

# SANCTIONS AND REQUIREMENTS FOR REGULATED ENTITIES IN 2023

# SANCTIONS AND ADMINISTRATIVE MEASURES IMPOSED FOR FAILURE TO COMPLY WITH AML/CFT OBLIGATIONS

## 1. Year 2023

### 1.1. List of penalties

**Serious penalties:**

Pursuant to Article 57 of Law 10/2010 of 28 April, 25 final administrative penalties were imposed during 2023, all of which were accompanied by a private reprimand. The list of breaches relating to the aforementioned Law, together with the amount of the fine imposed on each regulated entity, is as follows:

- **Failure to comply with formal identification obligations, in accordance with Article 3** (Art. 52.1.a):
  - Penalty imposed on a credit institution consisting of a fine of €325,542.
  - Penalty imposed on a credit institution consisting of a fine of €162,046.50.
  - Penalty imposed on a credit institution consisting of a fine of €139,674.
  - Sanction imposed on a credit institution consisting of a fine of €271,408.

- **Failure to comply with the obligation to obtain information on the purpose and nature of the business relationship, in accordance with Article 5** (52.1.c): Sanction imposed on a credit institution consisting of a fine of €1,329,000.

- **Failure to comply with the obligation to apply ongoing monitoring measures to the business relationship, in accordance with Article 6** (Article 52(1)(d)): Sanction imposed on a credit institution consisting of a fine of €922,099.50.

- **Failure to comply with the obligation to apply enhanced due diligence measures, in accordance with Articles 11 to 16** (Article 52(1)(f)): Sanction imposed on a credit institution consisting of a fine of €347,366.50.

- **Failure to comply with the obligation to carry out a special review, in accordance with Article 17** (Article 52(1)(g)):
  - Penalty imposed on a credit institution consisting of a fine of €347,366.50.
  - Penalty imposed on a credit institution consisting of a fine of €162,046.50.
  - Sanction imposed on a credit institution consisting of a fine of €271,408.

- **Failure to comply with the obligation to carry out a special review, as set out in Article 17, in conjunction with failure to comply with the obligation to report on the basis of circumstantial evidence, as set out in Article 18** (Articles 52.1.g and 52.1.h):
  - Penalty imposed on a credit institution consisting of a fine of €60,000.
  - Sanction imposed on a payment institution consisting of a fine of €84,700.

- **Failure to comply with the obligation to report on the basis of circumstantial evidence, in accordance with Article 18** (Article 52(1)(h)): Sanction imposed on a credit institution consisting of a fine of €2,598,000.

- **Failure to comply with the obligation to refrain from enforcement, in accordance with Article 19** (Art. 52.1.i): Sanction imposed on a credit institution consisting of a fine of
  €694,500.

- **Breach of the obligation to retain documents, in accordance with Article 25** (Art. 52.1.l): Sanction imposed on a payment institution consisting of a fine of
  €60,000.

- **Failure to comply with the obligation to adopt in writing and implement adequate internal control policies and procedures, in accordance with Articles 26 and 26a, including the adoption in writing and implementation of a customer onboarding policy** (Article 52(1)(m)):
  - Penalty imposed on a credit institution consisting of a fine of €591,084.
  - Sanction imposed on a credit institution consisting of a fine of €366,139.50.
  - Penalty imposed on a credit institution consisting of a fine of €694,500.
  - A penalty imposed on a credit institution consisting of a fine of €219,348.
  - Sanction imposed on a credit institution consisting of a fine of €482,816.

- **Failure to comply** with **the obligation to notify the Commission's Executive Service of the proposed appointment of the representative of the obliged entity, in accordance with Article 26b** (Article 52.1.n): Sanction against a law firm consisting of a fine of €60,000.

- **Failure to comply with the obligation to establish adequate internal control bodies, including, where applicable, technical units, operating in accordance with Article 26b** (Article 52(1)(ñ)): Sanction imposed on a law firm in the form of a fine of €90,000.

- **Failure to comply with the obligation to undergo an external review, in accordance with Article 28** (Article 52(1)(q)):
  - Penalty imposed on a law firm consisting of a fine of €60,000.
  - Penalty imposed on a payment institution consisting of a fine of €60,000.

- **Failure to comply with the obligation to apply, in respect of branches and subsidiaries in which a majority stake is held and which are situated in third countries, the measures provided for in**

**Article 31** (Article 52(1)(t)): Sanction imposed on a credit institution consisting of a fine of €4,829,250.

**Very serious sanctions:**

Pursuant to Article 56 of Law 10/2010 of 28 April, two final administrative sanctions were imposed during 2023, all of which were subject to a public reprimand. The list of breaches relating to the same Law, as well as the amount of the fine imposed on each regulated entity, is as follows:

- **Breach of the duty to report, as set out in Article 18, where a director or employee of the obliged entity has internally disclosed the existence of indications or the certainty that a transaction or operation was linked to Money Laundering or Terrorist Financing** (51.1.a): Penalty imposed on a credit institution consisting of a fine of
  €3,323,000.

