

COPBLAC

GUIDELINES FOR REGULATED ENTITIES

GEOGRAPHICAL RISK IN RELATION TO Money Laundering AND Terrorist Financing.

GUIDELINES FOR REGULATED ENTITIES ON

GEOGRAPHICAL RISK IN RELATION TO MONEY LAUNDERING AND TERRORIST FINANCING

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Background and regulatory framework

The international standards on combating Money Laundering and Terrorist Financing adopted by the Financial Action Task Force (FATF), a body under the OECD, set out a series of obligations that must be met by member states and by countries belonging to regional international organisations similar to the FATF that have signed Memoranda of Understanding with that organisation (such as GAFILAT, MONEYVAL or GAFIC, amongst other organisations), which in practice means that these standards and obligations apply to almost all countries, territories and jurisdictions worldwide.

Among the international standards adopted by the FATF is the duty of regulated entities to carry out their own risk assessments regarding Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT), taking into account, amongst other factors, the risks that may arise from certain countries or specific geographical areas. Consequently, the identification of heightened risks entails an obligation to apply enhanced due diligence measures in accordance with the criteria established by each institution on a case-by-case basis.

Directive 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, provides in Article 8 that Member States shall ensure that obliged entities take appropriate measures to identify and assess their risks of Money Laundering and Terrorist Financing, taking into account risk factors, including those relating to customers, countries or geographical areas, products, services, transactions or distribution channels.

This duty to carry out an analysis has, in turn, been incorporated into Spanish legislation, which stipulates that obliged entities must identify and assess, in a documented manner, their risks of Money Laundering and Terrorist Financing through their own analysis, which must include, amongst other criteria, the risks associated with transactions and business relationships that the obliged entities may have with certain countries or geographical areas posing a higher risk in these areas.

However, the regulations themselves also stipulate that certain regulated entities are exempt from the obligation to document such a risk analysis, specifically, insurance brokers and those covered by Article 2.1(i) et seq. of Law 10/2010 of 28 April Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) who, including agents, employ fewer than 10 people and whose annual turnover or annual balance sheet total does not exceed 2 million euros.

Law 10/2010 of 28 April and its Regulations, approved by Royal Decree 304/2014 of 5 May, provide that:

- The internal control procedures to be established and implemented by obliged entities shall be based on a prior risk analysis, which must be documented. This analysis shall identify and assess the risks faced by the obliged entity by type of customer, **country or geographical area**, product, service, transaction and distribution channel, taking into account variables such as the purpose of the business relationship, the customer's level of assets, the volume of transactions and the regularity or duration of the business relationship (Article 32 of the Regulations under Law 10/2010 of 28 April).

- Obligated entities must specify, in their own internal control measures, how they will carry out the special review of transactions, taking into account certain circumstances, including the geographical scope (Article 17 of Law 10/2010 of 28 April)

- In the relevant risk analyses, obliged entities shall consider as high-risk countries, territories or jurisdictions those listed in Article 22 of the Regulations under Law 10/2010 of 28 April, as well as any other country or territory identified in the obliged entity's relevant risk analysis.

- In any event, all obliged entities, without exception, must adopt enhanced due diligence measures in the case of business relationships and

transactions provided for in Article 19.2 of the Regulations under Law 10/2010 of 28 April, where these involve transfers of funds or are carried out with:

a) customers from high-risk countries, territories or jurisdictions, or which involve the transfer of funds to or from such countries, territories or jurisdictions.
b) those countries for which the FATF requires the application of enhanced due diligence measures.

Content and purpose of these Guidance Notes

The purpose of this Guidance is to assist obliged entities in fulfilling their obligation to identify the high-risk countries and jurisdictions that must be taken into account in their risk analysis and in the development of their internal control measures, in accordance with the geographical risk criteria set out in Article 22 of the Regulation under Law 10/2010 of 28 April; its content and sources should not be regarded as directly applicable, but rather as an aid to regulated entities when establishing the geographical risk controls that will determine the application of specific enhanced due diligence measures.

Notwithstanding the above, each obliged entity must also, depending on the sector in which it operates, the type and volume of transactions it carries out, its professional experience and, above all, its corresponding risk assessment, determine whether there are other risks arising from conducting business with certain countries or with nationals of those countries.

It is therefore highly important to emphasise that, whilst obliged entities must always take into account the criteria set out in this Guide when carrying out a risk analysis that includes geographical risk and, where appropriate, adopting enhanced due diligence measures, it does not contain a list setting out all possible criteria for classifying a country or a resident of a country as posing a risk of being linked to Money Laundering and Terrorist Financing; rather, on the contrary, **it is for the obliged entity to determine, within its own internal control measures and based on its own analysis, the risk involved in conducting business with certain countries or with residents of those countries and, where appropriate, to apply enhanced due diligence measures**.

