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Joint First and Second Evaluation Rounds

Compliance Report on Andorra

Adopted by GRECO
at its 41st Plenary Meeting
(Strasbourg, 16-19 February 2009)

I. INTRODUCTION

1. GRECO adopted the joint first and second round evaluation report at its 31st meeting (8 December 2006). The report (Greco Eval II Rep (2006) 1F) was made public by GRECO on 7 February 2007, following authorisation from the Andorran authorities.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the Andorran authorities submitted their Situation Report on measures taken to implement the regulations on 30 June 2008.
3. In accordance with Rule 31.1 of its Rules of Procedure, GRECO asked Azerbaijan and France to appoint rapporteurs for the compliance procedure. Mr Vusal Huseynov was appointed on behalf of Azerbaijan and Mr Jean Alègre on behalf of France. The GRECO secretariat has assisted the rapporteurs in drafting the compliance report.
4. The purpose of the report is to assess the measures taken by the Andorran authorities to comply with the recommendations in the evaluation report.

II. ANALYSIS

5. In its evaluation report, GRECO made 18 recommendations to Andorra. Compliance with these recommendations is considered below.

Recommendation i.

6. *GRECO recommended 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.*
7. Regarding the first part of the recommendation, the Andorran authorities state that in the first half of 2008 the Government established a programme to raise awareness of anti-corruption measures. The programme does not have a fixed timetable so that sessions can be organised to take account of any additional needs that may arise. The first stage of the programme was concerned with raising awareness among central government officials. A factual and educational document¹ has been prepared for this purpose and is available on the staff internet portal under a new "anti-corruption" heading. Copies have also been sent to all central government staff. This first stage included awareness raising sessions between June and October 2008 for senior and other staff of the diplomatic service². Although senior staff are required to pass on what they have learnt from these sessions to their subordinates, further sessions were organised at the end of 2008 and in the beginning of 2009 (for instance in January 2009; altogether, 5 sessions are planned in 2009) for the remaining staff of central government (just under 2000 persons), including special sessions for the police and customs service. Senior local government officials have shown a keen interest in these initiatives and have taken part in the awareness raising

¹ The document describes all the offences relating to the public service and draws attention to existing ethical principles. It states that a code of conduct is currently being prepared (see the information relating to Recommendation xiv).

² Initially the sessions – each lasting two hours and held once or twice a week – are obligatory for all state secretaries, directors and heads of department of the general public service. Each has about twenty participants and covers such areas as the relevant criminal and administrative legislation and regulations, international standards and case studies based on the experience of neighbouring countries.

sessions from the outset. They have asked for further sessions to be organised for local government personnel and the aforementioned information document has been sent to local authorities so that they can distribute it to all their staff. In January 2009, a special session directly concerned with combating corruption was organised for elected members of these local authorities, and further similar activities will take place throughout the year 2009. Finally it has been agreed with the professional training and development department of the state secretariat for the public service to incorporate this training in preventing corruption into the general initial and in-service training of public officials; for instance, all newly recruited staff members of the administration are required to attend this training (as part of the initial training).

8. Second and third stages will be concerned with awareness raising for the staff of semi-public bodies, the private sector, professional organisations and the general public. Lectures and conferences on corruption and professional ethics took place on 9 December 2008, International Anti-Corruption Day, with the participation of the media and specially invited figures from the public and private sectors. Members of government, parliament and political parties attended this on-day conference.
9. Turning to the second part of the recommendation, the Andorran authorities state that the training sessions also stress the importance of co-operation and collaboration in fighting corruption, with particular and systematic reference to the obligation to report to the criminal authorities any offences for which prosecution is mandatory (Article 36 of the Code of Criminal Procedure takes precedence over the obligation of discretion and professional confidentiality). These explanations are also included in the factual and educational document which was published on-line and disseminated.
10. GRECO notes the information supplied, which shows that significant efforts have been made to familiarise all public officials, and the private sector and the general public, with the provisions to prevent and combat corruption. Even though the awareness-raising programme is still being implemented, it makes no doubt that in the context of Andorra, the activities already carried out have the potential to contribute to a better knowledge of the anti-corruption measures.
11. GRECO concludes that recommendation i. has been implemented satisfactorily.

Recommendation ii.

