

G20 Anti-Corruption Working Group
Accountability Report Questionnaire 2014



SUMMARY OF NATIONAL PROGRESS

1. Please provide a high-level summary of the most significant Anti-Corruption measures or initiatives that your country has introduced or implemented since the last progress report. (maximum 1 paragraph).

The 2013 Progress Report can be accessed at http://en.g20russia.ru/docs/g20_russia/materials.html

Further to the resolution on anti-corruption measures adopted by the Spanish Parliament in February 2013 mentioned in the progress report sent last year, on 20 September 2013, the Spanish Government approved a package of measures for the “regeneration of democracy” (“programa de regeneración democrática”) that contains: measures to improve the supervision of party funding through the strengthening of internal and external controls, including the Court of Audit's powers; clear rules on the obligations attached to exercising public office and the corresponding sanctions for breaches, a proposal to reform criminal law and criminal procedure rules, including on the sanctioning regime applicable to corruption offences.

First steps towards implementing this package were taken through the adoption by the Government, on 13 December 2013, of two bills, one on supervision of party funding (draft Organic Law on the control of financial and economic activity of political parties that modifies Organic Law 8/2007, of 4 July, on Political Parties Funding, Organic Law 6/2002, of 27 June, on Political Parties and Organic Law 2/1982, of 12 May, on the Court of Audit) and a second one on accountability of high rank officials, as well as a report on plans for criminal law and criminal procedure law that would strengthen the fight against corruption.

Law 19/2013, 9 December, on transparency, access to information and good governance was published in the Official Journal on 10 December 2013.

UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

2. Has your country ratified the UNCAC?

YES X NO

If no, is there a process underway to ratify the Convention?

3. Since the last progress report, has your country proposed or implemented any changes to its legislation to comply with the UNCAC?

YES X NO

If yes, please provide details.

Substantive and procedural criminal legislation is currently under revision.

4. Has your country begun the UNCAC peer review process as a country under review?

YES X NO

If yes, please indicate what stage of review your country has completed and the date.

Phase 1 peer review was completed in 2011.

5. If yes, has your country made use of any of the UNCAC peer review voluntary options, or committed to do so (if the review is not already started)?

a. Publication of full report YES X NO COMMITTED TO DO SO

b. Involvement of civil society YES NO X COMMITTED TO DO SO

c. Involvement of business YES NO X COMMITTED TO DO SO

d. Allowing country visits YES X NO COMMITTED TO DO SO

If yes, please provide details (e.g., Web link for published report, how and when civil society / business was engaged during the review process, date of country visit)

The full report is published on-line:
<http://www.unodc.org/unodc/treaties/CAC/country-profile/profiles/ESP.html>

<http://www.exteriores.gob.es/Portal/es/PoliticaExteriorCooperacion/GlobalizacionOportunidadesRiesgos/Documents/España%20Info%20España%20s-aplicac%20Conv.NN.%20UU.%20contr%20corrupción.pdf>

The on site visit to Madrid took place in April 2011.

6. Has your country taken steps to respond to recommendations identified in its UNCAC peer review report?

YES YES TO SOME NO NOT YET RECEIVED THE REPORT

If yes, please indicate what steps your country has taken / is taking.

Substantive and procedural criminal legislation is under revision.

7. If you have responded to all or some of the recommendations, have you made those responses publicly available?

YES NO NOT YET

8. Has your country taken measures to promote, facilitate and support technical assistance in the prevention of and fight against corruption?

If yes, please provide a short overview indicating in which regions and topics you have provided technical assistance.

BRIBERY

Note - questions relating to implementation of the G20 *Principles on the Enforcement of the Foreign Bribery Offence* endorsed by Leaders in 2013 and the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* are included in a separate

questionnaire. The questions below concern other aspects of bribery not covered by this set of principles.