The inclusion of these criteria in the Regulation does not imply that transactions carried out with these countries or their nationals are necessarily linked to Money Laundering or Terrorist Financing; rather, these are

transactions in which a number of risk factors are present that must be taken into account by the institution.

The task facing regulated entities is to determine, within their respective internal control measures and following the required risk analyses, whether transactions with certain countries or with residents of those countries fall within their own definition of high-risk transactions, and to act accordingly by applying the enhanced due diligence measures they have put in place for each of the scenarios they may encounter.

It should be borne in mind that the regulations in this area are primarily preventive in nature, with the aim of preventing funds derived from criminal activities from being channelled through the various regulated entities. It is therefore considered essential to strengthen measures designed to detect suspicious transactions involving certain countries before they take place, in order to prevent funds of illicit origin from entering the system.

With a view to enhancing the usefulness of this guide in terms of identifying sources of information on the interpretation of the various criteria set out in the regulations, it includes not only official sources but also certain private organisations that carry out this type of research; however, inclusion in this guide should not be taken to imply full endorsement of the content or findings that their studies may contain.

It should be borne in mind at this point that this guide is intended for guidance only; it is therefore at the discretion of the regulated entities to decide how to apply the guidelines set out herein.

Common criteria for identifying high-risk countries, territories or jurisdictions

Among the criteria identified in their respective risk analyses, obliged entities shall consider as high-risk countries, territories or jurisdictions those which:

a) Do not have adequate systems in place to prevent Money Laundering and/or the Financing of Terrorism (AML/CFT).

b) Are subject to sanctions, embargoes or similar measures adopted by the European Union, the United Nations or other international organisations.
c) Exhibit significant levels of corruption or other criminal activities.
d) Provide funding or support for terrorist activities.
e) Have a significant offshore financial sector ('offshore' centres)
f) Are regarded as tax havens.

How is it determined which countries should be included within each of the above risk categories?

To identify high-risk countries, territories or jurisdictions, obliged entities shall consult reliable sources, understood to mean the current regulations on the matter; the lists of non-cooperative countries periodically issued by the FATF; the Mutual Evaluation Reports on each country issued by the FATF or its equivalent regional bodies (GAFILAT, GAFIC, MENAFATF, GAFIC, MONEYVAL and other multinational institutions); or reports issued by international organisations or institutions relating to each of the criteria set out: the World Bank, the International Monetary Fund, the OECD, the European Investment Bank or the Inter-American Development Bank, amongst others.

The classification of countries as high-risk territories must take into account the analysis of each of the above risk categories individually and in aggregate, with each criterion being weighted according to the circumstances of each entity.

1. Geographical risk criterion.
Countries, territories or jurisdictions that do not have adequate systems in place to prevent Money Laundering and the Countering of Terrorist Financing.

FATF lists of non-cooperative countries

The FATF periodically draws up and publishes lists of countries that do not have adequate systems in place for Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT). These lists, which include countries that have received a negative assessment in the

Country Assessment Report, are updated every four months by the FATF plenary following a review by the organisation's international assessors.

Depending on the degree of non-compliance highlighted in the reports, the FATF approves two lists of countries at each plenary session, which it updates periodically:

The first list, known as the Public Statement, includes two categories of countries:

- Countries in respect of which member countries are called upon to implement effective measures (counter-measures) to protect their financial sectors from the risks emanating from those countries.

- Countries with strategic deficiencies that have not made sufficient progress on their Action Plan to address those deficiencies, and in respect of which the FATF warns of the risks involved in doing business with them.

The second list is the **Compliance Document**, which refers to countries that are in the process of improving their compliance with international measures. It includes countries with strategic deficiencies in fulfilling their obligations regarding Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT).

Finally, there is a much larger group of small countries whose Mutual Evaluation Report, carried out by the FATF or the equivalent regional group, yielded an unfavourable result, implying the need for a periodic review of their systems for Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT). However, limitations on available resources prevent the establishment of individualised action plans, the carrying out of the corresponding assessments and their inclusion on the lists. These are the so-called jurisdictions pending review by the FATF International Review Group (this list of countries is referred to as the ICRG 'pool').

