

# Anti-Money Laundering Newsletter

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Main new legislation and news in relation to the  
Prevention of Money Laundering and Terrorist  
Financing (AML/TF) - 2Q21

**GARRIGUES**

April - July 2021

## 1. Sepblac publishes its 2020 activity figures: inspections were down/fall by 10%

On April 30, 2021, Sepblac published [data on the activities carried out in 2020](#), in the exercise of its powers as the Financial Intelligence Unit (FIU), as supervisory authority and as the body entrusted with maintaining the Centralized Banking Account Register.

From this information, it is worth noting, within its supervisory work, that **fewer inspections had been conducted in the year** (a 10% drop), but there were **more inspections on real estate regulated entities, law firms and tax and accounting advisors**. As part of its FIU work, it **handled significantly more suspicious transactions reports (with banks filing the bulk of these reports)**, as well as requests for information exchanged with foreign national authorities.

### Inspections were mainly conducted on real estate companies, law, audit and accounting firms and tax advisors

In 2020, Sepblac **carried out 13 inspections on real estate companies, 10 inspections on law firms**, and conducted 10 more inspections on audit and accounting firms and **tax advisors**. These figures were considerably higher than the ones of the previous year, reflecting a **closer monitoring** of anti-money laundering and counter-terrorist financing (AML/CFT) compliance by these operators by the regulatory body. The greater scrutiny placed on this group of obliged entities meant that fewer inspections were conducted on payment entities (87 inspections in the previous two years).

Group	2019		2020		Change vs 2019
	N°	% of total	No.	% of total	
Real estate companies	2	3%	13	23%	550%
Law firms	3	5%	10	18%	233%
Audit and accounting firms and tax advisors	0	0%	10	18%	900%
Credit institutions	14	22%	10	18%	-29%
Payment entities	36	57%	2	4%	-94%
Investment services firms and collective investment undertaking management companies	1	2%	6	11%	500%
Insurance companies, brokerage firms and pension fund managers	1	2%	6	11%	500%
<b>TOTAL</b>	<b>63</b>	<b>100%</b>	<b>57</b>	<b>100%</b>	<b>-10%</b>

In addition, Sepblac carried out considerably more specific supervisory actions in respect of individual AML/CFT obligations (procedures, internal control bodies, representatives to Sepblac, training, etc.).

	2019	2020	Change vs 2019
<b>Specific supervisory actions</b>	33	209	533%

One such specific action was the questionnaire sent to credit institutions in July 2020, with nearly 190 entities responding.

## Suspicious transaction reports sent to Sepblac increased by 70.49% over 2019

A total of 12,401 transactions were reported as suspicious, reflecting a **year-on-year increase of 70%**. The bulk of these reports (12,100) were made by obliged entities themselves. This evidences the important effort undertaken by these operators to comply with the provisions of the [Law 10/2010, of April 28 on the prevention of money laundering and terrorism financing](#), and its implementing regulations.

By segments, the reports of suspicious transactions of **financial-sector obliged entities** were once again the more numerous: 10,550. Within these, **banks** were responsible for 7,293 reports. This represents an increase of 54% with respect to 2019 and consolidates a growing trend seen in recent years.

Also of note is the number of reports submitted by **branches of credit institutions**, both within the **EU** (up 366% to 1,555) and **outside** (up 1.5% to 16), by **electronic money institutions** (up 326% to 290) and by **payment institutions** (up 26% to 745).

Among **non-financial sector obliged entities**, **notaries** and **registrars** once again made the highest number of reports (962), cementing their key role in preventing money laundering and terrorist financing. **Lawyers** made 36% more reports in the year to reach 30, but were outpaced by **auditors, accountants and/or tax advisors**, reaching 33 reports (up 230% in the year).

The majority of suspicious transaction reports were made to **central government law enforcement agencies**: 4,569 to the National Police and 3,755 to the Civil Guard. In a somewhat distant second place were those made to bodies reporting to the Spanish Tax Agency (AEAT), such as the National Anti-Fraud Office (ONIF) and the Customs Department (total of 1,781).

