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Letter dated 25 June 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 5 May 2004 (S/2004/369). The Counter-Terrorism Committee has received the attached fourth report from Spain submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Alexander V. **Konuzin**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 18 June 2004 from the Permanent Representative of Spain to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

Please find attached the report of Spain submitted in response to the third letter of the Counter-Terrorism Committee (see enclosure).

(*Signed*) Juan Antonio **Yáñez-Barnuevo**
Ambassador
Permanent Representative
Permanent Mission of Spain to the United Nations

Enclosure*

[Original: Spanish/English]

Report submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001

1. Implementation measures

I. Effectiveness in the protection of the financial system

1.1

1. Ratification of the International Convention for the Suppression of the Financing of Terrorism.

The International Convention for the Suppression of the Financing of Terrorism (done at New York on 9 December 1999) was ratified by Spain on 1 April 2002.[1] In accordance with article 96 of the Spanish Constitution of 27 December 1978, "validly concluded international treaties once officially published in Spain shall constitute part of the internal legal order".

Subsequent to the ratification of the International Convention for the Suppression of the Financing of Terrorism, Law 12/2003 of 21 May, the Prevention and Blocking of Terrorist Financing Act, and Organic Law 4/2003 of 21 May, which supplements the Prevention and Blocking of Terrorist Financing Act, were enacted.

Law 12/2003, while recognizing that "terrorism is one of the major aggressions against the peace, security and stability of democratic societies", affirms that "one basic aspect of the prevention of the perpetration of terrorist acts is the stopping of the financial flows used by terrorist organizations".[2]

The Statement of Reasons for Law 12/2003 emphasizes, in particular, the requirement of paragraph 1 (c) of Security Council resolution 1373 (2001) which orders the freezing of funds "without delay".

These texts were not the first in Spain to address the combating of the financing of crime, although they are the first specifically relating to combating terrorist financing. Thus, prior to Law 12/2003, the legal regime against the financing of crime in Spain consisted of Law 19/1993 of 28 December, the Measures for the Prevention of Money Laundering Act[3] and by Law 40/1979 of 10 December, the Legal Regime for Exchange Control Act.

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* Annexes are on file with the Secretariat and are available for consultation.

[1] *Official Gazette* of Spain, 23 May 2002.

[2] These expressions are taken up in the Statement of Reasons for the Act which also mentions that Security Council resolution 1373 (2001), adopted on 28 September 2001, called on States to adopt the necessary measures to prevent and suppress the crime of terrorism and, in particular, the financing of terrorist acts (para. 1 of resolution 1373 (2001)).

[3] This Law regulates the functions of the Commission on the Prevention of Money Laundering and Currency Violations, the competences of which are not affected by the new Supervisory Commission on Terrorist Financing Activities (art. 9.6 of Law 12/2003).

Purpose of Law 12/2003

Under the new regulatory regime envisaged by Law 12/2003 any type of financial flow may be blocked in order to ensure that the funds are not used for the preparation or perpetration of terrorist acts; in particular, it allows the blocking of accounts, balances, financial positions, capital transactions and movements of capital, withdrawal, payment and transfer operations in which the persons involved on any basis (ordering, issuing, holding, receiving or benefiting therefrom) are individuals or entities associated with terrorist groups or organizations, or when the operation is carried out for the perpetration of terrorist acts or in order to contribute to the purposes being pursued by the terrorist groups. In this context, the blocking covers any financial operation in a broad sense, including the ordinary management of a portfolio of securities.

In addition, persons who have links with terrorist groups may be forbidden to open accounts with financial entities or their branches.

Supervisory Commission on Terrorist Financing Activities

The blocking functions to which we have referred will be exercised by the Supervisory Commission on Terrorist Financing Activities, a body created by Law 12/2003; its membership includes the Secretary of State for Security as Chairman, one member from the Public Prosecutor's Office appointed by the Attorney-General, one representative of the Ministries of Justice, the Interior and Economic Affairs, and the Director of the Executive Service of the Commission on the Prevention of Money-Laundering and Currency Violations, who acts as secretary.

