

NATIONAL-LEVEL CORPORATE ANTI-ABUSE MEASURES RELEVANT TO THE EU COMPANY LAW PACKAGE

Expert Questionnaire

Spain

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1) Anti-abuse mechanisms - do any of these exist in this country? If so, how do they work?

a. Disqualified Directors

i. Is there an official definition of “disqualified directors”? If so, what are the grounds for disqualification? In which law can this be found? (link to legal text(s))

Disqualified directors lack a specific and unified legal regime.

In Spain, the disqualification in this area refers to several things:

- exercise of any business activity (art. 13.2 Commercial Code).
- exercise as director of a company (art. 13.2 Commercial Code, art. 455.2.2º Insolvency Act, and art. 213 LSC).
- management of third parties' assets or the power of representation of any person (art. 455.2.2º Insolvency Act).

The legal concept of “disqualified director” exists in Spain; however, there is no legal or official definition. A director can be disqualified by means of three disqualification procedures, and the legal effect of this qualification (or disqualification) is the prohibition to act as director of a company (art. 213 LSC):

a) (Natural) persons disqualified in bankruptcy proceedings (2-15 years), in case of guilt for bankruptcy (art. 455.2.2º Insolvency Act):

- Insolvent debtor (entrepreneur).
- Directors of the insolvent debtor (or other representatives of a natural or legal person).
- Partners/Shareholders (in some specific cases, as happens to be with those shareholders with relevant stakes of capital or shareholders with unlimited liability -in partnerships-).

b) Persons disqualified in accordance with criminal law. Art. 213 LSC refers to "persons convicted for any manner of falsehood or for crimes against freedom, property, socio-economic order, public safety, or the administration of justice". However, it is necessary that the outcome of the criminal proceedings (i.e., the judgement resulting from the criminal procedure) explicitly imposes the penalty of special disqualification on the person, since corporate law cannot impose the penalty of disqualification.

The penalty of special disqualification (the length of which can vary from 3 months to 20 years) that affects the management of companies is regulated under arts. 40 and 45 of the Criminal Code. Nevertheless, it is quite striking that no penalty of disqualification is provided for any of the corporate crimes (arts. 290 et seq. Criminal Code), for the crime of disloyal management of third parties' assets (art. 252 Criminal Code), or for the crime of misappropriation (arts. 253-254 Criminal Code).

c) Persons disqualified (up to 10 years) for serious offenses under the legislation on money laundering (art. 56 of Act 10/2010, of April 28, on the prevention of money laundering and the financing of terrorism).

Besides the “disqualification” as such, under Spanish company law there are some legal provisions that ban/prohibit the possibility to act as a company’s director under a number of other grounds that have nothing to do with any previous felony, crime of improper conduct, but rather under grounds of - some sort of - assumption of some conflict of interest or lack of capacity due to that person’s condition or professional position (minors, judges, members of the government and other relevant public servants, etc. , see art. 213 LSC).

We assume this is something - so to say - “common” under other European laws. Since those are not cases of “disqualification” as such (in Spanish: *inhabilitado*), but cases of “incapacity” of “incompatibility” we do not address them. Cases of incapacity (that makes ineligible a person to be appointed as director) are public at the Civil Registry, but since they are not “disqualified” in a proper sense, we will not refer to the Civil Registry hereunder.

ii. Is there an official list of (current) disqualified directors? If so, where is it? (name and link)

There is no official list, registry or database of disqualified directors, centralized and organized, public and accessible. Data on ineligible administrators are scattered among the Central Registry of Convicts (for disqualifications coming from a criminal offence), the Insolvency Public Registry (being the information of this latter published at the Commercial Registry as well). This hinders the easy search for disqualification regarding any person. Currently, if any person needs to check out whether a person is disqualified, they have to search for that information in those three registries.

Disqualification due to insolvency law is public, as it must be registered in both the Commercial Registry and the Insolvency Public Registry (art. 457 Insolvency Act and art. 326 Regulation on the Commercial Registry, “RRM”). Therefore, it is possible to search for the information regarding a person or company easily (only in those cases of disqualification from insolvency law, i.e., coming from a judgement issued within the insolvency proceeding).