9. Has your country criminalized the domestic offer or payment of bribes (active bribery)?

YES X NO

10. Has your country criminalized the domestic solicitation or acceptance of bribes (passive bribery)?

YES X NO

11. If no, is your country taking steps to criminalize active and/or passive bribery?

YES NO

If yes, please provide details.

12. Has your country instituted measures to discourage the solicitation of bribes?

YES X NO

If yes, please provide details.

Solicitation of bribes is a criminal offence according to the Penal Code (art. 286 bis, 419, 420 and 421).

13. Does your country provide support for/work with business in resisting solicitation?

YES NO

If yes, please provide details.

14. Has your country instituted measures to discourage facilitation payments?

YES X NO

If yes, please provide details.

Facilitation payments are a criminal offence according to the Penal Code.

ANTI-MONEY LAUNDERING

15. Since the 2013 progress report, has your country taken any measures to implement the revised FATF standards on anti-money laundering?

YES X NO

If yes, please provide details.

The 3rd Mutual Evaluation of Spain was adopted on 23 June 2006 and Spain was placed in a regular follow-up process. In 2010 Spain was excluded from the regular follow-up as substantial progress in addressing key and core Recommendations was noted by the FATF.

Spain has been the first country to be evaluated by the FATF under the 4th Round using the new methodology and a substantially positive (though provisional) outcome was presented by the Evaluation Team on 7th May.

Leaving aside the positive effects coming from being evaluated by an international, high-level team of experts, relevant measures have been taken since 2013 on both the regulation and the operational aspects of the AML-FT policy. On the regulatory side, a new, enhanced framework General Regulation on Money Laundering Prevention has been issued, along with some adjustments in the Law 10/2010, 28th April (see Question 16). On the operational aspect, new, relevant IT technology tools have been put into practice to help Authorities (FIU, Police and Prosecutors) determine the beneficial owner of the legal person at a specific point in time (see Questions 29-31).

16. Since the last progress report, have changes to your country's anti-money laundering legislation been proposed or implemented?

YES X NO

If yes, please provide details.

Firstly, it's worth noting that Law 19/2013, 9 December, on transparency, access to information and good governance has revised articles 5.2, 7.6, 9, 14, 26.4, 42 and 52.1.u) of the Law 10/2010, 28 April, on the prevention of money laundering and terrorism financing. The two main areas affected by this new legislation are:

a) Politically Exposed Persons (PEPs): (i) clarification of the definition by determining the categories of public positions to be considered as such, along with his family and associates, and (ii) extending the CDD measures to both national and foreign PEPs.

b) International Financial Sanctions: (i) extending the scope of measures that the Government may adopt in order to achieve a full, quick implementation of financial sanction, whether or not in the framework of an international instrument or an EU Regulation. It covers measures related to countries, legal and natural persons, different levels of CDD or freezing actions to be applied by financial institutions, and eventually limiting financial transactions in accordance with FATF Recommendations; (ii) making the lack of accomplishment of these provisions as an infraction

punishable under the AML-FT sanction regime.

Secondly, a new Regulation on AML-FT prevention has just been issued (Royal Decree 304/2014, May 5th, passing the Regulation of Law 10/2010, 28 April 28). It fully derogates the previous Regulation (Royal Decree 925/1995, 9 June) and it has been devised to bring a complete adjustment of the Spanish AML-FT regime to the last developments of the FATF Recommendations.

There is a number of areas where improvements can be noted, such as:

