejudice, where applicable, to the liability of the latter.

2. Obliged entities may rely on third parties covered by the legislation on prevention of money laundering and terrorist financing of other Member States of the European Union or equivalent third countries, and on the organisations or federations of these obliged entities, even if the documents or data required by those States or countries are different to those under this Act, provided that their completion or drafting is supervised by the competent authorities.

It is prohibited to rely on third parties domiciled in those third countries with strategic deficiencies that have been identified by means of the European Commission decision adopted in accordance with Article 9 of Directive (UE) 2015/849 of the European Parliament and of the Council of 20 May 2015, except for branches and subsidiaries majority owned by obliged entities established in the European Union, provided that such branches and subsidiaries comply in full with the group-level policies and procedures set by the parent.

3. Reliance on third parties for the implementation of due diligence measures shall require the prior execution of a written agreement between the obliged entity and the third party to formalise the respective obligations.

Third parties shall make information obtained in application of the due diligence measures immediately available to the obliged entity. Likewise, the third parties shall send to the obliged entity, at the request of the latter, a copy of the documents requested pursuant to this section.

4. The provisions of this article shall not apply to outsourcing or agency relationships where, on the basis of a contractual agreement, the outsourcing service provider or agent is to be regarded as part of the obliged entity.

The obliged entity, notwithstanding maintaining full responsibility for the customer, may accept the due diligence measures implemented by their subsidiaries or branches established in Spain or in third countries.

SECTION 2. SIMPLIFIED DUE DILIGENCE MEASURES.

Article 9. Simplified customer due diligence measures.

In the cases and under the conditions determined by law, obliged entities may apply simplified customer due diligence measures in respect of those customers, products or transactions involving a lower risk of money laundering or terrorist financing.

Article 10. Application of simplified due diligence measures.

The application of simplified due diligence measures shall be commensurate with the level of risk, in accordance with the following criteria:

a) Prior to application of simplified due diligence measures regarding a particular customer, product or transaction of those envisaged in law, obliged entities shall check that it effectively involves a lower risk of money laundering or terrorist financing.

b) The application of simplified due diligence measures shall at all times be consistent with the risk. Obliged entities shall not apply or cease to apply simplified due diligence measures as soon as they perceive that a customer, product or transaction does not involve a lower risk of money laundering or terrorist financing.

c) Obliged entities shall in any event maintain sufficient ongoing monitoring to detect transactions warranting special scrutiny in accordance with the provisions of Article 17.

SECTION 3. ENHANCED DUE DILIGENCE MEASURES.

Article 11. Enhanced customer due diligence.

1. Obliged entities shall, in addition to the normal due diligence measures, apply enhanced measures in relation to those countries with strategic deficiencies in their anti-money laundering and counter terrorist financing systems that have been identified by means of the European Commission decision adopted in accordance with Article 9 of Directive (UE) 2015/849 of the European Parliament and of the Council of 20 May 2015.

2. Obliged entities shall also apply enhanced measures in the cases envisaged in this Section and in any others determined by regulations to involve a high risk of money laundering or terrorist financing.

Obliged entities shall apply, on a risk-sensitive basis, enhanced customer due diligence measures in situations which by their nature may present a higher risk of money laundering or terrorist financing. In any event, private banking, money remittance and foreign currency exchange activities exceeding thresholds in accordance with regulations are deemed to be higher-risk situations.

3. The regulations may specify the enhanced customer due diligence measures required in the areas of business or activities that can pose a higher risk of money laundering or terrorist financing.

Article 12. Business relationships and transactions without physical presence.

1. Obliged entities may establish business relations or execute transactions by telephone, electronic and telematic means with customers who are not physically present, provided that one of the following conditions is met:

a) The customer's identity is accredited in accordance as defined in the applicable regulations on electronic signatures.

b) The first deposit originates from an account in the same client´s name opened in Spain, the European Union or in equivalent third countries.

c) The requirements to be determined in the regulations are judged to be met.

In any event, within one month of entering into the business relationship, obliged entities must obtain from these customers a copy of the documents required to practice due diligence.

Where discrepancies are observed between the data supplied by the customer and the other information accessible or in the possession of the obliged entity, a face-to-face identification will be required.

Obliged entities shall take additional due diligence measures when in the course of the business relationship they perceive the risk to be above the average risk level.

2. Obliged entities shall establish policies and procedures to address the specific risks associated with non-face-to-face business relationships and transactions.

Article 13. Cross-border correspondent banking.

1. Correspondent relationship is understood as the provision of banking services by one bank as the correspondent to another bank as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, and foreign exchange services.

Correspondent relationships include the relationships between and among credit institutions and financial institutions, including payment institutions, where similar services are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers. In all these cases the provisions of this article shall apply.

2. In respect of cross-border correspondent relationships with respondent institutions from third countries, financial institutions shall apply the following measures:

a) Gather sufficient information about a respondent institution to understand the nature of the respondent's business and to determine from publicly available information its reputation and the quality of its supervision.

b) Assess the respondent institution's anti-money laundering and anti-terrorist financing controls.

c) Obtain approval from senior management before establishing new correspondent relationships. The institution’s internal procedures shall specify the minimum management level of approval necessary for establishing or continuing business relationships, which may be set depending on the level of risk. This function may only be assigned to persons who have sufficient knowledge of the obliged entity’s level of exposure to the risk of money laundering and terrorist financing and who have sufficient rank to take decisions affecting that exposure.

d) Document the respective responsibilities of each institution.

e) Conduct enhanced, ongoing monitoring of the transactions made within the framework of the business relationship, taking into consideration the geographical, customer or service risk factors.

Financial institutions shall adjust the degree or intensity of application of the measures in accordance with the level of risk.

3. Credit institutions shall not enter into or continue correspondent relationships with shell banks. Likewise, credit institutions shall take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a bank that is known to permit its accounts to be used by shell banks.

For this purpose shell bank means a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence involving management and directorate, and which is unaffiliated with a regulated financial group.

4. Credit institutions shall not engage in or continue correspondent relationships that, either directly or through a sub-account, enable the customers of the respondent credit institution to execute transactions.

Article 14. Politically exposed persons

1. Obliged entities shall apply the enhanced customer due diligence measures provided for in this article in business relationships or transactions with politically exposed persons.

2. Politically exposed persons means persons who are or have been entrusted with prominent public functions, such as heads of State, heads of government, ministers or other members of Government, secretaries of State or undersecretaries; parliamentarians; supreme court judges, constitutional court judges or judges of other high-level judicial bodies whose decisions are not normally subject to appeal except in exceptional

circumstances, including equivalent members of the Public Prosecutor's Office, the members of courts of auditors or boards of central banks, ambassadors and chargés d'affaires, top military personnel of the armed forces; members of the administrative, management or supervisory bodies of State-owned enterprises; directors, deputy directors and members of the board or equivalent function of an international organisation; and senior officials of political parties represented in Parliament.

3. In addition, the following are deemed to be politically exposed persons:

a) The persons, other than those listed in the preceding paragraph, who are deemed to be senior officials in accordance with Article 1 of Law 3/2015 of 30 March 2015 regulating senior officials of the Spanish central government.

b) The persons who are or have been entrusted with prominent public functions in Spanish regional (autonomous) governments, such as Presidents, Ministers, other members of regional Executive Councils, the persons holding posts equivalent to those referred to in (a) above and regional member of parliaments.

c) In Spanish local government, mayors, councillors and the persons holding posts equivalent to those referred to in a) above in capital municipalities of provinces or Autonomous Regions and local entities that have more than 50,000 inhabitants.

d) Senior officials in Spanish trade union or business organisations.

The Commission for the Prevention of Money Laundering and Monetary Offences shall draft and publish a list setting out which type of functions and posts are considered to be those held by Spanish politically exposed persons.

4. None of the categories set out in the preceding paragraphs shall include public-sector employees of intermediate or lower levels.

5. Regarding the customers or beneficial owners referred to in this article, obliged entities shall, in addition to employing ordinary due diligence measures, do as follows:

a) Apply appropriate risk management procedures to determine whether the customer or beneficial owner is a politically exposed person. These procedures shall be included in the explicit customer admission policy referred to in Article 26.

b) Obtain the approval of at least the immediate management level for establishing or continuing business relationships.

c) Take adequate measures to establish the source of wealth and source of funds.

d) Conduct enhanced, ongoing monitoring of the business relationship.

The institution’s internal procedures shall specify the minimum management level of approval necessary for establishing or continuing business relationships, which may be set

depending on the level of risk of the transaction and the specific customer. This function may only be assigned to persons who have sufficient knowledge of the obliged entity's level of exposure to the risk of money laundering and terrorist financing and who have sufficient rank to take decisions affecting that exposure.

6. Obliged entities shall apply the measures specified in the preceding paragraph to the family members or persons known to be close associates of politically exposed persons.

For the purpose of this article, family members are deemed to be the spouse or any person with a stable link through a similar emotional relationship, as well as parents and children, and the spouses or any persons with a stable link to the children through a similar emotional relationship.

Persons known to be close associates are deemed to be natural persons who are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person, or who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person.

7. Obliged entities shall take reasonable measures to determine whether the beneficiaries of a life insurance policy and/or, where required, the beneficial owner of the beneficiary are politically exposed persons. Those measures shall be taken no later than at the time of the pay-out or at the time of the assignment, in whole or in part, of the policy. In those cases, the obliged entities, in addition to taking ordinary due diligence measures, shall:

a) Inform at least the immediate management level before proceeding to pay-out or assignment, in whole or in part, of the policy.

b) Conduct enhanced scrutiny of the entire business relationship with the policy holder.

c) Conduct the special review provided for in Article 17 to determine whether the suspicious transaction report in accordance with Article 18 is warranted.

8. Without prejudice to compliance with the provisions of the preceding paragraphs, when, due to the circumstances set down in article 17, a special review is required, the obliged entities shall take the appropriate measures to assess the possible participation in the act or transaction of any person who holds or has held a representative public office or senior position in the Public Administrations, or of their family members or persons known to be close associates.

9. Without prejudice to the provisions of Article 11, when the persons referred to in the preceding paragraphs have ceased to exercise their functions, the obliged entities shall continue to apply the measures envisaged in this article for a period of two years. After this period has elapsed, the obliged entity shall apply adequate due diligence measures in consonance with the risk that the customer may continue to pose, and shall continue to do so until the obliged entity determines that the customer no longer represents a specific risk derived from his former politically exposed person status.

Article 15. Data processing of politically exposed persons.

1. For application of the measures set out in the preceding article, institutions and persons covered by this Act may create files containing the identifying data of politically exposed persons, even if they do not maintain a business relationship with them.

For this purpose, obliged entities may gather the information available on politically exposed persons without their consent, even if this information is not available in sources that are available to the public.

The data contained in the files created by the obliged entities may only be used for compliance of the enhanced due diligence measures provided for in this Act.

2. It will also be possible for third parties other than the obliged subjects to create files that contain information identifying individuals with the status of politically exposed persons for the sole purpose of cooperating with obliged entities in the compliance of enhanced customer due diligence measures.

The persons or entities that create these files may not use the data for any purpose other than that designated in the previous subparagraph.

3. The processing and transfer of data referred to in the previous two paragraphs shall be subject to the Personal Data Protection Organic Act 15/1999, of 13 December, and subsequent implementing regulations.

Nonetheless, it will not be necessary to inform those concerned about the inclusion of their data in the files referred to in this article.

4. Obliged entities and third parties referred to in paragraph 2 shall establish procedures for the continuous updating of the data contained in the files on politically exposed persons.

In any event, the high-level security measures provided for in the personal data protection legislation shall be applied to the file.

Article 16. Products or transactions favouring anonymity and new developing technologies.

Obliged entities shall pay special attention to any money laundering or terrorist financing threat that may arise from products or transactions that might favour anonymity, or from new developing technologies, and take appropriate measures to prevent their use for money laundering or terrorist financing purposes.

In such cases, obliged entities shall conduct a specific analysis of possible money laundering or terrorist financing threats, which should be documented and made available to the competent authorities.

CHAPTER III.
REPORTING OBLIGATIONS.

Article 17. Special review.

