Groupe d'Etats contre la corruption
Group of States against corruption

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 8 December 2006

Public
Greco Eval I-II Rep (2006) 1E

Joint First and Second Evaluation Rounds

Evaluation Report on Andorra

Adopted by GRECO
at its 31st Plenary Meeting
(Strasbourg, 4-8 December 2006)

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INTRODUCTION

1. Andorra joined GRECO on 28 January 2005, i.e. after the close of the First Evaluation Round. It was therefore submitted to a joint evaluation procedure covering the themes of the First and Second Evaluation Rounds (see paragraph 3 below). The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Edmond Dunga (Albania, Director of the Council of Ministers' anti-corruption unit), Mrs Anca Jurma (Romania, chief prosecutor in the anti-corruption office), and Mr Georgi Rupchev (Bulgaria, head of the international co-operation department of the Ministry of Justice). The team, accompanied by two members of the Council of Europe secretariat, visited Andorra from 5 to 9 June 2006. Before the visit the GET experts were provided with replies to the Evaluation questionnaire (Greco Eval I-II (2006) 1F Eval I – Part 1 and Greco Eval I-II (2006) 1F Eval II – Part 2), copies of relevant legislation and other documentation.

2. The GET met representatives of the Ministry of Justice, including the minister himself, the police, the public prosecutor's office, the courts (first instance and criminal court) and investigating judges, the High Judicial Council, the ombudsman (*Raonador del Ciutadà*), the laundering prevention unit (LPU), the customs, the Civil Service Department, the Ministry of Finance, the court of auditors (auditor general), the Ministry of the Economy, the spatial planning ministry and the Mayor of Canillo. It also met the following civil society representatives: the accountants' association, the media (*Diari d'Andorra* and *Més Andorra*), the employers' organisation and the chamber of commerce.

3. In accordance with Article 10.3 of its Statute, GRECO had decided that:

   - the First Evaluation Round would deal with the following themes:

     - **Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption**[1]**:** Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy); Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
     - **Extent and scope of immunities**[2]**:** Guiding Principle 6 (hereafter "GPC 6": immunities from investigation, prosecution or adjudication of corruption); and

   - the Second Evaluation Round would deal with the following themes:

     - **Proceeds of corruption**[3]**:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), together, for members having ratified the Criminal Law Convention on Corruption (ETS No. 173), with articles 19.3, 13 and 23 of the Convention;
     - **Public administration and corruption**[4]**:** Guiding Principles 9 (public administration) and 10 (public officials);

[1] Themes I and II of the first evaluation round
[2] Theme III of the first evaluation round
[3] Theme I of the second evaluation round
[4] Theme II of the second evaluation round

- **Legal persons and corruption**[5]**:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), together, for members having ratified the Criminal Law Convention on Corruption (ETS No. 173), with articles 14, 18 and 19.2 of the Convention.

4. Andorra has signed, but not ratified, the Council of Europe's Criminal and Civil Law Conventions on Corruption (ETS No. 173 and 174) of 8 November 2001.

5. This report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to assess the effectiveness of measures adopted by the Andorran authorities to comply with the requirements of the provisions referred to in paragraph 3. For each theme, the report presents a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Andorra on how to improve compliance with the provisions under consideration.

I. OVERVIEW OF ANDORRA'S ANTI-CORRUPTION POLICY

a. Description of the situation

The perception and phenomenon of corruption

6. With its population of 77 000, of whom 28 000 are natives of the country, Andorra is one of the smallest Council of Europe member states. Per capita GDP is above the European average, with much of the country's prosperity depending on tourism, retail trade, construction, financial services and a favourable tax system, including no income tax[6]. It has a special relationship with France and Spain, based on the co-principality system, and adopted the Euro in December 2002. The 1993 Constitution marked an important stage in the development of Andorra's system of government and its legal, organisational and institutional arrangements. For a country of this size it is well equipped, institutionally, to tackle corruption.

7. The Andorran authorities are unable to provide information on corruption in the country or its particular features, and there have been no official or other studies of the nature, causes or scale of the phenomenon or the sectors affected. The authorities do not see corruption as a problem and it is not one of the government's priorities. Andorra does not have an anti-corruption policy or programme and has not established or charged any body with relevant powers or responsibilities.

8. Those whom the team spoke to on site could provide no further information or statistics on the subject and there had been no known cases of corruption in the courts or as the subject of administrative or disciplinary proceedings, at least in the four or five preceding years.

9. So far there is no evidence of links between organised crime and corruption and the authorities state that they are always on the watch for any attempt by foreign groupings to benefit from the financial and tax system. Violent and street crime are almost non-existent. Andorra is not one of the countries on Transparency International's Corruption Perceptions Index, and does not feature on any other index.

[5] Theme III of the second evaluation round

[6] Andorra is included on the OECD's list of tax havens, but has never featured among the non co-operative countries and territories of the Financial Action Task Force on Money Laundering (FITF)

Criminal law

10. New criminal and criminal procedure codes came into force in 2005. As the evaluators discovered, corruption as such was not an offence under the former Criminal Code, but came under the more general heading of subornation of civil servants or judges.

11. To bring it more into line with international conventions (Andorra has signed, though not yet ratified, the Council of Europe's Criminal and Civil Law Conventions on Corruption: ETS No. 173 and 174)[7], the September 2005 Criminal Code establishes the offences of active and passive corruption involving a public authority or official (article 380) and active or passive trading in influence (article 386). The penalties laid down are as follows:

    - for passive corruption, a fine equivalent to three times the value of the benefit received and up to three years' suspension or exclusion from all public office;
    - for active corruption, a fine equivalent to three times the value of the benefit received;
    - for active trading in influence, imprisonment and a fine equivalent to twice the value of the benefit sought or received, or even a ban of up to three years on any contractual relationship with the public authorities;
    - for passive trading in influence, as above, and possibly up to three years' suspension from the post or public office held.

12. The Criminal Code also establishes a number of other offences, such as abuse of official authority (article 372), extortion and unlawful charges (article 378 and 379), unlawful financing of political parties (article 387), misappropriation of public assets (article 388), involvement of private interests in public activities (article 391), prohibited transactions (article 392), and misuse of privileged information by a public authority or official (article 393). In certain cases, attempted corruption may be a criminal offence. Administrative provisions also apply to the police, under the Police Act.

13. Andorran law does not provide for the criminal liability of legal persons in cases of corruption or laundering linked to corruption. However, the courts may impose certain ancillary penalties, such as winding up of the legal person, suspension of its activities, temporary closure or exclusion of any contractual relationship with the public authorities.

14. Following the entry into force in Andorra of the European Convention on Mutual Assistance in Criminal Matters, since 25 July 2005 it has no been longer necessary to pass through diplomatic channels, in the interests of speed and efficiency. Requests for co-operation in criminal cases from countries that are party to the Convention now have to be sent to the justice and interior ministry, which also deals with the replies. Other cases still have to take the diplomatic route.

Main initiatives

15. As noted earlier, there is no specific anti-corruption policy. However, the authorities have indicated a series of measures that have had a significant impact in this area, such as the new legislation on the court of auditors, prevention of money laundering and the public service and the new Criminal Code. There were also plans for a programme to prevent corruption for the

[7] According to the Andorran authorities, a legal assessment is currently under way of the compatibility of domestic law with these conventions. The enactment and entry into force in September 2005 of the new Criminal Code and proposals to draw up a companies act are among the legal factors that have delayed ratification of the two conventions.

period 2005-2007. The general professional development plan included a specific element concerned with maintaining fundamental values and public ethics among senior officials. For other staff, proposals are being developed to fill any gaps in knowledge of the new Criminal Code, particularly the provisions establishing criminal offences for civil servants, and to make the latter more aware of the values underlying administrative action and the principles of public administration.

16. Public procurement procedures are governed by an act of 9 November 2000. This lists the persons authorised to conclude public or private contracts on behalf of the public service. Under the legislation, an individual or legal person can tender for a public contract, subject to certain conditions. For example, they may not be a member of the public service or have been convicted of offences against property or of forgery (sections 7.a and b). In the interests of transparency and openness, invitations to tender are published in the official journal. The legislation identifies several types of public contract and lays down the criteria and procedures for awarding them. Contracts may be ordinary, urgent or highly urgent. At central level, members of the government[8] determine the nature of the contract (under section 19.4 of the legislation, the relevant committee, or *mesa de contractació,* is chaired by the minister concerned). Similarly, the public procurement unit, which scrutinises requests for administrative classification and is responsible for the central register of public contracts and for developing measures to improve the system, is under the responsibility of, and chaired by the Minister of Finance. Although the legislation authorises the delegation of these powers, it must be explicit and published in the official journal. The GET has not been informed of the possible use of this power. Disputes relating to public contracts are dealt with by the competent body.

b. Analysis

17. Even though the Andorran authorities do not deny the possibility of corruption in the country, the absence of any information on the phenomenon is open to various interpretations. The GET was frequently told that "everyone knows everyone in Andorra", a situation already encountered by GRECO in other member countries. The small size of a country may be reflected in close social and institutional oversight, but can also be a major barrier to the disclosure or non-acceptance of (certain forms of) corruption.

18. It is clear that so far there has been no interest in centralising and analysing what information does exist here and there. For example, the police are well aware of one or two cases of personal enrichment within the country, journalists have suspected cases of conflicts of interest and certain persons and institutions acknowledge that public works contracts are a sensitive area.

19. The fact that until 2005 Andorran law did not include specific criminal provisions on corruption may also, to a certain extent, help to explain the lack of information, although it is a moot point as to whether the former Criminal Code was used effectively to deal with corruption, for example via the provisions on subornation[9]. At all events, the introduction of specific provisions on bribery in

[8]Under section 5 of the Public Procurement Act of 9 November 2000, the relevant bodies are the prime minister and the ministers, the bodies appointed by the municipal councils and the managing directors of parapublic and public law bodies. Section 64 of the Act establishes the administrative contracts unit in the finance ministry, comprising the Minister of Finance or an official nominated by him in the chair, a representative of the finance ministry general inspection department and directors of parapublic bodies. Under the regulation on the administrative classification of contracts of 31 December 2002, departmental directors of the regional planning departments are also members of the unit.

[9] The alphabetical index of the former Criminal Code did in fact include a reference to corruption and then referred to the articles on subornation. It also established offences of misappropriation of funds by public officials and misuse of company property.

2005 is to be welcomed. These, and how they relate to administrative disciplinary machinery, are still not well known, and this extends to the Civil Service Department.

20. As indicated in the descriptive section, Andorra has programmed a series of measures, including ones to make officials aware of the scope and significance of the new provisions. Given the scale of the changes, it will certainly be necessary for these measures – educational and other – to include other categories such as elected members and officials and non-established members of the public service, of whom there are a considerable number and who are often appointed on an *ad hoc* basis to positions of responsibility or advisory posts, as well as the general public and the private sector. **The GET recommends that measures to increase awareness of the new anti-corruption provisions be extended beyond civil servants to include elected members and officials, non-established members of the public service, the general public and the private sector, and that the need to report cases of corruption be stressed.**

21. From the on-site meetings it became clear that there were significant risks of and vulnerability to corruption in connection with public works and procurement contracts. Even though the legislation lays down fairly clear procedures for awarding contracts, various technical problems have been observed, such as the award of contracts without an invitation to tender, unauthorised opening of accounts, insufficient checks on cash payments, service providers who lack the necessary competence and, above all, tenders and specifications whose wording is not sufficiently objective. The information received by the GET indicates that problems in this area are sometimes linked with corrupt practices and that politicians play a certain role in the awarding of contracts. In the light of what has been said, and in view of the fact that public contracts do not come directly within the scope of this evaluation, *the GET observes that it should be ensured that the existing public procurement procedures are free from undue political or other influence. .*

22. Certain factors specific to Andorra may create a barrier to the detection of corruption (see part IV on the proceeds of corruption, concerning the practice of nominees and of pseudonymous and numbered accounts, and the absence of a land register, or rules on professional, banking, commercial and other confidentiality). This is often explained in terms of a commitment to preserving individuals' privacy in the context of a very tight-knit social fabric, together with the fact that the absence of direct taxation means that the state has never been required to show a close interest in individuals' and legal persons' assets, income or financial interests.

23. Some other features of the country create a further risk of corruption that ought to be taken into account. These include the tax system, from which foreigners, resident and non-resident, seek to benefit without necessarily meeting all the conditions laid down in law, and these same individuals' wish to acquire property and shares in companies[10].