- a) Developments on what risk-based approach (RBA) towards CDD entails. It clarifies both the risk scenarios and situations and the measures to be applied by the obliged entities in each of them. This allows concentrating the unavoidably limited resources used by the obliged persons in the riskiest transactions or areas of business, which ultimately leads to a more efficient outcome.
- b) Use of AML-FT data for other public purposes, such as tax evasion. Sharing of information between tax and AML-FT enhances mutual efforts developed by the Authorities and increase the efficiency performance of public policies.
- c) Enhanced CDD on complex corporate structures, trusts and similar arrangements. Advanced regulation in this regard is included in articles 8 and 9. The procedure in place until now to find out the beneficial owner consist of (i) obtaining ID data on a systematic basis, and (ii) verifying the identity in risk scenarios. Now, additionally, it is compulsory to obtain data to ascertain the condition of beneficial owner is high risk situations.
- d) A Centralized Financial Asset Owners Database is set up managed by the FIU. This is a key tool to help Authorities to find financial assets spread out in several financial institutions and take quick action where needed (article 50).
- e) A Beneficial Ownership Database is created and accessible to Authorities and obliged entities. Taking advantage that any type of transmission of shares of Private Limited Liability Companies (“sociedad de responsabilidad limitada”) should be necessarily authorized by a notary (public official) in Spain, a database at the General Council of Notaries has been created and including a search engine to link transactions and make it possible to find who the beneficial owner (BO) is, directly or indirectly, at point in time. Secured cards have been delivered to Authorities to access and extract information out for investigations concerning ML-FT (article 9.6) (see Questions 29 onwards, for more detailed explanation)

DENIAL OF ENTRY

17. Have any changes to your country’s legislation, regulations or powers to deny entry to foreign officials charged with or convicted of corruption offences been proposed/implemented since the last progress report?

YES NO

If yes, please provide details.

If no, is such legislation under consideration?

YES NO

If yes, please provide details.

INTERNATIONAL COOPERATION

18. Is your country's administration of mutual legal assistance consistent with the G20 High Level Principles?

YES X NO

If your country's approach is not yet consistent, are you taking steps to implement the Principles?

YES NO

If yes, please provide details.

19. Are you aware of your country having used one or more of the G20 country Guides to Mutual Legal Assistance?

If yes, please provide details.

20. Are you aware of non-G20 members having used the G20 Guide to Mutual Legal Assistance to request mutual assistance from your country?

If yes, please provide details.

21. Have any changes to your country's legislation related to international cooperation been proposed since the last progress report?

YES NO X

If yes, please provide details.

22. Has your country either used UNCAC, or stated that it will allow the use of UNCAC, as the treaty basis for mutual legal assistance (MLA) and/or extradition?

a. Has used as the treaty basis for MLA YES X NO

b. Will allow use as the treaty basis for MLA YES X NO

c. Has used as the treaty basis for extradition YES X NO

d. Will allow use as the treaty basis for extradition YES X NO

23. Do domestic authorities in your country cooperate and share information with the integrity offices of international organizations?

a. Cooperate and share information

b. Could cooperate, but has not been asked

c. Cannot cooperate

If you cannot cooperate, please provide details.

24. Has your country designated an appropriate authority responsible for mutual legal assistance and law enforcement requests relating to asset recovery (a point of contact)?

YES X NO

If yes, to which organizations:

- a. UNODC X
- b. StAR/Interpol Focal Point Initiative X
- c. Camden Asset Recovery Network X
- d. Other(s) X

If yes to 'Other(s)', please provide details.

EU Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

ASSET RECOVERY

25. Does your country have legislation allowing for asset recovery by foreign authorities or is such legislation proposed?

YES X NO

If yes, please provide details.

- Criminal Code, section 127 (Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property).
- Criminal Procedural Law (section 367 septies).
- Ley 18/2006, de 5 de junio, para la eficacia en la Unión Europea de las resoluciones de embargo y de aseguramiento de pruebas en procedimientos penales (Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence).
- Ley 4/2010, de 10 de marzo, para la ejecución en la Unión Europea de resoluciones judiciales de

decomiso (Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders).

26. Has your country established a specialist/dedicated unit for the recovery of the proceeds of corruption?

YES X NO

If yes, please provide the name of the specialist unit and contact details.

