

SPAIN

Moderate enforcement

2.0% of global exports

Investigations and cases

In the period 2016-2019, Spain opened 11 investigations, commenced eight cases and concluded one case with sanctions.

Following money laundering investigations into the **Banco de Madrid**, the Anti-Corruption Prosecutor's Office charged energy company **Duro Felguera** in 2018, along with some of its top executives, with crimes of international corruption and money laundering. The charges concern allegations that the company paid over US\$105 million in bribes to a senior Venezuelan official in exchange for contracts to build the Termocentro energy plant, worth US\$1.5 billion.⁶

In October 2019, Spain's High Court charged construction company **Fomento de Construcciones y Contratas (FCC)** and related subsidiaries with foreign bribery and money laundering in relation to a corruption scheme in Panama orchestrated by the Brazilian company Odebrecht. Around €82 million (US\$96 million), stemming from inflated construction costs, were allegedly paid in bribes to Panamanian public officials in exchange for contracts to build underground rail lines and a hospital – including allegedly to a proxy of former President Ricardo

Martinelli.⁷ According to the charges, FCC had no internal compliance mechanism designed to prevent bribe payments.⁸ Andorra's investigators have noted that other infrastructure projects in Costa Rica, El Salvador, Nicaragua and Panama, worth €434 million (US\$509 million), may also have been part of this corruption scheme.⁹

Spain gets serious: Defex on trial

Deals in Angola, Cameroon and Saudi Arabia involving **Defex**, the majority state-owned arms manufacturer were the target of prosecutions initiated in 2019 and 2020. These resulted from an investigation that started in 2014 triggered, according to *El País*, by a warning in 2012 from Luxembourg authorities to Spanish prosecutors regarding a suspicious money transfer, revealing suspect operations in Egypt and several South American, Asian and Gulf countries.¹

As of 2019, 27 people were indicted and on trial relating to Defex deals in Angola.² A US\$153 million contract for the sale of police equipment to Angola reportedly involved heavily padded invoices, with the extra money allegedly shared out among Angolan government workers and Defex executives.³ Two-thirds of the contract amount was reportedly used for bribes.⁴ In September 2019, the Spanish Anti-Corruption Prosecutor indicted three individuals for alleged corruption in obtaining security and defence contracts in Cameroon worth US\$100 million.⁵

According to media reports, the Saudi Arabia investigation began in 2015 and related to allegations that the company secured contracts between 1991 and 2016 by paying more than US\$100 million in bribes to Saudi officials.

¹ https://english.elpais.com/elpais/2018/10/24/inenglish/1540364892_173612.html

² <https://www.occrp.org/en/daily/9326-spanish-magistrate-accuses-state-owned-agency-of-corruption>; <https://www.lainformacion.com/empresas/la-justicia-acorralla-ahora-a-defex-en-el-flanco-de-la-venta-de-armas-a-arabia-saudi/6494212/>

³ https://english.elpais.com/elpais/2018/10/24/inenglish/1540364892_173612.html

⁴ https://elpais.com/politica/2018/03/27/actualidad/1522159729_243293.html

⁵ <https://www.tellerreport.com/news/2019-09-12---anti-corruption-calls-for-59-years-in-jail-for-corrupt-businesses-of-the-public-company-defex-in-cameroon-.SyWESguLB.html>; <https://diario16.com/el-caso-defex-de-la-venta-de-armas-a-camerun-deja-a-espana-como-un-pais-amigo-de-satrapas-y-corruptos/>

⁶ <https://www.elcomercio.es/economia/expresidente-duro-felguera-20180216140108-nt.html>

⁷ <http://www.poderjudicial.es/cgpi/en/Judiciary/National-High-Court/Judicial-News/El-juez-imputa-a-FCC-por-el-pago-de-82-millones-de-euros-de-comisiones-por-las-obras-del-metro-de-Panama> <https://www.newsroompanama.com/business/spanish-company-indicted-for-91-million-bribes-to-martinelli-frontman>