Collaboration with the Commission

Article 4 of Law 12/2003 makes it incumbent on government services, credit and insurance companies, investment service enterprises, currency exchange establishments and other bodies providing financial services to collaborate with the Commission in the performance of its functions and, in particular, to take the necessary measures to ensure the effectiveness of any agreed blocking measures. Compliance with that obligation will not involve breach of contract or imply the assumption of any form of liability. On the contrary, failure to comply with the duty to collaborate will be regarded as a very serious offence and will give rise to the imposition of the appropriate penalty by the Ministry of the Interior.

Obligation to provide information

For the effective performance of its tasks, Law 12/2003 makes it mandatory for certain bodies to provide information obtained in the course of their official duties to the Supervisory Commission on Terrorist Financing Activities. This obligation to collaborate applies, in particular, to bodies such as the Bank of Spain, the National Stock Exchange Board and, in general, to all bodies with supervisory powers in the financial field. The obligation to submit information to the Commission also extends to the Executive Service of the Commission on the Prevention of Money-Laundering and Currency Violations referred to in article 15.2 of Law 19/1993.

Jurisdictional control and relation to the courts

Decisions by the Supervisory Commission on Terrorist Financing Activities may be challenged before the Administrative Law Division of the High Court (article 66 of Organic Law 6/1985 of 1 July on the judiciary, and article 11.1 of Law 29/1998, of 13 July Regulating Contentious Administrative Proceedings in the version contained in Organic Law 4/2003 of 21 May).

Furthermore, the Commission, within the scope of its functions, will provide the necessary assistance to the criminal jurisdictional bodies and to the Ministry of Economic Affairs and must inform the latter of any incident that may constitute an offence.

2. Substantive criminal law

In conclusion, it must be pointed out that, among the provisions of the Spanish Penal Code on terrorist offences (articles 571 to 580) penalties are imposed for the provision of funds to armed bands, organizations or terrorist groups through property-related offences (article 575), as well as collaboration with the activities or objectives of an armed band, organization or terrorist group and, in particular, cooperation, assistance or trading, whether economic or of any other kind (article 576). Such action is punishable under Spanish law pre-dating the International Convention for the Suppression of the Financing of Terrorism.

It is also to be noted that Spanish law establishes universal jurisdiction to criminalize the preparation of terrorist acts in Spain, and for the perpetration of such acts in or outside Spanish territory. Specifically, paragraph 4 of article 23 of Organic Law 6/1985 on the judiciary confers jurisdiction on Spanish judges and courts "to try acts committed by Spanish citizens or aliens outside national territory that are likely to be characterized under Spanish criminal law as terrorist offences".

Furthermore, Organic Law 20/2003, of 23 December, criminalized the provision of funds, public assets and subventions or public assistance of any type to illegal associations when such action is taken by a government authority or official.

1.2

(a) With respect to the question relating to the recent evaluation by organizations involved in the protection of financial systems against abuse by criminals and, in particular, against abuse by people or entities intent on directing funds towards the financing of terrorism, Spain has periodically been subjected to the evaluation provided for in article IV of the Articles of Agreement of the International Monetary Fund (IMF).

Under that article, an IMF staff team made an exhaustive report on the global condition of the Spanish economy which was submitted to the Executive Board and approved in March 2004 (annex). In paragraph 33 of the report in the section entitled "Other issues", the following statement occurs:

> "The authorities pointed to two concrete steps in 2003 reflecting their commitment to counter money-laundering (AML) and the financing of terrorism (CFT). First, Spain's AML framework was strengthened by the adoption, in July 2003, of new provisions fully implementing the 2001 EU Directive. The provisions extend the definition of money laundering offences to cover all serious offences; prescribe customer due diligence and suspicious

transaction reporting duties for lawyers, notaries, auditors, and accountants, and require financial institutions and other reporting entities to adopt 'reasonable measures' to verify their customers' professional or economic activities. Second, a comprehensive CFT law was adopted in May 2003, establishing a Commission for the Oversight of Terrorist Financing, which is empowered to block or freeze a wide range of assets and transactions when 'the transaction, movement or operation is performed for the purpose, or on the occasion of perpetrating terrorist activities, or for contributing to the goals pursued by terrorist groups or organizations."