Apart from this, the Association of Registrars manages the Centralized Index of Disqualified Persons, an internal list of disqualified directors as a result of a guilt for bankruptcy, as it is provided by art. 61 bis RRM.

iii. Who has access to this list?

The Insolvency Public Registry is publicly accessible (articles 560.1 and 564 Insolvency Act). The information can be consulted online: <https://www.publicidadconcurzal.es/concurzal-web/afectado/buscar>.

But the data on the Central Registry of Convicts (since it includes those persons disqualified by a criminal offence) is only available for the concerned person (i.e., the disqualified director in the case of this study) apart from judges and prosecutors, as well as police authorities with prior judicial authorization (arts. 5 and 6 of Royal Decree 95/2009, of February 6, which regulates the Administrative records system to support the Justice Administration). The only way for a company to know if a person is not disqualified by criminal grounds is to ask him/her for a certificate for this Central Registry of Convicts.

As for the unofficial list of the Association of Registrars (Centralized Index of Disqualified Persons), only registrars can have access (however, this index or unofficial list refers to disqualified directors by means of a judgment within an insolvency proceeding).

b. Beneficial Owners

i. Where is the database of beneficial owners and which organization maintains it (link)

As we will mention below, the Council of Notaries has a database (BDTR), and the Association of Registrars has also a different database (RETIR: <https://sede.registradores.org/retir/>). Neither are publicly accessible.

ii. Are there any checks on the authenticity of beneficial owners or does the organisation depend on a “statutory declaration” or “affidavit” from the company directors?

As we will see in 3.c), both notaries and registrars have their own tool related to the beneficial owners.

*** Council of Notaries - BDTR:**

The Centralized Body for the Prevention of Money Laundering (OCP) of the General Council of Notaries created in 2012 a Database of Beneficial Owner of companies (BDTR), which has been in operation since May 2014. All the information comes from the Unique Electronic Notarial Index, which collects data from notarial deeds and other legal acts or transactions carried out before a notary in Spain that may affect the beneficial ownership of companies. These legal acts or transactions refer to not only incorporation of companies but other legal acts that are not registered at the Commercial Registry such as the transfer of shares / participations, etc. This Unique Electronic Notarial Index is the second most important database in Spain (after that of the Tax Administration).

Notaries verify (and contrast) the identity of the founders of companies and any other persons granting a deed through the beneficial ownership database. This verification is carried out by a notary (exercising public control functions) directly and immediately (personal interaction with the grantors of the deed) and it is reflected in a notarial public document. The beneficial owner database distinguishes between “proved ownership” and “declared ownership”. Proved ownership occurs when the title of ownership of the database comes directly from a notarial deed of a Spanish notary, that is, the information about the real owner results from the communication made by a notary who has intervened in the deed of company incorporation, capital increase or reduction or transfer of shares / participations. Declared ownership comes from the statement delivered by the representative in a previous action before a notary.

*** Association of Registrars - RETIR:**

In 2018 the Association of Registrars created a Registry of Beneficial Owners (RETIR). The information comes from the forms on beneficial ownership that must be filled out (by the legal representatives of the company) when depositing the annual accounts in the Commercial Registry.

iii. Updating of lists/databases

*** Council of Notaries - BDTR:**

The BDTR has identified the beneficial owner of more than 2.3 million legal persons, including companies and associations, foundations and political parties. That is around 80% of commercial companies and other types of non-corporate legal persons:

- more than 2 million private companies,
- about 126,000 joint-stock companies,
- and 210,000 associations, foundations, political parties or unions.

Notaries submit the information in this regard every 15 days. There is a double source of update. On the one hand, notaries send to the General Council of Notaries the information contained in all those deeds by which a legal person is formed, modified or extinguished, as well as directors' removal and appointment or transfer of shares ("proved beneficial ownership"). On the other hand, notaries send the information contained in the notarial deeds declaring beneficial ownership when it does not match the information that appears in the Database of Beneficial Owner, in order to complete, update or correct that information ("manifested beneficial ownership").