Intelligence Centre Against Organized Crime (C.I.C.O.), Spanish ARO
C/ Josefa Valcárcel 28, 5ª planta. 28027 Madrid
+ 34 91 5372743
cico@interior.es

27. Does your country publish or otherwise make publicly available details of amounts frozen, seized, recovered or returned?

YES NO X

If yes, please provide details.

28. Is your country providing technical assistance to developing countries aimed at helping the recovery and return of proceeds of corruption?

YES X NO

If yes, please provide details.

- RRAG (Red de Recuperación de Activos de GAFISUD)
- European Union's COPOLAD Program
- European Union's CEART Project

TRANSPARENCY OF LEGAL ENTITIES

29. Does your country have transparency requirements for legal persons, including companies, bodies corporate, foundations and partnerships?

YES X NO

If yes, please provide details.

The creation of companies in Spain requires the intervention of a public notary and the registration of the notarial deed in the Business Register. Only after registration legal personality is granted. Full transparency is required along the creation process.

Transparency is not limited to the creation process but extended to the whole range of activities developed by them. Disclosing the BO is required, not only upon request by the Authorities, but also before obliged entities when conducting transactions.

Complete information, most of the times fully checked (companies with full BO chain in Spain), and others based on declaration by the company (when part of the BO chain is abroad or the company is a Public Limited Liability Company, "sociedad anónima") is available for ML-FT investigations.

30. Does your country require that the beneficial ownership and company formation of all legal persons organized for profit be reported by the legal person?

YES NO X

If yes, to whom is it reported?

According to Act 10/2010 notaries and business registers are subject to AML/CFT requirements, and specifically to the request to identify and take reasonable measures to verify the beneficial owner. Art. 4 in the Act 10/2010 also provide that entities will not establish or maintain business relationships with legal persons whose structure of property or control has not been ascertained. Communication 3/2010 of the Notaries Centralised Unit for the Prevention of Money Laundering, dated 6 July, on the compliance of the obligation to identify the beneficial owner, reiterates this requirement. The Council of Notaries has agreed to systematise and integrate the available information about beneficial ownership in a separate database. Information will be granted to judicial and law enforcement authorities.

According to Act 10/2010 notaries and business registers are subject to AML/CFT requirements, and specifically to the request to identify and take reasonable measures to verify the beneficial

owner. Art. 4 in Act 10/2010 also provides that entities will not establish or maintain business relationships with legal persons whose structure of property or control has not been ascertained. This is the rule for any type of legal person organized for profit in Spain.

As regards PRIVATE LIMITED LIABILITY COMPANIES (around 92% of the total number of companies in Spain), information on BO is stored, systematized and treated in the Beneficial Ownership Database set up at the General Council of Notaries and, therefore, available to Authorities. This Database includes checked information obtained on the basis that any transaction involving shares of this type of company must be conducted through a notary in Spain. Therefore, the notary has to report and include in the Database all the information on the transactions (ID of the buyer, seller, ID of the shares, etc.).

In instances where there is an international conglomerate structure (chain of ownership with a step abroad) fully checked information in the Database cannot be obtained and stored at the Database; BO simple declaration can only be included in this last case. The same happens when the client is a PUBLIC LIMITED LIABILITY COMPANY (around 7.5% of the total number of companies in Spain), traceability cannot be achieved in this case, as the transmission of its shares does not require the authorization by a notary.

Therefore, transmissions of capital shares of PRIVATE LIMITED LIABILITY COMPANIES are reported and stored in the Beneficial Ownership Database and fully checked BO information is delivered to Authorities upon request. However, it is not possible to deliver fully checked BO information in the two cases mentioned above (BO chain with a step abroad, or PUBLIC LIMITED LIABILITY COMPANIES, "sociedades anónimas").

31. If yes, is this information available to the public?

YES NO

32. If this information is not available to the public, is it available to law enforcement?

YES X NO

WHISTLE BLOWER PROTECTION

33. Does your country have legislation to protect whistleblowers:

a. In the public sector YES X NO

b. In the private sector YES NO X

34. Have changes to whistle blower protection legislation been proposed or implemented since the last monitoring report?

YES NO X

If yes, please provide details.