(b) After the second round mutual evaluation of the tenth meeting of the Financial Action Task Force (GAFI/FATF), Spain took the measures described below.

– In the second FATF mutual evaluation report made of Spain in 1998 (hereinafter the 1998 report) it was pointed out that, given the number and diversity of the Spanish authorities responsible for the prevention policy, it would be desirable to rationalize structures and procedures.

The institutional system for combating money-laundering in Spain is geared to ensuring the maximum intergovernmental coordination. The body with overall responsibility in this area is the Commission on the Prevention of Money-Laundering and Currency Violations (hereinafter the Commission). The Commission is interdisciplinary in nature since it comprises senior officials of the administration with competence in various areas linked with combating money-laundering and the financing of terrorism, as well as representatives of the Public Prosecutor's Office. It is chaired by the Secretary of State for the Economy and has the following subsidiary organs:

– The secretariat which mainly performs functions of instituting and investigating administrative prosecutions, together with other functions that will be described below.

– The Executive Service (hereinafter SEPBLAC) which is the Financial Intelligence Unit.

In order to achieve the objective of rationalizing structures and procedures and maintaining the institutional structure indicated in the Prevention of Money-Laundering Act, Spain has changed the operational and planning methods of the above-mentioned bodies with a view to ensuring that the prevention policy is conducted in an effective and coordinated manner between all the actors involved.

Thus, it must be emphasized first of all that the Commission, which normally meets in plenary at least twice a year, also acts through its Standing Committee which meets once every two months. The latter Committee, which is chaired by the Director General of the Treasury and Financial Policy[4] has a more technically oriented membership than the plenary since its members are high-level officials (generally Under-Secretaries-General), rather than senior officials. Thus the Standing Committee undertakes more technical and concrete tasks, while the money-laundering prevention policy is directed by the Commission when it meets in plenary. The frequency of meetings of the Standing Committee is also a key factor

[4] This Directorate is part of the Secretariat of State for the Economy and is therefore hierarchically dependent on it.

with a view to achieving coordination between all bodies, and also with a view to ensuring the specific follow-up of cases.

Another element that assisted in the rationalization of structures and procedures has been the role taken by the Secretariat under an Assistant Director-General of the General Directorate of the Treasury and Financial Policy; it is therefore hierarchically subordinate both to the Chairman of the Standing Committee and to the Chairman of the Commission itself. Thus, the Office of the Assistant Director-General supports the Office of the Chairman in its work, prepares working documents, carries out the day-to-day follow-up of the prevention policy and represents Spain in international bodies dealing with the prevention of money-laundering and terrorist financing.[5]

As an example of the effort to rationalize structures and procedures mention may be made of the preparation and approval within the Commission of inspection plans on the basis of which a periodic efficient selection is made of entities that are to be inspected by SEPBLAC. These inspections, where appropriate, will lead to the opening of administrative prosecution files in respect of such entities. These administrative prosecution files are drawn up by the staff of the Secretariat.

In the second place, the 1998 report pointed out that, between July 1995 and December 1997, out of a total of 1,732 suspicious operations notified to SEPBLAC, 893 were in the banking sector and 480 were in other sectors for whose activities a licence is required and which are subject to supervision. By way of contrast to these figures, during the same period the currency exchange establishments, of which there are over 5,000 in Spain, notified only 17 suspicious operations.

Similarly, attention was drawn to the inherent risk of currency exchange establishments with respect to money-laundering since the money-launderers are transferring their criminal activity to non-financial sectors because of the increasingly strict control being exercised over the financial sector.