24. The authorities have stated in their replies to the questionnaires that in future legislation on specific subjects and groups of officials they intend to include provisions on preventing and combating corruption, which is to be welcomed. The GET considers that in general, studying needs and problems arising and above all assessing the extent of corruption in a country can facilitate and legitimise changes to legislation. Such studies and assessments serve as a guide to anti-corruption measures and contribute to a better understanding of the problem. **The GET therefore recommends that a study be undertaken of the scale and nature of possible corruption in Andorra, covering the most exposed sectors, coupled with an assessment of**

[10] The acquisition of property or shares in companies is conditional on those concerned obtaining foreign resident status, which requires them to live part of the year in Andorra.

existing instruments and machinery to deal with corruption, which would provide a sound basis for the development of anti-corruption policies.

II. INDEPENDENCE, SPECIALISATION AND MEANS AVAILABLE TO NATIONAL BODIES ENGAGED IN PREVENTING AND FIGHTING CORRUPTION

a. Description of the situation

Police

25. Police organisation and activities are governed by the Police Act of 27 May 2004, section 2 of which makes the government, through the head of government, responsible for its overall command. Under the current ministerial structure this places command in the hands of the Minister of Justice and the Interior. The force is led by a director, with one or more deputies (currently one). The government has complete freedom to appoint and dismiss the director and his deputies, on the advice of the responsible minister (section 43). The GET was told that in practice such dismissals have been little used in recent years. The deputy director posts may be filled from within the ranks of the force. The director may come from another government department or be appointed from among the "special category staff" (section 44), a category specified in the Civil Service Act.

26. The police force is made up of special departments, covering such areas as planning, administration, maintenance of public order, special tasks and emergency responses and the protection of leading figures, and four general departments: public safety and neighbourhood policing, criminal police, police support and transit and frontiers. The criminal police department, which has about forty officers out of a total of about 260, includes an investigation branch of 25 persons with its own command structure (three persons), which is responsible for juvenile cases and domestic violence, drugs, criminal records, organised crime and laundering and general matters. It also includes a three-person intelligence section concerned with analysis and terrorist issues, which according to the Andorran authorities would also deal with any corruption cases, in view of their sensitivity. Since it does not have its own command structure it would act under the supervision of the directorate, probably in collaboration with the investigation branch, whose officers are familiar with the analysis of accounting and banking documents, the forgery of means of payment and money laundering.

27. The GET noted that the Law on the police provides for a mechanism to protect its operational independence *vis a vis* undue interventions of the hierarchy: indeed, taking away a case from an officer, or removing him/her from the investigation process, before the investigation is complete, is prohibited. Such an interference is only possible with the approval of the competent prosecutor or judge. Furthermore, under its internal regulations, the function of police officer is incompatible with any other public or private occupation, other than in connection with research, voluntary and cultural activities, and so on. Recruitment is always by competition after publication in the official bulletin. Officers and members of specialist sections sit a specific entry competition. Selection is made by a four-member selection committee. Candidates must have the appropriate qualification to be considered, ranging from school certificate to masters degree, according to the competition and category of post being sought. The basic training is carried out in Andorra and lasts five months. France or Spain generally assist with special training, for example in economic and financial matters for certain members of the criminal police.

28. Disciplinary matters are dealt with internally by the directorate or head of department. Twenty-three disciplinary measures were ordered in 2005 and there had been 24 in 2006, up to the time

of the visit, for disobedience, lateness and negligence. The figures are not negligible. Two cases of complicity and of "enrichment" in connection with immigration have been uncovered in the past. One is currently awaiting trial but the police officer concerned has already resigned. At the time of the visit, one case of incompatibility of functions was being considered, but the question of enrichment had not yet arisen. Salaries are considered satisfactory. In the case of police involved in criminal investigations they rise from €2200 at the start of service to almost €3000 after ten years.

Courts and judges

29. After the adoption of the first written constitution, in 1993, legislation was enacted on the organisation of the courts (1994) and the prosecution service (1996). These established a unified system of justice administered by the *batlles* (first instance courts and judges) and senior judges and the status of judges and prosecutors. Criminal cases may be heard by individual *batlles*, *batlles* sitting as a court, the so-called *Tribunal de Corts* (criminal court) and high court of justice. There are three levels of criminal courts:

- The *batlles*, or first instance judges, sitting as individuals, hear petty offences and investigate all criminal cases. Sitting as a court, they hear other lesser offences. There are currently five investigating judges, to whom cases are allocated on a rotating basis.

- The criminal court hears other criminal cases at first instance and supervises the enforcement of sentences and other decisions, through its president. It also hears criminal appeals against decisions of the lower courts.

- The high court of justice comprises a president and eight judges appointed by the country's High Judicial Council. It is the highest court in Andorra. It hears all the appeals lodged against decisions at first instance of the civil and administrative courts and against judgments of the criminal court.

30. Once judgments are final, they cannot be modified or quashed unless, following an individual appeals procedure, the Constitutional Court, which is the supreme interpreter of the Constitution, rules that they have been handed down in violation of a fundamental right.

31. For the first time in Andorran history, since the reform of the judicial system in the 1994 and 1996 legislation, judges and prosecutors must have a university law training. They are appointed by the High Judicial Council[11] via a public competitive examination, with members of the prosecution service being proposed by the government. However, in view of Andorra's distinctive geographical and historical circumstances and, above all, the lack of Andorran lawyers, as a transitional provision the Constitution also authorises judges and prosecutors from the two neighbouring states to be appointed to the judiciary and the prosecution service. According to the Andorran authorities, efforts have been made to ensure that at least the *batlles* and the assistant prosecutors are of Andorran nationality. However the remainder, that is the judges of the criminal court and the high court of justice are currently either French or Spanish. The foreign judges do not live in Andorra and they also practise in their country of origin.

[11] The Council comprises 5 members who are designated as follows, according to art. 89 of the Constitution: one by the Síndic General, one by each of the Co-princes, one by the Head of Government, and one by the magistrates and the *batlles*; magistrates in exercise cannot be members of the Council.

The prosecution system

32. The Andorran prosecution system is based on the prosecution service and the investigating judges. The investigation section currently comprises five judges who do not specialise in specific areas but receive cases by turn as they are registered with the court.

33. The prosecution service, led by the chief prosecutor, is responsible for defending and applying the legal system and maintaining the independence of the courts, and for ensuring that the law is applied in the courts to protect citizens' rights and defend the public interest. It operates according to the principles of legality, unity and internal hierarchy (article 93 of the Constitution).

34. The legal status of the prosecution service is governed by the act of 12 December 1996, which states in its introduction that it is a distinctive institution because it has links with the judicial, executive and legislative branches of government. The act lays down a series of provisions in four sections that determine the functions of the prosecution service, its relations with the executive, legislative and judicial branches, its organisation, and incompatibilities and circumstances for judges' withdrawal.

35. The judicial system authorises the courts to discontinue cases under investigation. The relevant grounds are set out in article 42 of the Code of Criminal Procedure, according to which, once the investigation stage is completed, the investigating judge may:

- take no further action or order the discontinuation of measures already taken or preliminary arrangements;
- provisionally defer prosecution (art. 126 ff);
- launch proceedings if an offence may have been committed or refuse jurisdiction and refer the case to a *batlle* sitting as an individual in the case of a petty offence.

36. Anyone may lodge a complaint, which then automatically results in the opening of a case. Complaints are lodged with the police or the prosecution service and are then referred to the *Batlles* for allocation to an investigating judge. Such cases cannot be discontinued before a criminal investigation is opened. Appeals may be lodged against decisions to discontinue cases or defer prosecution.

37. Andorran criminal procedure is essentially based on an inquisitorial system, in which investigating judges play a key role. Article 22 of the Code of Criminal Procedure requires the police to inform the prosecution service when they think an offence may have been committed and start immediate inquiries. Once the police inquiries are complete, all the relevant information must be forwarded immediately to an investigating judge, who will then investigate or close the case. The prosecution service is informed of any investigations opened or preliminary measures taken by investigating judges. In accordance with the relevant legislation, the prosecutor directs police inquiries into suspected criminal offences and may issue instructions to the director of police.

Criminal inquiries into corruption cases: special investigation methods, witness protection, professional and banking secrecy

38. Under the Code of Criminal Procedure, in order to assemble the necessary evidence, the police may - with the approval by a judge - undertake home searches (plus directly, with the occupier's consent), the seizure of potential evidence (articles 76-79), interception of telephone, telegraph and postal communications (article 87), controlled deliveries (article 122b) and covert operations

and undercover agents (article 122c). The police carry out wiretaps and other interceptions on the basis of an agreement with the Andorran telecommunications company. However, permission to intercept communications is only granted in the case of major offences, defined by the Criminal Code as ones punishable by a maximum penalty of two or more years' imprisonment. For instance, active and passive bribery under art. 380, and trading in influence under art. 386 are punishable by fines and are minor offences. The aggravated forms of passive bribery (when, for instance, the bribe is connected with the accomplishment of an illegal act), are punishable by up to four years' imprisonment. Trading in influence when the third party is an official, also constitutes a major offence. Moreover, controlled deliveries, and covert and undercover operations can only be used for such offences as drugs and firearms trafficking, procuring and money laundering, but not for corruption.

39. Andorra's particular circumstances mean that there are no arrangements for protecting witnesses and other vulnerable protagonists, apart from the general provisions of the Criminal Code on intimidation, duress and blackmail.

40. Article 14 of the Constitution protects professional secrecy. The Criminal Code has similar provisions, including articles 182 to 193. Article 190 covers breach of confidentiality in the employment field, article 191 breach of professional confidentiality and article 192 the requirement for confidentiality to continue after a change of occupation or profession or the end of the contractual relationship. Article 377 concerns the disclosure of confidential information and is applicable to public authorities and individuals. The only clearly laid down exception to confidentiality requirements is in article 190, which exempts officials of different banks from the duty of maintaining banking secrecy when assessing commercial risks linked to loans. The legislation on international co-operation against the laundering of money and the proceeds of international crime also includes a number of provisions, some of them fairly long (sections 32 and, above all, 50). Section 50 forbids financial establishments from providing information on relations with their clients and the latter's accounts and deposits except in the case of judicial proceedings and on the written instructions of a court. Article 87.4 of the Code of Criminal Procedure establishes a similar exception, though limited to banking secrecy. Under the anti-laundering legislation, it is no longer possible to rely on banking secrecy alone to prevent Financial Intelligence Unit investigations or the exercise of its powers.

41. International legal assistance is governed by treaties and agreements to which Andorra is a party[12], and by the Code of Criminal Procedure where no such instrument is applicable. There have been two such cases in the last five years connected with corruption – with France and Mexico. These cases were dealt with in 2002-2003, with an average time elapsed before implementation of 375 days.

Other authorities

42. In the administrative field, disciplinary proceedings are launched by the public service secretariat (SEFP), under the public service legislation of 2000 – see also Section V.

43. The laundering prevention unit (UPB), established under the 2001 anti-laundering legislation, acts as the Financial Intelligence Unit. The UPB is an independent body which collates and assesses all declarations of suspected money laundering. The FIU also initiates and co-ordinates measures to prevent laundering.

[12] for example, those drawn up under Council of Europe auspices: the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, which came into force in Andorra in November 1999, and the 1959 European Convention on Mutual Assistance in Criminal Matters, which came into force on 24 July 2005.

44. Financially, the FIU is responsible to the justice and interior ministry. It comprises one person with extensive financial experience appointed by the Minister of Finance, a judge appointed by the High Judicial Council, two members of the police force appointed by the Minister of Justice and the Interior and an administrative member of staff. The FIU has a secure computerised information network with various data bases for analysing and processing national and international information and direct or indirect access to information from governmental institutions.

45. The Andorran customs service comprises some hundred officials. It has a directorate and three sub-directorates. It has three key responsibilities – taxation, monitoring commercial operations and social protection – and a transversal remit to combat fraud. This calls for a multilateral approach since it can be linked to various types of customs offences, such as commercial fraud (falsely declared goods, value or origin and import or export without a declaration), counterfeit or pirated goods, smuggling of highly taxed items, drug and precursor trafficking, arms smuggling and money laundering. Here again, the customs co-operate closely with numerous other agencies, such as the UPB in the case of money laundering.

46. There is also close co-operation with foreign counterparts under the EC/Andorra customs union agreement, whose application is monitored by a joint committee.

b. Analysis

The investigation and prosecution authorities and the courts

47. The size of the country and the lack of particular concern about corruption mean that there are no specialist agencies or specific departments responsible for this problem.

