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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures
(PC-R-EV)

FIRST EVALUATION REPORT ON THE PRINCIPALITY OF ANDORRA

SUMMARY

1. The Principality of Andorra was the 8th country evaluated by the Committee. The PC-R-EV evaluation team, accompanied by two colleagues from the FATF, made a four-day visit to Andorra la Vella from 22 to 25 March 1999.

2. The Principality of Andorra is a small country (464 km2) situated in the heart of the Pyrenees, between France and Spain, with a total population of some 65,800 people. It achieved sovereignty only in 1993. Due to its protected geographical situation, the quasi-absence of any direct taxes, the free circulation of money across its frontiers and its relatively developed financial system, Andorra is likely to attract money laundering operations.

3. The examiners wish to express their very positive overall impression concerning Andorra's anti-money laundering regime. This regime rests on sound bases, from both the criminal law and regulatory standpoints, and the institutions responsible for its implementation are motivated, convinced of the need for a systematic effort to combat money laundering. Attention should also be drawn to the results already achieved by the Andorran anti-money laundering system and the determination of the Government of Andorra to make this system as effective as possible.

4. Crime in general remains at a lower level than the European average and the police crime statistics[1] show a slight fall between 1995 and 1997, the total number of criminal offences falling from 2,028 (1995) to 1,937 (1997), mainly due to the reduction in the number of drug-related offences. On the other hand, the number of cases of fraud (up from 88 to 173) and housebreaking (up from 376 to 518) increased significantly. Major sources of dirty money are essentially offences committed abroad, including drug trafficking. Smuggling, recently made a criminal offence and often involving organised crime, is likely to be a major source as well. Financial crimes such as forgery, corruption and fraud, in particular Community fraud, are also to be mentioned among the offences of economic nature detected that might generate substantial profits. The most common technique used by money launderers seems to be depositing cash in Andorran bank accounts. Even though money laundering cases seem not too significant, the Government of Andorra is aware of the fact that its financial system and non-financial intermediaries may be, and indeed are, used for laundering operations, above all by foreign drug traffickers and, in general, by organised crime groups.

5. The Andorran anti-laundering policy priorities are prevention, criminal legislation, co-ordination between all the actors concerned and the improvement of the legislative and regulatory framework. The diligence obligations are established by the law of 11 May 1995 on “the protection of banking secrecy and the prevention of the laundering of money and the proceeds of crime”, the principles had been the subject of a Code of Conduct self-imposed by the Association of Andorran Banks in 1990. The offence of money laundering was introduced by the Criminal Code in July 1990 and partly modified by the law of May 1995. This law also imposes the obligation to identify clients, this obligation being limited to the banks alone, in the case opening a bank account, buying securities, making deposits, transferring funds, renting a safe or any other operation that can be assimilated to those listed. The obligation is not associated with a specific threshold. The banks are also obliged to keep a client identification register and to keep the documentation relating to the identity of their clients for at least the five years following the end of their commercial relations. The law of May 1995 also obliges any person or institution, banking or not, to declare any operation presenting

[1] Source: International criminal statistics – Andorra (Secretariat General of Interpol), 1995-1997.

reasonable evidence of links with money laundering to the judge of first instance ("*Batlle*"). A copy of the declaration, accompanied by the relevant documents, must be sent to the Supreme Finance Committee (CSF), so that it can check compliance with the obligations of the bank. However, the law of May 1995 also imposes, specifically concerning the activity of banking, the obligation of secrecy. Article 6 of this law stipulates that these establishments may give information relating to their relations with their clients and the accounts or deposits of these latter only in the context of legal proceedings and on the written request of a judge. The scope of this Article 6 is the subject of controversy in civil proceedings. Strict restrictions also apply when a foreign authority requests information protected by banking secrecy in Andorra.

6. Money laundering offences appear in articles 145 – 146 (laundering and aggravate laundering) and 303 (laundering through negligence) of the Criminal Code. The only laundering offences are listed as those connected with drug trafficking, sequestration, illegal arms sales, prostitution and terrorism. Article 147 of the Criminal Code stipulates that the offence of laundering may be constituted even if the main offence was committed abroad, provided that this offence is punishable under Andorran criminal law. The intentional element appearing in Article 145 of the Criminal Code is very broad as it covers not only the case of he who has knowledge of the origin of the goods but also the case of he who "should" know this origin. In practice, over a period of 4 years (1995-1998) five cases were brought before the "*Tribunal de Corts*", of which one was the subject of an order certifying the extinction of the criminal proceedings because of the death of the accused. In a second case the accused was found guilty but an appeal has been lodged. In a third case the accused were acquitted, while the fourth is about to be judged. The fifth case has not yet been dealt with. Ten other cases are currently being investigated and three others are about to be transmitted by the Police to the investigating magistrate.