⁸ https://elpais.com/economia/2019/10/30/actualidad/1572438853_383908.html

⁹ https://elpais.com/economia/2019/06/13/actualidad/1560437231_378056.html

These were reportedly paid through fictitious contracts, shell companies and bank accounts in the Bahamas, the Cayman Islands, the Isle of Man, Liechtenstein, Panama, Switzerland, the British Virgin Islands, the United States (Delaware) and Saudi Arabia itself.¹⁰ In January 2020, it was reported that a prosecutor had brought charges against eight individuals and four companies in connection with the case.¹¹

Defex's dealings in Brazil and Egypt are also reportedly still under investigation by Spanish authorities.¹² In September 2017, the Spanish Cabinet approved Defex's voluntary dissolution, as the company could no longer operate in view of the proceedings underway.¹³

Following the long-running *Operation Lezo* investigations, the former president of the region of Madrid, Ignacio González, was charged, in November 2019, for his role in irregularities in the acquisition of Brazilian company **Emissão** by state-owned **Canal de Isabel II**. He is alleged to have received US\$1.8 million from the deal, worth US\$31 million. The arrangement included a substantial surcharge for the Brazilian company and led to losses of more than US\$6 million to Madrid's coffers. A Uruguayan company called **Soluciones Andinas del Agua** was allegedly used as an intermediary for the deal, and four other individuals charged were found to have received US\$900,000

each. Employees of the Brazilian company were also said to be involved in the fraudulent deal.¹⁴

Since 2018, Spanish prosecutors have reportedly been investigating possible international corruption in connection with a Saudi Arabian contract to construct the high-speed AVE train link from Medina to Mecca, won by a consortium of Spanish companies led by multinational **OHL**.¹⁵ According to media reports, the prosecutors have looked into intermediaries affiliated with former King Juan Carlos and into companies that benefitted from the contracts.¹⁶ In June 2020, Spain's High Court initiated an investigation into the former king's involvement,¹⁷ but the Spanish Congress has rejected a congressional inquiry into his role in the deal.¹⁸ Questions have also been raised about preferential diplomatic treatment given to Saudi Arabia during the period of the former king's rule.¹⁹ In Switzerland, the Attorney-General of Geneva is reportedly investigating allegations of possible money laundering relating to a reported US\$100 million payment made by the Saudi government into a Swiss bank account of former King Juan Carlos, via a Panamanian foundation's Swiss bank account. The investigation is reportedly looking into whether a subsequent payment from that account was related to the AVE train contract.²⁰

The Spanish company **Grup Maritim TCB**, a Barcelona port operations company, is under investigation by Spanish and Guatemalan authorities concerning allegations of bribes paid to

¹⁰ https://elpais.com/politica/2018/10/23/actualidad/1540317811_490814.html

¹¹ <https://www.occrp.org/en/daily/11415-spain-hefty-sentences-sought-for-graft-in-saudi-arms-deals>; <https://www.tellerreport.com/news/2020-01-09---anticorruption-reveals-that-spain-has-been-paying-bribes-in-saudi-arabia-for-25-years-.rkBhSZNx8.html>

¹² https://elpais.com/politica/2018/10/28/actualidad/1540750783_414398.html; <https://www.occrp.org/en/daily/11415-spain-hefty-sentences-sought-for-graft-in-saudi-arms-deals>; <https://www.euroweeklynews.com/2020/01/14/arms-to-saudis-corruption-scheme-in-spain-netted-100-million/>

¹³ https://english.elpais.com/elpais/2018/10/24/inenglish/1540364892_173612.html

¹⁴ https://elpais.com/politica/2019/11/18/actualidad/1574073319_460889.html

¹⁵ <https://elcierredigital.com/investigacion/913174220/fiscalia-busca-empresas-espanolas-pagaron-comisiones-AVE-meca.html>. The consortium is made up of 12 Spanish companies: Adif, Cobra, Consultrans, Copasa, Dimetronic, Imathia, Inabensa, Ineco, Indra, OHL, Renfe and Talgo, <https://elcierredigital.com/investigacion/913174220/fiscalia-busca-empresas-espanolas-pagaron-comisiones-AVE-meca.html>

