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ASSESSMENT OF NATIONAL IMPLEMENTATION OF EU LAW IN AML/CFT

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Content

1. INTRODUCTION

In 1989, at the initiative of the G-7, an intergovernmental body known as the Financial Action Task Force (FATF) was created to coordinate efforts to prevent money laundering in both the international financial system and the national financial systems of the member entities.

The FATF's main objective is to develop and promote policies to combat money laundering and terrorist financing. It is the body that sets and oversees international standards for regulations against money laundering and terrorist financing.

Thus, in 1990, the FATF approved the first text of the so-called "40 Recommendations", which soon became the international standard in this area, and were the basis and starting point for the various international legislations that were approved in relation to the prevention of money laundering, including the First Directive approved by the European Union in this area (Council Directive 91/308/EEC of 10 June 1991).

These Recommendations contain, in general terms, measures on member countries' legal systems; measures to be taken by financial and non-financial institutions to prevent money laundering and terrorist financing; institutional measures in national systems related to the fight against money laundering and terrorist financing; and measures on international co-operation.

These Recommendations are not only the minimum standard to be applied in countries' legislation but, on the basis of them, FATF member countries or FSRBs (FATF Style Regional Groups) are monitored and evaluated in terms of their application and implementation.

The constant changes in criminal reality, as well as the detection and knowledge of new types of money laundering, have led to a series of changes in international standards and the incorporation of new measures for the prevention and repression of this crime and, as a consequence, in Community law.

In its 1996 review of the Recommendations, the FATF sought the support of so-called 'gatekeepers' to combat money laundering and terrorist financing. Thus, it included, among others, certain designated non-financial businesses and professions (DNFBPs) such as lawyers, notaries, trust and company service providers (TCSPs), real estate agents, accountants and auditors who assist with transactions involving the movement of money in national and international financial systems.

In this context, a succession of Community Directives have been adopted at European level, reflecting the changes made to the text of the 40 Recommendations. Thus, following the first amendment of the text by the FATF, the second Community Directive (Directive 2001/97/EEC) was adopted, amending the previous Directive and extending the category of regulated entities to sectors other than the financial sector, also

addressing legal and financial professionals (notaries, lawyers, auditors, accountants, tax advisors, etc.), who are also subject to obligations to cooperate in the prevention of money laundering, and offences considered to be predicate offences for money laundering.

In addition to anti-money laundering standards, in October 2001 the FATF was given the task of developing and promoting international standards on combating the financing of terrorism.

These new standards, known as the "IX Special Recommendations", introduced into international law measures to prevent and suppress the financing of terrorism, compliance with which by member countries and Regional Groups is also the subject of FATF evaluations.

In addition, the 40 Recommendations against money laundering and terrorist financing, which were amended for the second time in 2003, are also extended.

Following this new amendment, the Third European Directive (Directive 2005/60/EC) of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, implemented by Commission Directive 2006/70/EC of 1 August 2006, was adopted at European level, laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed persons' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

In this context, in February 2012, the FATF adopts a new text of the 40 Recommendations.

Among the most significant changes, the existing IX Special Recommendations on terrorist financing were integrated into the new text of the 40 Recommendations, reflecting the fact that there is a strong connection between the measures designed to prevent both money laundering and terrorist financing, although some Recommendations specifically focused on the prevention of terrorist financing were retained in the new text.

The revised version of the Recommendations also introduced new measures to combat the financing of the proliferation of weapons of mass destruction, on the one hand, and to tackle the laundering of proceeds of corruption and tax crimes, on the other hand.

In addition, the definition of Politically Exposed Person (PEP) not only maintained the measures for foreign PEPs and extended them to the beneficial owner, but also provides for certain measures for domestic PEPs, as well as "persons who hold a prominent position or function in an international organisation".

These changes led, at EU level, to the adoption of EU Directive 2015/849, 20 May (hereinafter referred to as "the Directive").

In February 2016, as a result of the wave of terrorist attacks in Europe, the European Union, aware of the need to strengthen counter-terrorism measures, approved the Action Plan on Terrorist Financing, which led, among other measures, to the amendment of Directive 2015/849, through Directive (EU) 2018/843.

In addition, Directive 2018/1673 was adopted, which establishes a minimum framework for defining offences and sanctions in the area of money laundering. It establishes criminal law criteria on the definition of the offence of money laundering, as well as considerations relating to complicity, sanctions applicable to legal persons, liability of legal persons, among others.

These amendments do not impose any additional obligations applicable to DNFBPs, so it is the main measures envisaged by the FATF Recommendations and Directive 2015/849 that will be analysed in this paper.

2. LAWYERS AND NOTARIES AS OBLIGED ENTITIES

In accordance with the provisions of **Recommendation 22** of the Financial Action Task Force, the customer due diligence and record keeping measures set out in Recommendations 10, 11, 12, 15 and 17 apply to DNFBPs in the following situations:

(d) **Lawyers, notaries**, other independent legal professionals and accountants - when they are preparing to transact or transact for their clients in the following activities:

- purchase and sale of real estate;
- management of client money, securities or other assets;
- administration of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of enterprises;
- creation, operation or administration of legal persons or other legal structures, and purchase and sale of business entities.

(e) Corporate service providers and trusts when they are preparing to transact or transact for a client in respect of the following activities:

- acting as an agent for the creation of legal persons;
- acting as (or arranging for another person to act as) a director or attorney-in-fact of a commercial company, a partner in a company or a similar position in relation to other legal persons;
- provision of a registered address, business address or physical space, postal or administrative address for a trading company, partnership or any other legal person or legal arrangement;
- acting (or arranging for another person to act as) as trustee of an express trust or performing the equivalent function for another form of legal structure;
- acting (or arranging for another person to act as) as a nominee shareholder for another person.

In addition, under Recommendation 23, the requirements set out in Recommendations 18 to 21 (internal controls, enhanced due diligence on business relationships and transactions with natural and legal persons from risk countries, suspicious transaction reporting and prohibition of disclosure) are also applicable to DNFBPs.

In the same vein, Article 2 of Directive (EU) 2015/849 states that it applies to "the following natural or legal persons acting in the exercise of their professional activities:

(a) auditors, external accountants and tax advisors;

(b) notaries and other independent legal professionals, where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning the:

(i) buying and selling of real property or business entities;

(ii) managing of client money, securities or other assets;

(iii) opening or management of bank, savings or securities accounts;

(iv) organisation of contributions necessary for the creation, operation or management of companies;

(v) creation, operation or management of trusts, companies, foundations, or similar structures;

The Directive also takes over the measures provided for in the FATF recommendations mentioned above, setting out the same obligations for lawyers and notaries, with the exception of some of them only to the strict extent that those persons ascertain the legal position of their client, or perform the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings.

These obligations should be implemented applying a risk-based approach. This means that notaries and lawyers must, according to Recommendation 1 of FATF and Article 8 of the Directive, identify, assess and understand their money laundering and terrorist financing risks and develop their policies and procedures to assess risks, and apply resources to ensure that they are mitigated effectively. These risk assessments shall be documented and kept up-to-date.

By adopting a risk-based approach, lawyers and notaries should be able to ensure that measures aimed at preventing or mitigating money laundering and terrorist financing correspond to the risks identified, allowing them to make decisions on how to allocate their own resources in the most effective way.

As stated in the introduction, these are the minimum obligations required by the FATF and the EU Directives, without prejudice to any additional obligations that may be established by local AML/CFT regulations. For this reason, each lawyer and notary must check the possible additional AML/CFT obligations established by their country.

3. OBLIGATIONS APPLICABLE TO NOTARIES AND LAWYERS

FATF Recommendations and EU Directive states that notaries and lawyers shall be subject to the main obligations of (a) conducting a risk assessment, (b) customer due diligence, (c) record keeping, (d) identification of Politically Exposed Persons, (e) implementation of internal control measures and (f) reporting of suspicious transactions.

a. Conducting a risk assessment

In accordance with FATF Recommendation 1 and its corresponding Interpretative Note, and also Article 8 of the Directive, Designated Non-Financial Businesses and Professions (DNFBPs), among which are notaries and lawyers, should take appropriate measures to identify and assess their money laundering and terrorist financing risks taking into account risk factors including those relating to their customers, countries or geographic areas, products, services, transactions or delivery channels.

To this end, each sector must carry out such assessments, document them in order to demonstrate their basis, keep them updated, and have the appropriate mechanisms to provide information about the risk assessment to the competent authorities and the Self-Regulatory Bodies (SRBs).

b. Due Diligence obligations

'Customer due diligence (CDD)' involves identifying and getting to know all natural or legal persons intending to establish business relationships or conducting any transactions, and it is not possible to maintain business relationships or carry out transactions with natural or legal persons that have not been properly identified.

The CDD measures to be implemented are the following:

1. Identifying the Customer and verifying the identity of the customer using reliable, independent source documents, data or information.
2. Identifying the beneficial owner and taking reasonable measures to verify the identity of the beneficial owner, so that the notary is convinced that they know who the beneficial owner is. For legal persons and other legal arrangements, this includes notaries understanding the ownership and control structure of the customer.
3. Understanding, and as appropriate, obtaining information on the purpose and intended nature of the business relationship.
4. Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that

the transactions being conducted are consistent with the notary's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds. This obligation must be understood in the case of longer-term business relationships and the notary's involvement in an occasional transaction is not necessary.

Article 14 of the Directive states that Member States shall not apply the requirement of verification of the identity of the customer and the beneficial owner to notaries, other independent legal professionals, auditors, external accountants and tax advisors only to the strict extent that those persons ascertain the legal position of their client, or perform the task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings.

c. Obligation to keep records

As required by FATF Recommendation 11 and Article 40 of the Directive, notaries and lawyers must keep for at least five years: all records obtained for compliance with the due diligence obligation (e.g. copies of records of official identification documents like passports, identity cards, driving licences or similar documents), including the results of any preliminary analyses undertaken (e.g. inquiries to establish the background and purpose of complex, unusually large transactions) after the date of the transaction.

They must also keep all necessary records on the transactions carried out with the customer, both locally and internationally, in order to make them available to the authorities.

Due diligence information and transaction records should be made available to domestic competent authorities upon appropriate authorisation.

d. Obligation to identify Politically Exposed Persons

This obligation means that notaries and lawyers, in addition to ensuring that they identify whether the customer or beneficial owner is a Politically Exposed Person (PEP), must apply enhanced due diligence measures.

This implies, first of all, that appropriate risk management systems must be in place to determine whether the customer or the final beneficiary (beneficial owner) is a politically exposed person.

Likewise, in the event that the customer or the final beneficiary should satisfy this condition, notaries and lawyers must be familiar with this circumstance at the time of execution of the transaction with the customer and must adopt reasonable measures to establish the origin of the assets and the origin of the funds which the customer intends to use in the transaction.