Obliged entities shall pay special attention to any event or transaction, regardless of its size, which, by its nature, could be related to money laundering or terrorist financing, and record the results of their analysis in writing. In particular, obliged entities shall examine with special attention all complex or unusual transactions or patterns of behaviours or those with no apparent economic or visible lawful purpose, or which denotes signs of deception or fraud.

When establishing the internal controls referred to in article 26, obliged entities shall specify the way in which this obligation to conduct a special review has to be fulfilled. Such specifications shall include the preparation and dissemination among executives, employees and agents of a list of transactions particularly liable to be related to money laundering or terrorist financing, which should be regularly updated and the use of appropriate IT tools to conduct each analysis, , bearing in mind the type of transactions, business sector, geographical scope and volume of information.

Subsequent regulations may determine operations that will in all events be subject to special review by the obliged entities.

Article 18. Suspicious transactions reporting.

1. Obliged entities shall, on their own initiative, notify the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (hereinafter the Executive Service) of any act or transaction, even the mere attempt, regarding which, following the special review referred to in the previous article, there is any indication or certainty that it bears a relation to money laundering or terrorist financing.

In particular, the Executive Service shall be notified of transactions that, with regard to the activities listed in article 1, reveal an obvious inconsistency with the nature, volume of activity or customer operating history, provided that the special review referred to in the preceding article does not perceive any economic, professional or business justification for the execution of the transactions.

2. The communications referred to in the previous section shall be made without delay in accordance with the relevant procedures under article 26 and shall, in any case, contain the following information:

a) List and identification of the natural or legal persons taking part in the transaction and the nature of their participation.

b) The activity which the natural or legal persons participating in transactions are known to engage in, and the congruence between this activity and the transactions made.

c) A list of transactions and their dates stating their nature, the currency in which they were transacted, the amounts and place or places involved, their purpose and the means of payment or collection used.

d) .The steps taken by the institution or person covered by this Act to investigate the transactions being notified.

e) A statement of all the circumstances of whatever kind giving rise to the suspicion or certainty of a link with money laundering, or evidencing the lack of economic, professional or business justification for the activities carried out.

f) Any other data relevant to the prevention of money laundering or terrorist financing determined in the regulations.

In any case, the notification made to the Executive Service shall be preceded by a structured process of a special review of the transaction in accordance with the provisions of article 17. In cases where the Executive Service considers that the special review conducted is insufficient, it will return the notification to the institution or person covered by this Act for the latter to conduct a more thorough review of the transaction, succinctly indicating the reasons for its return and the content to be reviewed.

In the case of merely attempted transactions, the institution or person covered by this Act shall record the transaction as not executed and report to the Executive Service on the information obtained.

3. Reporting on grounds of indication shall be carried out by the institutions and persons covered by this Act on the medium and in the format determined by the Executive Service.

4. Directors or employees of institutions and persons covered by this Act may report directly to the Executive Service on the transactions of which they are aware and consider there to be indications or the certainty of a relation to money laundering or terrorist financing in cases where, after being brought to light internally, the institution or person covered by this Act failed to inform the reporting director or employee of the outcome of his/her notification.

Article 19. Abstention from execution.

1. The institutions and persons covered by this Act shall refrain from carrying out any transaction of those referred to in the previous article.

However, when such abstention is not possible or may hinder the investigation, the institutions and persons covered by this Act shall be free to perform it notifying the Executive Service immediately thereafter in accordance with the provisions of article 18. The notification to the Executive Service shall, in addition to the information referred to in article 18.2, indicate the grounds for executing the transaction.

2. For the purposes of this Act, just cause for the refusal of notarial authorisation or for their duty of abstention shall mean the presence in the transaction either of various risk indicators

identified by the centralised prevention body or clear indication of law deception or fraud. Hence, without prejudice to article 24, the notary shall obtain from the customer the information needed to assess the concurrence of such indicators or circumstances in the transaction.

With regard to registrars, the obligation to abstain referred to in this article shall not in any case prevent the entry of the legal act or transaction in the land, trade or movable property registers.

Article 20. Systematic reporting.

1. In all events, the institutions and persons covered by this Act shall report the Executive Service at the established frequency on the transactions determined in the regulations.

Notwithstanding the foregoing, if the transactions subject to systematic reporting contain indications or the certainty of being related to money laundering or terrorist financing, the provisions of articles 17, 18 and 19 shall apply.

Certain categories of institutions and persons covered by this Act may be exempted in the regulations from the obligation to systematically report on transactions.

In the absence of transactions to report on, institutions and persons covered by this Act shall indicate this circumstance to the Executive Service at the frequency determined in the regulations.

2. Systematic reporting shall be carried out by the institutions and persons covered by this Act on the medium and in the format determined by the Executive Service.

Article 21. Cooperation with the Commission for the Prevention of Money Laundering and Monetary Offences and its support bodies.

1. The institutions and persons covered by this Act shall supply the documentation and information required of them by the Commission for the Prevention of Money Laundering and Monetary Offences and its support bodies in the exercise of their powers.

The requirements shall specify the documentation to be supplied or the circumstances that have to be reported, and shall expressly state the term in which these should be presented. At the end of the submission period for the required documentation or information, if the latter has not been supplied or is incomplete due to the omission of data hampering proper review of the situation, the obligation under this article shall be deemed to have been breached.

2. The institutions and persons covered by this Act shall, within the framework of the internal controls referred to in article 26, put in place systems allowing them to respond fully and rapidly to enquiries from the Commission for the Prevention of Money Laundering and Monetary Offences , its support bodies and other legally competent authorities regarding whether they maintain or have maintained during the previous ten years a business

relationship with specified natural or legal persons and regarding the nature of that relationship.

Article 22. Exemption.

Lawyers shall not be subject to the obligations under articles 7.3, 18 and 21 with respect to the information that they receive from any of their clients or obtain on the latter when ascertaining the legal position for their client or performing their duty of representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, irrespective of whether such information was received or obtained before, during or after such proceedings.

Notwithstanding the provisions of this Act, lawyers shall remain subject to their obligation of professional secrecy in accordance with the legislation in force.

Article 23. Exemption from liability.

The disclosure of information in good faith to the competent authorities under this Act by the institutions and persons covered by this Act or, exceptionally, by its employees or directors shall not constitute a breach of any restriction on the disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the institutions and persons covered by this Act, their directors or employees in liability of any kind.

Article 24. Prohibition of disclosure.

1. Obliged entities and their directors and employees shall not disclose to the customer or to third persons the fact that information has been transmitted to the Executive Service, or that a transaction is under review or may be under review in case it might be related to money laundering or terrorist financing.

This prohibition shall not include disclosure to the competent authorities, including centralised prevention bodies, or disclosure for law enforcement purposes in the context of a criminal investigation.

2. The prohibition laid down in the previous paragraph shall not prevent:

a) The disclosure of information between financial institutions belonging to the same group. For this purpose, the definition of group laid down in article 42 of the Code of Commerce shall apply.

b) The disclosure of information between the obliged entities referred to in points m) and ñ) of article 2.1, when they perform their professional activities, whether as employees or not, within the same legal person or in a network. For these purposes, a "network" shall mean the larger structure to which the person belongs and which shares common ownership, management or compliance control.

c) Disclosure of information, related to a single customer and a single transaction involving two or more obliged entities, between financial institutions or between the obliged entities referred to in points m) and ñ) of article 2.1, provided that they belong to the same professional category and are subject to equivalent obligations as regards professional secrecy and personal data protection. The exchanged information shall be used exclusively for the purposes of the prevention of money laundering and terrorist financing.

The exceptions laid down in the preceding subparagraphs shall also apply to disclosure between obliged entities domiciled in the European Union or in equivalent third countries.

Disclosure shall be prohibited with obliged entities domiciled in third countries not classified as equivalent or in respect of which the Commission adopts the decision referred to in the Additional provision of this Act.

3. Where the obliged entities referred to in article 2.1m) and ñ) seek to dissuade a customer from engaging in illegal activity, this shall not constitute a disclosure within the meaning of paragraph 1.

Article 25. Record keeping.

1. Obliged entities shall keep the documentation gathered for the compliance with the obligations under this Act for a period of ten years, after which they shall eliminate it. Five years after the end of the business relationship or the execution of the occasional transaction, the retained documentation shall be accessible only to the internal control units of the obliged entity, including its technical prevention units and, where applicable, the parties responsible for its legal defence.

In particular, obliged entities shall keep for its use in any investigation or analyses of possible money laundering or terrorist financing by the Executive Service or by other competent authorities:

a) Copy of the documents required under the customer due diligence measures for a period of ten years from the end of the business relationship or the date of the transaction.

b) Original, or evidentiary copy admissible in court proceedings, of the documents or records duly evidencing the transactions, their participants and the business relationships, for a period of ten years from the date of the transaction or from the end of the business relationship.

2. Obliged entities, with the exceptions determined in the regulations, shall store copies of the identification documents referred to in article 3.2 on optical, magnetic or computerised media to assure their integrity, the correct reading of the data, the impossibility of their manipulation and their proper conservation and localisation.

In any case, the record keeping system of obliged entities shall ensure the proper management and availability of the documentation, both for internal control purposes and for responding to the requirements of the authorities in a timely manner.

CHAPTER IV.
INTERNAL CONTROL.

Article 26. Policies and procedures.

1. Obliged entities shall adopt in writing and implement adequate policies and procedures of customer due diligence, reporting, record keeping, internal control, risk assessment and management, ensuring the reporting and the compliance with the provisions of this Act in order to forestall and prevent transactions related to money laundering or terrorist financing.

2. Obliged entities shall adopt in writing and implement an explicit customer admission policy. The said policy shall include a description of the kinds of customers potentially presenting a higher-than-average risk. Customer admission policies shall be gradual, with extra precautions taken for those customers presenting a higher-than-average risk.

Where there is a centralised prevention body for the collegiate professions covered by this Act, the latter shall be responsible for the approval in writing of the aforementioned policy of customer admissions.

3. The policies and procedures shall be applicable to a group's branches and subsidiaries located in third countries, without prejudice to such adaptations as may needed to comply with the specific rules and regulations of the host country, subject to any legally determined specifications. In the case of a group's branches and subsidiaries located in other Member States of the European Union, obliged entities shall comply with the obligations in the host country. The definition of "group" shall be as in Article 42 of the Commercial Code.

4. Without prejudice to application of the provisions of this Act, the Spanish institutions operating in a European Union country through agents or other permanent establishments other than branches shall comply with the anti-money laundering and counter terrorist financing regulations of the country in which they operate.

5. Obliged entities shall approve and keep up-to-date an appropriate anti-money laundering and counter terrorist financing manual which contains full information on the internal control measures referred to in the preceding paragraphs. For the exercise of its supervision and inspection function, the manual shall be at the disposal of the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences and, if case of Agreement, of the supervisors of the financial institutions.

6. The Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences and, if case of Agreement, the supervisors of the financial institutions may propose to the Standing Committee of the Commission for the Prevention of Money Laundering and Monetary Offences the formulation of requirements for obliged entities to adopt the appropriate remedial measures regarding their manuals and internal procedures.

7. The obliged entities exempt from complying with the obligations set out in paragraphs 1, 2 and 5 of this article may be determined by law.

Article 26 bis. Internal procedures for reporting potential breaches.

1. Obliged entities shall establish internal procedures for their employees, managers or agents to report, even anonymously, significant information on possible breaches with this Act, its implementing regulations or the derived policies and procedures committed in the obliged entity's operations.

These procedures may be incorporated into the systems which the obliged entity may have set up for reporting information on the occurrence of acts or conduct contrary to other general or sectoral rules and regulations applicable to it.

2. These systems and procedures shall be subject to the regulations on the protection of personal data for internal complaints reporting systems.

For these purposes, internal control and compliance bodies shall include only those regulated by Article 26 ter.

3. Obliged entities shall adopt measures to ensure that employees, managers or agents who report breaches committed at the institution are protected from reprisals, discrimination or any other unfair treatment.

4. The obligation to set up the reporting procedure described above does not replace the requirement for specific and independent mechanisms by which employees report internally those transactions suspected of being linked to money laundering or terrorist financing referred to in Article 18.

8. The obliged entities exempt from complying with the obligation envisaged in this article may be determined by law.

Article 26 ter. Internal control body and representative to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences.