12. *GRECO recommended 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.*
13. The Andorran authorities state that on 16 January 2008 the Government decided to establish an anti-corruption unit (the UPLC), answerable to the President's department. The UPLC has various responsibilities concerned with encouraging and co-ordinating government anti-corruption activities. The unit, which is already carrying out its international representative responsibilities and those concerned with training and awareness raising, is currently working on various proposed amendments to the public service legislation and on a draft code of conduct (see responses to recommendation xv).
14. The President's office has commissioned a national study from the Andorran studies institute, a public social research body, the conduct of which will be co-ordinated by the UPLC. It will include

a number of surveys, including a general survey into the public perception of corruption in Andorra and sectoral studies in specific sectors such as certain government departments, the police and the customs service. These studies have been deferred to enable the officials concerned to benefit first from the awareness raising sessions (see recommendation i.), before answering the questionnaires to be used in the studies. The main thrust of these studies was laid down in the second half of 2008 and the practical work will be carried out in the first half of 2009.

15. GRECO notes with satisfaction that the anti-corruption unit (UPLC) is responsible for supervising a research study into corruption in Andorra and that steps have been taken to ensure that it is conducted to a high standard. The study is currently at the preparatory stage, so the recommendation cannot yet be considered to have been fully implemented.
16. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

17. *GRECO recommended 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.*
18. The Andorran authorities state that on 13 June 2007 the Government approved the restructuring of the police force and that, as part of this, the criminal police department has been divided into three units: criminal investigation 1 (drugs and offences against the person), criminal investigation 2 (organised crime and laundering) and criminal investigation 3 (on call, criminal records and property offences). The main aim of this restructuring of the criminal police is to strengthen its investigation capacity and staffing has been increased, from some 30 to a current strength of 52 police officers. The recruitment of 23 new police officers in 2008 should also, in the end, benefit the criminal police. The criminal investigation unit 2 (organised crime and laundering) comprises three groups, of which group 1, specifically responsible for organised crime and laundering, also deals with corruption cases. It currently has 6 officers (compared with four in post at the time of the evaluation), who can call on the support of the other two groups (one responsible for computer crimes, the other responsible for international cooperation) if required.
19. The Andorran authorities state that group 1 is meant, like the other police units, to receive specialised training; however, despite relatively important funding being available, these training sessions remain difficult to implement since the country relies heavily on foreign partners (thus, a session on money laundering could not be organised with the Spanish police, as planned, in November 2008). A conference is scheduled on 12 February 2009 on "Prevention, investigation and repression of organised crime. The laundering of assets". It is also planned for the UPLC to train 3 or 4 police trainers on the topics which are addressed by the awareness-raising campaign mentioned earlier under recommendation i), so that they - in turn - disseminate the content of those sessions.
20. GRECO notes with satisfaction that the staffing of the criminal police department, including that of the units responsible for serious crime, which includes organised crime, laundering and corruption, has been strengthened. The reorganisation of the police force has confirmed the existence of specialist groups concentrating more on these forms of crime. Despite the good will of the authorities, it would appear that training remains a problematic area and initiatives in this area remain little developed or even in the stage of planning.
21. GRECO concludes that, for the time being, recommendation iii has been partly implemented.

Recommendation iv.

22. *GRECO recommended that the staffing of the prosecution service and the number of investigating judges be increased to improve their capacity for combating crime, including corruption.*
23. According to the Andorran authorities, in the second half of 2006 a new deputy prosecutor was appointed and assigned to his new duties in February 2007. This brings the number of prosecutors to four. In May 2008 a new support staff member was appointed. The chief prosecutor himself has been working full time since 2006 whereas his predecessor only worked part time as he also had duties in Spain.
24. The judicial teams have been reorganised and new organisation structures for the courts were published in autumn 2007. Staff have been created and a new post of "*batlle*" (judge) has been created (though it is unlikely that he will be required to operate as an investigating judge in criminal cases). Nevertheless investigating judges now work in teams of five, rather than three, judges. According to the Andorran authorities, this enables each investigation section to improve its workload distribution and achieve the expected results of the recommendation, even though the number of investigating judges as such has not increased (there are still 5 such judges). Apart from that, one of the issues that poses the investigating judges the most problems is the significant volume of international requests for mutual assistance, because of the high proportion of foreign residents and the large number of tourists. Special agreements with the Spanish and French judicial authorities currently under discussion should simplify the work and expedite mutual assistance procedures.
25. GRECO notes the steps that have been taken to increase the staffing of the prosecution service and the number of investigating judges. The Andorran authorities are convinced that, even though the number of investigating judges has not increased, their situation is clearly improving and should improve still further once the measures to facilitate the international mutual assistance process are implemented. These various measures have the same aims as the recommendation. Nevertheless, GRECO thinks that the Andorran authorities should keep close watch on the number of prosecutors and investigating judges, given the problems posed by files linked to complex forms of crime, the important role that investigating judges play in practice in investigations and the risk that recent anti-corruption initiatives might generate additional cases.
26. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

Recommendation v.