Requirements for all types of PEPs should also apply to family members or close associates of said PEPs.

e. Implementation of internal control measures

As indicated at the beginning, another of the obligations established by the FATF and the EU for notaries is the implementation of internal control measures.

These internal control programmes mean that notaries and lawyers must:

- Establish AML/CFT policies and procedures that will be applicable at their office, including adequate screening procedures to ensure high standards when hiring employees.
- Develop and maintain an ongoing internal and external employee training programme; and
- Establish an internal verification procedure to self-assess the operation of the system.

These internal control measures will depend on the money laundering and terrorist financing risk identified in the required risk self-assessment and the scale of the professional activity.

In addition, article 46 of the Directive foresees that Member States shall ensure that obliged entities:

- have access to up-to-date information on the practices of money launderers and financers of terrorism and on indications leading to the recognition of suspicious transactions.
- receive timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing
- identify the member of the management board who is responsible for the implementation of the laws, regulations and administrative provisions necessary to comply with the Directive.

f. Obligation to report suspicious transactions

FATF Recommendation 20 and Article 34 of the Directive require lawyers and notaries to collaborate and cooperate fully by giving timely notice to the FIU, including by filing a report, on their own initiative, where they know, suspect or have reasonable grounds to suspect that funds, regardless of the amount involved, are the proceeds of criminal

activity or are related to terrorist financing, and by promptly responding to requests by the FIU for additional information in such cases; and providing the FIU, directly or indirectly, at its request, with all necessary information, in accordance with the procedures established by the applicable law.

This obligation implies that if a notary or a lawyer suspects or has reasonable grounds to suspect that the funds are the result of criminal activity, or are related to terrorist financing, they must report it promptly to the Competent Authority determined by local regulations (the Financial Intelligence Unit (FIU) or similar).

This obligation is not applicable to notaries, other independent legal professionals, auditors, external accountants and tax advisors only to the strict extent that such exemption relates to information that they receive from, or obtain on:

- one of their clients, in the course of **ascertaining the legal position of their client**, or
- performing their task of defending or representing that client in, or
- concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings, whether such information is received or obtained before, during or after such proceedings.

In the case of notaries and lawyers, the FATF and the EU give the possibility to Member States to designate an appropriate self-regulatory body of the profession concerned as the authority to receive the information described above.

In this regard, both the Interpretative Note to Recommendation 23 and whereas clause 39 of the Directive allow lawyers, notaries, other legal professionals and independent accountants to send their Suspicious Transaction Reports to their appropriate Self-Regulatory Organizations (SROs), provided that there are appropriate forms of cooperation between these organisations and the FIU.

The whereas clause 39 recognizes that, in accordance with the case-law of the European Court of Human Rights, a system of first instance reporting to a self-regulatory body constitutes an important safeguard for upholding the protection of fundamental rights as concerns the reporting obligations applicable to lawyers. Member States should provide for the means and manner by which to achieve the protection of professional secrecy, confidentiality and privacy.

The obligation to report suspicious transactions also includes a prohibition on tipping-off the customer or third parties that such a report or related information is being provided to the FIU or the Self-Regulatory Body.

Furthermore, the AML/CFT Law of each country must expressly provide that prosecution authorities are not allowed to disclose the names of the reporter to the suspects and for the protection of notaries against criminal and civil liability for violation of any restriction on the disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, by the 'good faith' report produced, even if they do not know

precisely what the underlying criminal activity is, and regardless of whether the illegal activity actually occurred.

4. NATIONAL IMPLEMENTATION OF EU LAW IN AML/CFT

Since EU AML/CFT legislation is applied through national legal arrangements, with a view to focusing on the drawbacks of national implementation of EU law obligations at legal and practice level, national focus groups (NFGs) made up by 10 participants each were held in selected countries during February, 2021. For the purpose of obtaining previous information, questionnaires were submitted to the partners of the selected countries.

The focus was on assessing the implementation of the main obligations, considering the following aspects:

- Different existing preventive systems,
- Application of the risk-based approach,
- Role of the self-regulatory bodies,
- Difficulties in CDD (including difficulties in identifying beneficial owners),
- Suspicious reporting system,
- Training, and
- Supervision

Countries have adopted different approaches for regulating notaries as obliged subjects to the compliance of these provisions in the notarial and lawyers sector.

In addition, among the Member Countries, there are some systems for the prevention of money laundering and the financing of terrorism in the notarial sector, where the assessment of the sector's risk and the development of the internal control policies and procedures for AML/CFT are the responsibility of the self-regulatory bodies, which guarantees homogeneity and uniformity in the requirements for the application of these policies throughout the notarial sector.

Following, there is the legal analysis of the existing regulation in the selected countries, as well as the information obtained from the NFGs.

a. BELGIUM[1]

i. General Framework

In Belgium, lawyers and notaries have been subject to the Law on money laundering and the financing of terrorism since 2004 (the law of January 12, 2004 amending the law of January 11, 1993 on the prevention of the use of the financial system for the purposes of money laundering - now repealed).

In the case of lawyer, the French-speaking and German-speaking Bar Association had lodged a constitutional complaint against this law because the obligations imposed on lawyers were contrary to the fundamental principles of the independence of lawyers and professional secrecy.

The Constitutional Court confirmed that "*The fight against money laundering and the financing of terrorism, which have a clear influence on the development of organized crime, which poses a particular threat to society, is a legitimate objective of general interest. However, this objective cannot justify an unconditional or unlimited lifting of the professional secrecy of the lawyer, because, for the reasons recalled in B.6.1 to B.6.3, the lawyers cannot be confused with the authorities in charge of the investigation of the infringements."* (Judgment n ° 10/2008 of January 23, 2008, awaited B.8.).

Therefore, the Court decided that the information known by the lawyers during the exercise of the essential activities of his profession, namely assistance and defence in court of the client, and legal advice, even outside any legal proceedings, remain covered by professional secrecy, and cannot be brought to the attention of the authorities.

Thus, the lawyers remain subject but only when he exercises an activity listed by law and they must only make suspicion reports when they act outside their specific mission of defence and representation in court and that of advice.

The law of 18 September 2017 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing and on the limitation of the use of cash enabled the transposition of the fourth AML directive, 2015/849 of the Parliament and of the Council of May 20, 2015. It repealed that of January 11, 1993. It was amended by the law of July 20, 2020(1) transposing the 5th AML directive 2018/843 of the Parliament and of the Council of May 30, 2018.

According to article 5 26º, notaries liability is not limited to the assistance of their client in planning or carrying out certain transactions, but they are obliged to comply with all the obligations generally laid down for regulated entities, without exception.

[1] Most of the information was obtained directly from the text of the Law. Regarding notaries information, it was fully extracted from public sources, as the notarial questionnaire was not submitted

The only profession that benefits from a limited liability in order to protect the basis of the profession (defense, advice and analysis) are the lawyers. The law provides in article 5.28° its applicability to lawyers:

a) when they assist their client in preparing or carrying out transactions concerning:

i) the purchase or sale of real estate or commercial enterprises;

(ii) the management of funds, securities or other assets belonging to the client;

iii) the opening or management of bank accounts or portfolios;

iv) organization of the contributions necessary for the creation, management or management of companies;

v) the establishment, management or management of companies, trusts or trusts, companies, foundations or similar structures;

b) or when they act in the name of their client and on behalf of the latter in any financial or real estate transaction.

A special system for reporting suspicions also applies in which the President of the Bar plays a filter role.

ii. Main obligations

According to article 2, the obliged entities, in accordance with the provisions of the Law, shall apply a risk-based approach and implement the preventive measures, in a differentiated manner, according to their ML/TF risk assessment.

The Law establishes the following obligations:

a) Conducting an overall risk assessment

According to article 16 of the Law, obliged entities shall take measures that are appropriate and commensurate with their nature and their size to identify and assess the ML/FT risks to which they are exposed, by taking into account in particular the characteristics of their customers, the products, services or transactions offered by them, the countries or geographical areas concerned and the distribution channels used by them.

Participants in the NFG have manifested they were not aware about a sectoral risk assessment being conducted by the Bar Association or the General Chamber of Notaries.

b) General due diligence requirements

Articles 19 and 21 determines obliged entities shall take customer due diligence measures that involve:

a) identifying and verifying the identity of the customers:

1° who establish a business relationship with them;

2° who, outside the framework of a business relationship referred to in 1°, occasionally carry out:

- one or more transactions that appear to be linked amounting to a total of EUR 10 000 or more; or

- without prejudice to the obligations laid down in the European Regulation on transfers of funds, one or more credit transfers or transfers of funds within the meaning of that Regulation that appear to be linked and that amount to a total of more than EUR 1 000, or regardless of the amount, if the obliged entity receives the funds concerned in cash or in the form of anonymous electronic money.

b) assessing the customer's characteristics and the purpose and intended nature of the business relationship or occasional transaction as well as, where appropriate, obtaining additional information for this purpose; and

c) applying due diligence with regard to occasional transactions, as well as ongoing due diligence with regard to the transactions carried out during a business relationship.

The due diligence measures shall be based on an individual ML/FT risk assessment, taking into account the characteristics of the customer and of the business relationship or the transaction concerned. Moreover, this individual risk assessment shall take into account the overall risk assessment described above.

If obliged entities, in the context of their individual risk assessment, identify cases of high risk, they shall take enhanced due diligence measures. They may apply simplified due diligence measures if they identify cases of low risk.

In all cases, obliged entities shall ensure that they can demonstrate to the supervisory authorities competent pursuant to Article 85 that the due diligence measures applied by them are appropriate in view of the ML/FT risks they have identified.

Lawyers and notaries benefit (along with other professionals) from an exception with respect to obligations set in paragraphs a) and b): they can establish a business relationship even if they are unable to identify their client or to assess (i) of the characteristics of the client (ii) of the purpose and the business relationship or (iii) of the proposed transaction on the strict condition "that they assess the legal situation of their client or exercise their mission of defense or representation of this client in legal proceedings or concerning such proceedings, including in the context of advice relating to how to initiate or avoid such proceedings" (art. 33.2 and 34.4 of the Law).

In addition, according to article 33.5, they also benefit from an exception regarding the obligation to conduct ongoing due diligence with regard to the transactions carried out during a business relationship: they can establish a business relationship even if they are unable to carry out this continuous vigilance based on the same strict condition previously described.

In addition, according to Articles 22 and 23, obliged identities shall identify the agent(s) of the customers and shall identify and take reasonable measures to verify the identity of the beneficial owner(s) of the customers.