1. Obliged entities shall appoint a director or senior manager resident in Spain to act as a representative to the Executive Service.

Groups consisting of various obliged entities shall appoint a single representative who must be a director or senior manager of the group's controlling company.

In the case of individual entrepreneurs or professionals, the owner of the business shall act as representative to the Executive Service.

2. With the exceptions determined in subsequent regulations, the nomination of the representative, together with a detailed description of his/her career, shall be proposed to the Executive Service, which may make reasoned objections or observations.

The representative to the Executive Service shall be responsible for fulfilment of the reporting obligations set out in this Act, for which he/she shall have unlimited access to any

information in the possession of the obliged entity or, where applicable, of any company in the group.

3. Obliged entities managed centrally from another Member State of the European Union which operate in Spain through agents or other forms of permanent establishment other than a branch must appoint a representative resident in Spain, who shall have the status of central contact point.

Obliged entities operating in Spain under the freedom to provide services must also designate a representative to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences. Said representative is not required to be resident in Spain.

4. Obliged entities shall establish an adequate internal compliance unit responsible for implementing the policies and procedures referred to in Article 26.

The internal compliance unit, which, where applicable, will consist of representatives from the different business areas of the obliged entity, shall meet, with the periodicity determined in the internal control procedures, and shall expressly document the adopted agreements.

5. The representative to the Executive Service and the internal compliance unit shall have the necessary material, human and technical resources for the exercise of their functions.

6. The anti-money laundering and anti-terrorist financing compliance units shall, in all cases, operate with functional separation from the internal auditing department or unit of the obliged entity.

7. The types of obliged entities that may be exempted from the obligation to set up an internal control unit shall be determined by regulations. In such exempted obliged entities, the functions of the internal control unit shall be carried out by the representative to the Executive Service.

The classes of obliged entities for which it is compulsory to set up technical units to process and analyse information shall also be determined by regulations.

Article 27. Centralised prevention bodies.

1. By Order of the Minister for the Economy and Enterprise, the constitution of centralised prevention bodies may be agreed for the collegiate professions covered by this Act.

The centralised prevention bodies shall strengthen and channel the cooperation of collegiate professions with the judicial, police and administrative authorities responsible for the prevention and fighting of money laundering and terrorist financing, regardless of the direct responsibility that professionals have as obliged entities. The representative of the centralised prevention body shall be considered as the representative of its professional members for the purposes of article 26 ter.

2. The centralised prevention bodies shall examine, either on their own initiative or at the request of their members, the transactions referred to in article 17, and shall report them to the Executive Service in the event of the circumstances laid down in article 18. The members shall provide the centralised prevention body with all the information it requires of them in the exercise of its functions. Likewise, in accordance with the provisions of article 21, the members shall provide, either directly or through the centralised prevention body, all of the documentation and information required of them by the Commission for the Prevention of Money Laundering and Monetary Offences or by its support bodies in the exercise of their powers.

3. With the exception of the public officials referred to in article 2.1n), membership of centralised prevention bodies shall be voluntary for obliged entities

Article 28. External review.

1. The internal control measures and units referred to in articles 26, 26 bis and 26 ter shall be subject to an annual review by an external expert.

The results of the review shall be written up in a report detailing the internal control measures in place, assessing their operational efficiency and, eventually proposing changes or improvements as required. However, in the two years following the issue of this report, it may be replaced by a monitoring report issued by the external expert, dealing only with the appropriateness of the measures taken by obliged entity to remedy the deficiencies detected.

The models of the external expert reports may be approved by Order of the Minister for the Economy and Enterprise.

No later than three months from its issue date the report shall be submitted to the Board of Directors or, where appropriate, to the management board or top management body of the obliged entity, which shall take the necessary steps to remedy the detected deficiencies.

2. Obliged entities shall entrust the external review to persons having the adequate academic and professional background to perform the task correctly.

Those intending to act as external experts shall notify it to the Executive Service before commencing their activity and shall report the Executive Service every six months the list of obliged entities whose internal controls they have reviewed.

Obliged entities shall not entrust the external review to any natural person who renders or has rendered them any other kind of paid services in the three years prior or following to the date of issue of the report.

3. The report shall in any event be available for the Commission for the Prevention of Money Laundering and Monetary Offences and its support bodies during the five years following the date of issue.

4. The obligation under this article shall not be applicable to individual professionals and entrepreneurs.

Article 29. Employee training.

Obliged entities shall take appropriate measures to ensure that their employees are aware of the requirements of this Act.

These measures shall include the duly accredited participation of the employees in specific ongoing training courses designed to detect transactions that may be related to money laundering or terrorist financing and to instruct them on how to proceed in such cases. The training actions shall be included in an annual plan, designed taking into account the risks of the business sector of the obliged entity and approved by the internal compliance unit.

Article 30. Protection and suitability of employees, directors and agents.

1. Obliged entities shall take appropriate measures to ensure the confidentiality of the identity of employees, directors or agents who have reported to the internal compliance unit a transaction which they have reason to suspect or know to be related to money laundering or terrorist financing.

The representative referred to in article 26 ter shall appear in all kind of administrative or judicial proceedings in relation to the information included in the reports to the Executive Service or to any additional related information when it is considered essential to obtain clarification, confirmation or additional information from the obliged entity.

2. Obliged entities shall set forth in writing and implement adequate policies and procedures to ensure high ethical standards in the recruitment of employees, directors and agents.

3. All authorities and public officials shall take appropriate measures to protect from threats or hostile action the employees, managers or agents of obliged entities who report suspicion transactions, the protection measures set out in Article 65.1 being applicable.

Article 31. Branches and subsidiaries in third countries.

1. Obliged entities shall apply in their branches and majority-owned subsidiaries located in third countries measures at least equivalent to those laid down by Community law with regard to the prevention of money laundering and terrorist financing.

The Executive Service may oversee the suitability of such measures.

2. When the legislation of the third country does not permit the application of measures equivalent to those laid down in Community law, obliged entities shall adopt in respect of their branches and majority-owned subsidiaries additional measures to effectively address the risk of money laundering or terrorist financing, and they shall inform the Executive Service, which may propose to the Standing Committee of the Commission for the

Prevention of Money Laundering and Monetary Offences the formulation of requirements for the adoption of mandatory measures.

The Secretariat of the Commission for the Prevention of Money Laundering and Monetary Offences (hereinafter the Commission Secretariat) shall report the European Commission those cases where the legislation of the third country does not permit the application of equivalent measures and where action could be taken in the framework of an agreed procedure to pursue a solution.

Article 32. Protection of personal data.

1. The processing of personal data and of files, whether automated or otherwise, created for fulfilment of the provisions of this Act shall be subject to the provisions of the Organic Act 15/1999 and its implementing regulations.

2. The data subject's consent shall not be required for the processing of data necessary for compliance with the reporting obligations referred to in Chapter III.

The aforementioned consent will also not be required for the transfer of data foreseen in said Chapter and, in particular, those in article 24.2.

3. By virtue of article 24.1, and in relation to the obligations referred to in the previous paragraph, the communication obligation provided for in article 5 of the Organic Act 15/1999 shall not apply to the processing of data.

Likewise, the rules laid down in said Organic Act referring to the exercise of rights of access, rectification, cancellation and opposition shall not apply to the files and processing covered by this provision. In the event of the exercise of these rights by the data subject, obliged entities shall be restricted to stating the provisions of this article.

The provisions of this paragraph shall also apply to files created and managed by the Executive Service for fulfilment of the functions entrusted by this Act.

4. The centralised prevention bodies referred to in article 27 shall have the status of data processors for the purposes of the legislation on personal data protection.

5. The high-level security measures laid down in the legislation on personal data protection shall apply to the files referred to in this article.

Article 33. Exchange of information between obliged entities and centralised fraud prevention files.

1. Notwithstanding the provisions in article 24.2, in the event of concurrence of the exceptional circumstances to be determined in the regulations, the Commission for the Prevention of Money Laundering and Monetary Offences may agree to allow the exchange information concerning certain types of transactions other than those provided for in article

18 or related to customers subject to certain circumstances, provided that this takes place between obliged entities from one or more of the categories mentioned in article 2.

The agreement shall in any event determine the type of transaction or class of customer in respect of whom the exchange of information is authorised and the types of obliged entities that can exchange information.

2. Likewise, obliged entities may exchange information relating to the transactions referred to in articles 18 and 19 with the sole purpose of preventing or forestalling transactions related to money laundering or terrorist financing when the characteristics or pattern of the specific case suggest the possibility that, following its rejection, a transaction wholly or partially similar to the latter may be attempted with other obliged entities.

3. Obliged entities and the judicial, law enforcement and administrative authorities competent for the prevention or suppression of money laundering and terrorist financing may consult the information contained in the files created in accordance with the provisions of the legislation in force on personal data protection by private entities in order to prevent fraud in the financial system, provided that access to such information is necessary for the purposes described in the previous paragraphs.

4. Access to the data referred to in this article shall be limited to the internal compliance units referred to in article 26 ter, including the technical units established by obliged entities.

5. The provisions of Organic Act 15/1999 regarding the requirement for consent of the data subject, the obligation to inform the data subject and the exercise of the rights of access, rectification, cancellation and opposition shall not apply to the exchanges of information under this article.

The high-level security measures laid down in the legislation on personal data protection shall apply to the processing of the information exchanged pursuant to this article.

CHAPTER V.
MEANS OF PAYMENT.

Article 34. Obligation to declare.

1. Under the terms established in this Chapter, prior declaration shall be made by natural persons who, acting on their own account or for the account of a third party, perform the following movements:

a) Incoming or outgoing cross-border movements of means of payment for an amount of 10,000 euro or more or its equivalent in foreign currency.

b) Movements within national territory of means of payment for an amount of 100,000 euro or more or its equivalent in foreign currency.

For these purposes, movement shall mean any change of location or position taking place outside the address of the bearer of the means of payment.

Natural persons acting on behalf of companies that, duly authorised and registered by the Ministry of Home Affairs, engage in the professional transportation of funds or means of payment shall be exempted from the obligation to declare under this article.

2. For the purposes of this Act means of payment shall mean:

a) Paper money and coins, domestic or foreign.

b) Bearer cheques denominated in any currency.

c) Any other instrument, including the electronic ones, designed to be used as a bearer payment means.

3. In case of cross-border movements, the obligation to declare laid down in this article shall extend to movements for amounts exceeding 10,000 euro or its equivalent in foreign currency of bearer negotiable instruments, including monetary instruments such as travellers cheques, negotiable instruments, including cheques, promissory notes and payment orders, whether in bearer form, endorsed without restriction, made out to a fictitious payee or any other form in which ownership thereof is transferred on delivery, and incomplete instruments, including cheques, promissory notes and payment orders that are signed but omit the name of the payee.

4. The declaration provided for in this article shall conform to the approved model and shall contain accurate data on the bearer, owner, recipient, amount, nature, origin, intended use, route and method of transport of the means of payment. The obligation to declare shall be deemed breached if the information recorded is incorrect or incomplete.

The declaration model, once fully completed, shall be signed and presented by the person transporting the means of payment. Throughout the movement, the means of payment must be accompanied by the duly certified declaration and be transported by the person listed as the bearer. By Order of the Minister of Economy and Finance, the model, form and place of declaration shall be regulated and the threshold set down in points a) and b) of paragraph 1 may be amended.

Article 35. Control and seizure of means of payment.

1. In order to verify compliance with the obligation to declare established in the previous article, customs officials or police officers shall be empowered to control and inspect natural persons, their baggage and their means of transport.

The control and inspection of goods shall be verified in accordance with customs law.

2. Failure to declare, where this is required, or the lack of veracity in the declared data, provided that this can be estimated as particularly relevant, shall lead to the seizure by the

acting customs officials or police officers of all means of payment detected, except for the minimum for survival which may be determined by Order of the Minister of Economy and Finance.

For this purpose, the lack of full or partial veracity of the data relating to the bearer, owner, recipient, origin and intended use of the means of payment as well as the excess or reduction in the amount declared in respect of the real amount by more than 10 percent or EUR 3,000 will be, in any event, considered particularly relevant.

Likewise, seizure shall take place when, despite having declared the movement or not exceeding the declaration threshold, there is suspicion or certainty that the means of payment are related to money laundering or terrorist financing, or where there is reasonable doubt as to the veracity of the information provided in the declaration.