As the lists are subject to constant changes, as indicated above, the following links are provided where you can find up-to-date information on which jurisdictions are non-cooperative in the fight against Money Laundering and Terrorist Financing (FATF):

- Website of the COPBLAC: http://www.tesoro.es/prevencion-del-blanqueo-y-movimiento-de-efectivo/novedades

- Website of the Financial Action Task Force (FATF): http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/

EU list of high-risk third countries

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015, on the Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) activities, provides in Article 9 for the creation of lists of countries with strategic deficiencies in this area, referred to as 'lists of high-risk third countries'.

These lists will be drawn up by the European Commission on the basis of the criteria set out in the Directive itself, which relate to the identification of strategic deficiencies in:

a) the third country's legal and institutional framework for combating Money Laundering and Terrorist Financing, and in particular:

i) the criminalisation of Money Laundering and Terrorist Financing,

ii) customer due diligence measures,

iii) document retention requirements, and

iv) requirements for the reporting of suspicious transactions;

b) the powers and procedures of the competent authorities in third countries for the purposes of combating Money Laundering and Terrorist Financing, or

c) the effectiveness with which the anti-Money Laundering and Terrorist Financing regime addresses the third country's risks in relation to Money Laundering or Terrorist Financing.

Other unofficial sources

Furthermore, when assessing the risk arising from countries or jurisdictions that lack adequate systems for Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT), there are a number of international institutions that periodically publish reports on geographical or country risk, which may serve as a guide to regulated entities in determining their own risk ratings.

For example, the **Basel Institute**, an independent, not-for-profit organisation, publishes an annual 'AML Index' which ranks countries worldwide according to their risks in relation to Money Laundering and Terrorist Financing. According to the Institute itself, the Index is compiled through the technical aggregation of data from other reliable third-party sources to generate its own findings.
Further information at https://index.baselgovernance.org/

2nd Criterion: geographical risk.
Countries, territories or jurisdictions subject to sanctions, embargoes or similar measures adopted by the European Union, the United Nations or other international organisations.

Under Chapter VII of the **United Nations** Charter, the Security Council may adopt coercive measures to maintain or restore international peace and security. These measures range from economic or other sanctions that do not involve the use of armed force, to international military intervention.

The use of sanctions mechanisms is intended to exert pressure on a State, or on entities or individuals within that country, to comply with the objectives set by the Security Council without resorting to the use of force. Sanctions therefore provide the Security Council with an important instrument for enforcing its decisions. The universal nature of the United Nations makes it a particularly appropriate body for establishing and monitoring such measures.

The Council has resorted to mandatory sanctions as an instrument of coercion on several occasions, and the range of sanctions has included both broad economic and trade sanctions

as well as more targeted measures, arms embargoes, travel bans, financial or diplomatic restrictions, or a combination of several types of measures.

The **European Union**, as part of its Common Foreign and Security Policy, implements restrictive measures and/or sanctions against countries and entities following the adoption of the aforementioned United Nations Security Council Resolutions. It also applies other restrictive measures and/or sanctions independently.

These are intended to bring about a change in the policies and actions of countries that fail to uphold the rule of law, infringe international law or violate human rights.

The measures that may be employed by the EU encompass a range of instruments which may include, amongst others:

- trade restrictions on imports and/or exports;
- financial restrictions (capital movements, investment bans or limitations, etc.);
- prohibitions on carrying out certain types of transactions (technical assistance, intermediary activities);
- diplomatic diplomatic (restrictions on visas or travel on travel);
- embargoes on arms or dual-use goods.

The following websites contain links to the latest versions of the sanctions lists imposed by the European Union and the United Nations Security Council. The persons and entities included on these lists are subject to the relevant measures imposed, and all EU and UN Member States are obliged to apply these measures in relation to the persons and entities listed.

European Union: http://eeas.europa.eu/cfsp/sanctions/index_en.htm

http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf

United Nations: https://www.un.org/sc/suborg/es/sanctions/information

https://www.un.org/sc/suborg/es/sanctions/un-sc-consolidated-list

3rd Criterion: geographical risk.

Countries, territories or jurisdictions with significant levels of corruption or other criminal activities.

United Nations Convention against Corruption (UNCAC)

Currently, the UNCAC is the only universally applicable, legally binding instrument for combating corruption. The Convention's wide-ranging approach and the binding nature of many of its provisions make it a unique tool for developing a joint response to a global problem.

With the aim of providing guidance and assistance in preventing and combating corruption and economic fraud, the UN, through the UNODC (United Nations Office on Drugs and Crime), is constantly developing new manuals, tools and publications with a view to improving understanding of the issues, policies and best practices regarding the implementation of the Convention against Corruption (UNCAC).