27. *GRECO recommended 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.*
28. The Andorran authorities report various training initiatives, including a bilateral agreement with Spain signed in November 2006 on collaboration on staff training for judicial secretaries, judges and prosecutors, training on money laundering, with the participation of members of the financial intelligence unit and the police, training on the procedural steps required to secure evidence in

investigations and specific training activities in France and Spain provided in judicial training colleges³.

29. In July 2008, the High Judicial Council, in conjunction with Barcelona judicial college, produced plans for continuing training in the Principality for the 2008-2009 training period. The Council has paid close attention to the relevant GRECO recommendations and has included training on corruption. A first training module of 8 hours on "The instruments for combating corruption" was organised and implemented in 2008. A second module had to be postponed on two occasions for lack of availability of the foreign trainer, a fact which is not imputable to the Andorran authorities. They recall the system for the distribution of cases (on a rotational basis) among investigating judges and the difficulty to find a satisfactory solution that would enable one or two investigating judges (since there are only five of them) to specialise in corruption, notably. Given the current circumstances (in particular the fact that, to date, no corruption cases have come up), it was found more appropriate to involve all five investigating judges in the training activities dealing with corruption.
30. GRECO notes the information on the training generally available, and in particular the more specific training in the field of corruption introduced in July 2008 in co-operation with the Spanish judicial training authorities. GRECO understands the difficulties for the country to introduce a genuine specialisation for certain investigating judges. It also appreciates, in this context, the efforts accomplished to increase the skills of all investigating judges in the area of corruption. Difficulties exist to implement the training planned but this is not the country's responsibility. GRECO very hopes that these difficulties will be overcome and that training in the area of anti-corruption will be implemented as planned.
31. GRECO concludes that, overall, recommendation v has been dealt with in a satisfactory manner.

Recommendation vi.

32. *GRECO recommended 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.*
33. According to the Andorran authorities, in May 2008 the interior and justice ministries drew up preliminary draft legislation to improve the regulations on the career structure of public officials concerned with the administration of justice. This is currently being considered by the parties concerned and a working committee was created at the end of 2008. The Government's intention is to establish a judicial career structure that offers opportunities for professional advancement, by internal promotion, within the administration of justice system. Another objective is to strengthen the safeguards for judicial independence. This would be based on the principle that non-renewal of judicial terms of office, which under the Constitution are for six year renewable periods, could only be decided on objective grounds. The current system would thus be modified to introduce the principle of automatic renewal. These measures reflect the Government's commitment to securing the loyalty of judges and prosecutors by offering them the prospects of advancement.

³ At the French judicial college: "The participation of both parties in the investigation stage", "The prosecution service and the criminal court hearing", "Criminal evidence and scientific progress", "Combating organised crime". At the Spanish judicial college: "Case-law on restrictions of fundamental rights at the investigation stage", "New methods of investigation in criminal proceedings", "The growing prevalence of exceptional criminal provisions", "Economic crime", "Criminal law in the 21st century".

34. GRECO notes the Government's intention to make the renewal of judges' and prosecutors' terms of office more objective and to offer them more clearly defined career prospects. These are still currently at the draft stage. The various elements cannot therefore be assessed in the light of this recommendation.
35. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

36. *GRECO recommended 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.*
37. Regarding the first part of the recommendation, the Andorran authorities refer to the various provisions on professional, banking and general confidentiality, which are also considered in the GRECO evaluation report⁴. Article 190 of the Criminal Code, which incriminates the divulgence of secrets (personal data) in the context of professional activities, was amended in October 2008 (Law n°15/2008 which entered into force on 28 October 2008) does not apply anymore when the communication of information is required by law. With the Law n° 16/2008 on various amendments to the Code of Criminal Procedure (which entered into force also on 28 October 2008), Article 87 para.4 of the said Code was amended⁵ to enable the investigating judge not only to lift banking secrecy, but at present to also have access to information held by other financial entities or professions required to observe professional secrecy rules. The Andorran authorities also indicate that the financial intelligence unit has reviewed some of the provisions in the context of the redrafting of the money laundering prevention law, the new version of which was adopted on 11 December 2008. The revised law applies at present to a broad variety of professionals (including independent accountants, tax advisors, auditors, barristers and other legal advisors, notaries, real estate intermediaries, so called *economistas* and *gestorias*) who are all required to apply customer due diligence requirements and to report suspicious transactions – including all relevant information - to the FIU. These professions and all other obliged banking, financial and other businesses are at present required to obtain information about clients and transactions, and secrecy cannot be invoked anymore in the context of the obliged entities' mutual relations (even when one acts as an intermediary). At the same time, the former content of Article 50 of the anti-money laundering law (which provided that information only from financial businesses was accessible upon an order from the investigating judge) was abolished.
38. Turning to the second part of the recommendation, as part of the awareness raising programme established in 2008, public officials' attention is being drawn to the existence and scope of Article 36 of the Code of Criminal Procedure, which requires anyone who has knowledge of an offence to report it to the police or judicial authorities – an obligation that takes precedence over the duty of professional confidentiality. As indicated in paragraph 9, the awareness raising sessions place

⁴ See paragraph 40 of the report.