- **Failure to comply with the external review obligation, in accordance with Article 28, where a final administrative sanction has been imposed in the previous five years for the same type of infringement** (51.1.f): Sanction against a jeweller consisting of a fine of €150,000.

**Non-final administrative sanctions**:

Furthermore, during 2023, sanctions for serious and very serious infringements were imposed on various regulated entities, accompanied, respectively, by the corresponding private and public reprimands, totalling €38,134,680; these are not yet final under administrative proceedings, pending the resolution of the appeals lodged against them.

## 2. Analysis of the breaches penalised during the period

From the information set out in the previous section, we can see, first of all, that the highest number of breaches was detected in credit institutions (20), although breaches were also detected in the legal profession (3), the payment institutions sector (3) and the jewellery sector (1).

On this point, it should be noted that the distribution of breaches is not due to poorer performance by certain sectors, but is linked to greater scrutiny by the supervisors, given the risk classification assigned to the various sectors.

Secondly, it is worth noting that the most frequent types of non-compliance relate to the lack of adequate policies and procedures (5) and the lack of special scrutiny (5), followed by non-compliance relating to the lack of adequate formal identification (4). In any case, the determination of the amount is not solely indicative of the severity of the penalty, as the financial capacity of the regulated entity is also taken into account, resulting in varying figures.

In light of the above, a summary is provided of the most significant incidents that have led to sanctions during the period.

### 2.1. Due diligence obligations

With regard to the **due diligence obligations** set out in Law 10/2010 of 28 April, during 2023 sanctions were imposed for breaches of the obligation to **carry** out **formal identification**, to ascertain the **purpose and nature of the business relationship**, to apply **enhanced due diligence measures**, and for failure to apply **ongoing monitoring measures to the business relationship**.

With regard to **formal identification**, the breaches arose from inspections analysing AML/CFT measures at credit institutions handling cash receipts. Thus, the main breaches that have given rise to these infringements relate to the splitting of cash deposits, in respect of which the duty of identification has been systematically neglected due to the lack of automated tools capable of detecting the splitting of cash deposits at the counter for transactions amounting to less than €1,000, for the purpose of requiring the identification of the person making the deposit. Furthermore, there were notable shortcomings in the correct identification of the person making cash deposits, even where no splitting of payments occurred, arising from the inadequate design of the institutions' IT systems.

With regard to the breach relating to the lack of **information on the purpose and nature of the business relationship**, the sanction imposed during the period placed particular emphasis on the limited information available for a significant number of high- and very high-risk customers in the sample; specifically, the absence of supporting documentation based on external sources and of comprehensive financial information regarding the client's business activities, as well as the lack of scrutiny of commercial transactions.

With regard to the sanctions imposed for non-compliance with the obligation to apply **ongoing monitoring measures to the business relationship**, the main breaches that have led to infringements relate to the failure to periodically update risk-based customer due diligence measures, with the failure to update records for high-risk customers being particularly significant, the failure to impose restrictions on customers covered by Transitional Provision 7 of Law 10/2010 of 28 April, and the failure to verify the identity of beneficial owners regardless of the legal entity's risk profile.

Finally, it should be noted that, with regard to the main breaches that have given rise to the infringement in relation to the obligation to apply **enhanced due diligence measures**, these have been caused by the incorrect prior risk classification. Thus, in cases which, according to the regulations, should be classified as high-risk – such as private banking clients, clients considered to be in a position of public responsibility, and companies with bearer shares – standard due diligence measures were applied.

### 2.2. Reporting obligations

With regard to the **reporting obligations** set out in Law 10/2010 of 28 April, the imposition of sanctions for failure to comply with the obligation to **carry out a special review** is particularly noteworthy**,** although sanctions have also been imposed **for failure to report transactions on the basis of suspicion, for failure to refrain from executing such transactions, and for failure to comply with the obligation to retain documents.**

With regard to the obligation to **carry out a special review**, five sanctions were imposed during the period, all of which were linked to a failure to analyse transactions or high-risk customers which, by their nature, could be related to Money Laundering or Terrorist Financing. These included, amongst others, cases where, despite there being court orders relating to Money Laundering offences committed by the customer, the institution failed to carry out a special review. Furthermore, although of lesser significance in the calculation of the sanction, deficiencies have been recorded in some cases relating to more formal aspects, such as the absence of the author's name and signature on the special reviews, a limited time frame for the information analysed, and a lack of justification in the case of the closure of proceedings.

With regard to the obligation to **report on the basis of indications**, the penalty imposed is due to the fact that, although a special review existed which included grounds for referral to SEPBLAC, it was shelved. Furthermore, the very serious penalty for failure to report on the basis of indications is due to the fact that, despite the existence of internal communications regarding operational risks, a decision was taken not to report the information.