For further information on the UNCAC and on the status reports from different countries:

https://www.unodc.org/unodc/en/treaties/CAC/

http://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html

OECD

The OECD combats corruption and bribery in international business with the aim of strengthening development, reducing poverty and improving confidence in markets. The key instrument in this area is the OECD Anti-Bribery Convention and its 2009 Anti-Bribery Recommendation.

http://www.oecd.org/daf/anti-bribery/

The OECD produces country-specific monitoring reports and makes recommendations. These monitoring reports and details of countries' implementation efforts can be found at:

http://www.oecd.org/daf/anti-bribery/countryreportsontheimplementationoftheoecdanti-briberyconvention.htm

Other institutions

There are numerous public and private organisations that carry out studies on corruption at local and/or regional level:

World Economic Forum ☒

Among many other activities, this organisation publishes an annual Global Competitiveness Report on countries, which highlights their levels of corruption (*The Global Competitiveness Report*).

http://reports.weforum.org/global-competitiveness-report-2014-2015/rankings/

Transparency International

It is a non-governmental organisation dedicated to combating corruption on a global scale. Every year, Transparency International publishes a Corruption Perceptions Index for countries around the world. For further information about this organisation and the global Corruption Perceptions Index for different countries:

http://www.transparency.org/

4th criterion: geographical risk.

Countries, territories or jurisdictions that provide funding or support for terrorist activities.

Some countries have drawn up lists of countries or territories that support terrorist activities; however, there is currently no official international list of countries in this regard. International organisations, such as the UN and the European Union, have opted to identify, on a case-by-case basis, natural and legal persons who, due to their links to terrorist activities, are included on lists that are subject to regular updates and on which a series of restrictions and financial sanctions are imposed, as already described in criterion No. 2.

The system of international financial sanctions is, therefore, an important tool for ensuring the effectiveness of measures against Terrorist Financing, which relies on the compilation of international lists of terrorists or individuals and entities that support them, including their details and affiliations.

These lists must be checked by regulated entities in the course of their commercial activities, so that, should any of the persons or entities included on the list be identified, the funds or assets belonging to them must be frozen and the competent authorities notified. https://www.un.org/sc/suborg/es/sanctions/1267/aq_sanctions_list

Mandatory European Union framework.

The regulation governing the freezing of assets in the European Union (EU) is based on Regulations 2580/2001 and 881/2002, to which more than fifty amendments have been made since their adoption, primarily to update the lists and include new persons or entities.

Regulation 881/2002 is directed against the so-called *Al-Qaida network* (including its associates), incorporating the guidelines set out by the United Nations Security Council in Resolution 1267 (1999).

Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism is, by contrast, broader in its scope, applying to all organisations and individuals that the Council decides to include in the lists set out in its annexes.

As Regulations, these two instruments are directly and immediately applicable to all persons within the EU and, although differing in scope, both Regulations share the same preventive approach, establishing similar measures.

Of particular relevance to the financial sector is the so-called obligation to *freeze* or block assets linked to designated persons, which requires *preventing any movement, transfer, alteration, use or transaction of funds that could result in a change in the volume, amount, location, ownership, possession, nature or destination*

of these funds, or any other change that might facilitate their use, including the management of securities portfolios.

The General Secretariat for the Treasury and Financial Policy cooperates with and provides guidance to financial institutions (entities directly bound by the EU Regulations) on the effective implementation of asset-freezing measures, in cases where they require information regarding a client of their institution who appears on international terrorist lists. For further information:
http://www.tesoro.es/prevencion-del-blanqueo-y-movimiento-de-efectivo/sanciones-financieras

List of persons and entities whose assets must be frozen

To help obliged entities identify those who have been designated, the European Commission and the European Banking Federation have launched a single database of individuals and entities subject to asset freezing, which can be downloaded to facilitate search operations by financial institutions once the formal designation has been made. The website where the list can be found is as follows: http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm

5. Geographical risk criterion

Countries, territories or jurisdictions considered to be tax havens.

Spanish legislation sets out a list of countries and territories that may be classified as tax havens in *Royal Decree 1080/1991 of 5 July, which determines the countries or territories referred to in Articles 2(3)(4) of Law 17/1991 of 27 May on urgent tax measures, and Article 62 of Law 31/1990 of 27 December on the General State Budget for 1991.*

That list was drawn up by the Ministry of Finance for the purposes of taxing the income earned by companies based in those tax havens and has undergone significant changes, as many of those countries are no longer regarded as such for tax purposes following Spain's signing of the respective double taxation agreements

double taxation agreements with them, in accordance with the original wording of the first additional provision of Law 36/2006 of 29 November.