⁵ Article 87 para.4 reads now as follows: "In those cases where it is necessary to obtain information from a financial entity or a legal or natural person which/who is subject to professional secrecy rules, the judge [investigating judge] has to grant access to the information in question by issuing a reasoned decision".

particular stress on the need for collaboration and co-operation in fighting corruption. Finally, the Andorran authorities indicate that agreements on exchange of information are progressively being introduced (for instance between the immigration and the social security services).

39. GRECO notes that in respect of the first part of the recommendation, significant progress has been achieved, in order to soften various provisions on financial, professional and other categories of secrecy, notably in order to permit access to information held by entities other than just the banks. The amendments made to the anti-money laundering legislation and the criminal code are likely to facilitate the communication of suspicions and information which are useful for the fight against corruption and the laundering of related proceeds. As for the second part of the recommendation, the reporting of suspicions of crime including corruption is progressively recalled to the various state agencies. Even though the Andorran authorities do not mention it, one may legitimately expect that the suppression of penal sanctions for disclosing – where this is required by law - information related to persons constitutes an additional incentive to apply the reporting requirements of article 36 of the code of criminal procedure, at least by the services handling such information.
40. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

41. *GRECO recommended 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.*
42. The Andorran authorities state that the Parliament has adopted Law 16/2008 of 3 October 2008 (which entered into force on 28 October 2008) and as a result, articles 87 (interception of telephone communications), 122bis (controlled deliveries) and 122ter (undercover agents) of the Code of Criminal Procedure have been modified in accordance with the recommendation⁶.
43. GRECO notes with satisfaction that telephone tapping, controlled deliveries and undercover operations are now authorised for the various offences of corruption and trading in influence, including when these are predicate offences of money laundering.
44. GRECO concludes that recommendation viii has been implemented satisfactorily.

⁶ Article 87 (...): 2. In the case of all major offences and *lesser offences in cases of corruption or trading in influence*, the judge may order the interception of telephone, telegraph, postal and other communications at any point of any investigation if this is considered useful for establishing the facts of the case; Art 122 bis¹. The investigating judge, or if necessary the duty judge, may, at the request of the director of police, authorise the circulation or return of toxic, narcotic and psychotropic substances, as well as firearms, munitions or explosives, works of art, counterfeit money, images of children engaged in sexual activity or of their sexual organs, human organs, or objects, money or securities derived from a money or asset laundering operation or *from the original predicate offences* or *from lesser offences of corruption or trading in influence*. In determining whether such measures are necessary, account must be taken of the scale of the offence and the possibilities of surveillance. Art 122ter: The investigating judge, or if necessary the duty judge, may, at the request of the director of police, authorise the active participation of an undercover agent in offences relating to drugs, firearms, counterfeit money, procuring, terrorism, the sale of children, child prostitution and the use of children in pornography, trafficking of human organs, money or asset laundering or *the original predicate offences* or *lesser offences of corruption or trading in influence*. This agent must be a police officer of the judicial police.

Recommendation ix.

45. *GRECO recommended 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.*
46. The Andorran authorities state that Article 70 of the Criminal Code, on the confiscation of the instruments, proceeds and derived benefits of offences, has been amended by an Act of 18 October 2007 to include confiscation of the equivalent of the proceeds of offences. Since this reform, this type of confiscation has been applicable in cases where the location of the proceeds of an offence cannot be identified or they cannot be recovered from abroad. More recently, Article 70 of the Criminal Code was amended again by Law 15/2008 on the modification of the Criminal Code (it entered into force on 28 October 2008), with a view to authorise the confiscation of instruments used in the commission of an offence as well as attempts to commit an offence⁷.
47. According to the Andorran authorities, there is reason to hope that the changes to Article 116 of the Criminal Code, which concerns the temporary seizure of equivalent assets to the proceeds of crime (see the next recommendation), will clarify the situation and offer an incentive to courts to order equivalent confiscation. They also stress that the changes introduced in 2008 concerning special investigative means, seizure and confiscation were partly the result of initiatives from the judges and prosecutors themselves. Furthermore, since all Andorran judges and prosecutors are located in the same premises and the legal changes were announced in the press, these practitioners are in principle fully aware of the new provisions.
48. GRECO notes the information supplied, and the introduction, in 2007, of equivalent confiscation into Article 70 of the Criminal Code. Even though this is not strictly relevant to this recommendation, it is interesting to note that the most recently adopted amendments to this same article would also permit the confiscation of instruments intended for use in punishable attempts to commit offences, which could offer an additional weapon in the fight against corruption. Concerning incentives to apply the new measures, GRECO would have expected a more voluntary approach but overall, it accepts the reasoning of the Andorran authorities.
49. Overall, GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

Recommendation x.