In practice, the notary checks the Real Owner Database (BDTR) and shows the information to the representative of the legal entity, who has to confirm whether that information is accurate or not. The notary writes in the affirmative or negative answer in the public deed. Should the information not match the notary would ask the representative to correct or update it in a separate document known as "deed of beneficial ownership". After that, the notary communicates the new data to the General Council of Notaries through the Unique Electronic Notarial Index. In this way, the database is permanently updated.

* Association of Registrars - RETIR:

The RETIR updates its database with the annual deposit of accounts. It is also possible to update the information at a different time, but in that case the initiative belongs to the company.

iv. Who has access to the beneficial ownership database? Does the general public have unrestricted access, restricted access or no access?

In Spain there is still no rule indicating who can access the database's information on beneficial ownership. The two entities in charge of these databases (Council of Notaries and Association of Registrars) have signed collaboration agreements with different authorities.

* Council of Notaries - BDTR:

The information available is accessible to notaries, and to authorities responsible for the fight against money laundering and tax fraud, such as the Executive Service of the Committee for the Prevention of Money Laundering and Monetary Offences (SEPBLAC); the judicial, fiscal and administrative authorities competent in the prevention of money laundering.

The BDTR is also available to other subjects provided for in Act 10/2010, 28th April, on prevention of money laundering, in case they have signed an agreement with the General Council of Notaries. The General Council of Notaries has signed several framework agreements with different business and professional associations, including the most important in the financial and insurance sectors, such as the Spanish Banking Association, the Spanish Confederation of Savings Banks, the National Union of Credit Cooperatives, the Spanish Union of Insurance and Reinsurance Entities, and the Association of Collective

Investment Institutions and Pension Funds. These framework agreements establish the terms and conditions for the use by these entities' associates of the BDTR in order to comply with their legal obligations to identify the beneficial owner in the prevention of money laundering. On the grounds of these framework agreements, the General Council of Notaries has also signed special agreements with the majority of the Banks and the main companies in these sectors.

The European Anti-Fraud Office (OLAF), of the European Commission, can also request information.

Since its creation, these subjects have submitted more than 3.5 million queries for information on beneficial owners.

* Association of Registrars - RETIR:

Access to the RETIR is restricted to those required by law to collaborate in the prevention of money laundering or the financing of terrorism. Access to RETIR requires a Collaboration Agreement with the Association of Registrars. The Association of Registrars has signed several agreements with the Court of Accounts, the Prosecutor's Office, police forces, the Bank of Spain, the National Securities Market Commission, the General Council of the Judiciary and other official bodies involved in the fight against money laundering.

The restriction is that all the information held by RETIR requires a "legitimate interest" on the part of the applicant to be provided, whilst the Commercial Registry is public, and the information can be obtained without any requirement (art. 23 Commercial Code).

c. Electronic identity (E-ID) scheme - is there a scheme registered with the European Commission, and if so, what eIDAS level of assurance does it have?

The Spanish ID card (DNIE) is an electronic identification scheme is registered with the European Commission and its level of assurance is "high".

2) Company registry – transparency, access, cost

a. Which organization maintains the company registry? (name and link)

The Commercial Registries are public bodies that are regulated by the Ministry of Justice.

Commercial Registries are established in every provincial capital (50) and the competence of each Register extends to the territory of the corresponding province.

In addition, there are Commercial Registries in some major cities that are not provincial capitals or in territorial units that are not a province, such as some islands.

Registrars are public officials (and qualified lawyers, just like a notary).

b. To what extent is the registry digitalized? Can company foundations/registrations and reporting be carried out fully online/digitally?

Currently, incorporation deeds can be submitted online to the Commercial Registry, as well as to labor and tax authorities. As for the submission of information by companies, digital

tools are also used. The annual accounts can be submitted online as well (art. 366.2 RRM, on electronic submission of the accounts).

It is also possible to electronically legalize the minutes' books of general meetings of members/shareholders and other collegiate bodies (as the board of directors), as well as the registration book of shareholders/members, and the registration book of nominative shares (art. 18 of Act 14/2013, of September 27).

For the digital foundation process, see question 3 below.