The seized means of payment shall be paid into the accounts opened in the name of the Commission for the Prevention of Money Laundering and Monetary Offences in the seized currency, and the acting police officers or customs officials shall not be subject to the provisions of article 34.

The record of the seizure, which shall be sent immediately to the Executive Service for investigation and to the Commission Secretariat for instituting, if appropriate, the sanction proceedings, should clearly indicate whether the seized means of payment were found in a location or situation revealing a clear intention to conceal them. The record of the seizure shall have evidentiary nature, notwithstanding the evidence that could be brought forward by the interested parties in defence of their rights or interests.

3. When in the course of judicial proceedings non-fulfilment of the obligation to declare provided for in the previous article is observed, the court shall notify the Commission Secretariat, and shall provide it with the seized means of payment not subject to criminal liability, proceeding as laid down in the previous paragraph.

Article 36. Information processing.

The information obtained as a result of the obligation to declaration must be submitted to the Executive Service through electronic, computerised or telematic means, on the standardized computer media determined by the Executive Service. Information on seizures shall be centralised within the Commission Secretariat.

The tax authorities and law enforcement agents shall have access to the information referred to in the previous subparagraph in the exercise of their powers.

Article 37. Exchange of information.

The information obtained from the declaration provided for in article 34 or from the controls referred to in article 35 may be transferred to the competent authorities of other states.

Where there are suspicion of fraud or of any other illegal activity adversely affecting the financial interests of the European Community, such information shall also be forwarded to the European Commission.

CHAPTER VI.
OTHER PROVISIONS.

Article 38. Trade of goods.

Without prejudice to the limitations on cash payments set in Article 7.Uno of Law 7/2012 of 29 October 2012 amending tax and budget law and adapting financial regulations in order to step up anti-fraud operations, natural or legal persons who are professional dealers in goods shall be bound by the obligations laid down in articles 3, 17, 18, 19, 21, 24 and 25 in respect of transactions in which collects or payments are made by non-resident natural persons with the means of payment referred to in article 34.2 of this Act and for amounts exceeding 10,000 euro, whether made in one or several transactions that appear to be linked.

On a risk-sensitive basis, all or some of the other obligations under this Act may be extended by the subsequent regulations in respect of the aforementioned transactions.

Article 39. Foundations and associations.

The Protectorate and the board of a foundation, in the exercise of the functions assigned to them by Foundations Act 50/2002 of 26 December, and the staff with responsibilities in the management of foundations shall ensure that these are not used for money laundering or to channel funds or resources to individuals or entities linked to terrorist groups or organisations.

For these purposes, all foundations shall keep for records the period laid down in article 25 identifying all persons who contribute or receive gratis funds or resources from the foundation, under the terms of articles 3 and 4 of this Act. These records shall be made available to the Protectorate, the Commission on Terrorist Financing Monitoring, the Commission for the Prevention of Money Laundering and Monetary Offences or its support bodies, and the administrative or judicial authorities competent for the prevention or prosecution of money laundering or terrorism.

The provisions of the previous subparagraphs shall also apply to associations and compliance with the provisions of this article shall correspond in such cases to the governing body or general assembly, to the members of the representative body that manages the interests of the association and to the body responsible for verifying its constitution, in the exercise of the functions assigned to it by article 34 of Right of Association Organic Act 1/2002, of 22 March.

On a risk-sensitive basis, the other obligations provided for in this Act may be extended to foundations and associations by the subsequent regulations.

Article 40. Collaborative entities.

Managers of payment systems and of systems for the clearing and settlement of securities and financial derivatives, together with managers of credit cards or debit cards issued by other entities shall cooperate with the Commission for the Prevention of Money Laundering and Monetary Offences and its support bodies by delivering the information they possess on conducted transactions, as provided in article 21.1.

Article 41. Money remittances.

In the money remittance transactions referred to in article 2 of Payment Services Act 16/2009 of 13 November, transfers shall be made through accounts opened with credit institutions, both in the destination country of the funds and in any other in which the overseas correspondents or intermediate clearing systems operate. Entities providing money remittance services shall only arrange contracts with overseas correspondents or clearing intermediate systems that have in place appropriate methods of fund clearance and of prevention of money laundering and terrorist financing.

Funds thus managed must be used solely and exclusively for the payment of the ordered transfers and may not be used for other purposes. In any case, payment to the correspondents that pay the beneficiaries of the transfers shall necessarily take place in bank accounts opened in the country where such payment is made.

At all times, the entities referred to in this article shall ensure that the transaction is monitored until it is received by the final beneficiary, and this information shall be made available in accordance with the provisions of article 21.

Article 42. International financial sanctions and countermeasures.

1. The financial sanctions established by the Resolutions of the United Nations Security Council on the prevention and suppression of terrorism and terrorist financing and on the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing shall be compulsorily applicable for any natural or legal person as provided by EU regulations or by Council of Ministers regulation adopted at the proposal of the Minister for the Economy and Enterprise.

2. Without prejudice to the direct effect of Community regulations, the Council of Ministers, on a proposal from the Minister of Economy and Enterprise may resolve to apply financial countermeasures with respect to third countries which represent a higher risk of money laundering, terrorist financing or financing of the proliferation of weapons of mass destruction.

The resolution of the Council of Ministers, which may be adopted at its own initiative or in application of decisions or recommendations of international organisations, institutions or groups, may impose, inter alia, the following financial countermeasures:

a) Prohibit, limit or condition capital movements and the related collection or payment transactions, as well as transfers, from or to the third country or nationals or residents thereof.

b) Subject to prior authorisation any capital movements and the related collection or payment transactions, as well as transfers, from or to the third country or nationals or residents thereof.

c) Agree to freeze or block the funds or economic resources owned, held or controlled by natural or legal persons that are nationals or residents of the third country.

d) Prohibit the provision of funds or economic resources owned, held or controlled by natural or legal persons that are nationals or residents of the third country.

e) Require the application of enhanced customer due diligence measures in the business relationships or transactions of nationals or residents of the third country.

f) Establish systematic communication of the transactions of nationals or residents of the third country and of transactions entailing financial movements to or from the third country.

g) Prohibit, limit or condition the establishment or maintenance of subsidiaries, branches or representative offices of the financial institutions of the third country.

h) Prohibit, limit or condition the establishment or maintenance by financial institutions of subsidiaries, branches or representative offices in the third country.

i) Prohibit, limit or condition business relationships or financial transactions with the third country or with nationals or residents thereof.

j) Prohibit obliged entities from accepting due diligence measures by institutions located in the third country.

k) Require financial institutions to review, modify and, where applicable, terminate correspondent relationships with financial institutions of the third country.

l) Subject the subsidiaries or branches of financial institutions of the third country to enhanced supervision or to external examination or audit.

m) Impose on financial groups enhanced information requirements or external audit in respect of any subsidiary or branch located or operating in the third country.

3. The Executive Service of the Commission shall be responsible for supervising and inspecting compliance with the provisions of this article.

Article 43. Financial ownership file.

1. In order to forestall and prevent money laundering and terrorist financing, credit institutions shall report to the Executive Service, according to the timeframe determined in the subsequent regulations, on the opening or cancellation of current accounts, savings accounts, securities accounts and term deposits.

The report 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 state owned file, called a Financial Ownership File, for which the Secretariat of State for the Economy will be responsible.

The Executive Service, as processor, shall, in accordance with Organic Act 15/1999, determine the technical characteristics of the database and may 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 File. The Executive Service may obtain the above data for the exercise of its powers. The State Tax Administration Agency may obtain the above data as laid down in General Tax Act 58/2003 of 17 December.

Any request for access to the data of the Financial Ownership File shall be adequately reasoned by the requesting body, which shall be responsible for the correct form of the request. In no case may access to the File be requested 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 Attorney General 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 the correct use of the file, for which purpose he/she may request full justification of the reasons for any access.

CHAPTER VII.
INSTITUTIONAL ORGANISATION.

Article 44. Commission for the Prevention of Money Laundering and Monetary Offences.

1. The promotion and coordination of the implementation of this Act shall correspond to the Commission for the Prevention of Money Laundering and Monetary Offences, subordinate to the Secretariat of State for the Economy.

2. The following shall be functions of the Commission for the Prevention of Money Laundering and Monetary Offences:

a) Management and promotion of activities for the prevention of the use of the financial system or of other economic sectors for money laundering, as well as for the prevention of administrative infringements to the legal provisions on economic transactions with other countries.

b) Cooperation with the law enforcement agencies, coordinating the investigation and prevention activities carried out by the other organs of the Public Administrations with competence in the matters referred to in the preceding subparagraph.

c) Ensuring the most effective possible assistance in these matters to the judicial organs, the Public Prosecutor's Office and the criminal police.

d) Appointment of the Director of the Executive Service. The appointment shall be proposed by the Chairman of the Commission for the Prevention of Money Laundering and Monetary Offences, in consultation with the Bank of Spain.

e) Approval, in consultation with the Bank of Spain, of the budget of the Executive Service.

f) Provision of ongoing guidance for the actions of the Executive Service and approval of its organisational structure and operational guidelines.

g) Approval, on a proposal from the Executive Service and, in case of Agreement, the supervisory bodies of the financial institutions, of the Annual Inspection Plan for obliged entities, which shall be privileged.

h) Issuance of formal requests for obliged entities in the scope of compliance with the requirements of this Act.

i) Serving as a channel for cooperation between the Public Administration and the representative organizations of obliged entities.

j) Adoption of guidance and guidelines for action for obliged entities.

k) Issuing an opinion on draft legal provisions regulating matters related to this Act.

l) Submission to the Minister of Economy and Finance proposals for sanctions whose imposition is the responsibility of the Minister or of the Council of Ministers.

m) Agree with the supervisory bodies of financial institutions, and through the signing of the appropriate Agreements, the coordination of their actions with those of the Executive Service in matters of supervision and inspection of compliance with the obligations imposed under this Act to financial institutions, to ensure that they carry out their duties efficiently. These Agreements may provide that, subject to the powers of supervision and inspection of the Executive Service, the aforementioned supervisory bodies monitor the compliance by obliged entities with the obligations laid down in Chapters II, III and IV of this Act and that they make recommendations and propose the formal requests to be formulated by the Standing Committee of the Commission for the Prevention of Money Laundering and Monetary Offences.

n) Development of statistics on money laundering and terrorist financing, for which all competent bodies must provide their support. In particular, the National Commission on Judicial Statistics shall provide statistical data on judicial proceedings related to crimes of money laundering or terrorist financing.

ñ) Other functions assigned to it in the legal provisions in force.

3. The Commission for the Prevention of Money Laundering and Monetary Offences shall be presided by the Secretary of State for the Economy and shall have the composition established by regulation. In any case, it shall include appropriate representation of the Public Prosecutor's Office, the ministries and institutions competent in this matter, the supervisory bodies of financial institutions and the Autonomous Communities competent for the protection of individuals and property and for the maintenance of public safety.

The Commission for the Prevention of Money Laundering and Monetary Offences may act in plenary session or through a Standing Committee, whose composition shall be determined by regulation, and that, presided by the Director-General for the Treasury and Financial Policy, shall exercise the functions provided for in points f), g) and h) of the previous paragraph, and any other that the plenary session expressly delegates to it. Attendance of the plenary session of the Commission for the Prevention of Money Laundering and Monetary Offences and of its Standing Committee shall be personal and non-delegable.

Other committees attached to the Commission for the Prevention of Money Laundering and Monetary Offences may be determined by subsequent regulations..

4. The Commission for the Prevention of Money Laundering and Monetary Offences and the Commission on Terrorist Financing Monitoring shall cooperate to the fullest extent possible in the exercise of their respective competences.

Article 45. Support bodies of the Commission for the Prevention of Money Laundering and Monetary Offences.

1. The Commission for the Prevention of Money Laundering and Monetary Offences shall carry out its mission with the support of the Commission Secretariat and the Executive Service.

2. The functions of the Commission Secretariat shall be carried out by the department, with the rank at least of Sub-Directorate general, among those in the Secretariat of State for the Economy as determined in the regulations. The person in charge of this organizational unit shall serve, ex officio, as Secretary of the Commission and its Committees.