50. *GRECO recommended 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.*
51. According to the Andorran authorities, Law 16/2008 on the modification of the Code of Criminal Procedure, which entered into force on 28 October 2008, amended section 116, which sets out in more detail the circumstances in which assets derived from the commission of offences can be seized (it now clearly provides for the application of seizure measures in order to ensure a

⁷ Article 70: When it hands down a conviction and in other circumstances specified in the Code of Criminal Procedure, the court shall order the confiscation of the instruments used, *or in the case of a punishable offence were intended for use*, in the commission of the offence, the proceeds obtained and any derived benefits, including any subsequent transformation of these benefits.

In cases where the location of the proceeds of an offence cannot be identified or they cannot be recovered from abroad, the court may order *the confiscation of the equivalent value of these proceeds*.

possible future confiscation)⁸. They also state that even though the new wording does not provide explicitly for the seizure of assets held by legal persons, there is no intrinsic reason to conclude that it is excluded, since there is a general reference in the draft legislation to "any funds where there are sufficient objective grounds for believing that they are the direct or indirect proceeds of the offence". It would therefore be reasonable to consider that this wording permits the seizure of assets held by legal persons.

52. GRECO notes the 2008 amendment introducing explicitly into the Code of Criminal Procedure a procedure for seizure for the purposes of confiscation, including to ensure value confiscation. GRECO would have appreciated more conclusive evidence of the legislator's intentions, but the Andorran authorities are confident that the seizure of assets held by legal persons is also possible without this requiring further explicit provisions in legislation.
53. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

54. *GRECO recommended that the scope of money laundering be extended to include, as predicate offences, the largest possible number of corruption offences.*
55. The Andorran authorities state that the money laundering offence of Article 409 of the Criminal Code was amended on two occasions: firstly, by Act 29/2007 of 20 December 2007 to amend Article 409 of the Criminal Code, which has introduced a new wording that includes corruption, extortion, fraud and trading in influence as predicate offences of money laundering; secondly, by Act 15/2008 (which entered into force on 28 October 2008) which introduced further modifications to Article 409, but without affecting the list of predicate offences as amended in December 2007. The Andorran authorities have provided the text of the current wording of the provision⁹. They stress that the money laundering definition contained in the *Law on international co-operation against the laundering of money and the proceeds of international crime* (the anti-money laundering law) was also amended and Article 41 of this law just refers at present to the definition of the offence of the Criminal Code (and does not provide for a different definition).
56. GRECO notes the information on the amendments in December 2007 to Article 409 of the Criminal Code, which makes money laundering an offence. These add extortion, corruption and trading in influence, as well as other offences, to the list of predicate offences to money

⁸ Article 116: As well as awarding any damages for civil liability incurred, during the preliminary inquiry or formal investigation stages of cases the judge shall order, giving reasons, the seizure of any funds where there are sufficient objective grounds for believing that they are the direct or indirect proceeds of the offence, to ensure the confiscation of their equivalent, as provided for in Article 70 of the Criminal Code. He may also seize property and assets belonging to a non-liable third party unless the third party has acquired them lawfully in accordance with articles 119 and 120.

For the purposes of this article, shall be treated as funds, financial and other material and non-material assets of any nature, moveable and immovable property, and documents and securities or legal instruments of any nature or form, even electronic or digital, providing proof of ownership of or an interest in these same assets, including bank holdings and loans, travellers' or banker's cheques, payment orders, shares, securities, bonds and letters of exchange or credit.

⁹ Article 409: 1. Anyone who acquires or transmits money, assets or securities or who takes steps, actively or by omission, to conceal their origin in order to conceal them or their equivalent, when they derive from any major offence punishable by a minimum term of imprisonment of over six months, or from any offence relating to prostitution, extortion and fraud, corruption and trading in influence, or illegal trafficking in toxic drugs, and who is aware of their origin but has not been convicted as a perpetrator or accomplice, shall be punishable by one to five years' imprisonment and a fine of up to three times the value. Attempt, conspiracy and incitement to commit this offence is also an offence.

