



SPAIN

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IMPLEMENTATION AND LAW

Spain does not generally adopt unilateral sanctions measures besides those that are adopted and/or implemented at a European Union (“EU”) level. As for EU sanctions, these are adopted by EU regulations that have direct effect in the legal systems of EU Member States. Accordingly, they do not need to be transposed at the Member State level. Nevertheless, EU sanctions are enforced through national legislation in EU Member States.

There are certain specifications under Spanish national law that may expand upon EU requirements. In particular, Spanish Law 10/2010, on the Prevention of Money Laundering and Terrorism Financing (“Law 10/2010”) sets out, among other things, the prohibition on making financial resources available to designated persons (or not freezing their funds), and regulates the sanction regime.¹

Spain, through the EU, has adopted and/or implemented the international sanctions described below:

- All coercive measures ordered through resolutions of the Security Council of the United Nations ('UN'). The aims of the sanctions imposed by the UN are, among others, the non-proliferation of nuclear weapons, the fight against terrorism, the resolution of conflicts, and the support of democratic regimes.
- Embargoes imposed by the Organisation for Security and Cooperation in Europe (the 'OSCE').

POWERS AND PROVISIONS

Economic sanctions

According to Law 10/2010, the authority responsible for the freezing of funds and economic resources in Spain is the Ministry of Economic and Business Affairs, through the Commission for the Prevention of Money Laundering and Monetary Infractions and the Commission for the Surveillance of Terrorist Financing Activities (which is an organic part of the General Secretariat of the Treasury and Financial Policy).

The EU sanctions regime permits certain transactions (e.g., financial transfers or transactions with designated persons) in limited circumstances with the appropriate licence – for example, where there is a humanitarian need or where a contract pre-dates the sanction, depending on the sanctions regime in question.

In Spain, the procedure for obtaining such authorisation is set out on a case-by-case basis in specific ministerial notes. Notwithstanding the above, in general terms such a licence application needs to be submitted electronically and will be resolved according to Law 39/2015 of 1 October, of the Common Administrative Procedure of the Public Administrations ('Law 39/2015').

In general, the competent ministry responsible for granting the relevant licences is the Ministry of Economic and Business Affairs.



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Trade sanctions

According to Law 53/2007 of 28 December, on the control of the foreign trade of military and dual use-items ('Law 53/2007'), the main agency in charge of the implementation and supervision of export controls is the Ministry of Industry, Commerce and Tourism, through the General Sub-Directorate of International Trade of Military and Dual Use items. The latter is also the main administrative body responsible for granting authorisations concerning Spanish exports of military and dual-use items and performing related inspections in collaboration with the Spanish customs authorities.

In order to notify or obtain an authorisation connected to an export of a military or dual-use item or items, the following procedure should be followed:

Firstly, the exporter shall check if the military or dual-use item to be exported is listed: (i) in Annex 1 of the Royal Decree 679/2014 with regard to military items (which, as of this date, is the same as the EU Common Military List); or (ii) in Annex 1 of the EU Dual-Use Regulation (Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items). Where the item is listed in the list, the exporter must follow these steps:

1. The exporter must be registered at the Special Registry of Foreign Trade Operators (the 'REOCE'). An application must be filed before the General Sub-Directorate of International Trade of Military and Dual Use items. For these purposes, the applicant must complete a registration application and prepare supporting documents, such as company incorporation documents, power of attorney, etc., and submit those to the General Sub-Directorate of International Trade of Military and Dual Use items. This agency requires electronic submission of the application materials via a website of the Ministry of Industry, Commerce and Tourism.

In addition, if a Spanish entity with foreign participation wishes to be registered with the REOCE as an exporter of military items, it must first obtain an authorisation from the Ministries' Cabinet.

2. To obtain a licence, the exporter must submit an application to the General Sub-Directorate of International Trade of Military and Dual Use items through an application form accompanied by the appropriate control documents.
3. The decision to grant or deny an export licence will be made by the same authority on the basis of the report issued by the Inter-Ministerial Regulatory Board on External Trade in Defence and Dual-Use Material (the 'JIMDDU'). The JIMDDU is an administrative body composed of members representing different ministries, including among others, the Ministry of Defence, the Ministry of Economy and Competitiveness, and the Ministry of Foreign Affairs, European Union and Co-operation.