48. In practice, the prosecution service does not direct police criminal inquiries, which places most of the responsibility for identifying and taking action against corruption on the latter. In this context, the GET also noted the close links that exist, in legislation between the police and the government since the government exercises supreme command over the police and changes in the government can, in principal, lead to significant changes in the police managerial structure. This being said, during the visit there was no mention of existing controversies arising from possible involvement in operational matters (such as political interference in judicial investigations), and the GET noted that the Law on the police provides for a mechanism to protect the police's operational independence *vis a vis* the hierarchy (prohibition to take away a case from an officer, or to remove him from the investigation process until the investigation is complete, unless this kind of intervention is approvedby the competent prosecutor or judge). Also, changes of government have little affected the command and structure of the police in recent years. In the opinion of the GET, ensuring the application in practice of the prosecutor's leadership during investigations, as it is foreseen in the legislation on the prosecution service (see beneath), would constitute an additional barrier to risks of undue political intervention in the course of an investigation (with the aim of limiting or affecting it).

49. Criminal police representatives told the team that they lacked sufficient human and other resources to cope with the growing burden of inquiries, administrative tasks and other new duties that were regularly added to those that already existed. The police officials also acknowledged that they lacked experience in cases of corruption and economic and financial crime in general, with the exception of money laundering, for which officers had been trained and specialists were in post. The GET believes that Andorra must create the necessary instruments to ensure that it is

better equipped to deal with the threat posed by corruption to democracy, the rule of law and a properly functioning economic system. The corruption investigations that are likely to be generated by the new criminal provisions will inevitably increase the workload of the police and their need for special expertise. It should also be borne in mind that corruption inquiries are often complex. **The GET therefore recommends that the investigation unit of the criminal police be strengthened and steps be taken, through training and other means, to enable some of its officials to specialise in corruption cases, as well as economic and financial crime, including money laundering, which might be linked to corruption.**

50. Turning to the judicial system, the use of French or Spanish judges clearly offers certain benefits in the Andorran context, from the standpoint of judicial independence and the possibility of extending the field of recruitment to take account of specialist needs. However, there may also be disadvantages, such as lack of personal involvement and reduced responsibility of members of the judiciary, because even though they are subject to the same disciplinary arrangements under Andorran law, the effects of a severe disciplinary penalty would be greater for Andorran judges than for foreign ones, who in principle could continue to function in their countries of origin. Those whom the GET met said that the lack of Andorran lawyers was not as critical as in the past and that 300 persons were currently qualified in Andorran law, about a hundred of whom were lawyers.

51. The prosecution service comprises the chief prosecutor and three assistants, all of Andorran nationality. The prosecutors' role has been strengthened since the adoption of the Constitution and the 1996 legislation on the prosecution service. Their powers also extend to *habeas corpus* proceedings, civil proceedings and rulings on constitutional issues. It is reasonable to expect that the new Criminal Code adopted in 2005, which introduces new offences, including ones relating to corruption, will increase the prosecution service's workload. According to the department's last annual report, in 2005 prosecutors issued 7 044 reports, 6 371 concerned with criminal matters, and took part in 967 oral proceedings. The chief prosecutor and his assistants whom the team met argued that the number of assistants was insufficient to carry out their duties fully. The problem was particularly acute when one of the assistants had to take part in a training session or be replaced for another reason. The same shortage of staff reportedly applied to the investigating judges. **The GET therefore recommends that the staffing of the prosecution service and the number of investigating judges be increased to improve their capacity for combating crime, including corruption.**

52. Since corruption offences as such are a recent addition to Andorran law, this will be a new area for investigating judges to become involved in. Even though the staffing of the prosecution service should be increased, investigating judges will continue to play an important part in this type of inquiry. They will often require specialist knowledge of economic and financial crime and a good feel for the world of business. Currently, one or two of them have an understanding of and interest in this type of case, but this is entirely on their own initiative. They therefore require the necessary qualifications, so that they can also co-operate effectively with the police. **The GET also recommends that, even if they do not specialise in such cases, certain investigating judges develop specific qualifications and skills in more serious offences, including corruption, and that they investigate this type of cases, with the support of specialist police officers.**

53. The prosecution service is linked to the executive through the government's involvement in prosecutors' appointment procedure and also because it has the power to issue general recommendations to the prosecution service, as part of its responsibility for framing the country's penal policy. The current chief prosecutor, who was recently appointed, said that he had not

received any recommendations from the government. At all events, the GET welcomes the statutory arrangements governing the relationship between the government and the prosecution service, under which recommendations must always be issued in writing and whatever recommendations the latter receives, its members must always act in accordance with the principle of legality. This is important since the size of the prosecution service means that its four members can meet regularly to discuss cases and general issues.

54. According to the law, the prosecution service directs police activities. In practice, as far as the GET could see, the prosecutors do not perform this role. Moreover, the police prefer to deal directly with the investigating judges, who have full authority to order restrictions or limits on freedom of movement or action and other procedural measures during investigations, such as searches without the individual's consent, interception of communications and other instructions and warrants. At the same time, the members of the prosecution service consider that it would be difficult for them to direct police investigations, given their current workload and staffing. Their current priorities are concerned rather with dealing with the volume of work within a reasonable time, and so on. *The GET observes that to enable the prosecution service to fulfil its responsibility as the body entitled to initiate criminal proceedings it must be involved in investigations from the outset, once offences have been uncovered or reported to the police. This issue needs to be examined in the context of the increase in the prosecution service's resources.*

55. A sense of frustration emerged from meetings with Andorran judges and prosecutors, relating to the insecurity of their term of office and the limited opportunities for career progression. Under the Constitution, judges and prosecutors are appointed for a renewable six-year term. Even though, according to the representative of the High Judicial Council whom the team met, appointments have always so far been renewed, the members of the judiciary criticised the absence of pre-established and transparent criteria for such renewal, which did not protect them against the possibility of an arbitrary decision and did not offer them sufficient security in their judicial careers. **The GET therefore recommends that the High Judicial Council establish and apply clear and objective criteria for the renewal of judges' and prosecutors' terms of office, which take particular account of merit and professional experience.**

56. It should be noted in this context that the High Judicial Council does not include members of the judiciary. Indeed, the latter are excluded from membership of the commission, as is anyone exercising public responsibilities. All but one of its five members are political appointments for a six year term that can be renewed once. The decision to appoint members of the commission from outside the judiciary can probably be justified by the small size of the country and the restricted number of judges and prosecutors. Nevertheless, the GET regrets the Andorran authorities' decision to establish a renewable term of office for members of the High Judicial Council, given that this procedure paves the way for political influence (in the perspective of their term being renewed, the members of the JSC might be tempted to carry out their duties according to the views of the political personnel who decide upon the renewal of terms). *The GET therefore observes that in order to safeguard judicial independence members of the High Judicial Council should preferably be given a single term of office, instead of a renewable one following a political decision.*

57. The GET is aware that the country's small size makes it fairly difficult to offer members of the judiciary genuine opportunities for career progression. The majority of judges (11) work in the court of *batlles*, which has general jurisdiction to hear cases at first instance (other than for major offences) and powers of investigation. The twelve remaining judges, of whom eleven are foreign and work part time, are attached to the two higher courts. Since all bar one of the judges in the higher courts are foreign and therefore already receive a salary from their country of origin and

there is less work in the higher courts, the salaries at this level are less than those of the *batlles*. This situation has been described as a disincentive by the members of the judiciary and of the High Judicial Council whom the team met. In practice, corruption cases, particularly those linked to the world of business, the economy and finance, are generally complex. Dealing with them take time and requires particularly intensive work. The judicial system requires motivated and committed judges to handle this sort of case. *The GET therefore observes that consideration be given to new ways of ensuring that Andorran judges have real prospects of career progression (which is anyway embodied in judicial legislation). In particular, a revision of the salary system would make senior positions in the judicial hierarchy more attractive. At the same time, other ways should be found of recognising and rewarding merit in judicial activities, for example by introducing a system of promotion within posts.*

Sources of information and powers of investigation

58. Regarding access to information, the GET was told that banking and financial information could be obtained under the Code of Criminal Procedure, with the authorisation of a judge, or directly, in the case of the Financial Intelligence Unit, under the anti-laundering legislation. It was assured that these took precedence over the various professional, commercial and banking confidentiality provisions of the Constitution, the Criminal Code and the anti-laundering legislation and posed no problems in practice. Section 50 of the anti-laundering act even provides for arbitration by the on-call judge in the event of refusal to communicate banking information (solely) to the Financial Intelligence Unit. There is apparently close and rapid co-operation between police and investigating judges, thanks to the existence of an on-call judge, which makes it easier to obtain this type of information.

59. It was also stated that in practice it is not necessary to open a formal judicial investigation, which means that information can be made available at the preliminary inquiry stage, with the assistance of a judge.

60. Nevertheless there do seem to be difficulties with regard to the initiation and conduct of inquiries, once these require information held by public authorities. Some of the latter have in the past refused to supply the police with information held in their data bases that was apparently necessary to identify suspects.

61. It also emerged from discussions that it was not normal practice for public authorities to identify and report to the police or judicial authorities any suspected offences that might come to their attention in the course of their activities[13] (the issue has already been partially raised in the first part of the report in connection with individual reporting). This may be the consequence of cultural factors but also of an excessively strict interpretation of the various provisions on secrecy and confidentiality, which in any case are inconsistent, with some covering all areas of activity, including the public sector, others only banking and yet others the banking and finance sector. In particular, the Code of Criminal Procedure (article 87.4) only appears to authorise access to banking information, which would explain why the police representatives spoken to only referred to this type of information. **The GET therefore recommends that i) a review be carried out of the consistency of the provisions on professional, banking and other confidentiality to offer wider coverage of the various sources of information and limit its scope more explicitly so that it cannot be used to conceal criminal offences; ii) additional ways be found, such as awareness raising measures and explanatory notes, depending on the**

[13] For example, the representatives of the court of auditors stated during the visit that, as part of their monitoring of the lawfulness of movements of public funds, they did not know – and must not ask – whether an irregularity constituted an offence.

nature of the problem, to stimulate co-operation between public authorities and the police and judicial authorities concerning the communication of information arising from their own activities that might contribute to the opening or conduct of inquiries into corruption and related offences.

62. Andorra's very low level of taxes and its small size are further complicating factors concerning the methods that might normally be used, based on the experience of other GRECO member countries, in investigations into corruption, and economic, financial and organised crime. In the absence of any direct income tax, the authorities naturally lack data bases on the incomes of Andorran tax payers, thus depriving the inquiry bodies of a particularly valuable instrument that other countries use in asset investigations. As noted in the first part of this report, Andorra is also distinguished by the practice of nominees (even though this is prohibited) and pseudonymous accounts (though information on the real owners may be obtained), and the lack of a central land/property register.

63. In this context, the GET considers that during inquiries, still more emphasis should be placed on co-operation between public authorities, notaries, banks and other financial institutions, on the one hand, and the police and judicial authorities and on the use of special investigation methods. Regarding the latter point, there are still certain restrictions on the use of such methods in corruption cases and these should be reviewed. Currently, of all the methods recognised as being useful in corruption inquiries, only telephone taps can be used, and only for a limited number of types of corruption. **The GET therefore recommends that authority to intercept communications be extended to cover a wider range of corruption offences included in the Criminal Code and that other special investigation methods, such as controlled deliveries, covert operations and undercover agents, also be made applicable to corruption cases, with the appropriate legal and judicial safeguards.**

III. EXTENT AND SCOPE OF IMMUNITIES FROM PROSECUTION

a. Description of the situation

64. As with most national legal systems, there are two sorts of immunity in Andorran law:

- non-liability (freedom of speech) of members of parliament for votes and opinions they express in the course of their duties (article 53.2 of the Andorran Constitution) and of the ombudsman for opinions expressed or agreements reached, also in the course of his or her duties (section 6.2 of the legislation establishing and governing the *Raonador del Ciutadà*), and

- inviolability (immunity from arrest other than in *flagrante delicto*) of members of parliament (article 53 of the Constitution), the Head and members of Government (article 74 of the Constitution), members of the High Judicial Council (section 55 of the Judiciary Act), *batlles* and judges (section 77 of the Judiciary Act), members of the prosecution service (subject to the same responsibilities as *batlles* and judges under section 90 of the Judiciary Act and section 23 of the Prosecution Act) and members of the Constitutional Court (Constitutional Court Act). The criminal court sitting in full session may order the arrest of the aforementioned persons. The extent of inviolability is directly linked to the application of Guiding Principle 6.