However, the wording of the aforementioned first additional provision of Law 36/2006 of 29 November was amended following the adoption of Law 26/2014 of 27 November. Consequently, with effect from 1 January 2015, the criteria for removing a territory from the list of tax havens have been amended.

On 23 December 2014, the Directorate-General for Taxation of the Ministry of Finance and Public Administration issued a report in which, after analysing the content of the approved legislation, it expressly stated that *"the current list of territories, with the amendments arising from and to be derived from the provisions of Royal Decree 116/2003, shall continue to apply until a new list is approved*."

Therefore, until a new list of countries is published, the list of territories considered to be tax havens is as follows:

Emirate of Bahrain Sultanate
of Brunei
Gibraltar
Anguilla
Antigua and Barbuda
Bermuda
Cayman
Islands Cook
Islands
Republic of Dominica Grenada
Fiji Guernsey
Jersey
Falkland
Islands Isle of
Man Mariana
Islands
Mauritius
Montserrat Republic
of Nauru Solomon
Islands
Saint Vincent and the
Grenadines Saint Lucia
Turks and Caicos Islands
Republic of Vanuatu
British Virgin Islands
US Virgin Islands Hashemite Kingdom of
Jordan
Lebanese Republic Republic
of Liberia Principality of
Liechtenstein Macao
Principality of Monaco
Republic of Seychelles

Other sources

Alongside this formal criterion, there are numerous international institutions specialising in analysing the level of tax transparency in jurisdictions around the world, which periodically compile lists that may be of interest to obliged entities when assessing a country's risk level based on the lack of transparency reported in these areas:

European Union

The European Commission, supported by a group of experts, has created the Platform for Good Tax Governance. This platform publishes annual lists of tax havens that have been classified as such by various EU Member States.
http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/lists_of_countries/index_en.htm

OECD – Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework established by the OECD, focusing on tax transparency and the exchange of tax information amongst 120 countries (http://www.oecd.org/tax/transparency/).

This framework consists of the establishment of international standards set out in the OECD's 2002 Model Agreement on the exchange of information for tax purposes. The Global Forum publishes reports assessing the level of cooperation provided by states in tax matters in accordance with international standards, taking into account both their legislation and the exchange of information that takes place in practice. For further information on the exchange of tax information, including reports on different countries:
http://www.oecd.org/tax/transparency/peerreviewgroup.htm

Other unofficial sources:

Tax Justice Network

An international organisation that conducts studies on the level of financial secrecy in different countries and jurisdictions and compiles the so-called Financial Secrecy Index

, which ranks 92 jurisdictions according to their level of financial secrecy and the volume of their activities as a 'tool for understanding jurisdictions with financial secrecy, tax havens and illicit financial flows'.

The Financial Secrecy Index for 2015 is published at:
http://www.financialsecrecyindex.com/introduction/fsi-2015-results

Global Financial Integrity (GFI)

This is a non-profit research and advocacy organisation based in Washington DC, which produces reports and analyses on illicit financial flows (http://www.gfintegrity.org/)

Among the reports published by this organisation is its "Report on illicit financial flows from developing countries, 2003–2012". Further information is available at: http://www.gfintegrity.org/report/2014-global-report-illicit-financial-flows-from-developing-countries-2003-2012/

6th Geographical Risk Criterion

Countries, territories or jurisdictions with a significant offshore financial sector ("offshore" centres)

From a regulatory perspective, there is no official catalogue or list of offshore jurisdictions in Spain. However, various international organisations have produced analyses and lists of such territories. Specifically:

In 1999, the FSB (Financial Stability Board) set up a specific working group to analyse so-called offshore centres, which are listed on page 14 of that report:
http://www.financialstabilityboard.org/publications/r_0004b.pdf

Furthermore, in 2000, the International Monetary Fund (IMF) launched an assessment of offshore centres: http://www.imf.org/external/np/mae/oshore/2000/eng/back.htm#table1

Subsequently, it was agreed that, for countries subject to analysis by the IMF under Article IV of the organisation's Articles of Agreement, an analysis of the situation in the offshore sector would be included in the Financial Sector Assessment Programme (FSAP) reports, consequently, reviews of the situation and developments in these territories are not presented in the form of a list; the most recent list available can be found at the following link (2014): http://www.imf.org/external/NP/ofca/OFCA.aspx#A

In 1980, the OGBS (Offshore Group of Banking Supervisors) was formed as an association of financial supervisory authorities responsible for activities relating to the offshore sector. This organisation changed its name in 2011 and is now known as the Group of International Financial Centres Supervisors (GIFCS). The list of member countries can be found at the following link:
http://www.gifcs.org/index.php/about/members-and-observers