Identifying the beneficial owners in accordance with the first subparagraph includes taking reasonable measures to understand the ownership and control structure of the customer or of the agent who is a company, a legal person, a foundation, fiducie, trust or a similar legal arrangement.

According to the information provided during the NFG, in the case of lawyers, there is no common RBA to CDD obligations in lawyers sector, at all, in place. However, the OBFG (French and German speaking Bar Association) and the OVB (Orde van Vlaamse Balies) make various documents available to their members, to assist them in conducting the CDD:

- A checklist of obligations;
- A standard clause to be inserted in fee agreements;
- A risk assessment grid per file, with or without weighting;
- A file opening form;
- Identification sheets for the individual customer, the corporate customer and the beneficial owner.

In addition, participant lawyers have expressed not having knowledge of particular difficulties in the identification of the beneficial owner, as the UBO register is accessible.

They expressed the greatest difficulty for lawyers remains to combine the respect of their professional secrecy (the violation of which is penalized) and the respect of their obligations as regards prevention of ML / TF.

The Royal Decree of 30 November 2018 provided an obligation to notify, from entities subject to anti-money laundering legislation (including lawyers), the differences that these entities observed between the information included in the register and the information of which they were aware.

The Council of State canceled this obligation since it violated the professional secrecy of the lawyer on appeal from the OBFG and the OBV and the Royal Decree of 23 September 2020 removed this obligation.

c) Obligation to keep records

According to article 60, obliged entities shall keep, for a period of ten years after the end of the business relationship with their customer or after the date of an occasional transaction, using any type of record-keeping system, for the purposes of the prevention, detection or investigation of potential money laundering and terrorist financing, the following documents and information:

1° identification data and a copy of the records or of the result of checking an information source, including the documents containing the measures taken to comply with the verification obligation, including the information on any difficulties that arose during the verification process.

2° the records and registration data of transactions required to identify and precisely reconstitute the transactions conducted,

3° the analysis of atypical transactions and reporting of suspicions.

d) Obligation to identify politically exposed persons

According to article 34, obliged entities shall take adequate measures to assess the characteristics of the customers and the purpose and nature of the business relationship or of the intended occasional transaction.

In particular, they shall take reasonable measures to determine whether the persons identified, including the beneficial owner of the beneficiary of a life insurance policy, are politically exposed persons, family members of politically exposed persons or persons who are known to be closely associated with politically exposed persons.

e) Implementation of internal control measures

Article 8 determine that obliged entities shall develop and implement policies, procedures and internal control measures that are efficient and commensurate with their nature and size, which shall include:

1° developing policies, procedures and internal control measures relating in particular to model risk management practices, customer acceptance, customer and transaction due diligence, reporting of suspicions, record-keeping, internal control, management of compliance with the obligations set out in the Law;

2° where appropriate with regard to the nature and size of the obliged entity, and without prejudice to the obligations laid down by or pursuant to other legislative provisions:

> a) an independent audit function charged with testing the policies, procedures and internal control measures;

b) procedures for **verifying, when recruiting and assigning staff or appointing agents or distributors, whether these persons have adequate integrity** considering the risks associated with the tasks and functions to be performed;

3° **educating the obliged entity's staff** and, where appropriate, its agents or distributors, on ML/FT risks, and training these persons with regard to the measures implemented to reduce such risks.

Obliged entities shall verify the relevance and efficiency of the measures taken to comply with this article and shall, where appropriate, improve these measures.

In addition, obliged entities that are legal persons shall appoint, among the members of their statutory governing body or, where appropriate, of their senior management, the person responsible, at the highest level, for supervising the implementation of and compliance with the provisions of the Law. If the obliged entity is a natural person, these functions shall be performed by that person.

As informed during the NFG, notaries and lawyers do not apply common (in each sector) Internal Policies and Procedures to comply with AML/CFT obligations.

In addition, as informed, the CTIF or the SRBs do not carry out, on a permanent basis, any activity (response to inquiries, training activities) to assist notaries and lawyers in complying with AML/CFT obligations.

Talking about training, participants in the NFG confirmed the Bar Association and the Chamber of Notaries offer AML/CFT training courses to lawyers and notaries, but taking them is voluntary.

However, we did not have access to the number of training activities conducted by the Bar and the Chamber of Notaries during 2019-2020.

f) Obligation to report suspicious transactions

This obligation is defined in article 47. According to this article, the obliged entities shall report to CTIF-CFI, when they know, suspect or have reasonable grounds to suspect:

1° that funds, regardless of the amount, are related to money laundering or terrorist financing;

2° that transactions or attempted transactions are related to money laundering or terrorist financing. This obligation also applies when the customer decides not to carry out the intended transaction;

3° other than the cases referred to in 1° and 2°, that a fact of which they know, is related to money laundering or terrorist financing.

The obligation to report to CTIF-CI, does not entail that the obliged entity must identify the predicate money laundering offence.

The obliged entities also report to CTIF-CFI suspicious funds, transactions or attempted transactions and facts, of which they know as part of activities carried out by them in another Member State without having a subsidiary, branch or other type of establishment through agents or distributors representing them there.

The obliged entities report to CTIF-CFI funds, transactions and facts determined by the King, by Decree deliberated in the Council of Ministers, upon the advice of CTIF-CFI.

As informed during the NFG, Lawyers benefit from a **double exemption regime**:

- On one hand, they must not transmit any information or intelligence received from one of their clients or obtained on one of their clients during the assessment of the legal situation of this client or in the exercise of their defense or representing mission of that client in or relating to legal proceedings, including advice on how to initiate or avoid proceedings, whether such information is received or obtained before, during or after such procedures **unless they realize that they have taken part themselves in an ML / FT activity or have provided advice to this end or have been consulted for this purpose** (art. 53 of the Law)

  This is aimed at the case where the professional realizes after the fact that he has been used to participate in a ML / FT operation.

- On the other hand, the lawyer **cannot make a declaration of suspicion directly to the CTIF, but must do so to his President of the Bar** (art. 52 of the Law). The President of the Bar thus acts as a filter: he verifies the subjugation and that the lawyer is not within the framework of the exception (he does not, however, assess the suspicion of the lawyer). If the lawyer is liable and does not fall within an exceptional case, he immediately communicates the suspicious transaction report to the CTIF. This particular procedure aims to protect the solicitor-client privilege.

Finally, a lawyer who succeeds in dissuading his client from carrying out a ML / FT operation should not make a declaration.

According to the 2019 CTIF report, the number of STRs submitted by lawyers to the CTIF was: (i) 10 in 2017, (ii) 8 in 2018, and (iii) 11 in 2019. For 2019, this represents 0.04% of reports.

From these, only 1 report submitted in 2019 was disseminated to the judicial authorities.

It is not known, however, how many suspicious transaction reports were submitted to the President of the Bar. This information is not published.

Regarding notaries, they report directly to the CTIF. The number of STR submitted by the notaries was: (i) 1.076 in 2017, (ii) 1.270 in 2018 and (iii) 1.239 in 2019. In 2019 it represents 4,77 % of reports.

From these, the CTIF submitted 3 reports to the judicial authorities in 2017, 7 in 2018 and 4 in 2019.

The lawyers therefore make few declarations. According the participants in the NFG, this is explained by the special regime of subjugation and exception that is applied to them and also by the traditional characteristics of the profession which is reluctant to denounce its clients.

They have expressed that new generation of lawyers is more aware of the importance of the money laundering prevention and reporting, and lawyers registered within the Bar must indeed undergo AML/CFT training which allows them to obtain their certificate of aptitude for the legal profession (CAPA).

The CTIF publishes its annual report in which it summarizes the key figures and trends in ML / FT.

As informed, even there are specific forms to submit the STR, **specific risk indicators for the lawyers' sector have not been issued by the SRBs, CTIF or any other competent authority, to facilitate the detection of suspicious transactions in this sector**.

Regarding notaries, as informed, specific risk indicators to facilitate the detection of suspicious transactions for the notarial sector have been issued, but the participants in the NFG do not consider them useful as they are.

In addition, the CTIF has not provided typologies, feedback about the quality of STRs submitted by notaries and lawyers or any other guidance specific to these sectors.

According to Article 85, the National Chamber of Notaries and the President of the Bar Association to which the lawyers belong shall monitor compliance with the provisions of the Law. Article 117 determines they should adopt a supervisory regime in order to ensure compliance by the obliged entities with the provisions of the Law.

Both organizations shall each publish a report every year with information on the measures taken and penalties imposed, where applicable, the number of breaches reported and the number and description of the measures taken to ensure compliance, by the obliged entities.

We did not have access to these reports, so there is no information regarding the number of supervisions conducted by the National Chamber of Notaries and the President of the Bar Association to which the lawyers belong during 2019-2020 nor the penalties, if any, imposed during that period.

b. BULGARIA

i. General Framework

In Bulgaria, there are two laws regulating the AML/CFT system:

- Measures Against Money Laundering Act (AMLA), amended and supplemented by SG No. 69/04.08.2020, and
- Measures Against Financing Of Terrorism Act (CFTA).

According to art. 4.14 of the Law on Measures against Money Laundering (LMAML) the notaries and the assistant notaries acting in a substitute capacity are obliged entities in any aspect of their activity.

According to paragraph 15 of the same article, lawyers are included as obliged entities are as well the persons that, by way of their business, provide legal advice where:

a) assisting or participating in the planning or carrying out of an operation, transaction or other legal or factual action of a client thereof concerning the:
   - buying and selling of immovable property or transferring the enterprise of a merchant
   - managing of money, financial instruments or other assets;
   - opening, managing or disposing of a bank account, savings account or financial instruments account;
   - raising of contributions necessary for the creation of a legal person or other legal entity, increasing the capital of a commercial corporation, extending a loan or any other form of procuring funds necessary for the carrying out of the activity of a legal person or other legal entity;
   - formation, registration, organisation of the operation or management of a trust, merchant or another legal person, or other legal entity;
   - fiduciary management of assets, including trusts, escrow funds and other similar foreign legal entities incorporated and existing under the law of the jurisdictions providing for such forms of trusts;

b) acting for the account and/or on behalf of a client thereof in any financial operation whatsoever;

c) acting for the account and/or on behalf of a client thereof in any real estate transaction whatsoever;

d) providing a registered office, correspondence address, business accommodation and/or other related services for the purposes of the registration and/or operation of a legal person or other legal entity.