The Commission Secretariat shall, inter alia, institute the sanction proceedings for breach of the obligations under this Act and shall recommend the appropriate decision to the Standing Committee. The Commission Secretariat shall send to obliged entities the requirements of the Standing Committee and shall report to the latter on the fulfilment of these requirements.

3. The Executive Service of the Commission is a body attached organically and functionally to the Commission for the Prevention of Money Laundering and Monetary Offences, which, through its Standing Committee, shall provide ongoing guidance for its actions and approve its operating guidelines.

The powers relating to the economic, budgetary and hiring regime of the Executive Service shall be exercised by the Bank of Spain in accordance with its specific rules, which entity shall sign the appropriate agreement with the Commission for the Prevention of Money Laundering and Monetary Offences for these purposes.

Employees of the Bank of Spain serving on the Executive Service shall continue their employment relationship with the Bank of Spain, shall depend functionally on the Executive Service, and shall be subject to the regulations governing the employee system of the Bank of Spain.

The budget of the Executive Service, following its approval by the Commission for the Prevention of Money Laundering and Monetary Offences, shall be integrated, with the due separation, into the budget for operating and investment expenses referred to in article 4.2 of Bank of Spain Act 13/1994, of 1 June. The expenses made against said budget shall be charged to the Bank of Spain, which shall compensate these in the manner indicated in paragraph 5 of this article.

4. The Executive Service of the Commission, without prejudice to the powers conferred on the law enforcement agents and other public authorities shall perform the following functions:

a) Render the necessary assistance to the judicial bodies, the Public Prosecutor's Office, the criminal police and the competent administrative bodies.

b) Submit to the bodies and institutions mentioned in the foregoing points those reports of actions with reasonable indications of a crime or, where appropriate, breach of administrative law.

c) Receive the reports under articles 18 and 20.

d) Analyse the information received and take the necessary action in each case.

e) Execute the orders of and follow the guidelines given by the Commission for the Prevention of Money Laundering and Monetary Offences or its Standing Committee, and submit to the latter any reports that it requests.

f) Monitor and inspect fulfilment of the obligations under this law by obliged entities, in accordance with article 47.

g) Make recommendations to institutions and persons covered by this Act in order to improve internal controls.

h) Propose to the Standing Committee the formulation of formal requests for the institutions and persons covered by this Act.

i) Report, with the exceptions determined in the regulations, in the procedures for the creation of financial institutions, on the adequacy of internal controls under the schedule of activities.

j) Report, with the exceptions determined in the regulations, on the precautionary assessment of acquisitions and increases in shareholdings in the financial sector.

k) Others provided for in this Act or assigned to it through the legislation in force.

5. The Bank of Spain, for expenses incurred under the budget approved by the Commission on Money Laundering and Monetary Offences, shall draw up duly justified accounts, which it shall refer to the Directorate-General for the Treasury and Financial Policy. The above Directorate, after verifying said accounts, shall pay the amount to the Bank of Spain, charging against the non-budget item created for this purpose by the State Comptroller's Office.

The balance presented by the above concept shall be settled by charging against the benefits paid in annually by the Bank of Spain to the Treasury.

6. The patrimonial liability of the State for the actions of the bodies of the Commission for the Prevention of Money Laundering and Monetary Offences shall be chargeable, if applicable, to the Minister of Economy and Finance under the terms established by the Legal Regime of the Public Authorities and Common Administrative Procedure Act 30/1992, of 26 November.

Article 46. Financial intelligence reports.

1. The Executive Service of the Commission shall analyse the information received from obliged entities or other sources, referring, if it detects indications or certainty of money

laundering or terrorist financing, the relevant financial intelligence report to the Public Prosecutor's Office or competent judicial, police or administrative authorities.

The information and documents available to the Executive Service of the Commission and the financial intelligence reports shall be confidential and any authority or official who accesses its content must keep the latter secret. In particular, in no event shall the identity be disclosed of the analysts who participated in the preparation of the financial intelligence reports or of the employees, directors or agents who reported the existence of indications to the internal compliance units of obliged entities.

Financial intelligence reports shall not have probative value and may not be incorporated directly into judicial or administrative proceedings.

2. The bodies that receive financial intelligence reports shall report regularly to the Executive Service of the Commission on the outcome of the latter. The Commission for the Prevention of Money Laundering and Monetary Offences may agree on a procedure with the recipient bodies for the assessment of financial intelligence reports.

The Executive Service of the Commission may report obliged entities on the outcome of their reports. The information provided by the Executive Service of the Commission to the institutions and persons covered by this Act shall be confidential and must be kept secret by its recipients.

The Executive Service of the Commission shall assess the quality of the reports made in accordance with article 18, periodically reporting the management body or board of the obliged entity on this assessment.

Article 47. Monitoring and inspection.

1. The Executive Service of the Commission shall monitor compliance with the obligations laid down in this Act, adapting its actions, with respect to financial institutions, to the agreements concluded pursuant to article 44.

Supervision may be extended to those obliged entities that have been granted an exemption in accordance with Article 2(3) of this Act, in order to check that said exemption has not been mis-used.

In any event, the Executive Service of the Commission may conduct in respect of any individual obliged entities or groups thereof, the necessary inspections to verify compliance with the obligations relating to the functions assigned to it. In the case of groups which include subsidiaries or branches abroad, the Executive Service of the Commission may supervise the suitability of the policies and procedures applied by the parent to its subsidiaries and branches.

2. The inspections of the Executive Service of the Commission and, in case of agreement, of the supervisory bodies of the financial institutions, shall be covered by an Annual Plan that will be adopted by the Commission for the Prevention of Money Laundering and

Monetary Offences, without prejudice to the fact that the Standing Committee may, through reasoned agreement, conduct further inspections.

The Executive Service, and in case of agreement, the supervisory bodies of the financial institutions, shall on an annual basis submit a reasoned report to the Commission for the Prevention of Money Laundering and Monetary Offences on actions that were included in the previous year's Plan but which were not able to be carried out, where applicable.

3. Supervisory action and the annual plans approved shall be formulated with a focus on supervisory risk, which shall determine the type, intensity and periodicity of supervision.

The risk profile of obliged entities, including compliance risk, shall be reviewed periodically and in any event when there are significant events or new developments in their management or functioning.

The supervisory process may include review of the risk analyses carried out by obliged entities and of the adequacy of their internal policies, controls and procedures in view of the results of those analyses.

4. Obliged entities and their employees, directors and agents shall cooperate to the fullest extent possible with the staff of the Executive Service of the Commission, providing unrestricted access to as much information or documentation as is required, including books, accounts, records, software, magnetic files, internal reports, minutes, official statements and any other related matters subject to inspection.

5. The Executive Service of the Commission or the supervisory bodies referred to in article 44 shall forward the relevant inspection report to the Commission Secretariat, which will propose the appropriate measures to the Standing Committee. Likewise, the Executive Service of the Commission or the supervisory bodies referred to in article 44 may propose to the Standing Committee the adoption of formal requests urging institutions and persons covered by this Act to take the corrective measures deemed necessary.

6. The inspection reports of the Executive Service of the Commission or of the supervisory bodies shall have probative value, notwithstanding the evidence that may be brought forward by the interested parties in defence of their rights or interests.

7. The Executive Service of the Commission shall notify the obliged entity of the conclusions drawn from the inspection within a maximum of one year starting from the date of the obliged entity’s full compliance with the first requirement for information. The time period may be extended by an additional six months by reasoned decision of the Director of the Executive Service when the inspection is particularly complex or the extension is for causes attributable to the obliged entity.

Article 48. Cooperation arrangements.

1. Any authority or official discovering facts that may constitute an indication or evidence of money laundering or terrorist financing, either during the inspections of monitored

institutions or in any other way, shall report such circumstance to the Executive Service of the Commission. Without prejudice to any possible criminal liability, non-compliance with this obligation by public officials who are not obliged entities under article 2 shall be subject to disciplinary action in accordance with the specific legislation applicable to them. This same obligation shall be extensive to any information they are called on to provide by the Commission for the Prevention of Money Laundering and Monetary Offences and its support bodies in the discharge of their duties.

2. The Bank of Spain, the National Securities Market Commission, the Directorate-General for Insurance and Pension Funds, the Directorate-General for Registers and Notaries, the Institute of Accounting and Auditing, professional bodies and the competent state or autonomous bodies, as appropriate, shall provide a reasoned report to the Commission Secretariat when they detect possible breaches of the obligations established herein in the course of their inspection or supervisory labours.

3. Judicial bodies shall forward evidence to the Commission Secretariat, on the instruction of the Prosecutor´s Office or upon their own motion, when they detect signs indicative of a breach the obligations under this Act that not constitute criminal offence.

4. When exercising its functions in relation to financial institutions subject to special legislation, the Executive Service of the Commission may obtain from the Bank of Spain, the National Securities Market Commission or the Directorate-General for Insurance and Pension Funds, as appropriate, all of the information and cooperation necessary to carry them out.

5. Without prejudice to paragraph 4 above, the Executive Service of the Commission shall have direct access to statistical information on capital movements and foreign economic transactions reported to the Bank of Spain in accordance with the provisions of the legislation applicable to such transactions. Likewise, the managing bodies and the Treasury General of Social Security shall transfer the personal data and information they may have obtained in the exercise of their functions to the Commission for the Prevention of Money Laundering and Monetary Offences, at the request of its Executive Service in the exercise of the competences conferred on it by this Act.

Article 48 bis. International cooperation.

1. The Secretariat of the Commission, the Executive Service of the Commission and the supervisory bodies referred to in Article 44 shall cooperate, at their own initiative or upon request, with other competent authorities of the European Union whenever the functions specified herein have to be performed and, to do so, shall make use of all the powers conferred on them herein. Within the framework of this cooperation, the European Supervisory Authorities shall be provided with the information needed to allow them to carry out their duties in the prevention of money laundering and terrorist financing.

2. In the case of the competent authorities of third countries which are not members of the European Union, cooperation and exchange of information shall be conditioned by the provisions of international treaties or conventions or, as applicable, by the general principle

of reciprocity, and shall be conditional on the application by such foreign authorities of the same obligations of professional secrecy as are applicable for the Spanish authorities.

3. The exchange of information by the Executive Service of the Commission with Financial Intelligence Units of European Union Member States shall be in accordance with Articles 51 to 57 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

4. The exchange of information by the Executive Service of the Commission with Financial Intelligence Units of third countries which are not members of the European Union shall be in accordance with the Egmont Group principles or under the terms of the relevant memorandum of understanding. Memoranda of understanding with Financial Intelligence Units shall be signed by the Director of the Executive Service, following authorisation by the Commission for the Prevention of Money Laundering and Monetary Offences and a favourable report from the Spanish Data Protection Agency.

5. The Secretariat of the Commission, the Executive Service of the Commission and the supervisory bodies referred to in Article 44 may use the information received only for the purposes for which the authorities from which it came have given their consent. This information may not be transmitted to other bodies or natural or legal persons without the express consent of the competent authorities that have disclosed it.

6. At the request of the Financial Intelligence Unit of another EU Member State, the Executive Service of the Commission shall be empowered to suspend a transaction in progress when there is evidence of money laundering or terrorist financing, so that the requesting Financial Intelligence Unit can analyse the transaction, confirm the suspicion and communicate the results of the analysis to the competent authorities. In cases of suspension due to evidence of terrorist financing, it shall inform the Secretariat of the Commission for the Surveillance of Terrorist Financing whenever prior authorization has been received from the requesting Financial Intelligence Unit.

The suspension shall be agreed under the responsibility of the requesting Financial Intelligence Unit and shall be effective for a maximum of one month. Once that period has elapsed, the suspension shall be lifted unless it was ratified or extended by law at the request of the Public Prosecutor.

Article 49. Confidentiality.

1. All persons who carry out or have carried out an activity for the Commission for the Prevention of Money Laundering and Monetary Offences or any of its bodies, and who have had knowledge of its actions or confidential data are required to maintain due secrecy. Failure to comply with this obligation shall incur the liabilities set down in the legislation. Such persons may not publish, communicate or show classified data or documents, even after leaving the service, without the express permission of the Commission for the Prevention of Money Laundering and Monetary Offences.