At the same time, the 1998 report noted that there were almost no routine communications[6] from currency exchange establishments.

This situation has changed significantly in recent years.

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[5] For example, the Office of the Assistant Director-General for Inspection and Control of Capital Movements, which is the unit of the General Directorate of the Treasury and Financial Policy which assumes the Secretariat functions of the Commission coordinates the Spanish delegation to FATF and to all analogous regional bodies. In that way, representation abroad is not entrusted to the Government delegation for the National Plan on Drugs but to the Office of an Assistant Director-General hierarchically subordinate to the office of the Chairman of the Standing Committee and of the Commission.

[6] In addition to the notification of operations apparently or undoubtedly involving money-laundering (suspicious operations) or without any apparent economic or legitimate purpose (unusual operations), Spanish regulations make it mandatory to notify on a routine basis and at monthly intervals the following transactions:

– Operations entailing the physical movement of specie, banknotes, travellers cheques, cheques or other bearer documents issued by credit establishments, other than those that are the subject of a credit or charge against the account of a client, to a value greater than 30,050 Euros or the equivalent in foreign currency.

– Operations with or by persons or legal entities resident in territories or countries that are regarded as a tax haven when the amount involved is greater than 30,050 Euros or the equivalent in foreign currency.

In the first place, the following legal norms have been approved to regulate the sector:

– Royal Decree 2660/1998, of 14 December 1998, which regulated the changing of foreign currencies in establishments open to the public, apart from credit agencies.

– Order of 16 November 2000, regulating particular aspects of the legal regime of currency exchange establishments and their agents.

– Bank of Spain Circular 6/2001, of 29 October 2001, on heads of currency exchange establishments.

This legislation establishes the requirements for engaging in currency exchange activities, and the transfer of funds, makes them subject to a regime of authorization and supervision and, in addition, establishes a regime for the imposition of penalties and for inspections by the Bank of Spain. In short, the situation has changed and this sector is now subject to supervision and licensing.

There were 73 suspicious operations notified to SEPBLAC by currency exchange establishments in 2000, 2001 and 2002. There has thus been a significant increase in reports by bodies of this type.

With respect to routine notifications, 53 were notified by exchange houses in 2000, 100 in 2001 and 18,055 in 2002. There has thus been a very significant increase, particularly with respect to the most recent figure.

The process of painstaking inspection, as well as the opening of administrative prosecution files, has undoubtedly been a major factor in improving efforts to give effect to the rules for preventing money-laundering.

Thus, under the inspection plan for 2000, inspections were made of 32 currency exchange establishments, resulting in the opening of seven administrative prosecution files. In six out of the seven cases financial penalties were imposed. The remaining file is currently on hold because legal proceedings are under way that might have a bearing on the administrative prosecution.

– In the 1998 report it was noted that hardly any administrative prosecution files had previously been opened.

Since then, the situation has changed significantly.

Since the approval of the inspection plan for 2000, a total of 94 inspections of entities subject to them have been carried out.

These inspections have resulted in:

– The imposition of penalties on six credit establishments. The penalties totalled 3,340,910 euros. In one of these cases a public reprimand was delivered in addition to the fine.

– The imposition of sanctions totalling 916,012 euros on four currency exchange establishments. In one of these cases, a public reprimand was delivered in addition to the fine.

– The imposition of penalties totalling 275,000 euros on one real estate company.

Administrative prosecution files are currently being processed with respect to three credit establishments and two currency exchange establishments (one of which has been put on hold in connection with ongoing legal proceedings).

– In the 1998 report it was stated that the preventive effect of the Spanish regulations was restricted to three types of cases:

  – Criminal activities related to toxic or narcotic drugs or psychotropic substances.

  – Criminal activities related to armed bands and terrorist organizations or groups.

  – Criminal activities conducted by organized bands or groups.