Furthermore, within the scope of reporting obligations, the sanctions for **failure to refrain from executing transactions** were motivated by the fact that clients who had been subject to transactions based on suspicious activity were still permitted to trade. In addition, clients who had been subject to court orders, SEPBLAC requirements or internal alerts issued by staff continued to trade.

Finally, it should be noted that, with regard to the sanction for failure to retain documents, the main breaches relate, in this case, to the format or medium in which regulated entities are required to store this type of documentation.

### 2.3. Internal control measures

With regard to the **internal control** measures provided for in Law 10/2010 of 28 April, during 2023, the sanctions imposed for failure to comply **with** the obligation to **approve in writing and implement adequate internal control policies and procedures** are particularly noteworthy, although sanctions have also been imposed for failure to comply **with** the obligation to have **appropriate internal control bodies** in place, to undergo an **external expert review**, to notify the Executive Service **of** the **proposed appointment of the regulated entity's representative**, and to implement **appropriate control measures with regard to branches and subsidiaries abroad.**

As noted, the most significant requirement is that of approving in writing and implementing **adequate** internal control **policies and procedures**, as sanctions have been imposed on up to five occasions during the period. With regard to this latter breach, the main non-compliances detected relate to the automatic alert generation system, which had significant shortcomings in terms of ensuring an effective alert detection system, an inadequate assessment and classification of customers by risk level, as well as numerous deficiencies detected in the content of the AML/CFT Manual which institutions are required to have in accordance with the regulations.

Meanwhile, the obligation to have **adequate control measures in place regarding overseas branches and subsidiaries** has been penalised for the first time, as no detailed inspections focusing on this aspect had previously been carried out. Among the shortcomings identified, we can highlight the absence of key corporate AML/CFT policies and procedures at group level and the underestimation of AML/CFT risk at group level, in particular due to the limited risk analysis carried out in some countries; although there were also other shortcomings relating to the proper approval of regulations as well as the resources available at group level to carry out these functions.

Finally, **the remaining penalties imposed** during this period in relation to internal control measures were due to the absence of an internal control body, an external expert review and a representative within the organisation.

### 2.4. List of requirements

During 2023, a total of 17 requirements were issued to various regulated entities; the content and type of entity are detailed below:

**Requirements relating to due diligence obligations:**

- To ensure that the due diligence measures laid down by regulation are duly applied to all the organisation's customers, including those relating to the ongoing monitoring of the business relationship and, where applicable, enhanced due diligence measures:

  7 credit institutions,
  2 notaries
  1 insurance company

**Requirements relating to reporting obligations:**

- Ensure that special examinations and, where applicable, reports based on suspicious activity comply in all cases with the terms set out in the legal provisions in force, as does the obligation to refrain from execution:

  5 credit institutions
  3 insurance companies
  2 notary's office

- Ensure that the analysis of alerts, the special review of transactions and, where applicable, the corresponding report on suspicious activity, are always carried out without undue delay:

  1 credit institution

**Requirements relating to internal control measures**

- Carry out an appropriate ML/TF risk analysis, in accordance with the provisions of Article 32 of the Regulation implementing Law 10/2010 of 28 April:

  10 credit institutions 1
  insurance company

- Have an appropriate external expert's report: 4 credit

  institutions

- Align the structure and/or resourcing of the internal control body with the provisions of the regulations:

  4 credit institutions
  1 insurance company

- Ensure that, with regard to obligations relating to policies and procedures, the organisation defines, approves and certifies the implementation of a procedure that prevents the continuation of business relationships and the acceptance of new premiums from customers for whom the necessary identification documentation is not available:

  1 insurance company

- That the institution defines, approves and provides evidence of the implementation of a procedure preventing the payment of benefits without prior verification of valid and reliable documentation:

  1 insurance company

- Approve an Action Plan

  2 credit institutions

- Ensure that the Prevention Manual includes a procedure governing how requests received from judicial or police authorities are to be handled for AML/CFT purposes:

  1 credit institution

- Draw up a remediation plan: 2

  insurance company

- Update internal policies and procedures to bring them into line with current regulations, including the procedures manual and policies relating to branches and subsidiaries:

  5 credit institutions
  1 insurance company

- Approve an appropriate training plan 2

  credit institutions
  2 notary's offices

- To verify, comprehensively and on a regular basis, through internal audit procedures, the adequacy and effectiveness of all internal control procedures relating to AML/CFT.

  3 credit institutions
  1 insurance company

- Establish a procedure for the systematic and structured exchange of customer information within the group and implement Delegated Regulation (EU) 2019/758:

  1 credit institution

- Ensure the establishment and implementation of automated procedures for the detection of over-the-counter deposits exceeding €1,000:

  4 credit institutions

- Ensure that the institution's system for generating, processing and recording computerised alerts is effective in detecting transactions showing signs of money laundering:

    9 credit institutions
    3 insurance company

- Ensure that the procedures for identifying the parties involved in transactions and for retaining the supporting documents relating to them are fully in line with the provisions set out in Law 10/2010 of 28 April:

    4 credit institutions
    1 insurance company
    2 notary's office