2. The data, documents and information held by the Commission for the Prevention of Money Laundering and Monetary Offences or any of its bodies pursuant to the functions assigned to them in the legislation shall be confidential and may not be disclosed except in the following cases:

a) The disclosure, publication or transmission of data when the person involved expressly consents to it.

b) The publication of aggregated data for statistical purposes, or reports in summary or aggregate form, such that the individuals or subjects involved cannot be identified even indirectly.

c) The furnishing of information at the demand of parliamentary enquiry committees.

d) The furnishing of information at the request of the Public Prosecutor's Office and the administrative or judicial authorities that, under the provisions of regulations with the force of law, are required for this purpose. In such cases, the applicant authority shall explicitly invoke the legal provision enabling the request for information and shall be responsible for the request being made in the correct form.

e) The request for reports or for information by the Commission for the Prevention of Money Laundering and Monetary Offences or its support bodies, without prejudice to the duty of confidentiality of the person or institution from whom or which the report or information is requested.

Notwithstanding the provisions of General Tax Act 58/2003 of 17 December, the exchange of information between the Executive Service and the tax authorities shall take place preferably in the form determined by agreement between the Commission for the Prevention of Money Laundering and Monetary Offences and the Spanish State Tax Administration Agency.

The Commission Secretariat may provide the tax authorities and the law enforcement agents with information of relevance for tax or police operations.

3. The authorities, persons or public institutions receiving confidential information from the Commission for the Prevention of Money Laundering and Monetary Offences or its support bodies shall also be subject to the duty of confidentiality established in this article, taking appropriate action to guarantee its confidentiality and using it only in the context of carrying out the functions legally assigned to them.

CHAPTER VIII. PENALTY SYSTEM.

Article 50. Categories of offence.

The administrative offences provided for in this Act shall be classified as very serious, serious and minor.

Article 51. Very serious offences.

1. The following shall constitute very serious offences:

a) Failure to fulfill the reporting duty referred to in article 18, when a director or employee of the obliged entity has internally revealed the existence of indications or certainty that a fact or transaction was related to money laundering or terrorist financing.

b) Failure to fulfill the obligation to cooperate under article 21 following written formal request from the Commission for the Prevention of Money Laundering and Monetary Offences.

c) Breach of the disclosure prohibition under article 24 or the duty of confidentiality provided for in articles 46.2 and 49.2e).

d) Resistance to or obstruction of inspections, following an explicit request in writing from the acting inspectors.

e) Failure to comply with the obligation to take corrective action at the formal request of the Standing Committee referred to in articles 26.5, 31.2, 44.2 and 47.5 in the event of unwillingness to comply.

f) The commission of a serious offence when a final penalty was imposed on the obliged entity through administrative proceedings during the preceding five years for the same type of offence.

g) Failure to comply with the suspension measures decided by the Executive Service of the Commission in accordance with Article 48 bis.6.

2. As provided for in the Community regulations establishing specific restrictive measures in accordance with articles 60, 301 or 308 of the Treaty establishing the European Community, the following shall constitute very serious breaches of this Act:

a) Wilful breach of the obligation to freeze or block the funds, financial assets or economic resources of designated natural or legal persons, institutions or groups.

b) Wilful breach of the prohibition on making funds, financial assets or economic resources available to designated natural or legal persons, entities or groups.

Article 52. Serious offences.

1. The following shall constitute serious offences:

a) Failure to comply with formal identification obligations, under the terms of article 3.

b) Failure to comply with obligations to identify the beneficial owner, under the terms of article 4.

c) Failure to comply with the obligation of obtaining information on the purpose and nature of the business relationship under the terms of article 5.

d) Failure to comply with the obligation of implementing measures for ongoing monitoring of the business relationship, under the terms of article 6.

e) Failure to comply with the obligation of applying customer due diligence measures for existing customers under the terms of article 7.2 and the Seventh transitional provision.

f) Failure to comply with the obligation of applying enhanced customer due diligence measures, under the terms of articles 11 to 16.

g) Failure to comply with the obligation of independent audit, under the terms of article 17.

h) Failure to comply with the obligation of reporting suspicious transactions, under the terms of article 18, where this should not be classified as very serious breach.

i) Failure to comply with the obligation of abstaining from execution, under the terms of article 19.

j) Failure to comply with the obligation of systematic reporting, under the terms of article 20.

k) Failure to comply with the obligation of cooperating under article 21 except by written formal request from one of the support bodies of the Commission for the Prevention of Money Laundering and Monetary Offences.

l) Failure to comply with the record-keeping obligation, under the terms of article 25.

m) Failure to comply with the obligation of approving in writing and implementing adequate internal control policies and procedures under the terms of article 26, including the written approval and implementation of an explicit customer admission policy.

n) Failure to comply with the obligation of reporting the Executive Service on the proposed appointment of the representative of the obliged entity, or refusal to address the objections or observations made under the terms of article 26 ter.

ñ) Failure to comply with the obligation of setting up adequate internal control bodies, including, where appropriate, technical units, that operate under the terms provided in article 26 ter.

o) Failure to comply with the obligation of providing the representative to the Executive Service and the internal control body with the material, human and technical resources necessary in the exercise of their functions.

p) Failure to comply with the obligation of adopting and making available to the Executive Service an appropriate and updated manual for the prevention of money laundering and terrorist financing under the terms of article 265.

q) Failure to comply with the obligation of independent audit, under the terms of article 28.

r) Failure to comply with the obligation of employee training, under the terms of article 29.

s) Failure to comply with the obligation of adoption by obliged entities of the appropriate measures for maintaining the confidentiality of the identity of employees, directors or agents who have reported suspicious transactions to internal control bodies, under the terms of article 30.1.

t) Failure to comply with the obligation of applying in respect of branches and majority-owned subsidiaries located in third countries the measures provided for in article 31.

u) Failure to comply with the obligation of implementing international financial sanctions and countermeasures, under the terms of article 42.

v) Failure to comply with the obligation under article 43 of reporting on the opening or cancellation of current accounts, savings accounts, securities accounts and term deposits.

w) Failure to comply with the obligation to take corrective action at the formal request of the Standing Committee referred to in articles 26.5, 31.2, 44.2 and 47.5 where there is no unwillingness to comply.

x) Entering into or continuing business relationships or executing prohibited transactions.

y) Resistance to or obstruction of inspections, when there is no express written request from the acting inspectors.

2. Unless there are indications or certainty of money laundering or terrorist financing, the offences described in points a), b), c), d), e), f) and l) of the previous paragraph may be classified as minor when the breach by the institution or person covered by this Act must be regarded as merely occasional or isolated on the basis of the percentage of incidences in the sample of compliance.

3. The following shall constitute serious breaches of this Act:

a) Failure to comply with the obligation of declaring the movements of means of payment, under the terms of article 34.

b) Failure by foundations or associations to comply with the obligations under article 39.

c) Failure to comply with the obligations laid down in article 41, except where such failure should be classified as very serious in accordance with article 51.1b).

4. As provided for in the Community regulations establishing specific restrictive measures in accordance with articles 60, 301 or 308 of the Treaty establishing the European Community, the following shall constitute serious breaches of this Act:

a) Failure to comply with the obligation to freeze or block the funds, financial assets or economic resources of designated natural or legal persons, institutions or groups, where this should not be classified as very serious breach.

b) Failure to comply with the obligation to make funds, financial assets or economic resources available to designated natural or legal persons, institutions or groups, where it should not be classified as very serious breach.

c) Failure to comply with the obligations of reporting to and notifying the competent authorities specifically established in Community regulations.

5. Failure to comply with the obligations under articles 4 to 14 and 16 of Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 shall constitute serious breaches of this Act.

Article 53. Minor offences.

Notwithstanding the provisions of article 52.2, failure to comply with the obligations specifically set out in this Act that do not constitute serious or very serious breaches as laid down in the previous two articles shall constitute minor breaches.

Article 54. Liability of administrators and directors.

In addition to the liability corresponding to the obliged entity even by way of simple failure to comply, those holding administrative or management positions in the latter, whether sole administrators or collegiate bodies, shall be liable for any breach should this be attributable to the latter's wilful misconduct or negligence.

Article 55. Enforceability of administrative liability.

Administrative liability for breach of this Act shall be enforceable even if after the breach the obliged entity ceases to engage in business or the administrative authorisation for operating is revoked.

In the case of dissolved companies, the former shareholders shall be jointly and severally liable for the administrative penalties imposed to a maximum of what they would have received as their liquidation proceeds, without prejudice to the liability of the directors, administrators or liquidators.

Article 56. Penalties for very serious offences.

1. For the commission of very serious offences, the following penalties may be imposed:

a) Fine between a minimum of 150,000 euro and a maximum amount equal to the highest of: 10 percent of the total annual turnover of the obliged entity, twice the economic

substance of the transaction, five times the gain derived from the breach, if such gain can be determined, or 10,000,000 euro.

b) Public reprimand.

c) In the case of institutions requiring administrative authorisation for their operation, temporary suspension or withdrawal of this authorisation.

The penalty provided for in point a), which will be compulsory in all events, shall be imposed simultaneously with one of those listed in points b) or c).

2. If the obliged entity sanctioned is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial statements in accordance with Article 22 of Directive 2013/34/EU, the total turnover used to calculate the maximum penalty to be imposed shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting Directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

3. In addition to the applicable penalty to be imposed on the obliged entity for the commission of very serious offences, one or more of the following penalties may be imposed on those responsible for the offence, having held administrative or management positions in the entity:

a) Fine for each of them of between EUR 60,000 and EUR 10,000,000.

b) Removal from office, with disqualification from holding administrative or management positions in any entity subject to this Act for a maximum period of ten years.

c) Public reprimand.

The penalty provided for in point a), which will be compulsory in all events, may be simultaneously imposed with one of those listed in points b) or c).

4. In all cases the sanctions imposed shall be accompanied by an order requiring the offender to cease the conduct and to desist from repetition of that conduct.

5. If the imposition of a public reprimand has been agreed and it is determined that such reprimand would hinder an investigation in progress or jeopardise the stability of the financial markets, the competent authority may:

a) delay publication until such time as the reasons for the suspension cease to exist;

b) decide finally not to publish the sanction if the stability of the financial markets cannot be ensured.

Article 57. Penalties for serious offences.

1. For the commission of serious offences, the following penalties may be imposed:

a) Fine between a minimum of 60,000 euro and a maximum amount that may be imposed up to the highest of these figures: 10 percent of the total annual turnover of the obliged entity; the amount of the economic substance of the transaction plus 50 percent; three times the gain derived from the breach, if such gain can be determined; or 5,000,000 euro. For the purpose of calculating the annual turnover, regard shall be had to the provisions of Article 56.2.

b) Public reprimand.

c) Private reprimand.

d) In the case of entities subject to administrative authorisation to operate, the temporary suspension of such authorisation.

The penalty provided for in point a), which shall in any event be compulsory, shall be imposed simultaneously with one of those listed in points b) to d).

2. In addition to the sanction corresponding to the obliged entity for the commission of serious offences, the following sanctions may be imposed on the persons who, while serving at the obliged entity as a manager or director or performing the function of external expert, are responsible for the breach:

a) Fine on each of them for a minimum of 3,000 euro and a maximum of 5,000,000 euro.

b) Public reprimand.

c) Private reprimand.

d) Removal from office, with disqualification from holding administrative or management positions in any entity subject to this Act for a maximum period of five years.

The penalty provided for in point a), which shall in any event be compulsory, shall be imposed simultaneously with one of those listed in points b) to d).

3. In the case of breach of the obligation to declare under article 34, the following sanctions shall be imposed:

a) Fine of a minimum of 600 euro and a maximum of 50 percent of the value of the payment instruments used.

b) Public reprimand.

c) Private reprimand.

The penalty provided for in point a), which will be compulsory in all events, shall be imposed simultaneously with one of those listed in points b) or c).

4. In all cases the sanctions imposed shall be accompanied by an order requiring the offender to cease the conduct and to desist from repetition of that conduct.

5. If the imposition of a public reprimand has been agreed and it is determined that such reprimand would hinder an investigation in progress or jeopardise the stability of the financial markets, the competent authority may:

a) delay publication until such time as the reasons for the suspension cease to exist;

b) decide finally not to publish the sanction if the stability of the financial markets cannot be ensured.