The envisaged reform of the Criminal Procedural Law seeks to increase their protection.

35. Since the last progress report, has your country implemented any measures to protect journalists reporting incidents of corruption?

If yes, please provide details

PROCUREMENT

36. Does your country publish online any of the following?

a. Procurement laws and policies including any legislation defining the use of exceptions YES X NO

b. Selection and evaluation criteria YES X NO

c. Awards of contracts and modifications of contracts YES X NO

Please provide details.

<http://www.minhap.gob.es/es-ES/Areas%20Tematicas/Patrimonio%20del%20Estado/Contratacion%20del%20Sector%20Publico/P>

aginas/ContrataciondelSectorPublico.aspx

https://contrataciondelestado.es/wps/portal/!ut/p/b1/04_SjzQ0tLQ0Nji3NDDQj9CPykyssy0xPLMnMz0vMAfGjzOJNjZ1NwrzCAyCPd0NDDw93Fx8Qg1NDdyNzPRzoxwVAXt3PVc!/

37. Since the last progress report, have any new initiatives to promote public procurement transparency and integrity been proposed or implemented?

If yes, please provide details.

Transparency in public procurement is one of the strong points of Law 19/2013 on transparency since it makes compulsory publishing all contracts that are awarded (official announcement, awarded subject, prize...), including small amount contracts.

Within the framework of the package for the “regeneration of democracy” there are also some measures related to public procurement like those included in the bill on the control of financial and economic activity of political parties and also prohibitions to contract are reinforced in order to avoid conflicts of interests.

38. Are there regulations and procedures for public procurement officials to govern conflicts of interest?

YES X NO

If yes, please provide details.

Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común (Artículos 28-29)

39. Are companies that have been found to be involved in corrupt contracting practices excluded from future participation in public tenders?

YES X NO

If yes, please provide details.

Article 60 of the Spanish Act on public procurement (“Real Decreto Legislativo 3/2011, de 14 de noviembre, por el que se aprueba el texto refundido de la Ley de Contratos del Sector Público”) lists - among the grounds for exclusion - those convicted for, among other crimes,

bribery.

“Artículo 60 Prohibiciones de contratar

1. No podrán contratar con el sector público las personas en quienes concurra alguna de las circunstancias siguientes:

a) Haber sido condenadas mediante sentencia firme por delitos de asociación ilícita, corrupción en transacciones económicas internacionales, tráfico de influencias, cohecho, fraudes y exacciones ilegales, delitos contra la Hacienda Pública y la Seguridad Social, delitos contra los derechos de los trabajadores, malversación y receptación y conductas afines, delitos relativos a la protección del medio ambiente, o a pena de inhabilitación especial para el ejercicio de profesión, oficio, industria o comercio. La prohibición de contratar alcanza a las personas jurídicas cuyos administradores o representantes, vigente su cargo o representación, se encuentren en la situación mencionada por actuaciones realizadas en nombre o a beneficio de dichas personas jurídicas, o en las que concurran las condiciones, cualidades o relaciones que requiera la correspondiente figura de delito para ser sujeto activo del mismo.”

40. If yes, is the debarment list of International Financial Institutions taken into account?

YES NO

41. Are the names of companies excluded from future participation in public tenders made publicly available?

YES NO

If yes, please provide details.

The information can be included in a register which is public for those with a legitimate interest.

DISCLOSURE BY PUBLIC OFFICIALS

42. Does your country require disclosure by public officials of:

a. Income YES NO

b. Assets YES NO

- c. Conflicts of interest YES X NO
- d. Gifts YES NO
- e. Other YES NO

If yes, please provide details.