When Law 19/2003 of 4 July 2003, on the movement of capital and economic transactions with other countries and on specific measures for the prevention of money-laundering was approved, the regulations changed. This was in compliance with the adoption of the new European directive on the prevention of money-laundering and, together with other aspects such as the increase in the list of entities subject to the Law, there was also an extension, for preventive purposes, to the underlying criminal offence.

Thus, the new article 1 of the Prevention of Money-laundering Act provides that: "This Act regulates the obligations, actions and procedures for forestalling and preventing the utilization of the financial system, as well as of other sectors of economic activity, for the laundering of money arising from any type of illegal participation in the perpetration of an offence punishable by a term of imprisonment of more than three years". It is to be noted that financing of terrorism, as an offence punishable by a term of imprisonment of up to 10 years (article 576 of the Penal Code) must be regarded as a criminal offence underlying money-laundering.

Lastly, in the 1998 report it was pointed out that the two prosecutors belonging to the Commission must coordinate their activities. Such coordination exists and is fully effective since the Ministry of Economic Affairs in Spain is, under its Statute, an institution whose organization is governed by the hierarchical principle. Thus, both prosecutors answer to the same higher authority: the Government Procurator.

II. Effectiveness of counter-terrorism machinery

1.3 With a view to preventing, in particular, the commission of terrorist acts, the Government had developed the following initiatives within a counter-terrorism plan in order to address that phenomenon:

Emphasizing and intensifying the action taken in recent years as part of a comprehensive fight on all fronts against the terrorist organization ETA, principally affecting the operational level but not neglecting other aspects such as those relating to the financial, political, international and other networks of the armed band itself.

In the field of international terrorism, the strategy is as follows:

• Action in the rural and urban environment through the creation of joint units which address terrorism from a two-fold perspective: criminality connected with aliens and linked with terrorism and radicalism where there is a link with terrorism.

- In a year and a half the human and technical resources of the central units of the security bodies and forces of the State are being tripled.
- At the international level, the State security bodies must have access to international databases and multidisciplinary working groups in the area of counter-terrorism, where appropriate.

Another government initiative has been the creation of a National Counter-terrorism Coordination Centre with the participation of the two State security bodies responsible to the Ministry of the Interior (national police force and Civil Guard), together with the National Intelligence Centre (which comes under the Ministry of Defence). The National Counter-terrorism Coordination Council does not take on operational tasks which are in the hands of the security bodies and forces but is responsible for:

– Gathering information from what is already held in the database of each of the bodies and from international databases;

– Analysing such information;

– Coordinating operational activities.

The aim of this activity is:

– To evaluate the terrorist threat on an ongoing basis;

– To keep the initiative in counter-terrorism;

– To identify possible scenarios for intervention.

Groups specializing in terrorist financing and cyber-terrorism must also be strengthened.

Another measure is the creation of a judicial/prosecutorial body specializing in the subject which will be the first level of coordination, prevention and investigation.

In addition, it is also necessary to strengthen human resources and ensure their education and training, to increase the available equipment and infrastructure and provide the stimulus for the necessary legislative measures to enable the new challenges raised by international terrorism to be addressed effectively.

Similarly, the Government has decided to create an Executive Committee for the unified command of the security forces and bodies of the State with the functions specified below which will, in particular, enhance all aspects of counter-terrorism:

- Preparation, implementation and supervision of integrated programmes, procedures and services for the security bodies;
- Ensuring organizational and operational coordination with the security bodies in carrying out their functions with respect to international police cooperation, public security, information and investigation, criminal investigation department, infrastructure and equipment.

The priority objectives of this Executive Committee are:

- The creation of special joint units on terrorism and other forms of crime which are to be engaged in intelligence and investigation, police intervention and deactivation of explosives;
- The creation and management of a joint police database with access shared by the State security forces and bodies;
- Promoting the creation of a body responsible for scientific police work in order to ensure effective collaboration by the competent units of the security bodies;
- Promoting the creation of a study centre on public security to ensure consistency in the training of members of the State security forces and bodies;
- Creation and organization of facilities serving the public to facilitate immediate and direct access to police services;
- Strengthening particular aspects of international police cooperation.