¹⁶ <https://www.thelocal.es/20190913/prosecutors-question-ex-mistress-of-spains-former-king-over-saudi-train-scandal>; <https://www.thetimes.co.uk/article/lover-of-spain-s-former-king-juan-carlos-set-to-face-fraud-office-questioning-jkr9xv5vs>

¹⁷ <https://elpais.com/espana/2020-06-08/la-fiscalia-del-supremo-investiga-el-papel-del-rey-juan-carlos-en-el-ave-de-la-meca.html>; <https://www.voanews.com/europe/spaniards-protest-against-former-king-amid-corruption-allegations>

¹⁸ <https://english.elpais.com/politics/2020-03-11/spanish-congress-refuses-to-investigate-former-king-juan-carlos-for-alleged-irregular-donation.html>

¹⁹ <https://www.tellerreport.com/news/2020-03-08---spain--former-king-juan-carlos-suspected-of-corruption-by-swiss-justice-.HjEXM0DMSL.html>

²⁰ <https://english.elpais.com/international/2020-04-05/adel-al-jubeir-the-saudi-diplomat-who-endorsed-the-100m-donation-to-spains-king-juan-carlos.html>; <http://www.rfi.fr/en/wires/20200316-spanish-king-distances-himself-scandal-hit-father>

the former president and vice president of Guatemala and other senior government officials to secure a 25-year contract worth US\$255 million for the construction and operation of a new terminal in the Port of Quetzal.²¹ Allegedly, out of an agreed bribe of US\$30 million, approximately US\$12 million had been paid before the scheme was uncovered in 2016 by the International Commission against Impunity in Guatemala.²²

Spanish prosecutors are also investigating alleged bribes amounting to US\$3.5 million, paid by **Endesa**, the largest electric utility company in Spain, to Chilean politicians in exchange for permission to construct and operate a hydroelectric energy plant.²³ Endesa is majority-owned by the Italian utility company **Enel**.²⁴

In other jurisdictions, **Banco Santander** was fined €1 million (US\$1.1 million) in 2019 by the Norwegian Financial Supervisory Authority for violation of anti-money laundering laws. According to media reports, *Lava Jato* Taskforce investigators in Brazil suspect that **Santander Brasil** was one of the banks through which bribe payments were made.²⁵

Recent developments

In 2019, the Spanish Criminal Code was revised to transpose several EU Directives on economic crimes into the domestic legal framework.²⁶ Among other things, the code extends corporate criminal liability to the crime of embezzlement of public resources,

and therefore to legal entities that manage or are responsible for public resources.²⁷ Corporate criminal liability was introduced in 2010²⁸ and has already been recognised by the Supreme Court in a number of cases.²⁹ Amendments to the Criminal Code have also widened the legal definition of public official with respect to bribery, influence peddling and embezzlement.

The European Commission sent a letter of formal notice to Spain in February 2020 due to the country's delay in notification of implementing measures for the 5th EU Anti-Money Laundering Directive.³⁰

In June 2020, a working group of the General Codification Commission for the Transposition of Directive (EU) 2019/1937 (the EU Whistleblower Protection Directive) was established to prepare a transposition project proposal before 2 December 2020 and the Spanish Parliament began discussing the subject of a law.

Transparency of enforcement information

Statistics on enforcement are published every three months. Data covers investigations carried out by judicial bodies, indictments and final judgments for crimes related to corruption (categorised by the court that issued the decision, including both

²¹ <https://www.insightcrime.org/news/brief/guatemala-ex-president-received-millions-in-bribes-from-spanish-company/>; <https://spectrumnews1.com/ca/la-east/ap-top-news/2019/05/08/spain-arrests-5-in-guatemala-corruption-investigation>; <http://elmercantil.com/2019/05/08/detienen-a-angel-perez-maura-por-supuestos-pagos-para-eludir-su-extradicion/>

²² <https://www.elmundo.es/cronica/2018/10/02/5bb0a8c9e2704ed97c8b4667.html>

²³ <https://www.elmostrador.cl/noticias/pais/2016/09/16/cohecho-endesa-chile-es-investigado-por-fiscalia-de-espana/>