## Data on the preparation of mandatory reports points to a slowdown in the creation of financial institutions and in structural modifications of regulated companies

Mandatory reports on the creation of financial institutions decreased 40% over the past year, from 203 in 2019 to only 122 in 2020. Among them, 64% relate to the creation of institutions supervised by the Bank of Spain, and 35% to securities institutions. The slowdown was somewhat less acute for mandatory reports on **structural modifications** (down 33%, to 14). All this highlights the deceleration in the corporate activity of obliged entities in 2020, most likely due to the pandemic.

## 2. Legislation and publications of official bodies

### 2.1 Entry into force of European regulation on controls of cash entering or leaving the EU

The new [Regulation \(EU\) 2018/1672](#), which entered into force on June 3, 2021 (except for article 16, in force since December 2, 2018), contains a new **obligation to report all cash movements made within the European Union**, in order to combat tax evasion and money laundering.

Any person entering or leaving the EU carrying €10,000 or more in cash (irrespective of whether they own it) must declare that cash.

The Regulation also broadens the definition of cash to include not only currency (banknotes and coins) but also instruments considered highly liquid, such as gold, checks, travelers' checks and prepaid cards.

The Regulation repeals and replaces the previous legislation on the matter ([Regulation \(EC\) No 1889/2005](#)), with the goal of unifying the different laws throughout the EU to ensure an equivalent level of control over cash movements. The Regulation is directly applicable to member states and therefore compliance is mandatory. However, member states may establish, in accordance with their own laws, additional controls on cash movements within the Union, provided such controls observe the fundamental freedoms established in articles 63 and 65 of the [Treaty on the Functioning of the European Union](#).

Spanish law was amended (through [Legislative Royal Decree 7/2021](#), of April 27, 2021, on the transposition of European Union directives) to adapt Law 11/2010 to the new EU Regulation. In this sense, the definition of cash has been extended to encompass commodities used as highly-liquid stores of value. Under the new rules, parties carrying out transit services for cash or other payment means are required to disclose unaccompanied cash and to declare cash moved into or out of the EU. In addition, administrative claims may be lodged against the temporary detention of payment means.

The new rules join those already in place for cash movements in Spain: articles 34 to 37 of Law 10/2010, on the obligation to report and control payment means; articles 45 and 46 of the [Regulations for Law 10/2010, approved by Royal Decree 304/2014](#), on detention of payment means moved in order to prevent money laundering, and [Ministerial Order EHA 1439/2006](#) on reporting movements of payment means in order to prevent money laundering. In Spain, movements of cash totaling €10,000 or more into or out of the country must be reported, as must the conveyance of payment means within the country, if the value is above €100,000.

## 2.2 Iberpay's remote identification procedure, pending review by Sepblac

The remote identification procedure of Sociedad Española de Sistemas de Pago S.A. (Iberpay), known as the ["Procedure for requesting account ownership confirmation between entities"](#), has incorporated some changes which are pending review by Sepblac. As a result, the current procedure will become ineffective on 30 September 2021, unless the supervisory authority decides before that date to grant a new authorisation.

In March 2021, Iberpay informed Sepblac of a series of changes in its Account Ownership Service Procedure. Iberpay also reported that this service will soon include a verification system for clients wishing to open accounts remotely, making use of its banking credentials with enhanced authentication, in order to enhance security when accounts are opened online.

Under article 21.1.d) of the Regulations for Law 10/2010, of April 28, 2010, obliged entities may establish business relationships or perform transactions by telephone or electronic or virtual means with customers who are not physically present, provided the customer's identity is evidenced, using secure customer identification procedures for remote transactions and such procedures have been previously authorized by Sepblac. In accordance with this authorisation, Sepblac authorised Iberpay's procedure on 22 May 2015, in accordance with certain specifications.

### 2.3 Moneyval's annual report emphasizes that its members need to improve their AML/CFT practices

In its [2020 Annual Report](#), Moneyval, the Council of Europe's monitoring body assessing compliance with AML/CFT standards, noted that despite their efforts, the measures implemented by member states, including Spain, are ineffective or insufficient.

The June 4, 2021 report finds that the member states reviewed demonstrate a moderate level of effectiveness in their anti-money laundering and combating the financing of terrorism efforts, suggesting that the degree of implementation of the Financial Action Task Force (FATF) Recommendations (2019) is not entirely satisfactory.

In addition, Moneyval notes that criminals have found new ways to abuse the financial system by committing cybercrimes and misusing virtual currencies and that members must therefore focus their work on monitoring and disrupting these crimes.