1.4 During 2003 the following operations were carried out:

- Twelve police operations against international terrorism resulting in a total of 34 arrests of elements to a greater or lesser degree connected with Islamist terrorist groups and the arrest of one individual linked to extreme left-wing terrorism.
- Twenty-nine operations against the terrorist organization ETA (12 of them in collaboration with France) and ETA associates resulting in the arrest of 163 members of collaborators with that organization.
- One operation which resulted in the detention of three members of the terrorist organization GRAPO.
- Five operations against anarchoterrorism resulting in the arrest of 12 individuals.

1.5 The only measures of investigation specifically for the prosecution of terrorist offences envisaged in Spain's procedural legislation are those referred to in the report submitted on 21 December 2001.

Under article 55 of the Spanish Constitution, an organic law may determine the manner and the cases in which, on an individual basis and with the necessary judicial involvement and adequate parliamentary control, the rights recognized in article 17, paragraph 2 (maximum period of preventive arrest), and in article 18, paragraphs 2 and 3 (inviolability of the home and secrecy of communications), may be suspended for certain persons at the time of investigations of the activities of armed bands or terrorist elements. Thus, Spanish procedural legislation provides for:

– The extension of police detention by 48 hours, in addition to the initial 72 hours, provided that, within the first 48 hours of the period of detention, a judge receives a reasoned request to that effect and grants it within the subsequent 24-hour period (article 520 bis of the Criminal Procedures Act);

– Incommunicado detention, by judicial decision (article 520 bis);

– Detention by the police authority, irrespective of the place or domicile in which the supposed terrorists hid or took refuge, and a search made of such

places at the time of detention and the seizure of personal effects and tools found therein which may be related to the offence committed (article 553 of the Criminal Procedures Act).

Monitoring of communications, ordered by the Minister of the Interior or, failing him, by the Director of State Security, which is notified immediately in writing to the competent judge who, stating the reasons therefor, will rescind or confirm such decision within a maximum of 72 hours (article 579.4).

The organic law on the judiciary assigns responsibility for considering terrorist offences to a judicial body having jurisdiction throughout the national territory, namely the High Court (Audiencia Nacional).

The Spanish tax authorities and the judiciary receive special training in relation to typologies and trends in terrorist financing methods and techniques and in techniques for tracing property and funds of criminal origin with a view to their confiscation.

III. Effectiveness of customs, immigration and border controls

1.6 (a) Following the adoption of the resolution of the World Customs Organization (WCO) on security and facilitation of the international trade supply chain in June 2002, that Organization made great efforts to strengthen the role of the customs in enhancing the security of the trade supply chain.

For that purpose a working group on security and facilitation of the trade supply chain was set up in which the Department of Customs and Special Taxes of the Ministry of Development took an active part.

The working group reviewed the WCO Customs Data Model to ensure that it included a standardized set of data elements necessary to identify high-risk goods, and also the various legal instruments, to ensure the inclusion of provisions relating to security, and issued guidelines to enhance relations with the private sector and to assist it to apply the new regulations relating to security.

These efforts were incorporated in a plan of action designed to ensure the progressive application of the various measures by the members of WCO. The implementation of certain WCO instruments, such as the application of the list of data to be included in manifests, the use of a unique code for shipments, and so forth, have to be incorporated in the national legislation of the various countries.

In the case of the States members of the European Union, it is necessary to bear in mind the applicable community legislation. At the present time, work is in progress on amending the Community Customs Code (EEE No. 2913/92 of 12 October 1992) and the Implementation Measures which should, as far as possible, include the recommendations made in this area by the World Customs Organization.