Article 58. Penalties for minor offences.

For the commission of minor offences, one or both of the following sanctions may be imposed:

a) Private reprimand.

b) Fine of up to 60,000 euro.

These sanctions may be accompanied by an order requiring the offender to cease the conduct and to desist from repetition of that conduct.

Article 59. Penalty scale.

1. Penalties shall be scaled on the basis of the following:

a) The sum of the transactions relating to the breach.

b) The gains obtained as a result of the omissions or acts constituting the offence.

c) The circumstance of having acted or failing to act to remedy the breach on one's own initiative.

d) Final administrative penalties imposed for various types of offence on the obliged entity in the preceding five years under this Act.

e) The degree of responsibility or intentionality shown by the obliged entity in the acts.

f) The seriousness and duration of the breach.

g) The losses to third parties caused by the breach.

h) The economic strength of the accused, when the sanction is a fine.

i) The level of cooperation of the accused with the competent authorities.

In any case, the penalty shall be scaled such that the commission of the offences shall not be more beneficial for the offender than compliance with the breached regulations.

2. To determine the applicable penalty from among those listed in articles 56.3, 57.2 and 58, the following circumstances shall be taken into consideration:

a) The degree of liability or intention in the facts in which the person concerned is involved.

b) The past conduct of the person concerned, in the guilty entity or in any other, in connection with the requirements provided for in this Act.

c) The nature of the representation held by the person concerned.

d) The financial standing of the person concerned, when the penalty is a fine.

e) The gains obtained as a result of the omissions or acts constituting the offence.

f) The losses to third parties caused by the breach.

g) The level of cooperation of the accused with the competent authorities.

3. To determine the applicable penalty for breach of the obligation to declare under article 34, the following shall be considered aggravating circumstances:

a) Relevance of the movement, considered in any case to be that which duplicates the declaration threshold.

b) The lack of proof of the legal origin of the means of payment.

c) Inconsistency between the activity of the person concerned and the amount of the movement.

d) The fact of finding the means of payment in a place or situation that reveals a clear intention to conceal them.

e) Final administrative penalties for breach of the obligation to declare imposed on the subject concerned within the last five years.

f) The degree of intentionality of the acts by the interested party.

Article 60. Prescription of offences and penalties.

1. Serious and very serious offences shall prescribe after five years, and mild offences after two years, from the date on which the offence was committed. For offences arising from continuous activity, the start date for calculation purposes will be that of the termination of the activity or the last act with which the offence were committed. In the case of failure to comply with customer due diligence obligations, the limitation period shall begin on the date of termination of the business relationship, and for the obligation of record keeping, on expiry of the period referred to in article 25.

The limitation period shall be interrupted by any action by the Commission for the Prevention of Money Laundering and Monetary Offences or its support bodies, carried out with the formal knowledge of the obliged entity, leading to the inspection, monitoring or control of all or part of the obligations herein. It shall also be interrupted by the initiation, with the knowledge of those concerned, of sanction proceedings or criminal prosecution for the same facts or for others in which it is rationally impossible to separate those punishable under this Act.

2. The penalties imposed under this Act shall prescribe after three years in the case of very serious offences, after two years in the case of serious offences, and after one year in the case of minor offences, from the date of notification of the penalty decision.

The prescription period shall be interrupted in the event of an administrative or court agreement to suspend execution of the penalty decision.

Article 61. Sanction proceedings and precautionary measures.

1. The Standing Committee, on a proposal from the Commission Secretariat, shall initiate and, where applicable, dismiss the sanction proceedings as may be appropriate for the commission of offences under this Act.

The power to initiate or conclude the dismissal of the sanction proceedings for breach of the obligation to declare under article 34 shall correspond to the Commission Secretariat.

2. The Commission Secretariat shall carry out the preliminary investigation of the sanction proceedings as may be appropriate for the commission of offences under this Act.

The competent body for initiating sanction proceedings may agree, when beginning the proceedings or during the latter, to the provision of a sufficient guarantee to deal with the potential liabilities incurred. In the case of proceedings for breach of the obligation to declare under article 34, the amount seized in accordance with article 35.2 shall be deemed to have been furnished as a guarantee, and the Commission Secretariat may agree to enlarge or reduce said guarantee during investigation of the sanction proceedings.

The sanction proceedings applicable to failures to comply with the obligations under this Act shall be those set down, in general, in the exercise of punitive powers by the Public Administration.

3. The Council of Ministers, on a proposal from the Minister of Economy and Finance, shall have competence to impose penalties for very serious breaches. The Minister of Economy and Finance, on a proposal from the Commission for the Prevention of Money Laundering and Monetary Offences, shall have competence to impose penalties for serious breaches. The Director-General for the Treasury and Financial Policy, on a proposal from the instructor, shall have competence to impose penalties for minor breaches.

When the accused is a financial institution or requires administrative authorisation in order to operate, for the imposition of penalties for serious or very serious breaches, it shall be mandatory to request from the institution or administrative body responsible for its monitoring a report on the potential impact of the proposed penalty or penalties on the stability of the institution involved in the proceedings.

Competence for determining the sanction proceedings for breach of the obligation to declare under article 34 shall, on a proposal from the instructor and following the report of the Executive Service, correspond to the Director-General for the Treasury and Financial Policy, whose decisions shall bring the administrative procedures to an end.

4. In the sanction proceedings initiated by the Commission Secretariat, the deadline for ruling on proceedings and reporting the decision shall be one year from the date of notification of the commencement of proceedings, without prejudice to the possible suspension by the instructor of the period calculated in the cases mentioned in article 42.5 of Legal Regime of the Public Authorities and Common Administrative Procedure Act 30/1992 of 26 November, and the six-month extension to said time limit which may be duly agreed by the Commission Secretariat, on a proposal from the instructor, under the provisions of article 49 of said Act.

Expiry of the time periods established in the previous paragraph shall determine the expiry of the sanction proceedings. In such event, a decision initiating new proceedings must be adopted so long as the prescription period for the offence has not ended, in accordance with the provisions of article 60.

5. The implementation of final penalty rulings in sanction proceedings shall correspond to the Commission Secretariat.

The penalty of public reprimand, once it has become final in sanction proceedings, shall be enforced in the manner established in the decision and, in any event, shall be published in the Boletín Oficial del Estado (Official State Gazette) and on the Commission's website, where it shall remain available for a period of five years. If the published sanction has been subject to appeal in the courts, information on the status of the appeal process and the result thereof shall be published without delay.

6. In those cases in which the sanctioning proceedings do not result in a public reprimand, the Secretariat of the Commission shall publish on the Commission's website the final administrative penalties imposed for offences under articles 51 and 52, except paragraph 3.a), indicating the type and nature of the offences committed, but not identifying the entity,

person or persons responsible for the breach. This information shall remain available on the Commission's website for a period of five years.

7. The Secretariat of the Commission shall inform the European Supervisory Authorities of all the sanctions imposed on credit and financial institutions, including any appeal brought against them and the result thereof.

Article 62. Concurrent penalties and links with criminal procedures.

1. The offences and penalties provided in this Act shall be interpreted without prejudice to those laid down in other laws and the acts and omissions described as crimes and the penalties laid down in the Penal Code and special criminal laws, except as established in the following paragraphs.

2. Conduct that would have been punished criminally or administratively cannot be punished under this Act when individual identity, fact and legal basis are identical.

3. At any time in the administrative proceedings where it appears that the facts may constitute a criminal offence, the Commission Secretariat shall report such circumstance to the Public Prosecutor's Office, requesting evidence of the actions taken to this effect and shall agree to suspension of the proceedings until the notice described under the first subparagraph of the next paragraph is received or until a final verdict is delivered.

4. If the Public Prosecutor's Office finds no grounds to initiate criminal proceedings against any or all of the obliged entities, it shall notify the Commission Secretariat so that the latter may continue the sanction proceedings.

If, on the other hand, the Public Prosecutor's Office files a complaint or suit, it shall communicate this circumstance to the Commission Secretariat together with the outcome of such actions, when this becomes known.

5. The judgement given in the administrative proceedings shall, in all cases, observe the facts declared and proven in the sentence.

Article 63. Reporting of offences.

1. The employees, managers and agents of obliged entities who know of acts or situations that may constitute offences addressed in this Act may report them to the Executive Service of the Commission.

2. The reports shall be sent to the Executive Service of the Commission in writing and shall include all documents and information evidencing the reported acts. An order of the Minister for the Economy and Enterprise shall approve the reporting format and specify the characteristics and requirements of the channel by which reports are received, in order to ensure their confidentiality and security.

3. The training programmes of entities must include information on the existence of these mechanisms.

Article 64. Processing of reports.

The Executive Service of the Commission shall determine whether or not there is a founded suspicion of a breach in the reports received in accordance with Article 63. When there is not a founded suspicion or the acts or persons responsible for the breach are not specified sufficiently, it shall call on the reporting person to clarify the content of the report made, or to complete it with further information, granting a period of not less than 15 days to do so. If the period set for clarifying or completing the report elapses without any founded suspicion having been identified, the report shall be shelved.

2. The reports received shall not have evidential value and may not be directly incorporated into administrative proceedings. If the reported acts are sufficiently believable and are not known to the Public Administration, the Executive Service of the Commission or the supervisors of the financial institutions may, if there is an agreement as provided for by Article 44.2 m) herein, proceed as follows:

a) Use the information obtained to define a new inspection plan.

b) Conduct additional inspections either separately or as part of supervision actions under the approved annual inspection plan.

3. The results of the inspections conducted by the Executive Service of the Commission shall be sent to the Secretariat of the Commission, which shall forward them to the Standing Committee for consideration. If the checks reveal the possible existence of a criminal act, the information shall be sent to the Public Prosecutor for its investigation.

Article 65. Protection of persons.

1. The reports made pursuant to article 63:

a) shall not constitute a breach of or failure to comply with restrictions on information disclosure imposed by contract or by any legal, regulatory or administrative provision that may apply to the reporting person, to the persons closely linked to him or to the companies administered by him or of which he is the beneficial owner.

b) shall not constitute a breach of whatsoever type under labour law by the reporting person nor may they give rise to unfair or discriminatory treatment by his employer.

c) shall not give rise to any right to compensation or indemnity for the company to which the reporting person provides services or for any third party.

2. The Executive Service of the Commission shall inform of the various legal mechanisms available under current legislation to ensure these rights.

3. The reports shall be confidential and the Executive Service of the Commission may not disclose the identification data of the persons who made them. If, as a result of a report made, sanctioning proceedings are initiated against a natural or legal person, in no event shall the data of the person who made the report be included.

4. A report made in accordance with Article 63 shall not of itself confer the status of interested party in any administrative proceedings initiated against the offender.

Additional provision. Register of providers of services to companies and trusts.

1. The natural or legal persons that in a business or professional capacity provide all or some of the services described in article 2.1 o) herein must, before they commence activities, register obligatorily in the Commercial Register for the area in which their domicile is located.

2. In the case of natural or legal persons of whatever type, unless there is a specifically applicable rule or regulation, they shall register in accordance with the provisions of the Commercial Register Rules. Professional natural persons shall register online using a standard form approved by the Ministry of Justice.

3. In the case of legal persons, if not specified by their regulatory provisions, any change in directors or in the corporate contract shall also be registered in the Commercial Register.

4. The natural or legal persons that, at the date of entry into force of this additional provision are carrying out one or more of the activities listed in article 2.1 o) herein and are not registered, must register within a period of one year in accordance with paragraph 2 of this additional provision. Similarly, the natural or legal persons already registered in the Commercial Register must, within the same period, file in the register a statement that they are subject, as obliged entities, to the provision of this Act. Legal persons must also file a statement identifying their beneficial owners within the meaning of article 4.2b) and c) herein. These statements shall be included as marginal notes and must be updated whenever the beneficial ownership changes.

5. The natural or legal persons providing services to companies, if not specified in their regulatory provisions, shall be subject to the obligation to deposit their annual financial statements in the Commercial Register in the manner and with the effect set out in articles 279 to 284 of the consolidated text of the Limited Companies Law approved by Royal Legislative Decree 1/2010 of 2 July 2010. Also applicable shall be articles 365 et seq. of the Commercial Register Rules approved by Royal Decree 1784/1996 of 19 July 1996. The providers of services to companies that are professional natural persons are excluded from this obligation to deposit annual financial statements.