All the information registered in Commercial Registries is accessible online to any applicant. But there are some limits on the search features, which are restricted to company name or company directors. The main digital tools for company reporting information to the applicant are the following:

- Central Commercial Registry: informative notes, with summarized information.
- Official Gazette of the Commercial Registry (BORME), in electronic version since 2009.
- Provincial Commercial Registries: they can issue online (upon request) notes and certifications on companies (legal) providing information on the foundation process – including articles of association- and on the whole company's life-cycle (capital increases and decreases, extraordinary transactions, amendment of articles of association) as well as on some others relevant issues (directors' identity, appointment and removal, deposited annual accounts).

c. Are bulk downloads of the entire list of registered companies possible?

As "bulk downloads" means the possibility to have access to all the limited liability companies, our system does not provide for that option.

However, it is possible to download specific information from the Commercial Registry quite easily regarding basic/elementary aspects of companies (asking for a so-called "informative note" on one specific company that will provide for: company name, company identification number, list of internet domains, company address, corporate purpose, capital, representation (directors and others), registration data, special situations, and last available account deposit.

Continuous follow-up can also be requested (regarding registered information of a company) for a time period of 30 days.

d. Does the registry have search features beyond the name of the company or person (e.g. by sector or employee size)

The searching possibilities are limited, as we have stated above. It is possible to search for companies (through company name or company identification number), directors or other representatives (through full name or ID).

There are no other search features, i.e. by sector.

e. What is the typical cost of downloading a document from the registry?

The costs are established by legal tariffs or prices. The costs for obtaining information are regulated in Decree 757/1973, of March 29, which approves the Commercial Registrars Tariff, to be revised as a result of the transposition of Directive 2019/1151.

The costs are not very high, singularly considered. However, it could be relevant for big searches. Each access to the basic information of a company costs around 4 euros, apart from registrar fees (2 euros). Each Registry charges between 0,60 and 2 euros for information on each registry entry/inscription to be provided.

These are examples (published at the Central Mercantile Registry web):

- Information on incorporated companies (art. 379 a) R.R.M: General data, directors, proxies, annual accounts, corporate web: Datos generales, administradores, apoderados, depósito de cuentas, dominios y Web corporativa (sede electrónica) inscritos en el Registro Mercantil correspondiente: 3,304566 €
- Contents of those legal acts incorporated and published on the Gazzete of the Mercantile Registry (arts 9 y 379 c) RRM and art. 2 R.D 1979/2008 de 28 de Noviembre): 1,502530 €
- Search for directors/proxies: 1,803036 €
- Information on deposit of merger's, division's drafts, etc.: 1,803036 €

f. Is there information on employment levels beyond what is contained in annual accounts?

The Spanish Commercial Registry does not publish specific information on the number of workers in companies or other issues related to employment. However, this information is provided as part of the annual accounts.

g. Information on European company forms and EU reorganizations (CBM) - is a search possible for companies with the SE legal form or companies reorganized through a CBM?

There is no specific information. European company forms (European Company, European Cooperative Society, European Economic Interest Group) domiciled in Spain must be registered in the Spanish Commercial Registry, as well as cross-border structural changes when the resulting company is domiciled in Spain.

The European Cooperative Society domiciled Spain must be registered also in the Cooperatives Registry. As a result, access to information is public, with the same rules applicable to national companies.

3) Firm foundations

a. What authority or organization is responsible for registering new companies?

The Provincial Commercial Registry of the company's registered office (statutory address).

As mentioned before, Commercial Registries are public bodies that depend on the Ministry of Justice.

Commercial Registries are established in all provincial capitals (50) and each Registry's competence extends to the whole province. In addition, there are Commercial Registries in some major cities that are not provincial capitals or in territorial units that are not a province, such as some islands.

b. What are the steps needed to found and register a new company? To what extent can these happen digitally?

In Spain there is a double preventive control of legality. First by the notary, and later by the Commercial Registry.

Before registration in the Commercial Registry, the public deed of formation granted by the founders before a notary is mandatory. Afterwards, the registrar controls the formal compliance of the deed with Spanish Company Law. Like registrars, notaries are also public officials.

Digital tools for company foundation:

In 2003 a new “sub-type” of LLC (“Sociedad Limitada Nueva Empresa” (SLNE) was created, introducing the possibility of “on-line” formation of the SLNE. This was approved in the European context of “simplification of company law”.