65. In addition, certain categories of person enjoy exemption from jurisdiction under the Constitution (articles 53.3 and 74), the Judiciary Act (sections articles 55, 77-78 and 90) and the Prosecution

Act (section 23). The criminal court is the only body that can lay charges against or investigate members of parliament, the head of government or ministers, members of the High Judicial Council, *batlles* and judges and members of the prosecution service, and the high court has special jurisdiction to hear cases against them at first and final instance. The president of the court acts as investigating judge, a bench of five judges hears such cases and the full court hears any appeals.

b. Analysis

66. Since the 1993 Constitution came into force, proceedings have been initiated on three occasions concerning persons benefiting from immunity (and exemption from jurisdiction), and have been referred to the criminal court. There was one known case before this date and the individual concerned went to prison. The three cases, which are currently being dealt with, concern two former ministers and one still in post. The GET considers that as matters stand the immunities and procedures applicable to the categories of person referred to in this section do not pose an insurmountable obstacle to the authorities' ability to prosecute corruption offences.

IV. PROCEEDS OF CORRUPTION

a. Description of the situation

67. Confiscation is applicable to all criminal offences, including corruption and money laundering.

Confiscation and other forms of deprivation of instruments and proceeds of crime

68. Under Andorran law (article 70 of the Criminal Code[14]), confiscation is an ancillary consequence of an offence and in the event of conviction it must be applied to the instrument used in the commission of the offence, the proceeds obtained, any derived benefits and their subsequent conversion. There is no provision for equivalent confiscation, even though in practice interim measures are applied to all the assets of convicted offenders. Confiscation *in rem* is possible in the event of a person's demise.

69. Confiscation may not be ordered when assets belong to third parties of good faith who have acquired them lawfully. There is a presumption that offenders' families and other close acquaintances are aware of assets' illegal origin and confiscation is therefore applied. The third paragraph of article 70 contains a partial exception, in that it grants the criminal court the option of not confiscating or only partially confiscating assets when the profits or instruments derive from lawful trading and are disproportionate to the nature or seriousness of the offence, or when there are other grounds for such a decision.

70. Under article 176 of the Code of Criminal Procedure, if a convicted person's assets are insufficient to meet all the financial liabilities, the latter must be met in the following order: 1. compensation and reparation for damage suffered, 2. legal expenses, 3. fines.

71. Andorra did at one time consider reversing the burden of proof for the purposes of confiscation but this measure was not embodied in the new Criminal Code.

[14] Article 286 of the Criminal Code authorises confiscation for offences relating to drug trafficking.

Interim measures: seizure of material evidence and preventive seizure

72. Under Andorran legislation, seizure may be carried out directly by judges or indirectly via the police. Judicial seizure requires a judicial order with reasons for the decision. Interim measures may be ordered for any criminal offence. Andorran judges may order the seizure of securities, proceeds or other assets deriving from an offence.

73. The police may carry out seizures without a judge's order in order to assemble the necessary evidence relating to a particular offence (article 26.2 of the Code of Criminal Procedure adopted on 10/12/1998 and amended on 21/02/2005). The purpose of police seizures is to make evidence available for criminal proceedings, preserve that evidence and ensure that the proceeds of offences are available for confiscation. The items concerned must be identified, described and sealed. If by their nature they cannot be sent directly to the court the police must indicate their exact location and the person responsible for their custody. The seals may only be broken on the order of the judge or court and items seized must be transmitted to the judicial authorities in their entirety.

74. In judicial proceedings, apart from cases of *flagrante delicto*, the police are considered to be officials of the investigating judge and any seizure of proceeds identified in the proceedings will be carried out on the judge's orders. The judicial authorities may order interim measures under article 76 of the Code of Criminal Procedure, according to which judges may visit any location to carry out searches and seize objects and documents that could serve to establish the truth. They may also issue judicial orders to the police to carry out such operations.

75. As noted earlier, under article 87.4 of the Code of Criminal Procedure, it is judges who have the power to authorise checks on banks and the freezing of banking assets.

76. They may also take any decisions they consider necessary to ensure the restitution of objects seized if they are no longer relevant to the judicial proceedings. When the proceeds of an offence are identified and assessed, the relevant judge must adopt the resolutions necessary to ensure that they are returned to their owners, to ensure that no further damage is caused.

77. The final part of article 112 of the Criminal Code authorises judges to effects seizures as a safeguard against any civil liability arising from an offence. Under article 119, such measures may also be applied to third parties likely to be found civilly liable for offences committed.

Money laundering

78. Article 409 of the Criminal Code makes money laundering an offence. Offences liable to a maximum term of imprisonment exceeding three years, plus the offences of procuring and drug trafficking, constitute principal laundering offences. Only certain cases of corruption satisfy these criteria (when the action or omission attributable to the authority concerned constitutes an offence/unlawful act) and they exclude trading in influence, which is liable to a fine or professional disqualification, and a few other offences bordering on corruption.

79. Perpetrators of the offence of laundering may not be convicted as the perpetrators of or accomplices to the principal offence and must be aware that the assets concerned are the proceeds of an offence. Attempts to commit an offence, conspiracy and incitement are offences under this article.

80. Article 410 provides for increased sentences in the case of laundering by an organised group or laundering as a regular event.

81. Andorra has also established preventive arrangements under its 2000 legislation on international co-operation against the laundering of money and the proceeds of international crime (LCPI). Section 45 lists the bodies that are subject to preventive measures and required to report suspicious transactions to the laundering prevention unit, which acts as Andorra's Financial Intelligence Unit (see part II).

> The obligations laid down in this legislation shall be applicable to operational establishments in the Andorran financial system and insurance and reinsurance companies, together with other individuals and legal persons who, in the course of their occupation/profession or commercial activity, undertake, oversee or advise on movements of money or securities that could be used for laundering purposes, in particular:
>
> 1. independent accountants and tax advisers;
>
> 2. real estate agents;
>
> 3. notaries and members of other independent legal professions when they are involved in planning or carrying out operations on behalf of their clients under the following headings:
>
> - purchasing and selling property or commercial enterprises;
> - handling client cash, securities and other assets;
> - opening or managing bank, savings or securities accounts;
> - making the necessary arrangements for the establishment, management or direction of companies;
> - establishing, managing or directing companies, trusts or similar arrangements;
> - acting on behalf of clients in any financial or property transaction;
>
> 4. sellers of high-value items such as precious stones and metals, when payment is made in cash and for an amount of at least € 15 000 or the equivalent in any other currency;
>
> 5. gaming establishments.
> (…)

82. The laundering prevention unit is required to advise the prosecution service of any cases where there is a reasonable suspicion that a criminal offence has been committed. Any information held by the unit concerning corruption offences will be sent directly to the judicial authorities, who will decide what steps to take in response. As noted earlier, banking secrecy cannot be invoked as grounds for refusing to co-operate with the judicial authorities, though this is not always clear for all categories of financial and other activities. The judicial authorities may decide to transfer a case to the law enforcement agencies for further inquiries.

Statistics

83. As noted in part I of the report, no cases of corruption as such have been reported to or dealt with by the judicial authorities in recent years. There have therefore not been any purely national cases of laundering of the proceeds of corruption (for information, over the period 2002-2005, 33 judicial investigations were undertaken into laundering and over the same three-year period, 38 confiscation orders were made). Inquiries into the laundering of the proceeds of foreign corruption have however been brought to a successful conclusion in the context of international co-operation.

Mutual judicial assistance: interim measures and confiscation

84. Andorra ratified in 1999 the Council of Europe's 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) and in 2005 the 1959 Convention on Mutual Legal Assistance in Criminal Matters (ETS No. 030). Mutual assistance in corruption and laundering cases and in connection with interim measures, confiscation and obtaining evidence is based on these two treaties. It has also ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and signed the Criminal and Civil Law Conventions on Corruption and the so-called Palermo Convention.

85. Judicial and police co-operation, generally on a regular basis, focus on rapid and spontaneous exchange of information between the Andorran police and those of Spain, France and even other countries. This co-operation is long-established and is based on reciprocity. However two agreements on police co-operation were reached with the Spanish authorities in 1999 and 2001: one on police co-operation between the Spanish and Andorran interior ministries signed on 24 September 1999, which came into force on 25 September 1999, and one between the Andorran police and the *Guardia Civil*, which came into force on 18 September 2001. Co-operation may also pass through Interpol (Andorra has been a member of ICPO-Interpol since 1987) and above all the Egmont network of financial intelligence units, of which the laundering prevention unit is a member.

86. When Andorra is asked to provide assistance in criminal cases concerning confiscation and other forms of deprivation of the instruments and proceeds of crime, conventions ETS No. 141 and ETS No. 030 will be applicable to Parties to the conventions. In the case of other countries, the legislation on international co-operation against the laundering of money and the proceeds of international crime (LCPI) will be applied. There are no specific provisions on corruption. The general provisions applicable are those of the LCPI and those of international conventions ratified by Andorra.

87. In response to requests for confiscation, the Andorra judicial authorities may order the necessary interim measures to ensure that they are properly carried out (sections 20 ff of the LCPI). Sections 38 and 39 lay down what measures are applicable to foreign requests for confiscation. These apply to the instruments of offences or their proceeds, and money, securities or other assets acquired with their aid or their equivalent arising from a laundering offence or a major offence as defined in the Criminal Code.

b. Analysis

88. As noted in the descriptive part, Andorran legislation authorises the confiscation of instruments used to commit offences, the direct or indirect proceeds of those offences and any profits that might accrue. This legislation may be successfully applied to assets directly attributable to the perpetrators of offences. In practice, though, offenders often try to conceal assets by placing them in the hands of another person, attributing them to the assets of a legal person over which they exercise control and/or moving them abroad.

89. In the case of assets held by third parties, legal protection is only afforded to persons of good faith, which is to be welcomed. However, Andorran law does not allow the confiscation of the equivalent value of proceeds, which is particularly important, for example, when these proceeds cannot be located or repatriated from abroad. The GET considers that this situation weakens efforts to deprive offenders, including persons found guilty of corruption, of all the benefits of their offence. **The GET therefore recommends that authority to order confiscation of the**

equivalent value of the proceeds of offences (including corruption) be introduced into Andorran legislation and its use be encouraged in practice.

90. It also notes that it is not currently possible to reverse the burden of proof for the purposes of confiscation, although in Andorra it is normal practice in connection with the application of interim measures. *It observes that, for the sake of greater consistency, there should be statutory authority for such reversal in the case of confiscation.*

91. The provisions relating to seizure are mainly concerned with protecting potential evidence, the seizure of instruments and civil compensation and reparation, which means that seizure for the purposes of confiscation stems largely from practice, with investigating judges authorising the seizure of suspects' or accused persons' entire assets, whatever the value of the proceeds of the offence. It is then for the latter to prove that the assets seized are of lawful origin. The evaluators were told that this practice has not so far been challenged. Applying interim measures to all an accused person's assets also appears to stem from practice. Even though this Andorran practice shows that investigators are committed to preventing offenders from benefiting from the proceeds of crime, it is difficult to ignore the dangers this poses from the standpoint of certainty of the law, particularly for the authorities. The lawyers whom the team met acknowledged that although the legality of seizing all of an accused person's assets had not yet been challenged, this was always possible. Finally, and for the sake of consistency, the arrangements governing seizures should also take account of equivalent assets and those held by legal persons. **The GET therefore recommends that the legal basis of seizure for the purposes of confiscating the proceeds of crime (including corruption) be clarified, and that this include the seizure of equivalent assets and those held by legal persons.**

92. In view of Andorra's economic and geographical situation and the fact that the tourism that supplies most of its income also results in considerable movements of people, with about 12 million visitors a year and a large influx of seasonal workers, it is hardly surprising that a considerable proportion of crime in the country is of foreign origin. For this reason, the judicial authorities make considerable use of international legal co-operation and requests for assistance in their inquiries.

93. At the same time, Andorra's very low taxes attract foreign funds into its financial institutions, some of them for laundering. This is why Andorra receives a large number of requests for assistance and for financial information from foreign judicial and anti-laundering authorities. The GET welcomes Andorra's ratification, in 1999, of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and in 2005, of the European Convention on Mutual Assistance in Criminal Matters, as well as domestic legislation on international legal co-operation and combating money laundering. The team was told by the authorities that they made frequent use of international co-operation regarding the seizure and confiscation of the proceeds of crime, but very few statistics were supplied on this subject, including numbers of requests for assistance or information from foreign anti-laundering authorities. The Andorran authorities also said that they were able to respond – at least via the laundering prevention unit – to requests concerning tax offences, so long as this was not the sole ground for the request, which should include another element, such as laundering.