The Spanish Government is convinced of the importance of developing a more secure trade supply chain and is working to achieve that through the departments of the administration that have the authority to monitor international movements of goods and includes the related threat as one of its day-to-day priorities.

1.6 (b) In Spain, the monitoring of movements of cargo and people is undertaken by separate agencies. Authority for monitoring the movement of persons lies with the Ministry of the Interior whereas it is the Ministry of Economic Affairs and,

specifically, the Department of Customs, that monitors international movements of goods.

With respect to the sharing of information on terrorism, the Department of Customs forwards any information it obtains to the Ministry of the Interior which is the competent ministry for investigations on that matter.

IV. Controls on preventing access to weapons by terrorists

1.7 On 29 June 2002, the World Customs Organization adopted a recommendation concerning the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.

That Protocol covers matters that also have to be regulated at the Community level. To that end, the services of the European Commission are preparing standards for the development of that Protocol with respect, in particular, to licences for the import, export and transit of firearms, together with their marking and traceability.

However, the recommendations referring to risk assessment, machinery for verification and exchanges of information already apply. Specifically, Organic Law 12/1995 of 12 December, the Suppression of Smuggling Act, and Organic Law 3/1992 of 30 April, which make it an offence to smuggle defence materiel or dual-use goods, provide that the Government will approve the schedules of defence materiel and will establish the requirements, conditions and procedures governing authorizations. The national legislation dealing with these matters is Royal Decree 491/1998 of 27 March, approving the Regulations for the Foreign Trade in Defence Materiel and Dual-Use Goods.

With regard to the system of penalties and sanctions, in addition to the provisions in force in the Penal Code with respect to arms trafficking, Organic Law 12/1995 of 12 December, the Suppression of Smuggling Act, is applied; this treats as an offence, in particular, the export without authorization, or on the basis of an authorization obtained by fraud, of defence materiel or dual-use goods.

The adoption of the Common Position of the Council of the European Union (2003/468/CFSP) of 23 June 2003 on the control of arms brokering and the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects make it necessary to monitor brokerage operations in the arms trade from Spanish territory.

The purpose of the above regulation is, in particular, to prevent the acquisition of arms and dual-use goods by individuals and by terrorist groups and organizations. Thus, authorization may be refused if there are reasonable indications that the defence materiel or dual-use goods might be used in acts detrimental to worldwide or regional peace, stability or security or that they might infringe the international obligations of Spain and the guidelines within the European Union, particularly the criteria of the European Union Code of Conduct on Arms Exports of 8 June 1998.

1.8, 1.9, 1.10 The control of the circulation of and foreign trade in firearms is regulated in Spain by Royal Decree Law 137/1993 of 29 January whereby the Ministry of the Interior and the Directorate General of the Civil Guard are competent with regard to this matter and the Ministry of Industry, Tourism and

Trade is responsible for the regulation and management of import and export licences.

The marking and numbering of weapons and the punching of test benches are the responsibility of the services of the Civil Guard which keeps a register of marks, counter-marks and punches.

Arms presented for shipment at customs offices qualified for that purpose require a licence or authorization issued by the Ministry of Trade. Once they have been verified in the presence of the Civil Guard, they are placed at the disposal of the Arms Control Department for purposes of custody and transfer in accordance with the arms shipment handbook.

The above-mentioned Royal Decree Law provides penalties for violations of its provisions which include confiscation followed by auction and destruction.

Prior to the grant of any administrative authorization for the import/introduction or export/shipment of any materiel, product or technology, an entry must be made in a special Register of exporters of defence materiel and dual-use goods.

Requests for authorization must be accompanied by the control documents so as to provide adequate guarantees that the purpose and, where appropriate, the final use of the materiel are consistent with the authorization; the documents must also be authenticated and certificates of delivery are also required.

With respect to the principles of risk assessment, the Department of Customs and Special Taxes of the Ministry of Economic Affairs is working to develop a risk assessment analysis for arms control; this is at an advanced stage and is expected to be implemented shortly.