The Article 2.1 of the Uniform Internal Rules of the Bulgarian Supreme Bar Council (EVPVAS) for control and prevention of money and terrorism financing defines the application of the prevention measures to each lawyer performing legal consultations such as assistance in or introduction to planning or execution of an operation, a deal or other legal or factual action for their client regarding: purchase and sale of real estate or transfer of an enterprise to a trader; management of funds, financial instruments or other activated clients; opening, managing or disposing of a bank account, a special account or an account for financial instruments; acquisition of funds for establishment of a legal entity or other legal entity, increase of the capital of a commercial company, provision of a loan or any other form of acquisition of funds for restoration of the activity of a legal entity or other legal entity; establishment, registration, organization of the activity or management of trust property, trade or other legal entity; trust management of property, including trusts, trust funds and other similar foreign legal forms, established and continuing in accordance with the law of jurisdictions allowing forms of trust ownership.

According to the regulations described above, AML/CFT measures must be applied when a lawyer acts on behalf of his client, or when the lawyer represents the client in any financial transaction, paid for by the client. Furthermore, the following actions are covered by the AML/CFT measures -- actions on behalf of the client in any real estate transaction, provision of a management address, correspondence address, office and / or other subsequent services for the purposes of registration and / or operation of a legal entity or other legal entity.

AML/CFT rules do not apply when lawyers perform their activities of establishing protection or representation of a client in connection with the proceedings regulated in the process of law, which are pending, planned to be launched or have already been concluded, as well as while performing other activities other than those specified in Article 4.15 of the LMAML.

ii. Main obligations

a) Conducting an overall risk assessment

According to article 98 of the Law, in order to identify, understand and assess the risks of money laundering and financing of terrorism, the obliged entities shall conduct their own risk assessments, taking into account the relevant risk factors, including those relating to customers, countries or geographic areas, products and services supplied, operations and transactions or delivery channels. The risk assessments shall be updated periodically.

Article 100 precises that the professional bodies and associations of the obliged entities herein may conduct and update assessments of the risk of money laundering and financing of terrorism at sectoral level. The results of the risk assessments shall be made available to the members of the professional bodies and associations of the persons.

Participants in the NFG have manifested the Notary Chamber has conducted its own specific sectoral assessment of the risk of money laundering and terrorist financing in notarial activities, which takes into account the recommendations of the National Risk Assessment and the Supranational Risk Assessment and the recommendations of the EC. It is updated every two years, and its last update took place on 15 May 2020.

According to the internal rules of the Notary Chamber, the notaries shall prepare an individual assessment of the risk of money laundering and terrorist financing regarding the activity of the notary, which shall be updated periodically and contains information about the risk of money laundering and terrorist financing at the respective notary, the measures for management of the identified risks, the order, the conditions, and the ways for determining the risk profiles of the clients and the transactions.

This assessment may reproduce the sectoral risk assessment prepared by the Notary Chamber of the Republic of Bulgaria, as long as it is recognized by the respective notary as its own.

Regarding lawyers, participants in the NFG have confirmed the Supreme Bar Council (SBC) has also conducted a risk assessment on lawyers' sector taking into account and reflecting the results of the national risk assessment, as well as the results of the supranational risk assessment and the recommendations of the European Commission. It is updated every two years and the current report was published in July 2020.

According to the SBC's internal rules, lawyers prepare, based on the sectoral risk assessment, their own risk assessments, taking into account the relevant risk factors, unless facts and circumstances that require a different risk assessment of the respective lawyer are present. Lawyers who allow the establishment of a business relationship or the performance of an accidental operation or transaction through an electronic statement, electronic document or electronic signature or through another form without the presence of the client, include in their risk assessment an assessment of the resulting risk. The risk assessment is updated every two years. Based on the risk assessment prepared by him, the lawyer determines the risk profile of the client and the transactions through him, applying the appropriate measures in accordance with the defined profile.

b) General due diligence requirements

According to article 10, customer due diligence shall comprise:

- identifying the customers and verifying the identity thereof on the basis of documents, data or information obtained from reliable and independent sources;

- identifying the beneficial owner and taking reasonable measures to verify the identity thereof in a way providing the obliged entities with sufficient grounds to consider the beneficial owner as identified, including taking reasonable measures to understand the ownership and control structure of the customer;

- collecting information on the purpose and nature of the business relationship that is established or has yet to be established with the customer, in the cases provided for in the law;

- clarifying the source of funds in the cases provided for in law;

- ongoing monitoring of the business relationship as established and verifying the transactions and operations carried out throughout the course of the said relationship, as to whether the said transactions and operations are consistent with the risk profile of the customer and with the information collected, as well as timely updating of the documents, data and information collected.

Article 101 of the Law states that the Notary Chamber and the Supreme Bar Council shall adopt uniform internal rules on money-laundering and terrorist financing control and prevention, which shall be applied by the members of the said organisations after their adoption.

The Bulgarian Supreme Bar Council and the Notary Chamber have issued Internal Rules according to the Law on Measures against Terrorism Financing (LMTF) and the Measures against terrorist financing, adopted by the Supreme Bar Council with Decision № 2777 / 7.08.2020 and Decision of the Council of Notaries of the Notary Chamber of 03 May 2019, updated by the Council of Notaries of the NKRB with Decision № 1 / 15.07.2020, respectively.

The Unified Internal Rules of the Notary Chamber determine a general approach for notaries to carry out the due diligence of the client, which shall include:

- identification of clients and verification of their identification on the basis of documents, data or information, received from reliable and independent sources;

- identification of the beneficial owners of clients - legal entities or other legal entities and undertaking appropriate actions for verification of their identification, including application of appropriate measures for clarification of the ownership structure and control of the clients – people or legal entities;

- clarification of the origin of the funds.

In the cases where the notary or the assistant notary for substitution cannot fulfill the requirements for due diligence, he shall be obliged to refuse the execution of the transaction and shall assess whether to notify the Financial Intelligence Directorate of the State Agency "National Security".

Regarding lawyers, the internal rules of the Supreme Administrative Court (SAC) for conducting a comprehensive check of the lawyer's clients, include:

- identification of clients and verification of their identification on the basis of documents, data or information obtained from reliable and independent explicit sources of information, such as the Internet, registers with online access and others;

- identification of the beneficial owner of the client other than a natural person and taking appropriate action to verify his identification in a way that gives the Advocate sufficient grounds to consider the beneficial owner to be established, including the application of appropriate measures to clarify ownership structure and control of the client;

- collection of information and assessment of the purpose and nature of the business relationship that has been established or is to be established with the client

- the origin of the funds with which payment for the transaction or operation was carried out by submitting a declaration by the client;

- in case of contracts with long-term performance and with a subject that falls within the scope, current monitoring on the established business relations and verification of the transactions and operations, performed during the whole duration of these relations, as far as they correspond to the risk profile of the client and to the information collected -- information of the client and / or for his business activity, as well as a timely update of the collected documents, data and information.

Participants in the NFG have displayed the main difficulties in identifying the beneficial owners generally comes with the identification of foreign legal establishments, as according to the AMLA, the legal persons and other legal formations, established on the Republic of Bulgaria, are obliged to receive, dispose of and provide in the cases, provided by the law, appropriate, exact and updated information about the natural persons, who are their real owners, including with detailed data about the rights, held by them by declaring those circumstances in the Public and electronically available Trade Register.

In cases of foreign legal establishments difficulties are mainly related to the fact that the necessary information is in foreign registers, which are in the language of the respective country, and if that language is not among the most common languages (English, German, French, Spanish or Italian), it is especially difficult to understand the information provided.

c) Obligation to keep records

Article 67 of the Law states that obliged entities shall retain all documents, data and information collected and prepared, for a period of five years.

- In cases of establishing a business relationship with customers, as well as in cases of entering into correspondent relationships, the period shall run from the date of ending the relationship.

- In the cases of carrying out occasional operations the period shall run from the date on which said operations or transactions were carried out.

- In the cased of disclosure of information, the period shall run from the beginning of the calendar year succeeding the year of the disclosure of the information.

d) Obligation to identify politically exposed persons

Article 36 of the Law include the obligation of applying enhanced customer due diligence measures with respect to potential customers, existing customers and beneficial owners of a customer which is a legal person or other legal entity who are politically exposed persons in the Republic of Bulgaria, in another Member State or in a third country, or in international organisations, as well as with respect to potential customers, existing customers and beneficial owners of a customer which is a legal person or other legal entity who are closely linked with any such politically exposed persons.

e) Implementation of internal control measures

According to article 101, obliged entities shall adopt internal rules on money laundering and terrorist financing control and prevention which shall contain:

- clear criteria for recognising suspicious operations or transactions and customers;

- the procedure for the use of technical means for the purpose of preventing and detecting money laundering and terrorist financing;

- a system of internal control over the fulfilment of obligations established in this Act, the Measures against the Financing of Terrorism Act and in the instruments on the application thereof;

- the possibility of carrying out an internal audit review;

- the possibility of conducting an independent audit to test and evaluate the rules, procedures and requirements under this paragraph, where appropriate with regard to the size and nature of the business of the obliged entity

- an internal system for risk assessment and determining the risk profile of customers;

- policies, controls and procedures to mitigate and manage effectively the risks of money laundering and financing of terrorism identified at the level of the European Union, at the national level and at the level of the obliged entity,
- rules and organisation for fulfilling the obligations to clarify the source of funds and the source of the assets;
- the terms and procedure for the collection, retention and disclosure of information;
- the time intervals over which the databases and customer dossiers are reviewed and updated, taking account of the level of risk of the customers and the business relationships identified and documented,
- rules on the training of the rest of the employees;
- the allocation of responsibilities among the representatives and employees of the person as well as among the persons in a comparable position involved in its operations on other grounds, for the fulfilment of the obligations established in the Law

As mentioned before, The Notary Chamber and the Supreme Bar Council have adopted uniform internal rules on money laundering and terrorist-financing control and prevention, which shall be applied by the members of the bar associations.

As regard to training activities, the Supreme Bar Council has established the Krasnu Tsonchev Lawyer Training Center Foundation, which specializes in conducting various trainings for lawyers, but no trainings aimed at measures against money laundering were conducted in 2019, and for 2020 there were 3 seminars on this topic.

Regarding notaries, the Notary Chamber has organized in 2019 and 2020 seminars and trainings related to the measure, but there is no information regarding the number of training activities performed during this period. Lecturers at these seminars and trainings are both notaries and representatives of an external company - ALSAS.

During the NFG meeting, participants highlighted the useless of the training activities received and the need of increasing the role of the Self-Regulatory Bodies in a more active way.

f) Obligation to report suspicious transactions

The mechanism for reporting suspicious transactions by notaries and lawyers is regulated in Article 72 of the Law on Measures against Money Laundering.

Pursuant to the above-mentioned provision, in case of suspicion and/or knowledge of money laundering and/or the availability of funds of criminal origin, notaries and lawyers are obliged to immediately notify the Financial Intelligence Directorate of the State

Agency for National Security before carrying out the operation or transaction, and delay its implementation within the admissible term according to the normative acts, regulating the respective type of activity. The notification shall specify the maximum period within which the operation or transaction may be postponed.