At national level, these requirements apply to Members of Parliament, Ministers, Secretaries of State, Undersecretaries and Directors General:

- Ley Orgánica 5/1985, de 19 de junio, del Régimen Electoral General (Artículos 157-160)
- Ley 5/2006, de 10 de abril, de regulación de los conflictos de intereses de los miembros del Gobierno y de los Altos Cargos de la Administración General del Estado.
- Real Decreto 432/2009, de 27 de marzo, por el que se aprueba el Reglamento por el que se desarrolla la Ley 5/2006, de 10 de abril, de regulación de los conflictos de intereses de los miembros del Gobierno y de los altos cargos de la Administración General del Estado.

With regards gifts, Article 26.2.b).6 of Law 19/2013, 9 December, on transparency, access to information and good governance, reads "6. No aceptarán para sí regalos que superen los usos habituales, sociales o de cortesía, ni favores o servicios en condiciones ventajosas que puedan condicionar el desarrollo de sus funciones. En el caso de obsequios de una mayor relevancia institucional se procederá a su incorporación al patrimonio de la Administración Pública correspondiente."

PUBLIC OFFICIALS' IMMUNITIES

43. Does your country provide immunities from prosecution to individuals holding public offices for corruption related offences?

- a. All public office holders YES NO X
- b. Certain public office holders YES NO X
- c. No immunities available to public office holders YES NO X
- d. While in office YES NO X

e. Permanently

YES

NO X

If yes, which public office holders are immune and if immunity is limited, please explain.

As mentioned last year, there is an especial regimen for members of Parliament: "During their term of office, members of Congress and Senators shall likewise enjoy freedom from arrest and may be arrested only in the event of flagrante delicto. They may be neither indicted nor tried without prior authorization of their respective House." (Section 71.2 of the Constitution).

EDUCATIONAL INITIATIVES

44. Is your country involved in any of the following international anti-corruption educational initiatives?

International Anti-Corruption Academy

YES X

NO

UNODC Anti-Corruption Academic Initiative

YES X

NO

Other international anti-corruption educational initiative(s)

YES

NO

If yes, please provide details.

45. Does your country provide anti-corruption educational/training programs for officials, including public office holders?

YES X

NO

If yes, please provide details.

Training in public ethics is provided both as initial training when becoming a public official and also as continuous training.

46. Does your country or business associations in your country promote anti-corruption training for the private sector?

YES NO

If yes, please provide details.

47. Has your country disseminated G20 products and documents developed by the group with relevant domestic authorities?

YES NO

If yes, please provide details.

JUDICIARY

48. Has your country taken any measures to promote and disseminate the Bangalore Principles for Judicial Integrity?

If yes, please provide details

49. Has your country taken other measures to promote the accountability and independence of the Judiciary?

If yes, please provide details

According to the Constitution, judges and magistrates are independent: "Justice is vested in the citizens and administered in the name of the King by the Magistrates and Judges who comprise the Judiciary, independent, unmovable, liable and subject solely to the Laws of the Land" (section 117.1).

This principle is also enshrined Article 1 of Organic Act 6/1985, 1 July, of the Judiciary.

SECTOR-SPECIFIC TRANSPARENCY INITIATIVES

50. Is your country supporting or implementing any sector-specific initiatives?

Extractive Industries Transparency Initiative (EITI)

Implementing YES NO

Support YES NO

Construction Sector Transparency Initiative (CoST)

Implementing YES NO

Support YES NO

Other (specify below)

Implementing YES NO

Support YES NO

Please provide details on other sectoral initiatives supported by your country, or domestic measures taken in relation to specific sectors.

51. Does your government have integrity pacts with the business sector?

YES NO

If yes, please provide details.

FISCAL AND BUDGET TRANSPARENCY

52. Has your country taken steps to implement the IMF Good Practices in Fiscal Transparency?

YES NO

If yes, please provide details.

53. Has your country taken steps to implement the OECD Best Practices on Budget Transparency?

YES NO

If yes, please provide details.

Thank your for your time in completing this questionnaire.