²⁴ <https://www.reuters.com/article/us-enel-m-a-ceo/enel-actively-eying-ma-in-regulated-sphere-ceo-idUSKBN1HJ1V8>

²⁵ <https://www.reuters.com/article/us-norway-moneylaunderingsanctions/norway-fsa-fines-santander-bank-1-million-for-anti-money-laundering-breach-idUSKCN1TX29B>; <https://riotimesonline.com/brazil-news/rio-politics/lava-jato-links-five-major-brazilian-banks-to-r1-3-billion-laundry-scheme>

²⁶ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2019-2363

²⁷ <https://globalcompliance.com/spain-amendments-criminal-code-increase-corporate-criminal-liability-exposure-20190506/>

²⁸ LO 5/2010, which was later amended in 2015 - LO 1/2015

²⁹ STS 514/2015, de 2 de septiembre. STS 154/2016, de 29 de febrero (Pleno / Votos Particulares). STS 221/2016, de 16 de marzo. STS 516/2016, de 13 de junio. Auto 516/2016, de 28 de junio. STS 780/2016, de 19 de octubre. STS 827/2016, de 3 de noviembre. STS 31/2017, de 26 de enero. STS 121/2017, de 23 de febrero. STS 252/2017, de 6 de abril. STS 455/2017, de 21 de junio. STS 583/2017, de 19 de julio. STS 639/2017, de 28 de septiembre. STS 668/2017, de 11 de octubre. Auto 1521/2017, de 23 de noviembre. STS 7/2018, de 11 de enero. STS 279/2018, de 12 de junio. STS 316/2018, de 28 de junio. STS 365/2018, de 18 de julio. STS 506/2018, de 25 de octubre. STS 614/2018, de 30 de noviembre. STS 737/2019, de 5 de febrero. STS 742/2018, de 7 de febrero. STS 746/2018, de 13 de febrero. STS 123/2018, de 8 de marzo. Auto 711/2018, de 19 de abril. STS 234/2019, de 8 de mayo; <https://navarrollimaabogados.com/en/news/first-sentences-of-the-supreme-court-on-the-criminal-liability-of-companies/>

³⁰ https://ec.europa.eu/commission/presscorner/detail/en/inf_20_202; https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status_en

acquittal and conviction decisions).³¹ The Spanish General Council of the Judiciary publishes yearly statistics on mutual legal assistance (MLA) requests sent and received. Although the data covers all MLA requests, there is a separate category for requests sent by the Special Prosecutor for Corruption.³² There is also information on other requests, such as extraditions, filed through the Ministry of Justice,³³ and on international judicial assistance, filed directly through the Spanish courts.³⁴ The Office for Asset Recovery and Management publishes statistical information, most recently in its 2018 Annual Report.³⁵

In 2019, the Prosecutor's Office on Corruption and Organised Crime started publishing annual reports with summaries of the investigations and cases under its jurisdiction.³⁶ Court decisions are also published in full and available to the public directly³⁷ or through private databases.

Beneficial ownership transparency

There is a central register of beneficial ownership information, accessible to competent authorities, certain other entities and persons with a legitimate interest or purpose, but it is not yet accessible to the public. The Spanish Registrars Bar Association established a Register of Beneficial Ownership³⁸ in 2018 under the Ministerial Order 319/2018 of 21 March. All companies are required to provide information on their beneficial owners, including indirect beneficial owners, to the Companies Register and keep that information updated.³⁹ This register is accessible to competent authorities, including the Financial Intelligent Unit (SEPBLAC)

and entities identified in the Directive EU 2015/840, such as financial institutions and non-financial professions. Interested parties who can demonstrate a legitimate interest can also access the register, until implementation of the 5th EU Anti-Money Laundering Directive opens it to the public.⁴⁰ That implementation has been delayed because of changes in government and the coronavirus pandemic. Other registers – the Single Notarial Computerised Index, the Beneficial Ownership Database and the Financial Ownership File – are available only to the authorities, who can easily access beneficial ownership information to investigate money laundering cases.⁴¹

Inadequacies in legal framework

There is a general lack of whistleblower protection in both the public and private sectors for people who report on corruption and other irregularities. Spain has not yet transposed the EU Whistleblower Protection Directive into its domestic legislation, with a transposition deadline of December 2021, but as mentioned above, work has started on this.