2. Anyone who, through serious negligence, performs any of the actions described in the previous paragraph shall be punishable by up to one year's imprisonment.

laundering, as proposed in recommendation xi. GRECO also welcomes it that the money laundering definitions (and thus the predicate offences) are at present the same in both the Criminal Code and the anti-money laundering law.

57. GRECO concludes that recommendation xi has been implemented satisfactorily.

Recommendation xii.

58. *GRECO recommended 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.*
59. The Andorran authorities provide a long list of initiatives aimed at greater transparency in the economic area (stating that this would, indirectly, have a positive impact on the transparency of administrative activities), including: the adoption of the Public and Private Limited Companies Act, n°. 20/2007 of 18 October 2007, which has introduced a legal framework for these companies based on Community standards (including rules governing companies' annual accounts and the obligation - in certain cases - to have them audited and deposited), and the creation of a mercantile companies register to which anyone lawfully resident in Andorra can have access. In their subsequent comments, the authorities confirm that Article 42 of the Administrative Code of 1989 has not been complemented since this provision would already provide for a legal framework on access to information that meets the expectations of recommendation xii; citizens may apply for access to administrative documents, except in certain cases¹⁰. This Article also provides for the possibility to challenge a denial before the administrative court. This being said, the Andorran authorities have started to look at the relevant Council of Europe standards on access to public information, with a view to identify possible amendments that would be desirable. They also mention that constant efforts have been accomplished in recent years to improve communication with the public: the Communication Department of the administration provides the media with weekly briefings on government decisions and similar practices would take place at local level. New measures are being envisaged such as, for instance, continuous information provided to journalists via electronic messages like sms or the creation, by the anti-corruption unit (UPLC), of a website to inform the public about the UPLC's activities, to publish in the official language the reports adopted by GRECO and to introduce on-line contact possibilities.
60. GRECO notes the information supplied, which reflects current efforts (and what remains to be done) to attain a satisfactory level of transparency of commercial and financial information on business entities. It also notes, however, that this information has no apparent bearing on the content of recommendation xii, concerning access to public documents and improving communication with the public. As regards the latter, GRECO notes that there seem to be trend in favour of initiatives that would meet the second part of the recommendation. As far as the first part of the recommendation is concerned, however, the Evaluation Report mentioned the existence of difficulties to obtain access to purely administrative information held by central and local authorities, and concerning the work of the judiciary. Consultations seem to have been

¹⁰ According to Article 42, the administrative body may deny access to "documents protected by confidentiality according to law". Information which, directly or indirectly, enables to identify the persons they refer to may be communicated only to those persons who have a subjective or legitimate, personal and direct interest in the case. Access to certain documents can also be denied where these contain personal data.

initiated on desirable improvements in the area of access to information. The intended results need to be achieved, as part of this positive process.

61. GRECO concludes that recommendation xii has been partly implemented.

Recommendation xiii.

62. *GRECO recommended 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.*
63. Regarding the first part of the recommendation, the Andorran authorities do not say whether the court of auditors (CA) and the general inspection department (GID) of the Ministry of Finance have decided to intervene or contribute more actively in combating corruption; members of the CA attended, in December 2008, the awareness raising sessions mentioned earlier (see recommendation i.). They state that in 2007 the GID established procedures for monitoring the management of objectives and the effectiveness of the public accounts. In practical terms, it has completed a project to ensure that policy directives are consistent with technical standards and at the same time consider the means available to implement them. At the time of the evaluation visit the GID was still a very recent institution. Initially, it has concentrated its efforts on conformity checks, before extending its activities to establishing a system for monitoring the management of objectives and the effectiveness of the public accounts. However the audit programmes for 2006 already included a heading concerned with such monitoring. These could start effectively in 2009 following the exploratory studies that were carried out on 2006 and 2007 at central and local government levels to assess the degree of implementation of objective-based budgets and investment management plans.
64. Turning to the second part of the recommendation, the Andorran authorities state that the CA still cannot itself impose nor recommend the application of disciplinary measures. The Act of 13 April 2000 which regulates the CA's work does not really prevent the institution from recommending the application of such measures, and a discussion has been initiated on ways to implement this part of the recommendation through the adoption of a protocol that would complement the above Act.
65. In connection with the third part of the recommendation, the Andorran authorities state that the court of auditors and the general inspection department differ considerably in the nature of their activities, which does not facilitate close collaboration between them. However, when the CA audits the accounts of central government departments, semi-public bodies and companies in which the state has a holding, the auditors have access to all the reports produced by the general inspection department in the financial year concerned, and they rely heavily on its work. This information contradicts the situation described in the Evaluation Report¹¹, but there is no indication whether this is the result of certain changes. For its part, the GID sees all the reports produced by the Court on the annual audits of the various public sector bodies - government departments, semi-public bodies and companies in which the state has a holding.