KEY AGENCIES

In Spain, there are different agencies responsible for the administration and enforcement of sanctions, as detailed below:

Under the Ministry of Industry, Commerce and Tourism

- The General Directorate of International Trade and Investments (*Dirección General de Comercio Internacional e Inversiones*). This is the main administrative body responsible for granting authorisations and licences for Spanish imports and exports of products. Contact:

Tel. +34 91 349 46 40

Email: dgcii@mincotur.es

- The General Sub-Directorate of International Trade of Military and Dual Use items (*Subdirección General de Comercio Exterior de Material de Defensa y de Doble Uso*). This is the main administrative body responsible for granting authorisations concerning Spanish exports, imports, and transit of military and dual-use items. Contact:

Tel. +34 91 349 25 87

Email: sgdefensa.sccc@comercio.mineco.es

Web: www.comercio.gob.es/es-ES/comercio-exterior/informacion-sectorial/material-de-defensa-y-de-doble-uso/Paginas/legislacion.aspx

- The General Sub-Directorate of Foreign Investments (*Subdirección General de Inversiones Exteriores*). This is the main administrative body responsible for all matters concerning investment operations in and from countries that are the subject of EU restrictive investment measures. Contact:

Tel.: +34 91 349 46 40

Email: dgcii@mincotur.es

Under the Ministry of Economic and Business Affairs

- The General Secretariat of the Treasury and Financial Policy and the General Sub-Directorate of Inspection and Control of Movement of Capital (*Subdirección General de Inspección y Control de Movimientos de Capitales*). These entities are responsible for implementing international sanctions regarding the banking and financial sectors. Among others, these agencies are in charge of: (i) ordering and lifting freezing of funds and economic resources; and (ii) granting authorisations and receiving the notifications of the transfer of funds. Contact:

Tel.: +34 91 209 95 11

Email: secretariaicmc@tesoro.es

Web: www.tesoro.es

Under the Internal Revenue Ministry

- The General Sub-Directorate of Customs Management (*Subdirección General de Gestión Aduanera*). This administrative body is in charge of customs controls. Contact:

Tel. +34 91 728 94 50

Email: regimenes.adu@correo.aeat.es

Web: www.minhafp.gob.es

If an entity is suspected of violating an international sanctions regime and, in cases where such infringement could be deemed a criminal offence (for instance, smuggling of contraband), the Spanish Public Prosecutor's Office, the police, and the customs surveillance service may become involved in the investigation and prosecution of the offence.

ENFORCEMENT AND PENALTIES

In Spain, the sanctions regime applicable for breach of the prohibition on making financial resources available to designated persons (i.e. for not freezing their funds) is contained in sections 56 to 59 of Law 10/2010. According to this law, the wilful breach of the prohibition on making funds, assets or financial resources available to designated individuals, entities or groups shall be deemed a *very serious* infringement. If the breach is not wilful, it shall be deemed a *serious* infringement.

The penalties set forth for such actions are as follows:

- The penalties for committing *very serious* infringements are: (a) public admonition; (b) a fine amounting to at least €150,000, which may amount to up to the highest of the following: (i) 10% of the annual turnover of the subject; (ii) two times the amount of the transaction; or (iii) five times the amount of the profits derived from the infraction (if said profits can be set) or (iv) €10,000,000; and, (c) if those entities needed an administrative authorisation to operate, its temporary suspension or its revocation.
- The penalties for committing *serious* infringements are: (a) private admonition; (b) public admonition; and (c) fine amounting to at least €60,000, which may amount to the highest of the following: (i) 10% of the annual net turnover of the subject, (ii) the amount of the transaction plus 50%, (iii) three times the amount of the profits derived from the infraction (if said profits can be set) or (iv) €5,000,000; and, (d) if those entities needed an administrative authorisation to operate, its temporary suspension or its revocation.

Violations of export control rules (for example, the export of dual-use items without obtaining an authorisation, or having obtained such authorisation by fraudulent means) will be considered a criminal offence or an administrative infraction under the Criminal Code or Law 12/1995. Whether a violation is handled as a criminal offence or an administrative infraction depends on the value and the nature of the exported product that violates the applicable legislation. Section 10 of Spanish Law 53/2007, as well as Royal Decree 679/2014, refer to the Criminal Code and the Law of the Repression of Contraband regarding the sanctions regime.