This obligation also arises in cases where the operation or transaction has not been completed.

When the delay of the operation or transaction is objectively impossible or is likely to impede the actions to prosecute the beneficiaries of a suspicious transaction or operation, the obligor shall notify the Financial Intelligence Directorate of the State Agency for National Security immediately after its execution, stating the reasons, because of which the delay was impossible.

In the case of Lawyers, the notification obligations shall not be applied when exercising activity regulated by the Law on Advocacy, only with regard to the information that these persons receive from or about any of their clients in the process of establishing their legal status, or in defense or representation of this client in or in connection with proceedings regulated by procedural law which are pending, are about to be launched or have already been instituted, including upon provision of legal advice for instituting or avoiding such proceedings, whether or not this information has been received before, during or after of production.

However, this exception shall not apply when the person exercising activity regulated in the Law on Advocacy:

1.take part in the activities for money laundering or terrorist financing;

2.provides legal advice on a request aimed at money laundering or terrorist financing, or

3. knows that the client seeks legal advice for the purposes of money laundering or terrorist financing.

Both, lawyers and notaries report suspicious transactions directly to the Financial Intelligence Directorate. Participants in the NFG have exposed that the Directorate does not provide feedback about the quality of STRs submitted by notaries and lawyers and some of them consider the relationship among lawyers and the Directorate is not as suitable as they would desire.

According to the Financial Intelligence Directorate official annual report for 2019 - a total of 1.643 STRs have been filed. These data are provided in summary form, with no detailed indication by sector.

As informed by the NFG participants, the Supreme Bar Council and the Notary Chamber have set out criteria or indicators of suspicion of money laundering and terrorist financing for identifying suspicious transactions, transactions/deals and customers for both sectors in the Unified Rules.

The State Agency for National Security has published on its website certain rules and guidelines, but they are common to all sectors and in its annual activity reports for 2018 and 2019, refers to several typologies, but none of them is specific to these sectors.

According to the NFG participants, the Directorate does not carry out, on a permanent basis, any activity to assist notaries and lawyers in complying with AML/CFT obligations (response to inquiries or training activities).

According to article 108 of the Law the control over the application of the AML measures shall be exercised by the Chairperson of the State Agency for National Security.

The control authorities shall be officials on the staff of the Financial Intelligence Directorate of the State Agency for National Security designated by the Chairperson of the Agency.

The control authorities shall carry out on-site inspections of the obliged entities as to the application of measures for the prevention of the use of the financial system for the purposes of money laundering, as well as whenever there is a suspicion of money laundering.

According to the Annual Report on the Activity of the Administrative Directorate for Financial Intelligence in SANS for 2019, no inspections were conducted to notaries or lawyers in that period.

c. ITALY

i. General Framework

In Italy, the legislative framework for money laundering consists of Legislative Decree 231/2007, which transposed the relevant European directives, and of Legislative Decree 109/2007 for combating the financing of terrorism and the activities of countries that threaten international peace and security. These legislative texts were recently amended by Legislative Decree 125/2019, which entered into force on 10 November.

According to the Law, notaries and lawyers are considered to be obliged entities where they participate, whether by acting on behalf of and for their client in a financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client, in the following activities:

- buying and selling real estate or business entities;
- managing their client's money, securities or other assets;
- opening or managing banks, savings or securities accounts;

- organising contributions necessary for the creation, operation or management of companies; and

- creating, operating or managing trusts, companies, foundations or similar structures.

In theory, the system is based on the utmost collaboration among operators, administrative authorities, investigation authorities and judicial authorities and, in the case of notaries, respect and recognition of its role as guarantors of legality, "guardians" to combat money laundering and terrorist financing and key actors in AML / CFT.

In fact, it has been recognized by the authorities[2] that in a historical phase such as the one we are experiencing, the reports of suspicious transactions carried out by notaries cannot be replaced by any algorithm. Not only because they constitute, in numerical terms, the majority of reports sent by professionals, but above all because, thanks to their accuracy and very high legal quality, they are indispensable for investigators to understand the criminal phenomenon in the area at 360 °.

In addition, in the field of innovative start-ups, a fortiori following the recent sentence of the Council of State no. 02997-2018, which affirms the importance of the public deed in the constitution and therefore the need for notarial control of legality in the constitution, modification and extinction of joint-stock companies (which in our system is not entrusted to the Register of Companies which is allowed a purely formal control), suspicious transaction reports are recorded exclusively by notaries and no contribution from the Register of Companies.

However, it is observed that the opposite often also happens and that the notary, despite the daily contribution in AML / CFT as a key actor, in the inspection phase is heavily sanctioned and that therefore sometimes the report can also become the appearance of a "tick box culture" .

ii. Main obligations

a) Conducting an overall risk assessment

According to article 15, the sectoral supervisory authorities and risk self-regulation dictates criteria and methodologies, commensurate with the nature of the activity carried out and the size of the obliged parties, for the analysis and assessment of the money laundering and terrorist financing risks to which they are exposed in the exercise of their activity.

Obligated persons shall adopt objective procedures consistent with this criteria and methodologies for the analysis and assessment of the risks of money laundering and terrorist financing. In assessing the risk of money laundering or terrorist financing,

[2] Deputy Anti-Mafia Prosecutor Antonio Laudati

obliged persons shall take into account risk factors associated with the type of customers, the geographical area of operation, the distribution channels and the products and services offered.

The assessment shall be documented, periodically updated and made available to the authorities and the self-regulatory bodies for the purpose of exercising their respective functions and powers regarding the prevention of money laundering and terrorist financing.

According to article 11 of the Law, the self-regulatory bodies are responsible for drawing up and updating technical rules, adopted in its implementation after obtaining the opinion of the Financial Security Committee, on the subject of procedures and methodologies for the analysis and **assessment of the risk of money laundering and terrorist financing to which professionals are exposed in the exercise of their activities**.

The National Chamber of Notaries has issued technical rules of self-regulation, but no sectoral risk assessment has been conducted.

Regarding lawyers, the National Bar Council issued the technical rules on the procedure and methodology for analysing and assessing the risk of money laundering and terrorist financing but, as in the case of notaries, the sectoral risk assessment has not been developed.

During the NFG, Notaries and Lawyers highlighted the lack of guidelines on the risk assessment.

b) General due diligence requirements

Pursuant to Article 18, customer due diligence obligations include:

- the identification of the customer and the verification of his identity on the basis of documents, data or information obtained from a reliable and independent source. The same measures shall be taken in respect of the executor, including verification of the existence and extent of the power of representation by which he acts in the name and on behalf of the customer;

- the identification of the beneficial owner and the verification of his identity through the adoption of measures proportionate to the risk including, with specific reference to the beneficial ownership of legal persons, trusts and other similar legal entities and institutions, measures which allow the reconstruction, with reasonable reliability, of the ownership and control structure of the customer;

- the acquisition and evaluation of information on the purpose and nature of the ongoing relationship or professional service, including information on the establishment of the relationship, on the relationship between the customer and the perpetrator, between the customer and the beneficial owner and on the business activity, without prejudice to the possibility of acquiring, depending on

the risk, further information, including information on the economic and financial situation of the customer, acquired or possessed as a result of the conduct of the business.

- the constant monitoring of the relationship with the client, throughout its duration, through the examination of the client's overall operations, the verification and updating of the data and information acquired also with regard, if necessary on the basis of risk, to the verification of the origin of the funds and resources at the client's disposal, on the basis of information acquired or possessed by reason of the performance of the activity.

Professionals, are exempted from the obligation to verify the identity of the client and the beneficial owner until the time when the identification is provided only limited to cases in which they examine the legal position of their client or perform tasks of defending or representing the client in or in connection with proceedings before a judicial authority, including by means of a negotiation agreement assisted by one or more lawyers within the meaning of the law, including advice on the possibility of initiating or avoiding such proceedings.

Lawyers as defined by law, including advice on whether to institute or avoid such proceedings, shall be exempted from the obligation to verify the identity of the client and the beneficial owner up to the time of the appointment.

The Consiglio Nazionale del Notariato (CNN) was the first Professional Body to act as Self-regulation Body and created its own technical rules after hearing the Financial Security Committee.

The technical rules, applicable for notaries, contain the procedures and methodology for the analysis and the evaluation of the risk of ML and TF describing the internal controls, the CCD and the conservation of the documentation.

Regarding lawyers, the Consiglio Nazionale Forense (CNF) acts as Self-regulatory body and developed its own technical rules and Guidelines on 20.09.2019.

On 20th September 2019, the National Bar Council issued the technical rules on the procedure and methodology for analysing and assessing the risk of money laundering and terrorist financing, on internal controls, on customer due diligence, including simplified CDD, and on retention, after having obtained the favorable opinion of the Financial Security Committee.

None of the guidelines developed by the Self-regulatory bodies are mandatory, but during the NFG the participants expressed they considered them as clear and useful documents.

Regarding difficulties in identifying the beneficial owners, participants raised that in the non-financial sector, risks and difficulties are indeed related to the identification of the beneficial owner and to the limits deriving from professional secrecy.

To identify the beneficial owner, the lawyers and notaries can use public registers, lists, deeds or documents publicly available (for example the Chamber of commerce searches extracted from the Business Register) or refer to a written declaration made by the client where the latter indicates - under his own responsibility - the references of the beneficial owner (or of the beneficial owners, if they are more than one). The identification of the beneficial owner takes place simultaneously with the identification of the customer.

They consider the new the creation of a centralized registration system of Beneficial Owners in specific sections of the Italian Companies Register can be useful to increase transparency.

c) Obligation to keep records

Article 31 states that obliged parties shall keep, for a period of 10 years after the termination of the continuous relationship, professional service or occasional transaction, the documents, data and information useful to prevent, detect or ascertain possible money laundering or terrorist financing activities and to allow the carrying out of the analyses carried out, within the scope of their respective powers, by the FIU or by another competent Authority.

For this purpose, they shall keep a copy of the documents acquired during customer due diligence and the original or a copy with probative value pursuant to the legislation in force, of the books and records relating to the transactions. The documents retained shall, at least, make it possible to unambiguously reconstruct them:

- the date of establishment of the ongoing relationship or of the assignment;
- identification data,
- the date, the amount and the reason for the operation;
- the means of payment used.

d) Obligation to identify politically exposed persons

Pursuant to article 25 obligated persons shall establish adequate risk-based procedures to determine whether the customer is a politically exposed person and, in the case of ongoing relationships, professional services or transactions with politically exposed persons, in addition to the ordinary customer due diligence measures, shall take the following additional measures:

- obtain the authorisation of the persons vested with powers of administration or management or of their delegates or, in any case, of persons performing an equivalent function, before entering into or continuing an ongoing relationship, a professional service or an occasional transaction with such customers;

- apply appropriate measures to establish the origin of the assets and funds used in the continuing relationship or transaction;

- ensure constant and reinforced monitoring of the ongoing relationship or professional service.

e) Implementation of internal control measures

As defined in article 16, obligated persons shall adopt the controls and implement the controls and procedures, appropriate to their nature and size, necessary to mitigate and manage the money laundering and terrorist financing risks identified.