94. The revised Criminal Code that came into force in 2005 extends the scope of the offence of money laundering. Under article 409, the underlying predicate offence can include any major offence liable to more than three years' imprisonment and the lesser offences of procuring and drug trafficking. Nevertheless, this does not cover all the offences of corruption but only the more aggravated forms. In the case of active or passive corruption, this means that the bribe must be

offered or received in exchange for an unlawful action by the authority or official concerned. Trading in influence also falls outside the scope of the offence of money laundering. This may even be an obstacle to international co-operation. **The GET therefore recommends that the scope of money laundering be extended to include, as predicate offences, the largest possible number of corruption offences.**

95. The GET welcomes the establishment in 2001 of the laundering prevention unit. Since its creation, the unit has received 72 reports of suspicious operations from bodies and institutions required to make such reports, 54 of them from banks. Twenty-five of these reports were passed on to the prosecution service. The GET has taken note of various training activities that the unit has organised for the bodies and institutions concerned, and of the technical notices it has issued on types of suspicious transactions, the forms for identifying clients and, more recently, the need to pay close attention to transactions concerning politically exposed persons, which is particularly important from the standpoint of fighting corruption. Nevertheless, the GET is concerned by statements received from various persons that financial institutions do not report every suspicious transaction.

96. It also notes that bodies or professions, such as those of *gestorias* and *economistas*, that act as financial intermediaries or letter-box companies or offer advisory or other services are not always recognised[15] and are not covered by the legislation on international legal co-operation and combating money laundering. A draft amendment to this legislation to fill these gaps is apparently under consideration, which is to be encouraged. The resulting checks, familiarisation activities and reports of suspicious transactions would increase the current workload of the anti-laundering unit in particular.

97. In the light of the foregoing, *the GET observes that the relevant Andorran authorities should increase their efforts to encourage financial and non-financial institutions to comply with anti-laundering measures and to monitor this compliance. Since the laundering prevention unit has a major responsibility in this respect the Andorran government should ensure that it has sufficient resources to carry out its various duties.*

98. As noted above, Andorra is distinguished by the practice of nominees (even though this is prohibited) and pseudonymous accounts in financial establishments, although the latter maintain registers of the real account holders, who are known to the managers, and this information can be supplied to investigating authorities. There is currently no centralised land or property register[16]. The country's four notaries maintain individual registers. However many transactions, including property ones, are still by verbal agreement, with no written documents (the authorities take the view that the introduction in 2002 of a tax on patrimonial transmission, and the new law on the tax on added value – currently before Parliament – put an end to such practices since they require the confirmation of all transactions by a notarised act). These various factors led a number of the team's interlocutors to suggest that the real estate sector in particular was "very obscure" and lent itself readily to laundering and the concealment of kickbacks and other proceeds of corruption in Andorra.

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[15] Whether or not this is simple publicity, some indicate on their web sites that they guarantee banking secrecy and anonymity for their clients. During the visit, the evaluators were told that the *economistas* were claiming recognition for their profession.

[16] At the time of the discussion of the report, the Andorran authorities advised that measures are under way to establish a central register.

99. The professional secrecy and confidentiality referred to earlier may increase these risks of and vulnerability to corruption, by serving as a barrier to transparency of profits and assets of public officials and making it difficult to investigate both domestic and foreign corruption.

100. Some of these elements do not directly concern the subject of this evaluation, but their combined effects may significantly reduce the effectiveness of the measures required by Guiding Principles 4 and 19. *The GET observes that a whole raft of measures will be needed, in addition to the previously recommended improvements, to formally prohibit the use of nominees and to establish a central land and property register*[17]*.In this connection, the GET noted that the Law on companies, the Law on foreign investments and the Law on accountancy – which are all in the process of being adopted – have the potential of filling lacunae.*

101. Finally, the GET was told that certain cases from the FIU are not accepted by the prosecutors when they deal with a possible offence other than money laundering. However, the GET noted that the wording of art. 53 of the anti-money laundering law provides, on the contrary, that the FIU forwards to the prosecution service cases dealing with possible offences (and not only money laundering suspicions). Examples might include receiving or paying out kickbacks, bribes and so on. It would be a pity if the Andorran authorities neglected this sort of information, which nevertheless has a certain value, given that the unit's analysis has served to confirm the suspicions of the reporting institution or establishment. *The GET observes that the anti-laundering legislation should be interpreted to permit the transmission of cases concerning criminal offences other than money laundering, such as for instance corruption.*

V PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal context

102. The main sources of the administrative law on the activities of government in Andorra are the Constitution, the Administrative Code and the Civil Service Act. The main principles are embodied in articles 3.2, 25 and 72.3 of the Constitution and 13 to 22 of the Administrative Code. The Civil Service Act establishes the values and principles on which government activity is based, including a service, citizen and results orientation, basing administrative action on professional criteria, clarification of roles, management systems and procedures, commitment to public service objectives, clear and adequate communication and team work. Section 2 of the Act expresses this in more concrete terms, by stating that the public service must objectively serve the general interest in accordance with the values on which the Act is based and acknowledge efficiency, professionalism, neutrality and equity as the guiding principles of its activities and thus of the conduct of government and its staff.

103. Article 13 of the Administrative Code defines the public service as a. the Executive Council and the bodies answerable to it; b. the municipalities, the *quarts* and the bodies answerable to them; and c. autonomous and semi-public bodies and establishments.

Anti-corruption programme

104. As noted in the first part, certain short-term activities are planned to prevent corruption and alert officials in general to the risk, but more specific projects are required, particularly concerned with

[17] ibid

initial and continuing training. According to the Andorran authorities, over the period 2006-2007 as well as general awareness raising there will be a focus on values and aspects of public ethics of concern to senior managers.

Transparency

105. In connection with access to administrative information, article 12 of the Constitution provides for freedom of communication and information and prohibits prior censure. Similarly, article 42 of the Administrative Code sets out the rules on access to and communication of administrative documents and the exceptions concerning information concerning named persons, documents whose confidentiality is legally protected and ones containing personal data. According to the authorities, access is free, subject only to payment for photocopies.

106. The Data Protection Agency Act was passed in 2004. The agency supervises the processing of personal data by Andorran public authorities and/or private persons or bodies responsible for data processing. The aim is to protect and safeguard fundamental human rights regarding the processing and use of data. Chapter 5 of the Act deals with the right of access to data. Persons are entitled to be informed of the processing and use of data concerning them, by the person responsible for the processing, within five days of receiving the request. Reasons must be given for any refusal to provide information and appeals may be lodged to the data protection agency. File controllers may not require any form of payment for expenses incurred in exercising this right. The Act specifies exceptions to the right of access to public files when this could pose a threat to public security, administrative documents are required in connection with tax obligations, or confidentiality is necessary to prevent or prosecute administrative or criminal offences or is in the public interest or that of the individual concerned.

Supervision of public authorities and other measures

107. Administrative decisions may be challenged in administrative or judicial proceedings. Normally, prior administrative appeals are required. Appeals may be lodged with the government against its own actions and decisions (express or tacit) and those of local authorities and public bodies responsible for a public administrative service. Once the administrative remedies have been exhausted, applicants may appeal to the administrative court.

108. The court of auditors, created at the end of 2000, is a technical and independent body that supervises the economic and financial management of the public service and its accounts. In doing so, it must act in total independence of the public bodies and institutions that it supervises. It may act on its own initiative, in accordance with its annual work plan, or on the instructions of the *Consell General,* when the latter orders it to produce technical reports or carry out checks. It also scrutinises the accounts of the municipalities and *quarts*[18] and the bodies that answer to them, the economic and financial activities of public companies and of all the bodies that manage public funds or receive public subsidies and the accounts of the *Consell General* and associated bodies. Its work is based on the rules laid down by INTOSAI (and EUROSAI) and the IFAC.

109. All the court of auditors' reports and memoranda must refer to any offences, excesses or irregular practices that might have been observed and indicate who might be responsible or liable, according to its criteria, and what action should be taken. Where there is evidence of accounting, disciplinary or criminal responsibility or liability, the court must submit a report to the relevant authority.

[18] The *quarts* are subdivisions of the municipalities (article 84 of the Constitution).

110. There is a similar system at municipal level with the institution of the *interventor*, a sort of auditor assisted by two or three persons who undertakes prior financial scrutiny and also examines bids received in response to public tendering procedures.

111. To prevent the unlawful use of public funds, the finance ministry has a general inspection department, with thirteen staff. It carries out its statutory responsibilities *vis-à-vis* government, parapublic and public law bodies and public companies in which the public authorities are involved. Its responsibilities are similar to those of the court of auditors. It monitors the expenditure of the central authorities and other bodies attached to them. It scrutinises government activities from the standpoints of lawfulness, financial regularity and effectiveness.

112. The finance ministry also includes a taxation department that co-ordinates, manages and supervises the application of the country's taxation system. Andorran taxes are indirect. Taxation powers are exercised by the government and the municipalities.

113. The public authorities are also overseen by the ombudsman, the *Raonador del ciutadà*, established in 1998. The ombudsman is appointed by the *Consell General* by a vote of two-thirds of its members for a six-year renewable term.

114. The ombudsman is responsible for ensuring that a. the activities of government in general and in the broadest sense are compatible with the general principles of defending and protecting the rights and freedoms laid down in the Constitution, and b. the public authorities serve the general interest with total objectivity and comply with the principles of hierarchy, effectiveness, transparency and total obedience to the Constitution and the law. The ombudsman receives complaints regarding citizens' relations with all the public authorities and bodies in Andorra. He may prepare reports and make recommendations on his own initiative on matters of importance to citizens or to society in general. He also publishes an annual report. Complaints may not be anonymous and may be presented by any individual or legal person who can demonstrate a legitimate interest. Complaints about the functioning of the High Judicial Council must be passed on to the Council itself as they are outside the ombudsman's remit. In carrying out his activities, the ombudsman may issue the authorities or their staff with warnings, recommendations or reminders of their legal duties and suggestions about new measures to be introduced. In every case, the authorities and public officials must reply in writing within one month at most and in practice his recommendations and suggestions are binding. If those concerned fail to respond or to implement recommendations, the ombudsman may contact their hierarchical superior and in any case he must refer to any problems arising in his report. The ombudsman has access to all necessary administrative information, other than information of a restricted nature, but according to him this only concerns a limited number of cases.

115. Public procurement was discussed under Section I.

Recruitment, careers and preventive measures

116. Andorra's national public service, or general administration, comprises 1862 officials, all of whom are covered by the Civil Service Act of 15 December 2000. To these should be added approximately 150 temporary employees whose statute and employment conditions (temporary tasks, replacing a staff on maternity leave etc.) are provided for in the Civil Service Act, but who are mostly subject to the general labour legislation (art. 4 Civil Service Act). There are also 23 employees with a special relationship called upon, in principle, to serve as advisors or personal assistants. This kind of officials are envisaged by art. 4 of the Civil Service Act and their working

conditions are regulated in both the Civil Service Act and contractual provisions. Each of these officials signs a standard contract providing for the working conditions, their rights and duties. The initiative to hire such officials comes either from the Head of Government or individual ministers but the employment is to be finally approved by the Government in plenary. Finally, there are 18 "political" posts, which include members of government and top public officials such the Secretary General to the Government, the Head of Private Office of the Head of Government, the Chief of Protocol and State Secretaries, as well as the ambassadors. By virtue of the Civil Service Act (art. 3-2), these posts are subject to the rules of the Government Act of 15/12/2000. The administration of justice is somewhat specific. It comprises 90 employees hired for an indefinite duration and subject to the Civil service Act of the Administration of Justice of 27/05/2004, which is largely based on the Civil Service Act. This staff is in charge of technical, and administrative functions and working for departments not directly part of the judiciary. The management of the justice administration is autonomous but under the general authority of the High Judicial Council.

117. The municipalities have their own staff. These are covered by certain general provisions of the national Civil Service Act, as well as by similar legislation that all local authorities were required to enact within two years of the enactment, in 2000, of the Civil Service Act. At the time of the visit, each municipality had its own law. In the municipality visited, which had about 5000 population, there were 82 employees, of whom 15 worked in the municipal day nursery. Eighty percent of them had established civil service status. Parts I and III and the main provisions of part II of the Civil Service Act also apply to local authorities. Otherwise they are covered by their respective regulations.