¹¹ According to its paragraph 138, the GID produces no reports and the CA receives no statistical information from the GID.

66. GRECO notes the information provided. It observes that besides the awareness-raising events that CA members have attended, there are no reported measures to achieve greater involvement of the CA and the GID in the anti-corruption efforts. Nevertheless, both now appear to have started to include objectives management and effectiveness monitoring in their working plans and methods. Regarding the second part of the recommendation, the Court still lacks (or considers itself to lack) the power to recommend individual (disciplinary) measures; discussions would have started on dealing with this issue. Turning to the third part of the recommendation, GRECO notes that the general inspection department produces regular reports, which the Court's auditors have access to and use, in contrast to the situation at the time of the on-the-spot visit, when the Court had no access to Department information. To conclude, GRECO considers that further efforts could be made to involve to a larger extent and more explicitly the CA and the GID in combating corruption, and to enable the Court to recommend individual (disciplinary) measures.
67. GRECO concludes that recommendation xiii has been partly implemented.

Recommendation xiv.

68. *GRECO recommended 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.*
69. Regarding the first part of the recommendation, the Andorran authorities state that a draft ethical code for central government authorities is being prepared on the basis of the guidelines in the model code of conduct for public officials appended to Recommendation (2000)10 of the Council of Europe Committee of Ministers. However work has been suspended pending a general revision of the Civil Service Act, the contents of which are the subject of intense debate. It has been agreed that once agreement is reached on how the reform should proceed, the draft ethical code for the central administrative services will be finalised. The customs department is also working on a draft code of ethics but, once again and for the same reasons, it was deemed preferable to suspend the work. The police directorate has also expressed its commitment to producing such a code but work has been postponed until the reorganisation of the service is finalised.
70. In connection with the second part of the recommendation, there has not yet been any training as such because the ethical codes are still at the draft stage. However, the current awareness raising campaigns (see recommendation i) draw attention to the general ethical principles governing government action, the rights and duties, including incompatibilities, of public officials and the current disciplinary arrangements.
71. GRECO notes that some work has started on drawing up ethical principles. It regrets that this has had to be frozen because of uncertainties surrounding the reform of the Civil Service Act, and that there are currently no equivalent proposals for the staff of local authorities and departments. It is also clear that the second part of the recommendation, on training, will have to be looked at anew once the various codes of ethics have been approved.
72. GRECO concludes that recommendation xiv has been partly implemented.

Recommendation xv.

73. *GRECO recommended that arrangements be made to protect public officials who report suspected corruption in good faith from possible reprisals.*
74. The Andorran authorities state that the anti-corruption unit (UPLC) has started to consider this matter, drawing particularly on other countries' experience. However, the work is at a very early stage because it is difficult to find ways of adapting to the size of the country, for example by guaranteeing whistleblowers anonymity.
75. GRECO notes the information supplied and the lack of progress or practical proposals for implementing this recommendation.
76. GRECO concludes that recommendation xv has not been implemented.

Recommendation xvi.

77. *GRECO recommended 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.*
78. The Andorran authorities state that the anti-corruption unit considered setting up a study group on incompatibilities and migration to the private sector. However, it is difficult to find ways of reconciling this recommendation with the realities of Andorran life, because of the size of the country and the fact that, as a result, the prospects for public officials leaving government service are very limited. In practice, moreover, this reality means that politicians do not always have to abandon their main occupation, since the incompatibilities currently in force are very limited in scope. However, discussions continue on how to find a more detailed response to these issues.
79. GRECO notes the information supplied and the lack of progress or practical proposals for implementing this recommendation. The aim of the recommendation was not to establish absolute bans on conflicts of interest, ancillary activities and the migration of public officials to the private sector, but rather to introduce arrangements that would limit certain abuses and make it harder to take advantage of them ("stricter regulations"). The on-site visit and the evaluation report revealed certain significant risks, for example public decisions motivated by individual profit or interests (including, and in particular, ones at the local level).
80. GRECO concludes that, thus far, recommendation xvi has not been implemented.

Recommendation xvii.

81. *GRECO recommended 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.*
82. The Andorran authorities state that the draft legislation to amend the Criminal Code Act, no. 9/2005 of 21 February 2005 (mentioned earlier, see recommendation ix), was adopted and

entered into force on 28 October 2008. It introduces in Article 386bis of the Criminal Code¹² the principle of legal persons' liability for offences of corruption and trading in influence. In addition, Article 71¹³ specifies the fines to which they may be liable (up to € 300 000 or four times the profit obtained or expected from the commission of the offence), in addition to confiscation under Article 386bis and various other measures (dissolution, suspension of activity etc.).