The sectoral supervisory authorities and the self-regulatory bodies shall identify the size and organisational requirements on the basis of which the supervised and controlled obliged entities respectively adopt specific safeguards, controls and procedures to:

- the assessment and management of the risk of money laundering and terrorist financing;

- the establishment of an anti-money laundering function, including, where appropriate to the size and nature of the business, the appointment of an anti-money laundering officer and the provision of an independent audit function to verify policies, controls and procedures.

Obligated persons shall adopt measures proportionate to their risks, nature and size, suitable for making their personnel aware of their obligations. To this end, the obliged parties shall ensure that permanent training programmes are carried out, aimed at the correct application of the provisions of AML Decree, at the recognition of operations connected with money laundering or terrorist financing and at the adoption of the behaviours and procedures to be adopted.

As mentioned above, the National Chamber of Notaries (CNN) was the first Professional Body to act as Self-regulation Body and created its own technical rules after hearing the Financial Security Committee.

The technical rules, applicable for notaries, contain the procedures and methodology for the analysis and the evaluation of the risk of ML and TF describing the internal controls, the CCD and the conservation of the documentation.

Regarding lawyers, the Consiglio Nazionale Forense (CNF) acts as Self-regulatory body and developed its own technical rules and Guidelines on 20.09.2019.

On 20th September 2019, the National Bar Council issued the technical rules on the procedure and methodology for analysing and assessing the risk of money laundering and terrorist financing, on internal controls, on customer due diligence, including simplified CDD, and on retention, after having obtained the favorable opinion of the Financial Security Committee.

Article 11 establishes that "the self-regulatory bodies, their territorial divisions and the disciplinary councils, according to the principles and methods provided for by the law in force, promote and control compliance with the obligations provided for by this decree by the professionals registered in their registers and lists".

With reference to the promotion of compliance with obligations, the compulsory continuing training programs prepared by the National Bar Council and the National Chamber of Notaries must continue to include the AML discipline among the subjects.

In this regard, article 11.2 provides that self-regulatory bodies and their territorial divisions are also responsible for training and updating their members in the field of policies and tools for the prevention of money laundering and terrorist financing.

As informed, the Notary Chamber has organized in 2019 and 2020 seminars and trainings related to the measure, but there is no information regarding the number of training activities performed during 2019. During 2020, one activity has been organized in Rome by the Council of Notaries of the European Union.

Information on the number of training activities developed by the National Bar Council was not provided either.

f) Obligation to report suspicious transactions

According to article 35, the obliged parties, before carrying out the operation, shall send without delay to the FIU a report of suspicious transaction when they know, suspect or have reasonable grounds to suspect that money laundering or terrorist financing operations are being or have been carried out or attempted or that the funds, regardless of their amount, originate from criminal activity.

The suspicion is inferred from the characteristics, size, nature of the operations, their connection or splitting up or from any other circumstance known, by reason of the functions exercised, also taking into account the economic capacity and the activity carried out by the person to whom it refers, on the basis of the elements acquired in accordance with the AML Decree.

The frequent or unjustified recourse to cash transactions and, in particular, the withdrawal or payment in cash of amounts inconsistent with the risk profile of the customer, constitutes an element of suspicion. The FIU issues and periodically updates anomaly indicators in order to facilitate the identification of suspicious transactions.

If the elements of suspicion are present, the obliged parties shall not carry out the transaction until they have reported the suspicious transaction. This is without prejudice to cases in which the operation must be carried out because there is a legal obligation to receive the document or in cases in which the execution of the operation cannot be postponed in view of normal operations or in cases in which the postponement of the operation may hinder the investigation. In such cases, the obliged parties, after having received the act or performed the operation, shall immediately inform the FIU.

The FIU issues instructions for the detection and reporting of suspicious transactions in order to ensure timeliness, completeness and confidentiality.

Lawyers shall not be obliged to report a suspicious transaction with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings.

A special rule is envisaged for notaries. In fact, generally the presence of the suspicious elements the obliged parties do not carry out the transaction until they have reported the suspicious transaction. But when there is a legal obligation to receive the deed – and this is the rule for notaries - the obliged parties, after having received the act or performed the operation, immediately inform the Financial Intelligence Unit.

Article 37 of the Decree states that professionals shall transmit the report on a transaction suspicions directly to the FIU or to self-regulatory bodies. Self-regulatory bodies, on receiving a report of a suspicious transaction from their members, shall without delay forward it in full to the FIU, without the name of the reporter.

Regarding lawyers, the transmission of suspicious transaction reports to the FIU is carried out electronically, through the INFOSTAT-UIF Internet portal available on the FIU website, once the reporting lawyer is registred and authorised.

Specific instructions are available on the website. The reporting lawyer must communicate, inter alia, the data of the reporting person; the data of the reported subject and, if the customer operates on behalf of third parties, also the data of the latter; information on the transaction being reported and the reasons for the suspicion.

In the case of notaries, they have to prepare and send a report for a suspicious transaction through the Nation Chamber of Notaries.

Inside the operational flaw the sender is made anonymous by the CNN (Nation Chamber of Notaries) which acts as intermediary within the STR system (the STR is encrypted in the process from the notary to FIU and vice versa).

The Italian notaries can access to the IT system for STRs directly from the notarial intranet where a specific application will allow them to fill a file XML in compliance with the FIU technical rules.

This application, through some structured masks, guides the notary in the correct filling of the required data in order to finalise a STR and save it in a XMl file. In order to guarantee the data protection the XML file should be signed by the notary using the software for the digital signature provided by the CNN.

The tools lawyers can use for detecting suspicious transactions are essentially four:

- the principles contained in the Anti-Money Laundering Law;

- the Anomaly Indicators contained in the Ministerial Decree of 16 April 2010 (the so-called Ministerial Decree of Justice);
- the Anomaly Schemes prepared by the FIU in relation to various cases
- the technical rules of national self-regulatory bodies, to be issued pursuant to art. 11 of the Anti-Money Laundering Law.

Within the period 2019-2020, the STRs submitted by both sectors were the following:

Reporting entity	**2019**	**2020**
Notaries	4.630	3.329
Lawyers	66	39

Civil Law Notaries in Italy, have submitted about 5% of the total STRs coming out from the non-financial sector (almost 100.000), even if the share referring to companies is not available.

During the NFG meeting, the concept of "suspicious transaction" has been raised by lawyers and falls within the debate on the nature of suspicious action and related lack of evidence. Scholars argue that without evidence no report should be filled. On the other hand, the evidence would lodge a complaint.

Participants also highlighted that Lawyers are entrenched in the legal principle which impedes the implementation of AML/CFT as expected in providing the Suspicious Transaction Reports. These issues hinder the cooperation between legal professions and AML/CFT Italian Authorities on one hand and the collaboration between legal professions on the other.

Lawyers also consider the FIU needs to stimulate the increase in the quality of the reports of obliged subjects, not only for those who have recently joined the system, but also for some large operators who, also following internal reorganisations of AML activities, showed a worsening reporting capacity.

Even the AML Decree states that the FIU informs the reporter, directly or through the self-regulatory bodies, of the outcome of the reports, by means of appropriate procedures to ensure confidentiality, participants in the NFG expressed no feedback is provided by the FIU to legal professionals. The communication to Self-Regulatory Bodies, reported in the Focus Group, seems not sufficient to increase the effectiveness of the AML/CFT system.

In addition, participants consider the role of Legal Professions Associations such as Notaries and Lawyers is not exploited as "intermediate bodies" providing assistance to professional involved and data certainty to FIU.

The lack of competency of legal professions in AML/CFT should be covered by adding the required expertise within the organisation of legal associations. In particular, a purpose-build capacity building programme should be funded for both legal professions.

A specialised expert team in AML/CFT assigned to both legal associations is a solution shared among the focus group participants that will increase the effectiveness of the AML/CFT system.

The centralisation system applied by notaries in Spain, which inspired the LIGHT has been conformed as the good practice to be followed. In particular, the incorporation of an OCP by the notarial sector should play a crucial role in managing the relationship between professionals and FIU, which would greatly facilitate compliance with obligations, mainly allowing notaries to rely on the expertise of its members to analyze and report suspicious transactions to the FIU and ensuring the anonymity.

Regarding supervision, the current regulatory framework emphasises the role of self-regulatory bodies which, as representative bodies of professional categories, promote and monitor compliance with anti-money laundering obligations by professionals registered in their registers and lists and apply disciplinary sanctions for serious, repeated or systematic or multiple breaches of the obligations to which their members are subject under the AML Decree, and communicate annually to the Ministry of Economy and Finance and the Ministry of Justice the data concerning the number of disciplinary proceedings initiated or concluded by the territorial orders.

Consequently, the National Chamber of Notaries (CNN) is the Professional Body which acts for Notaries as Supervisory Body (and Self-regulation Body) and The Consiglio Nazionale Forense (CNF) is the Supervisory Body for Lawyers.

As informed by the participants in the NFG, during 2019-2020 no supervisions have been carried out by the aforementioned Supervisory Bodies and no disciplinary measures have been taken against their respective members.

Nevertheless, during the NFG meeting, participants have addressed that the very critical point of the system, is the framework of economic sanctions for breaches of AML obligations, as elaborated by the Ministry of Economy and Finance (MEF) in 2017, which they consider inconsistent with the requirements of EU and national law and reaches such high levels as to be against all principles of proportionality and reasonableness, and not useful for the implementation of the AML project.

d. SPAIN

i. General Framework

In Spain, the principal laws and regulations applicable to legal professionals under Spanish law, are the following:

- Law 10/2010, of 28 April, on the prevention of money laundering and terrorist financing ("Law 10/2010").

- Royal Decree 304/2014, of 5 May, on the adoption of Regulation of Law 10/2010, of 28 April, on the prevention of money laundering and terrorist financing ("Royal Decree 304/2014").

Law 10/2010 implements in Spain the European Directives on AML. Law 10/2010 was amended by Royal Decree-law 11/2018, of 31 August, in order to implement Directive 2015/849, of 20 May 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

At present, Spanish Government is preparing an amendment of Spanish regulations in order to implement Directive 2018/843, which amends Directive 2015/849.