SLNE has not been very successful (for other reasons than the on-line formation), and since the on-line formation was extended to all LLC (in 2006) the SLNE has decreased (almost disappeared).

However, the online formation is not 100% online since the physical presence (of the founders) before a notary is required. Of course, when the Digitalization Directive enters into force, this requirement (physical presence) will disappear. As far as we know, the notaries are very advanced in moving to a fully-online procedure.

The main instrument of formation is the DUE (Documento Único Electrónico or Unique Electronic Document), which gathers in a single electronic source the information required by the different public administrations.

The on-line incorporation system is built around two (administrative) institutions:

- 1. CIRCE system** (Information Center and Business Creation Network). The Information and Creation Network Centre (CIRCE) simplifies the procedure for online company registration.
- 2. PAE:** Entrepreneur Support Center (*Punto de Atención al Emprendedor*, “PAE”), shall facilitate the on-line formation of LLC, furnishing information, advise, etc.

The PAE is available to the public through the CIRCE network.

- Online PAE (“virtual”) through CIRCE network.

- Physical PAE (i.e, private or public institutions like chambers of commerce, bar associations and some others; information available on CIRCE as well).

PREVIOUS STEP: TO OBTAIN A CORPORATE NAME CERTIFICATE

- This is issued by the Central Mercantile Registry and asserts that the corporate name (requested by the founders) is not being used by any other company (“negative certificate”). Arts. 409 - 411 RRM. <https://www.rmc.es/privado/CertificacionesDenominaciones.aspx>

FIRST STEP: TO FILL OUT THE DUE: The DUE is filled out through a PAE (“virtual” or “physical”).

- The DUE is obtained by entering several data items (name of the company, identity of partners, amount of capital, nominal value of shares, etc.).

- The DUE is sent, simultaneously, to several Public Administrations in order to avoid filling out and presenting (physically) several documents at different locations and offices.

- A large number of documents may be requested and obtained electronically thanks to the DUE: census declaration, taxes, Social Security affiliation, application for trade name registration, etc.
- This electronic system has reduced to one (the DUE) compared to the former system involving up to 15 (!) application forms that the founders had fill out (for several administrations)
 - Once the DUE is filled out and sent, an appointment with the Notary to grant the Deed is set up (the DUE connects with the “electronic notarial agenda”).

- This appointment is fixed within the next following 12 (working) hours.

SECOND STEP: The founders must appear before the Notary to grant/execute the deed

- Immediately afterwards, the Notary will send electronically, through the CIRCE network a copy of the deed (the “original” deed remains in paper form in the Notary’s file):
1. to the Tax General Administration to get a (provisional) NIF (Tax Identification Number);
 2. to the Tax Local Administration (and other local administrations) to settle taxes, ask for opening permissions, etc.;
 3. to the Mercantile Register (province of the registered office).

THIRD STEP: Registration at the Commercial Registry

(Option A.) Incorporation **with templates** of articles of association:

- The Registrar will receive through the CIRCE network the electronic deed (together with the provisional NIF and the certificate of taxes’ settlement).

- The deed must be registered within the next following 6 hours and a certification of the filing/inscription sent back to the CIRCE the same day of the filing.

- The Registrar will ask for the definitive NIF to the Tax Administration through the CIRCE network.

(Option B). Incorporation with **NO templates** of articles of association

- “Two inscriptions” at the Registry:

- (1) A provisional one, within the **following 6 hours** regarding (only): corporate name, domicile, corporate purpose, capital and management body (type). The LLC is considered a legal person from that moment on.

- (2) The final registering (**ordinary**): **15 days**. Afterwards, the Registrar will ask for the definitive NIF to the Tax Administration through the CIRCE network

c. What checks (if any) are done on the authenticity of documents, identity of founders, record of founders (e.g. disqualification as directors) and beneficial owners

i. By notaries

The Notary checks on the following items/requisites:

- Identity, capacity, and free will of founders.
- Company’s name, purpose, evidence of capital contributions, articles of association, etc. (i.e., that the company is formed according to the legal requirements of the type –SRL, SA, etc.), as well as the disqualification of directors as a consequence of insolvency proceedings.
- Disqualification of directors: the notary requires a statement from the grantors of the deed on whether the appointees are affected by any legal cause of disqualification and includes that declaration in the deed. However, notaries do not carry out a verification of the veracity of that statement.