Inadequacies in enforcement system

As noted in the *Exporting Corruption* Report 2018, inadequate resources are a key obstacle to effective Spanish enforcement against foreign bribery. This was highlighted in the 2019 report of the Prosecutor's Office on Corruption and Organised Crime, which also noted that its staffing is inadequate, with a lack of permanent positions.⁴² By virtue of Royal Decree 255/2019 of 12 April,

³¹ <http://www.poderjudicial.es/cgpj/es/Temas/Transparencia/Repositorio-de-datos-sobre-procesos-por-corrupcion/Consulta-de-datos/>

³² <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Aspectos-internacionales/Cooperacion-con-organos-judiciales-extranjeros/Solicitudes-de-cooperacion-tramitadas-a-traves-de-la-Fiscalia/>

³³ <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Aspectos-internacionales/Cooperacion-con-organos-judiciales-extranjeros/Solicitudes-de-cooperacion-tramitadas-a-traves-del-Ministerio-de-Justicia/>

³⁴ <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Aspectos-internacionales/Cooperacion-con-organos-judiciales-extranjeros/Solicitudes-de-cooperacion-tramitadas-directamente-por-los-organos-judiciales/>

³⁵ <https://www.mjjusticia.gob.es/cs/Satellite/Portal/es/areas-tematicas/oficina-recuperacion-gestion>

³⁶ https://www.fiscal.es/documents/20142/183863/memoria2019_fiscalia_antikorupcion.pdf/bf933261-3bfc-249f-6b14-9eee30469b30

³⁷ <http://www.poderjudicial.es/search/indexAN.jsp>

³⁸ The *Registro de Titularidades Reales* (RETIR)

³⁹ <https://globalcompliance.com/spain-disclose-beneficial-owner-20180418/>

⁴⁰ <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/5amld-patchy-progress/>

⁴¹ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Spain-2014.pdf> p. 46

⁴² https://www.fiscal.es/documents/20142/183863/memoria2019_fiscalia_antikorupcion.pdf/bf933261-3bfc-249f-6b14-9eee30469b30

certain new permanent positions have been created to address these concerns.⁴³

According to the 2019 EU Justice Scoreboard, Spain is among the four EU countries with the worst public perception of judicial independence.⁴⁴ Despite this, all the corruption cases that have come to light have been investigated or are being prosecuted, and significant judgements have been rendered. However, there is a popular perception that justice is politicised, given that the election of the vocal members of the General Council of the Judiciary reflects the political composition of parliament. The General Council is a constitutional, collegiate, autonomous body, made up of judges and other jurists, which exercises governance functions with respect to the judiciary in order to guarantee the independence of judges. Improvements in the appointment process are necessary, as well as in the field of ethics – for example, a code of conduct for prosecutors should be adopted and the Commission on Judicial Ethics established in May 2018 should carry out more effective work.⁴⁵

The Group of States against Corruption (GRECO) noted in a 2019 review of Spain that law enforcement authorities – especially the police and the Civil Guard – must increase their coordination and collectively develop an anti-corruption strategy designed to enhance their organisational reputation and reinforce internal compliance mechanisms.⁴⁶

Recommendations

- Improve access to statistics and information on foreign bribery cases, investigations and settlements
- Fully implement the 5th EU Anti-Money Laundering Directive and ensure the central register for beneficial ownership information is publicly available
- Improve the legal framework for whistleblower protection in the public and private sectors
- Improve the appointment process for judges
- Allocate more resources to combat foreign bribery
- Improve coordination between enforcement authorities and ensure investigations are not prematurely closed
- Improve awareness of the offence of foreign bribery.

⁴³ <https://www.boe.es/buscar/act.php?id=BOE-A-2019-5563>

⁴⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562062740889&uri=CELEX:52019DC0198>

⁴⁵ <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680779c4d>

⁴⁶ <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168098c691>