Pursuant to Article 2.1.n) of Law 10/2010, notaries are defined as obliged entities. They are obliged to comply with all the obligations generally laid down for regulated entities, without exception.

As allowed by article 27 of Law 10/2010, notaries have incorporated a Money Laundering Centralized Prevention Body (OCP) in the General Council of Notaries by the ORDER EHA/2963/2005, of 20 September.

Some of the obligations applicable to notaries fall directly on the notary and others are carried out on behalf of the notary by the OCP:

Obligations executed directly by the notary

- Due Diligence Obligations
- Abstention from execution
- Non-disclosure
- Records keeping of the CDD information. Although the OCP provides a document digitization tool to facilitate compliance
- Detection of suspicious transactions

Obligations performed by the OCP on behalf of and in the name of the notaries

- Conducting the sectoral risk assessment
- Internal control obligations
- Analysis of suspicious transactions. The notary is involved in the analysis of the transaction in the initial phase, but the OCP subsequently analyses the transaction in greater depth with the tools at its disposal.
- Submittance of suspicious transactions reports to the FIU
- Attention to requests from authorities
- Training
- Supervision

In the case of lawyers, Article 2.1.ñ) of Law 10/2010 sets out the specific cases in which these professionals fall under the application of AML rules: "Lawyers, representatives at court and other independent professionals when they participate in the design, implementation or advice on activities on behalf of clients relating to the buying and selling of real state or business entities, the management of funds, securities or other assets, the opening or management of current, savings or securities accounts, the organization of contributions necessary for the creation, operation or management of companies or the creation, operation or management of trusts, companies or similar structures, or when acting on behalf of clients in any financial or real estate transaction".

Therefore, it is understood that other professional activities that lawyers may carry out, do not fall under AML regulations. For example, legal advice related to litigation, appearance before Courts or other legal advice related to different matters to those defined in that article.

However, it is worth mentioning that lawyers can also fall under the category defined in Article 2.1.o) of Law 10/2010, devoted to trust and company services providers:

"Persons who on a professional basis and in accordance with the specific rules applicable in each case provide the following services for the account of third parties: forming companies or other legal persons; acting as or arranging for another person to act as a director, a non-director secretary to the board or an external advisor of a company, a partner of a partnership or a similar position in relation to other legal persons;

providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement; acting as or arranging for another person to act as a trustee of a trust or similar legal arrangement, or acting as or arranging for another person to act as a shareholder for another person, other than a company listed on a regulated market of the European Union that is subject to disclosure requirements in conformity with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information".

Even though lawyers are not the only professionals that may carry out activities defined in Article 2.1.o) of Law 10/2010, they are deemed to fall under that category when performing any of these activities. For example, if a lawyer provides services consisting in acting for another person as director in a legal entity, they will fall under Article 2.1.o) of Law 10/2010.

During the NFG, lawyers were critical on the lack of clarity of Article 2.1.o), with special reference to the indeterminacy of the definition of lawyers as obligated subject. From their point of view the reference to *"for account of third parties"* is confusing. Some considers that it allows to include in this letter only the subjects who act as interposed persons, leaving aside other professionals, such as lawyers, who provide these services for clients who act on their own behalf; and others claim that the foregoing would imply emptying this section of content.

At the moment, no specific AML OCP has been incorporated in the case of lawyers, even though it has been requested for long to the competent authorities by the corresponding representative corporations of lawyers (CGAE-Consejo General de la Abogacía Española-Spanish Bar Council).

The need to promote the creation of a Centralized Prevention Body (OCP) for lawyers was also pointed out, which would have a very positive effect in safeguarding the professional secrecy and on compliance with obligations.

In this sense, several attending notaries point out that the action of its OCP makes it much easier for them to comply with their obligations to prevent money laundering, making special mention of the immediate resolution of inquiries by telephone and the establishment of compliance procedures that set protocols that clarify their performance.

ii. Main obligations

a) Conducting an overall risk assessment

According to article 32 of the Royal Decree 304/2014, the internal control procedures required of obliged entities shall be based on a prior risk analysis which shall be documented by the obliged entity.

The analysis shall identify and assess the obliged entity's risks by types of customers, countries or geographical areas, products, services, operations and distribution channels, taking into consideration variables such as the purpose of the business relationship, the level of customer assets, the volume of transactions and the regularity or duration of the business relationship.

This risk analysis shall be reviewed periodically and, in any event, whenever a significant change is verified that could influence the obliged entity's risk profile. A specific risk analysis must also be carried out and documented prior to the launch of a new product, the provision of a new service, the use of a new distribution channel or the use of a new technology by the obliged entity, and appropriate measures must be implemented to manage and mitigate the risks identified in the analysis.

In the case of notaries, as established in article 44 of the Royal Decree 304/2014, the OCP is in charge of carrying out the sectoral risk assessment.

As required by Recommendation 1, the OCP has drawn up a written risk assessment document for notarial sector, in which the risk exposure is determined and the risk elements, the variables influencing the risk and the grading criteria for risk locations are analyzed and assessed. The latest update is from December 2018.

Regarding lawyers, the sectoral risk assessment has not been conducted.

b) General due diligence requirements

Article 3 of the Law 10/2010 of 28 April 2010 on the prevention of money laundering and terrorist financing establishes the Customer due diligence requirements. It includes the following specific obligations:

- identifying the customer and checking its identity;
- identifying who the ultimate beneficial owner is and taking measures to check that person's identity;
- obtaining information on the purpose and intended nature of the business relationship; and
- conducting ongoing monitoring of the business relationship, including scrutinising transactions carried out during the relationship.

In the case of notaries, the OCP has designed and implemented common due diligence measures for the notarial sector, on the basis of the regulations and the risk assessment prepared by the OCP, which are binding. The Risk Based Approach is of particular importance as it establishes enhanced and simplified measures.

The OCP has published a catalogue of frequently asked questions for notaries with the most relevant topics in order to facilitate the fulfilment of their obligations.

In addition, there is a written enquiry system through the management platform developed by the OCP and an open telephone enquiry line. Since its creation, 13 notes or communications have been published on the most relevant topics.

The OCP has also drawn up catalogues of good practices for the proper fulfilment of notaries' obligations to prevent money laundering and the financing of terrorism, the latest of which are as follows:

- Best practice document on the involvement of trusts in notarial transactions.
- Document on good practice in the use of the notary's instrumental current account.
- Good practice document on the use of cryptoassets in notaries' offices.

Regarding lawyers, as mentioned above, the SRB is the so called “Consejo General de la Abogacía” (CGAE) – Spanish Bar Council. CGAE is not a “specific authority” or OCP for Money Laundering (ML) purposes, but -in general- the entity dealing with lawyers self-governance, professional rules, ethical issues and regulations, etc.

Notwithstanding the above, within CGAE -and since many time/years ago- a specific Sub-Commission has been created and is working to provide lawyers guidance, assistance and recommendations on ML/FT matters, but there is no common risk based approach to customer due diligence obligations applicable in lawyers sector.

In the documents issued by CGAE´s Sub-Commission there are, even they are not binding, many orientations and recommendations at this respect. In addition, the CGAE has also published a catalogue of frequently asked questions for lawyers with the most relevant topics in order to facilitate the fulfilment of their obligations.

Additionally, law firms (particularly those exceeding a certain size) have issued their specific RBA Internal Policies and Rules applicable to their CDD obligations.

Regarding the identification of the beneficial owners, the notary's office has a database of beneficial ownership (BODB) in which it collects information on the beneficial ownership of entities operating in Spain.

The information is obtained from the incorporation of the entities, the subsequent transfers of shares and other transactions involving a change of ownership or the creation of new shares which take place before notaries and from the declarations made by the grantors at the time of notarisation.

The information obtained in the incorporation, transfer of shares or other corporate operations (capital increases or reductions) provides the accredited information of the owner of the units or shares of the entities.

The information is also obtained in the due diligence carried out by the notary in each transaction in which he is involved and must be supported by reliable documents in cases where risk is detected.

The notarial BODB can be used by all other obliged parties to fulfil the obligation to identify and verify the identity of the beneficial owner as stipulated in article 9.6 of the Regulation of Law 10/2010.

In addition to the notarial BODB (mentioned above), according to legislation recently enacted-and when submitting and making the deposit of the annual accounts- Spanish corporations have to register/declare in the Mercantile Registry also the identification of its beneficial owners. Thus, a couple of years ago, another beneficial ownership database started to work, handled by the Central Mercantile Registry/Office.

During the NFG, participants concluded that, in practice, obliged persons have to identify beneficial owners following the procedures mentioned above. They also noted that under art. 8 of RD 304/2014, and for corporations/entities: "When there is no individual who owns or controls, directly or indirectly, more than 25 percent of the share capital or voting rights of the legal person, or who by other means exercises direct or indirect control in the legal person, the administrator(s) shall be deemed the beneficial owner(s)".

The identity of administrators of Spanish corporations has to be registered/declared in the Mercantile Registry.

Thus, for Spanish entities/corporations in principle, there would be no special problems/difficulties in order to identify beneficial owners, although these problems may arise/exist for non-Spanish entities and, particularly, for Anglo-Saxons Trusts for which, specific guidance and instructions -here attached- have been issued by SEPBLAC

c) Obligation to keep records

Pursuant to Article 25, obliged persons shall keep the documentation gathered for the compliance with the obligations under the Law for a minimum period of ten years.

In particular, obliged persons shall keep for its use in any investigation or analyses of possible money laundering or terrorist financing by the Executive Service or by other competent authorities:

a) Copy of the documents required under the customer due diligence measures for a minimum period of ten years from the end of the business relationship or the date of the transaction.

b) Original or evidentiary copy admissible in court proceedings, of the documents or records duly evidencing the transactions, their participants and the business relationships, for a minimum period of ten years from the date of the transaction or from the end of the business relationship.

Obliged persons shall store copies of the identification documents on optical, magnetic or computerized media to assure their integrity, the correct reading of the data, the impossibility of their manipulation and their proper conservation and localisation.

The record keeping system of the obliged persons shall ensure the proper management and availability of the documentation, both for internal control purposes and for responding to the requirements of the authorities in a timely manner.

d) Obligation to identify politically exposed persons

According to article 14, the obliged persons shall apply the enhanced measures of due diligence to the business relations or transactions of politically exposed persons.

In these cases, in addition to the normal due diligence measures, obliged persons must:

- Apply adequate risk management procedures in order to determine whether the customer or the beneficial owner is a politically exposed person. Such procedures shall be included in the express customer admission policy
- Obtain authorization from at least the immediate senior manager, in order to establish or maintain business relationships.
- Take adequate measures in order to determine the source of wealth and source of funds.
- Conduct permanent enhanced ongoing monitoring of the business relationship.