The report also states that members demonstrate the best results in the areas of risk assessment, international cooperation and use of financial intelligence.

### 2.4 The European Central Bank (ECB) takes over supervision of systemic investment firms

Starting June 26, 2021, large and systemic investment firms [will fall under the supervision of the ECB](#). The central bank will supervise [investment firms](#) that have total consolidated assets of €30 billion or more, as they are seen as holding important risks on their balance sheets.

European Union legislation on the supervisory framework for these firms includes the [Investment Services Directive](#), which member states must transpose into national law, and the [Investment Firms Regulation](#), which becomes directly applicable to all EU member states on June 26, 2021. The ECB explained that, like credit institutions and banks, these firms are exposed to large credit and market risks and therefore, as required by that Regulation, they need to apply for a license from the ECB.

Within the context of a [licensing procedure](#), the criteria used for assessing shareholders are the same as those used for assessing an acquirer of a qualifying holding in an existing credit institution. These criteria are:

- the reputation of the shareholder
- the financial soundness of the shareholder
- the lack of suspicion of money laundering or terrorist financing.

The first set of investment firms newly authorized as banks are expected to be added to the list of supervised banks in the second half of 2021, at which point they will effectively fall under ECB supervision.

### 2.5 FinCEN issues memorandum on national anti-money laundering and combating terrorist financing priorities

On June 30, 2021, FinCEN, the United States' main AML/CFT body, issued the [priorities](#) for the most important anti-money laundering/countering the financing of terrorism efforts in the United States. The priorities were issued after consulting with other key offices of the US Department of the Treasury, as well as federal and state regulators and relevant law enforcement and national security agencies.

The AML/CFT priorities include corruption, cybercrime, foreign and domestic terrorist financing, fraud, transnational criminal organization activity, drug trafficking organization activity, human trafficking and human smuggling, and proliferation financing.

FinCEN also released two statements (the [AML/CFT Priorities Statements](#)) offering obliged entities guidance on how to incorporate the priorities into their programs and how to put their efforts and resources to appropriate use.

## 2.6 The ECB issues its draft guide to fit and proper assessments for senior officers of credit institutions

The European Central Bank has issued its [draft Fit and Proper Guide and the New Fit and Proper Questionnaire](#), which will replace the previous versions from 2018 and 2016, respectively. Both documents are open for public consultation until August 2, 2021.

The draft guide explains how the ECB, in its supervisory role, assesses the qualifications, skills and suitability of candidates for senior posts within a credit institution, such as chief executive officer or member of the control committee.

The purpose of these documents is to enhance transparency and the quality and effectiveness of the fit and proper assessment. In particular, the ECB proposes a stricter approach to supervisory findings that could affect the suitability of candidates, whereby even if they do not have sole responsibility for an issue, they could be held individually accountable for sound management and appropriate decision-making, collectively with the other members of the managing body.

Lastly, the new guide gives details on how suitability can be reassessed when new facts emerge that were not known at the time of the initial appointment but that could affect suitability for the post.

## 2.7 The Council of the EU approves conclusions on the impact of the COVID-19 pandemic on internal security and the terrorist threat

The Council of the European Union approved two sets of conclusions on the impact of the COVID-19 pandemic [on internal security and on the threat posed by terrorism](#).

### Internal security

In addition to recommending that member states prevent hindrances to cross-border law enforcement, the Council stressed the need for the Commission to support Europol and the Innovation Lab in setting up a common, resilient and secure instrument for communications, and underlined the need to prevent the infiltration of criminal networks in the implementation of the Next Generation EU.

The Council also recommended that member states promote awareness campaigns for their citizens in order to prevent the impact of cybercrime activities, as well as misinformation and hate speech.

### Terrorist threat

In its second conclusion document, the Council noted that although terrorism did not increase during the pandemic, certain extremist groups have already incorporated COVID-19 into their narratives, which could have repercussions in the medium to long term. The Council therefore asked member states to monitor terrorism and to provide information to the EU Intelligence and Situation Centre (EU INTCEN) and to Europol.

The Council also highlighted the need for member states to swiftly apply the provisions of the Regulation to address the dissemination of terrorist content online, and invited the Commission and the EU Internet Referral Unit to provide continuing support for member states with their technical and operational expertise. Lastly, the Council noted that increased attention should be paid to emerging security risks, as well as opportunities stemming from new technologies, and underlined the role of the EU Innovation Hub.