Beneficial owner (anti-abuse prevention): thanks to a tool created by the General Council of Notaries in 2005, the Centralized Body for the Prevention of Money Laundering (OCP, acronym in Spanish). The OCP is based on a Unique Electronic Notarial Index, which is a large database that electronically stores and classifies the content of all public deeds and other acts granted by the almost 3,000 Spanish notaries since 2004. It contains approximately 120 million documents in a standardized format.

The OCP collaborates with the Executive Service of the Committee for the Prevention of Money Laundering and Monetary Offences (SEPBLAC), the highest Spanish authority in the fight against money laundering, as well as with police and judicial authorities, which it informs about any operation that is suspicious, and also receives requests on a daily basis for information from these public authorities.

Apart from this, the OCP has created a Beneficial Owner Database (BDTR, Spanish acronym), with the information contained in the Unique Electronic Notary Index (see

question 1.b). With this tool, Notaries carry out a “know your customer” due diligence and evaluate risk factors in the incorporation, and eventually do not authorize the deed if there is suspicion of money laundering. In company foundations, if any shareholder or designated director is a legal person, the notary checks the identity of its real owner. And every time a representative of the company appears before a notary, the notary checks the beneficial owner database and confirms with the representative that it is still correct or modifies it if it no longer corresponds to reality.

The information is recorded by each of the existing notaries in Spain on the basis of a codified structure of around 350 types of legal acts authorized by notaries. Thanks to cross-analysis of the data, it is easier to detect money laundering operations. An isolated analysis of acts carried out before different notaries, on different dates and places, could go undetected by a single notary. Any complaint to the authorities such as SEPBLANC is made by the OCP, after evaluating the consistency of the reports sent by notaries.

The Council of the European Union has recognized and used as a model the action taken by the Centralized Organization for the Prevention of Money Laundering in “The Manual of Good Practices in its Fight against Financial Crime”, with particular interest in the use of technology in the fight against this sophisticated crime.

Other international recognitions include that of the Financial Action Task Force (FATF) (2014 and 2019). <https://www.notariado.org/liferay/web/notariado/prevencion-del-blanqueo-de-capitales>

ii. By registration authority

The Commercial Registrar checks out (again, i.e., we have a double check) the legality of the corporate deed: company’s name and purpose, content of the articles of association, etc. Should any requirement be missed, the registrar rejects the registration of the company.

Regarding the disqualification of directors, before registering their appointment, the registrar must consult the Centralized Index of Disqualified Persons carried out by the Association of Registrars according to Insolvency Act, in order to check whether the director is disqualified as a result of guilt for a bankruptcy, as provided by art. 61 bis Regulation of Commercial Registry (RRM).

The registrar also checks the beneficial owner for anti-abuse prevention:
--- in 2015, the Anti-Money Laundering Registry Centre (CRAB) was created. It leads the collaboration of the registrars with the judicial, police and administrative authorities, responsible for the prevention and repression of money laundering.

--- in 2018 the Association of Registrars created a Registry of Beneficial Owners (RETIR, Spanish acronym) (see question 1.b).

(<https://sede.registradores.org/retir/>)

iii. By “facilitator” companies (foundation agents)

“Foundation agents” do not have a specific legal regime in Spain. For this reason, their possible role is more one of advice than one of control.

4) Cross-border Mergers (CBMs)

a. Please briefly describe the process for CBMs

The procedure for a CBM under the LME (Structural Changes Act 3/2009) correlates broadly with that of a domestic merger. However, the protection for minority shareholders, creditors, debenture holders and employee representatives in cross-border mergers is different from that of a domestic merger.

1. Draft terms of a cross-border merger. Drafted by the management bodies, deposited at the Commercial Registry and published in BORME; draft terms to be made available to shareholders, debenture holders, holders of special rights and employee representatives upon calling the general meeting (“GM”) pursuant art. 39.1 LME.

2. Management report. Explaining and substantiating the legal and financial aspects of the CBM with specific mention of the share exchange ratio and the implications of the merger for the shareholders, creditors and employees (arts. 33 and 60 LME). If the management body of the company receives an opinion from employees on the management report: annexed to the report (art. 60.2 LME).