83. Regarding the first part of the recommendation, GRECO notes with satisfaction that Andorra has introduced the principle of liability of legal persons for offences of corruption and trading in influence. The pecuniary and other fines appear to be adequate. However, as regards the second part of the recommendation, there are no reports of initiatives to familiarise the police and judicial officials with the new legislation on legal persons' liability.
84. GRECO concludes that recommendation xvii has been partly implemented.

Recommendation xviii.

85. *GRECO recommended that the Andorran tax authorities be made aware of the current legal obligation in the Code of Criminal Procedure to report cases of corruption.*
86. The Andorran authorities state that, in order to implement this recommendation, all of the staff of the taxation department (and not just its managers) were invited to, and did attend the anti-corruption awareness raising sessions described under recommendation i. During those sessions, the issue of collaboration in the identification of corruption offences and the importance of the formal obligation applicable to all public officials to report any offences for which prosecution is mandatory (Article 36 of the Code of criminal procedure) were addressed. The specific features of the country's tax system including the recent introduction of accounting obligations and tax controls as from 2009/2010 imply that it is only in the forthcoming months or years that tax authorities will be in a position to contribute to the detection of corruption offences.
87. GRECO notes the information provided, in particular the fact that the whole staff of the taxation department were made more familiar with the need to report possible cases of corruption detected in the course of their activities. It will perhaps be appropriate to put at their disposal, in due course, guidance documents on the recognition of corruption-related expenses in the tax payers' documentation and accounting material¹⁴.
88. GRECO concludes that recommendation xviii has been dealt with in a satisfactory manner.

¹² Article 386bis establishes the principle of legal persons' liability for the various offences specified in chapter 4 (on corruption and trading in influence) of part XXI of the Criminal Code (offences against the public service).

Art. 386bis: "In connection with the offences specified in this chapter, in addition to the offences provided for the court may impose the following measures:

a. confiscation of the proceeds, as provided for in Article 70;

b. the other consequences applicable to individuals or legal persons provided for in Article 71.

¹³ Article 71 of the Criminal Code. 1. When handing down sentence or in other circumstances specified in the Code of Criminal Procedure, the court may impose, giving reasons, the following measures: a) the winding up of the company, association or foundation; b) the suspension of activities (...) for a maximum period of 6 years; c) the temporary or definitive closure (...) of the premises (...); d. In the case of offences against the financial or economic system, or offences of corruption, trading in influence, terrorism or terrorism financing, or money or securities laundering, a fine on the company, association or foundation of up to € 300 000, or up to four times the profit obtained or hoped for from the commission of the offence, whichever is the greater. The court shall determine the size of the fine, having regard to the seriousness of the offence, the assets of the company, association or foundation and the impact on suppliers and employees' rights.

¹⁴ See for instance the The OECD Bribery Awareness Handbook for Tax Examiners (link to the report:

<http://www.oecd.org/dataoecd/20/20/37131825.pdf>).

III. CONCLUSIONS

89. **In view of the above, GRECO concludes that Andorra has satisfactorily implemented or dealt with in a satisfactory manner half of the recommendations in the joint first and second round evaluation report.** Recommendations i, vii, viii, x and xi have been implemented satisfactorily and recommendations iv, v, ix and xviii have been dealt with in a satisfactory manner. Recommendations ii, iii, vi, xii, xiii, xiv and xvii have been partly implemented and recommendations xv and xvi have not been implemented.
90. Andorra is making important efforts to raise awareness within the public administration and the country altogether about the need to combat corruption. Decisive reforms have also taken place in such areas as the special investigative techniques applicable during corruption investigations, the legal framework on confiscation and temporary measures, the rules on professional secrecy and thus the authorities' access to information, as well as the definition of the money laundering offence so as to include the underlying corruption offences. The Principality is still working on further improvements such as studying the phenomenon of corruption in Andorra, the legal statute of judges and prosecutors, making practitioners more familiar with the liability of legal persons and improving access to information held by the public authorities. GRECO regrets, however, that as regards a legal framework on conflicts of interest and incompatibilities, and on whistleblower protection, no noticeable progress has taken place so far.
91. GRECO invites the head of the Andorran delegation to provide additional information on recommendations ii, iii, vi, xii, xiii, xiv, xv, xvi and xvii by 31 August 2010 at the latest.
92. Finally, GRECO invites the Andorran authorities to authorise publication of this report as soon as possible, to translate it into the national language and to make that translation available to the public.