7. The examiners noted that the limited number of offences listed as predicate offences might be an obstacle both to the effectiveness of the fight against laundering within the Principality and in international co-operation. A preliminary draft law is intended to extend the definition of the laundering by reference to the activity of criminal organisation which, according to the examiners may give rise to many additional difficulties, unless a precise definition is given to the concept of organised crime. It would therefore appear more judicious to use a more general formula, such as that in the Strasbourg Convention, making reference to any criminal offence as the predicate offence.

8. Article 37, paragraph 5 of the Criminal Code stipulates that "the confiscation of the things *used* to commit the offence" may be imposed – this is thus a possibility – as an additional punishment, and this applies to both individuals and legal entities. However, in the case of money laundering, confiscation is expressly provided for by Article 147 of the Criminal Code which makes it compulsory for all sums and property connected with laundering The authorities of the Principality explain that the rudimentary nature of these provisions do not cause any difficulty in practice and point to several significant confiscations, one of which in the absence of the perpetrator of the offence, who had died. However, the Code of Criminal Procedure, as amended by the law of 10 December 1998, makes no provision for provisional measures (freezing, seizure) or for rules concerning confiscation.

9. The absence of any multilateral treaties or any legislation on international co-operation makes mutual assistance and other forms of co-operation with Andorra uneasy. Thus with the legislation now in force, the Andorran courts could not execute a confiscation pronounced by a foreign jurisdiction, as foreign judgements cannot be applied in the Principality. This is a particularly weak point in the system. Andorra should therefore rapidly introduce a legal instrument favouring this co-operation and ratify the existing international instruments. The examiners were in fact informed that the Principality was preparing to ratify the Vienna[2] and Strasbourg[3] conventions.

10. Regarding the diligence obligations, the law of May 1995 is a good start, but in the matter of identifying the clients, keeping documents etc. it applies only to banks. Its coverage should therefore be extended to all institutions capable of facilitating laundering operations. Similarly, the law should be revised to give specific powers to the INAF (Andorran National Finance Institute) to improve the supervision of the institutions subject to diligence obligations, in particular regarding the prevention of money laundering.

11. The existence of numbered accounts worries the examiners. It would be desirable that Andorra, in conformity with the international standards, harmonises its legislation with these standards and eventually eliminates these numbered accounts Similarly, the identification of the true beneficiary and the verification of the origin of funds should be made obligatory for persons acting as trustees, lawyers and other professionals who are authorised to directly perform certain financial operations, in particular deposit operations, on behalf of clients whose true identity is known only to them. In addition, they should be included within the field of application of a future criminal rule sanctioning the failure to report suspicious operations.

12. It is very positive that the banking institutions have well accepted their responsibilities concerning the declaration of suspicion, despite the difficulties that this entails (given the absence of a Financial Intelligence Unit in the system, declarations of suspect operations are sent directly to the judge). However, the examiners could not help wondering whether the small number of declarations of suspicions to the legal authorities is not due, in part, to the absence of any criminal provision directly sanctioning failure to declare suspicions, while on the other hand the non-respect of professional secrecy is subject to severe criminal sanction. It would therefore appear desirable to establish a balance by sanctioning under the criminal law at least the intentional failure to declare suspicion, in accordance with the practice of a number of member States. In fact the number of declarations to judges remains very limited (10 between 1995 and 1998) for various other reasons, in particular the virtual impossibility of proving that the funds come from the offences listing in Article 145 of the Criminal Code, the fact that the denunciation is made directly to the judge, the absence of a list of indicators of general application and the very restrictive interpretation of "suspicion".

13. The examiners were told that the Principality of Andorra intends to adopt a new law concerning in particular the creation of a Financial Intelligence Unit, the extension of the diligence obligations beyond the banking sector, creating the legal basis for international co-operation on criminal matters and reformulating the definition of money laundering. The rapid adoption and implementation of this new law seems to the examiners to be essential for developing an efficient anti-laundering system in Andorra. In addition, the planned

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2 The Andorran Parliament approved the ratification law concerning this Convention on 22 April 1999.

3 The Andorran Government signed this Convention on 7 May 1999.

ratification of the Vienna and Strasbourg Conventions should make it possible to significantly improve Andorra's capacity to assist foreign countries and, in particular, to execute freezing, seizure and confiscation decisions.

14. Through implementing these measures, Andorra will once more demonstrate its determination to fight effectively against money laundering and its will to honour its international obligations in this field.

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