Obliged persons, in addition to the normal due diligence measures, must apply reasonable measures in order to determine whether the customer or the beneficial owner is a politically exposed person, which shall be understood to be the review of the information obtained in the due diligence process, in accordance with the risk factors present in each case.

In the case of notaries, the OCP has a database of Spanish politically exposed persons in which it collects information on the individuals who perform or have performed prominent public functions through an elective office, appointment or investiture in Spain. In order to exclude "false positives", the database includes the ID number or NIE.

For the identification of foreign politically exposed persons, they apply commercial databases the notaries have to query when conducting the CDD.

e) Implementation of internal control measures

Pursuant to article 26 of the Law, obliged subjects, including legal professionals, must apply specific measures on internal control, such as:

- Establish internal policies and procedures for the fulfilment of obligations. A procedures manual will be drawn up setting out the actions to be taken for the proper fulfilment of obligations.

- External review. The obliged persons will be subject to an external expert who will describe and assess the internal control measures.

- Training. Appropriate measures will be taken to ensure knowledge of the requirements of the Act.

- Appoint an AML Representative before SEPBLAC;

- Implement an Internal Control Body; and, where applicable, a technical unit for data processing and analysis; and

It is important to note that these obligations vary depending on the size, balance and employees of the corresponding obliged entities. Therefore, in the case of lawyers, only those firms which reach a specific size are obliged to implement an Internal Control Body or a technical unit, or to approve an AML Manual.

As an example, lawyers firms that employ fewer than 10 employees and whose annual turnover or total annual balance does not exceed of EUR 2 million, are exempted from obligations of carrying out an individual risk assessment; approving an AML Manual; implementing internal control bodies; submitting to an external audit; and training employees.

Within lawyers sector no common internal policies exist or are applied to comply with AML/CFT obligations. CGAE and SEPBLAC (FIU) have issued some non-binding papers/recommendations, but it is the responsibility of each particular/specific subject party (lawyer or law firm) to develop and put in place appropriate Internal Policies and measures to meet those obligations (always following a RBA and on a "tailor maid basis").

Regarding notaries, common internal control policies and procedures were developed by the OCP and documented in the AML/CFT Procedures Manual, for the application of the notaries. This Manual must be applied by all notaries for the proper fulfilment of their obligations.

In relation to training, the CGAE provides periodic training in the different Local Bars Associations. At present, training courses have been held in 15 Local Bars Associations.

Annual congresses and seminars are also organised exclusively on the money laundering prevention, with the participation of Specialists in the field, SEPBLAC, judges, prosecutors, armed forces personnel, tax inspectors, and so on participated on them discussing about the most topical issues and analysing regulatory changes.

Since the creation of the Sub-Commission for Money Laundering Prevention, the CGAE has held five congresses and four conferences dedicated to the prevention of money laundering, each lasting an average of two days.

It has also carried out face-to-face training in the different Local Bars, as well as preparing the guides and documents mentioned above.

As for notaries, compulsory training courses have been designed by the OCP for notaries and their employees. The following courses were available on the Training Portal in 2020:

- Risk indicators associated with money laundering.
- Prevention of basic money laundering (basic).
- Prevention of money laundering (expanded).

In addition, four specific courses, on a particular subject, were also available:

- New risk indicator on terrorist financing.
- Consultation of lists of Spanish and foreign PEPs, and subsequent notarial actions.
- Consultation of lists of frozen funds.
- Course on Simplified Legal Persons.

The OCP has also carried out face-to-face training in different Notarial Colleges. 256 notaries (during 2019), and 154 (during 2020) have received face-to-face training.

During the NFG lawyers pointed out that they hold meetings and courses on the subject every year but that the absence of an OCP makes action and planning difficult.

The notaries sector pointed out that its OCP is a very valuable instrument for the preparation of annual and continuous training plans, as well as for monitoring them.

Both sectors point to the lack of training by the authorities.

f) Obligation to report suspicious transactions

Obliged entities or individuals must report to the FIU any act or transaction, even the mere attempt, regarding which, following a special review, there is any indication or certainty that it bears a relation to money laundering or terrorist financing.

Particularly, this obligation refers to transactions that, with regard to the activities regarded as money laundering or terrorism financing, reveal an obvious inconsistency

with the nature, volume of activity or customer operating history, provided that the aforementioned special review does not provide any economic, professional or business justification for the execution of the transactions.

Lawyers are exempted with respect to the information that the lawyers receive from any of their clients or obtain on the latter when ascertaining the legal position for their client or performing their duty of representing that client in or concerning judicial proceedings, including advice on instituting or avoiding proceedings, irrespective of whether such information was received or obtained before, during or after such proceedings.

During the NFG lawyers pointed out that it would be desirable that this exception, aimed at protecting the professional secrecy to which the lawyers are subject under Spanish legislation, was further clarified. In practice, lawyers face serious difficulties to draw a line between privileged information and information to be disclosed in STRs.

Lawyers apply the Sample Catalogue of Risk Transactions for notaries, registrars, lawyers, auditors and other professionals published by Commission for the Prevention of Money Laundering and Monetary Offences, as the FIU has not published a specific risk guide in the activity of lawyers and notaries.

They do not have a specific mechanism to report suspicious transactions to the FIU. Thus, they submit the forms established by the FIU to this end for obliged entities/individuals in general, where they inform at least of the following:

- List and identification of the natural or legal persons taking part in the transaction and the nature of their participation.
- The activity which the natural or legal persons participating in transactions are known to engage in, and the congruence between this activity and the transactions made.
- A list of transactions and their dates stating their nature, the currency in which they were transacted, the amounts and place or places involved, their purpose and the means of payment or collection used.
- The steps taken by the institution or person covered by the Law 10/2010 to investigate the transactions being notified.
- A statement of all the circumstances of whatever kind giving rise to the suspicion or certainty of a link with money laundering, or evidencing the lack of economic, professional or business justification for the activities carried out.
- Any other data relevant to the prevention of money laundering or terrorist financing determined in the regulations.

In this connection, lawyers expressed during the NFG that it would be very helpful that Spanish lawyers had their own OCP with authorities in this regard, as it has been repeatedly requested by the CGAE.

As lawyers do not have an OCP, information in this regard is extracted from the annual reports published yearly by the FIU. According to the 2019 report (2020 is not yet available), 22 (twenty two) STRs were reported by lawyers.

SEPBLAC has also not published a specific risk guide in the activity of lawyers and notaries.

As for notaries, the reporting of suspicious transactions by notaries is carried out by the OCP in the name and on behalf of the notaries themselves.

Communications of operations may have different origins:

- From the OCP's analysis of transactions submitted by notaries in which risk indicators were present.
- From the analysis of transactions obtained directly from the Single Notarial Index (in which all transactions carried out before a notary are stored) by the OCP. These transactions are retrieved from the Single Index on the basis of certain risk factors that often cannot be detected by the notaries themselves (e.g. successive purchase and sale transactions, concatenated transactions with significant price differences, etc.).

The OCP has developed a document of risk indicators for the notarial sector, divided into four blocks:

- Subjective (related to the customer)
- Suspicious means of payment
- Plurality of operations
- Operations with illogical or unusual aspects

It has been included in the Manual of Procedures developed by the OCP available to notaries.

The Procedures Manual also sets out the procedure for examining and reporting suspicious money laundering or terrorist financing transactions, which is the following:

- The notary must check, when executing transactions, if there are risk indicators, that have been defined by the OCP.

- When the established indicators are met, the notary shall communicate to the OCP, through a secure computer application, the transaction including all the relevant documents of the transaction.

- The notary must fill in a form including the most important data of the transaction with the indicators that have given rise to the communication and with a brief explanation of the elements that have generated the communication.

- It may also happen that the transaction is not executed, either because the notary determines that it is strongly linked to money laundering or terrorist financing or because the grantor does not submit the requested documentation and there are suspicions that the transaction may be related to money laundering and terrorist financing. In such cases all documentation obtained shall be compiled and forwarded to the OCP by ordinary registered mail.

According to the information provided by the OCP, the number of STRs analysed and submitted by the notaries to the FIU in 2019 and 2020 is as follows:

DESCRIPTION	2019	2020
Files sent by notaries to the OCP	1.628	1.821
Files sent by notaries to the OCP analysed and archived	1.055	1.256
Files extracted from the Single Notarial Database	1.584	1.550
Files analysed and archived extracted from the Single Notarial Database	1.035	1.242
Files analysed and reported by the OCP to FIU	736	948
Public instruments included in OCP communications to FIU	1.658	2.337

During the NFG, it was raised by lawyers that SEPBLAC (FIU) is very willing to participate in the meetings they held, but is not very proactive in the matter. They have no feedback of the outcome of investigations arising from the STR submitted. There is a perception that SEPBLAC's supervisory function is in practice highly focused on the sanctioning aspect. This generates situations of mistrust when raising doubts or resolving difficulties and tends to reduce the effectiveness of the collaboration mechanisms with the supervisor. It would be desirable, in their opinion, that the supervisor also had a more collaborative perspective so as not to generate that feeling of mistrust towards establishing relationships or formulating consultations.

Notaries stated that every year they receive the qualification of their reports, which is unique for the whole sector as the reports are made centrally by the OCP, but it is very

generic and does not give much information about the needs of the recipients of the information.

There is some concern in the lawyers sector about the low number of communications, a fact that is attributed, among other reasons, to the lack of clarity that in many cases exists when applying professional secrecy to the operations in which it intervenes, the reduced number of lawyers who performs the activities subject to AML/CFT regulation and the lack of an OCP. Furthermore, the lack of feedback and closeness to the supervisor also contributes to discouraging them.

SEPBLAC (FIU) is the competent authority for the supervision of lawyers and notaries for the prevention of money laundering and terrorist financing.

In the case of notaries, the OCP is also assigned the role of monitoring compliance with established internal control procedures.

In 2019, OCP started a supervisory procedure establishing 5 phases in the process:

1. Collection of information on the status of notaries' offices.
2. Monitoring of the information available in the OCP.
3. Analysis of the information obtained and selection of notaries to be audited.
4. On-site audit carried out by the inspection of the various notarial associations.
5. Report preparation.

During 2019-2020, the FIU conducted inspections in 3 Law firms. Notaries were not inspected by the FIU in the same period.

In the NFG meeting, the lawyers sector pointed the virtues that an OCP would suppose in the field of supervision, especially in such a diverse sector and with so many obligated subjects.

The notaries sector indicated that the supervision carried out by its OCP has had very good results and that a new process is currently being developed. Mention is made of the lack of supervision of notaries in recent years, stating that, before the pandemic, SEPBLAC reported that several supervisions would be carried out, but that the events seem to have paralyzed or postponed the execution.