6. The lack of registration of natural or legal persons engaging in the activities listed in article 2.1 o) herein or the lack of a statement declaring that they are subject to this Act or identifying the beneficial owners in the case of legal persons shall be deemed to be a minor offence referred to in article 53. The sanctioning procedure shall be as specified in article 61.

7. The natural or legal persons to which this additional provision is applicable, except for professional natural persons, must, every year when they deposit their annual financial statements in the competent Commercial Register, file an accompanying document giving the following information:

a) The types of services, of those listed in article 2.1 o) herein, which they provide.

b) The geographical area in which they operate, indicating municipality or municipalities and provinces.

c) Provision of this type of services to non-residents in the financial year in question.

d) Volume of billings for the services specified in subparagraph a) in the financial year and in the preceding year, should the provider of services to companies not engage solely in this activity. If it cannot be quantified, this shall be stated expressly.

e) Number of transactions made of those listed in said article 2.1 o), distinguishing the type or nature thereof. If no transactions have been made, this shall be indicated expressly.

f) The beneficial owner, should there have been any change therein with respect to that recorded in the Register, within the meaning of paragraph 4.

8. Professional natural persons must deposit the document specified in the preceding paragraph in the Commercial Register in which they are registered, except as provided in subparagraph f) above. Said deposit shall be in the first three months of each year and exclusively online using the standard form stipulated by the Ministry of Justice. The Order approving the firm shall set out the measures considered necessary to ensure the security of such communication. The failure to deposit this document shall be considered a minor breach for the purposes of article 53 herein and may be sanctioned as specified in article 58 herein.

9. The Ministry of Justice is authorised to act through the Directorate General of Registers and Notaries to lay down the orders, instructions or resolutions necessary to implement this additional provision.

First transitional provision. Implementing regulations of Act 19/1993 of 28 December.

Until the coming into force of the Regulations implementing this Act, the Royal Decree 925/1995 of 9 June, developing the Specific Measures for the Prevention of Money Laundering Act, and its implementing measures, shall remain in force insofar as they are not incompatible with the latter.

Second transitional provision. Sanction's regime.

The sanction provisions of Specific Measures for the Prevention of Money Laundering Act 19/1993 of 28 December shall be applicable to offences committed before the entry into force of this Act.

Third transitional provision. Power to initiate sanction proceedings.

Until the coming into force of the regulations of this Act, the power to initiate sanction proceedings shall continue to be exercised by the Secretariat of the Commission for the Prevention of Money Laundering and Monetary Offences.

Fourth transitional provision. Payment services.

Currency exchange offices authorised to manage cross border transfers shall be considered to be included among the obliged entities referred to in article 2 insofar as they have not been transformed into credit or payment institutions in accordance with paragraph 1 of the Second transitory provision of Payment Services Act 16/2009, of 13 November.

Fifth transitional provision. Attachment of the Executive Service.

Until the coming into force of the agreement referred to in article 45.3, the Executive Service shall remain attached to the Bank of Spain, established in article 24.1 of the Royal Decree 925/1995 of 9 June, implementing the Act 19/1993, of 28 December.

Sixth transitional provision. System for implementing the pension commitments of entities with bearer shares.

For the purposes of article 4.4, collective insurance contracts and pension plans formalised before the coming into force of this Act that establish pension commitments for companies in compliance with the provisions of the First additional provision of the consolidated text of the Pension Plans and Funds Act, approved by Royal Legislative Decree 1/2002 of 29 November, shall remain in force for the implementation of said liabilities.

Seventh transitional provision. Application of due diligence measures for existing customers.

Notwithstanding the provisions of article 7.2, obliged entities shall apply to all existing customers the due diligence measures set out in Chapter II within five years of the coming into force of this Act.

Eighth transitional provision. Agreements with the supervisory bodies of financial institutions.

Until the signing of the agreements referred to in article 44.2m), the existing cooperation agreements between the supervisory bodies of financial institutions and the Commission for the Prevention of Money Laundering and Monetary Offences ' Executive shall remain in force.

Repealing article.

Without prejudice to the Second transitional provision, on the coming into force of this Act, Specific Measures for the Prevention of Money Laundering Act 19/1993, of 28 December, shall be repealed.

First final provision. Amendment to Prevention and Freezing of Terrorist Financing Act 12/2003, of 21 May.

1. Prevention and Freezing of Terrorist Financing Act 12/2003, of 21 May, shall be renamed "Freezing of Terrorist Financing Act 12/2003, of 21 May".

2. Article 4 of Act 12/2003 is amended as follows:

"Article 4. The institutions and persons covered by this Act.

The public authorities and the subjects referred to in article 2 of the Prevention of Money Laundering and Terrorist Financing Act are required to cooperate with the Terrorist Finance Watchdog Commission.and, in particular, to carry out the necessary measures to enforce the freezing laid down in article 1; in particular they shall:

a) Prevent any act or transaction involving the withdrawal of balances and positions of any kind, money, securities and other instruments related to frozen capital movements or payment operations or transfers, except those sending new funds and resources to frozen accounts.

b) Report the Watchdog Commission on any form of entry made to the frozen account, without prejudice to the execution of the transaction.

c) Notify the Watchdog Commission, on its own initiative, of any application or request received in which the originator, issuer, holder, beneficiary or recipient is a person or entity in respect of which the Watchdog Commission has adopted a measure.

d) Furnish the aforementioned Watchdog Commission with the information it requires in the exercise of its powers.

e) Not disclose either to the customer or to third parties the fact that information has been transmitted to the Watchdog Commission.

3. Article 6 of Act 12/2003 is amended as follows:

"Article 6. Supervision and penalty system.

1. The supervisory and inspection duty of the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences referred to in article 47 of the Prevention of Money Laundering and Terrorist Financing Act extends to the fulfilment of the obligations established in this Act.

Where the inspection reports referred to in article 47.3 of the Prevention of Money Laundering and Terrorist Financing Act reveal breach of any of the obligations under article 4 of this Act, the Standing Committee of the Commission for the Prevention of Money Laundering and Monetary Offences shall report the Terrorist Finance Watchdog Commission on such circumstance.

2. Breach of the duties under this Act shall be considered a very serious offence for the purposes set down in Chapter VIII of the Prevention of Money Laundering and Terrorist Financing Act and shall be punished as provided therein.

The references in said Chapter to the Secretariat and the Standing Committee of the Commission for the Prevention of Money Laundering and Monetary Offences shall be understood as being made to the Secretariat of the Terrorist Finance Watchdog Commission and the Terrorist Finance Watchdog Commission, respectively.

The Minister of the Interior has the jurisdiction to propose the imposition of sanctions for offences committed under this Act, while the power to apply penalties falls upon the Council of Ministers."

4. Article 9 of Act 12/2003 is amended as follows:

"Article 9. Terrorist Finance Watchdog Commission.

1. The Terrorist Finance Watchdog Commission is set up as the body charged with agreeing the freezing of all transactions defined in article 1 of this Act, and with the exercise of all powers necessary to fulfil the provisions of the latter.

2. The Commission will be attached to the Ministry of the Interior and composed of:

a) Chair: Secretary of State for Security.

b) Members:

1. A member of the Public Prosecutor's Office, appointed by the Attorney General.

2. A representative of the Ministries of Justice, Home Affairs and Economy and Finance, appointed by the Ministers of the respective departments.

c) Secretary: the person who runs the office whose functions are carried out by the Secretariat of the Commission referred to in paragraph 4.

The chair of the Commission, if he/she should see fit, may convene experts in the areas of their competence for specific advice on any of the matters in question. The Director of the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences shall attend the meetings of the Terrorist Finance Watchdog Commission in an advisory capacity.

3. The members of this Commission are subject to the liability regime established by law and, in particular, to the obligations deriving from knowledge of the information received and transferred personal data, which may only be used in the exercise of the powers assigned by this Act. The experts advising the Commission shall be subject to the same liability regime for all things known to them by reason of their attendance of the Commission.

4. The Commission shall exercise its powers with the support of the Secretariat, which has the consideration of a body of the Commission. The functions of the Secretariat shall be carried out by the department, with the rank of at least under-directorate general, of those of the Ministry of the Interior determined in the regulations.

The Secretariat shall, inter alia, investigate the sanction proceedings as may be appropriate for breach of this Act and submit the appropriate resolution proposal to the Commission.

5. Compliance with the reporting obligations referred to in article 4 of this Act shall be fulfilled through the Secretariat of the Watchdog Commission.

6. The Commission for the Prevention of Money Laundering and Monetary Offences and the Terrorist Finance Watchdog Commission shall cooperate to the fullest extent possible in the exercise of their respective competences. Under the terms agreed by the two Commissions and without prejudice to article 45.3 of the Prevention of Money Laundering and Terrorist Financing Act, the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences shall report at the meetings of the Terrorist Finance Watchdog Commission on its activity in relation to facts or transactions revealing indications or certainty of a relationship with terrorist financing and, in particular, on the financial intelligence reports it may have drafted in connection with this matter.

The powers of the Commission shall be without prejudice to those assigned by the Prevention of Money Laundering and Terrorist Financing Act to the Commission for the Prevention of Money Laundering and Monetary Offences.

Second final provision. Amendment to Legal Regime of Capital Movements and Foreign Economic Transactions and Specific Measures for the Prevention of Money Laundering Act 19/2003, of 4 July.

1. The Legal Regime of Capital Movements and Foreign Economic Transactions and Specific Measures for the Prevention of Money Laundering Act 19/2003, of 4 July, is renamed "Legal Regime of Capital Movements and Foreign Economic Transactions Act 19/2003, of 4 July".

2. Article 12(2) of Act 19/2003 is amended as follows:

"2. The competence to initiate and carry out preliminary investigations in sanction proceedings resulting from the application of the arrangements in the Law and to impose the appropriate penalties shall be governed by the following:

a) The Secretariat of the Commission for the Prevention of Money Laundering and Monetary Offences shall have the competence to initiate and carry out preliminary investigations in sanction proceedings.

b) The Council of Ministers, on a proposal from the Minister of Economy and Finance, shall have competence to impose penalties for very serious breaches.

c) The Minister of Economy and Finance, on a proposal from the Secretary of State for the Economy, shall have competence to impose penalties for serious breaches.

d) The Director-General for the Treasury and Financial Policy, on a proposal from the instructor, shall have jurisdiction to impose penalties for minor breaches."

Third final provision. Amendment to Collective Investment Undertakings Act 35/2003, of 4 November.

Article 43.1j) of Collective Investment Undertakings Act 35/2003, of 4 November, is amended as follows:

"j) With adequate internal control procedures and mechanisms to ensure sound and prudent management of the company, including risk management procedures and IT control and security mechanisms, and bodies and procedures to prevent money laundering and terrorist financing, a related transactions system and an internal code of conduct. The management company must be structured and organised so as to minimise the risk of the interests of the CIU or of its clients being affected by conflicts of interest between the company and its customers, between customers, between one of its customers and a CIU or between two CIUs."

Fourth final provision. Competence.

This Act is drafted in accordance with articles 149.1.6, 149.1.11. and 149.1.13 of the Constitution, which grant competence to the State in respect of commercial legislation, the basis of credit regulation and the basis and coordination of general economic activity planning, respectively.

Fifth final provision. Development in regulations.

The government is empowered to approve, within one year of the coming into force of this Act, the regulations for its implementation and development.

Sixth final provision. Implementation of Community law.

This Act incorporates into Spanish law 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 money laundering and terrorist financing, developed by Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed

person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

Seventh final provision. Coming into force.

This Act shall come into force on the day after its publication in the Official State Gazette.

Excluded from the foregoing are the obligation to store copies of identification documents on optical, magnetic and computer media, provided for in article 25.2, and the obligations laid down in article 41, which shall come into force two years and one year, respectively, after the publication of this Act in the Official State Gazette.

POR TANTO,

MANDO A TODOS LOS ESPAÑOLES, PARTICULARES Y AUTORIDADES,
QUE GUARDEN Y HAGAN GUARDAR ESTA LEY.

Madrid, 28 April 2010.

JUAN CARLOS R.

The President of the Government,

JOSÉ LUIS RODRÍGUEZ ZAPATERO