118. In accordance with the Civil Service Act, the public service secretariat (SEFP), which also maintains a public service register, has classified public officials into two corps, three groups and a series of salary steps. A four-person technical selection committee (two representatives of the relevant institution and two from the SEFP acting as chair and secretary) supervise candidate examination and selection procedures. Its members are appointed by the SEFP and its decisions must be in writing. The Civil Service Act lays down the principle of merit for allocating places in the public service, via internal promotion or a selective recruitment procedure. The government appoints public officials. According to the Andorran authorities, there are approximately 1 000 candidates for an average of 100 posts filled each year in the public service. Hierarchical appeals can be lodged with government against decisions concerning competitions and candidate selection and against recruitment decisions. None of the administrative appeals presented in recent years concerning selection and recruitment have been successful and there have been no significant court decisions on the subject.

119. The Civil Service Act lays down specific procedures concerning the recruitment, selection and promotion of employees of central government. Section 25 lays down the principle of equality of candidates and objective selection in accordance with the requirements of the post. A general regulation on selection, promotion and professional careers was adopted on 29 November 2004, following consultations with the staff associations. This establishes in considerable detail the procedures for access to, selection for and promotion within the general administration. In recent years, and following the entry into force of the Civil Service Act, these procedures have drawn on the work of the four-person technical selection committee. Post descriptions are published, decisions are reported in writing and candidates may, at any time, consult information about their results, lodge appeals and so on.

120. The public service secretariat (SEFP) is responsible for applying the Civil Service Act and its regulations, and for developing the management systems applicable to the work of government.

As the government's main human resources manager, the SEFP is particularly concerned with applying the public service disciplinary code and procedures, ensuring that the arrangements governing access to and promotion within the service are rigorously enforced, monitoring the system of incompatibilities and generally ensuring that human resources are managed according to the principles of merit, open competition, transparency and professional rigour. Its human resources responsibilities give it a corporate vision and it is attempting to instil a new culture of public administration by strengthening the management skills of directors and heads of department, while continuing to comply with the legislation and the requirements of the different systems of human resources management already in place.

121. Turning more specifically to the prevention, detection and punishment of corruption, the SEFP a. administers the public service disciplinary code and procedure as laid down in the Act; b. provides directors, managers and staff in general with training on and familiarisation with this field, and incorporates specific training into staff initial and continuing training; c. ensures that access to the public service and staff selection comply with the principles in the legislation.

122. There is no system of financial disclosures for public officials in Andorra.

Training

123. When the modernisation of the public service started in 1999-2000, a seminar was organised for directors on administrative values. The themes relating to the values of public administration and the ethics of public managers and staff were not developed during the consolidation stage of the modernisation project because other strategic priorities intervened. However, once the general professional development plan for senior staff had been approved, specific plans were drawn up for a programme concerned with values and ethics in public service management. According to the Andorran authorities, it is planned to strengthen these aspects of the public service in staff initial and continuing training.

Conflicts of interest

124. Section 61 of the Civil Service Act specifies other activities in the public and private sectors that are incompatible with employment in the national public service. This is based on the fundamental principle that staff should devote their efforts to just one post, with no exceptions other than ones arising from the public service concerned. Private activities may not prevent or interfere with public employees' performance of their duties or obligations or compromise their independence or impartiality. Section 61 provides specifically that public officials, whether active or suspended, may not exercise any other occupation outside their status as officials in the public or private sectors, other than in the following cases and only when these are performed outside of working hours:

a. those relating to the management of their assets or those of their families, and collaboration in the family business of their parents or spouse, so long as they receive no remuneration;

b. attendance at congresses, conferences, seminars and courses, as rapporteur or contributor, on account of the public service post they occupy;

c. literary, artistic, scientific or technical production and creation and associated publications, on condition that this production or creation and any publications are not incompatible with the requirements of section 60 of the Act (obligations of employees);

d. activities of an investigative nature on account of the public service post they occupy;

e. exceptional activities in specific cases, to be authorised by the government in a decree, and subject to conditions laid down in the decree.

125. The Act requires directors and hierarchical superiors to enforce compliance with these rules. Failure to comply with them leads to disciplinary proceedings. There have been no such proceedings in connection with incompatibilities since the Civil Service Act came into force.

126. Section 60.3 also requires public officials to refrain from becoming involved in cases in which they, or members of their family up to the fourth degree of consanguinity and the second degree of affinity, might have a personal interest.

127. Sections 4.5 and 6.3 of the Government Act of 15 December 2000 forbid members of the government, state secretaries, the secretary general of the government, the head of the prime minister's private office and the head of protocol from entering into contracts with the public service or occupying directors' posts on the boards of private companies having such contracts. Nor may they perform paid activities of a commercial, industrial or professional nature.

128. There is no provision for rotation in Andorra, or measures to control migration to the private sector.

Gifts

129. Under section 71 of the Civil Service Act receiving gifts, benefits or privileges of whatever sort for oneself or a third party, for services solicited as a public official, constitutes very serious misconduct. There are no other regulations applicable to gifts or benefits received outside these circumstances.

Code of ethics

130. Andorra has no code of conduct as such for public officials but ethical rules and principles appear in the Civil Service Act and the legislation on the special corps of government, following pioneer work by the customs service, which adopted its own code on 12 April 2004, drawing on the recommendations of the World Customs Organisation.

Reporting cases of corruption

131. Under section 67.3 of the Civil Service Act, disciplinary liability will be imputed, not only to those committing faults but also to other officials who consent to or conceal such acts or encourage the non-fulfilment of obligations. Public officials have an obligation to report such acts, failing which they will be liable to disciplinary action. Reporting may be to hierarchical superiors. Article 36 of the Code of Criminal Procedure requires suspected criminal offences to be reported to the police or judicial authorities.

Disciplinary procedures

132. The public service disciplinary system and procedure is based on the definition of faults, the laying down of penalties, the criteria for assessing the fault committed and the penalty to be imposed. There is a separation between the bodies that open the proceedings, those that investigate the circumstances and those that decide. Senior managers and directors, and the

government, also exercise real disciplinary powers. The aim is to involve all those with senior management responsibilities in the disciplinary process. Proceedings are set in motion by a hierarchical superior or departmental head, or by the SEFP. Decisions on what penalties to impose are taken by the departmental head, the SEFP or the government, depending on the fault committed. To ensure that investigations are carried out independently, the Act authorises challenges to the investigator appointed by the authority that set off the proceedings. There are procedural safeguards to enable officials to request and present any evidence they consider necessary, and to reply to evidence against them. A regulation on the disciplinary system and procedure for national public officials is scheduled for approval in 2006, together with a disciplinary management handbook for senior officials and activities to develop this field.

133. For administrative faults, the penalties range from a simple written warning to final dismissal from the corps. However, the latter is rarely applied, with the most serious penalties involving suspension from duties for varying periods. The penalties laid down in the Civil Service Act vary according to the fault. Faults are classified into three groups: minor, serious and very serious. The penalties for minor faults are a written warning or temporary suspension from duties without pay for up to 15 days. The penalties for serious faults are a change of post, temporary suspension from duties without pay for 15 days to one month or loss of a managerial position. The penalties for very serious faults are suspension from one to six months or temporary or permanent dismissal, and the individual concerned may also be required to change post. Section 72.4 of the Act states that if the disciplinary proceedings reveal that a criminal offence may have been committed, the proceedings must be suspended and the prosecution service informed. Penalties are recorded in the public service central register and remain there for one to three years, depending on the seriousness of the faults. The time limit for taking action against faults or enforcing penalties is from two months to four years, depending on their nature.

134. The number of disciplinary proceedings in the national public service has considerably increased in the last five years. The Andorran authorities informed the GET during the visit that there had been about 100 disciplinary proceedings in the previous four years[19]. A regulation on the disciplinary system and procedure for national public officials is scheduled for approval in 2006.

b. Analysis

135. At first sight, there appears to be a statutory guarantee of transparency in most areas of government. However, this does not seem to be quite so clear in practice. According to journalists whom the team met, access to information is not always clearly provided for or automatically forthcoming. They said that it was only by insisting that they managed – sometimes – to obtain information at central level. Access to information held by local authorities was even more difficult, or even non-existent. Nor was it a common practice in Andorra to issue press releases, which made it very difficult in particular to follow up cases leading to judicial proceedings (which could be important regarding future corruption cases).

136. Although the above-mentioned constraints do not prevent the media from reporting political rivalries in the country and using this as an opportunity to draw public attention to certain issues, such as conflicts of interest involving politicians[20], the GET is concerned that access to public

[19] In the police there were about 48 disciplinary proceedings in 2005-2006, a majority of which were conducted under a summary procedure and concerned such matters as failing to obey a superior, indiscipline and negligence at work. Two to five disciplinary penalties have been imposed in the customs service for matters other than corruption.

[20] For example, at the time of the visit, the evaluators were informed of allegations by opponents that the political proposals to invite a particular bank to invest in a company (managed by a local authority) running a ski resort stemmed from the private interests of the decision makers concerned in this bank and in the ski resort company itself.

information is sometimes seen as a significant problem, for which there are insufficiently precise arrangements or safeguards. The GET believes that, to avoid any problems of predictability and abuse of discretionary power in decision making, transparency in general and access to information in particular call for more detailed regulations than what appears in general legislation. **The GET therefore recommends that i) steps be taken to clarify the rules on the transparency of administrative activities, particularly concerning access to public documents at both central and local levels, with responsibility for overseeing these rules being assigned to an appropriate authority, and ii) consideration be given to additional ways of improving communication with the public.**

137. The court of auditors has powers of financial and legal control of public accounts, as well as effectiveness, efficiency, cost-effectiveness and proportionality controls. It seems that in practice, the control applies mostly to financing and legality. The court has three members and three officials and carries out checks via private audit firms and individuals recruited by competition. Following such audits, the court reports on any failure to exercise responsibilities and may propose changes to the law in its annual reports, which are then discussed by the finance committee of the *Consell General* and published. However, it has no powers at present to recommend any disciplinary action against the officials concerned. Since its establishment in 2001, the prosecution service has not launched any criminal proceedings on the court of auditors' advice. As part of its efforts to strengthen its powers and role, from 2007 it plans to move beyond control of legality to include audits of objectives in accordance with INTOSAI and EUROSAI standards.

138. In addition, the finance ministry's general inspection department, which includes twelve inspectors of different kinds, carries out very similar functions to those of the court, other than monitoring the effectiveness of government spending. Each inspector is responsible for a specific group of institutions, with no possibility of rotation. Firms are monitored on a random basis and government departments and agencies systematically. The department can recommend disciplinary action against officials. Disciplinary proceedings are initiated jointly by the finance ministry and the SEFP, and the Government orders appropriate penalties. None of the checks carried out in recent years have identified any cases of conflicts of interest, incompatibility or corruption. The most frequent irregularities were ones associated with public procurement. The general inspection department does not produce regular reports on its activities and the court of auditors was unable to confirm the department's statement to the GET that it supplied the court with annual statistics. As from 2007, the Department will introduce a rotation policy and efficiency controls.

139. In the light of the foregoing, the scrutiny of bodies receiving public funds should be strengthened and more attention should be paid to issues relating to corruption. **The GET therefore recommends that the role of the court of auditors and the general inspection department in combating corruption be strengthened, in particular by i) inviting the court to check more frequently whether public accounts are being applied efficiently and in accordance with objectives; ii) authorising the court to recommend individual (disciplinary) and institutional measures to government; and iii) strengthening co-operation between the court and the department, particularly by making the results of the department's internal audits available on a regular basis.**

140. It was clear from the GET's discussions with the mayor of a municipality that local authorities' internal checks were normally carried out by persons close to elected officials coming under the category of employees with a special relationship, as defined in section 8 of the Civil Service Act. This was the case in the municipality visited. It was stated that there were no clear rules on

financial control and inspectors appeared to exercise more of a technical function. They did not assume responsibility for their checks and their failure to sign budget documents did not have any impact. However, the GET noted that all the municipalities have now adopted a single accounting model and are also liable to scrutiny by the court of auditors. The latter did note a certain number of irregularities in its 2004 report[21]. There is still a high risk of corruption and conflicts of interest at local level. *The GET observes that the Andorran authorities should review the matter and consider whether municipalities' internal financial and budgetary controls need to be strengthened.*

141. The ombudsman, or *Raonador*, may prepare reports and make recommendations on his own initiative on matters of importance to citizens or to society in general. His annual report must pay particular attention to both specific and general aspects of administration that fail to reflect the principles of effectiveness and transparency. The ombudsman may propose or recommend disciplinary measures. He has done so in cases concerning social security, succession and the public electricity and telecommunications services. However, the ombudsman states that in the last seven years he has never come across a case of corruption, even remotely. Nor has he considered this matter from a more general standpoint. *The GET observes, however, that his experience and overview of certain distinctive features of Andorra and the operations of its state and public service could make a valuable contribution to efforts in this area, particularly through his participation in the general study of corruption recommended in part I of this report.*

Public officials

142. The 2000 Civil Service Act is a definite advance over the previous situation, where the relevant law was scattered over various statutes and regulations. The present situation is still not ideal, since each municipality has its own law. Moreover, the Administrative Code of 29 March 1989 predates the 1993 Constitution, which has superseded certain provisions of the Code. This is probably the reason why certain interlocutors were not very sure about the practical applicability of the Code.