Thus, for instance, the export of dual-use items without obtaining authorisation, or having obtained such authorisation by fraudulent means (i.e., providing false information or documentation), will be deemed a criminal offence if (a) the value of the exported goods is above €50,000; or (b) the exported goods are weapons, explosives or any other goods the possession of which is illegal. In this case, the consequences may be: (i) a prison term of from one to five years; (ii) a fine of six times the value of the illegally exported goods; and (iii) seizure of said goods.

In cases where the value of an illegal export of a dual-use item is less than €50,000, and therefore does not fall under the category of a criminal offence, the action committed will be deemed to be an administrative infringement. Such an infringement can attract a penalty of a fine up to 350% of the value of the exported goods.

There are very few public cases of prosecutions relating to the infringement of sanctions or export control laws in Spain. However, the provisions against designated persons are vigorously enforced and Spanish banks work closely with the competent Spanish authorities in this regard.

OUTREACH

Currently in Spain there are different public authorities in charge of implementing and ensuring compliance with sanctions policy. These authorities provide information about the sanctions for potentially affected industry sectors, as described below:

- The webpage of the Ministry of Foreign Affairs, European Union and Cooperation² describes the current framework of international sanctions in Spain (whether they are a consequence of United Nations Security Council decisions or a decision adopted by the EU). Additionally, it also provides information regarding the sanctions regimes imposed by these institutions as well as by the OSCE regarding embargoes.

Links and Notes

¹ According to Section 42 of the Law 10/2010, 'Without prejudice to the direct effect of the EU regulations, the Council of Ministers, at the proposal of the Minister of Economic and Business Affairs, may agree on the application of financial countermeasures in respect of third countries that involve higher risks of money laundering, financing of terrorism or financing of the proliferation of weapons of mass destruction.'

² <http://www.exteriores.gob.es/Portal/es/PoliticaExteriorCooperacion/GlobalizacionOportunidadesRiesgos/Paginas/SancionesInternacionales.aspx>

³ <http://www.tesoro.es/prevencion-del-blanqueo-y-movimiento-de-efectivo/sanciones-financieras>

⁴ http://www.tesoro.es/sites/default/files/sanciones_financieras_internacionales._cuestiones_generales_y_procedimientos_especiales_en_materia_de_no_proliferacion_1.pdf

<http://www.comercio.gob.es/es-ES/comercio-exterior/informacion-sectorial/material-de-defensa-y-de-doble-uso/guia-operador/Paginas/productos-y-tecnologias-exportacion.aspx>

<http://www.comercio.gob.es/es-ES/inversiones-exteriores/sanciones-internacionales/Paginas/sanciones-internacionales.aspx>

⁵ http://europa.eu/rapid/press-release_IP-18-4295_en.pdf

⁶ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2012-0018+0+DOC+PDF+V0//EN>

- The webpage of the Ministry of Economic and Business Affairs³ provides basic information and online resources regarding international financial sanctions for the banking sector.⁴
- The Ministry of Industry, Commerce and Tourism, on its webpage, provides information regarding (i) exports and imports of dual-use items⁵ (including reports on their control, the licences and authorisations required, and the proper manner to proceed in cases where the destination or receiving country are subject to embargoes); and (ii) the investment sector – i.e., regarding restrictive investment measures in force in the EU (North Korea, Syria and Ukraine).⁶

Although there is no formal procedure for obtaining guidance from the relevant authorities, it is possible to obtain some informal assistance from them by email, phone or in person.

POLITICAL FACTORS

In general terms, the Spanish government has been supportive in both proposing international sanctions and their implementation and execution. Currently, the Spanish government's position does not differ from that of the EU. However, in October 2018, the government requested the EU to avoid the implementation of international sanctions against the government of Nicolás Maduro in Venezuela, with the aim of promoting dialogue between Maduro's government and the EU.

Additionally, although the Spanish government did criticise the economic and financial sanctions imposed by the EU on Russia (mainly because of the current importance of Russian tourism to Spain), it ended up joining other EU Member States in supporting Ukraine's territorial integrity.

Still, several industries have expressed dissatisfaction with the EU sanctions against Russia. For instance, the Spanish food industry was seriously and negatively affected by the international sanctions imposed by the government of Russia as a response to the first EU sanctions implemented (regarding the Crimean crisis).

Finally, Spain has publicly expressed its concern about US sanctions against Cuba and the impact that the Helms-Burton Act may have on Spanish investments in that country. The Ministry of Foreign Affairs has declared that it will work with the EU to mitigate such an impact.

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