## **2.8 A reminder: Documents, including Sepblac filings, can now be filed with the Bank of Spain through its electronic register**

The following documents can now be filed through the Bank of Spain's electronic register:

- Suspicious transaction reports, except for those filed by credit institutions, as these institutions must continue using the CTL software for these reports.
- Appointment of representatives and authorized individuals.
- External expert activity.
- Form for a computer component certificate for external entities.

Information on the process and on how to begin procedures can be viewed at [this link](#), and general information, technical requirements and instructions for using the electronic register can be found [here](#).

## **3. High risk jurisdictions for AML/CFT purposes**

### **3.1 Ghana removed from the list of high risk jurisdictions for AML/CFT purposes**

The Financial Action Task Force (FATF) has updated its list of countries placed under increased monitoring due to their strategic deficiencies in countering money laundering and terrorist financing, and taken Ghana off the list from [June](#). The FATF cites Ghana's "significant progress" in improving its AML/CFT regime.

With this decision, the country leaves the group of 21 high-risk countries it originally joined in October 2018. The FATF noted that, during that time, Ghana strengthened its prevention mechanisms and committed to fulfilling the objectives set out in its action plan.

## 4. International sanctions regime

### 4.1 The Council of the EU extends sanctions against the Syrian regime for another year

On May 27, 2021, the Council of the EU decided to [extend sanctions against the Syrian regime](#) until June 1, 2022, in light of the continued repression of the civilian population in the country. The decision was a result of the EU's ongoing monitoring of the situation in the Middle Eastern country since sanctions were first introduced against the Assad regime in 2011.

The Council also removed from the list five deceased persons, bringing the total to 283 people targeted by a travel ban and 70 entities subject to an assets freeze.

In order to avoid any impact on humanitarian assistance, the sanctions do not apply to the delivery of food, medicines and medical equipment.

## 5. Sanctions and judgments

### 5.1 The Supreme Court rules that the police can access certain bank account information without a court warrant

In a recent [judgment](#), the Supreme Court's Second Criminal Chamber ruled that, in exceptional cases, the police can access certain taxpayer bank information without authorization from the court, provided the accounts do not reveal details of suspects' private lives.

The Supreme Court reasoned that such a practice would not violate suspects' privacy if the data gathered is "not sufficient for painting a picture of how a given individual carries out their private life."

With this conclusion, the court confirmed that a police investigation into a money laundering scheme in Madrid was lawful. According to the facts cited in the judgment, a group of friends and family members used a web of fictitious companies to transfer funds to China without paying taxes.

The convicted defendants had argued that their right to privacy was infringed when the authorities looked into their accounts without first securing a warrant from a court. However, the Court ruled that there was no violation of banking secrecy, on the basis of two fundamental premises: firstly, the crime under investigation was serious, and the information of interest was essential for shedding light on the alleged crime. Secondly, the magnitude of any infringement caused by the activities performed must be balanced against the severity of the facts investigated.

After examining the facts of the matter, the Supreme Court ruled that by looking into the bank accounts, the authorities verified the "identification of account numbers and owners" but did not gain access to personal information such as spending habits, paychecks or electricity bills, among others, and that the law enforcement agencies' activities were proportionate and necessary to clarify the facts.



## 5.2 Financial institutions will have to identify the beneficial owners of securities accounts segregated from omnibus accounts

In a May 27, 2021 judgment, the Supreme Court ruled that financial institutions resident in Spain will be required to identify the beneficial owners of securities accounts segregated from omnibus accounts that operate abroad.

The reasoning given in the judgment is that article 42.a) of the Anti-Money Laundering Law should be interpreted in accordance with the principles underlying [Directive \(EU\) 2015/849](#). Therefore financial institutions must comply strictly with the obligation to accurately identify beneficial owners and to adopt appropriate measures to verify their identity, including for segregated accounts where their beneficial owner is not exclusively an institutional investor but rather direct clients of the financial institution abroad, in order to “completely, truthfully and exactly” verify who the beneficial owner is.

The court considers that simplified due diligence measures are not sufficient in these cases and that ordinary procedures must be adopted instead, given that this is a “key component for preventing individuals and legal entities from circumventing anti-money laundering rules by concealing their identities behind complex financial structures or arrangements”.

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