143. Nationally, the great majority of public officials are covered by the civil service regulations. However, some fall outside their scope and are covered either by contractual regulations, or a combination of both. And they sometimes have significant responsibilities. The GET was told by the Andorran authorities that the contractual relationship follows the same rules as the Civil Service Act, including as regards rights and obligations.

144. The GET has also been told that public service recruitment, including local government recruitment, is vulnerable to corruption and is not always conducted transparently, despite the rules laid down. The recruitment to political posts and of employees with a special relationship does not take into account anti-corruption requirements. There do not appear to be any particular requirements or objective criteria, such as demonstrable skills, for appointment to these posts and there have been occasions when persons with few or no qualifications have been appointed to senior positions. *The GET therefore observes that the Andorran authorities should i) make existing recruitment procedures, including local ones, more transparent and ensure that the relevant procedures are complied with; ii) ensure that the rights and obligations of contractual staff, including political appointments, take account of the need to combat corruption.*

145. Under a regulation of 9 July 2003, public officials are subject to annual appraisal, which takes account of their personal integrity. Simple or repeated failure to satisfy the requirements of the

[21] http://www.tribunaldecomptes.ad/

management objectives system may constitute serious or very serious negligence and lead to disciplinary action.

146. In general, ongoing training is available for the various administrative corps, in addition to initial training (which lasts for instance for 5 months[22] for the police and for 3 months for the customs officers. The Andorran authorities told the GET of certain planned short-term activities concerned with preventing corruption and making central government officials more aware of the problem, particularly through initial and continuing training. General staff awareness training and specific ethics-related activities for senior managers are planned for 2006-2007. These general and more targeted programmes will try to make public officials more committed to fighting corruption and raise citizen awareness of the problem.

147. There is a general ban on accepting gifts and other benefits. Under the Civil Service Act accepting gifts, benefits or privileges of whatever sort for oneself or a third party, for services solicited as a public official, constitutes a very serious misconduct punishable by from one to six months' suspension and loss of salary, dismissal and temporary or permanent disbarment from an official post. But officials and the public have little knowledge of these rules and there are no specific directives on how officials should respond to offers of presents, for example linked to hospitality.

148. The GET has noted that there is no code of conduct or ethical guidelines for the public service in general or for municipalities. Nor has there been any progress so far with the proposals made in 1999-2000 to introduce ethical rules for the police. A code of conduct for the customs service is currently being drawn up.

149. In view of the foregoing, **the GET recommends that immediate steps be taken: i) to approve ethical guidelines, in the form of a code of conduct, for the central and local public services as well as for specific bodies such as the police and customs; and ii) to provide suitable training on ethical issues.**

150. Finally, although section 67.3 of the Civil Service Act requires officials not to cover up professional misconduct and to report it, and article 36 of the Code of Criminal Procedure creates an obligation to report offences (including corruption) to the judicial authorities, there is nothing in Andorran law to protect persons making such reports, either internally or to the judicial authorities, from adverse effects on, for example, their careers. This is particularly important in a country the size of Andorra where social relationships are very tight-knit. **The GET therefore recommends that arrangements be made to protect public officials who report suspected corruption in good faith from possible reprisals.**

Conflicts of interest, incompatibilities, migration to the private sector

151. Incompatibilities are dealt with in section 61 of the Civil Service Act. Exercising incompatible professional activities constitutes a serious fault for officials. Issues relating to incompatibilities and conflicts of interest for members of the government and political officials are covered by the Government Act of 15 December 2000. However, the Civil Service Act does not deal adequately with conflicts of interest proper that might arise in the course of public activities or decision making, other than incompatibilities and the provisions of section 60.3. Besides, no proceedings have been taken concerning incompatibilities since the Civil Service Act came into force, which

[22] Out of approximately 800 hours of initial training divided into four modules, of which three are eliminatory, one eliminatory module includes issues relating to ethics and conduct. Police continuing training is carried out in collaboration with and with the assistance of the neighbouring French and Spanish police forces.

raises questions. The GET considers that no effective checks are carried out on conflicts of interest, incompatibilities and related activities concerning public officials. One of those whom the team met said that given the size of the country, conflicts of interest and incompatibilities were generally accepted, since it would be difficult to do otherwise. He also thought that applying the rules too strictly would effectively exclude too many Andorran citizens from the public sector.

152. Nor is there any general arrangement for declaring interests or assets, coupled with relevant checks. The explanations sometimes heard that Andorra is a small country where everyone knows each other and it is not difficult to see when an official's conduct could be linked to private interests are only partially valid. Given the size of the country, such a situation poses more risks than elsewhere. One locally elected official met during the visit acknowledged that a procedure for declaring assets and financial or other interests, before and after taking up political duties, would be desirable as leading to greater transparency. *The GET shares this opinion and observes that Andorra should introduce such a system for the declaration of assets.*

153. Andorra has no explicit ban on and does not scrutinise the migration of officials from the public to the private sectors. Admittedly, the issue of elites and the value to the business sector of knowledge and contacts gained in the administrative domain is less evident than in certain larger countries. Nevertheless, the close nature of social relations and the existence of a well-developed economic sector make it apparently easy to move from one sector to the other, including moves from a department with supervisory responsibilities to firms over which such supervision is exercised.

154. To conclude on this point, the GET is well aware of the constraints imposed by the size of the country and the argument that it is difficult to impose strict rules without excluding a significant proportion of Andorran citizens from public affairs. However, it is difficult to accept that the Andorran public and the various institutions concerned see conflicts of interest and, more generally, close interaction between collective and private interests as inevitable, since what is at issue in the end is the democratic functioning of these institutions and protecting the general interest. In the light of the foregoing, **the GET recommends that i) stricter regulations be introduced on conflicts of interest, incompatibilities and ancillary activities of public officials (civil servants, employees under contractual relationship or with special status, elected officials), ii) appropriate arrangements be made for overseeing the application of these regulations, and iii) rules be introduced on migration of officials to the private sector.**

155. Rotation is applied to customs and fire officers, but there is no general system for rotating staff of posts that might be deemed potentially vulnerable to corruption. Clearly, the size of the country limits the possibilities for rotation, but it would be unfortunate if Andorra deprived itself of a means of hindering the development over time of "special" relationships that might lead to special dispensations or exemptions from application of the rules. *The GET observes that the Andorran authorities should consider introducing the rotation principle, at least in administrative sectors that might be deemed more vulnerable to corruption.*

156. The significant increase in the number of disciplinary proceedings in recent years shows that the existing machinery has not been ineffective. However, it is very surprising that the majority of them concern questions of discipline, disobedience and negligence and that to date none of them has been linked, even remotely, to possible corruption. *The GET observes that the Andorran authorities would be well advised to keep a close watch for types of problems that might be associated with conduct subject to disciplinary action.*

VI. LEGAL PERSONS AND CORRUPTION

a. Description of the situation

General definition

157. The basic legislation governing the formation of companies is the commercial companies regulation of 19 May 1983. Commercial companies may take the form of commercial partnerships, and public and private limited companies. In the last two cases, the shares are recorded in a special register established by the company for that purpose and in which are also recorded transfers and all the liabilities and claims that might affect these shares.

Formation

158. Two-thirds of the authorised capital of all Andorran companies, except banks, must be of Andorran origin. Andorran capital is considered to be the capital of individuals and legal persons of Andorran nationality, and that of foreign individuals with at least 20 years' residence in the country (10 years for French and Spanish nationals). Company presidents, managing directors and anyone else with general powers to represent the company must be Andorran citizens or foreign nationals with at least 20 years' residence. Their names and status must be recorded in the companies register.

159. Companies are officially registered with a notary, following government approval. Legal personality can only be obtained after the registration with the notary is recorded in the companies register. Nor can any modification be binding on third parties until it has been formally registered. Commercial companies must have a specific and unique purpose and maintain accounts. Under the companies regulations, this specific purpose must be specified in their articles of association. When an application to found a company is submitted for prior approval, the department that administers the companies register must ensure that the stated purpose is consistent with the law, is not too extensive, vague or multifaceted and is not incompatible with the country's public morals or interests. The first checks are carried out on information concerning commercial companies and legal persons when the Government is asked to approve their formation. At this stage, applicants are required to submit two copies of the draft articles of association, a certificate showing the business name, a copy of their identity card or passport and a note of their place of residence.

Registration and measures to ensure transparency

160. Registration with the companies register requires the presentation of the notarised record of the company's foundation, which should include details of the founders – name, address or registered office, nationality and so on – and the articles of association. The companies register is a central register that is regularly updated. It contains information on each company's name, purpose, registered office, members, representatives, number of shares and so on. Inclusion on the register means that the company has been formally constituted. When companies are dissolved information about them is preserved and may be consulted. Any changes to companies' shareholding structure are in theory notified to the register.

161. Similarly, all the information supplied on the application for constitution or when any subsequent changes occur must be registered. This information is public and may be consulted by anyone. To obtain the information, those concerned must request a certificate identifying themselves.

Access to information is rapid and computerised. The law enforcement agencies have direct access to the computerised register.

Restrictions on legal persons' activities

162. The courts may impose bans on occupying posts in companies or other legal persons, trading or occupying public posts as ancillary penalties for certain offences, including corruption (article 382 of the Criminal Code).

Legislation on the liability of legal persons, penalties and other measures

163. Legal persons are civilly liable in connection with criminal offences specified in article 98.4 of the Criminal Code, which extends such liability to public and private establishments and official bodies for damage caused and interests adversely affected by criminal offences committed by authorities, officials or private employees in the performance of their duties, obligations or services. Article 71 of the Criminal Code also specifies ancillary measures that may be applied. In connection with findings of guilt or in other cases specified in the Code of Criminal Procedure, the courts may, in a reasoned manner, apply the following measures:

a. dissolution of a company, association or foundation;
b. suspension of its activities for a maximum period of six months;
c. temporary or permanent closure of an undertaking, or of its premises or establishments;
d. appointment of a judicial administrator of an undertaking or company;
e. publication of the judgment, in which case the convicted person must bear the cost;
f. Deprivation of the right of the individual or legal person to enter into dealings with the public service.

164. The 2000 legislation on international co-operation against the laundering of money and the proceeds of international crime also establishes the administrative liability of individuals and legal persons subject to preventive legal obligations. Financial penalties of up to € 600 000 may be imposed.

Tax deductibility

165. There is no system of tax deductibility in Andorra since the country relies on indirect taxes.

Tax administration

166. According to the Andorran authorities, bearing in mind the limited scope of the country's tax system, the tax authorities are all fully aware of the serious threat that certain offences may pose for the rule of law. For example, the direct and personal relations that the tax authorities have established have given them a clear understanding of the contribution they can make to combating offences such as laundering and corruption.

Accounting rules

167. There is no explicit statutory minimum period for preserving accounting or contractual documents in Andorran law. In the absence of a civil code, Roman (or Catalan) law applies. Certain documents containing contractual rights and obligations must be preserved for 30 years, after which these rights lapse. Other accounting documents are kept for five years, following general accounting principles. This applies to accounting documents relating to rights and obligations

with a shorter time limit. The anti-laundering legislation requires persons covered by the obligation to report suspicious transactions to retain any identification documents for ten years after the end of the commercial relationship, as well as all the documentation relating to the operations that were the object of the suspicions.

168. According to the Andorran authorities, the penalties for failure to conserve accounting documents in accordance with requirements can range from one to four years' imprisonment. However, it is not clear to what offences these penalties apply.

Role of auditors, accountants and other professionals

169. From the Andorran authorities' replies to the questionnaire, it is not possible to establish precisely the role of auditors, accountants and other legal professionals in preventing corruption and other related offences. It emerges from the on-site interviews that they sometimes perform a variety of tasks which exceed the area of advice (involvement in economic and financial activities, providing company service etc.). Outside accountants, tax assessors, notaries and members of other independent legal professions are under a formal obligation to report suspected laundering under section 45 of the legislation on international co-operation against the laundering of money and the proceeds of international crime. Moreover the general obligation to report offences pursuant to article 36 of the Code of Criminal Procedure applies to accountants, auditors and the legal professions.

b. Analysis

170. There are 7000 to 8000 companies on the companies register maintained by the economics ministry, mainly public limited companies operating in the service sector, including trading. The chamber of commerce identified a total of about 7000 businesses, with some companies operating several businesses. The public have free access to the register on simple written request and the judicial authorities and the laundering prevention unit have direct on-line access.