3. Expert’s report. Auditing: justification of the exchange ratio and methods used; identification of possible valuation problems, etc. (art. 34.4 LME). Not necessary (art. 34.5, 49.1.2º and 50.1 LME). Must be made available to shareholders, debenture holders, holders of special rights and employee representatives at the time of calling the GM (art. 39.1 LME).

4. Merger balance sheet. It will be made available to shareholders, debenture holders, holders of special rights and employee representatives at the time of calling the general shareholders’ meeting (art. 39.1 LME).

5. General shareholders’ meeting. Calling prior to one month (art. 40.2 LME). Vote of 2/3 of the voting capital present at the meeting unless the company is a joint-stock company or limited partnership by shares and at least 50 per cent of the share capital is present (simple majority). Approval by the GM will not be required if one of the companies involved is the direct holder of all share capital in the company which is to be taken over (Art. 49.1.4. LME).

6. Registration, publication and effectiveness of the CBM.

The merged company must submit the draft merger terms (no more than six months old) and shareholders’ approval to the Commercial Registry.

The Commercial Registry is responsible for verifying procedures and formalities according to the Spanish regulation and will issue a certificate of legality for the cross-border merger (Arts. 64 and 65.1 LME).

The CBM will be effective upon registration of the resulting company with the competent Commercial Registry (art. 46.1 LME). The transferring companies will be dissolved (art. 66.3 LME).

In cases where employee participation is required according to Act 31/2006 of 18 October on employee involvement in European Companies and Cooperatives, the merger will not be effective until an employee participation agreement (or submission to the subsidiary provisions of 31/2006 Act on employee participation) has been presented to the Commercial Registry.

b. Which authority is responsible for the pre-merger certificate (outbound CBMs), which authority is responsible for approving the merger (inbound CBMs)? (name and link)

Although the legality of the merger is controlled by the notary, the pre-merger certificate is issued by the commercial registrar. Both authorities control all the formal requirements that the Law requires to be stated in the deed.

The Commercial Registry is the authority responsible for the pre-merger certificate (art. 64 LME), it is responsible for checking whether the necessary procedures have been followed by the Spanish company or companies involved in the merger.

Plus, the Commercial Registry is the authority responsible for approving the merger in case the resulting company would be Spanish (art. 65 LME), after verifying all legal requirements (art. 65 LME), including the fulfilment of requirements on worker participation (for European Companies and Cooperatives).

c. What personnel capacity/qualifications does the authority/ies listed above (organization(s) granting the pre-merger certificate + approving merger) have?

In Spain there are around 140 commercial registrars, in charge of 62 Provincial Commercial Registries, and a Central Commercial Registry, for more than three million three hundred thousand registered companies and around 500,000 annual registrations.

The function of the commercial registrar is limited to accepting or denying the registration of the documents that are presented in the Registry for publication, based on the documents themselves and previous registry entries. They carry out a formal control, without personal interaction with the interested parties.

The legitimizing effects of registration in Spain are based on the quality of the prior information necessary for registration, obtained through the legal requirement of a notarial public document, which ensures the identity of the grantors of the deed, their capacity and legitimacy, the provision of free and informed consent, and anti-money laundering control.

d. What (if any) anti-abuse checks are made?

- i. Purpose of reorganization**
- ii. Background check on directors checks on the database of disqualified**
- iii. Identity of beneficial owners**
- iv. Worker I/C/P arrangements**

There is no vetting on the CBM on grounds of abuse (currently). However, currently the authority is the Registrar for CBMs (specially arts. 63-65 LME):

- The Commercial Registry is responsible for verifying procedures and formalities according to the Spanish regulation and will issue a certificate of legality for the CBM (arts. 64 and 65.1 LME).

- The CBM will be effective upon registration of the resulting company with the competent Commercial Registry (art. 46.1 LME). The transferring companies will proceed to cancellation (art. 66.3 LME).

- In cases where employee participation is required according to Act 31/2006 of 18 October on employee involvement in European Companies and Cooperatives, the merger will not be effective until an employee participation agreement (or submission to the subsidiary provisions of EIL) has been presented to the Commercial Registry.