171. It appears from the on-site meetings that the register does exercise some scrutiny of the background of persons involved in setting up companies, and of beneficiaries. The chamber of commerce does not operate a similar oversight of individuals or of the origin of funds and has not so far been involved, whether through awareness raising or in other ways, in preventing corruption. Changes to a company's capital, its partners and so on must be registered with a notary and included in the register, which in theory therefore is kept up to date.

172. The GET was informed that a 1983 decree set a time limit of twenty years for the abolition of bearer securities and that such financial instruments are no longer in circulation. It was told that about a thousand companies, most of them managing assets or offering fiduciary services, had no real ongoing activity. The new companies legislation scheduled for 2006-2007 will forbid or restrict the continued existence of such companies and the practice of nominees, make it compulsory to maintain accounts and have them audited and introduce unlimited liability for partners. It is also planned to open companies' authorised capital to foreign investors, which could help to limit foreign nationals' use of nominees and Andorran intermediaries. *The GET observes that the new companies legislation comes at a very opportune time and should improve transparency regarding beneficiaries and financial arrangements concerning legal persons.*

173. The subsidiary civil liability provided for in article 98.4 of the Criminal Code for public and private establishments is not a sanction but simply offers compensation for damage resulting from

criminal offences committed by officials or employees in the course of their work. Moreover, it appears that the ancillary measures that can be ordered against legal persons under article 71 of the Criminal Code only apply to money laundering (article 411) and not to corruption and trading in influence. Nor do these measures include financial penalties. It has also been noted in part III of the report that the legal rules governing seizure need to be extended and/or clarified in the case of legal persons. These various factors possibly explain the judicial authorities' lack of familiarity with companies, even though other countries' experience shows that the latter may often be used to conceal corruption or the proceeds of such offences. The GET concludes that the Andorran system of liability of legal persons in corruption cases is inadequate. Nor are the investigation and prosecution authorities sufficiently familiar with these matters. **The GET therefore recommends that i) legal persons be made liable for corruption offences and thus liable to financial and other penalties and ii) the necessary steps be taken, in terms of training, familiarisation etc., to raise the awareness of the police and judiciary practitioners about the new legislation on the liability of legal persons.**

174. Those convicted of the passive corruption of national public officials (articles 380.1, 381.1 and 382 of the Criminal Code) and passive trading in influence (article 386.2) may be prohibited from holding a public office. Individuals convicted of aggravated active corruption of national public officials (article 381.2 of the Criminal Code) and active trading in influence (article 386.1) may be deprived of the right to enter into dealings with the public service. *The GET observes that criminal legislation does not exclude individuals from managerial positions in private companies and bodies.*

175. The GET has been informed that the Andorran authorities plan to introduce a system of direct taxes in the near future. It notes that in such a system, it is important, in legislation and in practice, for kickbacks and other expenses linked to corruption not to be deductible when assessing taxes.

176. In theory the general obligation in article 36 of the Code of Criminal Procedure to report offences must apply to the tax authorities, but they do not acknowledge this legal requirement. Nor do they appear to be required to report suspicions of laundering, as provided for in section 45 of the legislation on international co-operation against the laundering of money and the proceeds of international crime (information received at the meeting in the taxation department of the finance ministry). The tax authorities' application of the requirement in the Code of Criminal Procedure to report offences would make an effective contribution to combating corruption, particularly in the context of the forthcoming fiscal reform. **The GET therefore recommends that the Andorran tax authorities be made aware of the current legal obligation in the Code of Criminal Procedure to report cases of corruption.**

177. The Andorran Criminal Code makes it a criminal offence to falsify annual accounts and other company documents (article 238) and to establish and use falsified or non-authentic documents in various ways (articles 435-441). On the other hand, there is no obligation to account for payments, which is why failure to record a payment in the accounts is not an offence. The GET has been informed that the Andorran authorities plan to introduce a system of compulsory accounting in the future. It considers that the introduction of such a system would assist the identification of corruption offences. *The GET observes that the accounting reform must take account of the need for clear and consistent accounting requirements and establish appropriate penalties for failure to comply with these requirements.*

178. The statistics on reported suspicions kept by the laundering prevention unit suggest that in practice the accounting and legal professions are carrying out their obligations correctly.

Accountants from the two professional associations take part in special training seminars organised by the unit. The Andorran authorities also plan to organise a second anti-laundering training seminar for notaries and lawyers at the beginning of 2007. When the GET met accounting representatives, the latter confirmed that in principle the requirement to report suspicions took precedence over professional confidentiality, even though the profession was not really organised to help enforce these rules. Overall, and subject to the possible improvements referred to in part IV concerning professions, such as *economistas* and *gestorias*, whose role is not totally clear, the GET notes with satisfaction that the accounting and legal professions in Andorra are sufficiently aware of their role in identifying and reporting money laundering and corruption offences.

CONCLUSIONS

179. The nature and scale of corruption in Andorra has not so far been investigated and there is no information on the subject. Nor have there so far been any recorded convictions for corruption. Part of the reason is that specific provisions on corruption were only introduced in the new Criminal Code of 2005. Besides, with its 77 000 inhabitants, Andorra remains a country where, it is claimed, "everyone knows everyone else". From the on-site meetings it became clear that there were significant risks of and vulnerability to corruption in connection with public works and procurement contracts and with respect to conflicts of interests affecting elected officials. A full assessment of corruption and steps to increase awareness of the new anti-corruption measures, including the need to report suspected cases, will therefore be necessary.

180. The police and judiciary lack the human resources and expertise to carry out their current responsibilities properly and relatively little use is made of special investigation techniques in corruption cases. With regard to their degree of autonomy, the police are closely linked to the government while judges' renewable terms of office and limited career prospects could be a barrier to their independence and reduce their motivation.

181. The extent and scope of immunities in Andorra, which apply for instance to national elected officials, do not adversely affect the possibility of taking criminal action against them.

182. Andorra makes provision for the freezing, seizure and confiscation of the proceeds of corruption, but these do not apply to their equivalents. Moreover, the burden of proof can be reversed with regard to interim measures, but not for the purposes of confiscation. Andorra must also make it possible for legal persons to be held liable for corruption offences. Bearer securities ceased to exist in Andorra in 2003, but certain specific Andorran practices and features may still impede corruption inquiries, such as the use of nominees, various and sometimes inconsistent provisions on professional and banking confidentiality and secrecy, the unclear role of business professions such as *gestorias* and *economistas* and the fact that there are about a thousand companies with no real activity offering asset management services. The imminent creation of a central land/property register is to be welcomed. The new companies legislation scheduled for 2006-2007 should greatly improve matters by banning companies with no real activity and the practice of nominees, making it compulsory to maintain accounts and have them audited and introducing unlimited liability for partners. It is also planned to open the authorised capital to foreign investors, which could help to limit foreign nationals' use of nominees and Andorran intermediaries.

183. Existing legislation appears to guarantee the transparency of government activities but according to certain Andorran representatives, access to information is by no means so clearly established in every case. The scope of the supervisory activities of the court of auditors, which scrutinises

the use of public funds, is satisfactory. However, its anti-corruption powers and commitment need to be strengthened. More involvement is also required from the Andorran tax authorities, who do not at present co-operate of their own accord with the criminal authorities by reporting offences. This is a particularly important issue in the context of the new tax system to be established in Andorra. The Civil Service Act of 15 December 2000 is a definite advance over the previous situation, where the relevant law was scattered over various statutes and regulations. The situation is still not ideal, since each municipality has its own law and public officials are not all subject to the same probity and integrity requirements. The recruitment process is not always transparent, ethical rules still have to be approved for all public officials and, in order to encourage the reporting of corruption, staff who do report their suspicions in good faith must be offered some form of career protection. Andorra's close-knit social fabric makes arrangements to prevent conflicts of interest essential. These must therefore be strengthened and applied to all public officials, whether or not their posts are established.

184. In view of the above, GRECO addresses the following recommendations to Andorra:

i. **that measures to increase awareness of the new anti-corruption provisions be extended beyond civil servants to include elected members and officials, non-established members of the public service, the general public and the private sector, and that the need to report cases of corruption be stressed** (paragraph 20);

ii. **that a study be undertaken of the scale and nature of possible corruption in Andorra, covering the most exposed sectors, coupled with an assessment of existing instruments and machinery to deal with corruption, which would provide a sound basis for the development of anti-corruption policies** (paragraph 24);

iii. **that the investigation unit of the criminal police be strengthened and steps be taken, through training and other means, to enable some of its officials to specialise in corruption cases, as well as economic and financial crime, including money laundering, which might be linked to corruption** (paragraph 49);

iv. **that the staffing of the prosecution service and the number of investigating judges be increased to improve their capacity for combating crime, including corruption** (paragraph 51);

v. **that, even if they do not specialise in such cases, certain investigating judges develop specific qualifications and skills in more serious offences, including corruption, and that they investigate this type of cases, with the support of specialist police officers** (paragraph 52);

vi. **that the High Judicial Council establish and apply clear and objective criteria for the renewal of judges' and prosecutors' terms of office, which take particular account of merit and professional experience** (paragraph 55);

vii. **that i) a review be carried out of the consistency of the provisions on professional, banking and other confidentiality to offer wider coverage of the various sources of information and limit its scope more explicitly so that it cannot be used to conceal criminal offences; ii) additional ways be found, such as awareness raising measures and explanatory notes, depending on the nature of the problem, to stimulate co-operation between public authorities and the police and judicial authorities concerning the communication of information arising from their own activities that**

might contribute to the opening or conduct of inquiries into corruption and related offences (paragraph 61);

viii. **that authority to intercept communications be extended to cover a wider range of corruption offences included in the Criminal Code and that other special investigation methods, such as controlled deliveries, covert operations and undercover agents, also be made applicable to corruption cases, with the appropriate legal and judicial safeguards** (paragraph 63);

ix. **that authority to order confiscation of the equivalent value of the proceeds of offences (including corruption) be introduced into Andorran legislation and its use be encouraged in practice** (paragraph 89);

x. **that the legal basis of seizure for the purposes of confiscating the proceeds of crime (including corruption) be clarified, and that this include the seizure of equivalent assets and those held by legal persons** (paragraph 91);

xi. **that the scope of money laundering be extended to include, as predicate offences, the largest possible number of corruption offences** (paragraph 94);

xii. **that i) steps be taken to clarify the rules on the transparency of administrative activities, particularly concerning access to public documents at both central and local levels, with responsibility for overseeing these rules being assigned to an appropriate authority, and ii) consideration be given to additional ways of improving communication with the public** (paragraph 136);

xiii. **that the role of the court of auditors and the general inspection department in combating corruption be strengthened, in particular by i) inviting the court to check more frequently whether public accounts are being applied efficiently and in accordance with objectives; ii) authorising the court to recommend individual (disciplinary) and institutional measures to government; and iii) strengthening co-operation between the court and the department, particularly by making the results of the department's internal audits available on a regular basis** (paragraph 139);

xiv. **that immediate steps be taken: i) to approve ethical guidelines, in the form of a code of conduct, for the central and local public services as well as for specific bodies such as the police and customs; and ii) to provide suitable training on ethical issues** (paragraph 149);

xv. **that arrangements be made to protect public officials who report suspected corruption in good faith from possible reprisals** (paragraph 150);

xvi. **that i) stricter regulations be introduced on conflicts of interest, incompatibilities and ancillary activities of public officials (civil servants, employees under contractual relationship or with special status, elected officials), ii) appropriate arrangements be made for overseeing the application of these regulations, and iii) rules be introduced on migration of officials to the private sector** (paragraph 154);

xvii. **that i) legal persons be made liable for corruption offences and thus liable to financial and other penalties and ii) the necessary steps be taken, in terms of training, familiarisation etc., to raise the awareness of the police and judiciary**

practitioners about the new legislation on the liability of legal persons (paragraph 173);

xviii. **that the Andorran tax authorities be made aware of the current legal obligation in the Code of Criminal Procedure to report cases of corruption** (paragraph 176).

185. GRECO also invites the Andorran authorities to take account of the *observations* in the analytical parts of this report (paragraphs 21, 54, 56, 57, 90, 97, 100, 101, 140, 141, 144, 152, 155, 156, 172, 174, 177).

186. Finally, pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the Andorran authorities to present a report on the implementation of the above-mentioned recommendations by 30 June 2008.